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**International Court of Justice**

**at the Peace Palace,**

**the Hague, the Netherlands**

– 2023 –

***The Case Concerning the Clarent Belt***

The Kingdom of Aglovale

v.

The State of Ragnell

**Memorial for the Respondent**

The 2023 Philip C. Jessup International Law Moot Court Competition

#

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[**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.** 1](#_Toc124884696)

[**A. Ragnell did not breach the rules governing use of force as Operation Shining Star qualifies as an act of self-defense.** 1](#_Toc124884697)

[**1. The violent attacks reached a sufficient level of gravity.** 1](#_Toc124884698)

[**2. The attacks were directed against Ragnell.** 2](#_Toc124884699)

[**3. UAC fighters qualify as perpetrators of armed attacks.** 3](#_Toc124884700)

[**B. Ragnell did not breach international humanitarian law by targeting Nant Gateway and Compound Ardan.** 3](#_Toc124884701)

[**1. Customary international law applies.** 3](#_Toc124884702)

[***a. UAC is not fighting a national liberation war.*** 3](#_Toc124884703)

[***b. The situation cannot be described as inter-State conflict or occupation.*** 4](#_Toc124884704)

[***c. The conflict is non-international, but Additional Protocol II does not apply.*** 5](#_Toc124884705)

[**2. The attack against the Nant Gateway was lawful.** 6](#_Toc124884706)

[***a. The Nant Gateway qualified as a military objective.*** 6](#_Toc124884707)

[***b. The attack was proportionate.*** 7](#_Toc124884708)

[**3. Ragnell took precautions before targeting Compound Ardan.** 7](#_Toc124884709)

[**C. Ragnell did not violate any human rights during the attacks.** 8](#_Toc124884710)

[**D. Consequently, Ragnell does not owe any compensation to Aglovale.** 9](#_Toc124884711)

[**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.** 10](#_Toc124884712)

[**A. Ragnell treated the detainees according to the relevant rules of non-international armed conflicts.** 10](#_Toc124884713)

[**B. Alternatively, Ragnell’s treatment of the detainees aligned with every regulation regarding prisoners of war.** 11](#_Toc124884714)

[**1. The employment of the prisoners in the transportation of the waste was lawful.** 11](#_Toc124884715)

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[**III. Aglovale violated its Treaty obligations by unilaterally imposing disproportionate and coercive unilateral 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.** 17](#_Toc124884722)

[**A. Aglovale violated Article 2(1) of the Treaty by disrespecting the sovereignty of Ragnell.** 17](#_Toc124884723)

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[**2. The sanctions imposed by Aglovale violated the non-intervention principle.** 18](#_Toc124884727)

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# **Statement of Jurisdiction**

The Kingdom of Aglovale (‘Aglovale’) and the State of Ragnell (‘Ragnell’) hereby submit the present dispute to the International Court of Justice (‘ICJ’) pursuant to Article 40(1) of the Court’s Statute, in accordance with the Statement of Agreed Facts for submission to the ICJ of the differences concerning the Clarent Belt, submitted to the Court on the 30th day of August 2022. Both States have accepted the jurisdiction of this Court pursuant to Article 41 of the Trilateral Treaty of Lasting Peace (‘TTLP’ or ‘Treaty’).

# **Questions Presented**

1. *Whether* the initiation of “Operation Shining Star” and the targeting of Nant Gateway and Compound Ardan were in conformity with the Treaty, and give rise to any obligation to compensate.
2. *Whether* 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.
3. *Whether* 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.
4. *Whether* Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, and Ragnell at the same time complied with its Treaty obligations when it was forced by that refusal to export the waste to Etna for processing and disposal.

# **Statement of Facts**

**Description of the Geographical Settings**

Three countries are situated in the Gais Peninsula: Aglovale, Balan and Ragnell. The Clarent Belt (‘Belt’) is a territory of the Peninsula, currently leased by Ragnell, which is largely uninhabited, except for the Tintagel Coast. This is where the Tintagel Park, an industrial park dominated by Ragnellian-owned factories, is located. One of these factories is The Plastics Conglomerate, which deals with waste management. The only way that connects the Tintagel Coast and the rest of the Gais Peninsula is the Eamont Thruway, whose only tunnel mouth is called Nant Gateway (‘Gateway’).

**Historical Background and the Trilateral Treaty of Lasting Peace**

The Belt used to belong to Balan. In 1951, after an explosion of unknown source, tensions began to rise between Balan and Ragnell, which later escalated into a war. Ragnell obtained control over most parts of the Belt. Peace talks began five years after the outbreak of war, and the conflict was terminated through the TTLP. This outlined the terms of Ragnell’s lease of the Belt from Balan. This construction entitled Ragnell to maintain the public order and provide government services in the Belt, while Aglovale was charged with stationing peacekeeping forces in the territory. The lease was created for a fixed term, expiring within 65 years. People celebrated the reach of the agreement all over the Gais Peninsula, except for some Balani veterans who founded an organization called ‘Unityk Ai Chyvon’ (‘UAC’).

**The Election Victory of President Vortigern**

In 2018, Dan Vortigern ran for presidency in Ragnell. His main campaign message was that the interests of Ragnellian factory owners, and thereby those of the Ragnellian economy, should be protected even after the termination of the lease. When elected, President Vortigern suggested in a speech that the TTLP might not serve Ragnell’s best interests.

**Increasingly Violent UAC Reactions**

During the Ragnellian election campaign, the UAC started spreading the news that Vortigern would not return the power over the Belt to Balan. After the election, the UAC took a violent turn. Between 2019 and 2021, the organization carried out many cyber and real-life attacks, without long interruptions between them. The targets were consistently Ragnellian factories and police units in the Belt. 40 people died as a result of these attacks. Balan claimed that it had taken both punitive and preventive measures in response to the UAC violence, while President Vortigern implied that Balan ‘cannot or will not act’ to stop terrorism. On 7th July 2021, coordinated attacks against three Ragnellian factories caused 50 deaths.

**The Initiation of Operation Shining Star**

The above-mentioned mentioned attacks urged President Vortigern to announce the launch of Operation Shining Star, which he described as a ‘limited and temporary military campaign’ necessary for putting the UAC’s destructions in the Belt to an end. Shortly afterwards, Aglovale withdrew its peacekeeping mission from the Belt. Aglovale and Balan pushed for the adoption of a Security Council Resolution condemning Ragnell, but it was vetoed by some permanent members. The Security Council received a letter from Ragnell, which contained that the Operation Shining Star was an exercise of self-defense. The UAC also sent a letter, addressed to the Depository of the Additional Protocols, in which it declared itself to be a fighter of a national liberation war.

**The First Months of the Combat**

In the early days of the combat, Balani military communications were leaked to the press, stating that Balan was unable to control the UAC. As the operation was going ahead, UAC developed its own fighting methods. The organization was engaged in guerrilla tactics, but the fighters carried their arms openly. Their hierarchical structures operated effectively, and they spread all over the Belt. By October 2021, 400 of them were captured by Ragnell and detained in the Belt. Ragnell did not limit its treatment of the detainees to the international minimum requirements. In November 2021, a bombing hit The Plastics Conglomerate, which resulted in the accumulation of both non-contaminated and contaminated plastic waste to Tintagel Park. Ragnell and Aglovale began negotiations on waste transfer, but as they failed to reach an agreement, they committed to continuing these negotiations.

**The Gateway’s Attack and Its Consequences**

In December 2021, Balan unilaterally declared the Eamont Thruway to be a humanitarian corridor and sent its troops into the Belt, so they can assist the evacuation of Balani citizens. Two days later, when the evacuation had already ended, Ragnell received information that UAC fighters were infiltrating through the Thruway. Ragnell issued a warning, then ordered the bombing of the Gateway. 30 UAC fighters were killed. Aglovale firmly disapproved of the Gateway’s targeting, and to demonstrate this, abandoned negotiations with Ragnell on the waste transfer.

**Ragnell’s Agreement with Etna**

Ragnell could not leave the situation unattended, and therefore reached a bilateral agreement with Etna on the waste management. Etna is a State that offers environment-friendly disposal of plastic waste. There were not enough Ragnellian workers available to load all the waste onto the ships, thus Ragnell instructed the detainees to provide assistance. Safety gear was at their disposal and the work was remunerated. Later, the International Solutions Alliance (‘ILSA’), a non-to-profit specialized in environmental protection raised questions regarding Etna’s competence in waste disposal, but Etna claimed that the concerns were unfounded.

**The Compound Ardan Incident**

The Ragnellian military leadership decided on the bombing of Compound Ardan based on two pieces of information in March 2022. An informant made the intelligence services aware that the facility was used by UAC fighters, which was confirmed by drone footages from February. After the attack, it turned out that civilians were hiding in one of the buildings. 76 civilians died, along with 18 UAC fighters. Afterwards, a Subcommittee of the Ragnellian Parliament conducted a public investigation, and the failing intelligence agents were discharged.

**The Transfer of the Detainees**

By the time of March 2022, Ragnell no longer deemed the conditions in the Belt safe, and it moved the detainees to a Ragnellian penitentiary facility. The standards of their treatment did not deteriorate from the previous level.

**The Aglovalean Sanctions**

Aglovale was determined to take even stricter measures against Ragnell than previously, and in April 2022 the Aglovalean legislation adopted sanctions targeting Ragnell. These included the freezing of bank accounts, the seizure of private and central bank assets, the imposition of travel bans and the prohibition of new agreements with Ragnellian companies. One of the seized properties belonged to Kay Ector, whose Aglovalean house was taken away. Kay Ector unsuccessfully exhausted all legal remedies in Aglovale. The sanctions caused, among other things, the closing of factories in the Belt and shortages of medicine in Ragnell.

**The Start of the Court Proceedings**

Despite the conflicts, the prescribed negotiations about the transition of the Belt back to Balan started between the three States of the Peninsula in June 2022. However, the negotiations went beyond the topic of transition, and the debates between the parties did not seem to move towards settlement. Ragnell initiated proceedings at the ICJ, upon which Aglovale filed counterclaims. The two States agreed that Aglovale would act as Applicant, and Ragnell would be the Respondent.

# **Summary of Pleadings**

**Pleading I**

The launch of Operation Shining Star was a legal act of self-defense since the UAC’s atrocities in the Belt, causing 90 deaths, qualify as armed attacks. They reached the required level of gravity, their target was Ragnell itself, and Balan’s inability to act entitled Ragnell to intervene. Regarding the law of targeting, Ragnell was bound by customary law, as the conflict can be classified as a non-international armed conflict that falls outside of Additional Protocol II’s (‘APII’) field of application. When attacking the Gateway, Ragnell destroyed a military objective without causing any collateral damage, thereby respecting the principle of proportionality. Compound Ardan’s bombing was a mistake on Ragnell’s part, which is nevertheless lawful, because Ragnell had taken the necessary precautions beforehand. The two Ragnellian attacks, by being totally compliant with humanitarian law, do not realize human rights violations. Even if the duty, rooted in human rights law to investigate civilian deaths applies, Ragnell fulfilled this obligation. Consequently, Ragnell does not owe any compensation to Aglovale.

**Pleading II**

Ragnell treated the detainees according to the relevant rules of NIACs. Their labor was neither uncompensated, nor abusive, and they did not face cruelties, attacks against their dignity or inhumanities after the transfer. Even if the detainees qualify as prisoners of war, Ragnell’s actions can still be considered legal. The transportation of the waste does not constitute either prohibited compulsory labor under the third Geneva Convention (‘GCIII’) or labor of dangerous or unhealthy nature. The destination of the prisoners’ transfer was in conformity with international law: their repatriation did not become highly difficult, and Ragnell’s strive for the prisoners’ safety justified their housing in a penitentiary. Additionally, Aglovale cannot successfully make human rights claims, since it cannot exercise diplomatic protection in the name of individuals who are not its nationals. In any event, Ragnell guaranteed the fullest possible realization of human rights connected to working conditions under the prevailing circumstances.

**Pleading III**

Aglovale contravened the TTLP by imposing unlawful sanctions against Ragnell and Ragnellian nationals. First, Aglovale violated Article 2(1) TTLP by disrespecting the immunity of Ragnell and Ragnellian State officials. Further, as the sanctions amounted to economic coercion, Aglovale contravened the non-intervention principle. Additionally, the sanctions are not legally justified countermeasures as they were disproportionate and disrespected the procedural requirement of notification. Moreover, Aglovale breached Article 2(2) TTLP by committing human rights violations against Ragnellian nationals. First, the sanctions infringed the right to fair trial as the listing process was arbitrary and Ragnellian individuals could not exercise their right to be heard. Second, by unlawfully depriving Ragnellian nationals of their assets, Aglovale violated their right to property. Last, the sanctions caused shortages of medical supplies, thus breaching the right to health. Finally, Aglovale contravened Article 2(3) TTLP by disregarding its World Trade Organization (‘WTO’) commitments. The sanctions breached the most-favoured-nation principle and the prohibition of quantitative measures by prohibiting trade agreements with Ragnellian businesses. Further, Aglovale cannot rely on the national security exception, lacking essential security interests.

**Pleading IV**

Aglovale had an obligation to cooperate with Ragnell as its environmental obligations under Article 28 TTLP remained in force. The armed conflict in the Belt does not *ipso facto* terminate or suspend the TTLP and Aglovale could not suspend its environmental obligations claiming material breach. Further, Aglovale failed to cooperate in good faith with Ragnell by refusing to take the reasonably requested steps to protect the marine environment and by failing to negotiate and consult with Ragnell. Meanwhile, this Court cannot exercise its jurisdiction concerning the conduct of Ragnell, as the subject-matter of its decision would implicate Etna. In any event, Ragnell respected its obligations under the Treaty by transporting the waste to Etna. First, there is no conclusive evidence to substantiate that Ragnell caused significant transboundary harm. Moreover, Ragnell exercised due diligence by adopting appropriate legislation and by concluding a bilateral agreement with Etna. Finally, Ragnell did not violate the right to a healthy environment as it had no obligation to respect this right. In any event, Ragnell may rely on necessity to preclude its wrongfulness since there was a grave and imminent peril.

#

# **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.**

Operation Shining Star, and the targeting of Nant Gateway and Compound Ardan were conform with the rules of international law incorporated in TTLP, as Ragnell (A) carried them out in self-defense whilst observing (B) all relevant rules of international humanitarian law (‘IHL’) and (C) human rights law (‘HRL’). Consequently, (D) Ragnell has no duty to compensate Aglovale.

### **A. Ragnell did not breach the rules governing use of force as Operation Shining Star qualifies as an act of self-defense.**

The recourse to use of force is legal if it happens following an armed attack.[[1]](#footnote-1) The criteria of an armed attack lie especially in its gravity,[[2]](#footnote-2) location, and perpetrator.[[3]](#footnote-3) The launch of Operation Shining Star met the required criteria, therefore Ragnell did not breach the prohibition of use of force.

#### **1. The violent attacks reached a sufficient level of gravity.**

It has long been accepted that not every use of force constitutes an armed attack.[[4]](#footnote-4) This Court held that insignificant attacks of irregular forces do not amount to armed attacks.[[5]](#footnote-5) Nonetheless, large-scale terrorist acts have often been called armed attacks in the international community.[[6]](#footnote-6) Accordingly, considering the gravity of some of the later atrocities,[[7]](#footnote-7) the attacks carried out by the UAC fighters qualify as armed attacks.

Additionally, the Court suggested that a series of attacks below this threshold might add up to the required gravity.[[8]](#footnote-8) Thus, even if the attacks of the UAC fighters do not qualify as armed attacks in themselves, they do so when treated cumulatively.

#### **2. The attacks were directed against Ragnell.**

The State itself is injured if its nationals are harmed abroad.[[9]](#footnote-9) This injury reaches the seriousness of an attack against State territory if the violence against its nationals is systematic or provocative.[[10]](#footnote-10) UAC fighters were aiming specifically at Ragnellian citizens’ factories,[[11]](#footnote-11) presumably to injure and intimidate Ragnellians systematically. Therefore, although the attacks were not perpetrated on Ragnellian territory, Ragnell was entitled to protect its nationals.

Further, the State suffers an armed attack outside its territory if the attack’s object is a representative of the sovereign,[[12]](#footnote-12) such as taking hostages in an embassy.[[13]](#footnote-13) In a similar vein, targeting Ragnell’s law enforcement units[[14]](#footnote-14) must also qualify as an attack against Ragnell.

#### **3. UAC fighters qualify as perpetrators of armed attacks.**

Nothing in the text of the Charter of the United Nations suggests that self-defense cannot be exercised against non-State actors,[[15]](#footnote-15) which has become a wide-spread reading after the 9/11 attacks.[[16]](#footnote-16) However, if the non-State actor’s State of residence effectively counters terrorism, self-defense is unnecessary,[[17]](#footnote-17) and the attacked State’s intervention may be refused.[[18]](#footnote-18) Otherwise, should the State of residence be unable or unwilling to eliminate the attack, the option of self-defense opens up.[[19]](#footnote-19) Balan has not been able to control the situation,[[20]](#footnote-20) which even Balani military chiefs admitted at one point.[[21]](#footnote-21) As Balan was at best unable to prevent the escalation, the armed attacks committed by UAC entitled Ragnell to act in self-defense.

### **B. Ragnell did not breach international humanitarian law by targeting Nant Gateway and Compound Ardan.**

#### **1. Customary international law applies.**

##### ***a. UAC is not fighting a national liberation war.***

The non-State party in a national liberation war may bring the Geneva Conventions and Additional Protocol I (‘API’) into force for itself through a declaration.[[22]](#footnote-22) Such declarations have scarce practice, as there has only been one case of acceptance and no legal disputes.[[23]](#footnote-23) State opinions of considerable weight during API’s drafting suggest that if the legally required facts exist, the lack of reception does not affect the status of the conflict.[[24]](#footnote-24) Conversely, if an accepted declaration is unfounded, it has no effects whatsoever. Therefore, the declaration’s acceptance is irrelevant when qualifying the conflict.

A national liberation war is a fight against colonialism in a broad sense,[[25]](#footnote-25) including alien occupation, *i.e.* the situation when ‘a territory which has not yet been fully formed as a State’ is occupied.[[26]](#footnote-26) Far from being a colonizing power, Ragnell is the lawful lessee of the Belt, which has never started developing into a separate State. Consequently, the conflict falls outside the category of national liberation wars, and as such, it is outside the scope of Article 1(4), API.

##### ***b. The situation cannot be described as inter-State conflict or occupation.***

The law of international armed conflict (‘IAC’) is triggered by inter-State conflict or occupation.[[27]](#footnote-27) The conflict must necessarily involve States,[[28]](#footnote-28) except when hostilities occur on occupied territory.[[29]](#footnote-29) An occupying power is a State that exercises military authority on foreign territory,[[30]](#footnote-30) which must be strong enough to oust the previous government.[[31]](#footnote-31) Ragnell fought a terrorist group, not a State, and overthrew no government, since it was Ragnell itself who had lawfully exercised jurisdiction[[32]](#footnote-32) in the Belt before the conflict.[[33]](#footnote-33) Consequently, the law of IAC is in inapplicable.

##### ***c. The conflict is non-international, but Additional Protocol II does not apply.***

The definition of NIAC in APII[[34]](#footnote-34) requires the conflict to extend, at least partially, to the State party’s territory.[[35]](#footnote-35) The fighting took place in the Belt, which is under Balani sovereignty.[[36]](#footnote-36) Consequently, APII does not govern the case.

Nevertheless, a conflict between a State and an independent non-State actor in a different State might still be a non-international armed conflict (‘NIAC’),[[37]](#footnote-37) if the organization within the non-State actor[[38]](#footnote-38) and the intensity of the conflict reach a sufficient level.[[39]](#footnote-39) Courts and scholars readily treat such conflicts as non-international.[[40]](#footnote-40) As the UAC had a well-developed command structure and a constant supply of weapons, while the conflict brought along a significant number of human losses and a flow of refugees,[[41]](#footnote-41) both criteria are fulfilled.

In summary, Ragnell views the fighting as a NIAC outside APII’s reach. Therefore, regarding the law of targeting, Ragnell was bound by customary law.

#### **2. The attack against the Nant Gateway was lawful.**

##### ***a. The Nant Gateway qualified as a military objective.***

The principle of distinction dictates that only military objectives are lawful targets.[[42]](#footnote-42) There are two cumulative criteria for determining whether an object is a military objective.[[43]](#footnote-43) First, the object must contribute effectively to military action. Second, the targeting party must gain a definite military advantage by its elimination.[[44]](#footnote-44) The Gateway fulfilled both requirements. The UAC profited from using it as a passage for smuggling, while its destruction allowed Ragnell to cut the UAC’s supply lines.[[45]](#footnote-45)

All objects have either military or civilian status.[[46]](#footnote-46) If the above criteria are satisfied, an object is a military objective, even if it has civilian functions too.[[47]](#footnote-47) As the Gateway was exposed to substantive military use, it qualified as a military objective, regardless of it being open to the public. Military objectives are exempted from combat only if both parties agree,[[48]](#footnote-48) thus, the fact that Balan unilaterally declared the Gateway as a humanitarian corridor did not change its status.[[49]](#footnote-49)

##### ***b. The attack was proportionate.***

Under the principle of proportionality,[[50]](#footnote-50) collateral damage expected of an attack must not exceed its concrete and direct military advantage anticipated.[[51]](#footnote-51) If a military objective is annihilated, and no collateral harm is done, the attack qualifies as proportionate.[[52]](#footnote-52) Since the bombing destroyed infrastructure with strategic relevance for the enemy and caused no civilian injuries, it was proportionate.[[53]](#footnote-53)

#### **3. Ragnell took precautions before targeting Compound Ardan.**

Targeting civilians based on incorrect information is a mistake,[[54]](#footnote-54) which State practice considers lawful if the necessary precautions were taken.[[55]](#footnote-55) Everything feasible must be done to verify targets,[[56]](#footnote-56) meaning that practically possible steps must be taken.[[57]](#footnote-57) It is not internationally wrongful if negligent intelligence production causes civilian casualties,[[58]](#footnote-58) supposing that the commander acted in good faith when ‘provided with wrong information’.[[59]](#footnote-59) Compound Ardan’s bombardment was based on information confirmed by two independent, seemingly trustworthy sources.[[60]](#footnote-60) Thus, Ragnell committed nothing more than an unfortunate mistake.

### **C. Ragnell did not violate any human rights during the attacks.**

Human rights treaties continue to operate in armed conflict.[[61]](#footnote-61) However, the rules of IHL are better suited to the realities of armed conflict.[[62]](#footnote-62) To reconcile this opposition, the ICJ consistently relies on the *lex specialis* doctrine.[[63]](#footnote-63) In both types of armed conflict,[[64]](#footnote-64) human rights are usually interpreted according to IHL.[[65]](#footnote-65) In any event, the ICJ has never pronounced human rights violations in armed conflict without parallelly finding IHL breaches,[[66]](#footnote-66) which indicates the prominence of IHL obligations in armed conflict. Therefore, the debated actions’ legality cannot be overturned by referring to HRL.

At the same time, IHL can also be interpreted according to HRL.[[67]](#footnote-67) In the human rights regime, States must investigate ‘potentially unlawful deprivations of life’.[[68]](#footnote-68) Arguably, the obligation to investigate promptly and effectively[[69]](#footnote-69) remains unaltered in armed conflict, otherwise it would be impossible to uncover whether civilian deaths are contrary to IHL. After the incident at Compound Ardan, a Subcommittee of Ragnell’s Parliament conducted a public investigation, thereafter corrective measures were taken.[[70]](#footnote-70) With this procedure, Ragnell performed its duty to investigate.

### **D. Consequently, Ragnell does not owe any compensation to Aglovale.**

International law recognizes the basic principle that a State must pay compensation only if it had caused injury with an internationally wrongful act.[[71]](#footnote-71) This rule is unchanged in armed conflict,[[72]](#footnote-72) and even progressive standards require unlawfulness.[[73]](#footnote-73) An internationally wrongful act ‘constitutes the breach of an international obligation’.[[74]](#footnote-74) Ragnell has demonstrated that none of its alleged actions constitute such a breach. Therefore, no compensation is due to Aglovale.

## **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. Ragnell treated the detainees according to the relevant rules of non-international armed conflicts.**

As established, the present conflict can be classified as a NIAC to which APII is inapplicable.[[75]](#footnote-75) It follows that the treatment of the detainees is governed by the basic principles of Common Article 3, the ‘minimum yardstick[s]’ that express the essence of IHL,[[76]](#footnote-76) along with further customary rules.[[77]](#footnote-77) One of these rules forbids uncompensated or abusive compulsory labor.[[78]](#footnote-78) Considering that the UAC detainees were granted appropriate remuneration[[79]](#footnote-79) and the same working conditions as Ragnellian nationals,[[80]](#footnote-80) their employment was neither uncompensated, nor abusive.

Further, the transfer of detainees must never result in treatment sinking below the guarantees of Common Article 3.[[81]](#footnote-81) Cruelties causing ‘serious mental or physical suffering’ are strictly forbidden.[[82]](#footnote-82) States may not keep detainees under inhumane conditions,[[83]](#footnote-83) where they regularly suffer beatings[[84]](#footnote-84) or lethal threats.[[85]](#footnote-85) It is equally unlawful to expose detainees to ‘serious attacks’ against their dignity,[[86]](#footnote-86) such as forcing them to strip their clothes,[[87]](#footnote-87) or preventing them to use the lavatory.[[88]](#footnote-88) Furthermore, less disgraceful inhumanities are also illegal, *i.e.* States must never cease to treat detainees as human beings.[[89]](#footnote-89) It is prohibited to confiscate the captives’ footwear before setting them off on a march.[[90]](#footnote-90) The fighters in Ragnellian power did not experience any inhumane treatment, not even after their transfer. The conditions of their detention, complying with all relevant international standards,[[91]](#footnote-91) did not deteriorate.[[92]](#footnote-92)

Therefore, Ragnell respected its international obligations regarding the labor and the transfer of the detainees.

### **B. Alternatively, Ragnell’s treatment of the detainees aligned with every regulation regarding prisoners of war.**

Should this Court find that GCIII applies to the conflict between Ragnell and UAC, and that the captured fighters should be treated as prisoners of war (‘POWs’), Ragnell’s actions were in full conformity with relevant regulations.

#### **1. The employment of the prisoners in the transportation of the waste was lawful.**

Among all POWs a State detains, only those may be compelled to work who are ‘physically fit’.[[93]](#footnote-93) Ragnell respected this provision and did not require the participation of prisoners who were ill or unfit for physical labor.[[94]](#footnote-94) Further, the detaining State must give payments to working prisoners.[[95]](#footnote-95) Ragnell abided by this rule too, by paying fair wages to the POWs.[[96]](#footnote-96)

##### ***a. The transportation of waste is a labor that is authorized by Geneva Convention III.***

Detaining States may not oblige POWs to perform all sorts of labor. This guarantees that States do not use enemy POWs for enhancing their own war operation.[[97]](#footnote-97) GCIII explicitly outlines the types of work that are principally independent from the war effort, and therefore States may compel POWs to them. States can legally employ POWs in a wide range of works connected to industrial production,[[98]](#footnote-98) and the same applies to public utility services.[[99]](#footnote-99) It was held that roadbuilding does not have a military character *per se*, therefore it is authorized as a public utility work.[[100]](#footnote-100) The UAC fighters moved waste that was originally produced by biomedical manufacturing industries,[[101]](#footnote-101) their work was thus authorized employment within the industrial sector. Alternatively, the waste shipment was a public utility service essential for the health and safety of the Belt’s inhabitants. The prisoners’ labor did not contribute to Ragnell’s war effort at all. Consequently, Ragnell lawfully compelled them to this work.

##### ***b. Ragnell provided the necessary equipment to protect the workers.***

POWs must be spared of work of dangerous or unhealthy nature.[[102]](#footnote-102) The ICTY has found the breach of this rule in such an extreme case as compelling POWs to life-threatening work on the front line.[[103]](#footnote-103) Furthermore, if a type of work poses risks to health that can be eliminated by using protective measures, it cannot be characterized as having a dangerous or unhealthy nature.[[104]](#footnote-104) If these protective measures exist, the detaining State must make them available.[[105]](#footnote-105) Whilst the POWs employed by Ragnell were indeed handling contaminated material, they were given basic safety gear, including masks and gloves,[[106]](#footnote-106) which are effective against the bacteria present in the waste,[[107]](#footnote-107) especially against their transmission through objects.[[108]](#footnote-108) No documentation implies that any prisoners involved have fallen ill afterwards. Conclusively, the transportation of the waste was not an inherently unhealthy work.

Furthermore, States must provide protective equipment indiscriminately.[[109]](#footnote-109) Thus, they must give the same safety gear to their nationals and to POWs. Ragnell adhered to this rule maximally since there was no difference between the masks and gloves used by Ragnellian workers and by the POWs.[[110]](#footnote-110)

#### **2. The transfer of the prisoners to Camlann was lawful.**

##### ***a. Prisoners of war can be moved from one State to another.***

States enjoy considerable liberty when deciding where to transfer POWs.[[111]](#footnote-111) No rule of IHL prohibits the movement of POWs from where they were captured. Indeed, the aim of interning POWs is to prevent them from re-joining the combat,[[112]](#footnote-112) and the regulation’s flexibility regarding the detention’s place serves this aim. States transfer POWs from the combat zone to their territory,[[113]](#footnote-113) and even to other States.[[114]](#footnote-114) The main legal boundary is that such a transfer should not cause POWs great difficulties in returning home.[[115]](#footnote-115) Therefore, a transfer from Egypt to New Zealand might be considered illegal.[[116]](#footnote-116) The UAC prisoners can be easily repatriated from Camlann. Consequently, Ragnell violated no rule by taking them away from the Belt.

##### ***b. Ragnell was entitled to transfer the prisoners to a penitentiary and detain them there.***

In certain circumstances, when ‘the interest of the prisoners themselves’ so demands, prisoners can be housed in buildings functioning as penitentiaries.[[117]](#footnote-117) Being safe from the combat is an overriding interest of the POWs, thus transfers to penitentiaries are allowed on these grounds. In any event, States’ obligation to protect the beneficiaries of the conventions should prevail over strict and narrow interpretations.[[118]](#footnote-118) States must remove prisoners from places where they ‘may be exposed to the fire of the combat zones’.[[119]](#footnote-119) When a transfer happens for the POWs’ safety, the transfer’s destination should have less influence on determining whether the action was legal. Considering that Ragnell initiated the transfer when the fight was drawing closer to Fort Caerleon,[[120]](#footnote-120) under the present circumstances, it was legal to put the prisoners in a penitentiary.

When living in a penitentiary, POWs must be protected from all dangers, including those arising from interactions with convicts.[[121]](#footnote-121) This can be achieved by separating POWs from the rest of the inmates. Ragnell implemented this measure, aiming to keep the POWs away from the slightest possibility of danger.[[122]](#footnote-122)

It is also crucial that POWs receive the same treatment in a penitentiary as anywhere else. Obligations, such as distributing food rations of ‘sufficient quantity’[[123]](#footnote-123) and ensuring that the detention’s location provides for ‘shelter against air bombardment’,[[124]](#footnote-124) continue to bind States. These international standards were consistently met, or even exceeded by Ragnell during the detention in Fort Caerleon,[[125]](#footnote-125) and this did not change after the transfer,[[126]](#footnote-126) which is corroborated by the fact that Ragnell was ready to host Red Cross experts[[127]](#footnote-127) inspecting the conditions of detention.[[128]](#footnote-128)

In summary, no aspect of the POWs’ transfer to Camlann contravenes the rules relevant to POWs.

### **C. Additionally, Aglovale cannot argue human rights violations.**

Applicant lacks standing to bring human rights claims before this Court. Diplomatic protection remains the most effective tool of States to enforce human rights obligations on other States.[[129]](#footnote-129) While confirming the *erga omnes partes* character of the conventions against genocide[[130]](#footnote-130) and torture,[[131]](#footnote-131) the ICJ has never attributed such status to the International Covenants. Although the Court accepted that certain human rights generate *erga omnes* enforcement, it cited only the ‘protection from slavery and racial discrimination’ as an example, which reflects that such a mechanism is reserved for the gravest breaches.[[132]](#footnote-132) Lately, the Court contrasted the *erga omnes partes* obligations under the Genocide Convention with exercising diplomatic protection, *inter alia*, as a remedy for human rights violations,[[133]](#footnote-133) thereby suggesting that such violations are generally not ‘concern[s] of all States’.[[134]](#footnote-134) When claiming diplomatic protection, it is one of the basic requirements that the State must act in favor of its nationals.[[135]](#footnote-135) The UAC fighters possess Balani, not Aglovalean nationality. Accordingly, Aglovale is not eligible to introduce the UAC detainees’ human rights violations into this litigation.

Should the Court find human rights claims admissible, they should be rejected since the detainees’ treatment, as explained above, has never sunk below international standards during the conflict.[[136]](#footnote-136) In any event, States must guarantee the realization of human rights connected to working conditions depending on their resources, and an armed conflict is generally regarded as a ‘resource constraint’.[[137]](#footnote-137) Considering the circumstances in the Belt, it cannot be argued that Ragnell underperformed its duties in this regard.

## **III. Aglovale violated its Treaty obligations by unilaterally imposing disproportionate and coercive unilateral 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 violated Article 2(1) of the Treaty by disrespecting the sovereignty of Ragnell.**

Article 2(1) TTLP sets out that the Parties shall apply amongst themselves the principles of international law governing friendly relations.[[138]](#footnote-138) Aglovale has breached this provision by (1) violating the immunity of Ragnell and Ragnellian State officials, (2) as well as the non-intervention principle. Additionally, (3) Aglovale cannot justify its actions as countermeasures.

#### **1. Aglovale violated immunity law by introducing sanctions.**

##### ***a. Aglovale violated the immunity of Ragnell.***

The customary rule of state immunity protects the State and its property from the jurisdiction of another State.[[139]](#footnote-139) While jurisdictional immunity provides exemption from foreign court proceedings,[[140]](#footnote-140) enforcement immunity protects a foreign State from enforcement measures against its own property,[[141]](#footnote-141) taken in the form of *inter alia* attachment, arrest or execution.[[142]](#footnote-142) Thus, enforcement immunity prohibits foreign authorities from imposing measures of constraint, such as freezing orders.[[143]](#footnote-143) Since non-judicial measures can also hinder how the State manages its property,[[144]](#footnote-144) it would be ‘absurdly paradoxical’ if State property, which includes the property of the central bank,[[145]](#footnote-145) was only protected by immunity from judicial measures.[[146]](#footnote-146) Consequently, by way of freezing the assets of the central bank, the sanctions breached Respondent’s immunity, violating Article 2(1) TTLP.

##### ***b. Aglovale violated the immunity of Ragnellian State officials.***

Certain high-raking officials enjoy customary immunity, which protects the effective performance of their duties.[[147]](#footnote-147) In this vein, bans prohibiting officials from entering the territory of another State also contravene immunity rules, as they preclude State officials from representing their State abroad.[[148]](#footnote-148) Moreover, the property of the Heads of State and Heads of Government located in another country is also protected by immunity.[[149]](#footnote-149) Therefore, Aglovale violated the immunity of Ragnellian State officials by banning them from entering Aglovale and freezing their assets.

#### **2. The sanctions imposed by Aglovale violated the non-intervention principle.**

In their economic relations, States must respect the non-intervention principle,[[150]](#footnote-150) which precludes them from intervening ‘directly or indirectly, in the internal or external affairs of another State’.[[151]](#footnote-151) Intervention is unlawful when it uses the methods of coercion,[[152]](#footnote-152) which has been defined as a ‘threat or use of force’[[153]](#footnote-153) but also comprises economic, political, or other measures,[[154]](#footnote-154) such as embargoes and asset freezes.[[155]](#footnote-155) Therefore, economic measures can also constitute illegal intervention, if a State is economically dependent on another State.[[156]](#footnote-156) As Ragnell’s economy relies heavily on Aglovale,[[157]](#footnote-157) who clearly intended to coerce Ragnell into changing its policy concerning the conflict,[[158]](#footnote-158) the sanctions violated the non-intervention principle and Article 2(1) TTLP.

#### **3. Additionally, the sanctions cannot be justified as countermeasures.**

Countermeasures are actions taken by an injured State in response to a previous international wrongful act of another State, directed against that provoking State.[[159]](#footnote-159) Although Aglovale is a party to TTLP, a State may only be considered injured, if it is affected by the breach in a way that differentiates it from the other State parties.[[160]](#footnote-160) Therefore, as Applicant was not specially affected by the acts of Ragnell, it is not entitled to take countermeasures.

In any event, countermeasures are limited by multiple substantive and procedural prerequisites.[[161]](#footnote-161) First, countermeasures must be proportionate to the injury suffered.[[162]](#footnote-162) This criterion is essential, since a disproportionate countermeasure will be unnecessary for enforcing the compliance of the other State.[[163]](#footnote-163) As the sanctions caused grave damages to Ragnell’s economy, they were disproportionate to the violations suffered by Aglovale.[[164]](#footnote-164) Second, the State against whom the countermeasures are directed must be called upon and notified before the injured State resorts to countermeasures.[[165]](#footnote-165) However, Aglovale failed to notify Ragnell about the imposition of sanctions. Consequently, the sanctions cannot be justified as countermeasures.

### **B. Aglovale violated Article 2(2) of the Treaty by committing human rights violations.**

#### **1. Ragnell has standing to bring its claims before the Court.**

Under customary law, every State can exercise diplomatic protection on behalf of its nationals when their rights are injured by the act of another State,[[166]](#footnote-166) provided that there exists a genuine nationality link[[167]](#footnote-167) and domestic remedies have been exhausted.[[168]](#footnote-168)

Nonetheless, local remedies need not be exhausted if the injured person is prevented from exercising the right thereto,[[169]](#footnote-169) including cases when the injured person is precluded from entering the territory of the State.[[170]](#footnote-170) As the sanctioned Ragnellian nationals were either hindered by the travel bans from entering Aglovale or – as in the case of Kay Ector – have duly exhausted all available local remedies,[[171]](#footnote-171) Ragnell has standing before this Court.

#### **2. Aglovale violated the right to fair trial.**

The right to fair trial[[172]](#footnote-172) ensures clear procedures for including individuals into sanctions lists[[173]](#footnote-173) and effective judicial remedy for those concerned.[[174]](#footnote-174) Accordingly, the freezing of individuals’ bank accounts and the imposition of travel bans on individuals undermines their right to fair trial in case they had no access to meaningful, effective judicial review.[[175]](#footnote-175) Moreover, fair trial is not guaranteed if individuals are not notified of the listing and the grounds for their designation.[[176]](#footnote-176)

As the sanctioned individuals were subject to travel bans precluding them from entering the country, they could not exercise their right to be heard. Only Kay Ector could exercise this right, however, Aglovalean courts failed to examine the merits of his complaint.[[177]](#footnote-177) Moreover, there is no indication that the Subcommittee communicated the reasons why certain individuals were added to the sanctions list.[[178]](#footnote-178) Consequently, the listing process was in violation of the right to fair trial.

Whilst parties to the International Covenant on Civil and Political Rights may derogate from their obligations under exceptional circumstances, this only applies if a public emergency was officially proclaimed[[179]](#footnote-179) in a formal and publicly announced document.[[180]](#footnote-180) Further, States must notify affected States of their intention to derogate.[[181]](#footnote-181) Aglovale’s sanctions legislation cannot be construed as an official proclamation of public emergency or as a notification to Ragnell. Therefore, Aglovale could not derogate from the right to fair trial.

#### **3. Aglovale violated the right to property.**

Over the past decades, property as a human right has reached a customary status,[[182]](#footnote-182) and has been reflected in several international and regional human rights instruments,[[183]](#footnote-183) resolutions[[184]](#footnote-184) and judicial decisions.[[185]](#footnote-185) Moreover, property is enshrined in international covenants as an intrinsic part of the non-discrimination clause.[[186]](#footnote-186)

Although the right to property may be limited, the deprivation of property is only justified if it satisfies the requirement of reparation,[[187]](#footnote-187) as reflected in numerous arbitral awards.[[188]](#footnote-188) As neither Kay Ector nor other Ragnellian nationals received any reparation, Aglovale arbitrarily deprived them of their property.

#### **4. Aglovale violated the right to health.**

Economic sanctions frequently cause shortages of medical supplies,[[189]](#footnote-189) and deprive individuals of essential healthcare, thereby violating the right to health.[[190]](#footnote-190) Accordingly, States have been discouraged from imposing embargoes that would affect another State’s medical supply.[[191]](#footnote-191) This Court also recognized export restrictions on medical equipment as harmful to the health of individuals, ordering them to be lifted.[[192]](#footnote-192) As the sanctions caused an evident scarcity of medical supplies in Ragnell,[[193]](#footnote-193) Aglovale infringed the Ragnellian nationals’ right to health.

### **C. Aglovale violated Article 2(3) of the Treaty by breaching its WTO commitments.**

As Aglovale and Ragnell are both WTO Members,[[194]](#footnote-194) they must comply with the agreements in force thereunder,[[195]](#footnote-195) which Aglovale has failed to fulfill.

#### **1. Aglovale violated the most-favored-nation principle.**

The most-favored-nation clause requires that equal treatment is provided to ‘like’ products and services from any Member States,[[196]](#footnote-196) in order to preclude States from discriminating between their trading partners.[[197]](#footnote-197) As Aglovalean companies were prohibited from entering into new contracts concerning goods and services only with Ragnellian businesses, Applicant discriminated between ‘like’ products from different countries. Therefore, by treating Ragnellian products and services less favorably, Aglovale contravened the most-favored-nation principle.

#### **2. Aglovale violated the prohibition of quantitative restrictions.**

The prohibition of quantitative restrictions prevents States from imposing prohibitions or restrictions on the importation or exportation of products.[[198]](#footnote-198) Although certain economic difficulties might allow the State to impose restrictions,[[199]](#footnote-199) Aglovale, being an economically advanced country,[[200]](#footnote-200) could not resort thereto. Moreover, although the prohibition only affected new agreements, such a restriction could likely cause the termination of all existing business with Ragnell.[[201]](#footnote-201) Consequently, as the sanctions prohibited every new trade agreement related to the import and export of certain goods and services between Aglovale and Ragnell,[[202]](#footnote-202) Applicant breached the prohibition of quantitative measures, violating Article 2(3) TTLP.

#### **3. Additionally, Aglovale cannot rely on the national security exception.**

States can deviate from their WTO commitments and take restrictive measures for essential security purposes, *inter alia* during war or other emergency,[[203]](#footnote-203) provided that such restrictions are necessary for security interests.[[204]](#footnote-204)

Nonetheless, the national security exception does not allow a State sole discretion in determining which measures are necessary for protecting security interests.[[205]](#footnote-205) Furthermore, these security interests must be ‘essential’, which implies a high standard.[[206]](#footnote-206) Notably, relevant cases defined essential interests as those concerning the core functions of the State: the protection of its territory or population.[[207]](#footnote-207) Since the ongoing armed conflict is limited to the Belt and Aglovale has withdrawn its peacekeeping forces, Applicant could not have any essential security interests concerning the war, as its territorial integrity was not threatened. Accordingly, Aglovale could not resort to the national security exception based on Article 2(3) TTLP.

### **D. Consequently, Aglovale must lift the sanctions, release all Ragnellian property seized or frozen, and pay compensation.**

The State responsible for an internationally wrongful act must make full reparation for the injury caused thereby.[[208]](#footnote-208) Hence, Applicant is obliged to withdraw the sanctions and restitute any Ragnellian property frozen or seized.[[209]](#footnote-209) Moreover, Aglovale must provide compensation to Ragnell for any damages not redressed by restitution.[[210]](#footnote-210)

## **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 was bound to cooperate as its environmental obligations under the Treaty remained in force.**

Under Article 28 TTLP, Aglovale had an obligation to cooperate in good faith in reducing the risk of significant harm from environmental pollution. This obligation remained in force, (1) as the existence of an armed conflict did not terminate or suspend the TTLP, and (2) Applicant could not rely on material breach to suspend Article 28 TTLP.

#### **1. Armed conflicts do not ipso facto terminate or suspend the operation of environmental provisions.**

The existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties,[[211]](#footnote-211) especially in the context of environmental protection.[[212]](#footnote-212) The need to protect the environment during hostilities has been recognized in IHL[[213]](#footnote-213) as well as in this Court’s case-law.[[214]](#footnote-214) Consequently, the armed conflict in the Belt has no effect on the applicability of the TTLP’s environmental provisions.

#### **2. Aglovale could not suspend Article 28 of the Treaty based on material breach**.

Whilst a material breach by one of the parties enables the other States to suspend the treaty in whole or in part,[[215]](#footnote-215) the right of suspension in multilateral context is limited to the State specially affected by the breach,[[216]](#footnote-216) *i.e.* the State which suffered ‘concrete adverse effects’.[[217]](#footnote-217) Thus, regardless of whether Ragnell’s military conduct contravened the TTLP, there is no evidence of a breach that had specific adverse effects on Aglovale.

Additionally, States may only resort to suspension by giving prior notice of their claim.[[218]](#footnote-218) This procedural rule was recognized by this Court as a reflection of customary law.[[219]](#footnote-219) Minister Laudine’s note verbale[[220]](#footnote-220) cannot be construed as an adequate notification since it did not indicate that Aglovale planned to suspend any provisions of TTLP. Therefore, Aglovale was not entitled to suspend Article 28 TTLP.

### **B. Aglovale violated Article 28 of the Treaty by not cooperating in good faith with Ragnell.**

Good faith cooperation is a fundamental duty in preventing environmental harm,[[221]](#footnote-221) and particularly indispensable in the protection of the marine environment.[[222]](#footnote-222) Similarly, Article 28 TTLP requires States to take all necessary or reasonably requested steps in order to cooperate in good faith in mitigating the risk of significant harm.[[223]](#footnote-223) By failing to take steps to protect the marine environment and by refusing to consult and negotiate with Ragnell, Aglovale did not cooperate in good faith.

#### **1. Aglovale failed to take the reasonably requested steps to protect the marine environment.**

Article 28 TTLP obliges States to take all necessary measures to reduce the risk of significant environmental pollution. To this end, States must take measures to prevent damage ‘to the environment of other States and of areas beyond national jurisdiction’.[[224]](#footnote-224)

Thus, States have a duty to take all necessary measures to prevent pollution to the marine environment and cooperate for that purpose.[[225]](#footnote-225) This positive obligation extends to every State, not only the ones engaging in potentially harmful activities[[226]](#footnote-226) and applies to all maritime areas.[[227]](#footnote-227) Therefore, Aglovale contravened Article 28 TTLP by refusing to cooperate in waste processing.

#### **2. Aglovale did not adequately consult and negotiate with Ragnell.**

The duty to cooperate is most strongly expressed in the obligation of consultation and negotiation.[[228]](#footnote-228) This implies that States must enter into consultations at the request of any of them to prevent significant transboundary harm.[[229]](#footnote-229)

Such consultations must be meaningful and conducted in good faith, *i.e.* parties must make substantial effort to adopt measures necessary for the preservation of the environment.[[230]](#footnote-230) Moreover, negotiations must be genuine, not mere formalities, as States should aim to reach an agreement.[[231]](#footnote-231) Accordingly, the duty to consult is unfulfilled if the State breaks off discussions without justification or refuses to consider the other States’ interests.[[232]](#footnote-232)

Ragnell made numerous requests to transfer the waste to Aglovale, but their first negotiation was unsuccessful.[[233]](#footnote-233) Therefore, they committed to continue the consultations,[[234]](#footnote-234) however, only one day before the scheduled meeting, Aglovale denied further cooperation.[[235]](#footnote-235) Consequently, as Aglovale failed to consider Ragnell’s interests and did not genuinely strive to agree with Ragnell, the consultations were not meaningful, and Applicant violated its obligation to cooperate in good faith.

### **C. Ragnell complied with its Treaty obligations by exporting the waste to Etna.**

#### **1. The claim is inadmissible under the Monetary Gold principle.**

Under the *Monetary Gold* principle, this Court cannot decide a dispute in which the legal interests of a third party *‘*would form the very subject-matter of the decision’.[[236]](#footnote-236) Such is the case when the determination of a third party’s responsibility is a temporal and logical prerequisite for a decision to be taken on the applicant’s claims.[[237]](#footnote-237)

Determining whether Etna failed to dispose of the hazardous waste in an environmentally sound manner is a temporal and logical precondition for deciding on the lawfulness of Ragnell’s conduct. Therefore, this Court cannot exercise its jurisdiction as the subject-matter of its decision would implicate Etna, a State that is indispensable to the proceedings, yet not a party to them.

#### **2. Ragnell prevented environmental pollution and harm.**

##### ***a. Ragnell did not cause significant harm to the environment.***

Article 28 TTLP stipulates that the Parties must use their best practicable means to prevent environmental pollution, by complying with all relevant rules.[[238]](#footnote-238) Under international environmental law, every State is obliged to ensure that activities within their jurisdiction do not cause harm to the environment of other States or areas beyond national jurisdiction.[[239]](#footnote-239) Nonetheless, States may only incur international responsibility for the damage caused to the environment if such damage reaches the threshold of ‘significant harm’,[[240]](#footnote-240) meaning that the case is of ‘serious consequence’[[241]](#footnote-241)

The burden of proof lies on Aglovale to demonstrate that Ragnell’s conduct had significant adverse impacts on the environment. Moreover, this Court requires claims to be supported by ‘fully conclusive’ evidence[[242]](#footnote-242) and in environmental cases, such evidence must be ‘clear and convincing’.[[243]](#footnote-243) The ILSA report does not suffice the standard of proof of this Court, as certain details remained ‘unknown’.[[244]](#footnote-244) Therefore, there is no evidence that Ragnell caused any harm, let alone significant harm.

##### ***b. Ragnell exercised due diligence in transporting the waste to Etna.***

Due diligence requires States to ‘act with prudence and caution’ and to use their best possible efforts to prevent significant transboundary harm.[[245]](#footnote-245) Likewise, Ragnell was expected to use its best practicable means to prevent harm under Article 28 TTLP.

When exercising due diligence, States are expected to demonstrate a certain level of vigilance and adopt appropriate measures,[[246]](#footnote-246) such as conducting an environmental impact assessment (‘EIA’)[[247]](#footnote-247) and notifying potentially affected States.[[248]](#footnote-248) Nonetheless, such steps only need to be taken if the risk of significant harm has been established concerning the proposed activity.[[249]](#footnote-249) Considering the distance between Etna and Aglovale,[[250]](#footnote-250) as well as the fact that the ILSA report took no mention of any potential harm to Aglovale’s territory,[[251]](#footnote-251) Ragnell had no obligation to conduct an EIA or notify Aglovale.

Consequently, by adopting appropriate legislation and concluding an agreement with Etna,[[252]](#footnote-252) Ragnell exercised vigilance and caution. Moreover, the agreement complied with the threshold of environmentally sound management demanded by the Basel Convention.[[253]](#footnote-253) However, as Ragnell did not ratify the Stockholm and Basel Conventions,[[254]](#footnote-254) it was not bound by any obligations thereunder.[[255]](#footnote-255) Furthermore, Ragnell could not transfer the waste to Aglovale, as it did not receive ‘prior informed consent’ therefrom.[[256]](#footnote-256) Hence, Ragnell demonstrates that it used its best practicable means in preventing harm under TTLP. In fact, by transporting the waste to Etna, Ragnell merely complied with its obligation of due diligence to prevent harm.

#### **3. Ragnell did not violate the right to a healthy environment.**

The right to a healthy environment is not established as a universal human right, as no global agreement codifies such right.[[257]](#footnote-257) Although a recent resolution[[258]](#footnote-258) has proclaimed the right to a healthy environment, this document is not binding[[259]](#footnote-259) and leaves the content of the right unclarified. When assessing pollution cases, human rights adjudication cannot find any violation of the right to a healthy environment in the absence of its codification.[[260]](#footnote-260) Regardless, the adverse effects of pollution must reach a certain threshold to be considered a human rights violation.[[261]](#footnote-261) However, States have been found to comply with their obligation to properly manage the risk from shipping hazardous substances, when they had a domestic regulatory framework in place.[[262]](#footnote-262)

Similarly, Ragnell adopted domestic legislation to promote environmental protection and concluded an agreement with Etna.[[263]](#footnote-263) However, Ragnell had no treaty-based obligation to respect the right to a healthy environment.[[264]](#footnote-264) Furthermore, there are no details to substantiate that significant harm was caused. Therefore, Ragnell did not contravene the right to a healthy environment.

#### **4. In any event, Ragnell may preclude its wrongfulness by invoking necessity.**

A State may rely on necessity as a ground for precluding the wrongfulness of an act provided that the act in question was the only way to protect an ‘essential interest’ of the State threatened by a ‘grave and imminent peril’.[[265]](#footnote-265) Additionally, the action taken must be the only available way to safeguard the interest.[[266]](#footnote-266)

Safeguarding the environment and preserving the population’s existence are considered ‘essential interests’ of States.[[267]](#footnote-267) Industry experts confirmed that the waste accumulated in the Belt would create an ‘environmental and public health calamity’.[[268]](#footnote-268) Further, the waste was contaminated with bacteria that could have led to significant mortality,[[269]](#footnote-269) had it remained in the Belt. Nevertheless, Applicant refused to cooperate in the transfer of the waste, albeit the only other suitable waste treatment facility was in Aglovale.[[270]](#footnote-270) Therefore, Ragnell was left with no other means than to transport the waste to Etna to preserve the ecological balance in the Belt. Consequently, Ragnell is entitled to invoke the plea of necessity.

# **Prayer for Relief**

For the foregoing reasons, the Respondent respectfully requests this Honorable Court to adjudge and declare that:

1. 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;
2. 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;
3. 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; and
4. 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 the Respondent**

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