IN THE

INTERNATIONAL COURT OF JUSTICE

MARCH 1983

FEDERATION OF RICHMOND,

Applicant,

v.

REPUBLIC OF BELTERRE.

Respondent.

MEMORIAL FOR RESPONDENT

Of Counsel:

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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.

QUESTIONS PRESENTED

I. Whether a state violates its treaty obligations under the Vienna Convention and customary international law when it unilaterally suspends the treaty with no valid justification?

II. Whether a state, injured by another state's breach of its treaty obligations, may exercise the sovereign right to block all assets within the injured state's jurisdiction in which the breaching state or its nationals have an interest?

III. Whether a state may nationalize goods belonging to another state and its nationals, where the confiscations are executed in a discriminatory manner, without a bona fide public purpose, and without adequate, prompt and effective compensation?

SUMMARY OF THE ARGUMENT

Richmond's unjustified unilateral suspension of the Chesterfield Highway Treaty was a violation of the Vienna Convention and customary international law, both of which emphasize the sanctity of treaty obligations. Absent the consent of the contracting parties or an express treaty provision permitting unilateral suspension, the parties must perform the treaty in good faith.

Richmond's inappropriate and unreasonable responses to the presence of the dreadfly in New Hostia contravened the Treaty, which reflected the clear and unambiguous intent of the parties. Because the Treaty codified Belterre's sovereign right of transit to the sea, and because Belterre has completely executed its treaty obligations, principles of equity demand that no provision contrary to the intent of the parties be implied.

In response to Richmond's treaty violations, Belterre legally blocked Richmond assets within its jurisdiction and suspended contracts between nationals of both countries. These economic measures enabled Belterre to provide a means of self-help against treaty violations, to protect its economy, and to ensure that assets would be available to satisfy Belterrian claims against Richmond. These functions, each recognized as a sovereign right by customary international law, are served by the blocking orders in conformity with the Vienna Convention on the Law of Treaties, the United Nations Charter, and the Articles of Agreement of the International Monetary Fund.

Richmond's confiscation of Belterrian goods at the port of Xanadu violates international law which requires adequate, prompt and effective compensation and which prohibits retaliatory and discriminatory nationalizations. Belterre is thus entitled to restitution of the goods and the paintings, as well as reparation for any loss or damage to the property. In addition, Belterre should be granted damages for interest and lost profits.

STATEMENT OF FACTS

The Republic of Belterre, an independent state, is an entirely land-locked nation bordered on the north by New Hostia and on the east by the Federation of Richmond (R.1). Since Belterre has no overland route which is practical for transporting perishable goods other than through Richmond (Clarification 214, hereinafter C.), the two countries signed the Chesterfield Highway Treaty which granted Belterre free access and use of the Chesterfield Highway, a route affording Belterre access to the sea (R.1). In consideration of fifty million dollars to be paid in equal installments over 10 years, and which in fact was paid, Belterrian goods were not to be within the customs territory of Richmond nor to be subject to inspection or interference of any kind by Richmond authorities (R.1,8).

Responding to press reports of rumors of the dreadfly (Drosophila terribilis) infestation in New Hostia, that country requested the World Health Organization (WHO) to inspect its citrus crops. When the WHO finally issued its report in December 1979, it recommended a program of chemical spraying to counteract the conditions present for any proliferation of the dreadflies found in New Hostia (R.1). This is important for Belterre and Richmond, both of which heavily depend on exporting the same type of citrus goods (R.2).

Despite the total lack of evidence suggesting any presence of the dreadfly in Belterre, on April 1, 1980, Richmond demanded that Belterre submit its citrus products to inspection by Richmond authorities until further notice. After declining Richmond's demand, Belterre offered a counter-proposal providing for certificates of inspection stating that citrus shipments originating in Western Belterre were free of the dreadfly. Refusing the counter-proposal, Richmond orally stated that it had no confidence in the Belterrian authorities' ability to guarantee that cargoes shipped along the Chesterfield Highway were not contaminated (R.2). At the same time, Richmond's written communication provided that if Belterre did not acquiesce to its demand of inspection, Richmond would suspend

Belterre's use of the highway on September 1, 1980 (R.3).

Belterre responded that since its vehicles were not subject to the jurisdiction of Richmond authorities, it would consider any interference with these vehicles lawfully travelling on the highway to be of utmost seriousness. Additionally, Belterre stated that its using the highway posed no harmful threat to either Richmond's inhabitants or economy. Finally, Belterre reminded Richmond that its use of the highway fully conformed to both international law and the Chesterfield Treaty (R.3).

Nevertheless, on September 1, 1980, Richmond imposed an agricultural checkpoint where the highway intersects the Belterre-Richmond border (R.3). Pursuant to Belterrian orders, transport drivers ignored the checkpoint sign requiring the submission of all Belterrian agricultural produce to inspection by Richmond authorities (R.3-4).

Upon the discovery of a dead dreadfly among the citrus crop of a Richmond farmer, Richmond immediately barricaded the highway at the border with concrete. In addition, Richmond sealed the entire border with Belterre and refused to permit Belterrian vehicles transit across Richmond territory or airspace. Finally, Richmond expelled the Belterrian ambassador and recalled its own (R.4). The infestation upon which Richmond has predicated its entire action has not occurred.

On September 25, Belterre enacted a Presidential Order blocking all assets "within the geographical limits of Beltterre," in which Richmond or its nationals, both natural and juridical, have any interest. Prohibiting any person within Belterre from "dealing in" assets, this order also forbade the performance of any contract that would benefit Richmond or its nationals (R.4). The contracts suspended by this order included development projects funded by private corporations (R.4, C.273).

Responding to the blocking order, Richmond confiscated property, destined for shipment to Belterre at its seaport of Xanadu, affecting only goods which belonged to Belterre and its citizens (R.4-5, C.310). Among the items seized were $5 million worth of goods owned entirely by Belterrians, $1.5 million worth of property owned by the government of Belterre, and two priceless paintings belonging to Belterre's public museum (R.5).

A few weeks later, after learning of possible evasion of the initial blocking order of September 25 by the use of offshore holdings dealing in Richmond assets, the President of Belterre stated in an Executive Decree dated November 1, that the order would 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 above (R.5).

This Decree prevented circumvention of the order by Belterrian investors who own 75% of Tropical Fruits, Ltd., which suspended its marketing contract for Richmond citrus (R.5). Tropical Fruits is incorporated in the Idyllic Islands where it maintains its headquarters (R.5, C.3).

Since these events, Belterre has shipped goods for its international trade by air and by railway lines over other neighboring states (R.4). Calculations based on actual contracts and shipping documents indicate that those alternate trading routes have increased the overall costs of imported goods by 10% and of exports by 5% (R.4, C.92). Belterre's citrus exports have constituted about 15-20% of its Gross National Product for the years 1979 through 1982 (C.120). In addition to the increased costs, there has also been a decrease in the volume of total export sales (R.5).

As for the goods confiscated at Xanadu, they are allegedly in storage.

Richmond, however, has failed to dispel Belterrian fears that some of the goods have spoiled, have been lost, or have been appropriated for official use (C.153). Belterre, on the other hand, has not acted to nationalize the blocked assets but rather has permitted the liquid assets to remain in interest-bearing accounts and has granted immunity from legal process to goods subject to official control (R.6).

In January 1982, Belterre established the Richmond Claims Administration to handle registration of all contract, tort, and other claims Belterrians might have against Richmond. Total claims filed have amounted to $74.8 million (R.6).

Both nations are parties to the Vienna Convention on the Law of Treaties, as well as members of the United Nations and the International Monetary Fund (IMF) (R.6, C.54). After Belterre gave notice of the blocking order and its amendment to the IMF in accordance with the IMF's decision on payment restrictions for security reasons, the IMF made no objection under the decision (Addendum 1).

ARGUMENT

I. SINCE THERE IS NO VALID JUSTIFICATION FOR RICHMOND'S UNILATERAL SUSPENSION OF THE CHESTERFIELD HIGHWAY TREATY, RICHMOND DIRECTLY VIOLATED ITS OBLIGATIONS UNDER THE VIENNA CONVENTION AND CUSTOMARY INTERNATIONAL LAW.

Article 42 of the Vienna Convention on the Law of Treaties provides that the termination, denunciation, or suspension of a treaty may take place only as a result of applying the provisions of the treaty or of the Convention itself. Because the Chesterfield Highway Treaty contains no provision establishing procedures for termination or suspension by the unilateral action of either party, the only way that the Treaty could legally be suspended was through the consent of both parties. Vienna Convention on the Law of Treaties, Doc. A/Conf. 39/27 (1979).

A. Richmond has breached its obligations under the Vienna Convention and customary international law which require that every treaty must be performed in good faith.

The common law rule of pacta sunt servanda is codified in Article 2(2) of the U.N. Charter and in Article 26 of the Vienna Convention: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Despite difficulties inherent in treaty enforcement, Richmond cannot arbitrarily decide to abrogate its commitments. More than two centuries ago, Wolff emphasized the necessity of guaranteed treaties. C. WOLFF, JUS GENTIUM METHODO SCIENTIFICA PERTATUM 233 (J. Drake trans. 1934). The League of Nations Council, in considering the German government's repudiation of disarmament provisions of the Treaty of Versailles, declared that Germany had failed in the duty incumbent upon all members of the international community to respect the undertakings for which they have contracted, and condemned any unilateral repudiation of international obligations. The Council's resolution stated the recognized principles of international law which Richmond has refused to obey:

> (1) That the scrupulous respect of all treaty obligations is a fundamental principle of international life and an essential condition of the maintenance of peace;

(2) That it is an essential principle of the law of nations that no Power can liberate itself from the engagements of a treaty nor modify the stipulations thereof unless with the consent of the other contracting parties. 5 LEAGUE OF NATIONS O.J. 551, 564 (1935).

Since traditionally such principles are binding even when the parties are forced to accept treaty provisions, they apply even more compellingly when, as here, a treaty is freely consented to by both parties, pursuant to the modern interpretation that good faith implies the free consent and equality of the contracting parties. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the U.N., G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

1. Richmond's actions have consistently resulted from an inappropriate and unreasonable overreaction to existing circumstances.

Any argument that unilateral suspension was justified because of the threat posed by the dreadfly to Richmond's economic well-being is untenable. To justify its actions, Richmond would have to argue that because it depends heavily on the exportation of citrus crops, it had to close the Chesterfield Highway for its self-protection. Yet Belterre also depends heavily on fruit exportation. Surely Belterre would, at the very least, take the precautionary measures of spraying, if the dreadfly in fact posed a threat to its crops.

Belterre agrees that it too must act in good faith and not export infested crops which could harm its neighbors. Belterre, however, has acted in good faith. The dreadfly does not pose the catastrophic emergency Richmond would like this Court to believe. The facts indicate that no other state through which Belterre's crops are now being transported has requested or required inspection. Furthermore, while Richmond refused to allow Belterrian cargoes to cross even its air space, neighboring countries other than Richmond are allowing Belterre to export goods by air and rail (R.4).

Had the World Health Organization (WHO) considered that the dreadfly situation necessitated emergency measures, it could have recommended that no produce be exported from New Hostia or that crops in Belterre be sprayed. Yet the WHO recommended neither course of action. Since Belterre is a member of the WHO, there is every reason to assume that Belterre would have followed WHO recommendations.

There was no evidence to suggest the presence of the dreadfly in Belterre when Richmond sent the first diplomatic note demanding that Belterre make its crops available for inspection. Thus, Richmond cannot use the argument of self-preservation as a rationale for breaching the Treaty. In September 1980, still with no evidence of any dreadfly presence in Belterre, Richmond established an agricultural checkpoint, contravening the Treaty.

Even when a Richmond farmer discovered a dead dreadfly among the fruit grown on his farm, Richmond still had no justification for suspending the Treaty. There is a split of opinion among entomologists as to whether a single dreadfly "implies an impending infestation" (C.256).

The European Court of Justice, in Rewe-Zentralfinanz eGMbH v. Direktor Der Landwirtschaftskammer, (1977) 1 Common Mkt. L.R. 599, held that a state may impose a frontier inspection on plant imports to prevent the spread of contaminated products even though that constitutes a restriction prohibited by Article 30 of the European Economic Treaty. That case, however, is distinguishable from the one now before this Court and cannot be used to justify Richmond's contravention of an explicit treaty provision. As the Advocate General emphasized, a state taking such protective measures must justify them by taking into account the existing rate of infection. Id. at 612. Yet, as the record here repeatedly shows, there is no existing rate of infection because there is no evidence of the dreadfly in Belterre. It would therefore be quite difficult for Richmond to justify its demand for inspections based on Rewe and similar cases, all of which hold that

there must be a present harm. It is not surprising that Richmond would overreact; Richmond has nothing to lose by suspending the Treaty. Belterre has already fulfilled its obligations by paying 50 million dollars over ten years; only Richmond's obligations are still executory.

2. Even were this Court to find that the presence of the dreadfly posed an environmental threat justifying inspections, Belterre should conduct such inspections, contrary to Richmond's demand.

Any claim that Belterre is not interested in protecting the agricultural economic base of both Richmond and Belterre is false. Although Belterre refused Richmond's inspection demand, Belterre fully desires to prevent any possible distribution of contaminated produce. Belterre is not objecting per se to the inspections of its citrus crops; rather, what Belterre is properly objecting to are inspections carried out by Richmond, since state practice allows for such inspections by the country of origin and since inspections by Richmond are in direct violation of the Chesterfield Treaty.

Numerous treaties and conventions whose specific purpose is the international regulation and control of plant diseases and pests provide that inspections and the issuing of health certificates be carried out by an official representative of the exporting country. As the Convention for the Protection of Plants signed at Rome, April 16, 1929, provides, where plants are recognized as infected, the exporting countries are to take measures contemplated under their own regulations. Even more importantly, Article 8 of the Convention proscribes any country from taking measures prohibiting the importation or transit of plants unless some plant disease or pest be ascertained to be "actually present" within the territory of the exporting country. Hudson International Legislation No. 215, 2680. As the facts here show, there is no dreadfly actually present in Belterre. See also, e.g., International Plant Protection Convention, Dec. 6, 1951, art. 6, 150 U.N.T.S. 1963 (the duly authorized officers of the exporting country inspect crops for exportation and issue certificates stating that the products in question

are substantially free from diseases and pests.)

Therefore, Belterre's counter-proposal follows customary procedures in international law. The inspection and issuance of certificates take place in the exporting state exactly as Belterre offered. Yet, for reasons so unacceptable that Richmond did not put them in writing because they lacked any justification, Richmond rejected Belterre's proposal. Instead, Richmond's diplomatic note threatened suspension of the Treaty if Belterre did not accord Richmond the right to inspect shipments (R.3). It is Richmond who has violated customary international norms of good faith by not allowing the inspection and issuance of a health certificate by Belterre, the country of origin. Belterre's counter-proposal of May 15, 1980 was the proper response to Richmond's inappropriate inspection demand of April 1 and evinced Belterre's willingness to negotiate in good faith under the Vienna Convention.

3. Richmond's threat of treaty suspension to pressure Belterre into amending the treaty provisions is an unacceptable bargaining tactic and contravenes the good faith doctrine.

While Richmond did notify Belterre of its intentions to suspend the use of the highway if Belterre did not allow inspection of shipments, Belterre was not obligated to accept Richmond's new terms. In an analogous situation, the United States rejected the Soviet Union's effort to denounce the occupation agreements of the Four Allies in Berlin. Belterre is in accord with the reasoning of the United States: "Public repudiation of solemn engagements . . . coupled with an ultimatum threatening unilateral action to implement that repudiation unless it be acquiesced in . . . would afford no reasonable basis for negotiation between sovereign States." MS. Department of State, file FW 762.00/11 - 2858, 40 DEPT. OF STATE BULLETIN, No. 1021, 79-89 (1959).

Richmond cannot use the presence of the dreadfly as a justification for suspension of the Treaty to force Belterre's acquiescence to an inspection of its goods. By the terms of the Treaty, Belterrian vehicles travelling on the

Chesterfield Highway are not subject to the jurisdiction of Richmond authorities. Under Article 39 of the Vienna Convention, a modification or amendment of a treaty requires the consent and agreement of all parties. Vienna Convention, supra p. 1. This was lacking in the present case. Indeed, the diplomatic correspondence between Belterre and Richmond, with its completely conflicting counter-proposals, evidences that no agreement for amendment or modification between the parties was reached: "Belterre would regard any interference with such vehicles as a matter of utmost seriousness." (R.3). Given that there can be no unilateral change of treaty provisions, Richmond's establishment of an agricultural checkpoint on the Chesterfield Highway constituted a violation and breach of the Treaty.

B. Only fundamental change that threatens a state's existence, development, or independence justifies the application of rebus sic stantibus.

Any reliance on the customary international law doctrine of rebus sic stantibus and Article 62 of the Vienna Convention which codified this doctrine would be misplaced. Article 62 provides that a fundamental change of circumstances from those existing at the time the treaty was concluded, not foreseen by the parties, may not be invoked as grounds for terminating, withdrawing from, or suspending the treaty unless the circumstances constituted the essential basis on which the parties consented. Id. The Treaty here was created because Belterre is a landlocked country and its people should not be disadvantaged by this "accident of geography" (R.8). It was based on this fact that Belterre sought free access to the highway and thus to the sea. The circumstances constituting the essential basis under which the Treaty was created have not changed; therefore, the doctrine of changed circumstances does not justify Richmond's suspension of the Treaty. Accord, Case Concerning the Free Zones of Upper Savoy and Gex, 1932 P.C.I.J., Ser. C, No. 58, 157-58 (Advisory Opinion).

Any argument that the presence of the dreadfly threatens Richmond's economic existence and that Belterre's continued use of the highway is inconsis-

tent with Richmond's self-preservation over-extends the bounds of the changed circumstances theory. No court has used the doctrine of changed circumstances or force majeure as the reason for allowing a party to free itself from a treaty unless its independence or very existence was threatened. See, e.g., Cantons of Thurgau & St. Gallen, 4 Ann. Dig. 280 (Swiss Fed. Ct. 1928).

Furthermore, the sanctity of treaty obligations overrides the doctrine of changed circumstances. The Carnegie Endowment for International Peace, which conducted a study of the relevant international law concerning the termination of treaties because of changed circumstances, found that this ground for termination has little support in the actual practice of states. The doctrine has always had a doubtful standing in international law because it conflicts with the basic rule that no state can free itself from a treaty or modify it except with the consent of the contracting parties. The International Law of the Future: Postulates, Principles and Proposals, International Conciliation, 38 AM. J. INT'L L. Supp. 129-133 (1944).

C. The Chesterfield Treaty has no provision for unilateral suspension or termination, nor should such a provision be implied contrary to the intentions of the parties as clearly expressed in the Treaty.

Any claim that the omission of a pest-control clause contravenes international law and that such a clause should be implied into the Treaty should an emergency arise cannot be sustained. The weight of authority holds that in treaty interpretation, one must take the treaty as a whole. L. OPPENHEIM, INTERNATIONAL LAW 953 (H. Lauterpacht 8th ed. 1955). In Competence of the General Assembly for the Admission of a State to the United Nations, this Court stated that "If the relevant words in their natural and ordinary meaning make sense in their context, that is an end to the matter." 1950 I.C.J. 4, 8 (Advisory Opinion of Mar. 3). See also, e.g., The S.S. "Wimbleton" 1923 P.C.I.J., Ser. A, No. 1, 36 (Judgment of May 22) ("When the wording of a treaty is clear its literal meaning must be accepted as it stands, without limitation or extension.").

1. Where the natural and ordinary meaning of words in context is clear, a contrary provision should not be implied.

The rule of effectiveness, ut re magis valeat quam pereat, the rule of liberal or extensive construction, cannot be used to support a contention that unless this Court implies a provision allowing for the imposition of inspection and other possible restrictions necessary to ensure the safety of Richmond, the Treaty will not be in accord with customary international law. There is no comparison between the Chesterfield Treaty and existing treaties of commerce and navigation providing for the free transit of goods. Such treaties often contain provisions similar to the General Agreement on Tariffs and Trade, Article XX, General Exceptions, which provides that nothing in the agreement shall prevent the adoption by any party of measures necessary to protect human, animal or plant life or health. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A21, 55, T.I.A.S. No. 1700, 55 U.N.T.S. 187. Accord, Treaty of Commerce and Navigation, Jan. 20, 1974, Italy-Albania, 43 L.N.T.S. 1926.

Even if these treaties are evidence of international law recognizing that the right of transit may be limited in exigent circumstances of plant infestation, again it must be emphasized that when Richmond made its inspection demand, there was no exigency. Furthermore, Belterre has already demonstrated that it should conduct the inspections.

It would be futile for Richmond to attempt to equate or analogize these and similar treaties to the one concluded with Belterre. While the provisions mentioned above may be essential parts of these treaties, it should be emphasized that they are actual provisions in the treaties themselves. No such provision exists in the Chesterfield Treaty which contains language diametrically opposed to the language in the treaties that Richmond would have this Court emulate.

The very fact that the Chesterfield Treaty differs from many commerce and transit treaties which specifically provide for inspections and other restric-

tions evinces that the parties in this case had a different intention which they unambiguously expressed in provision 3 of the Treaty: "Belterre goods shall not be subject to inspection . . . or interference of any kind by the authorities of Richmond." See Chesterfield Treaty (R.8). The principle of interpretation expressed in the rule of effectiveness cannot justify attributing a meaning which would be contrary to the letter and spirit of treaty provisions.

In Interpretation of Peace Treaties with Bulgaria, Hungary & Romania (Second Phase), this Court concluded that the parties' breach of treaty obligations could not be remedied by establishing commissions for the settlement of disputes which were not of the kind contemplated by the treaties. This Court has consistently stated that its duty is to interpret treaties as written by the parties, not to revise them where their provisions prove ineffective. 1950 I.C.J. 221, 229 (Advisory Opinion of July 18). A variation of this statement was repeated in Concerning Rights of Nationals of the United States of America in Morocco (Fr. v. U.S.), 1952 I.C.J. 176, 196 (Judgment of Aug. 27), which held that a "construction by implication" of convention provisions could not be adopted which would go beyond the scope of its declared purposes and objects, especially since the construction would involve radical changes and additions to the provisions. So fundamental a change could not be applied to the treaty rights as they existed at the conclusion of the treaty. Similarly, this Court should not imply so fundamental a change in the treaty rights as Richmond would like to propose. Accord, Conditions of Admission of a State to Membership in the United Nations 1948 I.C.J. 57, 62-63 (Advisory Opinion of May 28) ("[I]f the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the conditions laid down therein, they would undoubtedly have adopted a different wording.").

Finally, while the facts of the South West Africa Cases are not directly analogous to those here, the legal principles of interpretation directly apply.

In those cases, one party contended that this Court was entitled to "make good" an omission resulting from the parties failure to foresee "what might happen" and to presume what the framers of the document would have wished or would even have made express provision for, had they had advance knowledge of what was to occur. This Court, however, concluded that it would not presume what the wishes and intentions of the parties would have been had they anticipated events that were neither foreseen nor foreseeable and that it was not possible to make assumptions as to what those intentions were. South West Africa Cases (Second Phase) (Ethiopia v. S. Afr.) (Liberia v. S. Afr.) 1966 I.C.J. 65 (Judgment of July 18). In applying the same reasoning to the present case, only the intentions definitively stated in the Treaty should be honored.

2. Principles of general equity in interpreting legal documents prohibit reading into the treaty other than what was initially intended by the parties.

In the Cayuga Indians Claims Case, the United States contended that a part of the Treaty of Ghent was only a "nominal provision" which was not intended to have any definite application. However the British-American Claims Commission did not agree with that interpretation, stating:

> Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be so interpreted as to give it a meaning rather than so as to deprive it of meaning. We are not asked to choose between possible meanings. We are asked to reject the apparent meaning and to hold that the provision has no meaning. This we cannot do. . . .

Cayuga Indians Claims Case, 3 Ann. Dig. 360 (1926). See also, e.g., M.F. Allemes, The Legality or Illegality of the Ruhr Occupation, 10 TRANSACTIONS OF THE GROTIUS SOCIETY 61, 68 (1925) ("It is to be taken for granted that the parties intend the stipulation of a treaty to have effect and not be meaningless. Therefore an interpretation is not admissible which would make a stipulation meaningless or ineffective.")

However, to reject the apparent meaning of a treaty and to hold that a

treaty provision has no meaning is exactly what the effect would be if this Court interpreted provision 3 of the Chesterfield Treaty to be only a "nominal provision". Such an argument has already been considered and rejected. In the Corfu Channel Case (U.K. v. Alb.) 1949 I.C.J. 4 (Judgment of Apr. 9), when interpreting a Special Agreement, this Court concluded that it would be incompatible with the generally accepted rules of interpretation to admit that a provision was devoid of purport or effect. Such a conclusion should apply to the present case as well.

A state's right to record its intentions in a treaty with the expectation that those intentions will be respected not only by the parties themselves but also by the courts is a fundamental right basic to state sovereignty. For this Court now to write a provision into the Treaty would be to deny a state's interest in making independent sovereign decisions. Yet this would be the effect of Richmond's request for relief.

The principle of general equity in the intepretation of legal documents and relations is probably the most widely used principle of international law. W FRIEDMANN, LEGAL THEORY 964 (4th ed. 1960). It is well established that the courts will not disturb the meaning of a treaty or provisions that the parties bargained for in negotiations. The fact that Belterre paid millions of dollars as consideration for use of the Chesterfield Highway and in return, Richmond promised no interference of any kind with Belterrian goods, constitutes the essence of the agreement reached by the parties. Richmond has no legal right to demand that this Court rewrite the Treaty so that it is closer in substance to other transit treaties.

Another factor which clearly shows the intentions of the parties should be noted. Even without a treaty, Belterre has the right of freedom of transit. As Lauterpacht points out, there exists in customary international law a right to free or innocent passage for purposes of trade, travel, and commerce over the territory of all states. This right is based on the interdependence of states

within an international community. E. Lauterpacht, Freedom of Transit in International Law, 44 TRANSACTIONS OF THE GROTIUS SOCIETY 313, 320 (1958-59). This principle of customary international law is presently codified in numerous conventions and treaties. See, e.g., Convention and Statute on Freedom of Transit, Apr. 20, 1921, 7-8 L.N.T.S. 171; General Agreement on Tariffs and Trade, supra p. 8; U.N. Conference on the Law of the Sea, Jan. 14, 1958, A/Conf. 13/29; Convention on Transit Trade of Land-locked States, July 8, 1965, 19 U.S.T. 7373, T.I.A.S. No. 6592, 597 U.N.T.S. 42. Other countries besides Belterre use the Chesterfield Highway and their goods are subject to the customs, inspections, and other laws and regulations of Richmond (C. 195). Belterre had use of the highway prior to the Treaty, but as with other countries, this use was subject to all the laws and regulations of Richmond (C. 190,191). So, although under customary international law, Belterre as a land-locked country had a right of access to the highway, Belterre paid all of that money in part, so that it could ensure its goods would not be subject to Richmond authorities. It is obvious that provision 3 of the Treaty, rather than being a mere nominal provision as might be contended, is an essential condition upon which the Treaty was based.

International law recognizes the sovereign right of every state, based on its autonomy and independence, to decide its relations with another country, as long as the decision does not contravene the norms of international law. State sovereignty includes the freedom to decide relations with another nation as recorded in a treaty; state sovereignty does not include the freedom to ignore treaty obligations.

II. BELTERRE'S BLOCKING OF RICHMOND ASSETS WITHIN ITS JURISDICTION IS A PROPER EXERCISE OF BELTERRE'S SOVEREIGN RIGHT TO SECURE ITS INTERNATIONAL RIGHTS AND TO PROTECT ITS ECONOMY AND ITS NATIONALS' CLAIMS.

Belterre properly responded to Richmond's illegal suspension of the Treaty by blocking all Richmond assets. The blocking orders constitute appropriate, legal measures to provide self-help against Richmond's treaty violation,

to protect Belterre's economy, and to ensure that Richmond assets are available for Belterrians with claims against Richmond.

A. Belterre's blocking of Richmond assets is an economic sanction, permissible as a self-help measure under the principles of customary international law.

The blocking orders, a necessary response to Richmond's treaty violation, conform to customary international norms. When Richmond sealed the border, prohibiting Belterrian vehicles from crossing Richmond by land or air, Belterre had no alternative but to impose sanctions against Richmond.

1. International law recognizes the right of self-help for an injured state to enforce its rights.

International law recognizes self-help as the typical enforcement by an injured state using every means at its disposal to obtain satisfaction from the wrongdoer. J. MERRILLS, ANATOMY OF INTERNATIONAL LAW 21 (1976). This Court recognized the sovereign right to self-help in the Corfu Channel Case, supra p. 11, in which Albania attempted to exclude foreign vessels from the channel. Asserting the straits were an international waterway, Britain sent warships through the channel. This Court held that

> [t]he legality of this measure taken by the Government of the United Kingdom cannot be disputed, provided that it was carried out in a manner consistent with the requirements of international law. The "mission " was designed to affirm a right which had been unjustly denied. Id. at 30.

Because international courts have no compulsory jurisdiction, a vacuum of enforcement is created "tantamount to a general recognition of the right of self-help." H. LAUTERPACHT, THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY 395 (1933).

Belterre's freezing of Richmond assets conform to accepted legal criteria for self-help measures under both traditional rules and modern state practice. Under traditional principles of international law, self-help measures are permissible as reprisals where the acts are a reaction of one state against a violation of its rights by another state. 2 L. OPPENHEIM, INTERNATIONAL LAW (H.

Lauterpacht 7th ed. 1952). The principle of retorsion, equivalent retaliation for unfair and inequitable acts, also justifies Belterre's response. Acts of retorsion are generally economic measures such as the imposition of customs barriers. Id. at 134, 135. Because Richmond's sealing of its border constituted an economic measure adverse to Belterre's international trade, retorsion supports Belterre's freezing of Richmond assets as a similar economic measure. Under these concepts of self-help, Belterre not only had the right to interpret or determine the occurrence and nature of a violation of the treaty obligation, but also it had the right to determine the expediency or necessity of sanctions or reprisals. B. SINHA, UNILATERAL DENUNCIATION OF TREATY BECAUSE OF PRIOR VIOLATIONS OF OBLIGATIONS BY OTHER PARTY 98 (1966).

In addition to traditional norms, modern state practice has also established the right to block alien assets as a measure of self-help. Referring to blocking orders imposed by the United States during World War II, the War Claims Commission stated: "The provisions bringing the funds under the control of the local authorities are legitimate restraints on the use of funds. These restraints may be imposed in times of peace as well as in times of war, and cannot furnish the basis for a compensable claim." War Claims Arising Out of World War II, H.R. Misc. Doc. No. 67, 83d Cong., 1st Sess. 139 (1953) [hereinafter cited as War Claim Commission]. The United States exercised this right during peace-time, when, from 1945 to 1973, it refused to release East European assets blocked by Executive Order No. 9193, 3 C.F.R. Cum. Supp. 1174 (1942). R. LILLICH & B. WESTON, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS, pt. 1, at 214 (1975). Similarly, from 1950 until 1979, the United States blocked all assets within its jurisdiction in which the People's Republic of China or its nationals had any interest. 31 C.F.R. §§ 500.201-.206 (1981). Part of the United States' embargo against Cuba, enacted in 1960, includes an order blocking Cuban property in the United States, an order which remains in effect to this date. §§ 515.201-.205.

As with these earlier blockings of foreign assets, the freeze of Iranian assets demonstrates that this financial measure is within a nation's sovereign power, even absent a state of war. On November 14, 1979, ten days after Iranian students seized United States citizens and property in Teheran, President Carter ordered blocked all assets owned by the Iranian government within the jurisdiction of the United States. §§ 535.201-.208. The right of the United States to block the assets during the Iranian crisis was recognized by courts of nations other than the United States. For example, a court of the United Kingdom enjoined Iran from removing any assets under the jurisdiction of the United Kingdom. Wall St. J., Dec. 6, 1979, at 2, col.2. At the same time, a West German court attached Iran's 25% ownership of two multinational corporations. Time, Dec. 10, 1979, at 78.

In the Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran) 1980 I.C.J. 3 (Judgment of May 24), this Court refused to comment on the legality of the blocking orders. Any statements in the dissenting opinions regarding the frozen assets, aside from being dicta, C. AMERASINGHE, STATE RESPONSIBILITY FOR INJURIES TO ALIENS 33 (1967), are complicated by the unilateral actions taken by the United States after it had submitted the case to this Court. In the present case, neither party has acted to aggravate the dispute before the Court declares its judgment.

The most recent exercise of the right to block foreign assets as a measure of self-help occurred on April 3, 1982, when in response to the Argentine invasion of the Falkland Islands, Parliament blocked the movement of gold, securities or funds held in the United Kingdom by the Argentine Government or its nationals. BRITAIN AND THE FALKLAND CRISIS: A DOCUMENTARY RECORD 29 (1982) (available at the British Information Services Office, New York). As in the instant case, interest was to be repaid into Argentinian accounts in the United Kingdom, where it remained frozen for the duration of the conflict. Freezing of

Argentinian Assets: British Information Services, No. RL 188, at 3 (1982) (available at the British Information Services, New York) [hereinafter cited as Argentinian Assets].

Consequently, both traditional concepts of international law and modern state practice establish the blocking of foreign assets as a proper self-help measure. In fact, because many of the above blocking orders have overlapped in duration, the international monetary system has been subject to freezes without interruption for the past forty years.

2. The imposition of economic sanctions is consistent with the United Nations Charter.

Any assertion that the blocking of assets or a similar economic measure violates Article 2(4)'s proscription against the use of force in the U.N. Charter is unfounded. The Charter states: "All Members shall refrain in their international relations from 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 United Nations." U.N. Charter, art. 2, para. 4. The "threat or use of force" in article 2(4) applies only to military force, not economic force. Force in international affairs has traditionally referred to armed conflict. The clear common-sense meaning of the words applies only to physical, armed force, not to economic or political pressure. D. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 148 (1958). The drafters of the Charter specifically rejected proposals that would have prohibited economic force. Doc. 784, I/1/27, 6 U.N.C.I.O. docs. 334 (1945). According to the International Law Commission, U.N. prohibitions of aggression and force apply only to armed force. Report to the Secretary General, U.N. Doc. A/2211 (1952).

There is an important policy reason for limiting the proscription to armed force. A broad interpretation would detract from the primary goal of restricting armed aggression and maintaining international peace. Without the ability to impose financial, economic and other non-military sanctions, frustrations in international arbitration and negotiation might encourage aggression. "Economic sanctions have been viewed as alternatives, capable of producing an 'economic solution' instead of, and in preference to a 'military solution'." M. DOXEY, ECONOMIC SANCTIONS AND INTERNATIONAL ENFORCEMENT 131 (2d ed. 1980).

B. Belterre's blocking orders of Richmond assets were justified as a means of self-defense to protect Belterre's economy.

In freezing Richmond assets, Belterre exercised its sovereign right of self-defense in response to a threat to its economy. "It is universally recognized that any country has the right, in the protection of its economy, to pass currency regulations and to prevent the flow of capital beyond its borders." War Claims Commission, supra p.14. The order initially blocking Iranian property was motivated by an unusual and extraordinary threat to the economy of the United States. Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (1979). Although the removal of Iranian assets from the United States was not a threat to its security or independence, the United States had an economic interest in avoiding a depreciation of the dollar, a decrease in credit availability, and an increase in interest rates, all of which would have occurred had Iran withdrawn its $12 billion from the United States banking system. Lecture by S. Meyer, Professor of International Finance, The Wharton School, in Philadelphia. (Nov. 14, 1979).

Parliament's freeze of Argentinian assets in the United Kingdom was also premised on the protection of economic interests. The Exchange Control stated "that action to the detriment of the economic position of the United Kingdom is being or is likely to be taken by the Government of or persons resident in the Argentine Republic. . . ." Control of Gold, Securities, Payments

and Credits (Argentine Republic) Directions 1982, reprinted in Argentinian Assets, supra p.15-16.

The direct result of Richmond's illegal breach of the Treaty was an increase in transportation and other costs incurred by Belterre in trying to secure other means of international trade. For example, exports have increased in price by 5%. The costs of imports have increased by 10% (R.4). These costs, sustained by the Belterrian economy, will increase Belterre's inflation rate substantially, since exports of citrus fruit alone amount to 15-20% of Belterre's Gross National Product (C.120). Because Richmond's Treaty violation caused the inflation and the net decrease in Belterre's trade revenues, an important element of its balance of payments, the asset freeze was a legal exercise of Belterre's right to protect its economy.

C. Belterre's blocking orders justifiably ensure that Richmond assets will be available for Belterrian claims against Richmond.

The blocking orders enable Belterrian nationals to find assets to satisfy claims against Richmond. After freezing Iranian assets, the United States consistently maintained that the orders were issued to ensure the existence of Iranian funds for United States creditors. N.Y. Times, Nov. 15, 1979, at A1, col. 3.

The increased costs of imports and exports resulting from Richmond's wrongful breach of the Treaty, upon which Belterre was economically dependent, gave rise to many claims by Belterrians against Richmond. Without assurance that Richmond would submit to arbitration or negotiation, Belterre feared these claims would remain unsettled, especially if Richmond assets disappeared from Belterre's jurisdiction. Protection of these claims necessitated that Belterre block the assets. Furthermore, the continued existence of the blocking controls was justified by the subsequent wrongful seizure of Belterrian goods which gave rise to more claims against Richmond.

D. The suspension of contracts that would benefit Richmond or its nationals conforms with treaty and customary international law and constitutes a proper exercise of Belterre's jurisdiction.

The blocking orders effected the suspension of contracts benefiting Richmond and its nationals. This was necessary for the freeze to be effective; otherwise, Richmond could assign the rights to its assets to third parties, thus frustrating Belterre's attempts to protect its economy, to exercise its sovereign right of self-help, and to assure the availability of Richmond assets. There are no grounds to the assertion that the suspension of the privately funded development projects violates the right of development, since such aid is given only by nations or international organizations formed to combat underdevelopment. H. Espiell, The Right of Development as a Human Right, 16 TEX. INT'L L.J. 189, 199 (1981).

There is also no support for any allegation that the Executive Decree's extraterritorial application to persons and property outside of Belterre's borders exceeds its jurisdiction. Rather than expanding the definition of Richmond property subject to the freeze, the decree only modified the description of persons or entities subject to penalties for dealing with such property. Tropical Fruits, Ltd. is the only entity outside Belterrian borders, which the record indicates was affected by the decree (R.5).

Richmond has no standing to represent any claims on behalf of Tropical Fruits, which is incorporated in the Idyllic Islands where it maintains its headquarters. The Case Concerning the Barcelona Traction, Light and Power Co., Ltd. (Second Phase) (Belg. v. Spain) 1970 I.C.J. 3, 42 (Judgment of Feb. 5), (Canada alone had standing to submit a claim based upon economic loss on behalf of a corporation formed under Canadian law with its registered office there). Moreover, the extraterritorial application of the blocking order to enterprises such as Tropical Fruits is a proper exercise of Belterre's jurisdiction. Tropical Fruits' suspended marketing contract is a commercial enterprise within Richmond, which

like Belterre is a member of the International Monetary Fund (IMF)(C.54). The Articles of Agreement, which established the IMF, state that a member may impose restrictions on the making of payments and transfers for current international transactions, provided that it obtains the approval of the Fund. Article VIII (2)(a), Dec. 27, 1945, 60 Stat. 1401, T.I.A.S. No. 1501, 2 U.N.T.S. 39.

Pursuant to an IMF decision which provides for the method of notice and approval, Belterre notified the Fund of the blocking orders and received no subsequent objection (Addendum 1). "The language of no objection is a traditional formulation for the 'approval' that is required by Article VIII, Section 2(a)." J. GOLD, THE FUND AGREEMENT IN THE COURTS: VOLUME II 368 (1982). Therefore, whether or not the freeze applies extraterritorially to include commercial enterprises anywhere in the world, it does apply within the jurisdiction of IMF member states based on the Fund's approval. E. Gordon, The Blocking of Iranian Assets, 14 INT'L LAWYER 659, 673 (1980). Consequently, Belterre had the jurisdiction to prohibit Belterrian-controlled Tropical Fruits from performing its Richmond marketing contract.

E. Because the asset freeze conforms to international law, this Court should deny relief to Richmond and grant Belterre damages resulting from Richmond's treaty violations.

1. Richmond has suffered no compensable loss.

Damages for interferences with personal property in international law are recoverable only where there is a wrongful seizure of property. 2 M. WHITEMAN, DAMAGES IN INTERNATIONAL LAW 857 (937). Richmond's request for reparation should be denied, therefore, not only because the freeze is a legitimate response to Richmond's breach of the Treaty, but also because it is easily distinguished from a seizure such as a nationalization or expropriation. The key distinction between the blocking and the taking of assets is that the country taking assets effectively transfers title or ownership. Organization for Economic Co-operation and Development, Draft Convention on the Protection of Foreign Property: Text with

Notes and Comments 25 (O.E.C.D. publ. 1967).

The blocking of foreign assets, on the other hand, only affects the right to immediate possession, and specifically, the right to control the assets. Belterre's blocking orders only prohibit any dealings in Richmond assets(R.4). The orders do not assert any transfer of title. At no time has Belterre moved to nationalize or otherwise take the assets(R.6). Furthermore, the blocking is not a form of creeping nationalization, whereby "measures otherwise lawful are applied in such a way as to deprive ultimately the alien of the enjoyment or value of his property, without any specific act being identifiable as outright deprivation." Id. Subject to the settlement of the present dispute, Richmond and its nationals would reacquire the right to control the assets upon the single act of reversing the blocking orders.

Additionally, given that the blocking orders are not coupled with damage, destruction, detention, or deprivation of use of the property, Richmond's request for reparation must be denied. No damage or destruction exists because the assets are in interest-bearing accounts and are protected from legal process. To recover for the detention or deprivation of use of its property, a state must not only prove that the property was wrongfully detained, but also that it has suffered actual pecuniary loss. WHITEMAN, DAMAGES, supra p.20, at 863, 866. Richmond, however, has failed to show actual pecuniary loss. The interest on the blocked assets has been repaid into the Richmond accounts. Because Richmond has failed to demonstrate that the interest it could have earned elsewhere exceeds the actual interest earned, its request for damages must be denied.

2. Belterre is entitled to damages for losses resulting from the necessity to import and export by means costlier than the Chesterfield Highway.

Customary international law requires that Richmond make reparation for its illegal acts causing injury to Belterrian nationals. Case Concerning the Factory at Chorzow (Ger. v. Pol.) 1927 P.C.I.J., Ser. A, No. 9, at 21 (Judgment

of July 26). This Court, as successor of the Permanent Court, has the authority to determine the amount of damages and the method of its payment. Case Concerning the Factory at Chorzow (Ger. v. Pol.) 1928 P.C.I.J., Ser. A, No. 17, at 61-62 (Judgment of Sept. 13).

Damages for increased costs caused by the sealing of the border are similar to those caused by an embargo, since both effectively reduce possible routes of international trade. According to customary international law, where an embargo is wrongfully levied against a claimant, he should be compensated for his consequential losses. WHITEMAN, DAMAGES, supra p.20, at 874.

Unlike Richmond, Belterre has demonstrated not only that Richmond has committed an international wrong by breaching the Treaty, but also that it sustained actual pecuniary loss caused by Richmond's wrongful act. The 5% increase in the price of exports, the decrease in volume of export sales, and the 10% increase in import costs have been calculated from actual contracts and shipping documents (C.92). Rather than being speculative, these costs are actual losses resulting from Richmond's wrongful blockade of the border.

III. ALTHOUGH BELTERRE WAS JUSTIFIED IN FREEZING THE RICHMOND ASSETS, RICHMOND'S NATIONALIZATION OF BELTERRIAN GOODS VIOLATED INTERNATIONAL LAW.

Unlike the blocking of assets, the action taken by Richmond in confiscating Belterrian goods at Xanadu amounts to a seizure or taking. In the Case Concerning Certain German Interests in Polish Upper Silesia (Ger. V. Pol.), 1926 P.C.I.J., Ser. A, No. 7 (Judgment of May 25), the Permanent Court held that international law requires as a minimum standard the duty to pay fair compensation for expropriated property. Id. at 22. See also AMERASINGHE, supra p.15, at 125.

Belterre does not deny that a state has the sovereign right to take property belonging to foreign nationals. This right, however, concerns foreign investment. Charter of Economic Rights and Duties, 28 U.N.Y.B. 381 (1974). In this case, the confiscated property was not investment, but rather goods in transit and thus not subject to nationalization.

A. Richmond's retaliatory and discriminatory confiscation of Belterrian goods without providing for compensation is impermissible.

The right to take foreign property is not absolute. The first limitation imposed by customary international law is that a taking must be for a public purpose. Norwegian Shipowner's Claim (Nor. v. U.S.) Hague Ct. Rep. (Scott) 39, 42 (Perm. Ct. Arb. 1932). In Banco Nacional de Cuba v. Sabbatino, a United States Court of Appeals held that Cuba's retaliatory purpose was not a true public purpose to justify nationalization of American property. 307 F.2d 845, 865 (2d Cir., 1962), rev'd on other grounds, 367 U.S. 398 (1969). Richmond's confiscation of Belterrian goods without compensation violates international law because it was done for a retaliatory purpose, rather than for a public one such as general economic reform.

The second limitation is that an expropriation must be conducted without discrimination. The Oscar Chinn Case (U.K. v. Belg.), 1934 P.C.I.J., Ser. A/B No. 63, p. 87 (Judgment of Dec. 12). Because Richmond seized goods belonging only to Belterrians, such takings without adequate compensation are discriminatory and therefore invalid under international law.

B. Belterre is entitled to reparation for damages incurred by Richmond's wrongful confiscation of Belterrian goods.

Richmond must return the goods and pay for any damage or loss that has diminished their value since the confiscations. In the alternative, Richmond must pay Belterre adequate compensation for the taking of the goods. Where a confiscation is illegal, the injured state is entitled to the fair market value of the property at the time of the wrongful seizure, plus interest to the day of payment. Thus in the Chorzow Factory Case, the Permanent Court awarded Germany the value of property wrongfully expropriated by Poland, plus interest. In addition, Germany received damages for the loss of future profits. 1928 P.C.I.J. Ser. A, No. 17, at 47-48. Consequently, this Court does have the authority to award Belterre the value of the goods at the time of confiscation, plus interest,

that the Court award to Belterre damages for increased costs resulting from the need to transport goods by means other than the Chesterfield Highway. Finally, the Court is asked to order the immediate release of the Belterrian goods nationalized by Richmond at the port of Xanadu, or in the alternative, to order the prompt payment of adequate compensation for the value of these goods.

Respectfully submitted,

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William F. McCoy

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