

Faculté de droit et de criminologie

Philip C. Jessup International Law Moot Court Competition 2023

Case concerning the Clarent Belt

Auteur(s) : Fairouz Elhalmadi, Emily Harrop, Simon Heijmans, Elise Reyms
Promoteur(s) : Pierre d'Argent, Grégoire Brière, Coline Minguet
Année académique 2022-2023 : Master en droit – Finalité Etat & Europe
(Emily Harrop et Simon Heijmans), Finalité Droit de l'Entreprise (Fairouz
Elhalmadi et Elise Reyms)

Plagiat et erreur méthodologique grave

Le plagiat, fût-il de texte non soumis à droit d'auteur, entraîne l'application de la section 7 des articles 87 à 90 du règlement général des études et des examens.

Le plagiat consiste à utiliser des idées, un texte ou une œuvre, même partiellement, sans en mentionner précisément le nom de l'auteur et la source au moment et à l'endroit exact de chaque utilisation*.

En outre, la reproduction littérale de passages d'une œuvre sans les placer entre guillemets, quand bien même l'auteur et la source de cette œuvre seraient mentionnés, constitue une erreur méthodologique grave pouvant entraîner l'échec.

* A ce sujet, voy. notamment <http://www.uclouvain.be/plagiat>.

**IN THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS**

**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

MEMORIAL FOR THE APPLICANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES	i
STATEMENT OF JURISDICTION.....	ix
QUESTIONS PRESENTED	x
STATEMENT OF FACTS.....	xi
SUMMARY OF PLEADINGS	xv
PLEADINGS	1
I. RAGNELL VIOLATED ITS TREATY OBLIGATIONS IN LAUNCHING OPERATION SHINING STAR AND IN ITS ATTACKS ON BOTH NANT GATEWAY AND COMPOUND ARDAN, AND MUST PAY REPARATIONS FOR THE DEATHS OF THE EIGHT AGLOVALEAN NATIONALS	1
A. Ragnell violated the Treaty in launching ‘Operation Shining Star’	1
1. Ragnell violated multiple provisions of the Treaty	1
2. Self-defense does not preclude the wrongfulness of the violations of the Treaty	2
<i>a. Ragnell had no right to self-defense.....</i>	<i>2</i>
<i>i. The actions of the UAC do not amount to an armed attack.....</i>	<i>3</i>
<i>ii. Self-defense may not be invoked in response to an attack from a non-state actor....</i>	<i>3</i>
<i>b. Ragnell’s use of force was neither necessary nor proportionate</i>	<i>4</i>
B. Ragnell violated the Treaty by attacking Nant Gateway	5
1. Ragnell violated article 15 of the Treaty	5
2. Ragnell violated article 2(2) of the Treaty	5
<i>a. Ragnell violated the principle of distinction</i>	<i>5</i>
<i>b. Ragnell violated the principle of proportionality</i>	<i>6</i>
C. Ragnell violated article 2(2) the Treaty by attacking Compound Ardan	7
D. Ragnell must compensate Aglovale for the death of their eight nationals.....	7

II. RAGNELL VIOLATED ITS TREATY OBLIGATIONS BY EMPLOYING CAPTURED UAC FIGHTERS IN THE TRANSPORTATION OF CONTAMINATED WASTE, AND BY DETAINING THEM IN CAMLANN CORRECTIONAL CENTER⁹

A. Ragnell violated article 2(2) of the Treaty by breaching Geneva Convention III.....9

1. UAC members are entitled to POW status or equivalent protection.....9

2. Ragnell could not order UAC members to undertake prohibited labour of an unhealthy and dangerous nature.....10

3. Ragnell could not detain UAC members in Camlann11

B. Alternatively, Ragnell violated article 2(2) of the Treaty by breaching Geneva Convention IV11

1. UAC detainees are protected persons in occupied territory11

a. The Clarent Belt is an occupied territory..... 11

b. UAC detainees are protected persons under GCIV13

2. UAC detainees could not be ordered to work without their consent13

3. UAC detainees could not be displaced outside of the Clarent Belt13

C. Ragnell violated article 2(2) by breaching the ICCPR and the ICESCR14

1. The ICCPR and the ICESCR apply to the conflict15

2. Ragnell breached its obligations under the ICCPR and the ICESCR.....15

a. Ragnell violated the right to life under article 6 ICCPR..... 15

b. Ragnell violated the right to just and favourable conditions of work under article 7 ICESCR..... 16

c. Ragnell violated the right to health (art. 12 ICESCR).....16

III. AGLOVALE ACTED IN ACCORDANCE WITH THE TREATY IN IMPOSING UNILATERAL SANCTIONS AGAINST RAGNELL AND RAGNELLIAN NATIONALS, AND HAS NO OBLIGATION TO WITHDRAW THE SANCTIONS, TO RETURN ANY PROPERTY, OR TO COMPENSATE RAGNELL FOR THEIR IMPACT17

A. Aglovale took measures of retorsion17

1. Freezing bank accounts belonging to Vortigern, his cabinet ministers, and senior RPP members and financial supporters was lawful under the Treaty	17
2. Freezing of assets of major Ragnellian banks and the seizing of Prydwen Place was lawful under the Treaty	18
3. Imposing travel bans was lawful under the Treaty	19
4. Freezing the funds of Ragnell’s central bank was lawful under the Treaty	19
5. Prohibiting companies incorporated in Aglovale and Aglovalean citizens from entering into new contracts with or providing or receiving goods or services from business enterprises operating in Ragnell’s industrial, aviation, transportation, or security sectors was lawful under the Treaty	20
B. Alternatively, Aglovale was entitled to suspend its obligations	21
C. Alternatively, Aglovale was entitled to take countermeasures	21
1. Ragnell committed wrongful acts	22
2. Aglovale is an injured state	22
<i>a. Ragnell breached an obligation owed to Aglovale.....</i>	<i>22</i>
<i>b. Ragnell breached obligations owed to the group of State party to Treaty, which specially affected Aglovale.....</i>	<i>22</i>
3. The countermeasures are proportionate	23
4. Procedural requirements are met.....	23
D. Aglovale has no obligation to withdraw the sanctions, to return any property, or to compensate Ragnell for their impact	24
IV. RAGNELL VIOLATED ITS TREATY OBLIGATIONS IN TRANSPORTING HAZARDOUS PLASTIC WASTE TO ETNA, WHEREAS AGLOVALE COMPLIED WITH THE TREATY IN CONDITIONING COOPERATION REGARDING TREATMENT OF THE WASTE ON THE TERMINATION OF RAGNELL’S AGGRESSION.....	25
A. Ragnell violated its Treaty obligations in transporting hazardous plastic waste to Etna	25
1. Ragnell violated article 28 of the Treaty.....	25

<i>a. Transfer of the waste caused environmental pollution and harm in and surrounding the Gais Peninsula</i>	<i>25</i>
<i>b. Ragnell did not use its best practicable means to prevent the harm that occurred ..</i>	<i>26</i>
<i>i. Ragnell failed to conduct an environmental impact assessment</i>	<i>27</i>
<i>ii. Ragnell failed to mitigate the environmental damage that was occurring.....</i>	<i>28</i>
2. Necessity cannot be invoked by Ragnell to preclude wrongfulness	28
<i>a. Exporting the waste to Etna was not the only way for Ragnell to safeguard an essential interest against a grave and imminent peril</i>	<i>28</i>
<i>i. There was no grave and imminent peril</i>	<i>28</i>
<i>ii. Exporting waste to Etna was not the only way to safeguard Ragnell's essential interests.....</i>	<i>29</i>
<i>b. Exporting the waste to Etna impaired an essential interest of the international community as a whole.....</i>	<i>29</i>
<i>c. In any event, Ragnell contributed to the situation of necessity.....</i>	<i>29</i>
B. Aglovale complied with the Treaty in conditioning cooperation regarding treatment of the waste on the termination of Ragnell's aggression.....	30
1. Aglovale complied with its obligation to cooperate in good faith.....	30
2. In any case, Aglovale was entitled to suspend the operation of the Treaty as a consequence of its breach by Ragnell.....	31
3. In the event of a breach, Aglovale's refusal to pursue negotiations was a valid countermeasure	31
PRAYER FOR RELIEF.....	32

INDEX OF AUTHORITIES

Treaties and Conventions

<i>Charter of the United Nations</i> (24 October 1945) 1 UNTS 16 ('UN Charter')	2
<i>Geneva Convention Relative to the Protection of Civilian Persons in Time of War</i> (12 August 1949) 75 UNTS 287 ('GCIV').....	9, 13, 14
<i>Geneva Convention Relative to the Treatment of Prisoners of War</i> (12 August 1949) 75 UNTS 135 ('GCIII').....	9, 10, 11
<i>Hague Convention (IV) respecting the Laws and Customs of War on Land</i> (18 October 1907)	12
<i>International Covenant on Civil and Political Rights</i> (23 March 1976) 999 UNTS 171 ('ICCPR').....	9, 15
<i>International Covenant on Economic, Social and Cultural Rights</i> 993 UNTS 3 (16 December 1966) ('ICESCR').....	9
<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts</i> 1126 UNTS (8 June 1977) ('API') 5, 6, 9, 10	
<i>Stockholm Convention on Persistent Organic Pollutants</i> , UNEP/POPS/CONF/4, App. II (22 May 2001)('Stockholm Convention').....	26
<i>Trilateral Treaty of Lasting Peace Among the State of Ragnell, the Federation of Balan, and the Kingdom of Aglovale</i> (16 September 1958) ('Treaty')	1, 4, 9, 12, 21, 22, 30, 31
<i>Vienna Convention on the Law of Treaties</i> 1155 UNTS 331 (23 May 1969) ('VCLT')21, 26, 31	

United Nations Resolutions and Other International Documents

Committee on Economic, Social and Cultural Rights ('CESCR'), <i>General Comment n°23</i> , E/C.12/GC/23.....	16
CESCR, <i>General Comment n°14</i> , E/C.12/2000/4	15, 16
Human Rights Committee ('HRC'), <i>General Comment 27</i> CCPR/C/21/REV.1/ADD.9 (1999)	19

HRC, Communication n°1756/2008, <i>Zhumbaeva v. Kyrgyzstan</i> (19 July 2011).....	15
HRC, Communication n°763/1997, <i>Lantsov v. Russian Federation</i> (26 March 2002).....	15
HRC, Communication n°84/1981, <i>Barbato v Uruguay</i> (21 October 1982)	15
HRC, <i>General Comment n°36</i> , CCPR/C/GC/35	15
HRC, <i>General Comment n15</i> , CCPR/C/GC/15 (2008)	19
HRC, <i>General Comment n°31</i> , CCPR/C/21/Rev.1.....	14
International Committee of the Red Cross ('ICRC'), <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1987) ('ICRC Commentary API')</i>	7
ICRC, <i>Commentary on the Third Geneva Convention on the Treatment of Prisoners of War of 12 August 1949 (2020) ('ICRC Commentary GCIII')</i>	10, 11, 15
ICRC, <i>Customary International Humanitarian Law ('CIHL') (2005) Vol II</i>	5, 6, 7, 13, 14
International Law Commission ('ILC'), <i>Draft Articles on Jurisdictional Immunities of States and Their Property A/46/10 (1991)</i>	20
ILC, <i>Draft articles on Prevention of Transboundary Harm from Hazardous Activities A/56/10 (2001)</i>	26, 27
ILC, <i>Draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities A/61/10 (2006)</i>	26, 28
ILC, <i>Draft articles on diplomatic protection A/61/10 (2006)</i>	8
ILC, <i>Draft Articles on Responsibility of States for Internationally Wrongful Acts, A/56/10 (2001)</i>	2, 20, 23, 24, 28, 29
United Nations Environment Programme ('UNEP'), <i>Environmental Impact Assessment and Strategic Environmental Assessment : Towards an Integrated Approach (2004)</i>	27
UNEP, <i>Marine Plastic Debris and Microplastics - Global Lessons and Research to Inspire Action and Guide Policy Change (2016)</i>	26
UNEP, <i>Technical guidelines for the identification and environmentally sound management of plastic wastes and for their disposal, CHW 6/21 (2002)</i>	26
UNEP, <i>Technical guidelines on the environmentally sound management of biomedical and healthcare wastes, CHW/6/20 (2002)</i>	29

United Nations General Assembly ('UNGA'), <i>Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment</i> , A/RES/43/173 (1989).....	15
UNGA, <i>Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations</i> , A/RES/2625(XXV) (1970)	2, 21
UNGA, <i>Responsibility of States for Internationally Wrongful Acts</i> , A/RES/56/83 (2001) ('ARSIWA')	8, 21, 22, 23, 24, 25, 31
UNGA, <i>United Nations Convention Against Transnational Organized Crime</i> A/RES/55/25 (2000).....	18
UNGA, <i>United Nations Convention on Jurisdictional Immunities of States and Their Property</i> A/RES/59/38 (2004) ('UNCJI').....	19, 20
UNGA, <i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i> A/RES/70/175	10
<i>Unilateral economic measures as a means of political and economic coercion against developing countries</i> , Report of the Secretary General A/72/307 (2017)	20
United Nations Security Council ('UNSC'), <i>Threats to International Peace and Security Caused by Terrorist Acts</i> S/RES/1368 (2001).....	3
UNSC, <i>Threats to International Peace and Security Caused by Terrorist Acts</i> S/RES/1373 (2001).....	3
<i>Yearbook of the International Law Commission</i> , 1980, Vol II, Part 2	29

International Decisions

<i>Accordance with international law of the unilateral declaration of independence in respect of Kosovo</i> (Advisory Opinion) (2010) ICJ Rep 141	2
<i>Ahmadou Sadio Diallo (Guinea v. DRC)</i> (2007), ICJ Rep 582.....	8
<i>Appeal relating to the jurisdiction of the ICAO Council (India v Pakistan)</i> , ICJ Rep 46	21
<i>Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)</i> (2005) ICJ Rep 168.....	2, 3, 12, 14, 23
<i>Armed Activities on the Territory of the Congo (DRC v. Uganda)</i> (Reparations) (2022) ICJ Rep 2.....	8

<i>Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia) (Merits) (2007) ICJ Rep 43</i>	25
<i>Case concerning application of the international convention on the elimination of all forms of racial discrimination (Georgia v Russia) (2011) ICJ Rep 70</i>	30
<i>Case concerning Kasikili/Sedudu Island (Botswana v Namibia) (1999) ICJ Rep 1045</i>	26
<i>Case concerning Oil Platforms (Iran v US) (Preliminary objections) (1996) ICJ Rep 803</i>	26
<i>Case concerning Oil Platforms (Iran v. US) (Merits) (2003) ICJ Rep 161</i>	2
<i>Case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France (1978) 18 RIAA 416</i>	23
<i>Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) [1970] ICJ Rep 3</i>	29
<i>Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (1997) ICJ Rep 7</i>	23
<i>Čelebići (Judgement) IT-96-21-A (20 February 2001)</i>	13
<i>Chaparro Álvarez and Lapo Íñiguez v Ecuador (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 189 (26 November 2008)</i>	19
<i>Džinić v Croatia App no 38359/13 (ECtHR, 17 May 2016)</i>	18
<i>Eritrea-Ethiopia Claims Commission, Partial Award: Central Front Ethiopia's Claim 2 (28 April 2004)</i>	14
<i>Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (1997) ICJ Rep 88</i>	8, 28, 30
<i>Legal Consequences for States of the Continued Presence of South Africa in Namibia (Advisory Opinion) ICJ Rep 16</i>	21, 31
<i>Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) (2004) ICJ Rep 136</i>	2, 3, 12, 14, 15
<i>Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) (1996) ICJ Rep 226</i>	4, 5, 15, 29
<i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US) (Merits) (1986) ICJ Rep 14</i>	2, 3, 4, 21
<i>Nada v Switzerland App n°10593/08 (ECtHR, 12 September 2012)</i>	18

<i>Obligation to negotiate access to the pacific ocean (Bolivia v Chile) (Merits) (2018) ICJ Rep 507</i>	30
<i>Oil Platforms (Islamic Republic of Iran v. United State of America) (2003) ICJ Rep 161</i> ...	2, 3
<i>Prosecutor v. Brčićanin (Judgement) IT-99-36-T (1 September 2004)</i>	13
<i>Prosecutor v. Delalic et al. (Judgement) IT-96-21-T (16 November 1998)</i>	13
<i>Prosecutor v. Galić (Appeal Judgement), IT-98-29-A (30 November 2006)</i>	5, 6
<i>Prosecutor v. Krnojelac (Judgement) IT-97-25 (15 March 2002)</i>	14
<i>Prosecutor v. Krstic (Judgement), IT-98-33, (2 August 2001)</i>	14
<i>Prosecutor v. Kupreškić (Judgement) IT-95-16-T (14 January 2000)</i>	6
<i>Prosecutor v. Naletilic (Judgement) IT-98-34-T (31 March 2003)</i>	14
<i>Prosecutor v. Prlić et al. (Appeal Chamber Judgement) (29 November 2017)</i>	13
<i>Pulp Mills on the River Uruguay (Argentina v Uruguay) (2010) ICJ Rep 14</i>	26, 27
<i>Raimondo v Italy App no 12954/87 (ECtHR, 22 February 1994)</i>	18
<i>The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017)</i>	26, 27, 28

Treatises, Books and Chapters

A Hofer, ' <i>Unilateral sanctions as a challenge to the law of state responsibility</i> '. in C Beaucillon (ed), <i>Research Handbook on Unilateral and Extraterritorial Sanctions</i> (Edward Elgar Publishing 2021)	18
B Garner, <i>Black's Law Dictionary</i> (Thomson Reuters 2019)	10
C Beaucillon, <i>Les Mesures Restrictives de l'Union Européenne</i> (Bruylant 2014)	18
C Gray, <i>International Law and the Use of Force</i> (4th edn, Oxford University Press 2018).....	4
C O' Meara, <i>Necessity and Proportionality and the Right of Self-Defence in International Law</i> (Oxford University Press 2021)	4
Cambridge Dictionary, ' <i>Maximum security prison</i> ', Cambridge University Press < https://dictionary.cambridge.org/fr/dictionnaire/anglais/maximum-security-prison > accessed 13 November 2023.....	11

E Crawford, <i>Combatants</i> . in L Rain (ed), <i>The Routledge Handbook of the Law of Armed Conflict</i> (Routledge 2016)	10
F Paddeu, <i>Justification and Excuse in International Law</i> (Cambridge University Press 2018)	23
H Gasse and K Dörmann, <i>Protection of the Civilian Population</i> . in D Fleck (ed), <i>The Handbook of International Humanitarian Law</i> (Oxford University Press 2013)	14
K Vaïos, <i>Le début et la fin de l'application du droit de l'occupation</i> (Pedone 2010).....	13
L Olson, <i>Status and Treatment of Those Who Do Not Fulfil the Conditions for Status of Prisoners of War</i> . in A Clapham and al (ed), <i>The 1949 Geneva Conventions - A commentary</i> (Oxford University Press 2015)	10
M Bothe, <i>Compatibility and Legitimacy of Sanctions Regimes</i> . in N Ronzitti (ed), <i>Coercive Diplomacy, Sanctions and International Law</i> (Brill 2016).....	19
M Happold, <i>'Targeted Sanctions and Human Rights'</i> . in M Happold and P Eden (eds), <i>Economic Sanctions and International Law</i> (Hart Publishing 2016).....	18, 19
M Sassoli, <i>International Humanitarian Law - Rules, Controversies, and Solutions to Problem Arising in Warfare</i> (Edward Elgar 2019).....	5
M Sassòli, <i>International Humanitarian Law</i> (Edward Elgar 2019)	13
MK Sangale, <i>Generation and Management of Macroplastic Waste</i> . in, <i>Impact of Plastic Waste on the Marine Biota</i> (Springer 2022).....	26
N Ronzitti, <i>Sanctions as Instruments of Coercive Diplomacy: an International Law Perspective</i> . in N Ronzitti (ed), <i>Coercive Diplomacy, Sanctions and International Law</i> (Brill 2016)	20
R Kolb and S Vité, <i>Le droit de l'occupation militaire - Perspectives historiques et enjeux juridiques actuels</i> (Bruylant 2009)	13
R Otto, <i>Targeted Killings and International Law</i> (Springer 2012)	7
R. Kolb, <i>International Law on the Maintenance of Peace - Jus Contra Bellum</i> (Edward Elgar 2018).....	2
S Krähenmann, <i>Protection of Prisoners in Armed Conflict</i> . in D Fleck (ed), <i>The Handbook of International Humanitarian Law</i> (Oxford University Press 2013)	11

T Ruys, <i>'Armed Attack' and Article 51 of the UN Charter - Evolutions in Customary Law and Practice</i> (Cambridge University Press 2010)	4, 20
W Boothby, <i>The Law of Targeting</i> (Oxford University Press 2012).....	6
World Economic Forum, <i>Plastics, the Circular Economy and Global Trade</i> , White Paper (2020).....	26
Y Dinstein, <i>The International Law of Belligerent Occupation</i> (Cambridge University Press 2009)	12
Articles	
A Hofer, <i>'The 'Curiouser and Curiouser' Legal Nature of Non-UN Sanctions: The Case of the US Sanctions against Russia'</i> [2018] 23(1) <i>Journal of Conflict and Security Law</i>	18
A Roberts, <i>'What is Military Occupation?'</i> [1984] 55(1) <i>British Yearbook of International Law</i>	13
A Tzanakopoulos, <i>'State Responsibility for "Targeted Sanctions"'</i> [2019] 113 <i>American Journal of International Law</i>	17
A Tzanakopoulos, <i>'The Right to Be Free from Economic Coercion'</i> [2015] 4(41) <i>Cambridge Journal of International and Comparative Law</i>	17, 21
D Tladi, <i>'The Extraterritorial Use of Force against Non-State Actors'</i> [2021] 50(1) <i>The Hague Academy of International Law</i>	3
DJ Birkett, <i>'Asset Freezing at the European and Inter-American Courts of Human Rights: Lessons for the International Criminal Court, the United Nations Security Council and States'</i> [2020] 20(3) <i>Human Rights Law Review</i>	19
JG Sprankling, <i>'The Global Right to Property'</i> [2014] 52(2) <i>Columbia Journal of Transnational Law</i>	18
K Arai, <i>'Between Consented and Un-Consented Occupation'</i> [2018] 51(3) <i>Israel Law Review</i>	12
K Dörmann and L Collassis, <i>'International Law in the Iraq Conflict'</i> (2004) 47 <i>GYIL</i>	13
M Bothe, <i>'Beginning and end of occupation'</i> [2006] 34 <i>Collegium</i>	12

M Milanovic, <i>'Mistakes of Fact When Using Lethal Force in International Law: Part II'</i> (EJIL:Talk!, 15 January 2020) < https://www.ejiltalk.org/mistakes-of-fact-when-using-lethal-force-in-international-law-part-ii/ > accessed 11 October 2023.....	2
M Schmitt, <i>'The Principle of Discrimination in 21st Century Warfare'</i> [1999] 143(5) Yale Human Rights & Development Journal.....	6
R Higgins, <i>'The Right in International Law of an Individual to Enter, Stay in and Leave a Country'</i> [1973] 49(3) International Affairs.....	19
T Ferraro, <i>'Determining the beginning and end of an occupation under international humanitarian law'</i> [2012] 94(885) International Review of the Red Cross	12
T Ruys, <i>'Non-UN Financial Sanctions against Central Banks and Heads of State: in breach of international immunity law?'</i> (EJIL: Talk !, 12th May) < https://www.ejiltalk.org/non-un-financial-sanctions-against-central-banks-and-heads-of-state-in-breach-of-international-immunity-law/ > accessed 19 November 2022.....	18
Other Authorities	
Canada: <i>Special Economic Measures</i> (22 September 2017)	17
Centers for Disease Control and Prevention, <i>'Antibiotic Resistance Threats in the United States'</i> [2019] US Department of Health and Human Services CDC.....	10
European Union ('EU'): <i>Council Decision</i> 2014/145/CFSP (17 March 2014)	17
EU : <i>Council Implementing Regulation</i> (EU) 2022/260 (23 February 2022).....	17
EU : <i>Council Regulation</i> (EU) No 269/2014 (17 March 2014).....	17
EU : <i>Council Implementing Regulation</i> (EU) 2018/88 (22 January 2018).....	17
<i>Executive Order 13660</i> (6 March 2014)	17
Independent International Fact-Finding Mission on the Conflict in Georgia, Report (September 2009)	12
UK Military Manual (2004).....	6, 12
United States: <i>Executive Order 13692</i> (8 March 2015)	17

STATEMENT OF JURISDICTION

The State of Ragnell ('Ragnell') has instituted proceedings against the Kingdom of Aglovale ('Aglovale') before the International Court of Justice ('the Court') with regard to a dispute concerning alleged violations of the Trilateral Treaty of Lasting Peace Among the State of Ragnell, the Federation of Balan, and the Kingdom of Aglovale signed on 16 September 1958 ('the Treaty'). Aglovale has filed counterclaims under article 80 of the Rules of the Court.

The parties agree that Aglovale will appear before the Court as Applicant and Ragnell as Respondent. They agree that a dispute exists with respect to each of the claims and counterclaims, and that all counterclaims are directly connected to the subject matter of at least one of the claims within the meaning of article 80 of the Rules of Court.

The Court has jurisdiction over the subject matter of the claims and counterclaims pursuant to article 36(1) of the Court's Statute. Indeed, article 41 of the Treaty provides that any dispute concerning an alleged violation of obligations under the Treaty or the interpretation thereof, which cannot be settled by negotiation or other means, may be submitted to the Court. The Parties tried to settle the dispute through negotiations, but failed to reach an agreement. Articles 2 and 28 of the Treaty incorporate customary and conventional international obligations into the Treaty. The alleged violations of these obligations may thus also be submitted to the Court under article 41 of the Treaty.

In addition, article 41 of the Treaty provides that the dispute may be submitted to the Court by any Party to the Treaty. Accordingly, Aglovale and Ragnell have standing before the Court to present the claims and counterclaims.

QUESTIONS PRESENTED

The Kingdom of Aglovale respectfully asks this Honorable Court:

- I. *Whether* Ragnell violated its Treaty obligations in launching “Operation Shining Star” and in its attacks on both Nant Gateway and Compound Ardan, and whether it must pay reparations to Aglovale for the deaths of the eight Aglovalean nationals.

- II. *Whether* Ragnell violated its Treaty obligations by employing captured UAC fighters in the transportation of contaminated plastic waste, and by detaining them in Camlann Correctional Center.

- III. *Whether* Aglovale acted in accordance with the Treaty in imposing unilateral sanctions against Ragnell and Ragnellian nationals, and whether it has an obligation to withdraw the sanctions, to return any property, or to compensate Ragnell for their impact.

- IV. *Whether* Ragnell violated its Treaty obligations in transporting hazardous plastic waste to Etna, and whether Aglovale complied with the Treaty in conditioning cooperation regarding treatment of the waste on the termination of Ragnell’s aggression.

STATEMENT OF FACTS

The Gais Peninsula and the Clarent Belt

The Kingdom of Aglovale, the State of Ragnell, and the Federation of Balan are the three countries composing the Gais Peninsula ('the Peninsula'). Between Aglovale and the Dozmary Sea lies the Clarent Belt ('the Belt'), a large territory which was universally recognized until the early 1950s as part of the territory of Balan. On a portion of the Belt known as 'Tintagel Coast' an industrial park ('Tintagel Park') was established in the early 20th century.

In 1915, in order to allow the transport of goods between the Tintagel Coast and the rest of the Peninsula, an agreement was concluded between Aglovale and Balan for the construction of a seaport and of the Eamont Thruway – a railway and road system that crossed the Belt underground and connected to highways through southwestern Balan and into Aglovale. The Thruway is the only land route between the seaport and Aglovale.

The 'Clarent War' and the 'Trilateral Treaty of Lasting Peace'

In 1951, after deadly attacks initiated by Ragnell's secret services against Balan's port authority, tensions increased between Balan and Ragnell which resulted in the 'Clarent War'. After two years of fighting, Ragnell secured control over the Belt.

In 1958, Aglovale initiated peace talks between Ragnell and Balan which resulted in the adoption of the 'Trilateral Treaty of Lasting Peace' ('the Treaty'), ratified by all three states. With this treaty, the parties committed to cease hostilities and to demilitarize the Belt. It was agreed that Balan would remain sovereign over the Belt, and that Ragnell would become the lessee of the same territory for the next 65 years and would assume provision of government services there. Simultaneously, Aglovale was granted the unimpeded use of the seaport and of the Eamont Thruway, while it accepted to monitor both Balan's and Ragnell's compliance with the terms of the Treaty.

'Operation Shining Star'

The conclusion of the Treaty was loudly opposed by a group of veterans known as 'Unityk Ai Chyvon' ('UAC'), which started undertaking pacific actions such as marches and workshops.

As from 2018, the Ragnellian Progressive Party ('RPP') gained in popularity in Ragnell. One of its members – Dan Vortigern – was elected President of Ragnell and became publicly critical of the Treaty. After the election, the UAC started to carry out raids against

Ragnellian factories in the Belt. When Ragnell called upon Balan to take measures to stop the UAC, Balan responded that it was already undertaking such efforts.

On 7 July 2021, a raid was carried out by the UAC against three Ragnellian factories, halting their activities and killing employees. A few days later, President Vortigern responded by launching ‘Operation Shining Star’, a military campaign on Balan’s sovereign territory of the Belt, which officially aimed at clearing Tintagel Coast of UAC members.

On 15 September 2021, the UAC submitted a declaration within the meaning of article 96(3) of Additional Protocol I, declaring that they represented the Balani people in their fight for self-determination against alien occupation of the Belt.

The attacks on Nant Gateway and Compound Ardan

As from September 2021, sustained fighting broke out between the UAC and Ragnell’s military forces in the Belt. Balan gradually lost control over the situation in the Belt, while the UAC – well-equipped and organized – increased the rate of their ambushes and sabotages.

On 20 December 2021, Balan publicly declared the Eamont Thruway a ‘humanitarian corridor’ as it evacuated Balani civilians from Tintagel Coast. Two days later, the Defense Minister of Etna, an island located 450 nautical miles from Tintagel Park, informed Ragnell’s Defense Minister that the UAC were using the Eamont Thruway to launch an attack. Ragnell thus decided to bomb and destroy Nant Gateway – the only tunnel mouth of the Thruway within the Belt. As a result, all movements to access and exit Tintagel Coast were stopped. Aglovale denounced the destruction of Nant Gateway, notably because it isolated and endangered numerous Aglovalean and Balani nationals in the Belt.

In March 2022, Ragnell bombed Compound Ardan, a factory believed to be used by the UAC to launch attacks. It concluded that there were no civilians in or near the site, solely basing itself on information provided by a Balani worker – who had a history of providing unreliable information – and one-month-old drone footage. The bombing killed 68 Balani women and children and eight Aglovalean aid workers who had sought shelter in Warehouse 15, a structure of the Compound.

The shipment of waste to Etna

In 1989, one of the only two facilities in the Gais Peninsula able to process both contaminated and non-contaminated plastic waste was established in Tintagel Park by the Plastics Conglomerate, a private Ragnellian company.

In 2020, the Covid-19 pandemic caused an increase in the demand for plastic-based medical supplies. As a result, the production of plastic waste in Tintagel Park increased drastically.

On 15 November 2021, the main treatment plant of the Plastics Conglomerate was destroyed during a day-long fight between the UAC and Ragnell's forces. Consequently, the plastic waste that could not be treated started to accumulate, large amounts of which were contaminated by bacterial pathogens.

In early December 2021, negotiations began between Ragnell and Aglovale to discuss transfer of the waste to Aglovale, since the only other suitable facility in the Peninsula was located there. The negotiations failed and were planned to resume on 27 December. However, following the attack on Nant Gateway, Aglovale decided not to resume them.

On 20 January 2022, Ragnell concluded a bilateral agreement with Etna to ship the waste there for disposal. On 22 February 2022, it was established by the International Landfill Solutions Alliance, a global non-profit, that Etna's facilities were not appropriately equipped to treat the incoming waste. Subsequent reports indicated that Etna incinerated part of the waste and dumped other parts in landfills and the ocean.

The detention of UAC members

In October 2021, Ragnell captured more than 400 UAC members and detained them in Fort Caerleon, a detention center within the Belt. In January and February 2022, following the conclusion of the agreement with Etna regarding transfer of the waste, Ragnell ordered the UAC detainees to load the partially contaminated wastes onto ships. On 21 March 2022, Ragnell transferred the UAC detainees – whose number had grown to nearly 1000 – to Camlann Correctional Center, a maximum-security prison located in Ragnell's territory.

Sanctions against Ragnell

On 23 April 2023, Aglovale's Parliament enacted sanctions legislation against Ragnell, including targeted freezing of bank accounts, seizing of assets, and the imposition of travel bans. The sanctions also included the freezing of funds of Ragnell's central bank and the prohibition for Aglovalean citizens and companies to enter into new contracts with Ragnellian business enterprises operating in specific sectors.

In June 2022, in accordance with Article 18(1) of the Treaty, Balan requested the initiation of negotiations regarding the return of the Belt to Balani control. President Vortigern

expressed that he was willing to start the negotiations under certain conditions, which were rejected by Balan on 17 June. On 13 July 2022, an Application instituting proceedings against Aglovale was filed by Ragnell with the Registry of the Court.

SUMMARY OF PLEADINGS

I.

By launching Operation Shining Star, Ragnell violated articles 3 and 14 of the Treaty, which require parties to demilitarize the Clarent Belt, and article 11(1)(c) of the Treaty which allows Ragnell to maintain peace and order through the deployment of police personnel only.

Ragnell violated article 2(1) of the Treaty by disregarding the prohibition on the use of force set forth in article 2(4) of the UN Charter.

Neither of the violations is precluded by self-defense. There was no armed attack attributable to a State. In any case, Operation Shining Star was neither necessary nor proportionate.

By bombing Nant Gateway, Ragnell violated article 15 of the Treaty which compels parties to protect and preserve the integrity of the Eamont Thruway. Ragnell violated article the international humanitarian law ('IHL') principles of distinction and proportionality referred to in article 2(2) of the Treaty.

By attacking Compound Ardan, Ragnell violated the IHL principle of precaution referred to in article 2(2) of the Treaty and caused the death of 76 civilians, including eight Aglovalean nationals.

As a consequence of these breaches, Ragnell must compensate Aglovale for the death of its nationals.

II.

UAC detainees are entitled to the status of prisoners of war ('POW') under Geneva Convention III ('GCIII'), which contains principles of IHL referred to in article 2(2) of the Treaty.

Ragnell violated their rights under GCIII by ordering them to undertake unhealthy and dangerous labour and by transferring them to a maximum-security penitentiary.

Alternatively, if UAC detainees are not entitled to POW status, they must be considered as protected persons in occupied territory under Geneva Convention IV ('GCIV'). The Belt is an occupied territory because it is placed under the authority of Ragnell without Balan's consent.

Ragnell violated the detainees' rights under GCIV by ordering them to work without their consent and by displacing them outside of the Belt.

Ragnell violated the right to life under the International Covenant on Civil and Political Rights and the rights to health and to just conditions of work under the International Covenant on Economic, Social and Cultural Rights.

None of the breaches are precluded by necessity or distress.

III.

All the sanctions taken by Aglovale were lawful under Article 2 of the Treaty. Freezing bank accounts of determined individuals did not violate any human rights principles. The seizing of assets and of Prydwen Place was lawful because no right to property exists under international law. The travel bans were lawful because Aglovale has no obligation to allow entrance on its territory under international law. The freezing of funds of Ragnell's central bank did not violate rules relating to State immunity. Prohibiting Aglovalean companies and citizens from entering into business with companies operating in Ragnell did not violate the principle of non-intervention.

Alternatively, Aglovale was entitled to suspend its obligations under the Treaty because it was specially affected by Ragnell's material breach of the Treaty.

In any case, the sanctions were lawful countermeasures. Aglovale was injured by Ragnell's breaches of the Treaty and the conditions for the taking of countermeasures were respected.

As a consequence, Aglovale is under no obligation to withdraw its sanctions or compensate Ragnell.

IV.

Ragnell violated its obligation to prevent environmental harm under Article 28 of the Treaty. As demonstrated by ILSA's reports, harm to the environment occurred following the transfer of waste to Etna for disposal. Ragnell did not use its best practicable means to prevent such harm, since it failed to conduct an environmental impact assessment before transferring the waste and it failed to mitigate the damage when it was occurring.

This breach is not precluded by necessity. The accumulation of waste in the Belt did not pose an imminent threat and its transfer was not the only way for Ragnell to safeguard its interests. In any event, Ragnell contributed to the situation of necessity.

Aglovale complied with Article 28 of the Treaty when it conditioned the pursuit of negotiations concerning the waste to the termination of Operation Shining Star. In any case, Aglovale was entitled to suspend the operation of the Treaty as a consequence of its breach by Ragnell. In the event of a breach, Aglovale's refusal to pursue negotiations was a valid countermeasure.

PLEADINGS

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

In launching Operation Shining Star, Ragnell violated essential provisions of the Trilateral Treaty of Lasting Peace (‘the Treaty’)¹ (A). In addition to being inherently illegal, Operation Shining Star was also wrongful by the way it was conducted. In particular, the attacks on Nant Gateway (B) and on Compound Ardan (C) constituted breaches of Article 15 of the Treaty and of the principles of international humanitarian law (‘IHL’) referred to in Article 2(2) of the Treaty. Ragnell is thus under the obligation to pay compensation for the deaths of the eight Aglovalean nationals killed in these military operations (D).

A. Ragnell violated the Treaty in launching ‘Operation Shining Star’

Despite its alleged ‘*limited and temporary*’² character, Operation Shining Star was launched by Ragnell in violation of several essential provisions of the Treaty (1). None of those violations are precluded by way of self-defense (2).

1. Ragnell violated multiple provisions of the Treaty

By launching Operation Shining Star in July 2021, and sending troops in the Belt,³ Ragnell breached Articles 3 and 14 of the Treaty which respectively require from the contracting parties to ‘*withdraw all of their military forces from the Clarent Belt*’ and to demilitarize it. Ragnell did exactly the opposite. Moreover, Ragnell acted in violation of Article 11(1)(c) of the Treaty by which it undertook to respect Balan’s sovereignty and to ‘*maintain peace and order through the deployment of police personnel*’⁴ only.

¹ *Trilateral Treaty of Lasting Peace Among the State of Ragnell, the Federation of Balan, and the Kingdom of Aglovale* (16 September 1958) (‘Treaty’).

² Statement of Agreed Facts (‘SAF’), [31].

³ SAF, [31].

⁴ Treaty, Article 11(1)(c).

In violation of Article 2(1) of the Treaty, Ragnell also failed to ‘*apply*’, i.e. respect, the provisions of the Charter of the United Nations (‘UN Charter’), in particular Article 2(4) UN Charter which requires from Member States to ‘*refrain in their international relations from the threat or use of force*’ against any other State.⁵

Likewise, Ragnell violated the corresponding principles of ‘*customary international law governing friendly relations among states*’⁶ whose respect is also required under Article 2(1) of the Treaty.

2. Self-defense does not preclude the wrongfulness of the violations of the Treaty

Ragnell had no right under Article 51 UN Charter to resort to the use of force in self-defense **(a)**. In any case, Operation Shining Star was neither necessary nor proportionate **(b)**.

a. Ragnell had no right to self-defense

A state may only use force in self-defense if it is the victim of an armed attack⁷ **(i)** by another state⁸ **(ii)**. No such attack occurred against Ragnell.

⁵ *Charter of the United Nations* (24 October 1945) 1 UNTS 16 (‘UN Charter’), Article 2(4); R. Kolb, *International Law on the Maintenance of Peace - Jus Contra Bellum* (Edward Elgar 2018) 322.

⁶ UNGA, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, A/RES/2625(XXV) (1970), first principle; *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Advisory Opinion) (2010) ICJ Rep 141, [80]; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US)* (Merits) (1986) ICJ Rep 14, [191-193]; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Merits) (2005) ICJ Rep 168 [162].

⁷ UN Charter, Article 51; *Nicaragua*, n6, [195]; *Case concerning Oil Platforms (Iran v. US)* (Merits) (2003) ICJ Rep 161, [71]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (2004) ICJ Rep 136, [139]; *Armed Activities*, n6, [146].

⁸ M Milanovic, *Mistakes of Fact When Using Lethal Force in International Law: Part II (EJIL:Talk!, 15 January 2020)* <<https://www.ejiltalk.org/mistakes-of-fact-when-using-lethal-force-in-international-law-part-ii/>> accessed 11 October 2023; International Law Commission (‘ILC’), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, A/56/10 (2001) 306.

i. The actions of the UAC do not amount to an armed attack

The sporadic attacks of the UAC fighters cannot qualify as an armed attack. An armed attack triggering the right of self-defense must be a ‘*most grave use of force*’⁹ by its ‘*scale and effects*’.¹⁰ However, such threshold is not reached by the UAC fighters’ attacks which were mostly directed towards facilities and were scattered over months.¹¹

ii. Self-defense may not be invoked in response to an attack from a non-state actor

The conduct of the UAC fighters is not attributable to Balan, but to a non-state actor. As the Court has consistently ruled,¹² the use of force in self-defense pursuant to Article 51 UN Charter and customary international law (‘CIL’) is only permitted following an armed attack ‘*by or on behalf*’ of another state.¹³ In particular, in *Armed Activities*, the Court declined to find Uganda in a situation of self-defense following attacks by anti-Ugandan rebels that were not attributable to the DRC.¹⁴

The limited exception recognized in United Nations Security Council (‘UNSC’) Resolutions 1368¹⁵ and 1373¹⁶ only applies when a terrorist threat originates from a territory which is not under the control of the victim state¹⁷. For this reason, Ragnell cannot invoke state

⁹ *Nicaragua*, n6, [191]; *Oil Platforms*, n7, [51].

¹⁰ *Nicaragua*, n6, [195].

¹¹ SAF, [25]-[26].

¹² *Nicaragua*, n6, [195]; *Wall opinion*, n7, [139]; *Armed activities*, n6,[148]; D Tladi, ‘*The Extraterritorial Use of Force against Non-State Actors*’ [2021] 50(1) *The Hague Academy of International Law* 103

¹³ *Armed Activities*, n6, [146].

¹⁴ *Ibid.*, [147].

¹⁵ UNSC, *Threats to International Peace and Security Caused by Terrorist Acts* S/RES/1368 (2001).

¹⁶ UNSC, *Threats to International Peace and Security Caused by Terrorist Acts* S/RES/1373 (2001).

¹⁷ *Wall Opinion*, n7, [139] and Separate Opinion Judge Kooijmans [46].

practice under these resolutions in support of its claim, since the acts of UAC members originate within the Belt¹⁸ – a territory under Ragnell’s control.¹⁹

b. Ragnell’s use of force was neither necessary nor proportionate

In any case, Ragnell’s use of force in response to the UAC raids failed to meet the customary requirements of necessity and proportionality.²⁰

The use of force was not necessary because Ragnell jumped the gun without having explored other possibilities that would have allowed to meet its security concerns.²¹ In particular, Ragnell did not call upon the UNSC for assistance. In addition, instead of resorting to military force, Ragnell could have taken action in conformity with the Treaty, for example by deploying its police personnel²² on locations used by UAC to prepare and launch their actions.

In any event, Operation Shining Star was not proportionate, as it did not reflect the scope, nature and gravity of the attack itself.²³ The UAC attacks were sporadic and specifically directed at facilities. Ragnell’s response was overwhelming and totally out of proportion to such actions. Indeed, Ragnell sent its armored vehicles, military battalions²⁴ and air force²⁵, using heavy weapons such as bombs²⁶ to target essential Balani infrastructure such as Nant Gateway in response to raids by a non-state actor whose weapons were far less destructive²⁷.

¹⁸ SAF, [25]-[26].

¹⁹ SAF, [11].

²⁰ *Nicaragua*, n6, [176]; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ Rep 226, [41].

²¹ T Ruys, *'Armed Attack' and Article 51 of the UN Charter - Evolutions in Customary Law and Practice* (Cambridge University Press 2010); C Gray, *International Law and the Use of Force* (4th edn, Oxford University Press 2018) 159.

²² Treaty, Article (11)(1)(c).

²³ C O' Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law* (Oxford University Press 2021) 97.

²⁴ SAF, [31].

²⁵ SAF, [41].

²⁶ SAF, [41]-[47].

²⁷ SAF, [35].

B. Ragnell violated the Treaty by attacking Nant Gateway

On 23 December 2021, Ragnell's air force dropped two bombs on Nant Gateway, the only tunnel mouth of the Thruway within the Belt.²⁸ This attack breached Articles 15 (1) and 2(2) of the Treaty (2).

1. Ragnell violated article 15 of the Treaty

By bombing Nant Gateway, Ragnell destroyed part of the Thruway, rendering it unusable and halting all movement into and out of Tintagel Coast.²⁹ Under Article 15 of the Treaty, Ragnell undertook to '*protect and preserve the integrity of the Eamont Thruway [...] including any improvement*' to it. By destroying Nant Gateway, Ragnell violated this obligation.

2. Ragnell violated article 2(2) of the Treaty

By destroying Nant Gateway, Ragnell breached several principles of IHL referred to in Article 2(2) of the Treaty, namely the principle of distinction (a) and the principle of proportionality (b).

a. Ragnell violated the principle of distinction

The '*intransgressible*' customary principle of distinction³⁰ requires that parties to an armed conflict must at all times distinguish between civilian objects and military objectives and may, accordingly, only direct their operations against military objectives.³¹ Under CIL, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose destruction, in the circumstances ruling at the time, offers a definite military advantage.³²

²⁸ SAF, [41].

²⁹ Ibid.

³⁰ *Nuclear Weapons*, n20, [79].

³¹ International Committee of the Red Cross ('ICRC'), *Customary International Humanitarian Law* ('CIHL') (2005) Vol II, Rule 7; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* ('API') 1126 UNTS (8 June 1977), Article 48 and 52(2); *Prosecutor v. Galić* (Appeal Judgement), IT-98-29-A (30 November 2006), [191].

³² CIHL, n31, Rule 8; API, Article 52(2); M Sassoli, *International Humanitarian Law - Rules, Controversies, and Solutions to Problem Arising in Warfare* (Edward Elgar 2019) 350.

Nant Gateway is a civilian object by nature, because it is part of a civilian means of transportation³³ which has a purely economic purpose.³⁴

Nant Gateway's location as the only route in and out of Tintagel Coast rendered it an object indispensable to the survival of the civilian population.³⁵ Its destruction isolated and rendered the remaining civilians in the Belt extremely vulnerable, as providing them with basic necessities and humanitarian aid became nearly impossible.³⁶

In any case, there was a doubt whether Nant Gateway was being used to contribute to military action. Indeed, Ragnell based itself on information which was said to be reliable by the Defense Minister of Etna, without verifying it. When such doubt exists, an object normally used for civilian purposes must be considered as a civilian object and cannot be targeted.³⁷

b. Ragnell violated the principle of proportionality

The bombing of Nant Gateway was disproportionate under IHL. The customary principle of proportionality prohibits attacks which may be expected to cause losses or 'reverberating collateral damage' to civilians³⁸ or civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated.³⁹

Ragnell's anticipated military advantage was the prevention of a surprise attack and of future smuggling of weapons and UAC members into the Belt.⁴⁰ By preventing such use of the Thruway, Ragnell caused an overwhelmingly excessive damage to the civilian population. Indeed, the Thruway had been declared a humanitarian corridor.⁴¹ Ragnell thus knew that it was an essential route used to evacuate civilians to safety and to transport necessary goods and

³³ CIHL, n31, Rule 9.

³⁴ SAF, [5].

³⁵ API, art. 54.

³⁶ SAF, [42].

³⁷ CIHL, n31, 34, rule 10; API, art. 52(3); *Prosecutor v. Galić*, n31, [50] and [55].

³⁸ W Boothby, *The Law of Targeting* (Oxford University Press 2012) 105; M Schmitt, 'The Principle of Discrimination in 21st Century Warfare' [1999] 143(5) Yale Human Rights & Development Journal 168; UK Military Manual (2004), 5.33.4.

³⁹ CIHL, n31, 48, rule 14; *Prosecutor v. Kupreškić* (Judgement) IT-95-16-T (14 January 2000) [524].

⁴⁰ SAF [41].

⁴¹ SAF, [40].

humanitarian relief to the population in the Belt. Not only could the civilians no longer leave the Belt, but they were deprived of most basic necessities.⁴²

C. Ragnell violated article 2(2) the Treaty by attacking Compound Ardan

On 7 March 2022, after having mistakenly concluded that there were no civilians on site, Ragnell bombed Compound Ardan, killing 76 civilians – 68 women and children, and 8 Aglovalean nationals. These civilians had sought shelter in Warehouse 15, one of the buildings of the Compound.

By conducting this attack, Ragnell violated the principle of precaution, one of the principles of IHL referred to in article 2(2) of the Treaty.

Indeed, Ragnell did not take all feasible precautions to avoid incidental loss of civilian life⁴³ since it did not appropriately verify that Compound Ardan was not occupied by civilians.⁴⁴ The evidence on which Ragnell based itself was unreliable and outdated. It merely consisted in drone footage taken the month prior to the attacks, and intelligence received by a Balani informant – who appeared to have limited access to Compound Ardan and had a history of providing inaccurate and misleading information.⁴⁵ In the absence of a ‘*serious check of accuracy*’, this intelligence was insufficient to determine with certainty that there were no civilians in the Compound. Even in case of ‘*slight doubt*’, Ragnell should have called on ‘*additional information*’ or ordered ‘*further reconnaissance*’.⁴⁶

D. Ragnell must compensate Aglovale for the death of their eight nationals

As demonstrated above, Ragnell committed international wrongful acts in launching Operation Shining Star and by attacking Compound Ardan. The eight Aglovalean nationals were killed during and as a result of that attack. There is thus a direct and certain causal nexus

⁴² SAF, [42].

⁴³ CIHL, n31, Rule 15; R Otto, *Targeted Killings and International Law* (Springer 2012) 320.

⁴⁴ CIHL, n31, Rule 16.

⁴⁵ SAF, [48].

⁴⁶ ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) (‘ICRC Commentary API’), [2195].

between Ragnell's unlawful attack on Compound Ardan and the death of the eight Aglovalean nationals. Consequently, Ragnell must compensate Aglovale for these deaths.⁴⁷

All local remedies having been exhausted in Ragnell by the families of the Aglovalean victims,⁴⁸ Aglovale is entitled to claim compensation for the death of its nationals.⁴⁹ In accordance with the Court's usual practice, Aglovale respectfully requests that, failing agreement between the Parties on this matter within six months from the date of the forthcoming Judgment, the question of compensation due to Aglovale be settled by the Court, in the subsequent procedure in the case.⁵⁰

⁴⁷ UNGA, *Responsibility of States for Internationally Wrongful Acts*, A/RES/56/83 (2001) ('ARSIWA'), Article 36(1); *Armed Activities on the Territory of the Congo (DRC v. Uganda) (Reparations)* (2022) ICJ Rep 2, [93]; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (1997) ICJ Rep 88, [81].

⁴⁸ Clarification [2], ARSIWA, Article 44(b).

⁴⁹ ARSIWA, Article 44(a); International Law Commission ('ILC'), *Draft articles on diplomatic protection* A/61/10 (2006), Articles 1 and 3.

⁵⁰ *Ahmadou Sadio Diallo (Guinea v. DRC)* (2007), ICJ Rep 582, [164].

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

Ragnell employed UAC detainees to load contaminated waste onto ships and transferred them to Camlann Correctional Center ('Camlann') in violation of the principles of IHL contained in GCIII⁵¹ (A). Alternatively, if the Court does not recognize the status of POW to UAC detainees, Ragnell violated the principles of IHL contained in GCIV⁵² (B). Ragnell breached the principles of human rights law contained in the ICCPR⁵³ and the ICESCR⁵⁴ (C). The violations of these principles constitute a violation of article 2(2) of the Treaty.⁵⁵

A. Ragnell violated article 2(2) of the Treaty by breaching Geneva Convention III

UAC detainees benefit from the protection of GCIII as they are entitled to POW status under Additional Protocol I ('API')⁵⁶ (1). The application of the latter is confirmed by the notice issued by the Swiss Federal Council in September 2021.⁵⁷ Ragnell violated GCIII by ordering UAC detainees to undertake labour of unhealthy and dangerous nature (2) and transferring them to Camlann (3).

1. UAC members are entitled to POW status or equivalent protection

UAC fighters are combatants because they are members of an organized armed group under a well-established command which is responsible for the UAC fighters' conduct⁵⁸. In

⁵¹ *Geneva Convention Relative to the Treatment of Prisoners of War* (12 August 1949) 75 UNTS 135 ('GCIII').

⁵² *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (12 August 1949) 75 UNTS 287 ('GCIV').

⁵³ *International Covenant on Civil and Political Rights* (23 March 1976) 999 UNTS 171 ('ICCPR').

⁵⁴ *International Covenant on Economic, Social and Cultural Rights* 993 UNTS 3 (6 December 1966) ('ICESCR').

⁵⁵ SAF, [64]; Treaty, Article 2(2).

⁵⁶ API, Articles 43 and 44.

⁵⁷ Clarification [7].

⁵⁸ API, Articles 43(1) and (2); SAF, [35]; Clarification [7].

addition, they carry arms openly.⁵⁹ Combatants who fall into the hands of the enemy are entitled POW status.⁶⁰ UAC detainees are thus entitled this status, or are equally protected,⁶¹ and thus benefit from the protection of GCIII as they fell in the hands of Ragnellian armed forces.⁶²

2. Ragnell could not order UAC members to undertake prohibited labour of an unhealthy and dangerous nature

Article 52 GCIII prohibits states to employ POW on labour of an unhealthy or dangerous nature. Yet Ragnell ordered UAC detainees to load contaminated plastic waste onto ships for one month, knowing that large amounts of it were contaminated with *Clostridioides difficile* ('*C. diff.*') and methicillin resistant *Staphylococcus Aureus* ('*MSRA*').⁶³ These two bacterial pathogens have been characterized as major health threats, causing hundreds of thousands of hospitalizations and tens of thousands of deaths each year.⁶⁴ Thus, loading the waste onto ships was unsafe and liable to cause deadly diseases to UAC detainees.⁶⁵

The fact that UAC detainees did not receive appropriate training also amounts to a violation of Article 52 GCIII.⁶⁶

Therefore, Ragnell's employment of UAC detainees was in breach of article 52 GCIII as the work in question was both dangerous and unhealthy in nature.⁶⁷

⁵⁹ API, Article 44(3); E Crawford, *Combatants*. in L Rain (ed), *The Routledge Handbook of the Law of Armed Conflict* (Routledge 2016) 129.

⁶⁰ API, Article 44(1).

⁶¹ API, Article 44(4).

⁶² API, Article 44(3); SAF, [35]; L Olson, *Status and Treatment of Those Who Do Not Fulfil the Conditions for Status of Prisoners of War*. in A Clapham and al (ed), *The 1949 Geneva Conventions - A commentary* (Oxford University Press 2015) 917.

⁶³ SAF, [38] and [44].

⁶⁴ Centers for Disease Control and Prevention, '*Antibiotic Resistance Threats in the United States*' [2019] US Department of Health and Human Services CDC 7.

⁶⁵ ICRC, *Commentary on the Third Geneva Convention on the Treatment of Prisoners of War of 12 August 1949* (2020) ('ICRC Commentary GCIII'), [2744]; B Garner, *Black's Law Dictionary* (Thomson Reuters 2019) 837.

⁶⁶ GCIII, Article 51(3); ICRC Commentary GCIII, n62, [2733] and [2743]; UNGA, *United Nations Standard Minimum Rules for the Treatment of Prisoners A/RES/70/175*, Rule 101.

⁶⁷ GCIII, Article 52(1); S Krähenmann, *Protection of Prisoners in Armed Conflict*. in D Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford University Press 2013) 399.

3. Ragnell could not detain UAC members in Camlann

On 21 March 2022, UAC detainees were transferred to Camlann, a maximum-security penitentiary located within Ragnell's territory.⁶⁸ Yet POW may not be interned in penitentiaries.⁶⁹

In addition, detaining the UAC members in a maximum-security prison – the type of prison where there is the least amount of freedom⁷⁰ – is a breach of the POW's right not to be held in close confinement and of their freedom of movement.⁷¹

B. Alternatively, Ragnell violated article 2(2) of the Treaty by breaching Geneva Convention IV

Assuming that UAC detainees are not entitled to POW status, they must be considered as protected persons in occupied territory (1). Consequently, Ragnell could not order the UAC detainees to load the waste onto ships without their consent (2). The deportation of UAC members to Camlann constituted a prohibited displacement of civilians (3).

1. UAC detainees are protected persons in occupied territory

The Belt is an occupied territory under the authority of Ragnellian armed forces (a). If UAC detainees are not entitled to POW status, they are protected persons who benefit from the protection of GCIV (b).

a. The Clarent Belt is an occupied territory

The Lease Agreement under the Treaty provides that Ragnell must commit to the demilitarization of the Belt and must maintain peace and order by deploying police personnel

⁶⁸ SAF, [49].

⁶⁹ GCIII, Article 22.

⁷⁰ Cambridge Dictionary, '*Maximum security prison*', Cambridge University Press <<https://dictionary.cambridge.org/fr/dictionnaire/anglais/maximum-security-prison>> accessed 13 November 2023.

⁷¹ GCIII, Article 21(1); ICRC Commentary GCIII, n62, [1994]-[1995].

only.⁷² Thus, by sending military battalions into the Belt,⁷³ Ragnell was no longer acting with the consent of Balan.⁷⁴

Ragnell substituted its authority to that of Balan when it launched Operation Shining Star.⁷⁵ Balani military commanders, the Foreign Minister of Aglovale recognized that Balan had lost effective control over the Belt, to the benefit of Ragnell, following this military invasion. The President of Ragnell himself acknowledged having control over the Belt.⁷⁶

Ragnell exercised its own authority in the Belt when it detained hundreds of UAC members for more than five months at Fort Caerleon⁷⁷ and when it exercised its governmental responsibilities by concluding an agreement with Etna for the transfer of waste.⁷⁸

Ragnell's exercise of its own authority over the Belt,⁷⁹ without the consent of the Balani Government,⁸⁰ and Balan's inability to exercise authority due to the presence of Ragnellian military demonstrate that the Belt is an occupied territory.⁸¹

⁷² Treaty, Articles 11 and 14.

⁷³ SAF, [31].

⁷⁴ SAF, [32], [40], [49], [52] and [59]; *Armed Activities*, n6, [53]-[54]; Y Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press 2009) 35-37, K Arai, 'Between Consented and Un-Consented Occupation' [2018] 51(3) *Israel Law Review* 365-388.

⁷⁵ *Hague Convention (IV) respecting the Laws and Customs of War on Land* (18 October 1907) ('Hague Regulation 1907'), Article 42; *Armed Activities*, n6, [173]; *Wall Opinion*, n7, [78]; T Ferraro, 'Determining the beginning and end of an occupation under international humanitarian law' [2012] 94(885) *International Review of the Red Cross* 155; Independent International Fact-Finding Mission on the Conflict in Georgia, Report (September 2009), i.308.

⁷⁶ SAF, [35], [49] and [59].

⁷⁷ SAF, [36] and [49].

⁷⁸ SAF, [44].

⁷⁹ Hague Regulation 1907, n75, Article 42; *Armed activities*, n6, [173]; *Wall opinion*, n7, [78].

⁸⁰ *Armed Activities*, n6, [53]-[54].

⁸¹ M Bothe, 'Beginning and end of occupation' [2006] 34 *Collegium* 26; UK Military Manual (2004) [11.3].

The absence of armed resistance of Balani military forces does not impact this qualification of the Belt as an occupied territory,⁸² nor does the resistance of UAC fighters.⁸³ The mere unconsented presence of Ragnellian armed forces is sufficient.⁸⁴

b. UAC detainees are protected persons under GCIV

If the UAC members are not entitled to POW status, they are protected persons under GCIV because the Belt is an occupied territory and they have fallen into the hands of Ragnell – the occupying power – of which they are not nationals.⁸⁵

2. UAC detainees could not be ordered to work without their consent

Ragnell could not employ UAC detainees as workers unless they so desired.⁸⁶ Therefore, Ragnell’s order to UAC members to displace the toxic wastes from Tintagel Park onto the ships – without their consent – was contrary to Article 95 of GCIV⁸⁷ and customary IHL.⁸⁸

3. UAC detainees could not be displaced outside of the Clarent Belt

The transfer of UAC detainees from the Belt – the occupied territory – to Ragnell is a violation of the prohibition to deport protected persons, regardless of the motive of this

⁸² GCIV, Article 2(2); K Dörmann and L Collassis, ‘*International Law in the Iraq Conflict*’ (2004) 47 GYIL 298; A Roberts, ‘*What is Military Occupation?*’ [1984] 55(1) British Yearbook of International Law 256.

⁸³ M Sassòli, *International Humanitarian Law* (Edward Elgar 2019) 177.

⁸⁴ Ibid, 177; K Vaios, *Le début et la fin de l’application du droit de l’occupation* (Pedone 2010) 27; R Kolb and S Vité, *Le droit de l’occupation militaire - Perspectives historiques et enjeux juridiques actuels* (Bruylant 2009) 77.

⁸⁵ GCIV, Article 4; *Prosecutor v. Prlić et al.* (Appeal Chamber Judgement) (29 November 2017), [353] and [359]; *Prosecutor v. Delalic et al.* (Judgement) IT-96-21-T (16 November 1998), [271]; *Prosecutor v. BrĀanin* (Judgement) IT-99-36-T (1 September 2004), [125]; *Āelebići* (Judgement) IT-96-21-A (20 February 2001), [271].

⁸⁶ GCIV, Article 95.

⁸⁷ SAF, [44].

⁸⁸ CIHL, n31, Rule 95.

transfer.⁸⁹ The right of protected persons not to be displaced is part of CIL⁹⁰ and its violation by Ragnell constitutes a grave breach of IHL.⁹¹

Even if the transfer of the detainees were justified by security reasons, it was not materially impossible for Ragnell to displace UAC detainees within the occupied territory.⁹² Indeed, the Belt is a territory of thousands of square kilometres over which Ragnell exercises control.⁹³

In any case, Ragnell violated its obligation to transfer UAC members back to the Belt after the hostilities in the area ceased.⁹⁴ On 16 June 2022, President Vortigern recognized that Ragnell had control over the Belt,⁹⁵ meaning that it was possible for UAC members to be transferred back to Fort Caerleon.

C. Ragnell violated article 2(2) by breaching the ICCPR and the ICESCR

The ICCPR⁹⁶ and the ICESCR⁹⁷ do not cease to apply in situations of armed conflicts (1). By employing UAC detainees to handle wastes contaminated by deadly bacterial pathogens *C. diff.* and *MSRA* Ragnell violated these conventions (2).

⁸⁹ GCIV, Article 49(1); *Prosecutor v. Krstic* (Judgement), IT-98-33, (2 August 2001), [521]; *Prosecutor v. Krnojelac* (Judgement) IT-97-25 (15 March 2002), [474]; *Prosecutor v. Naletilic* (Judgement) IT-98-34-T (31 March 2003), [521].

⁹⁰ CIHL, n31, Rule 129.

⁹¹ GCIV, Article 147.

⁹² GCIV, Article 49(2); H Gasse and K Dörmann, *Protection of the Civilian Population*. in D Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford University Press 2013) 283.

⁹³ SAF, [2].

⁹⁴ GCIV, Article 49(2).

⁹⁵ SAF, [59].

⁹⁶ *Wall Opinion*, n7, [111]; Human Rights Committee ('HRC'), *General Comment n°31*, CCPR/C/21/Rev.1, [11].

⁹⁷ *Wall Opinion*, n7, [112].

1. The ICCPR and the ICESCR apply to the conflict

In *Armed Activities* and the *Wall opinion*, the Court affirmed that the protection of human rights does not cease to apply in situations of armed conflicts.⁹⁸ The Court also confirmed the application of this protection in respect of acts by a State in the exercise of its jurisdiction outside of its territory, especially in occupied territory.⁹⁹

2. Ragnell breached its obligations under the ICCPR and the ICESCR

There can be no restriction or derogation from the human rights of persons under any form of detention.¹⁰⁰ Ragnell violated the rights of the detainees under article 6 ICCPR (a), article 7 ICESCR (b) and article 12 ICESCR (c).

a. Ragnell violated the right to life under article 6 ICCPR

The Court explicitly recognized that the right to life must be respected during wartime,¹⁰¹ *a fortiori* in situation of occupation, and does not suffer any derogation.¹⁰² Article 6 ICCPR provides a duty for Ragnell to care for the life and bodily integrity of the UAC detainees.¹⁰³ By ordering UAC detainees to handle deadly bacterial pathogens, Ragnell violated the absolute right to life.¹⁰⁴ Ragnell cannot rely on logistical issues – such as the limited number of Ragnellian workers in the Belt¹⁰⁵ – to reduce its responsibility.¹⁰⁶

⁹⁸ *Wall Opinion*, n7, [105]; *Armed activities*, n6, [216]; Eritrea-Ethiopia Claims Commission, *Partial Award: Central Front Ethiopia's Claim 2* (28 April 2004), [26].

⁹⁹ *Armed Activities*, n6, [216]; *Wall Opinion*, n7, [109].

¹⁰⁰ UNGA, *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*, A/RES/43/173 (1989), principle 3.

¹⁰¹ *Nuclear Weapons*, n20, [25].

¹⁰² ICCPR, Article 4(2).

¹⁰³ HRC, *General Comment n°36*, CCPR/C/GC/35, [25]; HRC, Communication n°1756/2008, *Zhumbaeva v. Kyrgyzstan* (19 July 2011), [8.6]; HRC, Communication n°84/1981, *Barbato v Uruguay* (21 October 1982), [9.2].

¹⁰⁴ SAF, [44].

¹⁰⁵ *Ibid.*

¹⁰⁶ *General Comment n°36*, n100, [25]; HRC, Communication n°763/1997, *Lantsov v. Russian Federation* (26 March 2002), [9.2].

b. Ragnell violated the right to just and favourable conditions of work under article 7 ICESCR

Article 7 ICESCR is an integral part of the national standards for working conditions referred to in Articles 51 GCIII and 51 GCIV.¹⁰⁷ Because Ragnell exercises effective control over the Belt, it has an immediate obligation¹⁰⁸ to refrain from intervening directly or indirectly with the enjoyment of the right to just and favourable conditions of work,¹⁰⁹ especially since it is the employer of the detainees. Nonetheless, Ragnell forced UAC detainees to undertake dangerous work and failed to provide safe and healthy working conditions.¹¹⁰

c. Ragnell violated the right to health (art. 12 ICESCR)

Under Article 12 ICESCR, UAC detainees have the right to be free from health interference¹¹¹ and to a healthy work environment.¹¹² This entails that Ragnell had a duty not to expose UAC detainees to harmful bacterial pathogens that may directly or indirectly have an impact on their health and to minimize the causes of health hazards in the work environment.¹¹³ Ragnell breached these obligations by ordering the UAC detainees' exposure to *C. diff.* and *MSRA*.

¹⁰⁷ ICRC Commentary GCIII, [2723]-[2725].

¹⁰⁸ Committee on Economic, Social and Cultural Rights ('CESCR'), *General Comment n°14*, E/C.12/2000/4, [33].

¹⁰⁹ CESCR, *General Comment n°23*, E/C.12/GC/23, [58].

¹¹⁰ SAF, [35]-[33].

¹¹¹ CESCR, *General Comment n° 14*, [8].

¹¹² *Ibid.*, [15].

¹¹³ SAF, [38] and [44].

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

On 23 April 2022, Aglovale's Parliament enacted sanctions legislation against Ragnell in response to Operation Shining Star.¹¹⁴ These sanctions respect all of Aglovale's international obligations and therefore qualify as retorsions (A). Alternatively, if the Court finds that one or more of the sanctions are inherently illegal, Aglovale had the right to suspend its obligations under the Treaty (B) and the sanctions constitute lawful countermeasures (C). Consequently, Aglovale has no obligation to withdraw the sanctions, to return any property, or to compensate Ragnell for their impact (D).

A. Aglovale took measures of retorsion

All the sanctions taken by Aglovale on 23 April 2022 are measures of retorsion as they are inherently legal.¹¹⁵

1. Freezing bank accounts belonging to Vortigern, his cabinet ministers, and senior RPP members and financial supporters was lawful under the Treaty

The freezing of bank accounts imposed by Aglovale on Ragnell's High officials, senior RPP members and financial supporters is a measure of retorsion, as they do not fall foul of any of Aglovale's obligations to Ragnell.¹¹⁶ These targeted sanctions are consistent with state practice.¹¹⁷

¹¹⁴ SAF, [52].

¹¹⁵ A Tzanakopoulos, *'The Right to Be Free from Economic Coercion'* [2015] 4(41) Cambridge Journal of International and Comparative Law 11.

¹¹⁶ A Tzanakopoulos, *'State Responsibility for "Targeted Sanctions"'* [2019] 113 American Journal of International Law 137

¹¹⁷ European Union: *Council Implementing Regulation* (EU) 2018/88 (22 January 2018); *Council Regulation* (EU) No 269/2014 (17 March 2014); *Council Decision* 2014/145/CFSP (17 March 2014); *Council Implementing Regulation* (EU) 2022/260 (23 February 2022), *United States: Executive Order 13692* (8 March 2015); *Executive Order 13660* (6 March 2014); *Canada: Special Economic Measures* (22 September 2017).

Targeted sanctions – such as freezing of assets – cannot ‘*be said, in general, to infringe substantive human rights*’.¹¹⁸ The rights they may affect are in any case not absolute.¹¹⁹ Assuming the sanctions constituted restrictions to these rights, they were temporary due to the nature of assets freezing¹²⁰ and proportionate with the legitimate aim of ending Operation Shining Star to bring back peace and security to the Gais Peninsula.¹²¹

In addition, their application to the High officials of State does not trigger state immunity.¹²² This is consistent with state practice as targeted sanctions – among which the freezing of assets – have never been contested based on immunity rules.¹²³

2. Freezing of assets of major Ragnellian banks and the seizing of Prydwen Place was lawful under the Treaty

The freezing of assets of major Ragnellian banks and the seizing of Prydwen Place are measures of retorsion. It cannot be said that Aglovale violated the right to property of the Ragnellian banks or Kay Ector since no such right exists under the ICCPR and the ICESCR.¹²⁴

Even if the Court recognized that a right to property exists under international law, this right would not be absolute. Freezing and seizing only consist in temporarily preventing targeted persons’ use of their possession but they do not deprive them of their property.¹²⁵ The

¹¹⁸ M Happold, *Targeted Sanctions and Human Rights*. in M Happold and P Eden (eds), *Economic Sanctions and International Law* (Hart Publishing 2016) 92, 96; C Beaucillon, *Les Mesures Restrictives de l'Union Européenne* (Bruylant 2014) 398-401.

¹¹⁹ A Hofer, *The 'Curiouser and Curiouser' Legal Nature of Non-UN Sanctions: The Case of the US Sanctions against Russia* [2018] 23(1) *Journal of Conflict and Security Law* 10.

¹²⁰ *Džinić v Croatia* App n°38359/13 (ECtHR, 17 May 2016) [61].

¹²¹ *Nada v Switzerland* App n°10593/08 (ECtHR, 12 September 2012) [174].

¹²² T Ruys, *Non-UN Financial Sanctions against Central Banks and Heads of State: in breach of international immunity law?* (EJIL: Talk !, 12 May 2017) <<https://www.ejiltalk.org/non-un-financial-sanctions-against-central-banks-and-heads-of-state-in-breach-of-international-immunity-law/>> accessed 19 November 2022.

¹²³ A Hofer, *Unilateral sanctions as a challenge to the law of state responsibility*. in C Beaucillon (ed), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar Publishing 2021) 191.

¹²⁴ JG Sprankling, *The Global Right to Property* [2014] 52(2) *Columbia Journal of Transnational Law* 468.

¹²⁵ UNGA, *United Nations Convention Against Transnational Organized Crime A/RES/55/25* (2000), Article 2(7); *Raimondo v Italy* App no 12954/87 (ECtHR, 22 February 1994) [27].

provisional character of the sanction combined with its periodical review by Aglovale lead to the conclusion that a potential restriction of the right of property is proportionate.¹²⁶

3. Imposing travel bans was lawful under the Treaty

The travel bans imposed by Aglovale on Ragnell's High officials, senior RPP members and financial supporters are retorsions. No obligation exists under international law for Aglovale to allow Ragnellian nationals to enter its territory.¹²⁷ Aglovale only has the obligation to guarantee the freedom of movement enshrined in Article 12 ICCPR to its nationals and to people residing in Aglovale.¹²⁸ Persons targeted by Aglovale's travel bans do not fall into those categories.

Even if the Court found that the travel bans affect the right to freedom of movement, this right is not absolute.¹²⁹ In the present case, the potential restriction is proportionate to the purpose of halting Operation Shining Star in order to restore international peace and security in the Belt.

4. Freezing the funds of Ragnell's central bank was lawful under the Treaty

Freezing the funds of Ragnell's central bank was a measure of retorsion. Indeed, the measure complied with the relevant rules of international law, namely those reflected in the UN Convention on Jurisdictional Immunities of States and Their Property.¹³⁰

¹²⁶ *Chaparro Álvarez and Lapo Ñíiguez v Ecuador* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 189 (26 November 2008) [188]; DJ Birkett, 'Asset Freezing at the European and Inter-American Courts of Human Rights: Lessons for the International Criminal Court, the United Nations Security Council and States' [2020] 20(3) Human Rights Law Review 517.

¹²⁷ HRC, *General Comment n15*, CCPR/C/GC/15 (2008) [5]. M Bothe, *Compatibility and Legitimacy of Sanctions Regimes*. in N Ronzitti (ed), *Coercive Diplomacy, Sanctions and International Law* (Brill 2016) 39; R Higgins, 'The Right in International Law of an Individual to Enter, Stay in and Leave a Country' [1973] 49(3) International Affairs 344.

¹²⁸ HRC, *General Comment n°27*, CCPR/C/21/REV.1/ADD.9 (1999), [4].

¹²⁹ Haggold, n118, 95.

¹³⁰ UNGA, *United Nations Convention on Jurisdictional Immunities of States and Their Property A/RES/59/38* (2004) ('UNCJI').

The jurisdictional immunity under this convention is only triggered ‘*to the extent that [the measures taken] are linked to judicial proceedings*’.¹³¹ The freezing of funds was enacted by Aglovale’s Parliament,¹³² and not by a ‘court’ in the meaning of the convention.¹³³ The jurisdictional immunity is thus not triggered.

Similarly, as the freezing of assets was decided by the legislative branch, it cannot be qualified as an act of constraint – i.e. acts that are the continuation of a judgement. Therefore, the immunity from enforcement is not triggered.¹³⁴

Aglovale’s freedom to freeze Ragnell’s assets can thus not be restricted by the principle of sovereign immunity.¹³⁵ This is consistent with state practice.¹³⁶

5. Prohibiting companies incorporated in Aglovale and Aglovalean citizens from entering into new contracts with or providing or receiving goods or services from business enterprises operating in Ragnell’s industrial, aviation, transportation, or security sectors was lawful under the Treaty

On 23 April 2022, the sanction enacted by Aglovale’s Parliament against Ragnell included measures prohibiting companies incorporated in Aglovale and Aglovalean citizens to provide goods and services to or receive goods and services from business enterprises, in limited sectors, operating in Ragnell. These measures qualify as retorsions.

The International Law Commission recognized that acts of retorsions include ‘*embargoes of various kinds*’.¹³⁷ The principle of non-intervention does not prohibit the

¹³¹ ILC, *Draft Articles on Jurisdictional Immunities of States and Their Property* A/46/10 (1991), Article 18 [1].

¹³² SAF, [53].

¹³³ UNCJI, Article 2(1).

¹³⁴ Ruys, n122.

¹³⁵ N Ronzitti, *Sanctions as Instruments of Coercive Diplomacy: an International Law Perspective*. in N Ronzitti (ed), *Coercive Diplomacy, Sanctions and International Law* (Brill 2016) 22.

¹³⁶ *Unilateral economic measures as a means of political and economic coercion against developing countries*, Report of the Secretary General A/72/307 (2017) [12]-[14].

¹³⁷ ILC, *Draft Articles on Responsibility of States*, n8, 128.

measures taken by Aglovale as they are not ‘coercive’.¹³⁸ Indeed, the sanctions taken by Aglovale are not a bar for Ragnell to ‘decide freely of its economic system’.¹³⁹ The sanctions only regarded defined and limited Ragnellian sectors. It can therefore not be said that Ragnell lost its possibility to choose its economic system.

Moreover, in *Nicaragua*, the Court stated that the US trade embargo could not be regarded as a breach of the principle of non-intervention. The measure is therefore not wrongful and qualifies as retorsion.¹⁴⁰

B. Alternatively, Aglovale was entitled to suspend its obligations

Even if the Court considers that Aglovale violated its obligations under the Treaty, Aglovale was entitled to suspend these obligations under article 60 VCLT,¹⁴¹ which is declaratory of CIL.¹⁴² Indeed, Aglovale was specially affected by Ragnell’s breaches of the Treaty, namely the destruction of Nant Gateway – which resulted in the interruption of Aglovale’s seaport operations – and the death of eight of its nationals during the attack of Compound Ardan. These actions constituted a material breach of the Treaty, because the provisions breached – namely articles 2(1), 3, 11, 14 and 15 – are essential to the object and purpose of the Treaty,¹⁴³ which is the achievement of peace in the Peninsula.¹⁴⁴

C. Alternatively, Aglovale was entitled to take countermeasures

If the Court finds that one or more of Aglovale’s sanctions are inherently illegal, their wrongfulness is precluded as they are lawful countermeasures.¹⁴⁵ Ragnell’s breaches of

¹³⁸ *Nicaragua*, n6, [241]; Tzanakopoulos, n115, *The Right to Be Free from Economic Coercion*, 4.

¹³⁹ *Nicaragua*, n6, [241]; *Friendly Relations Declaration*, n8, Principle 3.

¹⁴⁰ *Nicaragua*, n6, [245].

¹⁴¹ *Vienna Convention on the Law of Treaties* 1155 UNTS 331 (23 May 1969) (‘VCLT’).

¹⁴² *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (Advisory Opinion) ICJ Rep 16 [94]; *Appeal relating to the jurisdiction of the ICAO Council (India v Pakistan)*, ICJ Rep 46 [38].

¹⁴³ VCLT, Article 60(3)(b).

¹⁴⁴ Treaty, Preamble.

¹⁴⁵ ARSIWA, Article 22.

international law (1) injured Aglovale (2) which responded by taking proportionate countermeasures (3). All the procedural requirements are met (4).

1. Ragnell committed wrongful acts

As demonstrated above, Ragnell committed wrongful acts¹⁴⁶ as it acted in violation of the Treaty in launching Operation Shining Star and in bombing Nant Gateway and Compound Ardan.¹⁴⁷

2. Aglovale is an injured state

Under article 49 ARSIWA, only an ‘*injured state*’ can take countermeasures. Aglovale is an injured State because Ragnell breached an obligation owed to Aglovale (a) and obligations owed to the group of States party to the Treaty, which specially affected Aglovale (b).

a. Ragnell breached an obligation owed to Aglovale

By destroying Nant Gateway, Ragnell breached an obligation owed to Aglovale,¹⁴⁸ namely the obligation to preserve the integrity of the Thruway, which is recognized as vital for Aglovale.¹⁴⁹

b. Ragnell breached obligations owed to the group of State party to Treaty, which specially affected Aglovale

The obligations relating to the demilitarization of the Clarent Belt set forth by Articles 3, 11(1)(c) and 14 of the Treaty were owed to all the parties thereof. In launching Operation Shining Star, Ragnell breached those obligations and Aglovale was specially affected by the bombing of Compound Ardan which resulted in the death of eight of its civilians.¹⁵⁰ In addition, by destroying Nant Gateway, Ragnell condemned Aglovalean nationals to stay in the Belt without basic necessities or humanitarian aid.¹⁵¹

¹⁴⁶ ARSIWA, Article 49(1).

¹⁴⁷ See I, B and C.

¹⁴⁸ ARSIWA, Article 42(a)(i).

¹⁴⁹ Treaty, Article 15.

¹⁵⁰ ARSIWA, Article 42(a)(ii).

¹⁵¹ SAF, [2], [42] and [48].

3. The countermeasures are proportionate

The package of sanctions taken by Aglovale is proportionate. The proportionality of the countermeasures must be assessed regarding the injury suffered, the gravity of the wrongful acts, and the rights in question.¹⁵²

Aglovale's response to devastating injuries caused by Operation Shining Star is limited to targeted and sectorial sanctions which are periodically reviewed.

In any case, the Court should not only consider the quantity but also the quality of the rights in question.¹⁵³ The limited economic measures taken by Aglovale clearly appear proportionate when compared to the principles of international law breached by Ragnell, namely the violation of the prohibition of the use of force – the 'cornerstone' principle of the UN Charter¹⁵⁴ –, principles of IHL, and principles of international human rights law.

The purpose of the measures taken by Aglovale is limited to inducing Ragnell to comply with its obligations under the Treaty by ending Operation Shining Star,¹⁵⁵ so that no more Aglovalean lives are threatened.

4. Procedural requirements are met

All procedural requirements for the taking of countermeasures are met. Aglovale called upon Ragnell to end Operation Shining Star.¹⁵⁶ It took urgent countermeasures and therefore did not have an obligation to notify or offer Ragnell to negotiate.¹⁵⁷ Notifying Ragnell of its intention to freeze assets would have frustrated the purpose of the measures because these assets could have been withdrawn from Aglovalean banks.¹⁵⁸ The measures were also urgent

¹⁵² ARSIWA, Article 51; *Gabčíkovo-Nagymaros*, n47, [85].

¹⁵³ ILC, *Draft Articles on Responsibility of States*, n8, 135 [4]; *Gabčíkovo-Nagymaros*, n47, [85]; *Case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France* (1978) 18 RIAA 416 [83].

¹⁵⁴ *Armed Activities*, n6, [148].

¹⁵⁵ ARSIWA, Article 49; *Gabčíkovo-Nagymaros*, n47, [87]; ILC, *Draft Articles on Responsibility of States*, n7, 135 [7].

¹⁵⁶ SAF, [32], [43], [49] and [52]; ARSIWA, Article 52(1)(a); *Gabčíkovo-Nagymaros*, n47, [84].

¹⁵⁷ ARSIWA, Article 52(2); F Paddeu, *Justification and Excuse in International Law* (Cambridge University Press 2018) 265.

¹⁵⁸ ILC, *Draft Articles on Responsibility of States*, n8, p. 136 [2].

in order to protect the rights of Aglovaleans in the Belt after it became clear that Ragnell had no intention to withdraw its troops.¹⁵⁹

D. Aglovale has no obligation to withdraw the sanctions, to return any property, or to compensate Ragnell for their impact

The Court may only award compensation if an injury is caused by an internationally wrongful act of a State.¹⁶⁰ Since Aglovale has committed no internationally wrongful act in enacting sanctions legislation, it has no obligation to compensate Ragnell for their impact. For the same reason, Aglovale has no obligation to withdraw the sanctions or to return any property.¹⁶¹

Even if the Court considered that Aglovale has committed an internationally wrongful act by enacting the sanctions, Aglovale has no obligation to compensate as the damage caused to Ragnell is ‘*too indirect, remote and uncertain to be appraised*’.¹⁶² The consequences on Ragnell’s economy are uncertain as the report of the International Monetary Fund contained mere predictions.¹⁶³ Moreover, because numerous other states took measures similar to those taken by Aglovale,¹⁶⁴ the part in Ragnell’s injury for which Aglovale would be responsible cannot be assessed.

¹⁵⁹ SAF, [51]-[52].

¹⁶⁰ ARSIWA, Articles 31 and 36; *Armed activities (Reparations)*, n47, [93].

¹⁶¹ ARSIWA, Article 30.

¹⁶² ILC, *Draft Articles on Responsibility of States*, n8, p. 92 [10]; *Trail Smelter arbitration (US/Canada)* (1938 and 1941) 3 RIAA 1905, 1931.

¹⁶³ SAF, [55].

¹⁶⁴ SAF [54].

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

Ragnell violated its Treaty obligations in transporting hazardous plastic waste to Etna (A). Aglovale complied with the Treaty when it conditioned cooperation regarding treatment of the waste on the termination of Operation Shining Star (B).

A. Ragnell violated its Treaty obligations in transporting hazardous plastic waste to Etna

By exporting contaminated plastic waste to Etna, Ragnell breached its obligation to prevent environmental pollution and harm under Article 28 of the Treaty (1). Necessity may not be invoked by Ragnell to preclude the wrongfulness of its actions (2).

1. Ragnell violated article 28 of the Treaty

Article 28 of the Treaty provides an obligation for Ragnell to use its ‘*best practicable means*’ to prevent environmental pollution and harm.

The breach of an obligation to prevent may only be demonstrated if the event that the State must prevent has occurred.¹⁶⁵ In the present case, pollution and harm to the physical and marine environment around the Gais Peninsula occurred (a). Ragnell did not use its best practicable means to prevent this harm (b).

a. Transfer of the waste caused environmental pollution and harm in and surrounding the Gais Peninsula

On 24 January 2022, Ragnell began shipping contaminated plastic waste to Etna for disposal. This waste included non-biodegradable and unsorted polymers such as polyethylene (‘PE’) and polyvinyl chloride (‘PVC’).¹⁶⁶ The shipment resulted in incineration and dumping of the plastic

¹⁶⁵ ARSIWA, Article 14(3); *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)* (Merits) (2007) ICJ Rep 43 [431].

¹⁶⁶ SAF, [38].

waste into landfills and the ocean.¹⁶⁷ These methods of disposal are harmful to the environment. For instance, the incineration of waste is a source of unintentional formation and release of persistent organic pollutants into the environment,¹⁶⁸ which are transported through air and water and deposited far from their place of release, where they accumulate in territorial and aquatic ecosystems.¹⁶⁹ In addition, plastics such as PE and PVC disintegrate in the marine environment into microplastics¹⁷⁰ which have adverse effects on the marine ecosystem,¹⁷¹ notably for marine species.¹⁷² Thus, it is established that environmental harm occurred.

b. Ragnell did not use its best practicable means to prevent the harm that occurred

Article 28 of the Peace Treaty provides an obligation for Ragnell to use its best practicable means to prevent environmental pollution and harm. This provision must be interpreted in accordance with the ordinary meaning to be given to its terms, in their context and in light of the Treaty's object and purpose.¹⁷³ An ordinary meaning of the obligation to prevent environmental harm comprises conducting environmental impact assessments where there is a

¹⁶⁷ SAF, [45].

¹⁶⁸ *Stockholm Convention on Persistent Organic Pollutants*, UNEP/POPS/CONF/4, App. II (22 May 2001) ('Stockholm Convention'), Annex C, Part II, a); World Economic Forum, *Plastics, the Circular Economy and Global Trade*, White Paper (2020) 6; UNEP, *Technical guidelines for the identification and environmentally sound management of plastic wastes and for their disposal*, CHW 6/21 (2002), 33.

¹⁶⁹ *Stockholm Convention*, Preamble.

¹⁷⁰ MK Sangale, *Generation and Management of Macroplastic Waste*. in, *Impact of Plastic Waste on the Marine Biota* (Springer 2022) 22.

¹⁷¹ *Ibid.*

¹⁷² UNEP, *Marine Plastic Debris and Microplastics - Global Lessons and Research to Inspire Action and Guide Policy Change* (2016) 88.

¹⁷³ VCLT, Article 31(1) ; *Case concerning Kasikili/Sedudu Island (Botswana v Namibia)* (1999) ICJ Rep 1045 [18]; *Case concerning Oil Platforms (Iran v US)* (Preliminary objections) (1996) ICJ Rep 803 [23].

risk of harm¹⁷⁴ (1) and mitigating environmental damage while it occurs¹⁷⁵ (2). Ragnell breached both of these obligations.

i. Ragnell failed to conduct an environmental impact assessment

When Ragnell began to ship the waste to Etna, it did so without proceeding to any verifications regarding Etna's waste treatment infrastructures. It was later revealed that Etna's facilities were not appropriately equipped to dispose of such quantities of waste in an environmentally sound manner.¹⁷⁶

According to the Court in *Pulp Mills*, an environmental impact assessment ('EIA') must be conducted prior to the implementation of a project which creates a risk of environmental harm.¹⁷⁷ The obligation to conduct an EIA requires a State to inform itself of all factual and legal components that foreseeably relate to the contemplated project.¹⁷⁸ Furthermore, the EIA must include the cumulative impact of this project with that of any associated projects.¹⁷⁹ In the present case, the transfer and disposal of waste are associated projects which create a risk for the environment. Consequently, Ragnell had the obligation under Article 28 to inform itself of all factual components relating to the transfer and disposal of the waste, including the suitability of Etna treatment facilities.

By failing to verify Etna's capacity to dispose of the waste in an environmentally sound manner prior to the shipment of the waste, Ragnell breached its obligation to conduct an EIA regarding the transfer and disposal of the waste.

¹⁷⁴ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (2010) ICJ Rep 14 [204]; ILC, *Draft articles on Prevention of Transboundary Harm from Hazardous Activities* A/56/10 (2001), Article 7; *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017) [157]-[161].

¹⁷⁵ ILC, *Draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities* A/61/10 (2006), Article 5(d).

¹⁷⁶ SAF, [45].

¹⁷⁷ *Pulp Mills*, n174, [205]; ILC, *Draft articles on Prevention of Transboundary Harm*, n174, Article 7(1); *The Environment and Human Rights*, Advisory Opinion, n174, [162].

¹⁷⁸ ILC, *Draft articles on Prevention of Transboundary Harm*, n174, Article 3(10).

¹⁷⁹ *The Environment and Human Rights*, Advisory Opinion, n174, [165]; UNEP, *Environmental Impact Assessment and Strategic Environmental Assessment : Towards an Integrated Approach* (2004) 52.

ii. Ragnell failed to mitigate the environmental damage that was occurring

After ILSA's first report was issued on 22 February 2022,¹⁸⁰ Ragnell knew – or should have known¹⁸¹ – that the transfer of large quantities of plastic waste to Etna was causing harm and pollution to the environment of the Gais Peninsula. The obligation to prevent environmental harm includes the obligation to take all steps to mitigate damage that is already occurring, even if all preventive measures have been taken.¹⁸² In this case, instead of stopping the transfer of waste to Etna and thus reducing the potential quantity of waste disposed of in a harmful manner, Ragnell continued to ship the remaining waste, ignoring ILSA's alarming report.

2. Necessity cannot be invoked by Ragnell to preclude wrongfulness

Necessity may only be invoked in exceptional circumstances.¹⁸³ The actions taken must be necessary to safeguard an essential State interest against a grave and imminent peril (a), without impairing the interests of the international community (b). The State invoking a situation of necessity cannot have contributed to creating it (c).¹⁸⁴ None of these conditions are met by Ragnell.

a. Exporting the waste to Etna was not the only way for Ragnell to safeguard an essential interest against a grave and imminent peril

i. There was no grave and imminent peril

The potential threat posed by the accumulation of waste in Tintagel Park did not constitute a grave and imminent peril to human health or the environment. Indeed, a grave and imminent peril must be objectively established and not merely apprehended as possible.¹⁸⁵ Industry

¹⁸⁰ SAF, [45].

¹⁸¹ *Pulp Mills*, n174, [205].

¹⁸² *The Environment and Human Rights*, Advisory Opinion, n174, [172]; ILC, *Draft Principles on the allocation of loss*, n175, Article 5(d).

¹⁸³ ILC, *Draft Articles on Responsibility of States*, n8, Article 25 (2) and (14); *Gabčíkovo-Nagymaros*, n47, [51].

¹⁸⁴ ILC, *Draft Articles on Responsibility of States*, n8, Article 25; *Gabčíkovo-Nagymaros*, n47, [51]-[57].

¹⁸⁵ ILC, *Draft Articles on Responsibility of States*, n8, Article 25(15); *Gabčíkovo-Nagymaros*, n47, [54].

experts only mentioned the possibility of a danger for public health and the environment.¹⁸⁶ It was not established that the realization of the peril was certain and inevitable on the long run.¹⁸⁷

ii. Exporting waste to Etna was not the only way to safeguard Ragnell's essential interests

Ragnell had other lawful means at its disposal to safeguard its essential interests. It could have shipped the waste to a country whose infrastructures were adapted. Alternatively, Ragnell could have stored the waste in tear-resistant and leakproof containers to avoid danger, as is recommended for infectious health-care wastes¹⁸⁸ such as the ones accumulating in Tintagel.¹⁸⁹ Ragnell could also have ceased its illegal military operation in the Belt in order to pursue negotiations with Aglovale on the question of the treatment of the waste.

b. Exporting the waste to Etna impaired an essential interest of the international community as a whole

The International Law Commission considers the protection of the environment to be an essential interest of all States.¹⁹⁰ Obligations which are, by their very nature, the concern of all States, are owed to the international community as a whole.¹⁹¹ Ragnell impaired the essential interest of all States to protect the environment when it exported hazardous plastic waste to Etna without respecting its obligation to prevent the environmental harm that occurred.¹⁹²

c. In any event, Ragnell contributed to the situation of necessity

Ragnell substantially¹⁹³ contributed to the situation of necessity. Indeed, it helped to bring about the situation of continued fighting in the Belt by launching Operation Shining Star on

¹⁸⁶ SAF, [38].

¹⁸⁷ *Gabčíkovo-Nagymaros*, n47, [54].

¹⁸⁸ UNEP, *Technical guidelines on the environmentally sound management of biomedical and healthcare wastes*, CHW/6/20 (2002), 20.

¹⁸⁹ SAF, [38].

¹⁹⁰ Yearbook of the International Law Commission, 1980, Vol II, Part 2, p. 39, (14); *Nuclear Weapons*, n19, [29].

¹⁹¹ *Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* [1970] ICJ Rep 3 [33].

¹⁹² See IV, A, 1, b.

¹⁹³ ILC, *Draft Articles on Responsibility of States*, n8, Article 25(20).

the territory of Balan.¹⁹⁴ Ragnell's forces were involved in the fighting which caused the destruction of the central floor of the treatment plant of the Plastics Conglomerate and in turn rendered the treatment of the waste in Tintagel Park impossible.¹⁹⁵ Ragnell can thus not rely on the situation in the Belt as a circumstance precluding wrongfulness.¹⁹⁶

B. Aglovale complied with the Treaty in conditioning cooperation regarding treatment of the waste on the termination of Ragnell's aggression

Aglovale respected its obligation under article 28 of the Treaty to take all steps that were necessary or reasonably requested by other Parties to cooperate in good faith in reducing the risk or impact of significant harm to the environment (1). In any case, Aglovale was entitled to suspend its obligation to cooperate as a consequence of Ragnell's breach of the Treaty (2). Even if it were considered that Aglovale breached Article 28 of the Treaty, Aglovale's actions were valid countermeasures (3)

1. Aglovale complied with its obligation to cooperate in good faith

The fact that the matter of the transfer of waste was negotiated between Ragnell and Aglovale at a certain time does not give rise to an obligation for Aglovale to pursue negotiations.¹⁹⁷ Neither can it be inferred from the commitment of the Parties to resume negotiations that Aglovale intended to be legally bound to do so.¹⁹⁸ In any case, after Ragnell destroyed Nant Gateway¹⁹⁹, its request to pursue negotiations was no longer reasonable or necessary.²⁰⁰ Indeed, transporting waste to Aglovale was rendered almost impossible by Ragnell's actions²⁰¹, making any future negotiations on the matter futile.²⁰²

¹⁹⁴ SAF, [31].

¹⁹⁵ SAF, [37].

¹⁹⁶ *Gabčíkovo-Nagymaros*, n47, [57].

¹⁹⁷ *Obligation to negotiate access to the pacific ocean (Bolivia v Chile)* (Merits) (2018) ICJ Rep 507 [91].

¹⁹⁸ Ibid.

¹⁹⁹ SAF, [41].

²⁰⁰ Treaty, Article 28.

²⁰¹ SAF, [41].

²⁰² *Case concerning application of the international convention on the elimination of all forms of racial discrimination (Georgia v Russia)* (2011) ICJ Rep 70 [159].

Good faith requires Parties to act in accordance with the purpose of the Treaty and with their intentions while concluding it.²⁰³ Yet the purpose of the Treaty is first and foremost the achievement of peace in the Gais Peninsula.²⁰⁴ Thus, in conditioning cooperation regarding the treatment of waste on the termination of Ragnell's illegal military operation, Aglovale acted consistently with the purpose of the Treaty which was agreed upon by the Parties.

2. In any case, Aglovale was entitled to suspend the operation of the Treaty as a consequence of its breach by Ragnell

Aglovale, being specially affected by the attack on Nant Gateway,²⁰⁵ was entitled to partly suspend the operation of the Treaty in the relations between itself and Ragnell under Article 60 ARSIWA.²⁰⁶ Indeed, the attack constituted a material breach of the Treaty.²⁰⁷ Aglovale appropriately notified Ragnell of its intent to end cooperation and mentioned the reasons therefor.²⁰⁸

3. In the event of a breach, Aglovale's refusal to pursue negotiations was a valid countermeasure

Aglovale, as a State injured by Ragnell's illegal destruction of Nant Gateway,²⁰⁹ was entitled to the non-performance of its obligation to cooperate, in order to induce Ragnell to comply with its own obligations,²¹⁰ namely the obligation to halt its military activities in the Belt. The refusal to pursue negotiations was an urgent countermeasure which was necessary to preserve the rights of Aglovale and of its citizens, who were trapped in the Belt after the bombing of Nant Gateway, with nearly no access to basic necessities and humanitarian aid.²¹¹

²⁰³ *Gabčíkovo-Nagymaros*, n47, [142].

²⁰⁴ Treaty, Preamble.

²⁰⁵ See III, B.

²⁰⁶ VCLT, Article 60 (2)(b); *Namibia*, n142, [94].

²⁰⁷ See III, B.

²⁰⁸ SAF, [43].

²⁰⁹ See III, C, 2, b.

²¹⁰ ARSIWA, Article 49.

²¹¹ SAF, [42].

PRAYER FOR RELIEF

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

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

**IN THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS**

**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

MEMORIAL FOR THE RESPONDENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	vi
STATEMENT OF JURISDICTION.....	xiii
QUESTIONS PRESENTED	xiv
STATEMENT OF FACTS.....	xv
SUMMARY OF PLEADINGS	xix
PLEADINGS	1
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
A. In launching Operation Shining Star, Ragnell complied with the UN Charter and the principles of conventional and customary international law governing friendly relations among states	1
1. Ragnell had the right to self-defense	1
<i>a. The accumulation of UAC raids constituted an armed attack against Ragnell.....</i>	<i>2</i>
<i>b. Self-defense may be invoked in response to an armed attack perpetrated by a non-state actor.....</i>	<i>2</i>
2. Ragnell complied with CIL’s self-defense requirements.....	3
<i>a. Ragnell’s military intervention was necessary to respond to the armed attack.....</i>	<i>4</i>
<i>b. Ragnell’s actions were proportionate.....</i>	<i>4</i>
3. Ragnell notified the United Nations Security Council.....	5
B. Ragnell complied with applicable principles of IHL	5
1. Ragnell complied with applicable principles of IHL by attacking Nant Gateway	5
<i>a. The attack respected the principle of distinction</i>	<i>5</i>
<i>b. The attack was proportionate</i>	<i>6</i>

2. Ragnell complied with applicable principles of IHL by attacking Compound Ardan	6
C. Ragnell has no obligation to compensate Aglovale for the deaths of the eight Aglovalean aid workers	7
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	9
A. Ragnell complied with the humanitarian law of non-international armed conflicts....	9
1. The confrontation in the Clarent Belt is a non-international armed conflict	9
<i>a. The armed conflict is regulated by the principles enshrined in common article 3</i>	<i>9</i>
<i>b. No additional rules of IHL apply to the conflict.....</i>	<i>10</i>
<i>i. The armed conflict is not regulated by Additional Protocol II.....</i>	<i>10</i>
<i>ii. The armed conflict is not regulated by article 1(4) of Additional Protocol I.....</i>	<i>10</i>
<i>iii. The armed conflict is not regulated by the law of occupation.....</i>	<i>11</i>
2. Ragnell complied with common article 3 and customary humanitarian law.....	12
<i>a. Ragnell’s employment of UAC detainees constituted regular labour.....</i>	<i>12</i>
<i>b. Ragnell had the obligation to transfer the UAC detainees.....</i>	<i>12</i>
B. Alternatively, Ragnell complied with Geneva Convention III.....	13
1. The employment of UAC detainees to load waste onto ships complied with the relevant standards of safety	13
2. The detention of UAC detainees in Camlann was justified by their own security interests	14
C. Ragnell complied with the ICCPR and the ICESCR.....	14
D. In any event, there were circumstances which precluded the wrongfulness of Ragnell’s actions.....	15
1. Distress precluded the wrongfulness of the transfer of UAC detainees.....	15
2. Necessity precluded the wrongfulness of the employment of UAC detainees to load waste onto ships.....	16

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	17
A. Aglovale was not entitled to take unilateral sanctions.....	17
1. Article 2 of the Treaty suffers no exceptions	17
2. Aglovale was not entitled to suspend its obligations	18
<i>a. Aglovale was not a party specially affected by a material breach.....</i>	<i>18</i>
<i>b. The obligations which were allegedly breached were not interdependent obligations</i>	<i>19</i>
3. In any case, Aglovale was not entitled to take countermeasures.....	19
<i>a. Aglovale is not an injured State.....</i>	<i>19</i>
<i>b. There is no right to take countermeasures for non-injured States</i>	<i>19</i>
<i>c. The allegedly wrongful act was not of a continuing nature.....</i>	<i>20</i>
<i>d. In any event, Aglovale failed to notify Ragnell prior to taking the sanctions</i>	<i>20</i>
B. None of the sanctions Aglovale took were lawful as such.....	20
1. Aglovale violated Article 2(1) of the Treaty by freezing the bank accounts of the President, his ministers and senior RPP members and financial supporters	20
2. Aglovale breached article 2(2) of the Treaty by imposing travel bans on the same individuals.....	21
3. Aglovale breached Article 2(1) of the Treaty by freezing the assets of Ragnell's central bank.....	22
4. Aglovale breached Article 2(1) of the Treaty by freezing assets of major Ragnellian banks and seizing Prydwen place	22
5. Aglovale breached articles 2(2) and 2(3) of the Treaty by prohibiting Aglovalean companies and citizens from entering in business with companies operating in Ragnell	23
<i>a. Aglovale violated Article 2(3) of the Treaty</i>	<i>23</i>

<i>b. Aglovale violated Article 2(2) of the Treaty</i>	24
6. The regime of sanctions is disproportionate	24
C. Aglovale must withdraw the sanctions and compensate Ragnell for their impact	25
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 WHEN IT WAS FORCED BY THAT REFUSAL TO EXPORT THE WASTE TO ETNA FOR PROCESSING AND DISPOSAL	26
A. Aglovale violated the Treaty by refusing to cooperate in good faith in the management of plastic waste	26
1. Aglovale breached its obligation to cooperate in good faith	26
2. Aglovale was not entitled to suspend its obligation to cooperate.....	27
3. Aglovale’s refusal to pursue negotiations is not a lawful countermeasure.....	27
B. Ragnell complied with its obligations when it was forced by Aglovale’s refusal to export the waste to Etna for processing and disposal	28
1. Ragnell complied with article 28 in exporting the waste to Etna	28
<i>a. The measure was taken to protect human health and the environment in the Clarent Belt</i>	28
<i>b. In any case, Ragnell complied with its obligation to prevent environmental pollution and harm</i>	29
<i>i. There is no sufficient evidence that environmental pollution and harm occurred</i> ...	29
<i>ii. Even if harm was caused, Ragnell did not breach its obligation to prevent it</i>	29
2. In any event, necessity precludes the wrongfulness of Ragnell’s actions	31

INDEX OF AUTHORITIES

Treaties and Conventions

<i>Charter of the United Nations</i> (24 October 1945) 1 UNTS 16 ('UN Charter').....	1
<i>Geneva Convention Relative to the Treatment of Prisoners of War</i> (12 August 1949) 75 UNTS 135 ('GCIII').....	9, 13, 14
<i>International Covenant on Civil and Political Rights</i> (23 March 1976) 999 UNTS 171 (‘ICCPR’).....	9, 14, 21, 22
<i>International Covenant on Economic, Social and Cultural Rights</i> 993 UNTS 3 (16 December 1966) ('ICESCR').....	9, 14
<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I)</i> (8 June 1977) (‘API’).....	10
<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)</i> (8 June 1977) (‘APII’)	10, 12
<i>Treaty on European Union</i> (7 February 1992) OJ C 326/13.....	3
<i>Trilateral Treaty of Lasting Peace Among the State of Ragnell, the Federation of Balan, and the Kingdom of Aglovale</i> (16 September 1958) ('Treaty')	1, 11, 18, 26
<i>Vienna Convention on the Law of Treaties</i> 1155 UNTS 331 (23 May 1969) ('VCLT')18, 19, 27, 30	

United Nations Resolutions and Other International Documents

Human Rights Committee ('HRC'), <i>General Comment n°27</i> , CCPR/C/GC/27 (1999)	21
---	----

International Committee of the Red Cross ('ICRC'), <i>Commentary on Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949</i> (2020) ('ICRC Commentary GCIII')	9, 13, 14
ICRC, <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949</i> (1987) ('ICRC Commentary API')	11
ICRC, <i>Customary International Humanitarian Law</i> ('CIHL') (2005) Vol II	5, 6, 7, 12, 13
International Law Commission ('ILC'), <i>Draft articles on Prevention of Transboundary Harm from Hazardous Activities, A/56/10</i> (2001)	30
ILC, <i>Draft Articles on Responsibility of States for Internationally Wrongful Acts A/56/10</i> (2001)	7, 8, 15, 16, 28, 31
ILC, <i>Draft Articles on the Law of Treaties, Yearbook of the International Law Commission</i> (1966) Vol II	19
Institute of International Law, <i>Present Problems of the Use of Armed Force in International Law A. Self-defence, Res 10A</i>	3
Inter-American Commission on Human Rights, OEA/Ser.L/V/II.98	7
United Nations General Assembly ('UNGA'), <i>Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV)</i> (1970)	21
UNGA, <i>Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514(XV)</i> (1960)	11
UNGA, <i>Declaration on the Inadmissibility of Intervention in the domestic affairs of States and the Protection of their Independence and Sovereignty, A/RES/2131(XX)</i> (1965)	21
UNGA, <i>Human rights and unilateral coercive measures, A/RES/27/21</i> (2014)	24
UNGA, <i>Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba A/RES/61/11</i> (2006)	23

UNGA, <i>Responsibility of States for Internationally Wrongful Acts</i> , A/RES/56/83 (2001) (‘ARSIWA’), Article 24(1).....	15, 20, 25, 27, 29, 31
UNGA, <i>United Nations Convention of Jurisdictional Immunities of States and Their Property</i> A/59/38 (2004).....	22
UNGA, <i>Universal Declaration of Human Rights</i> (‘UDHR’), A/RES/217(III) (1948)	22, 23
United Nations Security Council (‘UNSC’), <i>Threats to International Peace and Security</i> <i>Caused by Terrorist Acts</i> , S/RES/1368 (2001).....	2
<i>Yearbook of the International Law Commission</i> (1980) Vol. II Part 2.....	31
<i>Yearbook of the International Law Commission</i> (2001) Vol. II Part 2.....	19
International Decisions	
<i>Accordance with International Law of the Unilateral Declaration of Independence in Respect</i> <i>of Kosovo</i> (Advisory Opinion) (2010) ICJ Rep 403	11
<i>Ahmadou Sadio Diallo (Guinea v. DRC)</i> (2007), ICJ Rep 582.....	25
<i>Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)</i> (1972) ICJ Rep 46	27
<i>Arbitration Between the Republic of Croatia and the Republic of Slovenia</i> (Permanent Court of Arbitration) (Partial Award) (2016)	18
<i>Armed Activities on the Territory of the Congo (DRC v. Uganda)</i> (Merits) (2005) ICJ Rep 168	2, 3, 4, 11
<i>Armed Activities on the Territory of the Congo (DRC v. Uganda)</i> (Reparations) (2022) ICJ Rep 2.....	7
<i>Case concerning Application of the Convention on the Prevention and Punishment of the Crime</i> <i>of Genocide (Bosnia and Herzegovina v Yugoslavia)</i> (Merits) (2007) ICJ Rep 43.....	29
<i>Case concerning Oil Platforms (Iran v US)</i> (Merits) (2003) ICJ Rep 161.....	2, 3, 29
<i>Džinić v Croatia</i> App no 38359/13 (ECtHR, 17 May 2016).....	23

Eritrea-Ethiopia Claims Commission, <i>Partial Award: Central Front Ethiopia's Claim 2</i> (28 April 2004).....	12, 13
<i>Fisheries Jurisdiction (UK v Iceland)</i> (Merits) (1974) ICJ Rep 3.....	26
<i>Gabčíkovo-Nagymaros Project (Hungary/Slovakia)</i> (1997) ICJ Rep 88	15, 31
<i>Jurisdictional Immunities of the State (Germany v Italy)</i> (2012) ICJ Rep 99 [56]; <i>Certain Iranian assets (Iran v US)</i> (2019) ICJ Rep 7	22
<i>LaGrand Case (Germany v US)</i> (2001) ICJ Rep 466	8
<i>Lake Lanoux Arbitration (France v Spain)</i> (Award) (1957) XII RIAA 281	27
<i>Legal consequences for States of the continued presence of South Africa in Namibia</i> (Advisory Opinion) [1971] ICJ Rep 16	18, 27
<i>Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory</i> (Advisory Opinion) (2004) ICJ Rep 136	3, 11, 15
<i>Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965</i> (Advisory Opinion) (2019) ICJ Rep 95	11
<i>Legal Status of Eastern Greenland (Denmark v Norway)</i> (PCIJ) (1933) Ser A/B No 53	29
<i>Legality of the Threat or Use of Nuclear Weapons</i> (Advisory Opinion) (1996) ICJ Rep 226.3, 5	
<i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US)</i> (Merits) (1986) ICJ Rep 14.....	2, 3, 19, 21
<i>Nuclear Tests Case (Australia v France)</i> (1974) ICJ Rep 253.....	27, 30
<i>Prosecutor v Kordić & Čerkez</i> , ICTY-95-14/2 (26 February 2001)	12
<i>Prosecutor v Naletilić and Martinović</i> , IT-98-34-T (31 March 2003)	11
<i>Prosecutor v Tadić</i> , IT-94-1-A (15 July 1999).....	10
<i>Prosecutor v. Galić</i> (Appeal Judgement), IT-98-29-A (30 November 2006)	5
<i>Prosecutor v. Haradinaj</i> , IT-04-84 (29 November 2012)	10

<i>Prosecutor v. Kupreškić</i> , ICTY-95-16-T (14 January 2000).....	6, 7
<i>Pulp Mills on the River Uruguay (Argentina v Uruguay)</i> (2010) ICJ Rep 2010.....	29, 30
<i>Rainbow Warrior (New Zealand v France)</i> (Arbitration Tribunal) (1990) 82 ILR 499.....	15
<i>The Corfu Channel Case (UK and Northern Ireland v Albania)</i> (Merits) (1949) ICJ Rep 5..	29
<i>The Mavrommatis Jerusalem Concessions (Greece v UK)</i> (PCIJ) (1925) Ser A No 5	29

Treatises, Books and Chapters

B Deen et. al., <i>Uncharted and uncomfortable in European defence, The EU's mutual assistance clause of Article 42(7)</i> (Clingendael 2022).....	3
C Greenwood, 'Jus ad Bellum and Jus in Bello in the Nuclear Weapons Advisory Opinion'. in L Boisson de charzounes et. al. (ed), <i>International Law – The International Court of Justice and Nuclear Weapons</i> (Cambridge University Press 1999)	4
C Greenwood, <i>Customary international law and the First Geneva Protocol of 1977 in the Gulf Conflict</i> . in P Rowe (ed), <i>The Gulf War 1990-1991 in International and English Law</i> (Routledge 1993)	5
C Henderson, <i>The Use of Force and International Law</i> (Cambridge University Press 2018)..	3
D Akande, <i>Classification of Armed Conflicts: Relevant Legal Concepts</i> . in E Wilmhurst (ed), <i>International Law and the Classification of Conflicts</i> (Oxford University Press 2012).....	10
D Carron, <i>L'acte déclencheur d'un conflit armé international</i> (Shultess 2016)	12
DH Joyner, <i>International Legal Limits on the Ability of States to Lawfully Impose International Economic/Financial Sanctions</i> . in N Ronzitti (ed), <i>Coercive Diplomacy, Sanctions and International Law</i> (Brill 2016)	24
I Wuerth, <i>Immunity of Central Bank Assets</i> . in T Ruys (ed), <i>Immunities and International Law</i> (Cambridge University Press 2019).....	22

J Pejic, <i>Status of Armed Conflicts</i> . in E Wilmshurst and S Breau (eds), <i>Perspective on the ICRC Study on Customary International Humanitarian Law</i> (Cambridge University Press 2009)	10
K Alexander, <i>Economic Sanctions: Law and Public Policy</i> (Palgrave Macmillan 2009).....	24
M Sassòli, <i>International Humanitarian Law – Rules, Controversies, and Solutions to Problem Arising in Warfare</i> (Edward Elgar 2019).....	5
R Mohamad, <i>Unilateral Sanctions in International Law: A Quest for Legality</i> . in MR Bassett and AZ Marossi (eds), <i>Economic sanctions under international law: Unilateralism, multilateralism, legitimacy, and consequences</i> (Springer 2015)	23, 24
S Kräehenmann, <i>Protection of Prisoners in Armed Conflict</i> . in D Fleck (ed), <i>The Handbook of International Humanitarian Law</i> (Oxford University Press 2013)	12
S Sanna, <i>Treatment of Prisoners of War</i> . in A Clapham et al.(ed), <i>The 1949 Geneva Conventions – A commentary</i> (Oxford University Press 2015).....	13
T Ruys, <i>'Armed Attack' and Article 51 of the UN Charter</i> (Cambridge University Press 2010)	2
WH Boothby, <i>The Law of Targeting</i> (Oxford University Press 2012).....	5, 7
 Articles	
DJ Birkett, <i>'Asset Freezing at the European and Inter-American Courts of Human Rights: Lessons for the International Criminal Court, the United Nations Security Council and States'</i> [2020] 20(3) <i>Human Rights Law Review</i>	21
E Castellarin, <i>'Le gel des avoirs d'une banque centrale étrangère comme réaction décentralisée à un fait internationalement illicite : rétorsion ou contremesure ?'</i> [2012] 25 <i>Hague Yearbook of International Law</i>	21
G Travalio and J Altenburg, <i>'Terrorism, State Responsibility, and the Military Use of Force'</i> [2003] 4(1) <i>Chicago Journal of International Law</i>	3

JG Sprankling, <i>'The Global Right to Property'</i> [2014] 52(2) Columbia Journal of Transnational Law	21, 22
KN Trapp, <i>'Back to Basics: Necessity, Proportionality, and the Right to Self-Defence Against Non-State Terrorist Actors'</i> [2007] 56 ICLQ.....	3
L. A McNair, <i>'The General Principles of Law Recognized by Civilized Nations'</i> [1957] 33 British Year Book of International Law	21
M Jamnejad and M Wood, <i>'The Principle of Non-intervention'</i> [2009] 22(2) Leiden Journal of International Law	22
R Wedgwood, <i>'The ICJ Advisory Opinion on the Israeli Security Fence and the Limits of Self-Defense'</i> [2005] 99(1) American Journal of International Law	3
S Reinhold, <i>'Good faith in International Law'</i> [2013] UCL Journal of Law and Jurisprudence	25
TM Franck, <i>'Terrorism and the Right of Self-Defense'</i> [2001] 95(4) American Journal of International Law	2
Y Dinstein, <i>'Legitimate Military Objective under the Current Jus In Bello'</i> [2002] 78(1) International Law Studies	5

Other Authorities

<i>Actes de la conférence diplomatique sur la réaffirmation et le développement du droit international humanitaire applicable dans les conflits armés</i> , Genève, 1974 - 1977 Vol. 09 : comptes rendus analytiques de la Commission I : troisième et quatrième sessions.....	10
Letter from the representative of Belgium to the Secretary-General, S/2001/967 (8 October 2001)	3
Organization of American States (24 th Meeting of Consultation of Ministers of Foreign Affairs), OEA/Ser.F/II..24RC.24/Res.1/01.....	3

STATEMENT OF JURISDICTION

The State of Ragnell ('Ragnell') has instituted proceedings against the Kingdom of Aglovale ('Aglovale') before the International Court of Justice ('the Court') with regard to a dispute concerning alleged violations of the Trilateral Treaty of Lasting Peace Among the State of Ragnell, the Federation of Balan ('Balan'), and the Kingdom of Aglovale signed on 16 September 1958. Aglovale has filed counterclaims under Article 80 of the Rules of the Court.

The parties agreed that Aglovale would appear before the Court as Applicant and Ragnell as Respondent. They agreed that a dispute exists with respect to each of the claims and counterclaims, and that all counterclaims were directly connected to the subject matter of at least one of the claims within the meaning of Article 80 of the Rules of Court.

The Court has jurisdiction over the subject matter of the claims and counterclaims pursuant to Article 36(1) of the Court's Statute. Indeed, Article 41 of the Treaty provides that any dispute concerning an alleged violation of obligations under the Treaty or the interpretation thereof, which cannot be settled by negotiation or other means, may be submitted to the Court. The Parties tried to settle the dispute through negotiations, but have failed to reach an agreement. Articles 2 and 28 of the Treaty incorporate other customary and conventional international obligations into the Treaty. The alleged violations of these obligations may thus also be submitted to the Court pursuant to Article 41 of the Treaty.

In addition, Article 41 of the Treaty provides that the dispute may be submitted to the Court by any Party to the Treaty. Accordingly, Aglovale and Ragnell have standing before the Court to present the claims and counterclaims.

QUESTIONS PRESENTED

The State of Ragnell respectfully asks this Honorable Court:

- I. *Whether* the initiation of “Operation Shining Star” and the targeting of Nant Gateway and Compound Ardan were in conformity with the Treaty, and whether they give rise to any obligation to compensate.
- II. *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.
- III. *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
- IV. *Whether* Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, and whether Ragnell complied with its obligations when it was forced by that refusal to export the waste to Etna for processing and disposal.

STATEMENT OF FACTS

The Gais Peninsula and the Clarent Belt

Aglovale, Ragnell and Balan are the three countries composing the Gais Peninsula. The Clarent Belt, a mountainous and largely inaccessible region, was recognized until the early 1950s as part of the territory of Balan. On the only habitable portion of the Belt known as ‘Tintagel Coast’, an industrial park (‘Tintagel Park’) was established in the early 20th century. The factories in Tintagel Park were nationalized by Ragnell in 1954.

In 1915, an agreement was concluded between Aglovale and Balan for the construction of the Eamont Thruway, a railway and road system that crossed the Clarent Belt underground from the seaport and connected to highways through Balan and into Aglovale. The Thruway is the only land route between the seaport and Aglovale.

Near the Gais Peninsula lies Etna, an island located about 450 nautical miles from Tintagel Park.

The Clarent war and the Trilateral Treaty of Lasting Peace

In 1951, heightened tensions between Balan and Ragnell escalated into the Clarent War. After two years of negotiations in Stirling (Aglovale’s capital), Ragnell, Balan and Aglovale signed the Trilateral Treaty of Lasting Peace (‘the Treaty’). Through the Treaty, which confirms Balan’s sovereignty over the Belt, Balan agreed to lease the territory of the Clarent Belt to Ragnell for 65 years, during which Ragnell would be responsible for maintaining public order and providing government services. The Treaty was widely approved of in all three states, except by the group of Balani military veterans ‘Unityk Ai Chyvon’ (‘UAC’).

‘Operation Shining Star’

While UAC’s activities were pacific at first, they became violent after the election of Dan Vortigern as President of Ragnell. Between 2019 and 2021, UAC members carried out at least 233 raids, killing or injuring more than 75 people. Increasingly serious physical attacks and cyber-attacks were conducted against Ragnellian-owned factories and Ragnellian law enforcement units in the Belt. Although Ragnell called on Balan several times to take appropriate measures, Balan’s actions were insufficient to make UAC’s violent actions cease.

On 7 July 2021, UAC members attacked three Ragnellian factories in the Belt, killing 50 employees. Following these attacks, President Vortigern announced the launch of the temporary military campaign ‘Operation Shining Star’, with the aim of saving lives and

restoring regional prosperity. In September 2021, sustained fighting between UAC and Ragnell's forces broke out. As the situation worsened, UAC fighters continued to attack Ragnell's forces and Ragnellian corporations located in Tintagel Park, including through means of ambushes and sabotage raids.

On 15 September 2021, the UAC's senior commander submitted a declaration to the Swiss Federal Council claiming that the UAC '*represents the Balani people in their fight for self-determination*' and stating that the UAC will '*honor all applicable provisions of international humanitarian law*'. The depositary issued a notice that this declaration '*had the effects mentioned in Article 96, paragraph 3, of Additional Protocol I*'.

On 22 December 2021, the Defense Minister of Etna informed Ragnell that she had reliable intelligence indicating that UAC fighters were making their way along the Eamont Thruway to launch a surprise attack on Ragnell's forces. The next day, after providing sufficient notice to Balan, Ragnell bombed Nant Gateway, killing over 30 UAC fighters. No civilians were harmed.

On 7 March 2022, Ragnell's military leadership authorized a bombing raid on Compound Ardan, which is composed of four buildings and a smaller structure – Warehouse 15. Ragnell had previously received information and cellphone photographs from a Balani worker indicating that occupants of the Compound were UAC members engaged in active combats and that Warehouse 15 was being used to store weapons and ammunition. This intelligence was consistent with drone footage collected by Ragnell the month before. After the attack, which resulted in the death of 18 UAC fighters and the destruction of a number of UAC weapon caches, Ragnell however determined that 76 civilians, including eight Aglovalean aid workers, had fled to Warehouse 15 and were also killed.

Detention of UAC fighters in Fort Caerleon and in Camlann correctional center

During Operation Shining Star, Ragnell captured almost 1000 UAC fighters. They were first held at Fort Caerleon, a makeshift detention center in the Clarent Belt, some distance from active combats. There, they were provided basic food and shelter, and their treatment met relevant international standards.

On 21 March 2022, the fighting drew closer to Fort Caerleon. Ragnell decided to transfer the detainees to Camlann correctional Center, a prison in Ragnell.

Unilateral sanctions imposed by Aglovale

In response to Operation Shining Star, Aglovale unilaterally imposed the following sanctions to Ragnell:

- a. Freezing bank accounts belonging to Vortigern, his cabinet ministers, and senior RPP members and financial supporters, and seizing the assets of anyone of Ragnellian or other nationality engaged in direct or indirect attempts to circumvent these sanctions;
- b. Imposing travel bans on those same individuals;
- c. Freezing the funds of Ragnell's central bank and ten other major Ragnellian banks operating in Aglovale's territory; and
- d. Prohibiting companies incorporated in Aglovale and Aglovalean citizens from entering into new contracts with, providing goods or services to, or receiving goods or services from, business enterprises operating in Ragnell's industrial, aviation, transportation, or security sectors.

Several of Aglovale's allies adopted similar sanctions at Aglovale's urging. As a consequence, Ragnell suffered a sharp regression of its trade. Its hospitals were no longer able to acquire medicine and vital needs, and many Ragnellian-owned factories had to interrupt their activities.

Transfer of plastic waste to Etna

One of the only two suitable facilities for the treatment of waste in the Gais Peninsula is the facility established by The Plastics Conglomerate, located in Tintagel Park.

On 15 November 2021, this facility was rendered inoperative during fighting between Ragnell's forces and the UAC fighters. Company experts stated that it would take at least eight months to restore it. In the meantime, non-biodegradable and unsorted plastic waste such as polyethylene and polyvinyl chloride started accumulating in Tintagel Park and the port area. This waste was found to be contaminated by the bacterial pathogens *Clostridioides difficile* and *Staphylococcus aureus*. According to industry experts, the presence of the waste in Tintagel could '*trigger an unprecedented regional environmental and public health calamity*'.

In December 2021, Ragnell made repeated requests to transfer the waste to Aglovale for treatment. On 12 December, negotiations between Ragnell and Aglovale were held in Stirling. These negotiations failed to create an agreement, but both States committed to resuming talks on 27 December. After the attack on Nant Gateway, on 26 December, Aglovale

cancelled the negotiations which were scheduled the next day. Confronted with the risk caused by the accumulation of the waste, Ragnell concluded a bilateral agreement with Etna for the transfer and disposal of the waste.

UAC detainees were ordered to help load the waste into ships - Ragnell paid them wages commensurate with the nature of the work and provided them with basic safety gear. The waste was shipped to Etna between 24 January 2022 and 24 February 2022.

The International Landfill Solutions Alliance ('ILSA'), a global non-profit organisation, issued reports indicating that Etna had resorted to environmentally harmful methods of disposal, such as incineration and dumping into landfills and the ocean. Etna rejected these statements.

SUMMARY OF PLEADINGS

I.

By launching Operation Shining Star, Ragnell complied with the Treaty because it had the right to self-defense under Article 51 UN Charter in response to the armed attack by UAC fighters. Ragnell's exercise of this right was necessary and proportionate.

By bombing Nant Gateway, Ragnell respected the applicable principles of international humanitarian law ('IHL') referred to in Article 2(2) of the Treaty. It complied with both the principle of distinction, since the Gateway was a military objective by virtue of its use and location, and the principle of proportionality.

By attacking Compound Ardan, Ragnell complied with the IHL principle of precaution. It did everything feasible to verify that the Compound was a military objective and that its destruction would cause no civilian casualties, combining different sources of information.

Because it did not commit any wrongful acts, Ragnell has no obligation to compensate Aglovale for the death of its nationals. In any case, compensation should be reduced in light of the negligent conduct of the civilians killed.

II.

The conflict in the Belt is a non-international armed conflict and is thus only regulated by the IHL principles of common article 3 to the four Geneva Conventions and of customary IHL. Ragnell complied with these principles by employing the detainees as it provided them with safety gear and equal working conditions to that of Ragnellian workers. Ragnell had the obligation to transfer UAC detainees out of the combat zone, as their security so demanded.

Alternatively, if the UAC detainees were entitled to the status of prisoners of war, Ragnell complied with IHL principles under Geneva Convention III. Ragnell ensured that the UAC detainees' work respected the relevant safety standards and transferred them for their own security interests.

By employing the detainees, Ragnell complied with the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR').

In any case, distress and necessity preclude wrongfulness of the transfer and employment of UAC detainees, as there were no other reasonable ways for Ragnell to save their life or to prevent an unprecedented environmental and health calamity.

III.

Aglovale was not entitled to take unilateral sanctions because Article 2 of the Treaty suffers no exception. Aglovale was not entitled to suspend its obligations under the Treaty or to take countermeasures.

None of the sanctions taken by Aglovale were lawful as such, since they all violated principles referred to in the Treaty.

Freezing the bank accounts of Ragnell's High officials and other targeted individuals violated the principle of non-intervention in domestic affairs.

Imposing travel bans on the same individuals violated their freedom of movement under Article 12 ICCPR.

Freezing the assets of Ragnell's central bank violated rules on state immunity.

Freezing the assets of other major Ragnellian banks and seizing Prydwen Place constituted violations of the right to property.

Lastly, by prohibiting Aglovalean companies and citizens from entering in business with companies operating in Ragnell, Aglovale violated its obligation to promote free trade under Article 2(3) of the Treaty, and the right of the Ragnellian people not to be deprived of means of subsistence.

IV.

Aglovale violated Article 28 of the Treaty by refusing to pursue negotiations with Ragnell regarding transfer of waste to Aglovale. Aglovale was not entitled to suspend its obligation to cooperate. The interruption of negotiations was not a valid countermeasure.

Ragnell complied with its obligation to prevent environmental harm under Article 28 of the Treaty when it was forced by Aglovale's conduct to export the waste to Etna.

The conclusion of a transfer agreement with Etna was part of Ragnell's effort to prevent environmental harm, in view of the risk posed by the presence of the waste in Tintagel.

In any case, Ragnell did not breach its obligation to prevent environmental harm. There is no sufficient proof that such harm occurred. The transfer of waste was not an activity which created a risk of harm to the environment and Etna assured that it would dispose of the waste soundly.

In the event of a breach, wrongfulness is precluded by necessity because the transfer of waste was the only way for Ragnell to safeguard public health and the environment.

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

In launching Operation Shining Star, Ragnell acted in compliance with the Charter of the United Nations¹ ('UN Charter') and the principles of conventional and customary international law ('CIL') governing friendly relations among states, as incorporated in the Treaty² by its Article 2(1) (A). Furthermore, in conducting the attacks on Nant Gateway and Compound Ardan, Ragnell respected all applicable principles of international humanitarian law ('IHL'), as referred to in Article 2(2) of the Treaty (B). Consequently, Ragnell must not compensate Aglovale for the death of the eight Aglovalean aid workers (C).

A. In launching Operation Shining Star, Ragnell complied with the UN Charter and the principles of conventional and customary international law governing friendly relations among states

Under Article 51 UN Charter, Ragnell had the right to launch Operation Shining Star in self-defense (1). This right was exercised in compliance with CIL's self-defense requirements (2). The use of force in self-defense was reported to the United Nations Security Council ('UNSC') by Ragnell (3).

1. Ragnell had the right to self-defense

Article 51 UN Charter provides that UN Member States have an '*inherent right of [...] self-defence if an armed attack occurs*' against them. Ragnell was experiencing an armed attack by the UAC fighters (a). Self-defense may be invoked against non-state actors (b).

¹ *Charter of the United Nations*, 24 October 1945, 1 UNTS 16.

² *Trilateral Treaty of Lasting Peace Among the State of Ragnell, the Federation of Balan, and the Kingdom of Aglovale* (16 September 1958) ('Treaty').

a. The accumulation of UAC raids constituted an armed attack against Ragnell

Between 2019 and July 2021 – the start of Operation Shining Star, the UAC conducted more than 233 raids.³ These raids were directly directed against Ragnell, as they targeted Ragnellian law enforcement units – which can be considered as an ‘*external manifestation of the State*’⁴ – nationals, and factories on a territory where Ragnell exercised provision of government services.⁵

These increasingly violent attacks – which may be taken cumulatively by the Court to identify an armed attack⁶ – amount to a ‘*most grave*’⁷ use of force in view of their ‘*scales and effects*’.⁸ Indeed, they have caused considerable fatalities – killing at least 90 civilians – and pursued the common aim of opposing Ragnellian presence in the Belt.

b. Self-defense may be invoked in response to an armed attack perpetrated by a non-state actor

Nothing in Article 51 UN Charter indicates that an armed attack must emanate from a state entity in order to trigger a right to self-defense. Indeed, the purpose of Article 51 UN Charter is to ensure the ability to defend oneself when others break the prohibition against the use of force – regardless of the source of the attack. In the aftermath of the events of 9 September 2001, UNSC Resolutions 1368⁹ and 1373¹⁰ recognized a right to self-defense of states facing armed attacks by non-state terrorist groups, without making any reference to an

³ Statement of Agreed Facts (‘SAF’), [25], [26] and [30].

⁴ T Ruys, *‘Armed Attack’ and Article 51 of the UN Charter* (Cambridge University Press 2010) 99.

⁵ SAF, [11] and [25].

⁶ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US)* (Merits) (1986) ICJ Rep 14 [231]; *Case concerning Oil Platforms (Iran v US)* (Merits) (2003) ICJ Rep 161 [64]; *Armed Activities on the Territory of the Congo (DRC v. Uganda)* (Merits) (2005) ICJ Rep 168 [146].

⁷ *Nicaragua*, n6, [191]; *Oil Platforms* (Merits), n6, [51].

⁸ *Nicaragua*, n6, [195].

⁹ UNSC, *Threats to International Peace and Security Caused by Terrorist Acts*, S/RES/1368 (2001).

¹⁰ *Ibid.*

armed attack by a state.¹¹ Following these attacks, NATO invoked collective defense under Article 5 of its treaty and was widely supported by the international community.¹² Similarly, in the aftermath of the Paris terrorist attacks of 2015, France activated Article 42(7) TEU¹³ – the mutual assistance clause – and was unanimously supported by all EU member states. As this provision finds its foundation in Article 51 UN Charter, its activation provides for additional state practice of self-defense following attacks by a non-state actor.¹⁴ A State should thus be able to rely on Article 51 of the UN Charter, supplemented by CIL, when faced with an armed attack by a non-state actor.¹⁵

2. Ragnell complied with CIL’s self-defense requirements

Under CIL, the exercise of the right to self-defense must be ‘*proportional to the armed attack and necessary to respond to it*’.¹⁶ Ragnell’s military intervention was necessary due to the insufficiency of Balan’s response to the UAC’s attacks (a). The actions conducted in the context of Operation Shining Star were proportionate (b).

¹¹ TM Franck, *Terrorism and the Right of Self-Defense* [2001] 95(4) American Journal of International Law 840; *Armed activities* (Merits), n5, Separate Opinions Judge Kooijmans [28] and Judge Simma [8] and [11]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (2004) ICJ Rep 136, Separate Opinions of Judge Kooijmans [35] and Judge Higgins [33].

¹² Organization of American States (24th Meeting of Consultation of Ministers of Foreign Affairs), OEA/Ser.F/II..24RC.24/Res.1/01; Letter from the representative of Belgium to the Secretary-General, S/2001/967 (8 October 2001); C Henderson, *The Use of Force and International Law* (Cambridge University Press 2018) 210.

¹³ *Treaty on European Union* (7 February 1992) OJ C 326/13.

¹⁴ B Deen et. al., *Uncharted and uncomfortable in European defence, The EU’s mutual assistance clause of Article 42(7)* (Clingendael 2022) 19.

¹⁵ Institute of International Law, *Present Problems of the Use of Armed Force in International Law A. Self-defence*, Res 10A [10]; Dinstein, n5, 246; R Wedgwood, *The ICJ Advisory Opinion on the Israeli Security Fence and the Limits of Self-Defense* [2005] 99(1) American Journal of International Law 59; KN Trapp, *Back to Basics: Necessity, Proportionality, and the Right to Self-Defense Against Non-State Terrorist Actors* [2007] 56 ICLQ 141.

¹⁶ *Nicaragua*, n6, [176]; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ Rep 226, [41]; *Oil Platforms* (Merits), n6, [76]; *Armed Activities*, n6, [147].

a. Ragnell's military intervention was necessary to respond to the armed attack

A State's consistent failure or unwillingness to prevent its territory from being used as a base for domestic non-state actors to conduct attacks against another State renders the use of force necessary against these non-state actors.¹⁷

Balan's efforts were clearly insufficient to prevent acts of violence committed by Balani non-state actor UAC.¹⁸ Ragnell tried all possible means before resorting to force as a last resort. On several occasions, it called upon Balan to take action to halt the UAC fighters, in vain.¹⁹

Faced with an ongoing threat, Ragnell took the necessary actions to put a stop to UAC's violent actions.

b. Ragnell's actions were proportionate

The force used by Ragnell was proportionate in relation to the aim of putting a halt to the 'unabated'²⁰ and deadly attacks of the UAC.²¹ Indeed, Operation Shining Star is limited in scope, temporary, and has the sole purpose of clearing Tintagel Coast from the presence of the UAC.²² The attack on Nant Gateway served that exclusive purpose since it prevented an imminent attack against Ragnell's armed forces and sufficient notice was provided to Balan.²³ Similarly, the bombing of Compound Ardan aimed to destroy the facility from which the UAC launched their ground attacks against Ragnell.²⁴ At all times, Ragnell's military operations were contained in the Belt,²⁵ where UAC fighters were active and conducted their deadly raids.

¹⁷ Trapp, n15, 155.

¹⁸ SAF, [26]-[27].

¹⁹ Ibid.

²⁰ SAF, [35].

²¹ Greenwood, 'Jus ad Bellum and Jus in Bello in the Nuclear Weapons Advisory Opinion'. in L Boisson de Charzounes et. al. (ed), International Law – The International Court of Justice and Nuclear Weapons (Cambridge University Press 1999) 247.

²² SAF, [31].

²³ SAF, [34]; Clarification [4].

²⁴ SAF, [47].

²⁵ *Armed activities*, n6, [147]; Dissenting Opinion Judge Kooijmans, [33].

3. Ragnell notified the United Nations Security Council

Ragnell reported its resort to the use of force in self-defense to the UNSC, as required by Article 51 UN Charter and the UNSC did not contest the merits of such notification.²⁶

B. Ragnell complied with applicable principles of IHL

The attacks on Nant Gateway (1) and Compound Ardan (2) respected the relevant principles of IHL.

1. Ragnell complied with applicable principles of IHL by attacking Nant Gateway

On 23 December 2021, after receiving intelligence stating that UAC fighters were using the Eamont Thruway to launch a surprise attack on Ragnell's forces, Ragnell bombed Nant Gateway, a tunnel mouth of the Thruway.²⁷ This attack complied with the customary principles of distinction (a) and proportionality (b).

a. The attack respected the principle of distinction

The customary principle of distinction imposes to distinguish between military objectives, civilians and civilian objects. Attacks may only be directed at military objectives.²⁸ Objects which have both a civilian and military use are military objectives.²⁹ The Eamont Thruway was a military objective. By virtue of its location,³⁰ it constituted the main route in and out of Tintagel Coast for UAC fighters and their weapons.³¹ By virtue of its use,³² it was effectively contributing to the launch of a surprise attack by the UAC.³³ Its destruction offered

²⁶ Clarifications [3].

²⁷ SAF, [41].

²⁸ International Committee of the Red Cross ('ICRC'), *Customary International Humanitarian Law* ('CIHL') (2005) Vol II, Rule 1 and Rule 7; *Nuclear Weapons*, n16, [79]; *Prosecutor v. Galić* (Appeal Judgement), IT-98-29-A (30 November 2006), [191].

²⁹ M Sassòli, *International Humanitarian Law – Rules, Controversies, and Solutions to Problem Arising in Warfare* (Edward Elgar 2019) 354; C Greenwood, *Customary international law and the First Geneva Protocol of 1977 in the Gulf Conflict*. in P Rowe (ed), *The Gulf War 1990-1991 in International and English Law* (Routledge 1993) 73.

³⁰ ICRC, CIHL, n28, Rule 8.

³¹ SAF, [41]; Y Dinstein, *'Legitimate Military Objective under the Current Jus In Bello'* [2002] 78(1) *International Law Studies* 147.

³² ICRC, CIHL, n28, Rule 8.

³³ SAF, [41]; WH Boothby, *The Law of Targeting* (Oxford University Press 2012) 103.

³³ ICRC, CIHL, n28, Rule 8.

a military advantage³⁴ to Ragnellian armed forces as it stopped the UAC surprise attack without any civilian casualties.³⁵ Consequently, Ragnell complied with the principle of distinction.

b. The attack was proportionate

The bombing of Nant Gateway was proportionate under IHL. The customary principle of proportionality prohibits attacks which may be expected to cause losses or damage to civilians or civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated.³⁶

The attack on Nant Gateway could not be expected to cause excessive losses or damage to civilians or civilian objects. Indeed, the Thruway was no longer being used to evacuate civilians and Ragnell provided sufficient notice to Balan about the attack.³⁷ No civilians were injured in the bombing.³⁸ Basic necessities and humanitarian aid could still be transported to Tintagel Port by sea to the remaining civilians in the Belt.

The expected damage to the Thruway was not excessive in relation to the anticipated military advantage. Indeed, the bombing aimed to stop an imminent attack on Ragnellian forces and to prevent violence in the long term by putting an end to the use of the Thruway for smuggling weapons and UAC fighters into the Belt.³⁹

2. Ragnell complied with applicable principles of IHL by attacking Compound Ardan

On 7 March 2022, Ragnell authorized a bombing raid on Compound Ardan⁴⁰ – a factory used by the UAC to launch their ground attacks, believing that it was exclusively occupied by UAC fighters. The attack resulted in the death of 18 UAC fighters and the destruction of UAC

³⁴ ICRC, CIHL, n28, Rule 8.

³⁵ Clarification [4].

³⁶ ICRC, CIHL, n28, Rule 14; *Prosecutor v. Kupreškić*, ICTY-95-16-T (14 January 2000), [524]

³⁷ Clarification [4].

³⁸ SAF, [41].

³⁹ Ibid.

⁴⁰ SAF, [47].

weapon caches.⁴¹ It also caused the death of 76 civilians who had fled to Warehouse 15, a small structure of the Compound, days before the attack and without alerting belligerent authorities.⁴²

Ragnell complied with the customary principle of precaution as it took all possible measures to minimize loss of civilian's life.⁴³ Ragnell did everything feasible to verify that Compound Ardan was a military objective.⁴⁴ It combined recent drone-footage and the intelligence provided by a Balani worker, confirmed by cellphone photographs, to determine that all occupants of the Compound were UAC fighters engaged in active combat and that Warehouse 15 was used to store weapons and ammunitions.⁴⁵ As a result, Ragnell launched the attack based on all sources 'reasonably' available at the time,⁴⁶ which consistently indicated that there were no civilians on the site of the Compound.

C. Ragnell has no obligation to compensate Aglovale for the deaths of the eight Aglovalean aid workers

The Court may only award compensation if an injury is caused by an internationally wrongful act of a State.⁴⁷ Since Ragnell has committed no internationally wrongful act in launching Operation Shining Star and in attacking Compound Ardan, it has no obligation to compensate Aglovale for the death of the eight Aglovalean aid workers who were hiding in the Compound.

Even if it were considered that Ragnell has committed an internationally wrongful act in attacking Compound Ardan, the Court would still need to find that the eight Aglovalean killed contributed by their 'lack of due care'⁴⁸ to their own fate and injury since they decided to seek shelter in the Compound despite its use by the UAC to launch their attacks, without

⁴¹ Clarification [8].

⁴² SAF, [48].

⁴³ ICRC, CIHL, n28, Rule 15; *Prosecutor v Kupreškić*, n36, [49] and [132]; Inter-American Commission on Human Rights, OEA/Ser.L/V/II.98 (1998) [133].

⁴⁴ ICRC, CIHL, n28, Rule 16; *Prosecutor v Kupreškić*, n36, [260].

⁴⁵ SAF, [47].

⁴⁶ Boothby, n33, 178; US Navy, US Marine Corps and US Coastguard, *The Commander's Handbook on the Law of Naval Operations* (US Naval War College 2007) [8.3.1].

⁴⁷ *Armed Activities on the Territory of the Congo (DRC v. Uganda)* (Reparations) (2022) ICJ Rep 2 [93].

⁴⁸ International Law Commission ('ILC'), *Draft Articles on Responsibility of States for Internationally Wrongful Acts A/56/10* (2001), Article 39(5).

informing the belligerent authorities.⁴⁹ As a result, and consistently with the principle of CIL enshrined in Article 39 ARSIWA, any amount of compensation must be reduced in light of the willful or negligent conduct of the victims since it undeniably contributed to the injury.⁵⁰

⁴⁹ SAF, [48].

⁵⁰ ILC, *Draft Articles on Responsibility of States*, n48, Article 39; *LaGrand Case (Germany v US)* (2001) ICJ Rep 466 [57] and [116].

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

Ragnell’s employment of UAC detainees to load contaminated waste onto ships and their transfer to Camlann Correctional Center complied with the principles of IHL of non-international armed conflicts (‘NIAC’) contained in common article 3 to the four Geneva Convention (‘CA3’) (A). Alternatively, if the Court considers that UAC detainees are entitled to prisoner of war (‘POW’) status, Ragnell complied with the principles of IHL contained in GCIII⁵¹ (B). Ragnell respected the principles of human rights law contained in the ICCPR⁵² and the ICESCR⁵³ (C). By acting in accordance with all of these principles, Ragnell complied with Article 2(2) of the Treaty. In any case, there were circumstances precluding the wrongfulness of Ragnell’s actions (D).

A. Ragnell complied with the humanitarian law of non-international armed conflicts

The confrontation in the Clarent Belt is regulated by the law of NIACs (1). Ragnell complied with the principles enshrined in CA3 and customary IHL (2).

1. The confrontation in the Clarent Belt is a non-international armed conflict

The armed conflict in the Belt is regulated by the principles of IHL enshrined in CA3 (a). It is not regulated by any other rules of IHL (b).

a. The armed conflict is regulated by the principles enshrined in common article 3

As from September 2021, sustained fighting broke out between Ragnellian forces and the UAC,⁵⁴ causing hundreds of casualties and raising the level of violence in the Clarent Belt.⁵⁵ The UAC must be qualified as an organized armed group because they have a well-established command and control structures, can gain access to weapons, recruit new members, and use

⁵¹ *Geneva Convention Relative to the Treatment of Prisoners of War* (12 August 1949) 75 UNTS 135 (‘GCIII’).

⁵² *International Covenant on Civil and Political Rights* (23 March 1976) 999 UNTS 171 (‘ICCPR’).

⁵³ *International Covenant on Economic, Social and Cultural Rights* 993 UNTS 3 (16 December 1966) (‘ICESCR’).

⁵⁴ SAF, [35].

⁵⁵ SAF, [40].

military tactics.⁵⁶ When an armed conflict between an organized armed group and state forces is protracted⁵⁷ and reaches a certain degree of intensity⁵⁸ it is a NIAC pursuant to the principles enshrined in CA3. Therefore, the sustained conflict between the UAC and Ragnellian forces amounts to such a NIAC.

b. No additional rules of IHL apply to the conflict

The armed conflict is not regulated by the principles enshrined in Additional Protocol II ('APII')⁵⁹ (i), Additional Protocol I ('API')⁶⁰ (ii), nor the law of occupation (iii).

i. The armed conflict is not regulated by Additional Protocol II

The conditions required for the application of APII are not met. APII does not apply in case of the intervention of a State on the territory of another state,⁶¹ and the UAC do not exercise control over part of the territory.⁶²

ii. The armed conflict is not regulated by article 1(4) of Additional Protocol I

In September 2021, following the submission of a unilateral declaration by the UAC, the Swiss Federal Council issued a notice that the declaration had the effect of bringing into force the four Geneva Conventions and API.⁶³

⁵⁶ SAF, [35]; *Prosecutor v. Haradinaj*, IT-04-84 (29 November 2012) [60]; J Pejic, *Status of Armed Conflicts*, in E Wilmshurst and S Breau (eds), *Perspective on the ICRC Study on Customary International Humanitarian Law* (Cambridge University Press 2009) 85.

⁵⁷ *Prosecutor v Tadić*, IT-94-1-A (15 July 1999) [70].

⁵⁸ *Prosecutor v. Haradinaj*, n56, [40]; *Prosecutor v. Milosevic*, IT-02-54 (12 November 2009) [14].

⁵⁹ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* (8 June 1977) ('APII').

⁶⁰ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I)* (8 June 1977) ('API').

⁶¹ APII, Article 1(1); D Akande, *Classification of Armed Conflicts: Relevant Legal Concepts*, in E Wilmhurst (ed), *International Law and the Classification of Conflicts* (Oxford University Press 2012) 54-55.

⁶² Ibid.

⁶³ Clarification [7].

This notice can only be seen as a ‘*technical complement*’,⁶⁴ and the aforementioned conventions are only brought into force in armed conflicts referred to in Article 1(4) of API.⁶⁵ The confrontation between the UAC and Ragnell does not constitute such a conflict as the conditions of Article 1(4) API are not met. First, the presence of Ragnell cannot be qualified as alien occupation under Article 1(4) API because the Clarent Belt is the sovereign territory of Balan, which is fully formed as State.⁶⁶ Second, the Balani have no right to self-determination because they are not subject to alien subjugation, domination or exploitation.⁶⁷ Lastly, since the Balani people living in the Clarent Belt are indisputably forming the sovereign State of Balan, their right to self-determination has already been fulfilled.⁶⁸ The notice was thus incorrect.

iii. The armed conflict is not regulated by the law of occupation

The Clarent Belt cannot be qualified as an occupied territory because Ragnell does not exercise its own authority over it.⁶⁹ Indeed, Ragnell merely shipped waste to Etna in compliance with its obligation to prevent environmental harm under the Treaty.⁷⁰ This does not constitute an exercise of authority over the Belt.⁷¹

In addition, there is an ongoing armed conflict in the Clarent Belt, and battle areas may not be considered as occupied territory.⁷²

⁶⁴ *Actes de la conférence diplomatique sur la réaffirmation et le développement du droit international humanitaire applicable dans les conflits armés* (1974-1977) (9), comptes rendus analytiques de la Commission I : troisième et quatrième sessions, 380.

⁶⁵ *Ibid.*

⁶⁶ SAF, [3] and [11]; Treaty, Article 11(1); ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987) (‘ICRC Commentary API’), [112].

⁶⁷ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) (2010) ICJ Rep 403, [79] and [82].

⁶⁸ *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) (2019) ICJ Rep 95 [157]; United Nations General Assembly (‘UNGA’), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, A/RES/1514(XV) (1960), principle VI.

⁶⁹ *Armed activities* (Merits), n6, [216]; *Wall Opinion*, n17, [173].

⁷⁰ Treaty, Article 28.

⁷¹ SAF, [46]; Treaty, Articles 11 and 28.

⁷² *Prosecutor v Naletilić and Martinović*, IT-98-34-T (31 March 2003) [217].

Even if the Clarent Belt were to be considered as an occupied territory, the qualification of an armed conflict is based on the quality of the parties to the conflict and not on the status of the territory where it occurs.⁷³ As a result, the confrontation in the Clarent Belt – which opposes the UAC, a non-state actor, and Ragnell – would still be qualified as a NIAC.

The rules applicable to the UAC detainees are thus those applicable to NIACs, namely the principles enshrined in CA3.

2. Ragnell complied with common article 3 and customary humanitarian law

Ragnell acted in accordance with the principles enshrined in CA3 and customary IHL in temporarily employing UAC detainees in the transport of plastic waste (a) and in temporarily transferring them to Camlann (b).

a. Ragnell's employment of UAC detainees constituted regular labour

The employment of detainees is authorized under the law of NIACs,⁷⁴ *a fortiori* when the work undertaken aims to protect the health of the local population, e.g. by removing potentially toxic waste from the Belt.⁷⁵ Ragnell treated UAC detainees humanely and without any adverse distinction,⁷⁶ as they enjoyed the same working conditions as Ragnellian workers⁷⁷ and were provided with the relevant safety gear and paid wages commensurate with the nature of the work.⁷⁸

b. Ragnell had the obligation to transfer the UAC detainees

As the fighting drew closer to Fort Caerleon,⁷⁹ Ragnell had the obligation to displace the UAC detainees and to detain them in a premise removed from the combat zone⁸⁰ because

⁷³ D Carron, *L'acte déclencheur d'un conflit armé international* (Shultess 2016) 395.

⁷⁴ Common article 3 to the four Geneva Conventions (12 August 1949) ('CA3'); ICRC, CIHL, n28, Rule 95; APII, Article 5(e).

⁷⁵ SAF, [38] and [46].

⁷⁶ SAF, [36] and [44]; Clarification [5] ; CA3; *Prosecutor v Kordić & Čerkez*, ICTY-95-14/2 (26 February 2001) [256]; S Krähenmann, *Protection of Prisoners in Armed Conflict*. in D Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford University Press 2013) 372.

⁷⁷ Clarification [5]; ICRC, CIHL, n28, Rule 95; APII, Article 5(e).

⁷⁸ SAF, [44].

⁷⁹ SAF, [49]-[50]; Eritrea-Ethiopia Claims Commission, *Partial Award: Central Front Ethiopia's Claim 2* (28 April 2004) [68].

⁸⁰ ICRC, CIHL, Rule 121.

their security so demanded.⁸¹ It was materially impossible to transfer nearly one thousand UAC detainees within the limits of the Clarent Belt,⁸² because Fort Caerleon was already a makeshift detention center⁸³ and the infrastructures of Tintagel Coast – the sole habitable place of the Clarent Belt – were built for merely 10 000 civilians.⁸⁴ Therefore, temporarily moving the UAC detainees to Camlann was the sole means for Ragnell to respect its obligations under IHL.

B. Alternatively, Ragnell complied with Geneva Convention III

Even if the Court decided that the UAC detainees are entitled to POW status, Ragnell complied with Article 2(2) of the Treaty as it acted in accordance with the principles of IHL contained in GCIII. The work undertaken by the UAC detainees respected the relevant standards of safety (1), and their detention in Camlann was justified by their own interests (2).

1. The employment of UAC detainees to load waste onto ships complied with the relevant standards of safety

Ragnell had the right to employ the UAC detainees to clear the waste from the Tintagel Coast, since this constituted authorized public work that had a solely civilian purpose.⁸⁵ The UAC detainees were provided relevant safety gear⁸⁶ and enjoyed the same working conditions as Ragnellian workers.⁸⁷ As a result, they could be submitted to the same inherent risks of working with the plastic wastes as Ragnellian workers.⁸⁸

⁸¹ ICRC, CIHL, n28, Rule 129.

⁸² *Partial Award*, n79, [68].

⁸³ SAF, [36].

⁸⁴ SAF, [2], [17] and [36].

⁸⁵ SAF, [38], [46] and [50]; GCIII, Article 50(1)(b); ICRC, *Commentary on Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (2020)* ('ICRC Commentary GCIII'), [2708]-[2710].

⁸⁶ SAF, [44].

⁸⁷ Clarification [5]; S Sanna, *Treatment of Prisoners of War*. in A Clapham et al.(ed), *The 1949 Geneva Conventions – A commentary* (Oxford University Press 2015) 1003.

⁸⁸ GCIII, Article 51(3); ICRC Commentary GCIII, n85 [2736].

2. The detention of UAC detainees in Camlann was justified by their own security interests

Ragnell had an obligation under Articles 22 and 23 of GCIII and customary IHL to hold the UAC detainees captive on premises removed from the combat zones.⁸⁹ As the combats drew closer to Fort Caerleon,⁹⁰ Ragnell had to displace the UAC detainees for their own security interests and – due to the harsh topographical environment of the Belt – had no other choice but to temporarily detain them in premises close to the Balani border.⁹¹ In Camlann, the UAC detainees enjoyed the same treatment than in Fort Caerleon⁹² and Ragnell took care to separate them from other prisoners⁹³ to ensure compliance with IHL.⁹⁴

C. Ragnell complied with the ICCPR and the ICESCR

Ragnell complied with Article 2(2) of the Treaty by conforming to the principles of human rights contained in the ICCPR and the ICESCR.

The presence of bacterial pathogens did not threaten the right to life⁹⁵ or the right to health⁹⁶ of the UAC detainees as they were provided relevant safety gear.⁹⁷ In any case, removing the waste was both necessary and legitimate, as not removing it would have caused an “*unprecedented [...] environmental and public health calamity*”.⁹⁸

Work normally required from a person under detention does not constitute forced or compulsory labour.⁹⁹ It could normally be requested of the UAC detainees that they displace waste which, if kept in the Park, would have caused a higher risk to their health than their

⁸⁹ GCIII, Articles 22 and 23; ICRC, CIHL, n28, Rule 121; Sanna, n89, 990.

⁹⁰ SAF, [44]

⁹¹ See II, A, 2, b.

⁹² Clarification [6].

⁹³ Clarification [5].

⁹⁴ GCIII, Article 22; ICRC Commentary GCIII, n85, [1995].

⁹⁵ ICCPR, Article 6.

⁹⁶ ICESCR, Article 12.

⁹⁷ SAF, [44].

⁹⁸ SAF, [39].

⁹⁹ ICCPR, Article 8(3)(c)(i).

shipment.¹⁰⁰ In any case, any service exacted in cases of emergency or calamity threatening the life or well-being of the community – like the removal of toxic material¹⁰¹ – does not constitute forced or compulsory labour.¹⁰²

Therefore, Ragnell did not violate the ICCPR or the ICESCR.

D. In any event, there were circumstances which precluded the wrongfulness of Ragnell's actions

In any event, the alleged wrongfulness of the transfer of the UAC detainees to Camlann is precluded by distress (1), and the alleged wrongfulness of their employment is precluded by necessity (2).

1. Distress precluded the wrongfulness of the transfer of UAC detainees

In any case, the wrongfulness of the displacement of UAC detainees to Camlann Correctional Center is precluded as there were no other reasonable ways to save the lives of the internees entrusted to its care.¹⁰³ The fact that combats drew closer to Fort Caerleon created a situation of extreme urgency.¹⁰⁴ The danger for the UAC detainees was real and imminent.¹⁰⁵ Due to the harsh landscape of the Belt and the limited infrastructure of Tintagel Coast – the sole habitable place of the Clarent Belt¹⁰⁶ – there was no other reasonable way to protect nearly a thousand UAC detainees.¹⁰⁷ The fact that the UAC detainees' life was protected clearly outweighs the inconvenience caused by their detention in a penitentiary outside of the Clarent Belt.

¹⁰⁰ SAF, [44] and [46].

¹⁰¹ SAF, [38], [46] and [50].

¹⁰² ICCPR, Article 8(3)(c)(iii).

¹⁰³ UNGA, *Responsibility of States for Internationally Wrongful Acts*, A/RES/56/83 (2001) ('ARSIWA'), Article 24(1).

¹⁰⁴ *Rainbow Warrior (New Zealand v France)* (Arbitration Tribunal) (1990) 82 ILR 499 [79].

¹⁰⁵ ILC, *Draft Articles on Responsibility of States*, n48, 79.

¹⁰⁶ SAF, [2].

¹⁰⁷ See II, A, 2, b.

2. Necessity precluded the wrongfulness of the employment of UAC detainees to load waste onto ships

Due to the limited number of Ragnellian workers still in the Park,¹⁰⁸ the urgency of removing the materials, and Aglovale's refusal to cooperate regarding transfer of the waste, employing UAC detainees was the only way for Ragnell to safeguard its essential interests against a grave and imminent peril.¹⁰⁹ Three months prior to the shipment, industry experts alerted that the accumulation of the wastes could create an unprecedented environmental and public health calamity.¹¹⁰ As UAC detainees were the only workforce available in the Clarent Belt, the necessity to safeguard the environment and the security of the civilian population precludes the wrongfulness of their employment.¹¹¹

¹⁰⁸ Clarification [5].

¹⁰⁹ ARSIWA Article 25(1); *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (1997) ICJ Rep 88 [51]–[52]; *Wall Opinion*, n10, [140].

¹¹⁰ SAF, [39].

¹¹¹ ILC, *Draft Articles on Responsibility of States*, n48, Article 25 [14].

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

On 23 April 2022, the Aglovalean Parliament adopted sanctions legislation against Ragnell which included freezing bank accounts and seizing assets of certain individuals, imposing travel bans on the same individuals, freezing the funds of Ragnell’s central bank and other major Ragnellian banks and prohibiting companies incorporated in Aglovale and Aglovalean citizens from entering in business with companies operating in Ragnell.¹¹²

Aglovale was not entitled to take unilateral sanctions (A). Assuming it was entitled to do so, none of the sanctions it took were lawful as such (B). Aglovale must withdraw the sanctions and compensate Ragnell for their impact (C).

A. Aglovale was not entitled to take unilateral sanctions

Article 2 of the Treaty suffers no exceptions (1). Aglovale was not entitled to suspend its obligations under Article 2 of the Treaty (2). In any case, Aglovale was not entitled to take countermeasures (3).

1. Article 2 of the Treaty suffers no exceptions

The Treaty does not contain any exception to the “General Obligations” under Article 2, i.e. those obligations must be obeyed at all times. In particular, by requiring that state parties ‘*shall work to promote economic advancement, social welfare, and free trade*’, Article 2(3) must be read as imposing an obligation of economic cooperation between state parties, therefore necessarily prohibiting unilateral sanctions affecting their economic relations.

This construction flows from the very text of Article 2(3) read in its context, in particular in light of the Treaty’s preamble which underscores the desire of the parties ‘*to promote stability in the region, and to encourage the further development of friendly relations,*

¹¹² SAF, [53].

trade, and financial co-operation among them'.¹¹³ Moreover, the Treaty does not contain any national security clause or similar provision for temporal derogation or exception.

2. Aglovale was not entitled to suspend its obligations

The suspension of Aglovale's obligations under Article 2(3) of the Treaty was not possible under Article 60 VCLT, which reflects CIL.¹¹⁴ As stated above, Ragnell did not commit a material breach of the Treaty.¹¹⁵ Even assuming that Ragnell were responsible for such a material breach, Aglovale was not entitled to suspend its obligations. Indeed, Aglovale was not specially affected by the alleged material breach (a) and this breach was not one of interdependent obligations (b).

a. Aglovale was not a party specially affected by a material breach

The killing of eight Aglovalean nationals in Compound Ardan and the bombing of Nant Gateway do not amount to a material breach of the Treaty under Article 60(3)(b) VCLT. Indeed, these actions allegedly breached principles of IHL referred to in Article 2(2). Yet this breach does not render '*the accomplishment of [the] object and purpose [of the Treaty] impossible*',¹¹⁶ because the Treaty was primarily designed to regulate peaceful relations between the parties.¹¹⁷ In any case, these two isolated events do not amount to a '*deliberate and persistent breach*'¹¹⁸ of the Treaty. Assuming that a material breach existed, it would be in relation to Operation Shining Star itself, which occurred entirely on the territory of Balan and thus affected Balan's rights and not Aglovale's. Therefore, Aglovale was not entitled to suspend its Treaty obligations under Article 60(2)(b) VLCT.

¹¹³ *Vienna Convention on the Law of Treaties* 1155 UNTS 331 (23 May 1969), Article 31(1).

¹¹⁴ *Legal consequences for States of the continued presence of South Africa in Namibia* (Advisory Opinion) [1971] ICJ Rep 16 [94].

¹¹⁵ See I and II; VCLT, Article 60(1).

¹¹⁶ VCLT, Article 60(3)(b); *Arbitration Between the Republic of Croatia and the Republic of Slovenia* (Permanent Court of Arbitration) (Partial Award) (2016) [222].

¹¹⁷ Treaty, Preamble.

¹¹⁸ *Namibia*, n114, [95].

b. The obligations which were allegedly breached were not interdependent obligations

The alleged material breach of the Treaty did not radically change the position of all other parties with respect to the further performance of their obligations.¹¹⁹ Indeed, it was possible for Aglovale to suspend its obligations under Article 2 of the Treaty vis-à-vis Ragnell without violating its obligations towards Balan, since the sanctions were targeted at Ragnell only.¹²⁰ Thus, Aglovale was not entitled to suspend its Treaty obligations under Article 60(2)(c) VCLT.

3. In any case, Aglovale was not entitled to take countermeasures

Aglovale could not take countermeasures, because it was not an injured State (a). There is no right for non-injured states to take countermeasures (b). In any case, Aglovale could not take countermeasures in response to instantaneous acts (c). Aglovale failed to notify Ragnell before taking the sanctions (d).

a. Aglovale is not an injured State

Aglovale was not specially affected by Operation Shining Star since it takes place on Balan's sovereign territory.¹²¹ Thus, it is not an injured state under Article 42(b)(i) ARSIWA.

Furthermore, Aglovale is not an injured State within the meaning of Article 42(b)(ii) ARSIWA, because the obligations allegedly breached by Ragnell are not interdependent, as recalled above.¹²²

b. There is no right to take countermeasures for non-injured States

Article 54 ARSIWA provides the possibility for non-injured states to take *lawful* measures only. Aglovale thus had no right under this provision to take countermeasures, which are intrinsically unlawful. The Court has never recognized a right for non-injured states to take countermeasures.¹²³

¹¹⁹ VCLT, Article 60(2)(c);

¹²⁰ ILC, *Draft Articles on the Law of Treaties*, Yearbook of the International Law Commission (1966) Vol II 255.

¹²¹ See III, A, 2, b.

¹²² See III, A, 2, c.

¹²³ *Nicaragua*, n6, [249]; *Yearbook of the International Law Commission* (2001) Vol. II Part 2 [3], [6]-[7]; P d'Argent, '*Les obligations internationales*' [2019] 417 *Collected Courses of the Hague Academy of International Law* 103-105.

c. The allegedly wrongful act was not of a continuing nature

If Aglovale was an injured State, it would only be because of the death of its nationals in the attack on Compound Ardan and the destruction of Nant Gateway. However, these attacks – assuming they were wrongful – were instantaneous acts. Countermeasures could thus not be taken, since their purpose must be to induce compliance with the law when faced with an ongoing wrongful act.¹²⁴

d. In any event, Aglovale failed to notify Ragnell prior to taking the sanctions

Aglovale failed to comply with the notification requirement of Article 52(1)(b) ARSIWA. The measures taken by Aglovale were not urgent¹²⁵ in a manner that would prevent it from respecting its obligation to notify Ragnell. Aglovale waited one month after the death of its nationals and four months after the destruction of Nant Gateway¹²⁶ before taking the sanctions. Aglovale thus had ample time to notify Ragnell of its intention to take such measures.

B. None of the sanctions Aglovale took were lawful as such

Aglovale breached Article 2 of the Treaty by adopting the sanctions (1-5). The sanctions were disproportionate (6).

1. Aglovale violated Article 2(1) of the Treaty by freezing the bank accounts of the President, his ministers and senior RPP members and financial supporters

Aglovale froze the bank accounts of the President, his ministers and senior RPP members and financial supporters, and seizing assets of anyone engaged in attempts to circumvent this sanction.¹²⁷ By doing so, it violated the customary principles governing friendly relations between States referred to in Article 2(1) of the Treaty, namely the principle of non-intervention in domestic affairs.

¹²⁴ ARSIWA, Article 49 and 51(3).

¹²⁵ ARSIWA, Article 52(2).

¹²⁶ SAF, [41], [47] and [53].

¹²⁷ SAF, [53].

Under this principle, states may not implement or encourage the use of measures of an economic character aimed at coercing other states to bend to their will.¹²⁸ The freezing of bank accounts is a form of coercion which gravely interferes in the internal and external affairs of Ragnell.¹²⁹ Because this sanction does not aim to put an end to criminal behavior, it can only be understood as aiming to coerce Ragnell, through its highest representatives, into making political choices that it would not have made otherwise, in violation of the principle of non-intervention.¹³⁰

Because the freezing of bank accounts was intrinsically unlawful, Aglovale could not sanction individuals who do not comply with this sanction.

2. Aglovale breached article 2(2) of the Treaty by imposing travel bans on the same individuals

Aglovale imposed travel bans on President Vortigern, his cabinet ministers, and senior RPP members and financial supporters.

By doing so, Aglovale violated the principle of freedom of movement¹³¹ which is referred to in Article 2(2) of the Treaty. Freedom of movement under Article 12 ICCPR includes the right to travel internationally and to determine the state of destination.¹³² Restrictions to this right must be provided by law.¹³³ Aglovale's restriction to the freedom of movement did not respect this condition. By providing that the travel ban will notably be applied to '*anyone [...] engaged in direct or indirect attempts to circumvent the sanctions*', the sanctions legislation is not precise enough and thus confers '*unfettered discretion*'¹³⁴ on those charged of its execution.

¹²⁸ UNGA, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, A/RES/2625(XXV) (1970), Principle (c); UNGA, *Declaration on the Inadmissibility of Intervention in the domestic affairs of States and the Protection of their Independence and Sovereignty*, A/RES/2131(XX) (1965); *Nicaragua*, n5, [202] and [209].

¹²⁹ *Nicaragua*, n6, [205].

¹³⁰ A/RES/2131(XX), n130, (k).

¹³¹ ICCPR, Article 12.

¹³² Human Rights Committee ('HRC'), *General Comment n°27*, CCPR/C/GC/27 (1999) [8].

¹³³ *General Comment n°27*, n132, [11].

¹³⁴ *Ibid.*, [13].

In any case, the ban was not necessary to protect Aglovale's national security or public order¹³⁵ since the presence of RPP members and supporters in Aglovale would not have been a threat to those interests.

3. Aglovale breached Article 2(1) of the Treaty by freezing the assets of Ragnell's central bank

State immunities 'derive from the principle of sovereign equality of States' referred to in Article 2(1) UN Charter.¹³⁶ The freezing of assets of Ragnell's central bank violates the state immunity from execution provided for in the UN Convention of Immunities of States and Their Property ('UNCSI'). Immunity from execution is applicable independently of the nature of the organ taking the measure¹³⁷ and therefore applies to the sanctions enacted by Aglovale's Parliament. The assets of Ragnell's central bank which had a '*non-commercial use or purpose*'¹³⁸ could thus not be frozen as they enjoyed immunity from execution in accordance with the UNCSI.¹³⁹

4. Aglovale breached Article 2(1) of the Treaty by freezing assets of major Ragnellian banks and seizing Prydwen place

Aglovale breached the principle of the right to property, referred to in Article 2(2) of the Treaty. This includes the right not to be arbitrarily deprived of property.¹⁴⁰

CIL imposes limitations on the right for states to interfere with the property of foreign nationals.¹⁴¹ An interference with the right to property – of which freezing of assets and seizing

¹³⁵ ICCPR, Article 12(3).

¹³⁶ *Jurisdictional Immunities of the State (Germany v Italy)* (2012) ICJ Rep 99 [56]-[57]; *Certain Iranian assets (Iran v US)* (2019) ICJ Rep 7 [60]; UNGA, *United Nations Convention of Jurisdictional Immunities of States and Their Property A/59/38* (2004), Preamble.

¹³⁷ E Castellarin, '*Le gel des avoirs d'une banque centrale étrangère comme réaction décentralisée à un fait internationalement illicite : rétorsion ou contremesure ?*' [2012] 25 Hague Yearbook of International Law 180.

¹³⁸ *Germany v. Italy*, n136, [118].

¹³⁹ I Wuerth, *Immunity of Central Bank Assets*. in T Ruys (ed), *Immunities and International Law* (Cambridge University Press 2019) 269.

¹⁴⁰ UNGA, *Universal Declaration of Human Rights* ('UDHR'), A/RES/217(III) (1948), Article 17.

¹⁴¹ JG Sprankling, '*The Global Right to Property*' [2014] 52(2) *Columbia Journal of Transnational Law* 21.

property are constitutive of¹⁴² – must have the sole purpose of securing others’ rights or public order.¹⁴³ The interference with private property having nothing to do with the State does not fulfill such a purpose.

5. Aglovale breached articles 2(2) and 2(3) of the Treaty by prohibiting Aglovalean companies and citizens from entering in business with companies operating in Ragnell

a. Aglovale violated Article 2(3) of the Treaty

Under Article 2(3) of the Treaty, Aglovale had the obligation to promote good economic relations through free trade, economic advancement and social welfare.

The measure prohibiting Aglovalean companies from entering in business with companies operating in Ragnell constitutes a form of embargo which upsets the principle of free trade.¹⁴⁴

The unilateral sanction also adversely affects the economic and social development of the citizens of Ragnell as economic relations with Aglovale are negatively affected.¹⁴⁵ Indeed, unemployment is expected to triple, Ragnell’s economy to contract by 15.5% and imports to fall by nearly 25% in value by the end of 2022.¹⁴⁶

The fact that Aglovale is Ragnell’s most important trade partner, with bilateral commerce representing 32% of its economy,¹⁴⁷ renders the sanction all the more coercive and unlawful.¹⁴⁸

¹⁴² *Džinić v Croatia* App no38359/13 (ECtHR, 17 May 2016) [59]; DJ Birkett, 'Asset Freezing at the European and Inter-American Courts of Human Rights' [2020] 20(3) Human Rights Law Review 510 and 517.

¹⁴³ UDHR, Article 29; Sprankling, n141, 27.

¹⁴⁴ UNGA, *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba* A/RES/61/11 (2006), [2].

¹⁴⁵ R Mohamad, *Unilateral Sanctions in International Law: A Quest for Legality*. in MR Bassett and AZ Marossi (eds), *Economic sanctions under international law: Unilateralism, multilateralism, legitimacy, and consequences* (Springer 2015) 80.

¹⁴⁶ SAF, [55].

¹⁴⁷ SAF, [4].

¹⁴⁸ M Jamnejad and M Wood, 'The Principle of Non-intervention' [2009] 22(2) Leiden Journal of International Law 370.

b. Aglovale violated Article 2(2) of the Treaty

By adopting the sanction, Aglovale breached human rights principles referred to in article 2(2) of the Treaty, namely the right under Article 1(2) common to the ICCPR and ICESCR which provides that a people may not be deprived of its means of subsistence, and the right to development of the Ragnellian people. The adverse effects on these rights of sanctions such as the one adopted by Aglovale has been recognized in General Assembly Resolution 27/21.¹⁴⁹

In the present case, the prohibition on trade imposed by Aglovale had devastating effects on Ragnell's economy, leading to widespread suffering and deprivation for its civilian population.¹⁵⁰

Ragnellian hospitals were unable to acquire medicine and vital needs and many factories were forced to suspend production.¹⁵¹ Yet under common Article 1(2) and the right to development, people may under no circumstances be deprived of essential goods such as medicine.¹⁵²

6. The regime of sanctions is disproportionate

CIL requires that economic sanctions respect the principle of proportionality,¹⁵³ meaning that the economic and social effect of the sanctions must be considered when taking them.¹⁵⁴ The regime of sanctions imposed by Aglovale was entirely disproportionate because of its excessive overall consequences on Ragnell's economy and population.¹⁵⁵ In comparison, Ragnell's actions affected Aglovale only marginally.

¹⁴⁹ UNGA, *Human rights and unilateral coercive measures*, A/RES/27/21 (2014).

¹⁵⁰ SAF, [54]; DH Joyner, *International Legal Limits on the Ability of States to Lawfully Impose International Economic/Financial Sanctions*. in N Ronzitti (ed), *Coercive Diplomacy, Sanctions and International Law* (Brill 2016) 91.

¹⁵¹ SAF, [54].

¹⁵² A/RES/27/21, n149, [9].

¹⁵³ K Alexander, *Economic Sanctions: Law and Public Policy* (Palgrave Macmillan 2009) 10-11.

¹⁵⁴ Mohamad, n145, 80.

¹⁵⁵ See B, 5, a and b.

C. Aglovale must withdraw the sanctions and compensate Ragnell for their impact

As demonstrated above, Aglovale was not entitled to take unilateral sanctions against Ragnell and committed internationally wrongful acts by imposing a coercive regime of sanctions. Under its obligation of cessation, Aglovale must withdraw these sanctions.¹⁵⁶

In addition, the harmful consequences which resulted from the sanctions, including the sharp regression of Ragnell's trade,¹⁵⁷ were a direct consequence of Aglovale's prohibition on its companies to contract and trade with companies operating in Ragnell and its incitement of other states to follow. There is thus a direct and certain causal nexus between Aglovale's unlawful conduct and the economic consequences suffered by Ragnell. Aglovale must therefore compensate Ragnell for this damage.¹⁵⁸

In accordance with the Court's usual practice, Ragnell respectfully requests that, failing agreement between the Parties on this matter within six months from the date of the forthcoming Judgement, the question of the compensation due to Aglovale shall be settled by the Court, in the subsequent procedure in the case.¹⁵⁹

¹⁵⁶ ARSIWA, Article 30(a).

¹⁵⁷ SAF, [55]; see B, 5, a and b.

¹⁵⁸ ARSIWA, art. 36(1); *Armed activities (Reparations)*, n47, [93]; *Gabčíkovo-Nagymaros*, n109, [81].

¹⁵⁹ *Ahmadou Sadio Diallo (Guinea v. DRC)* (2007), ICJ Rep 582, [164].

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 WHEN IT WAS FORCED BY THAT REFUSAL TO EXPORT THE WASTE TO ETNA FOR PROCESSING AND DISPOSAL

Aglovale violated the Treaty by refusing to pursue cooperation with Ragnell regarding the management of the waste (A). Ragnell complied with the Treaty when it was forced by that refusal to transfer the waste to Etna for disposal (B).

A. Aglovale violated the Treaty by refusing to cooperate in good faith in the management of plastic waste

On 26 December 2022, Aglovale cancelled negotiations with Ragnell which were scheduled the next day in order to discuss the management of waste.¹⁶⁰ By doing so, Aglovale violated its obligation under Article 28 of the Treaty to ‘*take whatever steps are necessary or reasonably requested by other Parties [...] to cooperate in good faith in reducing the risk and/or the impact of significant harm from environmental pollution*’ (1). Aglovale was not entitled to suspend this obligation (2), and its refusal to cooperate is not a valid countermeasure (3).

1. Aglovale breached its obligation to cooperate in good faith

In early December 2022, Ragnell made a reasonable and necessary request to Aglovale – the request to discuss a transfer agreement regarding the plastic waste in order to reduce the important risk of pollution caused by the presence of the untreated waste.¹⁶¹ Aglovale thus had the obligation to take this ‘*reasonable step*’ at Ragnell’s request.¹⁶² Not only did Aglovale have the obligation to attempt negotiations with Ragnell – it also had the obligation to pursue these negotiations in a meaningful manner and in view of reaching an agreement,¹⁶³ especially in light of its commitment on 27 December to resume talks.¹⁶⁴ Indeed, the obligation to cooperate

¹⁶⁰ SAF, [43].

¹⁶¹ SAF, [39]; Treaty, Article 28.

¹⁶² Treaty, Article 28.

¹⁶³ *Fisheries Jurisdiction (UK v Iceland)* (Merits) (1974) ICJ Rep 3 [74]-[75]; *North Sea Continental Shelf Cases (Germany v Denmark and Netherlands)* (1969) ICJ Rep 4 [85].

¹⁶⁴ SAF, [39].

regarding possible transfer of the waste to Aglovale could not have been fulfilled by any other means than negotiation, since an agreement between Ragnell and Aglovale would have been necessary to that end.

In addition, by unjustifiably breaking off the negotiations¹⁶⁵ and thus disrespecting the trust and confidence¹⁶⁶ that Ragnell had placed in Aglovale's commitment to negotiate, Aglovale failed to act in good faith.

Therefore, Aglovale breached its obligation to cooperate in good faith in reducing the risk of harm caused by the presence of waste in Tintagel Park.

2. Aglovale was not entitled to suspend its obligation to cooperate

The suspension of Aglovale's obligations under Article 2(3) of the Treaty was not possible under Article 60 VCLT, which is declaratory of CIL.¹⁶⁷ As above, Ragnell did not commit a material breach of the Treaty when it acted lawfully in self-defense¹⁶⁸ – even if the bombing of Nant Gateway were wrongful, it did not amount to a material breach.¹⁶⁹

Even assuming that Ragnell were responsible for a material breach, it would only be in relation to Operation Shining Star in general. Aglovale was thus not entitled to suspend its obligations because Operation Shining Star – assuming it was wrongful – affected the rights of Balan and not those of Aglovale. Moreover, the Treaty does not contain interdependent obligations.¹⁷⁰

3. Aglovale's refusal to pursue negotiations is not a lawful countermeasure

Aglovale could not take countermeasures in response to Operation Shining Star because Ragnell acted lawfully in self-defense when launching it.¹⁷¹ In any case, Aglovale did not respect the conditions required to resort to countermeasures. Indeed, Aglovale did not offer to

¹⁶⁵ *Lake Lanoux Arbitration (France v Spain)* (Award) (1957) XII RIAA 281; S Reinhold, 'Good faith in International Law' [2013] UCL Journal of Law and Jurisprudence 17.

¹⁶⁶ *Nuclear Tests Case (Australia v France)* (1974) ICJ Rep 253 [46].

¹⁶⁷ *Namibia Opinion*, n115, [94]; *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)* (1972) ICJ Rep 46 [67].

¹⁶⁸ VCLT, Article 60(1).

¹⁶⁹ See III, A, 2, b.

¹⁷⁰ See III, A, 2, c.

¹⁷¹ ARSIWA, Article 49; *Gabčíkovo-Nagymaros*, n109, [83].

negotiate with Ragnell concerning the interruption of cooperation before taking such a countermeasure.¹⁷² The exception provided by Article 52(2) to this procedural condition is not applicable because the interruption of negotiations was not an urgent countermeasure necessary to preserve Aglovale's rights. Indeed, notification of the envisaged countermeasures would not have frustrated their purpose.¹⁷³

B. Ragnell complied with its obligations when it was forced by Aglovale's refusal to export the waste to Etna for processing and disposal

By exporting the waste to Etna, Ragnell complied with its obligation to prevent environmental pollution and harm under Article 28 of the Treaty (1). In any event, necessity precludes the wrongfulness of Ragnell's actions (2).

1. Ragnell complied with article 28 in exporting the waste to Etna

Ragnell exported waste to Etna as part of its obligation under Article 28 of the Treaty (a). In any case, Ragnell did not breach this obligation (b).

a. The measure was taken to protect human health and the environment in the Clarent Belt

When Aglovale refused to pursue negotiations regarding the conclusion of a transfer agreement, Ragnell was confronted with a serious threat to public health and the environment due to the presence of waste in the Belt.¹⁷⁴ Article 28 of the Treaty requires states to commit to the protection of human health and to prevent environmental harm within the Gais Peninsula. The conclusion of an agreement with Etna for the treatment of the waste was the only way for Ragnell to comply with this obligation, since there was no longer a functioning waste treatment facility in the Belt¹⁷⁵ and since Aglovale refused to pursue discussions concerning management of the waste.¹⁷⁶

Under Article 28 of the Treaty, Ragnell was thus not only entitled but obliged to export the waste to Etna.

¹⁷² ARSIWA, Article 52 (b).

¹⁷³ ILC, *Draft Articles on Responsibility of States*, n48, Article 52(6).

¹⁷⁴ SAF, [38].

¹⁷⁵ SAF, [37].

¹⁷⁶ SAF, [43].

b. In any case, Ragnell complied with its obligation to prevent environmental pollution and harm

A breach of Ragnell's obligation to prevent environmental harm may not be demonstrated because it is not established that such harm has occurred¹⁷⁷ (1). Even if harm had occurred, Ragnell would not have breached its obligation to prevent it (2).

i. There is no sufficient evidence that environmental pollution and harm occurred

It is up to the Party asserting a fact before the Court to prove it.¹⁷⁸ In the present case, the reports issued by the International Landfill Solutions Alliance ('ILSA')¹⁷⁹ do not establish with sufficient certainty that harmful methods of disposal were used or that pollution and harm occurred. Indeed, the reports lack precision regarding the quantities of waste that might have been disposed of in a harmful manner.¹⁸⁰ Moreover, Etna rejected the statements made by ILSA in these reports.¹⁸¹ Aglovale can thus not bring conclusive evidence¹⁸² that environmental harm occurred. In the absence of such evidence, the Court may not establish the occurrence of the alleged fact. As a consequence, no breach of Ragnell's obligation to prevent environmental harm can be demonstrated.

ii. Even if harm was caused, Ragnell did not breach its obligation to prevent it

On 20 January 2022, Ragnell concluded a bilateral agreement with Etna to export all accumulated waste for disposal.¹⁸³

¹⁷⁷ ARSIWA, Article 14(3); *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)* (Merits) (2007) ICJ Rep 43 [431].

¹⁷⁸ *The Mavrommatis Jerusalem Concessions (Greece v UK)* (PCIJ) (1925) Ser A No 5; *Legal Status of Eastern Greenland (Denmark v Norway)* (PCIJ) (1933) Ser A/B No 53; *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (2010) ICJ Rep 2010 [265]-[264]; *Oil Platforms*, n5, [57] and [61].

¹⁷⁹ SAF, [45].

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² *Pulp Mills*, n178, [265]; *The Corfu Channel Case (UK and Northern Ireland v Albania)* (Merits) (1949) ICJ Rep 5, 17.

¹⁸³ SAF, [44].

The obligation to prevent environmental harm under Article 28 of the Treaty must be interpreted in accordance with the ordinary meaning to be given to its terms.¹⁸⁴ An ordinary meaning of an obligation to prevent environmental harm is provided in *Pulp Mills* and in the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, which state that such an obligation only arises when there is a risk that an activity will cause harm to the environment through its physical consequences.¹⁸⁵

Yet no physical link connects the transfer of waste to its harmful disposal.¹⁸⁶ Indeed, just as the stockpiling of weapons does not entail the physical consequence that they will be put to a belligerent use¹⁸⁷, the transfer of waste does not entail the physical consequence that the waste will be disposed of in a harmful manner by another State. Thus, Ragnell's obligation to prevent environmental harm did not extend to assessing the possible fate of the waste once it was in Etna's hands.

In any case, Etna is a party to the Basel Convention on the Control of Transboundary Movements of Waste and their Disposal and to the Stockholm Convention on Persistent Organic Pollutants. It assured that its treatment facilities were appropriately equipped to dispose of the waste in accordance with those treaties.¹⁸⁸ Ragnell thus had every reason to 'place confidence'¹⁸⁹ in Etna's declarations and to believe that the waste would be disposed of soundly. In this context, Ragnell's obligation to prevent harm did not include the obligation to verify the statements made by Etna, another sovereign State.

In light of these elements, Ragnell did not breach its obligation to prevent environmental pollution and harm by exporting the waste to Etna for disposal.

¹⁸⁴ VCLT, Article 31(1).

¹⁸⁵ *Pulp Mills*, n178, [204]; ILC, *Draft articles on Prevention of Transboundary Harm from Hazardous Activities*, A/56/10 (2001), Article 1(16) and (17).

¹⁸⁶ *Ibid*, Article 1(17).

¹⁸⁷ *Ibid*.

¹⁸⁸ SAF, [44].

¹⁸⁹ *Nuclear Tests*, n166, [46].

2. In any event, necessity precludes the wrongfulness of Ragnell's actions

Necessity precludes the wrongfulness of Ragnell's actions, because these actions were the only way for Ragnell to safeguard essential interests against a grave and imminent peril and did not impair an essential interest of Aglovale or the international community.¹⁹⁰

The protection of the environment and public health constitute essential interests of Ragnell.¹⁹¹ These interests were endangered by a grave and imminent peril, namely the prolonged presence of contaminated waste in Tintagel Park, which threatened to cause an unprecedented environmental and public health calamity.¹⁹² The fact that this peril could appear in the long-term – rather than immediately – does not prevent it from being 'imminent' under Article 25 ARSIWA.¹⁹³

Transferring the waste to Etna was the only way to preserve Ragnell's essential interests. Indeed, Ragnell had previously tried to negotiate with Aglovale in view of the treatment of the waste,¹⁹⁴ and Aglovale refused to cooperate.¹⁹⁵ Since Ragnell no longer had a functioning treatment facility of its own,¹⁹⁶ it had no other option than to conclude an agreement with Etna in order for the waste to be processed and disposed of.

The transfer of the waste did not impair an essential interest of the international community¹⁹⁷ since Ragnell's interest to urgently protect public health and the environment in the Belt outweighed all other considerations.¹⁹⁸ Indeed, the peril caused by the presence of the waste in Tintagel was far more imminent and certain than the hypothetical harm to other interests that the transfer of waste might cause.

Therefore, in the event of a breach, the wrongfulness of Ragnell's actions is precluded by necessity.

¹⁹⁰ ARSIWA, Article 25(1)(a) and (b).

¹⁹¹ *Gabčíkovo-Nagymaros*, n109, [53]; *Yearbook of the International Law Commission* (1980) Vol. II Part 2, Article 33[14].

¹⁹² SAF, [38].

¹⁹³ *Gabčíkovo-Nagymaros*, n109, [54].

¹⁹⁴ SAF, [39].

¹⁹⁵ SAF, [43].

¹⁹⁶ SAF, [37].

¹⁹⁷ ARSIWA, Article 25(1)(b).

¹⁹⁸ ILC, *Draft Articles on Responsibility of States*, n48, Article 25(20).

PRAYER FOR RELIEF

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

- 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;
- 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;
- 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
- Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, whereas Ragnell complied with its obligations when it was forced by that refusal to export the waste to Etna for processing and disposal.

