

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

**April Term, 1983**

**FEDERATION OF RICHMOND**

**Applicant**

**v.**

**REPUBLIC OF BELTERRE**

**Respondent**

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**MEMORIAL FOR THE APPLICANT**

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**Yvonne Ang  
Susan Mary De Silva  
Alban Kang  
Kenneth Tan**



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## **JURISDICTION**

The Governments of the Federation of Richmond and the Republic of Belterre have submitted the following controversy for resolution by the International Court of Justice pursuant to paragraph 1 of Article 36 of the Statute of the International Court of Justice. The parties have not qualified the jurisdiction or competence of this Court.

## SUMMARY OF FACTS

The Federation of Richmond and the Republic of Belterre are adjacent independent states. Richmond lies between landlocked Belterre and the Utopia Ocean.

### **(a) The Chesterfield Highway Treaty**

In 1965, Richmond granted Belterre, by way of treaty, the use of Chesterfield Highway (hereinafter "the Highway") which connects Chesterfield, Belterre's capital, to Richmond's port of Xanadu. In return for such use Belterre covenanted to pay certain fixed sums of money and to use the Highway in a manner consistent with international law and respectful of the territorial sovereignty of Richmond.

### **(b) The dreadfly threat**

In 1978 it was reported that the citrus crops of New Hostia, an independent state bordering the northwestern frontier of Belterre, were infested with dreadfly, a fast-multiplying pest capable of rendering fruit commercially valueless. Since both Belterre and Richmond depend heavily on citrus fruit exports, the threat of dreadfly was especially dangerous to them. A World Health Organisation inspection team called in by New Hostia in 1979 found that conditions were ideal for rampant proliferation of the pest and recommended that New Hostia begin immediately a program of chemical spraying of all citrus groves in the country concentrating on the province closest to Belterre, where live dreadflies were found. New Hostia has since done some spraying but it is unclear whether it conformed to the World Health

Organisation recommendations for effective eradication of the pest.

**(c) Richmond's request to Belterre**

In April 1980 Richmond made a diplomatic request to Belterre to allow Richmond to inspect all shipments of citrus to be transported across the Highway. This was refused. Belterre counter-proposed that shipments from the western part of Belterre would carry a certificate of inspection issued by Belterre. This was declined by Richmond as being an ineffective measure against the dreadfly threat.

**(d) The closure of the highway**

On 15th August 1980 Richmond reiterated its request to inspect shipments of citrus along the Highway before they entered Richmond territory. Belterre was notified that if inspection was not accorded by 1st September 1980, Richmond would have no choice but to suspend its use of the Highway on that date.

Richmond set up an agricultural checkpoint on 1st September 1980 at the Belterre-Richmond border. Nevertheless, transport vehicle drivers, under orders from Belterrean authorities, refused to stop and generally ignored the checkpoint.

On 22nd September 1980, a dreadfly was found in the citrus crop of a Richmond farmer near the Richmond-Belterre border. The dreadfly could not have flown to Richmond from New Hostia as its normal geographic range is 2 kilometres from its point of birth. New Hostia's closest border is 700 miles from Richmond.

Richmond President Karafa thus announced at a press conference that the Highway Treaty was suspended and the entire border with Belterre sealed. Richmond recalled its Ambassador from Belterre and expelled the Belterrean Ambassador.

**(e) The blocking order**

Three days after the closure of the Highway, Belterre issued an order blocking all the assets of Richmond nationals within Belterre. The order also forbade the performance of any contract for the benefit of Richmond and its nationals. This resulted in the immediate suspension of \$1.2 billion in development projects within Richmond by Belterrean corporations.

The frozen liquid assets are held in interest-bearing accounts and other goods are subject to strict Belterrean control. However, all assets have been immunised from Belterre's courts and no judgements can be executed over the frozen assets.

**(f) The seizure at Xanadu**

Richmond seized all property stranded at Xanadu as a result of the closure of the Highway. This included 2 paintings belonging to the Belterre Art Museum. The goods have not been converted to public ownership and the affected parties have not been precluded from making their claims through Richmond's judicial process.

**(g) The executive decree**

To further enhance the effectiveness and potency of the Blocking Order, an Executive Decree was declared on 1 November

1980. The Decree forbade foreign corporations owned by anyone within Belterre from trading with Richmond.

The immediate effect of this was to cause Tropical Fruits Ltd, a Belterrean-owned corporation registered in the Idyllic Islands, to suspend its marketing contract for Richmond citrus worth \$35 million. Tropical Fruits Ltd which holds a monopoly over Richmond citrus exports owns some warehouses in Richmond from which it does business. Its paralysis in this respect caused Richmond not only contractual losses but also forced it to find other distributors for citrus exports.

**(h) The present situation**

Immediately after the closure of the Highway, Belterre began to export goods through neighbours other than Richmond. Belterre citrus exports have not been interrupted. The frozen assets have not been released since 1980.

**(i) Submission to the International Court of Justice**

In April 1982, both parties agreed to submit this dispute to the International Court of Justice. There are no reservations to the jurisdiction of the Court.

**(j) Relevant international treaties**

Both Richmond and Belterre are members of the United Nations and parties to the Vienna Convention on the Law of Treaties 1969. Neither have signed the 1958 Geneva Convention on the High Seas nor the 1982 United Nations Convention on the Law of the Sea.

**QUESTIONS PRESENTED**

- I. Whether Richmond's emergency closure of Chesterfield Highway to international traffic with Belterre violated any legal obligation.
- II. Whether Belterre's order on 25th September 1980, blocking the assets of Richmond nationals within Belterre and disrupting development contracts within Richmond, was in violation of international law.
- III. Whether Belterre's Executive Decree of 1st November 1980, extending the blocking order to include non-Belterrean entities not within Belterre, constituted a breach of its legal obligations.
- IV. Whether the seizure of property in Richmond was justifiable under international law as a response to Belterre's prior illegal actions.

**SUMMARY OF ARGUMENTS**

The question of transit rights over another state's territory has always been recognised by states as a matter to be regulated on the basis of individual agreements between themselves. Since transit is in effect an encroachment on the sovereignty of the transit state, only the latter can determine the extent to which it is willing to accept such limitation on its sovereignty.

The Chesterfield Highway Treaty embodied Richmond's attempts to aid landlocked Belterre by granting it transit privileges through Richmond territory. Belterre repeatedly abused these privileges in such a manner as to materially violate the spirit and Letter of the Treaty, in particular Article 4, by which Belterre covenanted to use its privileges in accordance with all applicable rules of international law and respect for the territorial sovereignty of Richmond. Richmond was left with no choice but to suspend Belterre's treaty privileges until the conflict between them could be resolved. This suspension was effected in accordance with Richmond's rights under International law and only as a last resort after Belterre demonstrated her unwillingness to observe "the spirit of co-operation" which afforded her privileges of transit in the first instance.

Belterre's reply was the imposition of illegal sanctions to punish Richmond for suspending its treaty privileges and to coerce Richmond into reinstating them. More specifically, Belterre's order of 25th September 1980 aimed at disrupting the economic activities of Richmond was a form of economic coercion in violation of the principle of non-intervention and contrary to Belterre's obligations under the

United Nations Charter to maintain peace and good order. The resulting freezing of Richmond's assets amounted to an illegal taking contrary to established norms of international law. Belterre's actions cannot be looked upon as justified retaliation because Richmond's suspension of its treaty privileges was in accordance with its rights under international law.

Further, Belterre's Executive Decree of 1st November 1980 extending the ambit of the Blocking Order to non-Belterrean entities such as Tropical Fruits Ltd was in violation of Belterre's responsibilities to the international community. International law does not allow the infringement of sovereign rights except under recognised principles of jurisdiction. Belterre's Decree did not conform to such principles. Even if such an application of extra-territorial jurisdiction is recognised under international law, it was an abuse of Belterre's rights, as a result of which Richmond suffered loss.

Belterre's unwillingness to co-operate and general unreasonableness meant that Richmond had no alternative but to resort to lawful measures to remedy the situation. Goods stranded at Xanadu had to be seized in order to give effect to the closure of the Highway. Under these circumstances, the seizure was also a justified response to Belterre's prior illegal actions.

In the interest of the international community and for the maintenance of peace and good order, Richmond requests this Court to grant the remedies asked for.



**I. RICHMOND'S EMERGENCY CLOSURE OF CHESTERFIELD HIGHWAY (hereinafter "THE HIGHWAY") TO INTERNATIONAL TRAFFIC WITH BELTERRE DID NOT VIOLATE ANY LEGAL OBLIGATION**

**A. Richmond's closure of the Highway was not in violation of its obligations under the Chesterfield Highway Treaty (hereinafter "the Treaty") because the Treaty was lawfully suspended**

**1. The Treaty was capable of suspension under international law**

The right of suspension of a bilateral treaty due to material breach of its terms by the other party has long been established at customary international law<sup>1</sup> and is codified by Article 60 of the Vienna Convention on the Law of Treaties, 1969<sup>2</sup> (hereinafter "the Vienna Convention"). This rule of "good sense and equity"<sup>3</sup> is a necessary supplement to the principle of *pacta sunt servanda*.<sup>4</sup> No state should be held to the performance of obligations under a treaty which the other contracting party is refusing to respect.<sup>5</sup> Thus if a

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1. A McNAIR, *THE LAW OF TREATIES* 573 (1961); B.P. SINHA, *UNILATERAL DENUNCIATION OF TREATY BECAUSE OF PRIOR VIOLATIONS OF OBLIGATIONS BY OTHER PARTY* 27-32 (1966); G. HARASZTI, *SOME FUNDAMENTAL PROBLEMS OF THE LAW OF TREATIES* 310-326 (1973). Fitzmaurice, *Second Report on the Law of Treaties*, [1957] 2 Y.B. INT'L L. COMM'N. 16, U.N. Doc. A/CN.4/SER. A/1957/Add. 1 at 30-31 and 52-55; Waldock, *Second Report on the Law of Treaties*, [1963] 2 Y.B. INT'L L. COMM'N. 36, U.N. Doc. A/CN. 4/SER. A/1963/Add. 1 at 73, 77.

2. U.N. DOC. A/CONF. 39/27 (1971) reprinted in 63 AM. J. INT'L L. 875 (1969). Art. 60, as far as is relevant, reads:

"1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. . ."

This Court in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (Advisory opinion) 1971 I.C.J. 16, at 47, found Art. 60 "in many respects . . . a codification of the existing customary law".

3. Waldock, *supra* note 1, at 73.

4. See Wehberg, *Pacta sunt servanda*, 53 AM. J. INT'L L. 775 (1959).

5. Waldock, *supra* note 1, at 73.

party fails to fulfil its treaty obligations, *pacta sunt servanda* becomes inapplicable and the other party has the option of suspending the treaty.<sup>6</sup> Even so-called "permanent" treaties<sup>7</sup> are capable of suspension as what is envisaged is not total abrogation of the treaty, but rather suspension of its operation until the conflict between the parties is resolved.<sup>8</sup> This Court must therefore disregard any assertion by Belterre that, despite its breach, the terms of the Treaty, in particular Article 2, exclude the right of suspension.

In any case, the Treaty cannot fall into the so-called "permanent" category. To construe the phrase "in perpetuity" in Article 2 as conferring a permanent right of transit would be to disregard the first rule of treaty interpretation - that a treaty must be read as a whole.<sup>9</sup> Article 2 must be read with Article 5. A Treaty cannot be permanent if it can be terminated.<sup>10</sup> The phrase "in perpetuity" merely denotes a period not expressly limited.<sup>11</sup> In case of doubt, this Court is urged not to depart from its practice and that of its predecessor to construe purported limitations of state sovereignty restrictively.<sup>12</sup>

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6. HARASZTI, *supra* note 1, at 316.
  7. The existence of such a category of treaties is doubtful. See Waldock, *supra* note 1, at 63-85.
  8. McNAIR, *supra* note 1, at 573; Fitzmaurice, *supra* note 1, at 49. See also Chinkin, *Crisis and the Performance of International Agreement: The Outbreak of War in Perspective*, 7 YALE J. WORLD PUBLIC ORDER 177 (1981).
  9. McNAIR, *supra* note 1, at 365. See also Art. 31 of the Vienna Convention on the Law of Treaties, *supra* note 2 (hereinafter cited as "the Vienna Convention").
  10. See Waldock, *supra* note 1, at 63.
  11. This phrase was so interpreted in the U.S. case of *Karnuth v. United States*, 279 U.S. 231 (1929).
  12. See *The S.S. Lotus (France v. Turkey)*, 1927 P.C.I.J., ser. A, No. 10 at 18; *The Asylum Case (Colombia v. Peru)*, 1950 I.C.J. 266 at 274-75.

2. Richmond was entitled to suspend the Treaty because of its material breach by Belterre

- (a) **Article 4 is "essential to the accomplishment of the object or purpose of the treaty" within the meaning of Article 60(3) of the Vienna Convention**

Article 60(3) of the Vienna Convention defines material breach as, *inter alia*, "the violation of a provision essential to the accomplishment of the object or purpose of the treaty".<sup>13</sup> This was explained by the International Law Commission in its commentary as a provision "considered by a party to be essential to the effective execution of the treaty [or] very material in inducing it to enter into the treaty at all, even although of an ancillary character."<sup>14</sup>

Article 4<sup>15</sup> of the Treaty is indeed such a provision as it encapsulates necessary safeguards for Richmond against abuse of the privilege of transit by Belterre. Without Article 4 Richmond would not have entered into the Treaty at all.

- (b) **Belterre's non-compliance with Article 4 was thus a material breach of the Treaty**

Article 4 acknowledges the rule of international law that Belterre's treaty right of transit must be exercised in good faith and in a manner consistent with Richmond's legitimate interests.<sup>16</sup> As a publicist comments, "(c)laims of transit over foreign territory must always be regarded as subject to the requirements of the sovereign

13. Art. 60(3)(b) of the Vienna Convention, *supra* note 2.

14. I.L.C. Commentary on Draft Articles of the Law of Treaties, reprinted in 61 AM. J. INT'L L. 248, 426 (1967).

15. Art. 4 reads:

"The Republic of Belterre covenants to use the Chesterfield Highway in a manner consistent with international law and respectful of the territorial sovereignty of Richmond."

16. B. CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 131-132 (1953). See also Hassan, *Good Faith in Treaty Formation*, 21 VA. J. INT'L L. 443 (1981).

thereof. . . . There is no room for equal equities..."<sup>17</sup> The priority to be given Richmond's interests as transit state is further reflected in the provisions of multilateral conventions concerning transit.<sup>18</sup>

Given the World Health Organisation warning of probable pest proliferation, the priority to be given Richmond's interests mandated that Belterre at the very least submit its citrus shipments to inspection. Current state practice where transit rights are granted shows that in a situation of possible pest infestation, submission to inspection is imperative. Several multilateral and bilateral treaties have been concluded along these lines.<sup>19</sup> Even if these treaties do not represent a firm rule of customary international law, they can be regarded as yardsticks by which Belterre's obligations of good faith and respect for the territorial sovereignty of Richmond may be measured. Certainly, complete immunity from inspection in such a situation would be inconsistent with Belterre's obligations under Article 4 of the Treaty. This is reflected in Article 3 which grants immunity from inspection only if transit is "pursuant to the Treaty",

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17. 1 C. HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 618 (1951).
  18. See e.g., Art 7 of the Barcelona Convention on Freedom of Transit 1927, 7 L.N.T.S. 12; Art. 12 of the Convention on Transit Trade of Landlocked Countries 1965, 597 U.N.T.S. 42; Art. 125(3) of the 1982 United Nations Convention on the Law of the Sea. U.N. DOC. A/Conf. 62/122 (1982).
  19. See e.g., Art. 11 of the Convention on Transit Trade of Landlocked Countries 1965, *supra* note 18; the 1929 International Convention for the Protection of Plants, 126 L.N.T.S. 305; 1965 Convention between the Government of the Polish People's Republic and the Government of the Socialist Federal Republic of Yugoslavia Concerning Cooperation in the Matter of Plant Protection, 768 U.N.T.S. 188 (200); Agreement between the Government of the French Republic and the Government of the Socialist Republic of Romania Concerning Plant Protection and Phytosanitary Control, 733 U.N.T.S. 238 (260).

that is, immunity is conditional on Article 4 being complied with by Belterre.

As such, Belterre's refusal to comply with Richmond's request for inspection can only be regarded as a breach of its treaty obligations of good faith and respect for the territorial sovereignty of Richmond under Article 4. Its unreasonable behaviour in continuing to use the Highway in complete disregard of the havoc a large scale spread of dreadfly would wreak on Richmond's economy was a further violation of Article 4, especially since Belterre was doing nothing of its own accord to curb the possible danger.

**(c) The whole Treaty had to be suspended**

The interdependent nature of the provisions of the Treaty necessitated that it be suspended *in toto*.<sup>20</sup> Article 2 is the central provision of the Treaty with all the other provisions making sense only by reference to it. The homogeneous character of the Treaty provisions clearly indicate its status as an "indivisible act"<sup>21</sup> to which the principles of severance cannot apply.

**3. Richmond's suspension of the Treaty was in accordance with international law**

**(a) Richmond was entitled to exercise its right of suspension of the Treaty immediately on violation of its terms by Belterre**

International law recognises the Richmond's right, as the injured party, to suspend the Treaty at its option in the absence of binding

20. See McNAIR, *supra* note 1, at 474-489; Sinha highlights the general rule that provisions of bilateral treaties such as the Treaty at hand are homogeneous, forming an "indivisible whole, each part depending on the other." SINHA, *supra* note 1, at 88. See also the I.L.C. Commentary on Art. 41 of the Vienna Convention, *supra* note 14, at 391.

21. *Techt v. Hughes*, 229 N.Y. 222, 243 (1920) (per Cardozo J.) cert. denied 254 U.S. 643 (1920).

agreement to the contrary.<sup>22</sup> Richmond has made no such agreements with Belterre.

**(i) Article 5 of the Treaty is inapplicable**

The procedure laid down in Article 5 applies only when either party wishes to terminate the Treaty without invoking any of the grounds recognised at customary international law.<sup>23</sup> Article 5 did not apply as Richmond merely **suspended** the Treaty in accordance with its rights under international law.

**(ii) The procedural requirements laid down in the Vienna Convention were not applicable**

The procedural requirements of the Vienna Convention cannot apply as it has no retroactive effect.<sup>24</sup> Moreover, these procedural requirements were not and did not purport to be customary international law. Indeed, they were a novel attempt to place strictures on the wider right of denunciation of treaties at customary international law.<sup>25</sup>

**(b) In any case, Richmond furnished reasonable notice of its intention to suspend the Treaty**

The extreme urgency of the situation cannot be over-emphasised. Although the World Health Organisation had declared

22. Acting U.S. Attorney-General Biddle stated on the suspension of the international Load Line Convention of 1930 that it is a "well-established international practice that violation of a treaty by one party renders the treaty voidable at the option of another contracting party injured by the violation." Cited in 5 G.H. HACKWORTH, DIGEST OF INTERNATIONAL LAW 345 (1943); see also L. OPPENHEIM, INTERNATIONAL LAW 947 (8th ed. H. LAUTERPACHT 1955); 2 HYDE, *supra* note 17, at 1541.

23. These include material breach, supervening impossibility of performance and fundamental change of circumstances. See generally Waldock, *supra* note 1; Fitzmaurice, *supra* note 1.

24. See Art. 4 of the Vienna Convention, *supra* note 2, which came into force on 27th January 1980.

25. See HARASZTI, *supra* note 1, at 417- 418.

conditions ideal for rampant proliferation of the pest, there was little indication of anything being done to contain it in New Hostia and none at all in Belterre. There was at least a reasonable apprehension on the part of Richmond that Belterrean produce was infested. This seemed confirmed by the later discovery of dreadfly near the Belterrean end of the Highway. Richmond's notice of a full 15 days was reasonable under the circumstances. That the right of suspension was exercised only as a last resort 22 days after it was initially due to take effect is evidence of Richmond's good faith and willingness to co-operate with Belterre. The ease with which Belterre was able to adjust to the suspension by the use of alternative routes at little extra cost demonstrates that adequate time was given to make alternative arrangements.

**B. Richmond had no obligation outside the Treaty to allow Belterre the use of the Highway**

Restrictions upon the independence of states cannot be presumed.<sup>26</sup> Any assertion by Belterre of a right of transit at customary international law must be supported by strict proof of extensive and virtually uniform state practice of such transit and *opinio juris et necessitatis*.<sup>27</sup>

International law in fact does not recognise any right of transit, general or exceptional, across a state's territory without its consent. This is a natural corollary of the principle of state sovereignty,<sup>28</sup> in

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26. See *The S.S. Lotus*, *supra* note 12, at 18.

27. Art. 38 of the ICJ Statute refers to "international custom, as evidence of a general practice accepted as law." See D.W. GREIG, *INTERNATIONAL LAW* 17-30 (2nd ed. 1970).

28. Arbitrator Huber stated that "sovereignty in the relations between states signifies independence. Independence in regard to a portion of the Globe is the right to exercise therein, to the exclusion of any other state, the functions of a state" (emphasis

the face of which arguments for rights of access based on concepts such as natural law, servitudes and the freedoms of the seas have failed.<sup>29</sup> Whatever the moral force of these assertions, it is not the law and as this Court itself has recognised, "[r]ights cannot be presumed to exist merely because it should seem desirable that they should."<sup>30</sup>

The widespread practice of regulating passage by way of treaty<sup>31</sup> and the observable fact that the admission of aliens, whether for trade or otherwise, is at the complete discretion of every state,<sup>32</sup> is clear evidence of the absence of any rule of customary international law mandating transit rights. If at customary international law a state can refuse an alien entrance to its territory it is axiomatic that a state can refuse him transit and the practice of conferring rights of transit by way of treaty underlines this fact. The absence of

**Footnote 28 continued**

added). Island of Palmas (Miangas) Arbitration (Netherlands v. U.S.), 2 R. INT'L ARB. AWARDS 829 (1928)

29. Childs comments: "[t]he establishment of legal philosophies to justify the position of inland states had little effect on those nations that would have to grant the rights sought ..." (emphasis added). Childs, The Interest of Landlocked States in Law of the Sea, 9 SAN DIEGO L. REV. 701, 703 (1972). See also McNair, So-Called State Servitudes 6 BRIT. Y.B. INT'L L. 111 (1925); Viall, The Transit of Persons To and From Lesotho, 1 COMP. & INT. L.J. S. AFR. 8 (1968).
30. South West Africa Cases (Ethiopia v. S. Africa; Liberia v. S. Africa) 1966 I.C.J. 6 at 48.
31. See, e.g., Convention of Mannheim, 20 RECUEIL DE TRAITES 355 (1875); Treaty of Commerce and Fluvial Navigation Between Brazil and Bolivia, 7 RECUEIL DE TRAITES (ser. 3) 632 (1915). See generally 1 J. MOORE, A DIGEST OF INTERNATIONAL LAW 627-53 (1906); 1 HACKWORTH, *supra* note 23, at 596-613.
32. The writers are virtually unanimous that a state may lawfully exclude aliens at will. See, e.g., 1 G. SCHWARZENBERGER, INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 360-1 (3rd ed. 1957); 1 OPPENHEIM, *supra* note 22, at 675-6; 2 D.P. O'CONNELL, INTERNATIONAL LAW 753-5 (2nd ed. 1970).

rights of transit is further supported by the deliberations of various international conferences,<sup>33</sup> the decisions of judicial and arbitral tribunals<sup>34</sup> and the works of publicists.<sup>35</sup> As such, any claim by Belterre to a right of passage at customary international law must necessarily fail.

**C. Even if there was an obligation outside the Treaty to allow Belterre the use of the Highway, its closure was not a breach of such obligation**

Any extra-treaty obligation to allow transit, if such did exist, would be subject to Richmond's right of control and regulation to protect its legitimate interests.<sup>36</sup> This power is inherent in the principle of territorial sovereignty<sup>37</sup> and undoubtedly extends to the

- 33. International conventions dealing with the issue consider it to be a matter of interstate agreement, being in essence a derogation from the sovereignty of the grantor state. See Makil, *Transit Rights of Landlocked Countries*, 4 J. WORLD TRADE L. 35 (1970); see also Childs, *supra* note 29, for detailed studies of the major conventions considering this question.**
- 34. No international judicial or arbitral tribunal has recognized any customary right of transit. See, e.g., *Territorial Jurisdiction of the International Commission of the River Order*, 1929 P.C.I.J., ser. A, No. 23; *The Railway Traffic between Lithuania and Poland case*, 1931 P.C.I.J., ser. A/B, No. 42; *The Right of Passage over Indian Territory case* (Portugal v. India), 1960 I.C.J. 6.**
- 35. Those who examine the matter of transit look to state practice of states and fail to find therein any convincing rule of customary international law prescribing the grant of passage. See, e.g., 1 OPPENHEIM, *supra* note 22 at 321; 1 SCHWARZENBERGER, *supra* note 32, at 237; Viall, *supra* note 29.**
- 36. See Lauterpacht, *Freedom of Transit in International Law*, 44 TRANSACTIONS OF THE GROTIUS SOCIETY 313, 345-6 (1958-9); 1 HYDE, *supra* note, at 618; Sarup, *Transit Trade of Landlocked Nepal*, 21 INT'L & COMP L.Q. 287, 301 (1972). In the *Right of Passage over Indian Territory case*, *supra* note 34, at 45, this Court affirmed that "Portugal's claim of a right of passage is subject to full recognition and exercise of Indian sovereignty over the intervening territory ..."**
- 37. This was pointed out by Judge Wellington Koo in the *Right of Passage over Indian Territory case*, *supra* note 34, at 63.**

suspension of transit should Richmond's vital interests be threatened.<sup>38</sup>

It cannot be denied that Richmond's vital interests, indeed, its economic survival, was threatened by Belterre's continued transport of probably pest-infested citrus. With Belterre doing nothing to contain the spread of dreadfly and being unco-operative with Richmond's attempts to do so, Richmond had no choice but to suspend the Treaty until the danger was past and new arrangements made for re-implementation of transit.

**II. BELTERRE'S ORDER ON 25th SEPTEMBER 1980 (HEREINAFTER "THE BLOCKING ORDER"), BLOCKING THE ASSETS OF RICHMOND NATIONALS WITHIN BELTERRE AND DISRUPTING DEVELOPMENT CONTRACTS WITHIN RICHMOND, WAS IN VIOLATION OF INTERNATIONAL LAW**

**A. The freezing of the assets of Richmond's nationals within Belterre amounted to a taking contrary to the established norms of international law**

**1. Such a restriction on the use of the assets amounted to a taking under international law**

Interference with an alien's property may amount to a taking although no explicit attempt is made to affect legal title to the property.<sup>39</sup> Although a state may not purport to interfere with the rights to property, it may by its actions render those rights so

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38. See, e.g., *The Right of Passage over Indian Territory case*, *supra* note 34, when this Court held that India's overriding responsibility to preserve order in her own territory justified her refusal to grant passage to Portugal.

39. Christie, *What Constitutes a Taking of Property Under International Law*, 38 BRIT. Y.B. INT'L L. 307, 309 (1967).

useless that it amounts to a taking.<sup>40</sup> The freezing of the assets by Belterre, regardless of intention, amounted to a taking since the Blocking Order deprived Richmond nationals of the use and benefit of their assets. Maintaining the liquid assets in interest bearing accounts does not detract from the fact that the rightful owners are deprived of their use so as to amount to a loss of ownership.

2. Such taking of property was illegal under international law

To be lawful, a taking of alien property must be motivated by some **bona fide** social or economic interest.<sup>41</sup> The Blocking Order was in fact a retaliatory act, aimed at disrupting the economic activities of Richmond,<sup>42</sup> and therefore cannot be looked upon as a **bona fide** act done in furtherance of Belterre's economic development.

International law further prescribes that legitimate takings of alien property must be non-discriminatory.<sup>43</sup> When nationals of only

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40. See **Norwegian Shipowners' Claim** (Norway v. U.S.), 1 R. INT'L ARB. AWARDS 307 (1922); **German Interest in Polish Upper Silesia Case** (Germany v. Poland), 1926 P.C.I.J., ser. A, No. 7. In an attempt to codify the existing law on protection of aliens, publicists concur that unreasonable restrictions in the use of property can amount to a taking. See Art. 10(3) of the Harvard Draft Convention on International Responsibility of States for Injuries to Aliens, 1961 (hereinafter "the Harvard Draft Convention"), reprinted in F.V. GARCIA-AMADOR, L.B. SOHN & R.R. BAXTER, RECENT CODIFICATION OF THE LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS 204 (1974).

41. **German Interest in Polish Upper Silesia Case**, *supra* note 40. See also Art. 10(1) of the Harvard Draft Convention, *supra* note 40; Para. 4 of the 1962 Resolution on Permanent Sovereignty Over Natural Resources, G.A. Res. 1803, 17 U.N. GAOR Supp. (No. 17) at 15, U.N. Doc. A/5217 (1962). This resolution has been held to be declaratory of customary international law in the **Texaco Case**, reprinted in 17 INT'L LEGAL MATERIALS 1 (1978).

42. Refer to arguments in II(B) at page 13.

43. **Oscar Chinn Case (U.K. v. Belgium)**, 1934 P.C.I.J., ser A/B, No. 63. See also 2 O'CONNELL, *supra* note 32, at 779.

one state suffer from such a taking, as in the present case, the action constitutes illegal discrimination on its face, discrimination which more than anything else exposes the illegality of the act.<sup>44</sup>

Even if the taking is for a public purpose and non-discriminatory, a state is under a duty to compensate aliens for the taking of property.<sup>45</sup> Belterre has made no effort to compensate Richmond's nationals for the loss of their property. Instead, the blocked assets have been immunised from the jurisdiction of the municipal courts. As such, the taking was not in conformity with accepted international standards.<sup>46</sup>

3. Even if the freezing did not amount to an illegal taking, it was an unlawful interference with the acquired rights of Richmond's nationals

The assets in Belterre owned by Richmond nationals are acquired rights<sup>47</sup> and cannot be cancelled without full compensation of the equities attached to them.<sup>48</sup> Any form of interference with the

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44. **Spanish Zones of Morocco Claims (U.K. v. Spain)**, 2 R. INT'L ARB. AWARDS 615 (1925). See also 2 O'CONNELL, *supra* note 32, at 779.

45. **Norwegian Shipowners' Claim**, *supra* note 40. See also Art. 10(2) of the Harvard Draft Convention, *supra* note 40; Para. 4 of the 1962 Resolution on Permanent Sovereignty Over Natural Resources, *supra* note 41.

46. To conform to accepted international standards, a state is obligated to compensate the alien for the loss of his assets. See C.F. AMERASINGHE, STATE RESPONSIBILITY FOR INJURIES TO ALIENS 135 (1967); 2 O'CONNELL, *supra* note 32, at 776.

47. O'Connell defines acquired rights as "any rights, corporeal or incorporeal, properly vested under municipal law in a natural or juristic person and of an assessable monetary value." 2 O'CONNELL, *supra* note 32, at 763.

48. Acquired rights include proprietary rights, such as ownership of liquid assets, which cannot be taken away without compensating the owners for their loss. See Ko, **The Concept of Acquired Rights in International Law: A Survey**, 24 NETH. INT'L L. REV. 120 (1977); 2 O'CONNELL, *supra* note 32, at 766; GARCIA-AMADOR, SOHN & BAXTER, *supra* note 40, at 42.

exercise and enjoyment of these rights give rise to state responsibility.<sup>49</sup> The Blocking Order effectively deprived Richmond's nationals of their property, and even if it did not amount to a taking in the classic sense, it was an unlawful interference with acquired rights.

4. The exhaustion of local remedies rule is inapplicable because Belterre's courts have no jurisdiction over the matter

The frozen assets have been immunised from the jurisdiction of Belterre's courts,<sup>50</sup> depriving Richmond nationals of effective local means of redress. The exhaustion of local remedies rule is thus inapplicable<sup>51</sup> and Richmond is not precluded from bringing a claim before this Court.

**B. The Blocking Order was in violation of the principle of non-intervention**

1. The Blocking Order as a whole was a form of economic coercion in violation of the principle of non-intervention

In attaining minimal world order, the general community of states through authoritative pronouncements has formulated a policy prohibiting the use of coercion as an instrument of international change.<sup>52</sup> The United Nations General Assembly has thus declared that the use of economic measures "to coerce another state in order to establish from it the subordination of the exercise of its sovereign

49. E.g., restrictions imposed on bank deposits, **Guaranty Trust Co. of New York Claim** (U.S. v. U.S.S.R.), 30 INT'L L.R. 134; deprivation of the right of disposal of goods, **Spanish Zones of Morocco Claim**, *supra* note 44.

50. The courts have been precluded from executing judgments.

51. **Finnish Arbitration Case** (Finland v. U.K.), 3 R. INT'L ARB. AWARDS 1479 (1934).

52. McDougal & Feliciano, **Legal Regulation of Resort to International Coercion: Aggression and Self-Defence in Policy Perspective**, 68 YALE L.J. 1057, 1164 (1959).

rights or to secure from it advantages of any kind" is prohibited.<sup>53</sup> The illegality of economic coercion has been repeatedly emphasised in numerous other General Assembly resolutions.<sup>54</sup> The cumulative impact of these many resolutions of similar content gives rise to an international norm<sup>55</sup> prohibiting the use of economic coercion as a form of intervention.<sup>56</sup>

The purpose of the Blocking Order was to coerce Richmond into opening the lawfully closed Highway by disrupting its economic activities. As such, it was a form of economic coercion aimed at causing deliberate injury to Richmond.

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53. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11, U.N. Doc. A/6014 (1965). See also the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1971). The latter has been said to be a set of *jus cogens* rules. See Rusk, **The 25th U.N. General Assembly and the Use of Force**, 2 GA. J. INT'L & COMP. L. 19 (1972).
54. See, e.g., Para. 6 of the Resolution on Permanent Sovereignty Over Natural Resources, G.A. Res. 3171, 28 U.N. GAOR Supp. (No. 30) at 52, U.N. Doc A/9030 (1973); Para 4(e) of the Declaration on the Establishment of a New Economic Order, G.A. Res. 3201, 29 U.N. GAOR Supp. (No. 1) at 3, U.N. Doc. A/9559 (1974); Art. 32 of the Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974).
55. The effect of many resolutions of a similar content gives rise to strong evidence of *opinio juris*. See the separate opinion of Judge Dillard in the **Western Sahara Case** (Advisory Opinion), 1975 I.C.J. 12 at 121. Declaratory resolutions declare the existence of customary international law. See J. CASTANADA, LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS 168 (1969).
56. This is also the view of publicists. See Bowett, **International Law and Economic Coercion**, 16 VA. J. INT'L L. 245 (1976). Note, **The Use of Non-violent Coercion: A Study in Legality Under Article 2(4) of the Charter of the United Nations**, 122 U. PA. L. REV. 983 (1974).

2. In any case, the suspension of development contracts in Richmond was an unlawful interference in the economic activities of Richmond

The Blocking Order caused disruption of development projects in Richmond and was an interference in its economic activities contrary to the principle of non-intervention.<sup>57</sup> The right of a state to embark upon any economic policy it may choose is limited by the rule that such a policy cannot be exercised for the dominant purpose of causing injury to another state.<sup>58</sup> The Blocking Order was aimed at paralysing Richmond's economic activities. Such interference, was a violation of the principle of non-intervention.

**C. The Blocking Order was contrary to Belterre's obligations under the United Nations Charter**

Although the term 'use of force' remains undefined in the United Nations Charter,<sup>59</sup> many publicists are of the opinion that it includes the use of economic force.<sup>60</sup> The United Nations, in the process of preparing a treaty on non-use of force, has recognised that the term includes all forms of coercion, economic and political.<sup>61</sup>

57. A state is entitled to exercise sovereignty over all economic activities within its territories. See the 1962 Resolution on Permanent Sovereignty Over Natural Resources, *supra* note 41. Note also the Declaration on the Establishment of a New Economic Order, *supra* note 54, and the Charter of Economic Rights and Duties of States, *supra* note 54.
58. A. THOMAS & A.J. THOMAS, NON-INTERVENTION, THE LAW AND ITS IMPORT IN THE AMERICAS 409 (1956).
59. Art. 2(4) of the United Nations Charter, 59 Stat. 1031 (1945) T.S. No. 993.
60. See generally Delaris, 'Force' under Article 2(4) of the United Nations Charter: The Question of Economic and Political Coercion, 12 VAND. J. TRANSNAT'L L. 101 (1979); Lilich, The Status of Economic Coercion Under International Law: United Nations Norms, 12 TEX. INT'L L.J. 17 (1977); Dempsey, Economic Aggression and Self-Defence in International Law: The Arab Oil Embargo & Alternative American Responses Thereto, 9 CASE W. RES. J. INT'L L. 253 (1977).
61. A 35-member Special Committee on Enhancing the Effectiveness of the Principle of the Non-use of Force in International Relations

With increasing economic inter-dependence, the vulnerability of most states to economic coercion has increased, emphasizing the need for more stringent control of the use of force.<sup>62</sup> Thus, the Blocking Order as a form of economic coercion aimed at stifling the development of Richmond, must be seen as a violation of Belterre's obligations under the Charter.

Furthermore, by resorting to economic coercion in the face of the alleged dispute, Belterre is in breach of Art. 2(3) of the United Nations Charter with regards to pacific settlements of disputes.<sup>63</sup> Embargos, boycotts and other economic pressures do not constitute procedures of pacific settlement under the Charter.<sup>64</sup>

**D. Belterre's Blocking Order cannot be justified as retaliation in response to perceived unlawful acts**

**1. There has been no prior illegal act by Richmond to justify any form of retaliation**

Any form of retaliation, including the use of economic measures,<sup>65</sup> must conform to the preconditions recognised by international law.<sup>66</sup> Since Richmond has not breached any of its legal

**Footnote 61 continued**

whose goal is to draft a treaty on the non-use of force has recently concluded a report to be presented to the General Assembly. 19 U.N. MONTHLY CHRON. 71 (June 1982).

62. M.S. McDUGAL & W.T. BURKE, LAW AND MINIMUM WORLD PUBLIC ORDER 196 (1961).
63. As to what would amount to pacific settlement, see Art. 33 of the U.N. Charter, *supra* note 59. See also Blum, **Economic Boycotts in International Law**, 12 TEX. INT'L L.J. 5, 13 (1977).
64. Brosche, **The Arab Oil Embargo and the United States Pressure Against Chile**, 7 CASE W. RES. J. INT'L L. 3, 32 (1974).
65. Certain states have resorted to use of economic measures as a form of reprisals. See Bowett, **Economic Coercion and Reprisals by States**, 13 VA.J. INT'L L. 1, 8 (1972); Lilich, *supra* note 60.
66. The three conditions are that there must be a prior international delinquency against the claimant state, there must have been no other recourse available and the retaliatory act must be proportionate to the wrong done. See the **Naulilaa Case** (Portugal v. Germany), 2 R. INT'L ARB. AWARDS 1012 (1928) and Bowett, *supra* note 65, at 9.

obligation to Belterre,<sup>67</sup> the Blocking Order cannot be justified as a form of economic retaliation.

2. Any claim of justifiable retaliation must be rejected because the Blocking Order was a completely disproportionate response to the alleged prior illegal act

Even assuming a prior illegal act by Richmond, the Blocking Order was disproportionate and cannot be justified by any reference to Richmond's acts. Richmond has merely closed off an access route for Belterre. Alternative and equally viable routes are clearly available as is demonstrated by the ease with which Belterre adjusted to the closure of the Highway. No Belterrean property was taken. Therefore, the Blocking Order was an unwarranted punitive act against private individuals for an alleged act by the state.<sup>68</sup>

**III. BELTERRE'S EXECUTIVE DECREE OF 1st NOVEMBER 1980 (HEREINAFTER "THE DECREE"), EXTENDING THE BLOCKING ORDER TO INCLUDE NON-BELTERREAN ENTITIES NOT WITHIN BELTERRE, CONSTITUTED A BREACH OF ITS INTERNATIONAL OBLIGATIONS**

**A. The Decree did not conform to principles of state jurisdiction**

1. The Decree cannot rely on the nationality principle because corporate nationality is determined by the place of incorporation

Any exercise of extra-territorial jurisdiction must be "by virtue of a permissive rule derived from international custom or from a convention."<sup>69</sup> A state may exercise extra-territorial jurisdiction

67. Refer to arguments in Part I at pages 1-10.

68. Contrast the freezing of the Iranian assets by the U.S. government in 1979. It only affected the property of the Iranian government. Exec. Order No. 12, 170, 44 Fed. Reg. 65, 729 (1979). Assets of Iranian nationals in the U.S. were not affected. See Gordon, *The Blocking of Iranian Assets*, 14 INT'L LAW. 659 (1980).

69. *The S.S. Lotus*, *supra* note 12, at 19.

over a company if the company is its national. This is determined by its place of incorporation.<sup>70</sup> Hence, a Belterrean-owned corporation registered in a foreign state is not a Belterrean national and cannot be subject to Belterre's jurisdiction. Thus, the Decree asserting jurisdiction over such corporations as Tropical Fruits Limited cannot be justified on the nationality principle.

2. The Decree cannot purport to protect Belterrean shareholders because there has been no threat to their interests

States sometimes attempt to regulate the activities of foreign corporations to protect the interests of nationals who are shareholders.<sup>71</sup> In the present case, the interests of Belterrean shareholders have in no way been threatened, nor has Belterre asserted such a justification for its action. The protective principle cannot conceivably validate the Decree's effect, which is to restrict the trading activities of non-Belterrean entities.

**B. Control of foreign corporations through shareholders as an exercise of extra-territorial jurisdiction contravenes international law**

The emergence of a new rule of customary law depends upon the

70. **Barcelona Traction, Light and Power Company Case**, (Belgium v. Spain), 1970 I.C.J. 3. This Court also decided in that case that other tests for determining corporate nationality were not acceptable (at 34-39). Vagts states that to allow the control theory to determine corporate nationality would lead to much uncertainty and unpredictability. See Vagts, **The Corporate Alien: Definitional Questions in Federal Restraints on Foreign Enterprises**, 74 HARV. L. REV. 1489 (1961).

71. E.g., U.S. Securities Exchange Act of 1934, 48 Stat. 881 (1934), as amended, 15 U.S.C.A.; U.S. anti-trust laws, Sherman Act, 26 Stat. 209 (1890), as amended, 15 U.S.C.A.; European Communities anti-trust laws, Art. 85-86 of the EEC Treaty, 295 U.N.T.S. 2. See also Akehurst, **Jurisdiction in International Law**, 46 BRIT. Y.B. INT'L L. 154 (1972-73).

practice and conviction of the body of states.<sup>72</sup> State practice indicates that the control of foreign corporations through shareholders is not a legitimate exercise of jurisdiction. There has been strong resistance by states to such form of extra-territorial control. Domestic laws have been enacted to protect nationals and other corporations whose trading activities are threatened by these extra-territorial regulations.<sup>73</sup>

In the recent Soviet gas pipeline crisis, the United States issued regulations similar in nature to Belterre's Decree.<sup>74</sup> The reaction from the affected states demonstrates that such measures are not recognised under international law.<sup>75</sup> Thus, it cannot be said that existing law and practice accept such measures as a legitimate exercise of extra-territorial jurisdiction.

72. **Supra** note 27 and text accompanying note.

73. E.g., s. 31.6 of the Canadian Combines Investigations Act 1975, Cap. 76 Statutes of Canada; and s. 1(3) of the U.K. Protection of Trading Interests Act 1980, Cap. 11 Acts of Parliament (1980). The English Act becomes applicable the moment there is a likelihood of damage to the trading interests of the U.K.

74. See the regulations issued by the office of Export Administration of the U.S. Dept. of Commerce on June 22, 1982 reprinted in 21 INT'L LEGAL MATERIALS 864 (1982). Note:

"Person subject to the jurisdiction of the United States' includes

"i) Any person, wherever located, who is a citizen or resident of the United States;

"ii) Any person actually within the United States;

"iii) Any corporation organised under the law of the United States or of any state, territory, possession, or district of the United States; or

"iv) Any partnership, association, corporation, or other organisation, wherever organised or doing business, that is owned or controlled by persons specified in paragraphs (i), (ii) or (iii) of this section". *Id.* at 866.

75. The European Communities argue that there is no basis of jurisdiction for the U.S. extra-territorial legislation. See the European Communities' Comments on the U.S. Regulations Concerning Trade with the U.S.S.R., reprinted in 21 INT'L LEGAL MATERIALS 891 (1982).

**C. In any case, Belterre is responsible for the injury to Richmond flowing from the illegal exercise of extra-territorial jurisdiction**

**1. The Decree is an abuse of rights contrary to general principles of law**

The principle of good faith which governs international obligations also controls the exercise of rights by states.<sup>76</sup> Hence Belterre is obliged to exercise its jurisdiction "reasonably, honestly, in conformity with the spirit of the law and with due regard to the interests of others."<sup>77</sup> The Decree purporting to control only Belterrean nationals, had the effect of disrupting the citrus exports of Richmond to third states. Although Belterre may have the right to control its nationals, the exercise of such right must be balanced against Richmond's need to protect its economic development.<sup>78</sup> Belterre sought to impose its policies upon Richmond's trading partners so as to create a form of indirect boycott against Richmond.<sup>79</sup> This is an abuse of Belterre's right to legislate over its

76. CHENG, *supra* note 16, at 129.

77. *Id.* at 134. This process of balancing the interest of States is illustrated in the **Trail Smelter Case** (U.S. v. Canada), 3 R. INT'L ARB. AWARDS 1905 (1941). This Court has also on a number of occasions affirmed the principle of good faith. See Hassan, *supra* note 16, at 446, and cases cited therein.

78. The United Kingdom government prescribed that states may apply their anti-trust laws to activities of their nationals abroad "only provided that this does not involve interference with the legitimate affairs of other states." BRITISH PRACTICE IN INTERNATIONAL LAW 60 (1967). The U.S. State Department's approach is similar to that developed by the U.S. courts, namely, the rule of reasonableness. This involves the balance of both the interests of the U.S. and the interests of other states concerned with a given transaction. See Leich, **Contemporary Practice of the United States Relating to International Law**, 76 AM. J. INT'L L. 836, 843 (1982). See also the European Communities Comments, *supra* note 75.

79. This is also the argument raised by the European Communities regarding the U.S. regulations on trade with the U.S.S.R., *supra* note 76.

nationals and a violation of international law for which it should be held responsible.<sup>80</sup>

2. There has been an indirect interference with the economic activities of Richmond in violation of the principle of non-intervention

The aim of the Decree was to further interfere with the economic activities of Richmond and had the effect of disrupting the citrus exports of Richmond. Where a government compels its nationals to instill, even indirectly, a trade boycott against another state, such conduct amounts to unlawful intervention.<sup>81</sup>

**IV. THE SEIZURE AT XANADU WAS A JUSTIFIABLE AND NECESSARY RESPONSE TO BELTERRE'S PRIOR ILLEGAL ACTIONS**

**A. The seizure was a reasonable and necessary step taken to effect the suspension of the Treaty**

A state is entitled, in the exercise of its police powers, to seize property as a measure against violation of municipal<sup>82</sup> and international law.<sup>83</sup> Such seizure must be in the interest of the state.<sup>84</sup>

Belterre's material breach of the Treaty necessitated its suspension.<sup>85</sup> The consequent seizure of property stranded at Xanadu was a reasonable measure following from the closure of the

80. Even when the content of the legislation does not infringe a specific rule of international law, it may nevertheless be contrary to international law if it constitutes an abuse of rights. See Akehurst, *supra* note 71.

81. A boycott amounts to intervention the legality of which is determined by its purpose. THOMAS & THOMAS, *supra* note 58, at 411.

82. *Case of the Asparia* (U.S. v. Mexico), 4 MOORE INT'L ARB. 4614 (1841). See also S. FRIEDMAN, *EXPROPRIATION IN INTERNATIONAL LAW* 1 (1955).

83. 2 O'CONNELL, *supra* note 22, at 776; B.A. WORTLEY, *EXPROPRIATION IN PUBLIC INTERNATIONAL LAW* 38 (1959).

84. 2 O'CONNELL, *supra* note 22, at 776; WORTLEY, *supra* note 83.

85. Refer to arguments in Part I at pages 1-10.

Highway. Seizing such goods to prevent them from being transported over the Highway was a necessary step in effecting the suspension of the Treaty.

**B. The seizure was a lawful response to Belterre's illegal Blocking Order**

1. The Blocking Order was a violation of international law

Any retaliatory act must be preceded by a prior international delinquency against the claimant state.<sup>86</sup> The Blocking Order and the resulting freezing of assets were in violation of international law.<sup>87</sup>

2. No other recourse was available to Richmond

A justified retaliation must be one used as a last resort and must be proportionate to the wrongs done.<sup>88</sup> The frozen assets were immunised from the jurisdiction of Belterre's courts. Protest through diplomatic channels would have been futile because the present dispute arose out of Belterre's refusal to comply to the inspection regulations as requested by Richmond through diplomatic channels. Under these circumstances, Richmond had no alternative but to seize the property left behind at Xanadu.<sup>89</sup>

3. Any compensation which might be payable is not yet due

Compensation need only be paid at "the latest day of effective

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86. **Naulilaa Case**, *supra* note 66.

87. Refer to arguments in Part II at pages 10-17.

88. **Naulilaa Case**, *supra* note 66.

89. The government-owned property could be used to pay compensation to the affected Richmond nationals. Individual Belterrean owners may seek redress through the relevant authorities in Richmond.

taking"<sup>90</sup> and after all the relevant circumstances have been taken into account.<sup>91</sup> There has been no effective taking as the seized property is still subject to judicial process.

**C. This Court cannot entertain any claims from Belterre because local remedies have not been exhausted**

Since the affected parties have not been precluded from the jurisdiction of Richmond's courts, Belterre has no right to claim on behalf of her nationals.<sup>92</sup> There is no indication that the government-owned property is otherwise protected by international law.<sup>93</sup> Furthermore, no claims has been made for them through the relevant authorities.<sup>94</sup>

90. **Norwegian Shipowners' Claim**, *supra* note 40, at 342. The term 'effective' is not a term of art and no specific rule can be stated defining the term in regard to expropriation as such. See generally, AMERASINGHE, *supra* note 46, at 159; S. WHITE, *NATIONLIZATION OF FOREIGN PROPERTY* 17 (1961).
91. Para 4 of the 1962 Resolution on Permanent Sovereignty over Natural Resources, *supra* note 41, states that "... the owner shall be paid appropriate compensation in accordance with the rules in force in the state taking such measures ...". Note also Art. 2(2) of the Charter of Economic Rights and Duties of States, *supra* note 55.
92. **The Interhandel Case** (Switzerland v. U.S.), 1959 I.C.J. 11.
93. There is no indication that the property is diplomatic property. Regarding the paintings, neither state is a signatory to the UNESCO Convention on The Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, UNESCO Doc. 16 C/Res at 135.
94. All procedural remedies must be exhausted. **The Ambatielos Arbitration** (Greece v. U.K.), 12 R. INT'L ARB. AWARDS 83 (1956).

**CONCLUSION AND PRAYER FOR RELIEF**

**CONSIDERING THAT** the closure of the Chesterfield Highway did not violate any of Richmond's legal obligations;

**CONSIDERING THAT** the Blocking Order was in violation of international law;

**CONSIDERING THAT** Belterre is responsible for Richmond's loss of citrus exports arising from the Executive Decree.

**CONSIDERING THAT** the seizure at Xanadu was a justified response to Belterre's prior illegal actions.

The Federation of Richmond respectfully requests this Honourable Court to:

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's assets by Belterre is in violation of international law, and
  - (a) **Order** that Belterre release property held by it and to allow performance of contracts whose completion was interrupted by the Blocking Order; or, in the alternative,
  - (b) **Award** to Richmond damages measured by the costs of replacing property or procuring alternative contractual performances 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 crops since 1st November 1980;

4. **DECLARE** that the seizure at Xanadu was justified under international law;
5. **DENY** to Belterre all relief sought in the present proceedings.

**RESPECTFULLY SUBMITTED**

Yvonne Ang  
Susan M De Silva  
Alban Kang  
Kenneth Tan


**C E R T I F I C A T E**

We hereby certify that this Memorial complies with the OFFICIAL  
RULES of this Competition.

  
Yvonne Ang

  
Susan Mary De Silva

  
Alban Kang

  
Kenneth Tan