
IN THE
INTERNATIONAL COURT OF JUSTICE

MARCH 1983

FEDERATION OF RICHMOND,

Applicant,

v.

REPUBLIC OF BELTERRE.

Respondent.

MEMORIAL FOR APPLICANT

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STATEMENT OF JURISDICTION

The parties submit the present dispute to this Court by special agreement, pursuant to Article 40 of the Statute of the International Court of Justice, which provides:

1. Cases are brought before the Court, as the case may be, either by notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

Moreover, Article 36 of the Statute of the International Court provides that the jurisdiction of the Court comprises all cases which the parties refer to it.

It must therefore follow that the Court has jurisdiction to resolve the present dispute. In addition, by virtue of Articles 36 and 38 of the Statute, the Court may settle all the questions presented.

STATEMENT OF FACTS

The Federation of Richmond is an independent state whose economy is heavily dependent upon the production and exportation of citrus fruit (R.2). Richmond, which lies between the Utopia Ocean on the east and The Republic of Belterre on the west, has an equatorial climate favorable to the region's citrus exporting industries. Other citrus exporting states in the area include Belterre and New Hostia, an independent agricultural nation bordering on Belterre's north-west frontier (R.2).

In 1965, Belterre, a land-locked state, entered into a treaty with Richmond obtaining perpetual use of the Port of Xanadu and the Chesterfield Highway. The highway spans Richmond from the port to Chesterfield, the capital of Belterre, 400 miles to the west.

The Treaty is an uncomplicated document, the general intent of which is to "assure that the people of Belterre shall not be disadvantaged by the accident of geography which has denied Belterre direct access to the sea" (R.8). It should be noted that although Belterre lacks direct access to the sea, it does not lack alternatives to the Chesterfield Highway for the transshipment of its imports and exports. It is currently making use of rail and air routes through adjacent countries at only a marginal increase in cost.

In return for ten annual payments of five million U.S. dollars (\$5,000,000), Richmond agreed to permit Belterre perpetual free access to the highway. Richmond waived any rights to collect customs duties on the transhipped goods, as had previously been the case, and agreed that such goods would not be "subject to inspections, attachment, sequestration, or interference of any kind by the authorities of Richmond" (R.8).

In 1978, the world press began to report that the dreadfly (*drosphila terribilis*), an insect devastating to the marketability of citrus products, had infested the New Hostian crops. New Hostia requested the assistance of the World

Health Organization (WHO), in June 1979, which reported in December of that year that conditions in the area were ideal for the rampant proliferation of the pest. The WHO recommended that the New Hostian authorities immediately begin a program of chemical spraying of all citrus groves in the country, concentrating upon the province closest to Belterre, which is where the live dreadflies were first discovered. New Hostia immediately complied with these recommendations (R.1).

Richmond, fearful of the impact that the spread of the dreadfly could have on its crops and economy, on April 1, 1980 sought Belterre's cooperation in limiting the threat of infestation. Specifically, Richmond requested that Belterre permit inspection of all shipments of citrus fruits and products carried along the Chesterfield Highway. Belterre, without explanation, refused Richmond's request on May 15, 1980 and proposed instead that it would undertake the inspection of fruit originating in the areas of the Republic adjacent to the infested groves in New Hostia (R.2). Richmond believed that Belterre's counterproposal was ineffective in resolving the urgency of the problem. In particular, Richmond was unconvinced that either the Belterrian authorities or its own could identify citrus fruit as coming from the western parts of Belterre. Moreover, Richmond had no confidence in the reliability of the Belterrian Health Ministry to carry out the inspections and that Belterre's counterproposal would not guarantee that cargoes transiting Richmond were free from contamination (R.2).

Richmond believed at this juncture that it faced two distinct problems: the imminent infestation of its citrus groves by the dreadfly and the refusal of Belterre to accept reasonable and effective measures to avert the infestation. Accordingly, Richmond informed Belterre that in order to protect Richmond's agricultural and economic security, it would have no alternative other than to suspend Belterre's use of the Chesterfield Highway on September 1, 1980.

Belterre responded on August 20, asserting that it had acted in conformity with international law and that it believed no danger threatened Richmond.

Finally, Belterre stated that it would regard any interference with its vehicles travelling on the Chesterfield Highway as "a matter of utmost seriousness" (R.3).

Through September 22, 1980, Richmond continued to allow Belterrian vehicles the use of the Chesterfield Highway, but attempted to intercept citrus-carrying trucks at an agricultural checkpoint (R.3). Belterre once again declined to respect Richmond's concerns and ordered its vehicles not to stop at the checkpoint (R.3). On September 22, however, a Richmond citrus farmer found a lemon impregnated with a dead insect in his groves near the border with Belterre. Since a dreadfly normally exists within a two-kilometer radius of its place of birth and has a lifespan of less than two weeks (Clar. Nos. 38, 41), it is unlikely that the dreadfly could have arrived in Richmond other than through its natural infestation pattern, migrating from New Hostia across Belterre or through an artificial dispersion pattern assisted by the transshipment of Belterrian citrus across the Chesterfield Highway.

Immediately upon learning of the spread of the dreadfly into Richmond, Federation President Karafa announced the blocking of the highway, the suspension of the Treaty, the recall of its ambassador from Belterre and the expulsion of the Belterrian ambassador. The President of Belterre retaliated by unilateral order blocking all assets of Richmond nationals, both natural and juridical, within the geographical limits of Belterre, and prohibited persons within Belterre from dealing in those assets. The order also forbade the performance of any contract for the benefit of Richmond or any Richmond national and effectively suspended \$1.2 billion in developmental projects then being conducted within Richmond by Belterre corporations (R.4). Despite its asserted dependence on the Chesterfield Highway, Belterre was able to continue exporting its citrus crop, increasing the cost of its exports by only 5% and the cost of its imports by 10% (R.4).

In order to protect its interests, on October 15, Richmond confiscated \$6.5 million in Belterrian property located at the Port of Xanadu awaiting tran-

shipment to Belterre. The property also included two paintings of undetermined value belonging to the Belterre Art Museum (R.4-5).

Belterre amended its blocking order on November 1, 1980 to include:

1. all natural persons who are citizens of Belterre;
2. all natural persons who are physically present in Belterre;
3. all corporations or other commercial enterprises organized under the laws of Belterre; and
4. all commercial enterprises anywhere in the world which are owned or controlled by any person or entity described in (1), (2), or (3) above.

(R.5). A significant effect of this amendment was the termination by Tropical Fruits Ltd. of its marketing contract for Richmond's citrus output. Tropical Fruits to this point had possessed a virtual monopoly on the exportation of Richmond's citrus products. The cancellation of this contract naturally forced Richmond to immediately undertake a search for alternate marketers. Tropical Fruits Ltd., although headquartered in the Caribbean, was controlled primarily by Belterrian investors.

Both Richmond and Belterre are members of the United Nations and World Health Organization, and are parties to the Vienna Convention on the Law of Treaties. In April, 1982, both parties agreed to submit their dispute to the International Court of Justice.

QUESTIONS PRESENTED

1. Whether a State may temporarily suspend the operation of a bilateral agreement granting a land-locked State access to the sea when specific performance would result in serious economic and ecological harm?
2. Whether a State may use discriminatory economic force by blocking the assets of another State and its nationals without justification and solely in retaliation for the legitimate protective actions of the injured State?
3. Whether in self-defense and in order to ensure that its nationals are not denied just compensation for the prior blocking of their assets, a State may exert temporary jurisdiction over goods belonging to the State which blocked the assets?

SUMMARY OF ARGUMENT

International law requires a state to take reasonable measures to control the spread of insects threatening to its own or a neighbor's agriculture and economy. There is a long history of acceptance by international agreement and judicial decision of the type of inspection procedures proposed by Richmond in the present case. Indeed, the area of pest control is one for which international responsibility is recognized and in which irresponsibility engenders universal concern.

Belterre's refusal to respect principles of customary international law formulated for the resolution of similar circumstances justifies Richmond's determination that it had no alternative to the suspension of the Chesterfield Highway Treaty. Further, Belterre had no basis for presuming that Richmond intended to forego its sovereign rights and international obligations in the formation of the Treaty. Customary international law recognizes that a land-locked state's right of transit may be limited in exigent, infestation-related circumstances and to prevent harm or prejudice to the transit state.

Belterre violated international law when it froze Richmond's assets solely in retaliation for Richmond's legitimate protective actions. The blocking constituted a taking which is universally condemned by the law of nations. Belterre lacked any legitimate justification for the blocking order. In addition, the extra-territorial nature of the amendment to the blocking order was a further violation of international law. The blocking of the assets was an impermissible exercise of economic force by Belterre against Richmond in violation of the United Nations Charter. Belterre was obligated but failed to employ the procedures for resolving disputes articulated in Articles 33 and 37 of the United Nations Charter before it issued the blocking order.

Richmond was justified in confiscating the property at the port of Xanadu because it was acting in self-defense and ensuring that its nationals were

not denied just compensation for the prior blocking of their assets. The confiscation of the property by Richmond was in proportion to Belterre's blocking order. The Federation of Richmond is entitled to an award of damages under international law. The recognized remedy in international law for the unlawful taking of property is full compensation. Further, Belterre is not entitled to an award of damages, since the property at the Port of Xanadu has been neither damaged nor destroyed. Additionally, the losses claimed by Belterre have not been estimated with certainty and do not arise from a violation of international law by the applicant, since Richmond was justified in its actions.

ARGUMENT

I. RICHMOND'S ACTIONS WERE NECESSARY TO PREVENT THE THREATENED DISRUPTION OF ITS AGRICULTURAL AND ECONOMIC STABILITY AND DID NOT VIOLATE ANY LEGAL OBLIGATION OWED TO BELTERRE.

Belterre's efforts to enforce strict and literal performance of the Chesterfield Highway Treaty are not supported by international law. The measures taken by Richmond to prevent the spread of the dreadfly into its territory were self-protective sovereign actions compatible with international law. The terms of the Treaty are completely consistent with Richmond's sovereign rights and international responsibilities and the Treaty must itself be considered in the light of international norms and practices.

A. The Chesterfield Highway Treaty was drafted to operate within the context of the protections and requirements of international law.

Richmond and Belterre are both member-States of the United Nations (R.6). The Vienna Convention on the Law of Treaties indicates that any bilateral agreements between member-States shall, as a matter of course, incorporate the general principles of international law to which every State is bound. Vienna Convention, Art. 31(3)(c), U.N. Doc. A/Conf. 39/27 (1969).

International law "places the principal emphasis on the intentions of the parties." Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) 1981 I.C.J. 4, 31 (Judgment of May 26). The fact that the Treaty is devoid of many of the provisions generally found in bilateral or multi-lateral international agreements does not prevent the interpretation of this Treaty so that it accurately reflects both the intentions of the parties and "the spirit of international cooperation" espoused (R.8). Indeed, the doctrine of plain meaning, referred to by Lauterpacht as "the pivot of the traditional doctrines of interpretation," 4 Oppenheim International Law (8th Ed. by Lauterpacht, 1955), at 393, ". . . is merely a Prima Facie guide and cannot be allowed to obstruct the essential quest in the interpretation of Treaties, namely, to search for the real intention of the contracting parties. . ." Sir Arnold McNair, cited Id. at 395.

International tribunals have often declined to act upon the plain or literal meaning of terms in treaties and other international agreements in order to uphold what was believed to be the common intentions of the parties. See, e.g., Island of Timor Case (1913), Hague Ct. Rep. (Scott), 355, 382; Ottoman Debt Arbitration, Ann. Dig. (1925-26), Case No. 270; L. Oppenheim, supra, at 399. In Competence of the General Assembly for the Admission of a State to the United Nations, 1950 I.C.J. 4 (Advisory Opinion of March 3), this Court stated:

. . . [t]he first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavor to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, this is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then . . . [the Court must] seek to ascertain what the parties really did mean when they used these words.

Id. at 8 (emphasis added). It is crucial to ensure that Belterre not be allowed to introduce the doctrine of plain meaning as an artificial device for avoiding or obscuring the reasonable intentions of both parties to the Treaty, thereby fostering an inequitable resolution of the present case.

B. The international impact of the emergency dictates that Belterre's response be judged by international law and agreements governing similar international concerns.

In order to interpret correctly the Chesterfield Highway Treaty, useful comparisons may be made to treaties between other land-locked countries and their neighbors, since treaties may themselves generate customary international law. See, Anthony D'Amato, The Concept of Custom in International Law (1971), Chapter 5.

The right of passage for land-locked countries to promote and facilitate trade and travel is as old as the establishment of these states themselves. See, Grotius, De Jure Belli Ac Pacis Libri Tres (1646), reprinted in 1 J.B. Scott, The Classics of International Law, at 196-202 (1925); Puffendorf, De Jure Naturae et Gentium Libri Octo, reprinted in Scott, Id. at 354-361 (1934). Significantly, 19th

and 20th century treaties governing these rights incorporate as a standard provision either a variant of Force Majeure or police powers clauses which solely protect the interests of the transit-state.*

Multilateral treaties concerning free transit also include force majeure and, significantly, pest-control provisions. In particular, the Convention on Transit Trade of Land-Locked States, July 8, 1965, 19 U.S.T. 7373, T.I.A.S. 6592, 597 U.N.T.S. 42 (1967) provides specifically that although goods in transit should not be subject to any customs controls, Id. Principle 4, at 44-46, no State is bound ". . . to afford transit for goods of a kind of which importation is prohibited, . . . as a precaution against diseases of animals or plants or against pests," Id. Article 11, at 54-56, or in cases of Force Majeure. Id. at 60. Conventional international law is thus clear in its explicit recognition that Richmond may impose limitations on transit to control the spread of insects, such as the dreadfly, which threaten ecological disruption and economic disaster.

Commentators are in general agreement that "norms articulated by . . . different groups tend in the course of time . . . to emerge as customary norms of international law." Rama Rao, International Custom, 19 INDIAN J. OF INT'L L. 515, 517 (1979). See also Statute of the International Court of Justice, Art. 38. Indeed, consensus itself is a source of law which, when achieving the status of customary international law, becomes binding even on dissenting states. Akehurst, Custom as a Source of International Law, 47 BRIT. Y.B. OF INT'L L. (1976) 1, at 24. See also Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pak.), 1972 I.C.J. 1 (Judgment of August 18), separate opinion of Judge Dillard,

* For example, the Treaty of Cession and Boundaries, March 16, 1816, Sardinia - Switzerland, 65 Parry, Consolidated Treaty Series 447, interposed police powers by the transit-state despite the parties' agreement that "commercial communications between the [States would] be free at all times . . .", Id. at 453. The Treaty of Commerce and Navigation, July 25, 1947, U.S.S.R. - Hungary, 216 U.N.T.S. 266 (1955), provides for internal protective regulation "(i)n matters relating to the importation and exportation and the conveyance in transit of animals, animal products, living plants, plant parts, and seeds . . ." Id. Art. 15, at 276.

at 101. The measures taken by Richmond in acting swiftly to limit the ecological threat thus receive substantial support from international law.

C. Richmond's emergency measures taken to control the spread of agricultural pests were a legitimate exercise of State sovereignty.

Recent decisions of the European Court of Justice have held that a country's concern about the spread of agricultural pests may constitute a sufficiently important justification for the equivalent of quantitative restrictions on imports to be imposed in apparent contravention of express treaty provisions to the contrary. *Rewe-Zentralfinanz eGmbH v. Direktor der Landwirtschaftskammer*, (1977) 1 C.M.L.R. 599; *Rewe-Zentralfinanz eGmbH v. Director of the Landwirtschaftskammer, Westfalen-Lippe*, (1973) 1 C.M.L.R. 630. The European Court found that although phyto-sanitary border inspections of agricultural imports constitute a non-tariff barrier to the free transit of goods, the interest of the member-State in protecting its agricultural base from the spread of agricultural pests or disease is of such overriding importance as to justify the imposition of reasonable preventive actions, although these actions are in apparent contravention of Article 30 of the European Economic Community Treaty. EEC Treaty (Treaty of Rome), September 17, 1957, 298 U.N.T.S. 3 (1958).

While discussing the fact that Article 36 of the EEC Treaty provides for emergency measures to be taken to protect public health and to contain the spread of diseases threatening to animals, vegetation and crops, the court emphasized that the State's actions were intended primarily to protect a predominant public interest. Moreover, although ". . . the basic principle of the Treaty is the abolition of all obstacles to the free movement of goods between the member-States, . . . the serious risk that the products subject to inspection may be contaminated by pathogenic organisms . . .", provides adequate justification for the burdens such inspections may entail. (1977) 1 C.M.L.R. 599 at 609 (emphasis in original). Further support is contributed when there is sufficient evidence for doubting

the accuracy of certificates of inspection by the exporting states as in the present case. Id. at 612. Indeed, the marginal increase in transportation costs occasioned by the inspections in terms of delay or, in the case of contamination, confiscated produce, is counterbalanced by the public policy advanced by such measures.

D. Richmond did not agree to yield any of its international or sovereign rights by granting Belterre the right of transit under the Chesterfield Highway Treaty.

Like the EEC Treaty, the Chesterfield Highway Treaty cannot be so narrowly interpreted as to cause severe hardship to one of the parties to the treaty. The Highway Treaty between Richmond and Belterre is an uncomplicated document expressing the general agreement between the parties and is therefore silent as to a number of terms which are generally standard in international agreements, including dispute resolution and Force Majeure clauses, and provisions providing for modification of individual treaty provisions without alteration to the underlying basis for the agreement.

The Chesterfield Highway was constructed in 1925 over a traditionally-used route (Clar. Nos. 83, 189). Belterre made use of the highway prior to the conclusion of the Treaty in 1965 with the permission of the Government of Richmond. Recent conventions on transit have urged, however, that individual states conclude agreements between themselves to formalize their common understandings and to conform with existing international conventions. See 597 U.N.T.S. at 44. When considered in the light of their traditional access to the highway and the trend towards the memorialization of similar informal transit agreements, it is clear that the Treaty was concluded in order to formalize the relationship between Richmond and Belterre and to ensure that Belterre's right of transit was not based solely upon the customary relationship between the countries. See Akehurst, supra at 47, n.2. This right, contrary to Belterre's contention, is not unlimited.

Prior to the drafting of the Treaty, the dreadfly had been unknown in

the Richmond/Belterre region (Clar. 255). It is thus reasonable that a pest-control clause would not be included in the Treaty. Given the simple and straightforward nature of the Treaty, such an omission constitutes further evidence that the parties intended to be bound both by the limited provisions of the treaty itself and by common precepts of international law.

E. The suspension of the Treaty was a justified abridgement of the rights customarily granted to Belterre as a land-locked State.

The right of access to the sea is an "imperfect" right. Lauterpacht, Freedom of Transit, 49 TRANSACTIONS OF THE GROTIUS SOCIETY 330, 346 (1958-59). See also Caflish, Land-locked States and their Access to and from the Sea, 49 BRIT. Y.B. OF INT'L L. 71, 87-91 (1978). For an inherent right to exist, the use of the route must be a necessity to the land-locked state and it must have been relied upon for a considerable period of time. However, the qualifying condition to this right of transit, which is the basis of the present disagreement between Belterre and Richmond, has not been properly met by Belterre. Lauterpacht's discussion of the right of transit hinges upon the stipulation that in the exercise of the land-locked country's right of transit, no harm or prejudice result to the transit-state. As is evident from the immediacy of the danger facing Richmond, harm and prejudice would be the natural result of Belterre's continued use of the Chesterfield Highway for the transport of its uninspected agricultural goods to market.

It is within Richmond's sole discretion to determine what factors constitute an injury or threat to its security. Right of Passage Over Indian Territories Case, supra at 40. Moreover, Richmond has the right, emanating from its normal exercise of territorial sovereignty, to establish reasonable regulations to protect its security, including emergency regulations of limited impact. Id. at 40; Asylum Case (Colom. v. Peru), 1950 I.C.J. 266 (Judgment of November 20). Richmond sought to introduce such reasonable regulations by requesting limited

inspection privileges of Belterre's produce-carrying vehicles. Belterre rejected these proposals and proceeded to drive its trucks past Richmond's inspection stations.

It is important to note that while Belterre is land-locked, it does not lack alternative avenues other than the Chesterfield Highway for the transit of its goods. Belterre has both air and rail links connecting it to its marketplaces through New Hostia and other States in the region (R.4). Although the employment of these alternatives does increase incrementally Belterre's cost of doing business, it has not been indicated that Belterre's competitive position in the world citrus market has been threatened. Moreover, the situation generating the increased costs would not have arisen had Belterre employed adequate protective measures in a timely fashion.

F. Belterre failed to comply with its obligations both under international law and the spirit of international cooperation espoused in the Treaty.

The spread of the dreadfly into the Belterre region was confirmed by the World Health Organization in December, 1979 (R.2). Although Belterre had not requested the WHO report and was not the subject of the report, as a member of the WHO, Belterre nonetheless was put on notice by the disturbing contents of the report and the remedial measures it outlined. A State in Belterre's position is recognized by international law as being under an affirmative duty to extend cooperation and mutual assistance to a neighbor State "in order to avert grave [environmental] situations, and to eliminate, reduce or correct, as far as possible, the effects of such situations or events." Report of the 5th Session of the U.N. Environment Program, Principle 9, 9 U.N. Doc. UNEP/IG.12/2 (1978) at 13. The failure to abide by such responsibility will subject a State "to liability in accordance with applicable international law for environmental damage resulting from violations of these obligations" Id. Principle 12, at 13-14.

In defiance of this responsibility, Belterre's counterproposal of May

15, 1980 (Clar. 29) indicated a continued lack of concern for the possible effects that the spread of the dreadfly might cause to its economy and to Richmond's. The mere offering of the counterproposal by Belterre effectively admitted that Richmond's concerns were justified and bore substantial weight and immediacy. Moreover, the terms of the counterproposal may be construed as an admission that Belterre's initial proposals, made in response to Richmond's message of concern, were insufficient to effectively contain the dreadfly infestation. Belterre could not identify the fruit grown in areas of its country where infestation was suspected and since it had no internal regulations regarding agricultural packaging or transport (Clar. Nos. 259, 264), would have been unable to inspect fruit passing through its country over the Chesterfield Highway had it even chosen to do so (Clar. 156).

The presence of a significant ecological threat to the environment of an adjacent state is a matter raising serious international concerns. G.A. Res. 2995 (xxvii), U.N. Doc. A/Conf. 48/4, December 15, 1972. Indeed, the United Nations General Assembly has stipulated that "cooperation between countries sharing (common natural resources) . . . must be developed on the basis of a system of prior information and consultation within a framework of normal relations." Report of the U.N. Conference on the Human Environment, G.A. Res. 3129 (xxvii), A/9330, December 13, 1973.

Customary international law therefore indicates that a common interest exists between States in seeking to protect a shared natural resource. Indeed, no state has a preferential privilege to act to the prejudice of another. Case Relating to the Jurisdiction of the International Commission of the River Oder, (1929) P.C.I.J. Ser. A, Nos.23, 27. Richmond does not seek to impute a strict liability standard upon Belterre for any extra-territorial environmental damage, whether prospective or actually incurred. Rather, Richmond seeks to hold Belterre accountable for Belterre's failure to carry out its duty to prevent the threaten-

ed damage, due to the realization of the damage compounded by Belterre's prior notice of the threat and its negligent failure to limit the injurious events as determined by a contextual standard of due diligence. See, Report of the ILC on the Work of its Thirtieth Session, GAOR, 33rd Sess., Supp. (No. 10) U.N. Doc. A/33/10, 197 (1978).

- G. Richmond was justified in suspending the Treaty since continued performance would have extracted an unreasonable and unforeseen sacrifice.

Richmond asserts that it fully performed its obligations under the Treaty.* Should this Court find, however, that Richmond breached certain provisions or suspended operation of the Treaty absent an implied provision permitting such suspension, Richmond's actions were nonetheless permissible under international law. See Right of Passage Over Indian Territories Case (Gr. Brit. v. Port.), 1957 I.C.J. 1, 85-91 (Order of June 6).

Cases must necessarily be admitted in which the State must be able to declare itself freed from any engagement even when it has not expressly reserved this right by a clause in the Treaty. Respect for engagements contracted should not, for example, be pushed to a suicidal extent. Though a State may be required to execute burdensome engagements contracted by it, it cannot be asked to sacrifice its development and its [economic] existence to the execution of a Treaty.

2 Pradier-Fodéré, p.264 (1911), cited at AM. J. OF INT'L L. 348 (1926). See also

* Belterre's contention that the suspension of its air rights over Richmond was in contravention of the Treaty is without merit. Where for instance, Lithuania had accepted an obligation not to restrict traffic with Poland by river, it was clear under the doctrine of expressio unis est exclusio alterius, that traffic by rail did not come within the obligation. Railway Traffic Between Lithuania and Poland, (Lithuania v. Pol.), 1931 P.C.I.J. Ser. A/B, No. 42, 107, at 121 (Advisory Opinion of October 15). Moreover, the court found that the mere fact that a particular or traditional means of transit had been relied upon by a land-locked state did not translate into a "right" recognized by international law or convention. Id. at 120-121. Similarly, the Chesterfield Highway Treaty, which included rights to the use of the Port of Xanadu neither expressly nor impliedly extended air rights within its provisions. In addition, it need be only briefly mentioned that absent a specific treaty to the contrary, international convention permits the suspension or termination of air rights as a discretionary matter of the transit-state. See Convention on International Civil Aviation, December 7, 1944, Arts. 5 and 6, E.A.S. 469, 59 Stat. 1516, 3 Bevans 929. No such particular treaty is in evidence in the present case.

Vienna Convention, supra, Art. 32.

This Court has further held, under the doctrine of rebus sic stantibus (changed circumstances) that "a State may refuse to execute a treaty if the conditions which prevailed at the time of signature have substantially changed." Corfu Channel Case (Gr. Brit. v. Alb.), 1947 I.C.J. 1, 41 (Order of July 31). See also Art. 62, Vienna Convention, supra. Although the appearance of the dread-fully in the area may not in itself be sufficient to warrant the application of the doctrine of changed circumstances, the continued performance of the Treaty would have extracted an unreasonable sacrifice from Richmond and thus invites the application of the doctrine. Belterre's refusal to apply reasonable methods for eradicating the pest, indicating a lack of good faith in opposition to Article 26 of the Vienna Convention and the spirit of international cooperation espoused in the Treaty, offers further support for the application of the doctrine. Art. 26, Doc. A/Conf. 39/27, supra.

This Court and its immediate predecessor have on occasion declined to apply the doctrine of rebus sic stantibus in a number of instances where some commentators have suggested it might apply. I. Detter, Essays on The Law of Treaties, 95 (1967). See Denunciation of the Treaty of November 2nd 1865 between China and Belgium (China v. Belg.), 1929 P.C.I.J., Ser. A, No. 16, 1, 22-25 and 52 (Order of May 15, 1929). The application of the doctrine in the present case would be proper recognition of Richmond's right to unilaterally denounce the Chesterfield Highway Treaty because of the changed environmental conditions and Belterre's concurrent abdication of responsibility for the spread of infestation. If, on the other hand, this Court applies the theory of imprevison and states that no such right exists and that a heretofore unseen event has created a shift in the conventional relationship between Richmond and Belterre, case law suggests that a re-adaptation or revision of the Treaty would be in order. See China-Belgium Case, supra. This alternative would enable the Treaty to continue in

operation to the benefit of both parties. Richmond sought to achieve such a reasonable revision by suggesting limited inspection privileges, but was rebuffed by Belterre. Richmond's prompt protective measures were necessitated by the nature of the emergency and were not in any way indicative of an unwillingness to compromise with Belterre in seeking a resolution of the problem.

Belterre is under an affirmative duty to conform its behavior to the standards of international law to ensure that Richmond's interests are not prejudiced. Corfu Channel Case, supra, at 34. In order to effect this, Belterre, like every state, is duty bound to exercise proper vigilance in its territory. As a consequence of this duty, Belterre is considered by international law as having actual or constructive knowledge of prejudicial acts or omissions within its jurisdiction; it is thus bound to take preventive measures to forestall the execution in its territory of prejudicial acts detrimental to Richmond or other states in the region. Id. at 44. In any event, actual knowledge was provided to Belterre in the form of the WHO report to New Hostia.

Once notice of suspected infestation and of conditions conducive to further spread of the dreadfly came to its attention, Belterre was under an affirmative obligation to ensure that neither its actions nor omissions imperiled the rights and security of its neighbor States. Belterre was clearly aware of the dangers posed by the dreadfly and yet chose a dangerous course of inaction.

It is inconceivable that the dreadfly found in the field of a Richmond farmer, near the border of Belterre, could have originated from any place other than Belterre or New Hostia. During the 14-day lifespan of the dreadfly, the normal geographic range of the insect is within two kilometers (Clar. Nos. 38, 41). Indeed, the dreadfly could have arrived in Richmond through only two possible avenues: the gradual dispersion across Belterre from the infested groves of New Hostia or through an artificial pattern of dispersion facilitated by the transportation of infested citrus products over the Chesterfield Highway.

Richmond's concern about the spread of the dreadfly into its territory was thus well-founded and justified the reasonable measures taken to ensure that further infestation was limited. Belterre's unreasonable refusal to take any action to lessen the threat to its neighbors, by declining to accept the WHO's recommendation to New Hostia that infested areas be sprayed with pesticide or, at a minimum, to allow limited inspection of its produce-carrying vehicles at the Richmond border amount to a violation of the spirit of its agreement with Richmond, of the clauses implied to a treaty by customary international law and specific international agreement, and of the precepts of customary international law regarding the rights of land-locked nations to have access to the sea.

II. BELTERRE'S RETALIATORY AND UNJUSTIFIED BLOCKING OF RICHMOND'S ASSETS CONSTITUTED A TAKING AND SUCH USE OF ECONOMIC FORCE IS A VIOLATION OF THE UNITED NATIONS CHARTER AND INTERNATIONAL LAW.

Article 10 of the 1961 Harvard Draft Convention on Responsibility of States for Injuries to Aliens holds that a "taking of property includes not only an outright taking of property, but also any such unreasonable interference with the use, enjoyment, or disposal of property" so that the owner will not be able to use, enjoy, or dispose of the property within a "reasonable period of time after the inception of such interference" or "for a limited period of time." Article 10, paragraph 3, Draft Convention on the International Responsibility of States for Injuries to Aliens, Draft No. 12, Apr. 15, 1961. See also 8 M. Whiteman, Digest of International Law, at 1006 (1967). The American Law Institute in its Restatement of the Law, Second, on Responsibility of States for Injuries to Aliens maintains that a taking occurs when a state intends to and effectively does deprive an alien of substantially all the benefit of his interest in property even though the state does not deprive him of his entire legal benefit. American Law Institute, Restatement of the Law, Second, Foreign Relations Law of the United States (1965), pt. IV, "Responsibility of States for Injuries to Aliens", pp.572-73. See 8 M. Whiteman, supra, at 1007.

For more than two years, Belterre has deprived Richmond of the use of and other rights normally associated with the ownership of its assets. This is an unreasonable length of time. Richmond cannot exert any control over the assets. It cannot withdraw the funds from Belterre, invest them more beneficially, or sell them at a profit. Although Richmond maintains its legal interest over the assets, it has been substantially deprived of the benefit of the assets. Only the liquid assets are held in interest-bearing accounts. As to the remaining assets, Richmond is deprived of any gain the assets would normally engender.

Throughout history, nations have condemned the taking of alien property by a state. See Jay Treaty, February 29, 1796, United States - Great Britain, Art. X; W. Malloy, Treaties, Conventions, International Acts, Protocols, Agreements United States 1776-1809, 509 (1910); Case of the Brig Macedonian (U.S. v. Chile), 2 Moore's Arb. 1449 (1863). The Organization For Economic Co-operation and Development, Draft Convention on the Protection of Foreign Property, Art. 1 (OECD Publication 1967) states that: "Each Party shall at all times ensure fair and equitable treatment to the Property of the nationals of the other Parties. It shall accord within its territory the most constant protection and security to such property and shall not in any way impair the enjoyment or disposal thereof by unreasonable or discriminatory measures." Id.

A recent case of blocking of assets occurred on November 14, 1979 when the United States froze Iranian assets which were in or came within the possession or control of persons subject to the jurisdiction of the United States. While this Court did not address the issue of the blocking of assets in its opinion, Judge Morozov, in his dissenting opinion, stated that the United States' economic sanctions against Iran violated both the provisions of general international law and the Charter of the United Nations. Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 4, 54 (Judgment of May 24); see Bretton, L'affaire des otages americains devant la Cour Internationale de

Justice. 107 JOURNAL DU DROIT INTERNATIONAL, 787, 806-07 (1980).

Other instances in which a country blocked the assets of another nation are distinguishable from the present case. Great Britain froze Argentine assets on April 3, 1982 after the Argentine invasion of the Falkland Islands. See Control of Gold, Securities, Payments and Credits (Argentine Republic) Directions 1982, reprinted in Freezing of Argentine Assets, British Information Services (3 April 1982). Richmond, however, is not at war with Belterre and has not utilized armed aggression. The United States blocked Cuban assets within the jurisdiction of the United States in response to the expropriation without compensation of American property in Cuba by the Government of Fidel Castro. This order remains in effect to the present date. 31 C.F.R. § 515.201. It should be noted that Richmond had not expropriated any Belterrian property before Belterre issued the blocking order. When the United States government froze the assets of Italy in 1941 and of Bulgaria, Hungary, and Rumania in 1947, it did so because of the failure of these governments to meet their bond obligations and debts to nationals of the United States arising out of war damages, nationalization of property, and financial debt. See 8 M. Whiteman, Digest of International Law at 952-66 (1967). There is no indication that Richmond owed any debts to Belterre or to Belterrian nationals, nor did Richmond nationalize any property before the blocking of its assets.

An immediate effect of the blocking order was the suspension of \$1.2 billion in development projects then being conducted within Richmond by Belterre corporations. This cessation is in and of itself a violation of the law of nations since the right of development is newly recognized as a human right in international law. Espiell, The Right of Development as a Human Right, 16 TEX. INT'L L. J. 189, 194-95 (1981).

- A. International law recognizes no justification for the blocking order imposed by Belterre on Richmond.

Belterre can offer no justification under international law to legiti-

mize the freezing of Richmond's assets. Richmond at no time threatened either through diplomatic channels or by its actions or statements to remove its assets from Belterre. Belterre thus had no reasonable basis for presuming a threat to its economy. Belterre cannot claim that Richmond's recall of its ambassador and its expulsion of the Belterrian ambassador constituted a threat of force which would justify blocking the assets. Such action is customary diplomatic practice among nations and is authorized by Article 9 of the Vienna Convention on Diplomatic Relations, Doc. A/Conf. 20/13 and CORR. 1, April 14, 1961.

A state may justify unilateral economic measures, which would otherwise be illegal, if it can show that it was acting in self-defense. The requirements for self-defense are that a state is reacting to an illegal act which poses "an immediate danger to its security or independence", that no alternative means of protection are available and that the reaction be proportionate to the harm done. Bowett, Economic Coercion and Reprisals by States, 13 VA. J. INT'L L. 1, 7 (1972). See Dempsey, Economic Coercion and Self-Defense In International Law: The Arab-Oil Weapon and Alternative American Responses Thereto, 9 CASE W. RES. J. INT'L L. 253, 276, 298 (1977). Thus, the blocking of the assets by Belterre cannot be considered a measure taken in self-defense.

Even if this Court should find that Richmond did contravene certain provisions of the Treaty, these actions in no way posed an immediate hazard to the security or independence of Belterre. Belterre's sovereignty and control over its territory and nationals were not threatened. The marginal 10% increase in the cost of importing goods into Belterre and the 5% increase to the cost of Belterrian exports is merely an economic inconvenience and has evidently not caused a collapse of or even modest harm to Belterre's economy.

Belterre has failed to demonstrate that alternative means of protection other than the blocking of the assets were unavailable. Belterre's reaction was excessive and not in proportion to the harm allegedly done. Belterre's blocking

order had the effect of suspending \$1.2 billion in development projects then being conducted within Richmond by Belterre corporations and compelled Tropical Fruit Ltd., which held a virtual monopoly on citrus exports from Richmond, to suspend its marketing contract for Richmond citrus, worth approximately \$35 million in 1979. The threat of infestation was serious. The dreadfly could only have come from Belterre and the WHO inspection team had reported that conditions were ideal for the rampant proliferation of the pest (R.1). The increased cost to Belterre in importing and exporting its goods is a small burden compared to the threat of a dreadfly infestation.

Revenue from the sale of citrus products constitutes 15% to 20% of Richmond's Gross National Product (Clar. 120). Destruction of Richmond's citrus crops by dreadfly infestation would have a serious impact on its economy. In all probability, the loss of revenue of this magnitude would result in curtailment of essential government services and additionally would create huge government deficits. Since Richmond's economy is based on the exportation of its citrus crops, not only would those workers who harvest, package and ship the fruit be put out of work, but the country as a whole would suffer severe hardships.

B. The blocking of Richmond's assets by Belterre was an impermissible retaliation in violation of international law.

Actions by a state taken in retaliation against another state violate international law. In a note concerning economic coercion and self-defense in international law, one commentator has noted:

In contrast to self-defense, reprisals are punitive in character - they seek to impose reparations for the harm done, or to compel a satisfactory settlement of the dispute created by the initial illegal act or to compel the delinquent State to abide by the law in the future. Because such action is taken after the event and when the harm has already been inflicted, reprisals cannot be characterized as a means of protection.

Dempsey, supra at 298. Belterre's blocking of Richmond's assets was retaliatory and was done to exert pressure upon Richmond to abandon its legitimate course of

action. No right to coercion of such nature is recognized by international law. Economic reprisals are legal under international law only if preceded by a prior illegal act, redress by other means has been exhausted or is unavailable, and the economic measures taken are "limited to the necessities of the case and proportionate to the wrong done." Bowett, supra at 9-10. As previously noted, the blocking of the assets was disproportionate to the action taken by Richmond.

In contrast, the actions taken by Richmond in suspending the Highway Treaty, closing the entrances to the Chesterfield Highway and sealing the border with Belterre were both legal and proper. Contrary to the requirements of international law, Belterre made no reasonable effort prior to blocking the assets to negotiate with Richmond and thus had not exhausted the available alternative methods of redress. Indeed, negotiations must prove fruitless for economic reprisals to be legal. Shneyer & Barta, The Legality of the U.S. Economic Blockade of Cuba Under International Law, 13 CASE W. RES. J. INT'L L. 451, 465 (1981). Belterre at no time attempted to enter into negotiations with Richmond after Richmond announced that it had no alternative but to seal the border with Belterre.

Belterre imposed the blocking order after the President of Richmond announced that the Highway Treaty was suspended and that the entire border with Belterre would be sealed as a self-protecting measure. Since the blocking order applied only to Richmond nationals and not to nationals of any other country, Belterre's intent was evidently to retaliate only against Richmond because of the restrictions Richmond had imposed. It is a violation of international law when a state pursues a deliberate course of action injuring or discriminating against foreign nationals. 8 M. Whiteman, supra at 983. As a retaliatory measure, the blocking of the assets violated international law.

C. The extraterritorial impact of Belterre's expansion of the blocking order was a further violation of international law.

Belterre's Executive Decree of November 1, 1980 broadened the blocking order to include all natural persons who are citizens of Belterre, all natural

persons who are physically present in Belterre, and all corporations or other commercial enterprises anywhere in the world which are owned or controlled by any person or entity previously described (R.6). Belterre could not extend the blocking order to encompass all these persons or entities because it could not legally block assets either inside or outside its own borders. Such freezing orders, if legal, are of strict territorial application. Gianviti, Le blocage des avoirs officiels iraniens par le Etats-Unis, 69 R.C.D.I.P. 279, 298 (1980). Belterre and Richmond were not at war, Richmond had not nationalized any property belonging to Belterrian citizens before the blocking and did not owe any debts to Belterre or to its nationals.

D. Belterre failed in its obligation to abide by the provisions of Articles 33 and 37 of the United Nations Charter.

As a member of the United Nations, prior to resorting to any blocking of assets, Belterre had an affirmative obligation to abide by the requirements of Articles 33 and 37 of the United Nations Charter. Article 33 of the Charter provides that:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

U.N. Charter art. 33, para. 1. Before blocking Richmond's assets, Belterre was obligated to use the procedures set out in Article 33. If such means had been unsuccessful, Belterre would have been bound as a member of the United Nations by Article 37 of the Charter, which states that if the procedures in Article 33 fail, the parties shall refer the dispute to the Security Council. U.N. Charter art. 37, para. 1 & 2. Belterre chose to ignore these procedural steps and instead instituted its illegal measures of self-help.

- E. The economic force employed by Belterre in blocking Richmond's assets is a violation of Article 2(4) of the United Nations Charter and is condemned by the international community.

Belterre is bound by the provisions of Article 2(4) of the United Nations Charter. It violated this provision when it instituted the blocking of the assets as economic force against Richmond. Article 2(4) prohibits "the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the Nations." U.N. Charter art. 2, para.4..

Any claim put forth by Belterre that Article 2(4) does not include economic force is without merit. The term 'force' in Article 2(4) of the Charter should be read broadly since it is located in Article 2 rather than in Article 1 of the Charter. Article 2 sets out the principles in accordance with which the members of the international community must act while Article 1, in stating the purposes of the collective community under the auspices of the United Nations prohibits 'threats to the peace', 'breaches of the peace', and 'acts of aggression' and therefore, might also include certain other forms of intense coercion. Zedalis, Some Thoughts on the United Nations Charter and the Use of Military Force Against Economic Coercion, 17 TULSA L. J. 487, 491 (1981).

The word 'force' as used in Article 2(4) is not limited to military force when read in conjunction with the phrase "or in any other manner inconsistent with the Purposes of the United Nations" which appears at the end of the Article. Where the drafters of the Charter intended it to limit the word 'force' to a military context, they prefaced it with the adjective 'armed' as in in Article 46 or they used it in a context which left no doubt that it meant armed force, such as in Article 44. Zedalis, supra, at 496.

Force is prohibited if it is directed against the territorial integrity or political independence of a state or if it is otherwise inconsistent with the purposes of the United Nations. It is beyond doubt that the political independence of a state can be eroded without the use of armed force.

Note, The Arab-Oil Embargo and United States Pressure Against Chile: Economic

and Political Coercion and the Charter of the United Nations, 7 CASE W. RES. J. INT'L L. 3, 19 (1974-75). Moreover, economic coercion may constitute a threat to the peace. Id.

The international community condemns the use of economic force. Specifically, the United Nations General Assembly has condemned economic means of coercion on several occasions. Dempsey, supra, at 265 (1977). "No state may use or encourage the use of economic, political, or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind." U.N. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131 (XX) (1965); U.N. Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation Among States In Accordance With the Charter, adopted by consensus, G.A. Res. 2625, 25 GAOR Supp. 28 (A/8028) at 121 (1970); Charter of the Organization of American States, Art. 16. U.N. Resolution 3171 on the Permanent Sovereignty Over Natural Resources emphasizes the duty of all States to refrain in their international relations from military, political, economic, or any other forms of coercion aimed against the territorial integrity of any State and the exercise of its national jurisdiction." G.A. Res. 3171 (XXVIII) (1973). Since many states have ratified these provisions over a considerable period of time, the provisions are binding on Belterre as customary international law. See Vienna Convention on the Law of Treaties, supra.

The blocking of the assets was an exercise of economic force by Belterre against Richmond. Belterre instituted these economic measures to affect Richmond's economy adversely so that the sovereign state of Richmond would be forced to abandon the reasonable measures it had instituted for the protection of its economy and environment. As such, the blocking was an impermissible exercise of economic force which is prohibited by the United Nations Charter and condemned by the international community as a whole.

III. IN ORDER TO PROTECT ITS INTERESTS AND THAT OF ITS NATIONALS, RICHMOND WAS JUSTIFIED IN CONFISCATING THE PROPERTY LOCATED AT THE PORT OF XANADU AWAITING TRANSPORTATION TO BELTERRE.

By confiscating the property belonging to Belterre and Belterrian nationals at the port of Xanadu, Richmond was protecting its own nationals whose assets Belterre had frozen. This action was taken by Richmond in self-defense. The test of self-defense in international law, as previously set out, infra at 15, is that the state must be reacting to an illegal act by another state which poses "an immediate danger to its security or independence", that no "alternative means of protection" be available and that the reaction be proportionate to the harm done. Bowett, supra, at 7. See Dempsey, supra, at 298. Richmond was reacting in a reasonable manner to Belterre's illegal act in seizing the assets. No alternative means of protection were available to Richmond.

Richmond was justified in protecting the interests of its nationals who would have claims arising from the seizure of their assets by Belterre. Virtually all of Richmond's citrus crop was marketed by a contractor - Tropical Fruits Ltd. - a Belterrian-controlled company. In 1979, this contract was valued at \$35 million which contributed 15% to 20% of Richmond's Gross National Product (Clar. 120). Both this contract and \$1.2 billion in development projects being performed in Richmond by Belterre corporations were suspended by Belterre's actions (R.4). Obviously, the impact on Richmond's economy was enormous. In contrast, the property confiscated by Richmond at Xanadu was limited to privately-owned goods valued at \$5 million, government property worth \$1.5 million and two paintings of undetermined value (R.5), in addition to the minimal increase in transportation costs. This figure is considerably lower than that effected by the Belterrian blocking order, thus establishing the disproportionate character of Belterre's actions.

IV. RICHMOND IS ENTITLED TO COMPENSATORY DAMAGES FOR BELTERRE'S VIOLATIONS OF INTERNATIONAL LAW.

An award of damages in international law presupposes the existence of

an international claim "based upon the wrongful act or omission of one state toward another state." 2 Whiteman, Damages in International Law, at 1 (1937).

Richmond is entitled to compensatory damages since Belterre violated international law by blocking Richmond assets. Richmond is entitled to seek an award for its nationals because injuries to private persons or to their property committed in violation of international law are injuries against the state of such persons.

1 Whiteman, Damages in International Law, at 82, 275 (1937).*

Richmond requests an order from this Court that Belterrian and non-Belterrian entities release property held by them. Alternatively, the remedy of restitution should be applied. Whenever possible, the award of damages in international law is restitution in kind. R. Redslob, Traite de Droit des Gens, at 239 (1950); G. Schwarzenberger & E. Brown, A Manual of International Law, at 147 (1976). Where money is taken, as in the present case, the usual amount of damages is the amount of the money originally expropriated, together with interest.

2 Whiteman, supra, at 967 (1937). The recognized remedy in international law for expropriation of property is full compensation. See, Chorzow Factory Case (Merits) (Ger. v. Pol.) 1929, P.C.I.J. Ser. A, No. 17 (Judgment of September 13). Damages are recoverable for the unlawful seizure of property particularly where the seizure is coupled with damage, detention, use, or destruction. 2 Whiteman, supra, at 857. The blocking order by Belterre amounted to a detention of the assets. Even if the Court should find that Belterre was justified in issuing the blocking order, Richmond is entitled to the release of the assets. Indeed, section 186 of

* The doctrine of exhaustion of local remedies does not apply in the present case since this doctrine is only applicable to individuals and not to states. T. Haesler, The Exhaustion of Local Remedies in the Case Law of International Courts and Tribunals, at 17 (1968). It is not necessary to exhaust local remedies where to all appearances there are no local remedies to be exhausted. H. Lauterpacht, International Law, at 17 (1978). The individuals effected by the blocking order had no local remedies available to them. Belterrian courts, whose government had issued the freezing order, offered no viable relief. This violation of international law requires that adequate reparations be made to Richmond. See R. Redslob, Traite de Droit des Gens, at 238 (1950); L. Delbez, Les Principes Generaux du Droit International Public, at 385 (1964); P. Guggenheim, Traite de Droit International Public, at 63 (1954).

the American Law Institute Restatement maintains that a state must provide compensation even if the taking of the property was not wrongful under international law. 8 M. Whiteman, Digest of International Law, at 1086 (1967).

Richmond is entitled to an award for damages measured by the costs of replacing property or procuring alternative contractual performance and for the loss of sales and sales opportunities since the time of the blocking order. Where, as in the present case, the detention of property by a state is wrongful from its inception, damages can be recovered for "losses sustained on account of or incident to" the detention of the property. 2 M. Whiteman, supra, at 860. Also, an award of damages for probable earnings and lost profits, if not for the illegal taking, is permitted under international law. Id. at 876, 1241 and 1271.

Richmond is the proper party to seek relief for the suspension of the marketing contracts held by Tropical Fruits, Ltd., a corporation with the Idyllic Islands as its place of incorporation, 75% of whose stock is owned by Belterre investors. Although a claim on behalf of a national is usually the sole prerogative of the national's country, this Court has recognized exceptions to this rule. Reparations for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, 181-82 (Advisory Opinion of April 11). Richmond seeks this Court's recognition of its right to bring the present claim in the interests of justice. No other recourse is available to the majority of investors, who cannot hope to have their interests represented by their own State which originally caused the violation of international law.

V. SINCE RICHMOND'S ACTIONS HAVE BEEN COMPATIBLE WITH THE NORMS OF INTERNATIONAL LAW, BELTERRE'S CLAIM FOR AN AWARD OF DAMAGES IS WITHOUT MERIT.

Belterre is not entitled to the release of the property seized at the port of Xanadu or to damages in the value of the goods. Damages are recoverable for the wrongful seizure of property only where coupled with damage, detention, use or destruction. 2 M. Whiteman, supra, at 857 (1937). The goods seized by

Richmond at Xanadu were not damaged, detained, used, or destroyed. The seizure by Richmond was legal and was taken in self-defense. Since the detention of property was at its inception legal, Richmond is only liable in damages for detention for an unreasonable length of time or for damage to the property during detention. Id. at 859-69. Richmond has not detained this property for an unreasonable length of time. The seizure took place about two weeks after the respondent issued its blocking order and Belterre has since kept Richmond assets frozen. The property detained by Richmond has also not been damaged.

International law recognizes the duty of a state to make compensation where actual pecuniary loss has been sustained. 2 M. Whiteman, supra, at 866. The burden of proof is on Belterre to show the existence of actual pecuniary loss. Id. at 838-39. Belterre has failed to make such a showing and is thus not entitled to an award of damages for the increased cost of transportation for Belterrian goods. The increased costs have not arisen out of a violation of international law since Richmond's actions were legal and justified. Further, Belterre has provided no proof of actual pecuniary loss incurred by Richmond's detention of the goods at the Port of Xanadu.

Belterre's blocking order violates customary international law concerning taking of alien property. No valid justification existed for this action. The freezing of the assets was retaliatory and in violation of the law of nations and the United Nations Charter. It is not entitled to recover damages.

Belterre seeks on the one hand to deny its international responsibilities to prevent the spread of pests devastating to the citrus crops, and ultimately the economy, of its neighbor States and, on the other hand, asks that this Court grant it relief under supposed principles of international law. As this Court has noted, "a State must not be permitted to benefit by its inconsistency to the prejudice of another State." Temple of Prial Vihea Case, supra, at 40.

Belterre has exerted economic force against Richmond in violation of international law and the United Nations Charter solely in retaliation for Rich-

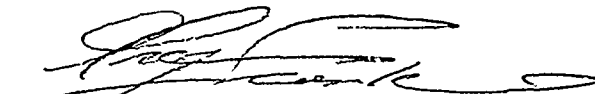
mond's reasonable and temporary protective measures. Belterre has thus demonstrated a continuing disregard for international law and responsibility.

CONCLUSION

The Federation of Richmond respectfully requests that this Court:

1. declare that its actions in closing the Chesterfield Highway were not in violation of any legal obligation;
2. declare that the blocking of Richmond assets by Belterre is in violation of international law, and
 - a. order that Belterre and non-Belterre entities release property held by them and/or perform contracts whose completion was interrupted by that decision or, in the alternative;
 - b. award to Richmond damages measured by the costs of replacing property or procuring alternative contractual performance at market rates prevailing on the date of the Court's order;
3. award to Richmond damages for the loss of sales and sales opportunities for its citrus crop since November 1, 1980; and
4. deny to Belterre an award of damages for any costs resulting from Richmond's temporary suspension of the Chesterfield Highway Treaty.

Respectfully submitted,


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Silvia Eiriz

