

TEAM 346R

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

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

MEMORIAL FOR THE RESPONDENT

2023

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STATEMENT OF JURISDICTION

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

The State of Ragnell respectfully requests the Court to adjudge:

I.

Whether the Respondent violated the Treaty by launching a military operation and carrying out bombings, and has to pay reparations for deaths of Aglovalean nationals.

II.

Whether the Respondent violated the Treaty by employing captured UAC fighters in transportation of contaminated plastic waste and temporarily transferring them to Camlann.

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 the compensation.

IV.

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

STATEMENT OF FACTS

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 Vortigerns 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

I.

Ragnell submits that the Court should not rule on Aglovale's first submission because it cannot assert claims concerning Balan's legal interests, which form the very subject matter of this case. In any event, Ragnell's initiation of the military operation was in accordance with the Treaty as the it is partly suspended due to Aglovale's and Balan's material breach of the Treaty. Consequently, the Belt cannot be considered occupied territory because Ragnell was exercising its rights as a lessee. Additionally, the initiation of "Operation Shining Star" was an act of self-defence as it was a response to an armed attack by the UAC, who is a terrorist organization. Ragnell's use of force was also necessary and proportional to the UAC's escalating violence. Furthermore, Ragnell decision to bomb Nant Gateway complied with the rules of IHL as Nant Gateway was a legitimate military objective, whose destruction offered a definite military advantage to Ragnell and was thus proportional. Ragnell also complied with principles of IHL when it bombed Compound Ardan and can therefore not be held liable for the incidental loss of civilians' lives. Consequently, Ragnell is under no obligation to pay compensate.

II.

Aglovale cannot assert the rights of Balani UAC fighters, as the requirements for diplomatic protection are not fulfilled and the Monetary gold principle precludes Aglovale from bringing this claim before the Court. In any case, the captured UAC fighters are not prisoners of war as the Belt is not under alien occupation and the UAC does not represent Balani people. Furthermore, the UAC fighters do not fulfil other conditions for the status of prisoners of war. Nonetheless, Ragnell granted them the protection necessary under IHL. Ragnell's temporary employment of UAC detainees was an urgent measure to prevent any significant harm from environmental pollution and thus did not breach human rights. Furthermore, Ragnell complied with principles of IHL when it employed the UAC fighters. They were not compelled to do any prohibited work and were entitled to the same working conditions as Ragnellians. Moreover, in order to ensure their safety Ragnell transferred the UAC fighters to the Camlann Correctional Centre, where they were treated in accordance with international standards, thereby complying with principles of IHL.

III.

Aglovale violated its Treaty obligations by unilaterally imposing disproportionate and coercive sanctions against Ragnell and Ragnellian nationals, thereby also failing to maintain its neutrality. The imposed sanctions were outside of Aglovale's jurisdiction and were aimed to coerce Ragnell into ceasing with its military operation, thereby intervening in Ragnell's internal affairs. Moreover, Aglovale violated State immunity and immunities of State officials by freezing their assets and imposing travel bans. Furthermore, Aglovale violated its duty to protect human rights by expropriating Kay Ector's property and urging its allies to adopt similar sanctions, which caused a danger to the health and the standard of living of Ragnellian nationals. The imposed sanctions also violate the provisions of GATT. Moreover, Aglovale's sanctions do not meet all the requirements to be considered as countermeasures. Consequently, Aglovale must withdraw its unlawful sanctions and compensate Ragnell for their impact.

IV.

Aglovale further violated the Treaty by refusing to cooperate in good faith as it unjustifiably broke off the negotiations. Aglovale not only had a duty to negotiate but also a duty to conclude an agreement with Ragnell as it agreed to use its best practicable means to prevent environmental harm. On the other hand, Ragnell complied with all applicable principles of international environmental law. Due to Aglovale's refusal to cooperate, Ragnell was coerced to transfer the waste to Etna. By doing so, Ragnell complied with its obligation to prevent transboundary harm and safeguard human rights as keeping the toxic waste in the Belt would have caused greater damage to the environment and to the civilians in Gais Peninsula. Furthermore, the transfer to Etna was in accordance with the precautionary principle and the principle of proximity. In any event, Aglovale failed to prove that significant transboundary harm did in fact occur. Even if the Court finds that Ragnell breached its international obligations, the wrongfulness is precluded because Ragnell was acting under a state of necessity.

PLEADINGS

I. THE INITIATION OF “OPERATION SHINING STAR” AND THE TARGETING OF NANT GATEWAY AND COMPOUND ARDAN WERE IN CONFORMITY WITH THE TREATY, AND DO NOT GIVE RISE TO ANY OBLIGATION TO COMPENSATE

A. Aglovale cannot assert claims concerning Balan’s legal position

Article 41 Treaty stipulates that in the event of an alleged violation of any obligation from the Treaty, any Party may submit the dispute to the Court. However, the consent to jurisdiction in international adjudication is fundamental and is a corollary of the sovereign equality of States.¹ Accordingly, the Court’s jurisprudence² follows the Monetary Gold principle under which it cannot rule on a question that requires it to determine the legal position of a State that is not a party to the proceedings.³ Accordingly, the Court should follow its previous decisions.⁴ In the present case Balan is not a party to the proceedings and explicitly chose not to intervene, reserving the right to bring a subsequent action.⁵ Consequently, the Court should not rule on this issue since Balan’s legal interests form the very subject matter of the case.

¹ Sparks, Tom, *Reassessing State Consent to Jurisdiction*, Nordic Journal of International Law 91(2), 2022, p. 217.

² East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 90 [“East Timor”]; Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240; Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012, p. 99 [“Jurisdictional Immunities Greece intervening”].

³ Monetary Gold Removed from Rome in 1943 (Italy v. France, UK, and USA), Preliminary Question, Judgement I.C.J. Reports 1954, p. 19, p. 32.

⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008, p. 412, ¶53.

⁵ Facts, ¶62.

B. The initiation of “Operation Shining Star” was in accordance with the Treaty

1. Ragnell did not breach the Treaty provisions, as the Treaty is partly suspended

- i. Aglovale’s and Balan’s failure to prevent the UAC attacks constitutes a material breach of the Treaty

The violation of a provision essential to the accomplishment of the object or purpose of the treaty constitutes grounds for its suspension in whole or in part.⁶ The essential object and the purpose of the Treaty was to “*maintain comprehensive peace*”.⁷ Both Balan⁸ and Aglovale⁹ breached this obligation by not stopping the ongoing UAC attacks. Their omissions resulted in UAC’s attack in July 2021, which caused 50 deaths and a temporary halt in three Ragnellian factories.¹⁰ Due to the attack Ragnell invoked its right of self-defence pursuant to Article 51 UN Charter. Therefore, the Treaty provisions in conflict with Respondent’s right to self-defence in Part III Treaty are suspended.

Moreover, Ragnell’s failure to initiate VCLT suspension procedure beforehand does not preclude its claiming prior material breach in response to Aglovale’s allegations.¹¹

- ii. Consequently, the Belt cannot be considered an occupied territory

Pursuant to Article 2(2) Treaty the Parties must respect CIL under which a territory is considered occupied when it is placed under the authority of a hostile army.¹² Given that Article 14 was suspended Respondent was not prohibited from sending its military to the Belt. Therefore, Ragnell’s army cannot be considered as hostile and the conditions for occupation are not fulfilled.

⁶ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331 [“VCLT”], Article 60.

⁷ Preamble Treaty.

⁸ Facts, ¶27.

⁹ Treaty, Article 6.

¹⁰ Facts, ¶30.

¹¹ VCLT, Article 65(5).

¹² 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; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136 [“Wall Opinion”], ¶78.

2. The initiation of “Operation Shining Star” was an act of self-defence because it was a response to an armed attack by the UAC

Article 20 Treaty provides that nothing in the Treaty shall be interpreted as affecting other rights and obligations under the UN Charter.¹³ Therefore, as Ragnell was exercising its right to self-defence under Article 51 UN Charter, it did not violate any conflicting obligations under the Treaty.

i. Ragnell had the right to use self-defence against the UAC

A State may use force in self-defence if it has been subjected to an armed attack,¹⁴ which can be carried out by non-State actors, such as a terrorist organization,¹⁵ even if they cannot be attributed to the State.¹⁶ The language of Article 51 UN Charter further supports this by granting the right to self-defence in response to “*an armed attack*,” not to any specific type of attacker.¹⁷ That, evidently, is why Resolution 1368 and Resolution 1373 reiterate the right of self-defence by a State specifically against terrorist attacks.¹⁸ In the present case Ragnell was subjected to an armed attack by the UAC¹⁹ and had to act to stop their actions along with saving lives and restoring regional prosperity.²⁰

¹³ This is also established in Charter of the United Nations, 24 October 1945 UNTS XVI [“UN Charter”], Article 103.

¹⁴ Kretzmer, David, *Counter-Terrorism: International Law and Practice*, Oxford Scholarly Authorities on International Law, 2012, p. 623.

¹⁵ *Ibid.*, p. 621.

¹⁶ 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”], separate opinion of Judge Simma, ¶12.

¹⁷ Franck, Thomas M., *Terrorism and the Right of Self-Defense*, *The American Journal of International Law*, 95(4), 2001, p. 840.

¹⁸ Security Council resolution 1368 (2001), 12 September 2001, S/RES/1368 (2001); Security Council resolution 1373 (2001), 28 September 2001, S/RES/1373 (2001).

¹⁹ Facts, ¶30.

²⁰ Facts, ¶19.

ii. Ragnell satisfied the CIL's requirements of necessity and proportionality

a. Ragnell's actions were necessary

Ragnell has unsuccessfully urged Balan to stop the UAC on numerous occasions.²¹ Even though Balan conducted arrests and police raids of UAC clubs in Balani cities, UAC's attacks escalated and culminated in attack in July 2021. Consequently, it was necessary for Ragnell to initiate a limited and temporary military operation²².

b. Ragnell's actions were proportional

As Ragnell's law enforcement units were attacked and unequipped to fight against guerrilla fighters, the most effective and mildest course of action to stop the UAC was to send armoured vehicles and Ragnellian military to the Belt.²³ This can be compared to the situation in northern Iraq, where Kurdish attacks were intensifying over the years, as a result of which Turkey sent its troops to the border region to stop the attacks.²⁴

iii. Ragnell complied with the UN Charter's notice requirement

By submitting a letter to the head of the Security Council stating that "Operation Shining Star" had been launched in response to the UAC's armed attacks,²⁵ Ragnell complied with Article 51 UN Charter. The notification serves as an indication of the lawfulness of its military action.²⁶

C. The bombing of Nant Gateway complied with the rules of IHL

1. Ragnell complied with the principle of distinction as Nant Gateway was a legitimate military objective

²¹ Facts, ¶30.

²² Facts, ¶31.

²³ Facts, ¶¶25,31,35.

²⁴ Tams, Christian J., *The necessity and proportionality of anti-terrorist self-defence*, Cambridge University Press, 2010, p. 395.

²⁵ Clarifications, ¶3.

²⁶ *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"], ¶200.

According to the principle of distinction, the parties to a conflict must always make a distinction between civilian and military objectives and can thus only direct their operations against military targets.²⁷ This principle forms part of CIL.²⁸

Military objectives are objects which by their nature, location, purpose or use make an effective contribution to military action and whose destruction offers a definite military advantage.²⁹ In the *Prlić* case the ICTY considered the Old Bridge as a legitimate military target despite its use both by civilians and the ABiH,³⁰ as its destruction offered a definite military advantage.³¹ Similarly, the Nant Gateway was used both by civilians and the UAC.³² Furthermore, it was the only tunnel mouth within the Belt,³³ meaning that it was the only way through which the UAC fighters could enter into the Belt.

Moreover, unilateral pronouncement of the Nant Gateway as a humanitarian corridor³⁴ does not establish it as a protected zone such as set out in IHL.³⁵

2. Ragnell complied with the precautionary principle before bombing Nant Gateway

i. Ragnell applied precautionary measures before bombing Nant Gateway

Constant precautions must be taken to protect the civilian population.³⁶ To fulfil this obligation Parties to the conflict must give effective advance notice of attacks that may affect the civilian

²⁷ 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.

²⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226 [“Nuclear Weapons”], ¶78; Tadić case, 1999 ICTY Appeals Chamber Judgment IT-94-1-A, ¶168.

²⁹ Protocol I, Article 52.

³⁰ Prlić et al. case, 2013 ICTY Trial Chamber Judgement IT-04-74, ¶1582.

³¹ Prlić et al. case, 2017 ICTY Appeals Chamber Judgment IT-04-74-A, [“Prlić Appeals Chamber”], ¶411.

³² Facts, ¶41.

³³ Facts, ¶15.

³⁴ Facts, ¶40.

³⁵ Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 [“GC IV”], Article 15; Protocol I, Article 60.

³⁶ Protocol I, Article 57.

population.³⁷ Ragnell provided sufficient notice about the bombing of the Gateway to Balan,³⁸ thereby complying with the precautionary principle.

ii. In any event, Ragnell had to act urgently

Ragnell received information that UAC fighters were making their way along the Eamont Thruway to launch a surprise attack on Ragnell's forces.³⁹ Any subsequent examination cannot replace the individual's assessment of the situation who had to act in the "*heat of the moment*".⁴⁰ Consequently, it is necessary to consider how much opportunity does a State have to plan its reaction.⁴¹ Ragnell had to act urgently in order to prevent the surprise attack and did not have additional time to seek additional information regarding the usage of Gateway.

3. Ragnell's bombing of Nant Gateway was 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.⁴² Issuing a warning contributes to the proportionality of an attack.⁴³ Due to Ragnell's warning, no civilians were hurt, which shows that Ragnell did consider possible civilian casualties.

Even if the bombing results in the isolation of population, it can be justified by military necessity.⁴⁴ Respondent submits that the bombing of Nant Gateway was necessary to prevent the UAC's surprise attack and their access to the Belt. Subsequently, Ragnell's bombing was proportional as Ragnell gained a concrete and direct military advantage.

³⁷ Protocol I, Article 57(2)(c).

³⁸ Clarifications, ¶4.

³⁹ Facts, ¶41.

⁴⁰ *Bubbins v. The United Kingdom*, 2005 ECtHR, Application No. 50196/99, ¶139.

⁴¹ *McCann and others v. The United Kingdom*, 1995 ECtHR, Application No. 18984/91, ¶193.

⁴² Protocol I, Article 57(2).

⁴³ Schmitt, Michael N., *Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance*, Virginia Journal of International Law 50(4), 2010, pp. 827-828.

⁴⁴ *Prlić Appeals Chamber*, ¶411.

4. The bombing was not an act of collective punishment

Aglovale's Minister stated that the bombing of Nant Gateway was an act of collective punishment.⁴⁵ In order for an act to qualify as a collective punishment, there must be a specific intent of the perpetrator to collectively punish civilians.⁴⁶ Ragnell had no such intent, since the aim of the bombing was to end the ongoing use of the Eamont Thruway by the UAC.⁴⁷

D. The bombing of Compound Ardan was in accordance with IHL

1. Compound Ardan was a legitimate military target

Ragnell had the information that Compound Ardan was being used to launch ground attacks against Ragnell and that the UAC activities were chiefly concentrated in four buildings, while another smaller structure – Warehouse 15 – was being used to store weapons and ammunition,⁴⁸ thus making it a military objective as described in Article 52 Protocol I.

2. Additionally, Ragnell complied with the precautionary principle

The decision to bomb Compound Ardan was based on the gathered information from a Balani worker who claimed to have knowledge of the usage of Compound Ardan and provided a map and cell phone photographs. Ragnell determined that the described situation was in conformity with its drone image. Only after these careful examinations, Ragnell authorized a bombing raid on the four buildings and on Warehouse 15.⁴⁹ Thus, Ragnell took all necessary precautions.⁵⁰

3. Furthermore, the bombing of Compound Ardan was proportional

In the present case, Ragnell could not have expected that there would be any civilians' casualties since the civilians hid in Warehouse 15 without alerting the belligerent force.⁵¹ Consequently, a reasonably well-informed person, could not have expected (excessive) civilian

⁴⁵ Facts, ¶42.

⁴⁶ Fofana and Kondewa case, Special Court for Sierra Leone, 2008 Judgement on Appeal, Case No. SCSL-04-14-A, ¶224.

⁴⁷ Facts, ¶41.

⁴⁸ Facts, ¶47.

⁴⁹ Ibid.

⁵⁰ Protocol I, Article 57, Kupreškić case, 2000 ICTY Trial Chamber Judgment IT-95-16-T, ¶524.

⁵¹ Facts, ¶48.

casualties to result from the attack.⁵² Additionally, there was an anticipated direct military advantage, since the bombing was meant to weaken the UAC fighters and destroy their weapons and ammunition,⁵³ as it also did⁵⁴. Consequently, Ragnell's actions were in conformity with the principle of proportionality⁵⁵.

4. In any case, Ragnell is not responsible for the death of Aglovalean civilians as its mistake was both honest and reasonable

State's actions are evaluated based on how they responded to available information known at the time.⁵⁶ Firstly, Ragnell honestly believed that Warehouse 15 was being used by the UAC and that there were no civilians in or around the Compound.⁵⁷ Secondly, given the conformity of the informant's data and the drone image, Ragnell's error was objectively reasonable. Furthermore, all the information that Ragnell received, apart from the presence of civilians in Warehouse 15, was accurate.⁵⁸ Therefore, Ragnell's mistake was both honest and reasonable.⁵⁹

E. Ragnell's actions do not give rise to any obligation to compensate

1. Aglovale cannot seek reparation as it is itself in breach

The clean hands doctrine is a general principle of law by which a State does not have *locus standi* necessary to bring its claim before the Court if it was itself guilty of illegal conduct.⁶⁰ A party engaged in a continuing breach is not permitted to take advantage of the other party's similarly illegal conduct.⁶¹ Consequently, as Aglovale's unlawful economic sanctions caused harm to Ragnell's economy and violated human rights, as will be elaborated below, Aglovale cannot claim compensation.

⁵² Galić case, 2003 ICTY Trial Chamber Judgement IT-98-29, ¶58.

⁵³ Facts, ¶47.

⁵⁴ Clarifications, ¶8

⁵⁵ Protocol I, Article 57(2).

⁵⁶ Hakimi, Monica, *A Functional Approach to Targeting and Detention*, Michigan Law Review 110(8), 2012, p. 1397.

⁵⁷ Facts, ¶47.

⁵⁸ Clarifications, ¶8.

⁵⁹ Ibid.

⁶⁰ Paramilitary Activities, dissenting opinion of Judge Schwebel, ¶272.

⁶¹ Diversion of Water from the Meuse, 1937 P.C.I.J. Series A/B. No 70, individual opinion, Judge Hudson, p. 78.

2. Alternatively, reparation should be limited to a curial declaration

Judicial declaration is a significant sanction and itself appropriate satisfaction.⁶² Thus, Respondent submits that a declaratory judgement is sufficient.

3. In the further alternative, when awarding compensation, mitigating factors should be considered

The impact of an economic crisis should be considered when determining compensation.⁶³ For instance, in *Sempra* case⁶⁴ the Tribunal recognised that the effect of the economic crisis should be factored in for the valuation of compensation. If the Court were to find that compensation is payable, the amount should be appropriately reduced due to the effects of the economic sanctions imposed by Aglovale.

⁶² Corfu Channel case, Judgment, 1949 I.C.J. Reports 1949, p. 4, [“Corfu Channel”], p. 35; Difference Between New Zealand and France Concerning the Interpretation or Application of Two Agreements, Concluded on 9 July 1986 Between the Two States and which Related to the Problems Arising from the Rainbow Warrior Affair, 1990, p. 215, ¶¶122,123.

⁶³ Enron Corporation and Ponderosa Assets L.P. v. Argentine Republic, ICSID Case No. ARB/01/3, Award (2007), ¶232, National Grid plc v. The Argentine Republic, UNCITRAL Award (2008) ¶274.

⁶⁴ *Sempra Energy International v. The Argentine Republic*, ICSID Case No. ARB/02/16, Award (2007), ¶417.

II. RAGNELL ACTED IN ACCORDANCE WITH THE TREATY IN TEMPORARILY EMPLOYING UAC DETAINEES IN THE TRANSPORT OF PLASTIC WASTE TO ETNA, AND IN TEMPORARILY TRANSFERRING THEM TO CAMLANN

A. Aglovale has no standing to make claims regarding the UAC fighters

1. Aglovale cannot utilize diplomatic protection

A State is entitled to protect its subjects, when injured by internationally wrongful acts committed by another State, through diplomatic protection.⁶⁵ However, only the State of nationality of the injured individual can utilize diplomatic protection.⁶⁶ Thus, Aglovale cannot assert the rights of UAC fighters, who are Balani nationals.⁶⁷

2. The Monetary Gold principle applies

Furthermore, the Monetary Gold principle precludes Aglovale from bringing a claim before the Court. Applicant might argue that it had a legal interest in the protection of *erga omnes* obligations, however the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things, therefore the Court cannot evaluate the lawfulness of the conduct, whatever the nature of the obligation invoked.⁶⁸

B. The captured UAC fighters are not prisoners of war

1. The UAC's declaration does not have the effects of entry into force of the GCs and Protocol I

The UAC's senior commander submitted a declaration to the Swiss Federal Council,⁶⁹ pursuant to Article 96(3) Protocol I, which establishes that GCs and Protocol I enter into force only in an armed conflict in which peoples are fighting against alien occupation in the exercise of their right of self-determination.⁷⁰ As those conditions are not fulfilled, the declaration should not have the mentioned effects.

⁶⁵ The Mavrommatis Palestine Concessions, 1924 P.C.I.J. Rep Series A. No 2, p. 12.

⁶⁶ Armed Activities, ¶¶33,34.

⁶⁷ Facts, ¶13.

⁶⁸ East Timor, ¶29.

⁶⁹ Clarifications, ¶5.

⁷⁰ Protocol I, Article 1(4).

i. The Belt is not under alien occupation

When territories have a questionable legal status, they can be considered as territories under alien occupation,⁷¹ meaning they have not yet been fully formed as a State.⁷² Conversely, the Belt is not under alien occupation as Balan is a fully formed state and Ragnell is a lawful lessee under the Treaty.

ii. Additionally, the UAC does not represent Balani people in their fight for self-determination

Article 96(3) GC III refers to an authority representing people engaged in a fight against a High Contracting Party. The Polisario Front was regarded as an authority representing the Sahrawi people because their *de facto* representation has been uncontested since the 1970s.⁷³ Conversely, UAC cannot represent the Balani people as they are represented by Federation of Balan, which was actively trying to stop UAC's efforts.⁷⁴

2. Additionally, the UAC fighters are not prisoners of war

For UAC fighters to be protected as prisoners of war they must collectively fulfil the conditions of Article 4 GC III.

i. The UAC fighters are not members of the armed forces of a Party to the conflict

According to Article 4(1) GC III prisoners of war are members of the armed forces of a Party to the conflict. As the UAC is not a Party to the conflict, its fighters are not members of the armed forces.

⁷¹ Gattuso, Dominic, *The Polisario Front and the Future of Article 1(4)*, Texas Law Review 99(6), 2021 [“Gattuso”], p. 1209.

⁷² Yves Sandoz et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, p. 54.

⁷³ Gattuso, p. 1215.

⁷⁴ Facts, ¶26.

- ii. The UAC fighters do not fulfil other conditions for the status of a prisoner of war
 - a. The UAC is not an organised resistance movement belonging to a Party to the conflict

Article 4(2) GC III establishes the requirement of “*belonging to*” between independent forces and a State.⁷⁵ The UAC cannot belong to Balan as Balan is not a Party to the conflict. Furthermore, there is no *de facto* relationship between them as not only is Balan not controlling the UAC fighters but was also making efforts to stop them.⁷⁶

- b. UAC does not fight in accordance with IHL

The combatants must conduct their operations in accordance with laws and customs of war.⁷⁷ Although the UAC pledged to honour all applicable provisions of IHL,⁷⁸ the Court should observe that the UAC fighters are terrorists. Comparably, in the *Kassem* case the judge refused to grant the prisoner of war status to Kassem, with the reasoning that international law does not protect terrorists.⁷⁹ UAC fighters thus have no right to claim the status of lawful combatants.

C. Employment of UAC detainees was a necessary measure to prevent any significant harm from environmental pollution and did not breach human rights and IHL

The temporary employment of the captured UAC fighters was in compliance with Ragnell’s obligation under Article 2(2) Treaty to respect all applicable principles of human rights and IHL.

⁷⁵ Dörmann, Knut, Commentary of 2020, Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 [“Commentary GC III (2020)”], ¶1004.

⁷⁶ Facts, ¶26.

⁷⁷ Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 [“GC III”], Article 4(2).

⁷⁸ Clarifications, ¶7.

⁷⁹ Lauterpacht, Elihu, *International Law Reports*, Cambridge, Grotius Publications Limited, vol. 42, 1971, pp. 470-483.

1. The work done by the UAC's fighters was demanded by times of emergency and thus does not breach human rights

i. Ragnell had a duty to prevent a public health calamity

States must prevent diseases in order to fulfil everyone's right to the highest possible quality of health⁸⁰ and have a positive obligation to take reasonable steps to protect the lives of persons within their territory.⁸¹ Ragnell complied with this obligation when it took action to dispose of the waste, as there was a threat of a public health calamity, requiring additional workers.⁸²

ii. Ragnell compelled the detainees to work as that was demanded by the times of emergency

Forced labour is generally prohibited,⁸³ however, this rule does not encompass any service demanded in times of emergency or calamity endangering the community's life or well-being.⁸⁴ Since the Plastics Conglomerate was left inoperative, plastic waste began to accumulate.⁸⁵ In order to prevent an unprecedented regional environmental and public health calamity⁸⁶ it was necessary to compel the detainees to work. Therefore, as the work of UAC detainees was reasonably required due to an emergency it cannot constitute forced labour.

2. Furthermore, Ragnell complied with GC IV when compelling the detainees to work

i. The work done by the detainees was necessary for the health of humans and is not directly related to the conduct of military operations

Protected persons may be compelled to do work that is normally required to ensure the health of humans and is not directly related to the conduct of military operations.⁸⁷ Examples of work

⁸⁰ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 ["ICESCR"], Article 12(2)(c).

⁸¹ Öneriyıldız v. Turkey, 2004, ECtHR, Application no. 48939/99, ¶65.

⁸² Facts, ¶¶37,38,44.

⁸³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 17 ["ICCPR"], Article 8.

⁸⁴ ICCPR, Article 3(c)(iii).

⁸⁵ Facts, ¶38.

⁸⁶ Ibid.

⁸⁷ GC IV, Article 40.

related to military conduct are building of bunkers, carrying railway sleepers for the construction of trenches, and building of other fortifications on the frontline.⁸⁸ Contrarily, the UAC fighters had to load waste onto ships as there was an emergency of removing the material in order to protect the health of all population in Gais Peninsula.⁸⁹

- ii. Furthermore, the workers were entitled to the same working conditions as Ragnellians

Protected persons shall be entitled to the same working conditions and protections as national workers.⁹⁰ When loading contaminated waste onto ships the work crews was treated equally, with no distinctions based on nationality.⁹¹

D. In any event, Ragnell granted the UAC fighters the treatment of prisoners of war

1. Ragnell had the right to utilize the labour of prisoners of war under GC III

- i. Ragnell had no other option except ordering the detainees to work

Due to the UAC's violence, the Ministry of Ragnell issued a statement advising its nationals to leave the Belt immediately.⁹² As a result, there were only a few Ragnellian workers left in the Belt⁹³ and Ragnell was compelled to order the detainees to work in pursuit of safeguarding the environment.

- ii. Only physically fit detainees had to work

The Detaining Power may only use the labour of physically fit prisoners of war.⁹⁴ Ragnell respected this provision as only men over the age of 18 were detained and complied to work.⁹⁵ The detainees, who were ill or unfit for physical labour, were not required to do so.⁹⁶

⁸⁸ Simić case, 2003 ICTY Trial Chamber Judgement (IT-95-9), ¶834.

⁸⁹ Facts ¶¶38,44.

⁹⁰ GC IV, Article 95.

⁹¹ Clarifications, ¶5.

⁹² Facts, ¶36.

⁹³ Facts, ¶44.

⁹⁴ GC III, Article 49; Eritrea-Ethiopia Claims Commission - Partial Award: Prisoners of War - Ethiopia's Claim 4, Volume XXVI pp. 73-114, 2003 ["Eritrea-Ethiopia"], ¶127.

⁹⁵ Clarifications, ¶5.

⁹⁶ Ibid.

iii. The detainees were not compelled to do prohibited work

Prisoners of war are generally prohibited from working in chemical industries.⁹⁷ The reason for this proscription is that these industries are likely to contribute directly to the war effort.⁹⁸ However, the detainees' work did not have a military purpose as it consisted solely of loading waste onto ships in the port⁹⁹ in order to preserve the environment.

2. The detainees were treated in accordance with provisions of the GC III

i. The work done by the detainees was not of dangerous or unhealthy nature as they were sufficiently protected

Under Article 52 GC III prisoners of war may not be involuntary employed for labour which is of dangerous or unhealthy nature. When Ragnell provided the workers with basic safety gear, including masks and gloves,¹⁰⁰ the work could no longer be considered as dangerous and unhealthy.

ii. Furthermore, the working conditions of UAC fighters were under no instance inferior to those enjoyed by Ragnellian workers

Prisoners of war should be granted suitable working conditions not inferior to those enjoyed by nationals of the Detaining Power.¹⁰¹ The UAC fighters worked alongside roughly 150 Ragnellian workers¹⁰² and were treated uniformly, with no distinctions based on nationality.¹⁰³

⁹⁷ GC III, Article 50.

⁹⁸ Picté, Jean, Commentary of 1960, Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, p. 264.

⁹⁹ Facts, ¶44.

¹⁰⁰ Ibid.

¹⁰¹ GC III, Article 51.

¹⁰² Clarifications, ¶5.

¹⁰³ Ibid.

iii. The detainees were paid wages commensurate with the nature of the work

The prisoners of war should be paid a fair working rate by the detaining authority.¹⁰⁴ Ragnell compensated the detainees in accordance with the nature of the work,¹⁰⁵ thereby complying with this provision.

E. Ragnell acted in accordance with IHL when transferring the UAC detainees to Camlann Correctional Centre

In order to ensure their safety, Ragnell temporarily transferred the UAC detainees, thereby complying with its obligation under Article 2(2) Treaty to respect principles of IHL.

1. Ragnell did not keep the detainees in areas close to combat zone

The Detaining Power shall not establish internment camps in areas particularly vulnerable to the dangers of war.¹⁰⁶ As the combat zone got closer to Fort Caerleon, where the detainees were primarily held, Ragnell justifiably transferred them to Camlann.¹⁰⁷ This was necessary to ensure their safety.¹⁰⁸

2. Ragnell's transfer of the UAC fighters was only temporary

Article 49 GC IV prohibits forcible transfers from occupied territory to the territory of the Occupying Power. Nevertheless, there can be an evacuation of a given area, if the security of the population or imperative military reasons so demand. People who have been evacuated shall be returned to their homes as soon as hostilities in the affected region cease.¹⁰⁹ Ragnell temporarily evacuated the UAC fighters to ensure their safety as the fighting drew closer.¹¹⁰

F. Ragnell granted the UAC fighters the treatment of prisoners of war when transferring them to Camlann Correctional Centre

1. The transfer to a penitentiary was justified by the detainees' best interests

¹⁰⁴ GC III, Articles 54, 62.

¹⁰⁵ Facts, ¶44.

¹⁰⁶ GC IV, Article 83.

¹⁰⁷ Facts, ¶49.

¹⁰⁸ Facts, ¶50.

¹⁰⁹ GC IV, Article 49.

¹¹⁰ Facts, ¶50.

- i. Ragnell transferred the detainees in order to ensure their safety

The relocation of detainees to Camlann facility was in accordance with Article 22 GC III, which generally prohibits the internment of detainees in penitentiaries. However, such relocation is permitted when justified by the interests of the prisoners themselves.¹¹¹ Ragnell transferred the detainees in order to protect them from the dangers of active combat,¹¹² thereby acting in their best interest.

- ii. The detention standards at Camlann Correctional Centre and Fort Caerleon were the same

Applicant might argue that the transfer was not in the fighter's best interests as the freedom of movement is restricted in a maximum-security prison. However, the detention standards at Camlann Correctional Centre were the same as those at Fort Caerleon.¹¹³ Furthermore, the standards at both detention centres met or even exceeded relevant international standards.¹¹⁴ What is more, Ragnell's Ministry allowed visitation by International Committee of the Red Cross to both Fort Caerleon and Camlann¹¹⁵ and therefore also complied with CIL.¹¹⁶

- iii. The detainees were housed separately from other prisoners

The prisoners of war should not be interned in penitentiaries as housing with persons convicted of a criminal offence might compromise the security of prisoners of war.¹¹⁷ This is not a factor as the UAC fighters were housed separately from other prisoners.¹¹⁸

¹¹¹ GC III, Article 22.

¹¹² Facts, ¶49.

¹¹³ Clarifications, ¶6.

¹¹⁴ Facts, ¶36.

¹¹⁵ Facts, ¶50.

¹¹⁶ Eritrea-Ethiopia, ¶¶58-62.

¹¹⁷ Commentary GC III (2020), ¶1996.

¹¹⁸ Clarifications, ¶5.

2. The relocation of detainees to Camlann facility was necessary and temporary

- i. The transfer was a necessary measure to keep the prisoners safe from combat zone

Article 23 GC III prohibits sending prisoners of war to, or detaining them in, areas where they may be exposed to the fire of the combat zone. In Conflicts with fluid battlefields and rapidly changing fronts, the Detaining Power must constantly evaluate the safety of camp locations.¹¹⁹ Ragnell was forced to transfer the detainees as the fighting was coming closer to Fort Carleon and it evacuated them to Camlann, a safe location.¹²⁰

- ii. Furthermore, the evacuation was safer for UAC detainees than staying at Fort Caerleon

Article 47 GC III provides that the transfer can occur if it can be carried out in adequate conditions of safety. Nonetheless, the detaining power must proceed with the transfer if doing so puts the prisoners in less danger than keeping them where they are.¹²¹ Ragnell was right to transfer the detainees, as staying in Fort Caerleon would represent a greater danger to the UAC fighters than the transfer to Camlann.

¹¹⁹ Commentary GC III (2020), ¶2636.

¹²⁰ Facts, ¶49.

¹²¹ Commentary GC III (2020), ¶2638.

III. AGLOVALE VIOLATED ITS TREATY OBLIGATIONS BY UNILATERALLY IMPOSING DISPROPORTIONATE AND COERCIVE SANCTIONS AGAINST RAGNELL AND RAGNELLIAN NATIONALS, AND MUST IMMEDIATELY WITHDRAW THOSE SANCTIONS, RELEASING ALL RAGNELLIAN PROPERTY FROZEN AND REINSTATING ALL ASSETS SEIZED PURSUANT TO THEM, AND COMPENSATE RAGNELL FOR THEIR IMPACT

A. Aglovale breached UN Charter and CIL by imposing unlawful and coercive sanctions

Article 2(1) Treaty provides that Contracting Parties must respect the provisions of UN Charter and CIL governing friendly relations among States. Therefore, by unilaterally imposing coercive sanctions Aglovale breached the Treaty.

1. Aglovale's sanctions breached the principle of non-intervention by interfering in Ragnell's internal affairs

Under CIL regulating friendly relations, no State has the right to intervene in the affairs of any other State.¹²² Consequently, States may not use or encourage the use of economic or any other type of coercion¹²³ intervening in matters over which a State is free to decide under the principle of State sovereignty.¹²⁴ By imposing sanctions Aglovale aimed to coerce Ragnell into ceasing its legitimate military operation.¹²⁵

Furthermore, sanctions such as trade embargo are deemed more likely to breach the non-intervention principle when the sanctioned State is highly reliant on trade with the sanctioning State, as shown by U.S.'s trade embargo on Cuba.¹²⁶ Likewise, Ragnell is highly reliant on trade with Aglovale, as it presents 32% of Ragnellian economy.¹²⁷ Therefore, trade embargo

¹²² Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, GA Res. 2625 (XXV), 24 October 1970 ["Declaration on Friendly Relations"], p. 121.

¹²³ Ibid.

¹²⁴ Paramilitary activities, ¶205.

¹²⁵ Facts, ¶52.

¹²⁶ Ruys, Tom, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, Edward Elgar Publishing, 2016 ["Ruys"], p. 7.

¹²⁷ Facts, ¶4.

imposed on Ragnell and its citizens should be interpreted as coercive and in breach of principle of non-intervention.

2. Additionally, Aglovale imposed sanctions, which are outside of its jurisdiction

It is prohibited for States to extend the application of their laws to persons, property and acts outside of their territory.¹²⁸ Aglovale imposed sanctions targeting Ragnellian and other nationals.¹²⁹ In the present case, Aglovale has no legal right to extend its jurisdiction outside its territory and over acts of foreign nationals.

Additionally, the passive personality principle is accepted only in extreme cases such as terrorism and other organized discriminatory attacks on State's nationals, or to assassination of State's officials.¹³⁰ However, Aglovale cannot claim this jurisdiction as Respondent is not responsible for the deaths of eight Aglovalean nationals. Furthermore, they cannot be justified under the protective principle, which empowers States to sanction foreigners for acts committed against their national security, as it has been limited to attacks on the country's organization and structure.¹³¹ Since there was no such attack, Aglovale's national security was not threatened.

3. Moreover, Aglovale violated State immunity and immunities of State officials by freezing their assets and imposing travel bans

- i. The sanctions imposed on Ragnell's central bank breach Ragnell's State immunity

State immunity is a part of CIL,¹³² and encompasses protection of State assets, however, only if they are used for non-commercial purposes¹³³. In this regard, there is an overwhelming presumption that a central bank's operation and property is used for sovereign purposes and hence covered by immunity.¹³⁴ Consequently, the burden of proof on the possibility of the

¹²⁸ The Case of the S.S. "Lotus", 1927 P.C.I.J. Rep Series A, No 10, ¶19.

¹²⁹ Facts, ¶53.

¹³⁰ Malanczuk, Peter, *Akehurst's Modern Introduction to International Law*, 7th ed., Routledge, 1997, p. 111.

¹³¹ Bantekas, Ilias, Papastavridis, Effhymios, *Concentrate International Law*, Oxford University Press, 2013, p. 79.

¹³² Jurisdictional Immunities Greece intervening, p.99, ¶56.

¹³³ Ibid. ¶118.

¹³⁴ High Court of Justice Queen's Bench Division, Case No. 2004/536, 20. 10. 2005, ¶82.

seizure is on the Party seeking to seize the State's assets.¹³⁵ Therefore, the burden lies on Aglovale. Respondent submits that the property of its central bank is intended for governmental purposes, thus, the freezing of assets of Ragnell's central bank breaches Ragnell's State immunity.

- ii. Moreover, the imposed sanctions prevented the State representatives from fulfilling their obligations

Under CIL, high ranking State officials, like Ministers of Foreign Affairs and Heads of State, are protected by immunities, which ensure the effective performance of their functions.¹³⁶ CIL does not provide any exception to the immunity.¹³⁷

Aglovale imposed travel bans and froze assets of Ragnellian high-ranking officials and State representatives.¹³⁸ As a result, they were unable to effectively carry out their obligations since they could not travel or access the assets required for their official duties. Furthermore, the fact that Aglovale provided periodic review of the sanctioned individuals does not preclude their unlawfulness.

B. Additionally, Aglovale's sanctions are unlawful as they violate human rights

Pursuant to Article 2(2) Treaty the Contracting Parties must respect human rights and take all necessary measures to prevent their violations.

1. Aglovale violated the right to property by expropriating Kay Ector's Prydven palace

¹³⁵ Supreme Courts of the Netherlands Civil Division, Case No. 19/03142 and 19/03144, 18 December 2020, ¶3.2.3.

¹³⁶ Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p. 3, ¶53.

¹³⁷ Ibid. ¶58.

¹³⁸ Facts, ¶53.

i. Ragnell can protect Kay Ector under diplomatic protection

Kay Ector is a Ragnellian national, whose asset was expropriated by Aglovale on basis that he was allegedly trying to circumvent the sanctions.¹³⁹ Additionally, Kay Ector exhausted all local remedies in Aglovale¹⁴⁰ thus both conditions for diplomatic protection are fulfilled.

ii. Aglovale unlawfully expropriated Kay Ector's asset

Right to property is a general principle of law, thus binding on all States.¹⁴¹ By seizing Kay Ector's property Aglovale violated this right by unlawfully expropriating him. Expropriations may take form of confiscations which include a punitive element.¹⁴² Expropriation can only be lawful if it serves a public purpose and is executed against the payment of compensation.¹⁴³ In the present case, the seizure of Prydven palace did not serve any public purpose as Kay Ector is not responsible for Ragnell's policies. Furthermore, Kay Ector was not offered any compensation for the loss of his property rendering the expropriation unlawful.

2. Additionally, Aglovale is responsible for the consequences of other States' sanctions resulting in a breach of human rights of Ragnellian nationals

Under CIL, no State may encourage the use of economic or any other type of coercion.¹⁴⁴ Aglovale is the most economically advanced country in the region with the nominal GDP of US\$950 billion.¹⁴⁵ Its economic power implies a strong political influence as other States depend on cooperation with Aglovale.¹⁴⁶ Therefore, overcompliance from other States and its corporations can be expected when sanctions are implemented.¹⁴⁷ Aglovale should have anticipated and considered the impact of its allies' sanctions on human rights on Ragnell, the

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Sprankling, Jogn G., *The Global Right to Property*, Columbia Journal of Transnational Law 52(2), 2014, p. 16.

¹⁴² Kriebaum, Ursula, Reinisch, August, *Property, Right to, International Protection*, Max Planck Encyclopedia of Public International Law, 2009, ¶10.

¹⁴³ *Manolium Processing v. The Republic of Belarus*, PCA Case No. 2018-06, Final Award, 22 June 2021, ¶414.

¹⁴⁴ Declaration on Friendly Relations, p. 122.

¹⁴⁵ Facts, ¶1.

¹⁴⁶ Facts, ¶4.

¹⁴⁷ Douhan, Alena F., *Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions*, Report of the Special Rapporteur A/HRC/51/33, 2022, ¶23.

imposition of which it encouraged. Failure to do so shifted legal responsibility for the resulting human rights problems¹⁴⁸ on Aglovale.

3. Aglovale caused danger to the health and standard of living of Ragnellian nationals

Although the States have jurisdiction over their trade policies, these policies are subject to human rights considerations.¹⁴⁹ Measures may not violate the right to life,¹⁵⁰ and the right to an adequate standard of living, including food, clothing, housing and medical care.¹⁵¹

As a consequence of Aglovale's and its allies' sanctions Ragnellian hospitals were unable to acquire stocks of medicine and other vital needs.¹⁵² Furthermore, due to overcompliance with Aglovale's policies, several retail and fast-food chains operating in Ragnell ceased operations, and social media platforms suspended accounts belonging to Ragnellian nationals.¹⁵³

Additionally, Aglovale gravely impaired Ragnell's economy by seizing assets of Ragnellian banks and imposition of trade embargo.¹⁵⁴ Ragnell's trade contracted sharply, with reports that inflation would reach 34% and unemployment triple to 18,6% by the end of 2022,¹⁵⁵ causing serious threat to the standard of living of Ragnellian nationals.

C. Furthermore, Aglovale's sanctions breached WTO law

Under Article 2(3) Treaty Contracting Parties must promote economic advancement and free trade between them in accordance with all applicable principles of international law. Both Aglovale and Ragnell must thus respect the principles of non-discrimination and most-

¹⁴⁸ Ibid.

¹⁴⁹ Bossuyt, Marc, *The Adverse Consequences of Economic Sanctions*, Commission on Human Rights, E/CN.4/Sub.2/2000/33 ["Bossuyt"], ¶9

¹⁵⁰ ICCPR, Article 6.

¹⁵¹ ICESCR, Articles 11, 12.

¹⁵² Facts, ¶54.

¹⁵³ Ibid.

¹⁵⁴ Facts, ¶53.

¹⁵⁵ Facts, ¶55.

favoured-nation treatment. Hence, economic sanctions, when undertaken between WTO Members, conflict with their General Agreement on Tariffs and Trade obligations [“GATT”]^{156, 157}.

1. Aglovale cannot invoke security clause as its security interests were not threatened

Under Article XXI GATT a State may impose measures it considers necessary to protect its essential security interests. The term “essential security interest” is a narrow concept understood to refer to interests relating to the State’s quintessential functions, such as the internal maintenance of law and public order.¹⁵⁸ When interpreting and applying this norm States are limited by good faith pursuant to Article 31 VCLT.¹⁵⁹ Aglovale did not act in good faith as it imposed the sanctions for reasons of political nature as means of exerting political pressure on Ragnell’s sovereign decisions.

2. In any case, the embargo was not necessary

Measures are regarded necessary if they are genuinely required and States do not have any other reasonable options.¹⁶⁰ In the present case Aglovale had other alternatives to imposing sanctions in order for Ragnell’s military operation in the Belt to come to an end, as it could have resumed its peacekeeping obligation and helped Ragnell to protect its nationals from the UAC’s aggression.

¹⁵⁶ General Agreement on Tariffs and Trade, 30 October 1947, 55 U.N.T.S. 194, Articles I, XIII.

¹⁵⁷ Ruys, p. 10.

¹⁵⁸ Panel Report, Russia – Measures Concerning Traffic in Transit, WT/DS512/R, 5 April 2019, ¶7.130.

¹⁵⁹ Ibid., ¶7.131.

¹⁶⁰ Deutsche Telekom AG v. The Republic of India, Interim Award, UNCITRAL PCA Case No. 2014-10, 13 December 2017, ¶239.

D. Furthermore, Aglovale's sanctions cannot be considered as lawful countermeasures

Countermeasures may only be taken by injured States in response to a violation of an international obligation to restore compliance with the obligation.¹⁶¹ The measures must be proportionate to the violation, and must not violate human rights.¹⁶² Furthermore, they must fulfil procedural conditions.¹⁶³

1. Aglovale failed to fulfil procedural conditions for imposing countermeasures

Before resorting to countermeasures an injured State must notify the responsible State of its decision to take countermeasures and offer to negotiate.¹⁶⁴ Aglovale failed to notify Ragnell of its intentions to impose countermeasures and did not offer to negotiate.¹⁶⁵

2. Sanctions are disproportionate to Ragnell's alleged violations of the Treaty

i. Aglovale's sanctions gravely affected Ragnell's economy and its nationals

Countermeasures must be proportionate to the injury suffered¹⁶⁶ and must be considered not only in quantitative terms, but also in terms of the gravity of the internationally wrongful act and the value of the rights at stake.¹⁶⁷ In the present case the imposed sanctions seriously affected Ragnell as it was predicted that Ragnell's economy would contract by 15.5%, inflation would reach 34%, unemployment would triple to 18.6%, and imports would fall by nearly 25% in value before the end of 2022. The disproportionate sanctions further caused the deprivation

¹⁶¹ International Law Commission ["ILC"], Articles on Responsibility of States for Internationally Wrongful Acts, 56th Sess. ["ARSIWA"], Article 49.

¹⁶² ARSIWA, Article 50.

¹⁶³ ARSIWA, Article 52(1)(b).

¹⁶⁴ ARSIWA, Article 52(1).

¹⁶⁵ Facts, ¶52.

¹⁶⁶ ARSIWA, Article 51.

¹⁶⁷ Air Service Agreement of 27 March 1946 between the United States of America and France, Arbitral Award, 9 December 1978, p. 417, ¶83.

of medical supplies in Ragnellian hospitals and lowered the standard of living of Ragnellian nationals.¹⁶⁸

- ii. Furthermore, the sanctions were ineffective in achieving their intent and are consequently disproportionate

Sanctions must be reasonably capable of achieving the intended outcome.¹⁶⁹ Sanctions that are targeted in ways that would not result in the termination of the violation must be considered ineffective.¹⁷⁰ As President Vortigern stated Ragnell will not surrender to Aglovale's demands,¹⁷¹ and Ragnell will cease with the military operation only if Balan and Aglovale sufficiently provide safety to Ragnellian nationals and companies operating in the Belt.¹⁷² Consequently, the Court should regard the sanctions as ineffective in achieving their goal and solely effective in creating human suffering.

E. In any case, Aglovale should have maintained its neutrality

Under the Treaty Aglovale is obligated to abide by the principles of neutrality, impartiality and fairness.¹⁷³ By imposing the sanctions in order to help Balan and refusing to reinstate its peacekeeping forces in the Belt,¹⁷⁴ Aglovale showed clear favouritism for Balan, while intentionally disregarding Ragnell's interests.

F. Aglovale must withdraw unlawful sanctions and compensate Ragnell for their impact

1. All sanctions must be revoked

As Ragnell acted in accordance with the Treaty and international law, Aglovale must withdraw all unlawful sanctions, release all frozen Ragnellian property and reinstate all assets.

2. Aglovale should compensate Ragnell for the impact of the sanctions

¹⁶⁸ Facts, ¶¶54,55.

¹⁶⁹ Bossuyt, ¶46.

¹⁷⁰ Ibid.

¹⁷¹ Facts, ¶56.

¹⁷² Facts, ¶59.

¹⁷³ Treaty, Article 6(4)(a).

¹⁷⁴ Facts, ¶60.

As Aglovale was Ragnell's main trading partner,¹⁷⁵ the imposed trade embargo caused the volume of Ragnell's trade to contract sharply¹⁷⁶ and caused shortages in Ragnellian hospitals,¹⁷⁷ thus, establishing required causal nexus.¹⁷⁸

Reparation must be made for violations of international law.¹⁷⁹ The compensation must to the greatest extent possible, eliminate all consequences of the illegal act and re-establish the situation that would have existed if the illegal act had not been committed.¹⁸⁰ Consequently, Aglovale is under the obligation to compensate Ragnell for its suffered losses.

¹⁷⁵ Facts, ¶4.

¹⁷⁶ Facts, ¶55.

¹⁷⁷ Facts, ¶54.

¹⁷⁸ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment Reparations, I.C.J., 9 February 2022, ¶145.

¹⁷⁹ ARSIWA, Article 31.

¹⁸⁰ *Factory at Chorzów*, 1928 P.C.I.J. Rep Series A, No 17, p. 47.

IV. AGLOVALE VIOLATED THE TREATY BY REFUSING TO COOPERATE IN GOOD FAITH IN THE MANAGEMENT OF THE PLASTIC WASTE, WHEREAS RAGNELL COMPLIED WITH ITS OBLIGATIONS UNDER THE TREATY WHEN IT WAS FORCED BY THAT REFUSAL TO EXPORT THE WASTE TO ETNA FOR PROCESSING AND DISPOSAL

A. Aglovale violated its duty to cooperate in good faith by unjustifiably breaking off negotiations

Article 28 Treaty provides that the Parties must cooperate in good faith in reducing the risk of significant harm from environmental pollution. The duty to cooperate forms part of CIL¹⁸¹ and includes the duty to negotiate in good faith.¹⁸²

1. Aglovale failed to negotiate in good faith

The principle of good faith is a fundamental principle of international law.¹⁸³ Its importance has been affirmed in the context of the performance and interpretation of treaties.¹⁸⁴

Negotiations would not be conducted in good faith where one party terminates the negotiations without justification, imposes abnormal delays or time limits or systematically refuses to consider the proposals or the interests of the other party.¹⁸⁵

¹⁸¹ Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF. 48/14, 1972, Principle 24; Lake Lanoux Arbitration (France v. Spain). Decision of November 16 1957 [“Lake Lanoux”], p. 308.

¹⁸² Inter-American Court of Human Rights, Advisory Opinion OC-23/17 on The Environment and Human Rights, 2017 [“Advisory Opinion OC-23/17”], ¶186; Principles and guidelines for international negotiations: resolution / adopted by the General Assembly, A/RES/53/101, 1998, p. 2.

¹⁸³ Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 275, ¶38.

¹⁸⁴ Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment, I.C.J. Reports 2008, p. 177, ¶145.

¹⁸⁵ Lake Lanoux, p. 307.

i. Aglovale did not engage in meaningful negotiations

Negotiation must be meaningful,¹⁸⁶ which means that the negotiating Parties must have a genuine intention to achieve a positive result.¹⁸⁷ Meaningful negotiations encompass consideration of other States' interests.¹⁸⁸

a. Aglovale failed to consider Ragnell's interests

Duty to pay reasonable regard to the legal rights of other States entails the obligation to consider the various interests at stake.¹⁸⁹ Aglovale failed to consider the interests of Ragnell, which is a coastal country and a lessee of the Belt, where its citizens and many companies are located. Consequently, Ragnell would be the most affected if the waste remained untreated due to Aglovale's refusal to cooperate.

b. Aglovale made an unreasonable demand

Negotiations are not meaningful when a Party insists upon its own standing without considering any modification of it.¹⁹⁰ Consequently, the negotiating Parties must try to find a mutually satisfactory solution by compromising.¹⁹¹ In the present case, Aglovale made an unreasonable demand that it would not engage in negotiations until Ragnell completely halted its military activities in the Belt.¹⁹² By conditioning its own fulfilment of the Treaty with the cessation of Ragnell's lawful military activities, Aglovale breached its duty to engage in meaningful negotiations.

¹⁸⁶ Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment of 5 December 2011, I.C.J. Reports 2011, p. 685, ["Macedonia v. Greece"] ¶132.

¹⁸⁷ Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 246, ¶87; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 132, ["Georgia v. Russia"] ¶157.

¹⁸⁸ Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 3, ¶78.

¹⁸⁹ Ibid.

¹⁹⁰ Macedonia v. Greece, ¶132.

¹⁹¹ Case concerning claims arising out of decisions of the Mixed Graeco-German Arbitral Tribunal set up under Article 304 in Part X of the Treaty of Versailles (Between Greece and the Federal Republic of Germany) Decision of 26 January 1972, pp. 60, 62.

¹⁹² Facts, ¶43.

ii. Aglovale's cessation of negotiations constitutes an unreasonable delay

The obligation to negotiate in good faith also requires that there is no unreasonable delay.¹⁹³ Time frame depends on the circumstances of the case.¹⁹⁴ In the present case, time was of the essence as waste had already begun to accumulate in Tintagel Park, threatening an unprecedented regional environmental and public health disaster.¹⁹⁵ Therefore, any delay in negotiations was unwarranted as it meant a greater threat to the environment.

iii. Aglovale should have continued with the negotiations, as they are a continuing obligation

The obligation to negotiate ceases only once negotiations have succeeded or have been properly and fully exhausted and/or become futile.¹⁹⁶ Furthermore, as the Court provided, the obligation to negotiate is a continuing obligation.¹⁹⁷ Since Ragnell was still ready to negotiate, Aglovale was obligated to continue with the negotiations.¹⁹⁸

2. Aglovale was under the obligation to conclude an agreement with Ragnell

In *Nuclear Weapons* case the relevant treaty stipulated that the parties must “*pursue negotiations in good faith on effective measures*” and did not contain any explicit direction to negotiate until successful.¹⁹⁹ Nevertheless, the Court found that there was an obligation to conclude an agreement. On the same token, in the present case there was a danger of an unprecedented environmental catastrophe²⁰⁰ and Aglovale was the only one on the Peninsula with adequate facilities.²⁰¹ Considering that Aglovale agreed to use its best practicable means

¹⁹³ Owada, Hisashi, *Pactum de Contrahendo, Pactum de Negotiando*, Max Planck Encyclopedias of International Law, 2008, ¶38.

¹⁹⁴ Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 73, ¶49.

¹⁹⁵ Facts, ¶38.

¹⁹⁶ Georgia v. Russia, ¶159.

¹⁹⁷ North Sea Continental Shelf Case, Judgment, I.C.J. Reports 1969, Separate Opinion of Judge Padilla Nervo, p. 92.

¹⁹⁸ Facts, ¶39.

¹⁹⁹ Nuclear Weapons, ¶99.

²⁰⁰ Facts, ¶38.

²⁰¹ Facts, ¶39.

to prevent environmental harm,²⁰² it was under an obligation to conclude an agreement with Ragnell.

B. On the other hand, Ragnell complied with all applicable principles of international environmental law

1. Ragnell is not bound by the Basel Convention and Stockholm Convention

Ragnell is committed to use its best practicable means to prevent, or to remedy, environmental pollution, and harm, by compliance with all relevant rules of international law.²⁰³ Applicant might therefore argue that the Basel Convention and Stockholm Convention must be applied. However, Ragnell is not a signatory Party to them.²⁰⁴ The fact that Article 28 Treaty refers to “*relevant rules of international law*” does not mean that Ragnell is bound by Conventions to which it is not a signatory Party. Such interpretation would be contrary to the principle of good faith established in Article 31 VCLT. Additionally, a different reading of Article 28 Treaty would mean that Respondent is bound by all environmental law conventions, which would be contrary to consensual nature of international law.

2. Ragnell satisfied its duty to prevent transboundary harm

- i. Ragnell’s actions aimed to prevent greater harm that could derive from keeping the pollutants in the Belt

Under CIL, States are obligated to take measures to prevent their territory being used for acts contrary to the rights of other States.²⁰⁵ This duty requires States to exercise its best possible

²⁰² Treaty, Article 28.

²⁰³ Ibid.

²⁰⁴ Facts, ¶19.

²⁰⁵ Corfu Channel case, pp. 21–22; Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7 [“Gabčíkovo-Nagymaros”], ¶140; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14, [“Pulp Mills”], ¶¶203-205.

efforts to minimize the risk to the environment.²⁰⁶ Accordingly, the duty of prevention is an obligation of means and not of results.²⁰⁷

The obligation to prevent transboundary harm is violated if a State fails to take reasonable preventative measures²⁰⁸ and act in accordance with the standard of due diligence.²⁰⁹ Ragnell took reasonable measures by transferring waste to Etna, which was the only option for waste disposal, since Aglovale refused to cooperate.

ii. In any event, the consequences were not foreseeable

A State of origin is not responsible for preventing risks that are not foreseeable.²¹⁰ In the present case, Ragnell concluded the agreement with Etna, who is a party to the Basel and Stockholm Conventions.²¹¹ Consequently, it would be unreasonable for Ragnell to expect and foresee that Etna will breach the obligations arising out of those conventions.

3. Additionally, Ragnell complied with the precautionary principle

The precautionary principle refers to the actions that must be taken when there is a lack of scientific certainty regarding how an activity might affect the environment.²¹² This principle has not yet reached the status of CIL,²¹³ nonetheless Ragnell complied with it. As Aglovale rejected cooperation,²¹⁴ Ragnell had to search for other means to resolve the environmental

²⁰⁶ Jervan, Marte, *The Prohibition of Transboundary Environmental Harm. An Analysis of the Contribution of the International Court of Justice to the Development of the No-harm Rule*, PluriCourts Research Paper No. 14-17, 2014, p. 62.

²⁰⁷ Pulp Mills, ¶187; Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 2011 ITLOS Reports, p. 10, [“ITLOS 2011”], ¶110.

²⁰⁸ Corfu Chanell, p. 23; The Iron Rhine Arbitration (Belgium v. Netherlands), PCA 2003-02, 24 May 2005, ¶222.

²⁰⁹ ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Yearbook of the International Law Commission 2001, Vol. II, Part Two [“ILC on Transboundary Harm”], Article 3; Advisory Opinion OC-23/17, ¶124.

²¹⁰ ILC on Transboundary Harm, Commentary Article 3 ¶5.

²¹¹ Facts, ¶18.

²¹² Advisory Opinion OC-23/17, ¶180.

²¹³ Beyerlin, Ulrich, *International Environmental Law*, Hart Publishing, Oxford, 2011 [“Beyerlin”] p. 286; ITLOS 2011, ¶135; Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, 1999 ITLOS Reports, p. 28, ¶¶73-80.

²¹⁴ Facts, ¶43.

problem. Etna committed to disposing waste in an environmentally sound manner and reassured Ragnell that its treatment facilities were appropriately equipped.²¹⁵

4. Moreover, Ragnell complied with the proximity principle

Ragnell committed to use the “*best practicable means*” to protect the environment.²¹⁶ Ragnell considered the proximity principle holding that waste should be disposed of as close to the point of origin as possible.²¹⁷ Since the Plastic Conglomerate was destroyed²¹⁸ and Aglovale refused to dispose the waste,²¹⁹ the next nearest waste disposal facility was in Etna.²²⁰

5. In any event, Aglovale failed to satisfy the required burden of proof

A State that brings action against the State of origin must show clear and convincing evidence for having been significantly affected by this harm.²²¹ Aglovale’s claim is based solely on a report of a not-for-profit organization, which loosely states that some incineration and landfill and ocean disposal took place, however exact quantities remained unknown.²²² Consequently, Aglovale failed to produce sufficient evidence of significant transboundary harm.

6. Ragnell safeguarded human rights

The Court has stressed that the general obligation to prevent human rights violations is an obligation of means rather than of result.²²³ Ragnell made a strong effort to protect human rights and the environment by repeatedly requesting Aglovale’s assistance in the disposal of the waste. Due to Aglovale’s rejection Ragnell was coerced to enter into an agreement with Etna to protect infringements of human rights and the environment.

²¹⁵ Facts, ¶44.

²¹⁶ Treaty, Article 28.

²¹⁷ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, pp. 3–30, Article 18.

²¹⁸ Facts, ¶47.

²¹⁹ Facts, ¶43.

²²⁰ Facts, ¶41; Clarifications, ¶1.

²²¹ Beyerlin, p. 43.

²²² Facts, ¶45.

²²³ Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2015 ITLOS Reports, p. 4, ¶129.

7. Even if Ragnell breached its international obligations, the wrongfulness is precluded under a state of necessity

The state of necessity is a ground recognized by CIL²²⁴ for excluding the wrongfulness of an act that is not in accordance with an international obligation. Necessity can be invoked if the act in question is the only way for the State to protect its essential interest.²²⁵

Ragnell was acting in order to protect its essential interest, namely the environment in Gais Peninsula, where the untreated waste became an acute problem after Aglovale refused to cooperate with Ragnell.²²⁶ Consequently, Ragnell was compelled to export waste to Etna as keeping the toxic material in the Park “*would have posed a higher risks to human health and the environment.*”²²⁷

²²⁴ Gabčíkovo-Nagymaros, ¶51; Wall Opinion, ¶140.

²²⁵ ILC, ARSIWA Commentary, United Nations, Yearbook of the International Law Commission 2001, Vol. II, Part Two, Article 25, p. 80, ¶1.

²²⁶ Facts, ¶46.

²²⁷ Ibid.

PRAYER FOR RELIEF

For the foregoing reasons, the State of Ragnell, the Respondent, respectfully requests this Honourable Court to adjudge and declare that:

- I. The initiation of “Operation Shining Star” and the targeting of Nant Gateway and Compound Ardan were in conformity with the Treaty, and do not give rise to any obligation to compensate.
- II. Ragnell acted in accordance with the Treaty in temporarily employing UAC detainees in the transport of plastic waste to Etna, and in temporarily transferring them to Camlann.
- III. Aglovale violated its Treaty obligations by unilaterally imposing disproportionate and coercive sanctions against Ragnell and Ragnellian nationals, and must immediately withdraw those sanctions, releasing all Ragnellian property frozen and reinstating all assets seized pursuant to them, and compensate Ragnell for their impact.
- IV. Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, whereas Ragnell complied with its obligations under the Treaty when it was forced by that refusal to export the waste to Etna for processing and disposal.

Respectfully submitted,
AGENTS FOR RAGNELL

