

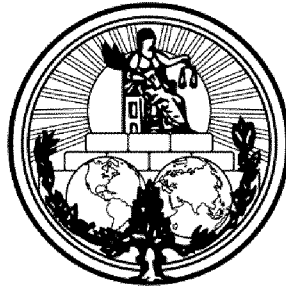
**TEAM 346A**

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**THE 2023 PHILIP C. JESSUP INTERNATIONAL LAW  
MOOT COURT COMPETITION**

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**THE CASE CONCERNING THE CLARENT BELT**



**THE KINGDOM OF AGLOVALE**

**APPLICANT**

**v.**

**THE STATE OF RAGNELL**

**RESPONDENT**

**IN THE INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**

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**MEMORIAL FOR THE APPLICANT**

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**2023**



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## STATEMENT OF JURISDICTION

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The Kingdom of Aglovale [“the Applicant”] and the State of Ragnell [“the Respondent”] hereby submit the present dispute regarding the Clarent Belt to the International Court of Justice [“the Court”] pursuant to Article 40(1) of the Court’s Statute and Article 41 of the Trilateral Treaty of Lasting Peace Among the Respondent, the Federation of Balan, and the Applicant signed on 16 September 1958 [“the Treaty”].

According to Article 36(1) of the Statute, the Court has jurisdiction to decide all matters referred to it for decision. Both parties have accepted the Court’s decision as final and binding and shall execute it in good faith in its entirety.

## QUESTIONS PRESENTED

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The Kingdom of Aglovale respectfully asks the Court to adjudge:

### I.

*Whether* the Respondent violated the Treaty by initiating a military operation and carrying out bombings that killed the Applicant's nationals and is thus obligated to pay reparations.

### II.

*Whether* the Respondent violated the Treaty by employing captured UAC fighters in transportation of contaminated plastic waste and detaining them in Correctional Center.

### III.

*Whether* the Applicant violated the Treaty by imposing unilateral sanctions against the Respondent and the Respondent's nationals and is thus obligated to withdraw the sanctions, and pay compensation.

### IV.

*Whether* the Respondent violated the Treaty by transporting hazardous plastic waste to Etna and *whether* the Applicant violated the Treaty obligation by refusing to cooperate in good faith in the management of the waste.

## STATEMENT OF FACTS

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### **BACKGROUND**

The Applicant, the Kingdom of Aglovale [“Aglovale”] and the Respondent, the State of Ragnell [“Ragnell”] are neighbouring countries. Between Aglovale and the Dozmary Sea lies the Clarent Belt [“the Belt”], with habitable industrial park Tintagel Coast. Aglovale and Balan concluded an agreement for financing construction of a seaport and Eamont Thruway, the only land route between the seaport and the Aglovale’s territory.

### **TRILATERAL TREATY OF LASTING PEACE**

Balan deployed an army division near the border between the Belt and Ragnell after an explosion at the port authority’s buildings in the Belt. Ragnell then dispatched an armed division to the border as a response. Acts of aggression escalated into the Clarent War in June 1952. Aglovale remained neutral, and their government convened the first round of peace talks, that stretched over two years. On 16 September 1958 leaders signed the “Trilateral Treaty of Lasting Peace” to ensure demilitarization and friendly relations. Although Balan regained their sovereignty over the Belt, they agreed to lease the territory to Ragnell for 65 years in exchange for a specified annual payment. Aglovale was granted unrestricted use of the seaport and the railway and agreed to monitor activities on the territory.

### **ENVIRONMENTAL POLICIES**

During the Clarent war toxic chemicals leaked into the soil and ocean. Ragnell took steps to restore soil and revive marine environment that had become polluted, by licensing several companies to construct waste management facilities, among which was “The Plastics Conglomerate,” a private company owned by Ragnell’s corporation, that established a plant to process plastic waste in 1989. Throughout the years Aglovale funded renovations of the port facilities, paid for a major expansion and modernization of the Nant Gateway.

In the 21st century new factories in the Belt, most of which were operated by the Ragnell’s corporations, caused additional waste by producing plastics-based items for the biomedical and healthcare industries and plastic parts for use in military technology. All three countries took legislative steps to strengthen domestic environmental protection laws.

## **UAC AGGRESSION**

“Unityk Ai Chyvon” [“UAC”] (“United and Whole” in Balani) began as a group of military veterans who opposed the Treaty, by organizing annual protests and marches across Balan. Throughout the years they expanded their activities like founding veterans’ aid centers and student societies. In 1967 the Ragnellian Progressive Party [“RPP”] was formed and focused on protecting their interests of in the Belt. In August 2018 UAC student societies called upon Balanis to stand together, as a response to Dan Vortigerns [“Vortigern”] open skepticism of international institutions and treaties. When he was elected as president, UAC membership increased, and their tactic shifted to physical and cyber-attacks against factories owned by Ragnell in Tintagel Park. Balan took measures to stop the attacks after being called upon by Ragnell. On 15 September 2021 UAC submitted a declaration to the Swiss Federal Council which acted as a depositary, claiming that they represent the Balani people in fight for self-determination against alien occupation of the Belt. The declaration was accepted.

## **“OPERATION SHINING STAR”**

After the attacks carried out by UAC members in July 2021, Vortigern launched the military campaign Operation Shining Star to wipe out the UAC fighters. In September 2021 fighting broke out between UAC and Ragnell’s forces. Over the next few months, Ragnell’s forces captured more than 400 UAC fighters and detained them at Fort Caerleon. On 21 March 2022, UAC detainees were transferred to Camlann Correctional Center, a maximum-security prison in the north of Ragnell.

## **WASTE MANAGEMENT PROBLEM**

On 15 November 2021, the central floor of the main waste treatment plant of The Plastics Conglomerate collapsed, rendering the facility inoperative. Plastic waste began to accumulate in Tintagel Park and port area. Industry experts predicted that continued fighting could trigger an environmental and public health disaster. On 12 December 2021 Representatives from Aglovale and Ragnell met to negotiate transfer of the waste for processing in Aglovale’s management facilities, but failed to reach an agreement. They agreed to resume talks on 27 December 2021.

## **DESTRUCTION OF THE NANT GATEWAY**

On 20 December 2021, Balan ordered evacuation of all Balani workers living in the park, declaring the railway a humanitarian corridor. On 22 December 2021, Ragnell’s Defense Minister received an urgent call from the Defense Minister of Etna, a nearby State island,

relaying intelligence that dozens of UAC fighters were making their way along the railway to launch a surprise attack. The next day at 3:43 a.m. Ragnell's air force bombed and destroyed Nant Gateway. Aglovale's Minister of Infrastructure and Transport pointed out that the Aglovale had used the railway peacefully. The destruction of the Nant Gateway has left many civilians trapped in the Tintagel Park and unable to access basic necessities and humanitarian aid.

### **BILATERAL AGREEMENT ON WASTE DISPOSAL**

Due to the bombing of the Nant Gateway, scheduled meeting in regard to waste management negotiations was cancelled. On 20 January 2022, Ragnell signed a bilateral agreement with Etna to export all waste for disposal and Etna committed to dispose of the waste in an environmentally sound manner. Ragnell ordered UAC detainees to help load the waste onto ships, providing them with necessary safety gear. On 22 February 2022, International Landfill Solutions Alliance ["ILSA"] issued a report stating that treatment sites were not equipped to handle large amounts of waste and indicated that some incineration, landfill and ocean disposal took place.

### **BOMBING RAID**

On 7 March 2022, the Respondent's military leadership authorized a bombing raid on the Compound Ardan, killing 76 civilians, including 8 Aglovalean nationals. An investigation later showed that a Balani worker who provided information to Ragnell and claimed that all the occupants of Compound were UAC fighters had limited access to the location and had a history of providing misleading intelligence.

### **ECONOMIC SANCTIONS**

On 22 April 2022, the governments of the Aglovale and Balan issued a joint statement demanding the return of the detainees and condemned Vortigern's war of aggression in the Belt. The next day Aglovale enacted economic sanctions against Ragnell, sanctioning their Central and other banks, president Vortigern, RPP senior members and its financial supporters, and imposing trade embargo. On 4 May 2022, Aglovale seized Prydwen Place, summer home of Kay Ector who is Ragnellian national and primary donor to the RPP. On 15 June 2022, the Ambassador of Balan personally delivered a letter to Vortigern, demanding initiation of negotiations for the transition of the Belt to Balani control. Ragnell issued demands for transferring control, however Balan rejected them all.

## **SETTLEMENT OF DISPUTE**

Throughout June and July 2021, delegates from Aglovale, Ragnell and Balan met in Geneva to negotiate a settlement of their disputes. After negotiations failed to produce an agreement, Ragnell filed an Application with the Court's Registry on 13 July 2022. Aglovale announced its intention to file counterclaims on 21 July 2022. Both parties cited the Treaty as the legal basis. Balan chose not to intervene, reserving the right to sue Ragnell in the future.

## SUMMARY OF PLEADINGS

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### I.

Ragnell violated its Treaty obligations by initiating “Operation Shining Star” in the Belt despite the obligation in Article 14 Treaty to keep the Belt demilitarized. Due to Ragnell’s militarization of the Belt, the territory should be considered occupied. Additionally, the initiation of the military operation breached the *jus cogens* rule of prohibition of use of force. Ragnell cannot claim that the use of force was justified by its right to self-defence pursuant to Article 51 UN Charter as Ragnell’s attack was not a response to an armed attack attributable to a State. Additionally, Ragnell’s military force failed to meet the requirements of necessity and proportionality. Moreover, when bombing Nant Gateway Ragnell breached principles of IHL, which trapped civilians in the Belt leaving them without basic necessities and humanitarian relief. Ragnell further breached IHL and human rights, when it bombed Compound Ardan, which resulted in the deaths of 8 Aglovalean nationals. Consequently, due to its wrongful actions Ragnell must pay reparations for the murder of Aglovalean nationals.

### II.

The UAC, which represents Balani people, was exercising its right to self-determination against alien occupation and submitted a declaration to the Swiss Federal Council, which had the effect of Article 96(3) Protocol I. Consequently, UAC is a Party to the conflict. Thus, its detained fighters should be granted the status of prisoners of war. Alternatively, if the Court determines that they should not be granted this status, they are still protected persons under GC IV. Furthermore, by forcefully employing captured UAC fighters in the transportation of contaminated medical waste Ragnell violated their rights under IHL as they were forced to work in dangerous and hazardous conditions. Ragnell also violated IHL by involuntarily transferring them to a maximum-security prison in its territory, which was contrary to their interests.

### III.

Aglovale acted in accordance with the Treaty when it imposed unilateral sanctions against Ragnell in pursuit of Ragnell’s compliance with the Treaty. The imposed sanctions do not breach the UN Charter as there is nothing in it that prohibits the imposition of unilateral sanctions. Additionally, the imposed sanctions were within Aglovale’s jurisdictional limits and did not breach the principle of non-intervention. The imposed sanctions were also compliant

with the rules of State immunity and immunities of State officials. Furthermore, Aglovale cannot be responsible for the shortages in several Ragnellian hospitals or for the ceasing of operations of foreign companies since that was a consequence of the continued war and decisions of other sovereign States. Additionally, the seizure of Kay Ector's property did not breach his right to property. Aglovale's sanctions were necessary for the protection of its essential security interests and are therefore compliant with WTO law. In the alternative, even if Aglovale's sanctions are in breach of the Treaty, their wrongfulness is precluded as they should be considered as countermeasures. In any case, Ragnell cannot assert the wrongfulness of the sanctions as it is itself in breach of the Treaty. Consequently, Aglovale has no obligation to withdraw the sanctions, return seized property or to compensate Ragnell.

#### IV.

By transporting hazardous waste to Etna Ragnell violated its Treaty obligations to protect human health and the environment as the inaccurate disposal resulted in significant transboundary harm for which Ragnell is responsible. When Ragnell transported the waste to Etna it failed to take all appropriate measure and exercise appropriate due diligence, which resulted in significant transboundary damage. Additionally, as Ragnell's actions caused environmental pollution and endangered lives of nationals living in Gais Peninsula, Ragnell violated their human rights. On the other hand, Aglovale acted in accordance with the Treaty as it complied with the duty to cooperate in good faith despite Ragnell's breaches of the Treaty. Aglovale entered into meaningful negotiations with Ragnell but halted them due to Ragnell's escalating breaches of the Treaty. Consequently, Ragnell cannot claim that conditioning Aglovale's cooperation with Ragnell's compliance with the Treaty presents an unreasonable ground for halting the negotiations.



## PLEADINGS

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### **I. RAGNELL VIOLATED ITS TREATY OBLIGATIONS IN LAUNCHING “OPERATION SHINING STAR” AND IN ITS ATTACKS ON BOTH NANT GATEWAY AND COMPOUND ARDAN, AND MUST PAY REPARATIONS TO AGLOVALE FOR THE DEATHS OF THE EIGHT AGLOVALEAN NATIONALS**

#### **A. Aglovale has the right to make claims regarding Ragnell’s breach of the Treaty**

##### **1. The Treaty grants Aglovale the right to submit its counterclaim to the Court**

The Treaty consists of *erga omnes partes* obligations owed by any State Party to all the other State Parties,<sup>1</sup> with each State having a legal interest in compliance with the Treaty.<sup>2</sup>

Additionally, Article 41 Treaty stipulates that in the event of an alleged violation of any of the Treaty obligations, “*any Party*” may submit the dispute to the Court. Each Contracting Party therefore has a legal standing because they have an interest in ensuring compliance with treaty obligations.<sup>3</sup> Consequently, Aglovale may make counterclaims against Ragnell’s violations of the Treaty.

##### **2. Respondent cannot invoke the Monetary Gold principle**

The Monetary Gold doctrine compels the Court to refrain from deciding a case only where the legal interests of a non-consenting third State forms “*the very subject matter*” of the case.<sup>4</sup>

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<sup>1</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, I.C.J. Reports 2022, p. 3, ¶107.

<sup>2</sup> Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422 [“Belgium v. Senegal”], ¶68.

<sup>3</sup> Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 3, ¶¶33,34.

<sup>4</sup> Monetary Gold Removed from Rome in 1943 (Italy v. France, UK, and USA), Preliminary Question, Judgement I.C.J. Reports 1954, p. 19 [“Monetary Gold”], p. 32.

Pursuant to the existing jurisprudence<sup>5</sup> Monetary Gold principle should be abandoned altogether,<sup>6</sup> and not applied by the Court in the present proceedings. In any case, *ratio* of the Monetary Gold principle is to protect the legal interests of the absent States.<sup>7</sup> However, Balan's legal interest would not be affected by this proceeding. Therefore, the Court should exercise its jurisdiction.

## **B. Ragnell violated international law by initiating the military operation in the Belt**

### **1. Ragnell breached Article 14 Treaty by militarising the Belt**

Ragnell violated Balan's sovereignty<sup>8</sup> by launching the military operation<sup>9</sup> and breached Article 14 Treaty that explicitly prohibits militarization of the Belt. This prohibition should be differentiated from lease provisions, which specifically allow military use of territory.<sup>10</sup> Consequently, Ragnell cannot successfully claim that the lease precludes the Belt being occupied territory.

Pursuant to Article 2(2) Treaty the Parties must respect customary international law ["CIL"] under which a territory is considered occupied when it is placed under the authority of a hostile army.<sup>11</sup> In the present case, Ragnell's forces increased their hold over parts of the Belt<sup>12</sup> and carried out a number of attacks<sup>13</sup>. The described situation is consistent with occupied territory in the sense that

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<sup>5</sup> Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, dissenting opinion of Judge Donoghue, ¶3; Interpretation of Peace Treaties, Advisory Opinion, I.C. J. Reports 1950, p. 65, p. 71.

<sup>6</sup> Ardan, Zacharay Molleng and Zamir, Noam, *The Monetary Gold Principle: Back to Basics*, American Journal of International Law, 115(1), 2021, p. 76.

<sup>7</sup> Monetary Gold, p. 32.

<sup>8</sup> Treaty, Article 11.

<sup>9</sup> Facts, ¶31.

<sup>10</sup> See for example: Treaty concerning the relations between the two countries (United States of America and Cuba), 3 July 1934, Article III.

<sup>11</sup> Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Article 42.

<sup>12</sup> Facts, ¶36.

<sup>13</sup> Facts, ¶¶40,41,47.

one State would exercise control over a part of another State's sovereign territory against the wishes of the latter State.<sup>14</sup>

## **2. By initiating the “Operation Shining Star” Ragnell breached the prohibition of the use of force**

Article 2(1) Treaty stipulates that the Contracting Parties shall respect the provisions of the Charter of United Nations [“UN Charter”] and the principles of CIL governing friendly relations. One of those principles is the prohibition of use of force, a *jus cogens* rule<sup>15</sup> also codified in Article 2(4) UN Charter.

i. Ragnell's use of force was not a response to an armed attack attributable to a State Article 51 UN Charter recognizes the existence of an inherent right of self-defence in the case of an armed attack by one State against another State.<sup>16</sup> If an attack is carried out by non-State actors it must be attributable to a State.<sup>17</sup> In the present dispute the attacks were carried out by the UAC,<sup>18</sup> whose actions cannot be attributable to Balan since the conditions laid out in ARSIWA<sup>19</sup> are not fulfilled.

Moreover, even if Respondent claims that the UAC is a terrorist organization and therefore Balan is responsible for their actions, it is still required for a State to at least accept and harbour a terrorist organization on its territory.<sup>20</sup> On the contrary, Balan was actively trying to stop the UAC fighters with police raids and arrests of its members.<sup>21</sup>

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<sup>14</sup> Strauss, Michael J., *Territorial Leasing in Diplomacy and International Law*, Brill Nijhoff, 2015, p. 199.

<sup>15</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14 [“Paramilitary Activities”], ¶190.

<sup>16</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p.136 [“Occupied Palestinian Territory”], ¶139.

<sup>17</sup> Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005, p. 168 [“Armed Activities”], ¶146.

<sup>18</sup> Facts, ¶25.

<sup>19</sup> International Law Commission [“ILC”], Articles on Responsibility of States for Internationally Wrongful Acts, 56th Sess. [“ARSIWA”], Articles 4-11.

<sup>20</sup> Brunnée, Jutta and Toope, Stephen J., *The Use of Force: International Law after Iraq*, *The International and Comparative Law Quarterly*, 53(4), 2004, p. 805.

<sup>21</sup> Facts ¶26.

ii. Additionally, Ragnell's use of force was not necessary and proportional. Necessity and proportionality condition the exercise of the right of self-defence.<sup>22</sup> Consequently, self-defence is only legal if the State was unable to achieve the desired outcome through alternative means involving either no or limited use of armed force.<sup>23</sup> Applicant submits that Ragnell should have first exercised its right to deploy police personnel<sup>24</sup> and only if that proved insufficient resort to the military operation. Moreover, since UAC's arsenal was limited,<sup>25</sup> Ragnell sending both its armoured vehicles and military battalions, was excessive and thus disproportional.

### **3. Respondent cannot claim that the Treaty is suspended**

A State that uses force unlawfully cannot terminate or withdraw from a treaty or suspend its operation because of an armed conflict caused by the act of aggression if the outcome benefits the aggressor State.<sup>26</sup> Since Ragnell violated the prohibition of the use of force and would benefit from the termination of the Treaty, it cannot claim its (partial) suspension.

#### **C. Ragnell violated IHL by bombing Nant Gateway**

According to Article 2(2) Treaty Ragnell was required to follow principles of international humanitarian law ["IHL"],<sup>27</sup> which Ragnell failed to abide by when bombing Nant Gateway.

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<sup>22</sup> Paramilitary Activities, ¶194.

<sup>23</sup> Ibid., dissenting opinion of Judge Schwebel, ¶212.

<sup>24</sup> Treaty, Article 11(1)(c).

<sup>25</sup> Facts, ¶35.

<sup>26</sup> ILC, Articles on Responsibility of States for Internationally Wrongful Acts, 56th Sess. (2002), Article 15.

<sup>27</sup> Milanovic, Marko, *Mistakes of Fact When Using Lethal Force in International Law*, 2020, available at: <https://www.ejiltalk.org/mistakes-of-fact-when-using-lethal-force-in-international-law-part-i/>, [accessed 17 January 2023].

## **1. Ragnell failed to comply with the principle of distinction**

The Parties to the conflict must under CIL<sup>28</sup> and IHL<sup>29</sup> always distinguish between the civilian population and combatants, as well as between civilian objects and military objectives.<sup>30</sup> Military objectives are limited to objects that make an effective contribution to military action.<sup>31</sup> In case of doubt, it should be presumed that an object is not being used to make an effective military contribution.<sup>32</sup> Ragnell only had one source regarding the UAC's utilization of the corridor,<sup>33</sup> which was not sufficient for eliminating the doubt of Nant Gateway's civilian usage. Raising additional doubt was the fact that Nant Gateway was declared a humanitarian corridor and was used to evacuate civilians.<sup>34</sup>

## **2. Additionally, Ragnell failed to take the necessary precautions before bombing Nant Gateway**

The principle of precaution required Ragnell to take the necessary precautions to protect the civilian population against the consequences of military operations.<sup>35</sup>

### **i. Ragnell lacked sufficient knowledge of Nant Gateway's usage**

Ragnell made the decision to bomb the humanitarian corridor solely based on information provided by Etna's Defense Minister.<sup>36</sup> Due to the importance of Nant Gateway for civilians and Aglovale,<sup>37</sup> Ragnell should have sought additional evidence before executing the bombing.

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<sup>28</sup> Tadić case, 1999 ICTY Appeals Chamber Judgment IT-94-1-A, ["Tadić Appeals Chamber"], ¶168.

<sup>29</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, ["Protocol I"], Article 48.

<sup>30</sup> Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, 2000, ¶29.

<sup>31</sup> Protocol I, Article 52(2).

<sup>32</sup> Protocol I, Article 52(3).

<sup>33</sup> Facts, ¶41.

<sup>34</sup> Facts, ¶40.

<sup>35</sup> Protocol I, Articles 57, 58.

<sup>36</sup> Facts, ¶41.

<sup>37</sup> Treaty, Article 15.

ii. Additionally, Ragnell's warning does not satisfy the precautionary principle

Pursuant to Article 57(2)(c) Protocol I States have an obligation to give warnings prior to attack. Despite Ragnell's notice about the bombing of the Gateway,<sup>38</sup> an effective warning does not make an unlawful attack lawful, nor does it divest the attacker from its other obligations to take feasible precautionary measures.<sup>39</sup>

### **3. In any event, the bombing of Nant Gateway was not proportional**

The principle of proportionality requires States to abstain from launching attacks anticipated to result in excessive incidental civilian casualties in relation to the anticipated military advantage.<sup>40</sup> As Ragnell was acquainted with the importance of Nant Gateway, it knew that the bombing was going to have serious consequences, namely the impossibility of civilian evacuation and isolation. Anticipated civilian harm was thus not proportional to the military advantage gained by Ragnell.

### **4. By bombing Nant Gateway Ragnell denied the civilians basic necessities and the right to humanitarian relief**

The Occupying Power has the duty of ensuring the food and medical supplies to the population<sup>41</sup> and must allow free passage of essential supplies.<sup>42</sup> By bombing Nant Gateway, Ragnell blocked the passage while simultaneously not ensuring the basic necessities.<sup>43</sup>

Moreover, relief societies and organizations and representatives of protecting powers or their substitutes, must have access to all protected persons.<sup>44</sup> By bombing Nant Gateway Ragnell halted all movement through Tintagel, making humanitarian aid nearly impossible to provide.<sup>45</sup>

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<sup>38</sup> Clarifications, ¶4.

<sup>39</sup> Baruch, Pnina Sharvit and Neuman, Noam, *Warning Civilians Prior to Attack under International Law: Theory and Practice*, Israel Yearbook on Human Rights, 41(1), 2011, p. 393.

<sup>40</sup> Protocol I, Article 57(2).

<sup>41</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 ["GC IV"], Article 55.

<sup>42</sup> GC IV, Article 23; Protocol I, Articles 69, 70(2).

<sup>43</sup> Facts, ¶42.

<sup>44</sup> GC IV, Articles 59, 142, 143.

<sup>45</sup> Facts, ¶42.

## **5. Furthermore, Ragnell prevented Aglovale from using Eamont Thruway thus breaching Article 15 Treaty**

Ragnell agreed to protect and preserve the integrity of the Eamont Thruway and Tintagel port during the term of the lease and guaranteed Aglovale unimpeded use of them.<sup>46</sup> Nonetheless, Ragnell bombed Nant Gateway without considering Aglovale's legitimate interests.

### **D. The bombing of Compound Ardan constitutes a breach of IHL and human rights**

Article 2(2) Treaty bounds the Contracting Parties to respect all applicable principles of human rights and IHL, and take all necessary measures to prevent violations of those principles, which Ragnell failed to do.

#### **1. Ragnell breached right to life by murdering civilians in Compound Ardan**

The prohibition of violence to life and person, with respect to persons who are not actively participating in hostilities, is one of the minimum standards from common Article 3 to all GCs. Respondent failed to fulfil this obligation, when it bombed Compound Ardan, killing 76 civilians, including 8 Aglovalean nationals.<sup>47</sup> By doing so Ragnell arbitrarily violated the right to life,<sup>48</sup> which also applies in hostilities.<sup>49</sup> Additionally, Ragnell's act constitutes a breach of the principle of distinction,<sup>50</sup> as Ragnell failed to distinguish between civilians and combatants.

#### **2. Furthermore, Ragnell failed to take the necessary precautions before attacking Compound Ardan**

Those who plan or decide upon an attack will base their decision on information given to them and must in case of even a slight doubt seek additional information.<sup>51</sup> Ragnell received information

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<sup>46</sup> Treaty, Article 15; Facts ¶11.

<sup>47</sup> Facts, ¶¶47,48.

<sup>48</sup> International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 17 ["ICCPR"], Article 6.

<sup>49</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226 ["Nuclear Weapons"], ¶25.

<sup>50</sup> Protocol I, Article 48.

<sup>51</sup> Yves Sandoz et al., *Commentary 1987 on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* ["Commentary Protocol I"], p. 680.

from a Balani national,<sup>52</sup> which should have raised suspicion and necessity for additional information. If Ragnell had sufficiently informed itself, it would have found out that the informant had only limited access to the Compound and a history of providing inaccurate and misleading intelligence.<sup>53</sup>

Furthermore, Ragnell should have regularly updated its intelligence data,<sup>54</sup> however it used a one-month-old drone footage.<sup>55</sup> Had Ragnell complied with its due diligence and taken all necessary precautions, the deaths of 76 civilians would be avoided.

### **3. In any event, Ragnell's mistake was unreasonable**

Only a mistake that is honest and reasonable can justify the use of an otherwise wrongful lethal force.<sup>56</sup> Although Ragnell's mistake might have been honest, it was not reasonable as there were feasible precautions that could have been taken to avoid it.<sup>57</sup> Respondent should have for example obtained an updated drone image or checked the reliability of the informant. Additionally, Ragnell had plenty of time to prepare and execute the operation carefully,<sup>58</sup> but failed to do so.

#### **E. In any case, the cumulative effect of the bombings constitutes a breach of international law**

The ICTY held in *Kupreškić* case that in the event of repeated attacks, which fall within the grey area between indisputable legality and unlawfulness, the cumulative effect of such acts rises to the level of a breach of international law.<sup>59</sup> Ragnell's bombings of Compound Ardan and Nant Gateway were not indisputably lawful, consequently falling in the category of grey area. As a result of their combined effect, the bombings are to be considered illegal.

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<sup>52</sup> Facts, ¶47.

<sup>53</sup> Facts, ¶48.

<sup>54</sup> Lubin, Asaf, *The Reasonable Intelligence Agency*, Yale J. Int'l. L., 47, 119 (2022), p. 127.

<sup>55</sup> Facts, ¶47.

<sup>56</sup> Ibid.

<sup>57</sup> *McCann and others v. The United Kingdom*, 1995 ECHR, Application No. 18984/91, ¶200.

<sup>58</sup> Ibid., ¶193.

<sup>59</sup> *Kupreškić et al. case*, 2000 ICTY Trial Chamber Judgement IT-95-16 ["Kupreškić"], ¶526.

## **F. Ragnell must pay reparations for killing Aglovalean nationals**

### **1. Aglovale can protect its injured nationals**

For Aglovale to successfully invoke diplomatic protection, the claim must comply with the rules of nationality of the claim<sup>60</sup> and local remedies must be exhausted.<sup>61</sup> In the bombing of Compound Ardan 8 Aglovaleans died,<sup>62</sup> which means that the requirement of nationality of the claim is met. The second condition has also been fulfilled since the families of the deceased Aglovalean nationals exhausted all local remedies in Ragnell.<sup>63</sup>

### **2. Ragnell is under the obligation to pay reparation to Aglovale for killing its nationals**

The killing of Aglovalean nationals is both wrongful and attributable to Ragnell since it is responsible for all acts of its armed forces.<sup>64</sup> Thus, the causal nexus requirement is also fulfilled.<sup>65</sup> Since Ragnell breached international law it is under obligation to make full reparation.<sup>66</sup>

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<sup>60</sup> ARSIWA, Article 44; ILC, Draft Articles on Diplomatic Protection, 58th Sess. (2006) [“Draft Articles on Diplomatic protection”], Article 3(1).

<sup>61</sup> Draft Articles on Diplomatic Protection, Article 14.

<sup>62</sup> Facts, ¶48.

<sup>63</sup> Clarifications, ¶2.

<sup>64</sup> ARSIWA, Article 4; Protocol I, Article 91; Tadić Appeals Chamber, ¶63.

<sup>65</sup> Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2022, p. 116 [“Congo v. Uganda 2022”], ¶145.

<sup>66</sup> ARSIWA, Article 31; Factory at Chorzów, 1928 P.C.I.J. Rep Series A, No 17, p. 47.

**II. RAGNELL VIOLATED ITS TREATY OBLIGATIONS BY EMPLOYING CAPTURED UAC FIGHTERS IN THE TRANSPORTATION OF CONTAMINATED PLASTIC WASTE, AND BY DETAINING THEM IN CAMLANN CORRECTIONAL CENTER**

**A. Aglovale can assert the rights of UAC fighters**

Aglovale has an interest in claiming that Ragnell violated the rights of the captured UAC fighters. Firstly, this arises out of the *erga omnes partes* character of the Treaty obligation,<sup>67</sup> Secondly, Applicant can submit its counterclaim based on the rules of IHL which are essentially of an *erga omnes* character.<sup>68</sup>

**B. UAC fighters are protected as prisoners of war**

Article 96(3) Protocol I stipulates that an authority representing people can make a unilateral declaration addressed to the depositary and can undertake to apply the GC and Protocol I. This occurs in the exercise of their right of self-determination, against an alien occupation of a High Contracting Party.<sup>69</sup> The UAC's senior commander submitted a declaration to the Swiss Federal Council, as depositary of Protocols to the GC, which had the effect of Article 96(3) Protocol I.<sup>70</sup>

**1. UAC was exercising its right of self-determination against alien occupation**

UAC is an authority representing Balani people in their fight against the Occupying Power Ragnell,<sup>71</sup> who is a party to the GCs.<sup>72</sup>

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<sup>67</sup> Belgium v. Senegal, ¶68.

<sup>68</sup> Occupied Palestinian Territory, ¶157.

<sup>69</sup> Protocol I, Article 1(4).

<sup>70</sup> Clarifications, ¶7.

<sup>71</sup> Ibid.

<sup>72</sup> Facts, ¶64.

i. The Belt was under alien occupation

Alien occupation can occur in territories of questionable legal status,<sup>73</sup> where the occupant is holding out in bad faith refusing to negotiate its withdrawal in exchange for peace.<sup>74</sup> Polisario Front's war of national liberation<sup>75</sup> was qualified as an alien occupation,<sup>76</sup> as the Kingdom of Morocco made claims of sovereignty over the Western Sahara<sup>77</sup> which started a war. Similarly, despite Balan's sovereignty over the Belt,<sup>78</sup> Ragnell launched a military operation.<sup>79</sup> Furthermore, Ragnell's Parliament adopted a resolution directing the government not to begin discussions with Balan concerning the withdrawal from the Belt.<sup>80</sup> Therefore, due to Ragnell's military control in the Belt and its refusal to withdraw, the Belt should be considered as under alien occupation.

ii. UAC represent the Balani people, who are defending their right to self-determination

The principle of self-determination is CIL<sup>81</sup> and is also codified in Article 1 UN Charter. The UAC's members, Balani nationals, were continually increasing in number<sup>82</sup> and their opposition was the strongest when Ragnell unlawfully entered the Belt.<sup>83</sup> The UAC was determined to protect

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<sup>73</sup> Gattuso, Dominic, *The Polisario Front and the Future of Article 1(4)*, Texas Law Review 99(6), 2021 ["Gattuso"], p. 1209.

<sup>74</sup> Benvenisti, Eyal, *The International Law of Occupation (2nd Edition)*, Oxford Scholarly Authorities on International Law, 2012, p. 16.

<sup>75</sup> Higgins, Noelle, *The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements*, Human Rights Brief 17(1), 2009, p. 14.

<sup>76</sup> Gattuso, p. 1209.

<sup>77</sup> Ibid.

<sup>78</sup> Treaty, Article 11.

<sup>79</sup> Facts, ¶31.

<sup>80</sup> Facts, ¶51.

<sup>81</sup> East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 90, ¶29; Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12, ¶¶54-59; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, ¶¶52-53.

<sup>82</sup> Facts, ¶25.

<sup>83</sup> Facts, ¶35.

the Balani people from Ragnell's unlawful military control<sup>84</sup> and invoked its right to self-determination<sup>85</sup>.

Hence UAC is recognized to be bound to the GC's and Protocol I in its relations with Ragnell and vice versa.<sup>86</sup>

## **2. The captured UAC fighters are prisoners of war under GC III**

### **i. The UAC fighters are members of armed forces of a Party to the conflict**

Armed forces are all persons who fight on behalf of a Party to a conflict subordinating themselves to its command.<sup>87</sup> Additionally, they shall enforce compliance with the rules of international law,<sup>88</sup> including IHL. The UAC is a Party to the conflict and its fighters are members of its armed forces, which has a well-established command and control structures.<sup>89</sup> Additionally, the UAC has pledged to honour all applicable provisions of IHL.<sup>90</sup>

Respondent might argue that UAC did not respect rules of international law as it used guerrilla warfare tactics, however, the mere existence of guerrilla warfare does not have this effect.<sup>91</sup>

### **ii. UAC fighters have fallen into the power of an adverse Party**

Any combatant of armed forces, who falls into the power of an adverse Party shall be a prisoner of war.<sup>92</sup> The Detaining Power must exercise some level of physical control over the detainees,

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<sup>84</sup> Armed activities, ¶165.

<sup>85</sup> Occupied Palestinian Territory, ¶115.

<sup>86</sup> Fortin, Katharine, Unilateral Declaration by Polisario under API accepted by Swiss Federal Council, Armed Groups and International Law, 2015, available at: <https://www.armedgroups-internationallaw.org/2015/09/02/unilateral-declaration-by-polisario-under-api-accepted-by-swiss-federal-council/> [accessed 17 January 2023].

<sup>87</sup> Protocol I, Article 43; Henckaerts, Jean-Marie and Doswald-Beck, Louise, *Customary International Humanitarian Law, Vol. I: Rules*, Cambridge University Press, 2005, p. 15.

<sup>88</sup> Protocol I, Article 43.

<sup>89</sup> Facts, ¶35.

<sup>90</sup> Clarifications, ¶7.

<sup>91</sup> Veuthey, Michel, *Guerrilla Warfare and Humanitarian Law*, p. 278.

<sup>92</sup> Protocol I, Article 44.

who are no longer able to participate in hostilities or defend themselves.<sup>93</sup> In the *Prlić* case the ICTY found that Muslims who were captured had fallen into the hands of the enemy and were thus protected by the GCs.<sup>94</sup> Similarly, Ragnell captured UAC fighters,<sup>95</sup> they were no longer active combatants and were under physical control of Ragnell.

### **3. In any event, the prisoner of war status of UAC fighters should have been presumed**

A person who falls into the hands of the enemy and appears to be entitled to such status, shall be presumed to be a prisoner of war.<sup>96</sup> In the case of guerrilla warfare tactics, openly carrying firearms may suffice to appear to be entitled to such status.<sup>97</sup> As UAC fighters were carrying arms openly,<sup>98</sup> Ragnell should have presumed their prisoner of war status. If nevertheless the doubt still existed, they were entitled to protection from GC III until their status was decided by a competent tribunal,<sup>99</sup> in which case the burden of proof falls on the captor.<sup>100</sup>

#### **C. By forcefully employing captured UAC fighters in the transportation of contaminated medical waste Ragnell violated IHL**

In accordance with Article 2(2) Treaty all Contracting Parties are bound to respect all principles of IHL, which are manifestly violated in case of unlawful labour.<sup>101</sup> Furthermore, the GCs form part of CIL.<sup>102</sup>

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<sup>93</sup> Dörmann, Knut, Commentary of 2020, Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, ¶961.

<sup>94</sup> *Prlić et al. case*, 2013 ICTY Trial Judgement IT-04-74, ¶708.

<sup>95</sup> Facts, ¶61.

<sup>96</sup> Protocol I, Article 45.

<sup>97</sup> Commentary Protocol I, p. 549.

<sup>98</sup> Facts, ¶35.

<sup>99</sup> Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 [“GC III”], Article 5(2).

<sup>100</sup> Commentary Protocol I, p. 546.

<sup>101</sup> *Naletilić and Martinović case*, 2003 ICTY Trial Chamber Judgement (IT-98-34) [“*Naletilić and Martinović*”], ¶250.

<sup>102</sup> *Nuclear Weapons*, ¶79; *Eritrea-Ethiopia Claims Commission - Partial Award: Prisoners of War - Ethiopia's Claim 4*, Volume XXVI, pp. 73-114, 2003, ¶30.

## **1. Ragnell compelled the prisoners of war to perform prohibited work**

Prisoners of war may be compelled to work in certain industries, with the exception of chemical industry.<sup>103</sup> This prohibition must be considered absolute, as these industries are likely to contribute to war effort.<sup>104</sup> The detainees worked with contaminated medical waste<sup>105</sup> from the Plastic Conglomerate, which is an industry of chemical nature.<sup>106</sup> Consequently, any work done by the captured UAC fighters is a violation of Article 50 GC III and CIL.<sup>107</sup>

## **2. Moreover, UAC fighters had to work in hazardous conditions**

- i. The loading of the waste on to ships constitutes labour of an unhealthy and dangerous nature

No prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.<sup>108</sup> Furthermore, the detaining authorities should ensure that the work is performed with maximum safety.<sup>109</sup> Whilst Ragnell provided suitable safety equipment to UAC workers,<sup>110</sup> the large accumulations of waste were still contaminated by the bacterial pathogens.<sup>111</sup> Consequently, the work was still of dangerous nature. and Ragnell did not reach the standard of maximum safety.

- ii. Furthermore, UAC detainees had to perform forced labour

It is prohibited to use prisoners of war for dangerous work, if the prisoners do not volunteer for it.<sup>112</sup> In the *Naletilić and Martinović* case the ICTY recognised forced labour as the detainees did

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<sup>103</sup> GC III, Article 50.

<sup>104</sup> Picte, Jean, Commentary of 1960, Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, p. 268.

<sup>105</sup> Facts, ¶49.

<sup>106</sup> Facts, ¶¶37, 38.

<sup>107</sup> *Naletilić and Martinović*, ¶¶85–87.

<sup>108</sup> GC III, Article 52.

<sup>109</sup> *Naletilić and Martinović*, ¶257.

<sup>110</sup> Facts, ¶44.

<sup>111</sup> Facts, ¶38.

<sup>112</sup> GC III, Article 52.

not come forward for the work but were nonetheless selected to work.<sup>113</sup> Similarly in this case the UAC fighters were ordered to help load medical waste on to ships.<sup>114</sup>

**D. If UAC detainees do not have a prisoners of war status, Ragnell still breached IHL and human rights law by imposing forced labour to UAC fighters**

**1. Ragnell breached the rights of protected persons**

i. UAC fighters are protected persons under GC IV

Protected persons are those who have found themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.<sup>115</sup> Captured Balani UAC fighters are therefore protected persons as they were captured by Ragnell, which is the Occupying Power.<sup>116</sup>

ii. UAC fighters did not consent to work

The Detaining Power shall not employ internees as workers, unless they so desire.<sup>117</sup> In this case UAC fighters were ordered to do the work and did not give their consent.

Furthermore, Ragnell's advised its nationals to depart from the Belt for their safety.<sup>118</sup> Consequently, Ragnell had to order the UAC fighters to work as there was a limited number of Ragnellian workers still in the Park.<sup>119</sup> If Ragnell had not evacuated its nationals, the workers would still be in the Belt and the UAC fighters would not be forced to work.

**2. Moreover, Ragnell violated human rights law**

Parties committed to respect human rights law in Article 2(2) Treaty. Ragnell violated Article 8(3)(a) ICCPR, which provides that no one should be required to perform forced or compulsory

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<sup>113</sup> Naletilić and Martinović, ¶270.

<sup>114</sup> Facts, ¶44.

<sup>115</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 ["GC IV"], Article 40.

<sup>116</sup> Facts, ¶36.

<sup>117</sup> GC IV, Article 95.

<sup>118</sup> Facts, ¶36.

<sup>119</sup> Facts, ¶44.

labour.<sup>120</sup> What is more, the State Parties should ensure that persons enjoy safe and healthy working conditions.<sup>121</sup> Ragnell did not comply with this provision as the UAC fighters were forced work in hazardous conditions.<sup>122</sup>

**E. Furthermore, Ragnell violated IHL by transferring the captured UAC fighters to a maximum-security penitentiary in Ragnell**

Because UAC detainees have a prisoners of war status, they are protected under GC III.<sup>123</sup> Nonetheless, even if the Court finds that the UAC fighters do not have this status, they should be considered as protected persons under GC IV. Consequently, regardless of their legal status, Ragnell violated UAC fighters' rights when it involuntarily transferred them to a maximum-security prison in its territory.

**1. UAC fighters should not have been transferred to Ragnell's territory**

i. UAC fighters were transferred involuntary

Protected persons should not involuntarily be transferred to the territory of the Occupying Power unless it is physically impossible for them to stay.<sup>124</sup> A critical element of this rule is the involuntary character of the displacement,<sup>125</sup> meaning that the relevant persons have no genuine choice.<sup>126</sup> Since the UAC detainees were prisoners, they had no genuine choice and were forced to transfer into Ragnell's territory.<sup>127</sup> Consequently, Ragnell should have transferred them to another facility in the Belt and only if that proved impossible, to Ragnell's territory.

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<sup>120</sup> ICCPR, Article 8.

<sup>121</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 ["ICESCR"], Article 7.

<sup>122</sup> Facts, ¶49.

<sup>123</sup> GC III, Article 4.

<sup>124</sup> Clapham, Andrew, Commentary of 1958, Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, p.278.

<sup>125</sup> Milošević case, 2003 ICTY Trial Chamber Judgement (IT-02-54), ¶70.

<sup>126</sup> Krnojelac case, 2002 ICTY Trial Chamber Judgment (IT-97-25), ¶475.

<sup>127</sup> Facts, ¶49.

- ii. Additionally, Ragnell's transfer made it difficult for UAC fighters to return into the Belt

Pursuant to Article 46 GC III when the Detaining Power decides on the transfer of prisoners of war, it should consider that repatriation is not made more difficult. As Ragnell relocated the detainees into their territory<sup>128</sup>, it increased the difficulty of their later repatriation. Even if the transfer was temporary, the fighters still had to return to the Belt.

## **2. The prisoners of war should not have been transferred to Camlann Correctional Centre**

Under GC III prisoners of war are prohibited from being interned in penitentiaries, except when justified by the prisoners' interests.<sup>129</sup> Generally, no prisoner of war may at any time be detained in areas where he may be exposed to the fire of the combat zone.<sup>130</sup> Ragnell argued that the transfer was necessary to ensure the safety of the detainees, as the fighting was getting closer to Fort Caerleon.<sup>131</sup> However, the potential danger of approaching combat zone does not justify the relocation to a maximum security prison for convicted criminals.<sup>132</sup> Therefore, in order to protect their security, Ragnell should have transferred the UAC detainees to another suitable facility safe from the dangerous of active combat.

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<sup>128</sup> Ibid.

<sup>129</sup> GC III, Article 22.

<sup>130</sup> GC III, Article 23.

<sup>131</sup> Facts, ¶49.

<sup>132</sup> Okimoto, Keiichiro, *The 1949 Geneva Conventions: A Commentary*, Chapter, Oxford Scholarly Authorities on International Law, 2015, p. 973.

### **III. AGLOVALE ACTED IN ACCORDANCE WITH THE TREATY IN IMPOSING UNILATERAL SANCTIONS AGAINST RAGNELL AND RAGNELLIAN NATIONALS, AND HAS NO OBLIGATION TO WITHDRAW THE SANCTIONS TO RETURN ANY PROPERTY, OR TO COMPENSATE RAGNELL FOR THEIR IMPACT**

#### **A. Aglovale did not violate Ragnell's sovereignty by imposing unilateral sanctions**

Aglovale respected Article 2(1) Treaty by complying with provisions of the UN Charter, the principles of conventional law and CIL governing friendly relations among States. Aglovale imposed the sanctions in pursuit of Ragnell's compliance with the Treaty.<sup>133</sup>

#### **1. The imposed sanctions do not infringe UN Charter**

Nothing in the UN Charter expressly allows or prohibits States from imposing sanctions unilaterally. In the absence of such prohibition, "*all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction.*"<sup>134</sup> Thus, there is no general prohibition on the use of sanctions, even if imposed unilaterally.<sup>135</sup>

Economic sanctions are commonly implemented without a Security Council authorization. The EU currently maintains 27 unilateral sanctions,<sup>136</sup> while the US is currently maintaining 38 unilateral sanctions regimes.<sup>137</sup> Even the most vocal opponents of unilateral sanctions, such as Russia and China, are imposing them.<sup>138</sup>

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<sup>133</sup> Facts, ¶53.

<sup>134</sup> The Case of the S.S. "Lotus", 1927 P.C.I.J. Rep Series A, No 10, ¶¶44–47.

<sup>135</sup> Bogdanova, Iryna, *The Legality of Unilateral Economic Sanctions under Public International Law*, Chapter, Brill, 2022, p. 71, ["Bogdanova"].

<sup>136</sup> European Commission, EU Sanctions Map, available at: <https://sanctionsmap.eu/#/main> [accessed 17 January 2023].

<sup>137</sup> U.S. Department of the Treasury, Sanctions Programs and Country Information, available at: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information> [accessed 17 January 2023].

<sup>138</sup> Bogdanova, p. 68.

## 2. The imposition of unilateral sanctions did not violate the principle of non-intervention

States are obligated not to intervene in matters within the domestic jurisdiction of another State.<sup>139</sup> The Court stated that sanctions such as trade embargos do not constitute a breach of the CIL principle of non-intervention,<sup>140</sup> thus setting very high bar for possible infringement.<sup>141</sup> Only coercion that intervenes in the national matters of a State could equal an intervention.<sup>142</sup>

### i. Aglovale did not adopt coercive measures

Coercion includes elements of compulsion and elimination of available options to coerced State.<sup>143</sup> Ragnell cannot successfully argue that Aglovale's sanctions reach standard of coercion, as it had other trading partners, as also stated by Ragnellian President.<sup>144</sup>

### ii. Additionally, Aglovale did not intervene in Ragnell's national matters

National matters encompass areas of domestic or foreign policy in which a State has no international legal obligations.<sup>145</sup> Aglovale imposed sanctions as a response to Ragnell's violation of prohibition of use of force, an *erga omnes* obligation and breaches of the Treaty,<sup>146</sup> thus not affecting Ragnell's national matters.

### iii. Sanctions imposed by Aglovale were within its jurisdictional limits

A State may assume jurisdiction over aliens for acts done abroad, if these acts affect key interests of the State.<sup>147</sup> Aglovale rightfully sanctioned Ragnellian leading party members and its financial

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<sup>139</sup> Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/25/2625, 1970, p. 123.

<sup>140</sup> Paramilitary Activities, ¶245.

<sup>141</sup> Ruys, Tom, *Les sanctions des tiers contre la Russie: les "mesures restrictives" de l'Union européenne sous l'angle du droit international*, *Journal des tribunaux*, 38, 2022, p. 740.

<sup>142</sup> Bogdanova, p. 76.

<sup>143</sup> Barber, Rebecca, *An Explanation of the General Assembly's Troubled Relationship with Unilateral Sanctions*, *International and Comparative Law Quarterly* 70(2), 2021, p. 353.

<sup>144</sup> Facts, ¶56.

<sup>145</sup> *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923 P.C.I.J. Rep Series B, No 4, pp. 23, 24.

<sup>146</sup> Facts, ¶52.

<sup>147</sup> Crawford, James, *Brownlie's Principles of Public International Law*, 9th ed., Oxford University Press, 2019, p. 701.

supporters, since their actions contributed to the destruction of Aglovaes essential economic interest, the deaths of eight Aglovalean nationals and the entrapment of dozens of Aglovalean nationals. Applicant thus urges the Court to recognise that Aglovale's restrictions remained within the customary limits of the exercise of jurisdiction.

State practice also indicates that sanctions are not limited by rules of extraterritoriality, for example, of the Switzerland<sup>148</sup> and United Kingdom<sup>149</sup> which imposed sanctions on Russia, and USA sanctioned Iran.<sup>150</sup>

### **3. The imposed sanctions were compliant with the rules on State immunity and immunities of State officials**

State immunity rules derive from CIL.<sup>151</sup> However, State practice shows that the scope of State immunity and immunity of State officials is deteriorating, indicating that there are a variety of situations in which they do not apply.

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<sup>148</sup> State Secretariat for Economic Affairs of Switzerland, Sanctions and Embargos, available at: [https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html) [accessed 17 January 2023].

<sup>149</sup> Government of United Kingdom, UK sanctions relating to Russia, available at: <https://www.gov.uk/government/collections/uk-sanctions-on-russia> [accessed 17 January 2023].

<sup>150</sup> U.S. Department of the Treasury, Iran Sanctions, available at: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/iran-sanctions> [accessed 17 January 2023].

<sup>151</sup> Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012, p. 99, ¶56.

- i. Aglovale's freezing of the assets of Ragnell's Central bank does not violate State immunity

State immunity of Central banks<sup>152</sup> does not protect from freezing of assets. For example, EU has frozen assets of Russian and Belarusian Central banks,<sup>153</sup> and Japan has frozen assets of Russian Central bank.<sup>154</sup>

In any case, State property is protected from interventions by other States only when it serves sovereign purposes.<sup>155</sup> Therefore, in order for the Central banks' property to invoke immunity, Respondent must provide a "*concrete and clear*" evidence<sup>156</sup> that it is using it for sovereign purposes, which it failed to do.

- ii. Further, Aglovale did not violate immunities of Ragnell's president and high-ranking officials by freezing their assets and imposing travel bans

Heads of States and ministers of foreign affairs are protected by immunity from measures that would interrupt them in the performance of their duties.<sup>157</sup> However, performance of their duties is not dependent on private funds.<sup>158</sup> This is also reflected in State practice, for example Switzerland, known for its neutrality, sanctioned the Russian President and other high-ranking officials by freezing their private assets.<sup>159</sup>

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<sup>152</sup> Stoll, Peter-Tobias, *State Immunity*, Max Planck Encyclopedia of Public International Law, ¶67.

<sup>153</sup> European Council, EU Restrictive measures against Russia over Ukraine (since 2014) ["EU Restrictive measures"], available at <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/> [accessed 17 January 2023].

<sup>154</sup> Kihara, Leika, Sugiyama, Kentaro, *Japan freezes assets of Russia's central bank as part of new sanctions*, available at: <https://www.reuters.com/world/europe/japan-freezes-assets-russias-central-bank-part-new-sanctions-2022-03-01/> [accessed 17 January 2023].

<sup>155</sup> Bundesgerichtshof Beschluss, Case No. VII ZB 63/12, 4 July 2013, ¶10.

<sup>156</sup> Swedish Supreme Court, Case No. Ö 3828-20, 18 November 2021, ¶28.

<sup>157</sup> Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, ¶54.

<sup>158</sup> Ruys Tom, *Immunity, Inviolability and Countermeasures - A Closer Look at Non-UN Targeted Sanctions*, The Cambridge Handbook of Immunities and International Law, 2019, p. 697.

<sup>159</sup> The Federal Council of Switzerland, Switzerland adopts EU sanctions against Russia, available at: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-87386.html> [accessed 17 January 2023].

Furthermore, the Court should consider unchallenged State practice regarding travel bans, namely, Russia banned the U.S. president from entering its territory,<sup>160</sup> while Canada,<sup>161</sup> and EU<sup>162</sup> imposed travel bans on the Russian president and other officials. In any case, a State must only allow the entry to a foreign high-ranking official if the visit is related to the performance of their functions.<sup>163</sup> If such situation occurred Aglovale would have adapted the sanctions.<sup>164</sup> Therefore, the immunities Ragnells high-ranking officials were not violated.

## **B. The sanctions imposed by Aglovale complied with human rights obligations**

Pursuant to Article 2(2) Treaty the Contracting Parties are bound to respect all applicable principles of human rights.

### **1. Aglovale is not responsible for the ceasing of operations of foreign companies or shortages in several Ragnellian hospitals**

#### **i. The continued armed war contributed to the shortages**

During armed conflict several Ragnellian corporations, mostly producing biomedical and healthcare supplies,<sup>165</sup> were forced to temporarily cease with their production.<sup>166</sup> Furthermore, several other States imposed similar measures which Thus, Respondent cannot argue that the shortages of medical supplies were solely due to Aglovale's sanctions.

#### **ii. Moreover, Aglovale cannot be responsible for actions of other sovereign States**

Aglovale is not responsible for the actions of other sovereign States, even though it urged them into imposing sanctions, as they should have conducted their own due diligence when imposing

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<sup>160</sup> Luscombe, Richard, Russia bans 963 Americans from entering country, available at: <https://www.theguardian.com/world/2022/may/22/russia-bans-963-americans-entry> [accessed 17 January 2023].

<sup>161</sup> Government of Canada, Government to ban sanctioned Russians from entering Canada, available at: <https://www.canada.ca/en/border-services-agency/news/2022/05/government-to-ban-sanctioned-russians-from-entering-canada.html> [accessed 17 January 2023].

<sup>162</sup> EU Restrictive measures.

<sup>163</sup> Foakes, J.S., *The position of heads of state and senior officials in international law*, Oxford University Press, 2014, p. 117.

<sup>164</sup> Clarifications, ¶9.

<sup>165</sup> Facts, ¶16.

<sup>166</sup> Facts, ¶30.

their sanctions and their impact on human rights. Aglovale provided a periodic review of the imposed sanctions and was making additional changes.<sup>167</sup> Hence, if the sanctions would present a risk to human rights of Ragnellians, they would be accordingly changed. Furthermore, Aglovale did not aid or assist,<sup>168</sup> direct and control,<sup>169</sup> nor coerce<sup>170</sup> its allies to impose the sanctions, thus it cannot be liable for their actions.

## **2. Sanctions did not breach human rights of Kay Ector**

i. Aglovale did not violate Kay Ector's right to property nor expropriated his asset  
Right to property is not recognized by any convention that we are signatories to.<sup>171</sup> Applicant submits that right to property is also not recognized as CIL.<sup>172</sup>

Furthermore, seizing was not an act of expropriation. Seizing of assets entails temporarily prohibiting the transfer, conversion, disposition, or movement of assets on the basis of a competent authority's order.<sup>173</sup> As the seizure of Prydven palace was temporary in nature, Aglovale's act does not constitute expropriation and Aglovale owes no compensation to Ragnell.

ii. Aglovale guaranteed judicial review of the sanctions

Due process and judicial review should be available when imposing sanctions.<sup>174</sup> Aglovale provided judicial review of the imposed sanctions, as proven by the proceedings provided to suit of Kay Ector.<sup>175</sup> Furthermore, Aglovale's Subcommittee for Economic Relations provided reviews of designations of sanctioned persons, which included designation by Kay Ector.<sup>176</sup>

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<sup>167</sup> Clarifications, ¶9.

<sup>168</sup> ARSIWA, Article 16.

<sup>169</sup> ARSIWA, Article 17.

<sup>170</sup> ARSIWA, Article 18.

<sup>171</sup> Facts, ¶64.

<sup>172</sup> Sprankling, John G., *The Global Right to Property*, Columbia Journal of Transnational Law 52(2), 2014, p. 21.

<sup>173</sup> United Nations Convention against Transnational Organized Crime: resolution/adopted by the General Assembly, 8 January 2001, A/RES/55/25, Article 2(f).

<sup>174</sup> ICCPR, Article 14.

<sup>175</sup> Facts, ¶57.

<sup>176</sup> Clarifications, ¶9.

### **C. The sanctions did not breach WTO law**

WTO Member States are allowed to deviate from WTO law by taking measures they consider necessary for the protection of their essential security interests.<sup>177</sup> Such measures can be taken during armed conflict or heightened tension surrounding a State.<sup>178</sup> After Ragnell's initiation of the military operation Aglovale lost access to Tintagel coast and suffered deaths of its nationals. Furthermore, Aglovalean civilians were unable to escape dangerous conflict zones due to the bombing of Nant Gateway.<sup>179</sup> Heightened tensions in the Belt constitute an essential security interest thus making it necessary for Aglovale to impose sanctions.

### **D. Even if Aglovale's sanctions are in breach of the Treaty, their wrongfulness is precluded**

Under Article 22 ARSIWA an injured State may take countermeasures against a State responsible for an internationally wrongful act in order to induce that State to comply with its obligations.<sup>180</sup> However, countermeasures must be proportionate to the injuries suffered.<sup>181</sup>

#### **1. Aglovale is an injured State**

By bombing Nant Gateway<sup>182</sup> Ragnell injured Aglovale by denying it access to Tintagel port which is essential and owed to Aglovale under Article 15 Treaty.<sup>183</sup> Additionally, Ragnell infringed its obligations under the Treaty,<sup>184</sup> by killing Aglovalean nationals.<sup>185</sup>

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<sup>177</sup> General Agreement on Tariffs and Trade, 30 October 1947, 55 U.N.T.S. 194, Article XXI(b)(iii).

<sup>178</sup> Russia - Measures concerning traffic in transit case (Ukraine v. Russia), WTO, Panel Report, 2019, ¶7.76.

<sup>179</sup> Facts, ¶42.

<sup>180</sup> ARSIWA, Article 49.

<sup>181</sup> ARSIWA, Article 51.

<sup>182</sup> Facts, ¶41.

<sup>183</sup> Treaty, Article 15.

<sup>184</sup> Treaty, Articles 2, 11.

<sup>185</sup> Facts, ¶¶31,48.

## **2. The sanctions satisfy ARSIWA's requirement of proportionality**

Proportionality should be assessed by considering qualitative elements, such as the importance of the interests protected and the seriousness of the breach.<sup>186</sup> Before resorting to unilateral measures, Aglovale attempted other means. Firstly, calling Ragnell to cease with the infringements of the Treaty<sup>187</sup> and secondly, requesting UN Security Council to intervene in the Belt, which was vetoed.<sup>188</sup> Aglovale intervened with the implementation of sanctions, only when Ragnell bombed Compound Ardan, killing Aglovalean nationals.<sup>189</sup> Furthermore, at the time of the imposition of sanctions, many Aglovalean nationals were trapped without basic necessities and humanitarian aid.<sup>190</sup> Consequently, Ragnell's continuing breaches could no longer be tolerated.

## **3. Aglovale did not frustrate procedural requirements**

Generally, an injured State may impose countermeasures only if it notifies the responsible State and offers to negotiate.<sup>191</sup> However, notification is not necessary if it would frustrate the purpose of the countermeasures,<sup>192</sup> for example in cases of temporary freezing of assets.<sup>193</sup> Notification of Aglovale's intentions to impose countermeasures would frustrate its own purpose, since Ragnell and sanctioned individuals could withdraw their assets from Aglovale.

### **E. In any case, clean hands doctrine prevents Ragnell from asserting the wrongfulness of the sanctions**

Ragnell is precluded from making claims that Aglovale's sanctions are in breach of the Treaty, in accordance with the principle of clean hands, which is part of CIL<sup>194</sup>. A party engaged in a

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<sup>186</sup> Case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France, Arbitral Award, 1978, ¶83.

<sup>187</sup> Facts, ¶¶32,43.

<sup>188</sup> Facts, ¶34.

<sup>189</sup> Facts, ¶48.

<sup>190</sup> Facts, ¶42.

<sup>191</sup> ARSIWA, Article 52(1).

<sup>192</sup> ARSIWA, Article 52(2).

<sup>193</sup> ILC, ARSIWA Commentary, United Nations, Yearbook of the International Law Commission 2001, Vol. II, Part Two, Article 52, p. 136, ¶6.

<sup>194</sup> Diversion of Water from the Meuse (Netherlands v Belgium), 1937 P.C.I.J. Ser A/B, No 17, Individual Opinion, Judge Hudson ["Opinion Hudson"], p. 77.

continuing breach is not permitted to take advantage of the other party's similarly illegal conduct.<sup>195</sup> Ragnell violated its obligations from the Treaty and thus, appears before the Court with unclean hands and is precluded from objecting to alleged Treaty violations by Aglovale.

**F. Aglovale has no obligation to withdraw the sanctions or to return seized property or to compensate Ragnell**

**1. Due to Ragnell's continuing breaches, Aglovale may keep the sanctions imposed**

As Ragnell shows no intention to cease with the violations of the Treaty,<sup>196</sup> Aglovale has no obligation to withdraw the sanctions. Consequently, the ceased and frozen property should not be returned.

**2. Aglovale owes no compensation to Ragnell for any damages**

- i. If the Court finds that Aglovale breached the Treaty, the Court should issue a declaratory judgement

Restitution is not possible as the damage cannot be undone.<sup>197</sup> Instead of compensation judicial declaration is a significant sanction and should suffice as reparation.<sup>198</sup>

- ii. Should Aglovale be required to pay compensation, the amount should be lowered as Aglovale is not the only contributor

A State is obligated to compensate only injury that is a direct and certain consequence of its wrongful conduct.<sup>199</sup> In the present case, sanctions cannot be regarded as a natural and direct cause for Ragnell's losses due to Ragnell's own actions and sanctions imposed by other countries.<sup>200</sup>

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<sup>195</sup> Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7 ["Gabčíkovo"], ¶110.

<sup>196</sup> Opinion Hudson, p. 78.

<sup>197</sup> ARSIWA, Article 35.

<sup>198</sup> Corfu Channel case, Judgment, 1949 I.C.J. Reports 1949, p. 4, p. 35.

<sup>199</sup> Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012, ¶14.

<sup>200</sup> Facts, ¶54.

**IV. RAGNELL VIOLATED ITS TREATY OBLIGATIONS IN TRANSPORTING HAZARDOUS PLASTIC WASTE TO ETNA, WHEREAS AGLOVALE COMPLIED WITH THE TREATY IN CONDITIONING COOPERATION REGARDING TREATMENT OF THE WASTE ON THE TERMINATION OF RAGNELL'S AGGRESSION**

**A. Ragnell violated CIL by causing significant transboundary harm**

Ragnell must protect human health and the environment in Gais Peninsula and use its best practicable means to prevent, or to remedy, environmental pollution and harm.<sup>201</sup> Moreover, Ragnell is bound to respect “*all relevant rules of international law*” including CIL<sup>202</sup>. Thus, Ragnell must not only exercise due diligence and prevent pollution,<sup>203</sup> but has a further obligation to take into account the uncertain risks involved in the disposal of hazardous waste. Consequently, all of Ragnell’s actions should be evaluated in light of the precautionary principle,<sup>204</sup> which Ragnell failed to consider when transporting hazardous waste to Etna.

**1. Ragnell is responsible for significant transboundary harm**

- i. Ragnell failed to take all appropriate measures to comply with the principle of prevention

In order to protect significant transboundary harm Ragnell should have observed the principle of prevention,<sup>205</sup> which is linked to the obligation to exercise due diligence.<sup>206</sup>

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<sup>201</sup> Treaty, Article 28.

<sup>202</sup> Treaty, Articles 28, 2(1).

<sup>203</sup> Gabčíkovo, ¶140.

<sup>204</sup> Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, ¶135.

<sup>205</sup> Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF. 48/14, (1972) [“Stockholm Declaration”], Principle 21.

<sup>206</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 on The Environment and Human Rights, 2017 [“Advisory Opinion OC-23/17”], ¶128.

a. There was a risk of significant damage

The duty of prevention arises when there is a possibility of significant damage, which is determined by the project's size and scope.<sup>207</sup> Ragnell needed one month and additional workers to ship the large amounts of hazardous waste to Etna,<sup>208</sup> indicating the projects' large scale. Furthermore, while analysing the possibility of substantial damage, the project's location is critical.<sup>209</sup> Since Etna is an island state,<sup>210</sup> an inaccurate disposal of waste could easily affect the ocean, as it also did.<sup>211</sup>

b. Ragnell failed to act with appropriate and proportional due diligence

The standard of due diligence must be proportional to the degree of risk of transboundary harm.<sup>212</sup> Due diligence calls for a State to inform itself about the factual and legal elements of a project and to take appropriate measures.<sup>213</sup> Ragnell was exporting hazardous waste and should have demonstrated a very high standard of care. Thus, it could and should have determined that the capabilities of Etna's facilities were inadequate, since ILSA, a non-profit organisation, was able to come to this conclusion.<sup>214</sup> Additionally, given that the Belt had already encountered an environmental disaster during the Clarent war,<sup>215</sup> the level of care demanded in this situation was even higher.

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<sup>207</sup> Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015, p. 665 ["Costa Rica"], ¶¶153,155.

<sup>208</sup> Facts, ¶44.

<sup>209</sup> Similarly, in *Costa Rica* the Court held that due to the location of the project any harm caused could easily affect the river and therefore Nicaragua's territory.

<sup>210</sup> Facts, ¶41.

<sup>211</sup> Facts, ¶45.

<sup>212</sup> Commentary on the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 2001 in Report of the ILC on the Work of its Fifty-Third Session, A/56/10, (2001) ["ILC on Transboundary Harm"], Article 3, ¶11; Advisory Opinion OC-23/17, ¶142.

<sup>213</sup> ILC on Transboundary Harm, Commentary, Article 3, ¶10.

<sup>214</sup> Facts, ¶45.

<sup>215</sup> Facts, ¶8.

ii. Ragnell had better means to appropriately dispose waste

States shall, if necessary, seek the assistance of competent international organizations to prevent or reduce the risk of significant transboundary harm.<sup>216</sup> Accordingly, Ragnell should have sought the assistance of organisations, such as ILSA and the UN Environment Assembly, which would have helped determine, whether Etna's facilities were adequate to dispose waste. Since Ragnell should have determined that Etna was not capable of appropriately disposing the waste, it was under an obligation to ship the waste to another country with suitable treatment facilities.

iii. Inaccurate waste disposal caused serious transboundary environmental harm

The prohibition that States must not use their territories in a way which harms the environment of other States<sup>217</sup> forms part of CIL.<sup>218</sup> Such harm must be significant.<sup>219</sup> Significant harm is considered any harm to the environment that involves a real detrimental effect on matters such as human health, environment and right to life.<sup>220</sup>

In the present dispute, Ragnell exported its waste to Etna, whose primary treatment sites were not equipped to handle such large shipments of hazardous waste, resulting in incineration, landfill and ocean disposal,<sup>221</sup> thus establishing a causal link. Even though the exact amount of pollution remains unknown, it has already had substantial negative impact on the environment,<sup>222</sup> which will lead to similar human rights infringements as in the past,<sup>223</sup> thus reaching the level of serious transboundary harm.

iv. Consequently, Ragnell was under an obligation to remedy further harm

Pursuant to Article 28 Ragnell was under an obligation to remedy environmental harm, even

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<sup>216</sup> ILC on Transboundary Harm, Article 4.

<sup>217</sup> Stockholm Declaration, Principle 21.

<sup>218</sup> Trail smelter case (United States of America, Canada), Award, 11 March 1941, p. 1939; Nuclear Weapons, ¶29.

<sup>219</sup> ILC on Transboundary Harm, Commentary, Article 2, ¶4.

<sup>220</sup> Ibid., Advisory Opinion OC-23/17, ¶140.

<sup>221</sup> Facts, ¶¶44,45.

<sup>222</sup> Ibid.

<sup>223</sup> Facts, ¶8.

if the waste was no longer in its possession.<sup>224</sup> In order to remedy the harm, Ragnell should have primarily made arrangements to transport the waste to another State with suitable facilities or reimported it<sup>225</sup> and appropriately store it.

## **2. Additionally, Ragnell failed to act in an environmentally sound manner**

- i. Ragnell was required to act in an environmentally sound manner when transporting waste to Etna

As Ragnell has an obligation to use best practicable means to prevent environmental pollution<sup>226</sup>, it was also bound to act in an environmentally sound manner [“ESM”], which forms at least an emerging part of CIL.

- ii. Ragnell failed to take all the necessary measures to ensure accurate disposal

Management in an ESM entails taking all appropriate measures to guarantee that hazardous waste is managed in a way that will safeguard human health and the environment.<sup>227</sup> The country of export plays an important role.<sup>228</sup> ESM Framework stipulates that the State of export must not only evaluate receiving facilities but also elements such as effective legal systems, government oversight and other infrastructure.<sup>229</sup> Ragnell failed to properly establish the adequacy of the facilities and failed to consider the regulatory circumstances, which would have ensured that waste was being managed in an ESM.

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<sup>224</sup> This can be compared to “cradle to grave” concept enshrined in the Cairo guidelines and principles for the environmentally sound management of hazardous wastes, 1987, UNEP, 14/30.

<sup>225</sup> This can be compared to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Treaty Series, vol. 1673, p. 57, Article 8.

<sup>226</sup> Treaty, Article 28.

<sup>227</sup> United Nations, Technical guidelines for the identification and environmentally sound management of plastic wastes and for their disposal, 2002, UNEP, 6/21, p. 8.

<sup>228</sup> Romée van der Mare, Eva, *Trading Plastic Waste in a Global Economy: Soundly Regulated by the Basel Convention*, Environmental law journal, 2022, p. 7.

<sup>229</sup> Framework for the environmentally sound management of hazardous wastes and other wastes, UNEP, 11/3, 2013, ¶39.

## **B. Additionally, Ragnell violated the obligation to uphold human rights**

Article 2(2) Treaty provides that the Contracting Parties are bound by all applicable principles of human rights and shall take all necessary measures to prevent violations of those principles. One of those rights is the right to live in a healthy environment,<sup>230</sup> which can be seriously endangered by environmental threats.<sup>231</sup>

### **1. Ragnell violated the right to a healthy environment**

The UN General Assembly passed a resolution recognizing the right to a clean, healthy, and sustainable environment as a human right. This right can be considered part of CIL as it was adopted by a vote of 161 in favour and zero against,<sup>232</sup> thus fulfilling the requirement of State practice and *opinio juris*. Ragnell's actions caused environmental pollution thereby violating the right to a healthy environment of residents of Gais Peninsula.

### **2. Ragnell violated the right to life**

Right to life is an inherent human right,<sup>233</sup> whose fulfilment depends on the States' measures to protect the environment.<sup>234</sup> This relates to the operation of waste-collection sites, on account of the potential risks inherent in that activity.<sup>235</sup> In the present case, Ragnell failed to protect the environment resulting in incineration and thus endangering lives of nationals living on Gais Peninsula.

### **3. Ragnell violated the right to the highest attainable standard of health**

The right to the highest attainable standard of health is one of the fundamental rights of every human being.<sup>236</sup> The States are under the obligation to ensure that waste is disposed of without

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<sup>230</sup> Inter-American Court of Human Rights, *Lagos del Campo vs Peru*, Case No. 12.795, Judgment of 31 August 2017 (Preliminary Objections, Merits, Reparations and Costs), ¶141.

<sup>231</sup> Mandate of the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and wastes: resolution / adopted by the General Assembly, A/HRC/18/L.6, 2011.

<sup>232</sup> The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly, A/RES/76/300, 2022.

<sup>233</sup> ICCPR, Article 6.

<sup>234</sup> Advisory Opinion OC-23/17, ¶61.

<sup>235</sup> *Öneryıldız v. Turkey*, 2004, ECtHR, Application no. 48939/99, ¶65.

<sup>236</sup> ICESCR, Article 12(1).

endangering human health and without harming the environment.<sup>237</sup> Ragnell violated this right by carelessly exporting waste to Etna, where it was not appropriately disposed.<sup>238</sup>

**C. On the other hand, Aglovale acted in accordance with the Treaty as it complied with the duty to cooperate in good faith**

Pursuant to Article 28 Treaty the Contracting Parties must cooperate in good faith. Duty to cooperate in environmental matters is also part of CIL.<sup>239</sup> It is derived from the principle of good faith in international relations<sup>240</sup> and is essential for protection of the environment.<sup>241</sup> Duty to cooperate encompasses the duty to consult and negotiate with potentially affected States.<sup>242</sup>

**1. Aglovale complied with the duty to cooperate by engaging in good faith negotiations**

i. Duty to negotiate is an obligation of means

The obligation to negotiate does not encompass the obligation to reach an agreement.<sup>243</sup> States are only required to conduct consultations in good faith, which requires parties to respect their agreed purpose and intent.<sup>244</sup> Aglovale entered into negotiations with Ragnell<sup>245</sup> in order to cooperate in regard to disposal of waste. By doing so it respected the purpose of the Treaty.

ii. Aglovale entered into meaningful negotiations with Ragnell

The States concerned must enter in meaningful negotiations<sup>246</sup> on environmental risks, since the purpose of negotiations is prevention or mitigation of transboundary harm.<sup>247</sup> Aglovale had a

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<sup>237</sup> Commission v. Italy, 1999, CJEU, C-365/97, ¶68; Commission v. Greece, 2004, CJEU, C-420/02, ¶22.

<sup>238</sup> Facts, ¶45.

<sup>239</sup> Lake Lanoux Arbitration (France v. Spain). Decision of 16 November 1957 [“Lake Lanoux”], p. 308.

<sup>240</sup> Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 253, ¶¶46, 49; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14 [“Pulp Mills”], ¶145.

<sup>241</sup> Gabčíkovo, ¶140.

<sup>242</sup> Advisory Opinion OC-23/17, ¶186.

<sup>243</sup> Pulp Mills, ¶¶150,154.

<sup>244</sup> Vu, Hao-Nhien Q., *The Law of Treaties and the Export of Hazardous Waste*, UCLA Journal of Environmental Law and Policy 12(2), 1994, p. 398.

<sup>245</sup> Facts, ¶39.

<sup>246</sup> Pulp Mills, ¶146.

<sup>247</sup> Ibid. ¶205.

genuine intention to cooperate with Ragnell, as it even committed to resuming talks despite the first unsuccessful negotiations.<sup>248</sup>

## **2. Aglovale halted cooperation with Ragnell due to its escalating breaches of the Treaty**

One party cannot terminate the negotiations without justification.<sup>249</sup> Aglovale halted the negotiations when Ragnell inhumanely bombed Nant Gateway, which was of grave significance to both Aglovale's economy and its nationals isolated in the Belt<sup>250</sup>. Aglovale was willing to continue cooperating if Ragnell would have halted its military activities in the Belt.<sup>251</sup> Respondent voluntarily agreed to the demilitarization of the Belt<sup>252</sup> and can thus not claim that conditioning Aglovale's cooperation with Ragnell's compliance with the Treaty presents an unreasonable ground for halting the negotiations.

## **3. In any event, Ragnell's actions made it nearly impossible for Aglovale to cooperate with Ragnell**

Aglovale is a landlocked State<sup>253</sup> with the only land route connecting it to seaport going through Nant Gateway, which Ragnell destroyed.<sup>254</sup> Subsequently, even if Aglovale and Ragnell would have reached an agreement, it would be nearly impossible to transport waste from the Belt to Aglovale due to Ragnell's own actions.

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<sup>248</sup> Facts, ¶39.

<sup>249</sup> Lake Lanoux, ¶307.

<sup>250</sup> Treaty, Article 15; Facts, ¶¶41,42.

<sup>251</sup> Facts, ¶43.

<sup>252</sup> Treaty, Article 14.

<sup>253</sup> Facts, ¶1.

<sup>254</sup> Facts, ¶¶5,41.

## PRAYER FOR RELIEF

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For the foregoing reasons, the Kingdom of Aglovale, the Applicant, respectfully requests this Honorable Court to adjudge and declare that:

- I. Ragnell violated its Treaty obligations in launching “Operation Shining Star” and in its attacks on both Nant Gateway and Compound Ardan, and must pay reparations to Aglovale for the deaths of the eight Aglovalean nationals;
- II. Ragnell violated its Treaty obligations by employing captured UAC fighters in the transportation of contaminated plastic waste, and by detaining them in Camlann Correctional Center;
- III. Aglovale acted in accordance with the Treaty in imposing unilateral sanctions against Ragnell and Ragnellian nationals, and has no obligation to withdraw the sanctions, to return any property, or to compensate Ragnell for their impact;
- IV. Ragnell violated its Treaty obligations in transporting hazardous plastic waste to Etna, whereas Aglovale complied with the Treaty in conditioning cooperation regarding treatment of the waste on the termination of Ragnell’s aggression.

Respectfully submitted,  
**AGENTS FOR AGLOVALE**