

**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

Res
MEMORIAL FOR THE APPLICANT

**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 Republic of Belterre and the Federation of Richmond are adjacent independent states. Richmond is bordered by Belterre on the west and the Utopia Ocean on the east. With New Hostia to its northwest, Belterre is entirely landlocked. The economy of all three states is heavily dependent on the export of citrus crops.

(a) The Chesterfield Highway Treaty

On 1st January 1965, Richmond and Belterre agreed to a treaty granting Belterre certain rights to the use of a highway running between Richmond's port of Xanadu and Belterre's capital of Chesterfield. Between 1965 to 1977, Belterre used the Chesterfield Highway (hereinafter "the Highway") without major incident, making payment therefore in accordance with the treaty.

(b) The dreadfly alarm

In 1978, the world press reported that citrus crops in New Hostia were infested with dreadfly, an insect capable of rendering fruit commercially useless. A World Health Organization report in December 1979 concluded that there were some dreadfly present in the New Hostian province closest to Belterre. Although there was no serious damage to crops, "conditions were ideal for rampant proliferation of the pest" and chemical spraying of the affected areas was recommended.

(c) The diplomatic exchanges

Although there was no evidence to suggest the presence of dreadfly in Belterre, Richmond delivered a diplomatic note to Belterre's ambassador on 1st April 1980 in terms which demanded

that Belterre submit for Richmond's inspection all shipments of citrus fruits or products to be carried along the Highway. Belterre declined and counter-proposed that each vehicle transporting citrus from the western parts of Belterre would carry a certificate issued by the Belterre Health Ministry stating that the shipment was free of dreadfly.

This counter-proposal was orally declined by Richmond on 15th August 1980 for the reasons that the latter did not believe it possible to identify the origin of the fruit, that it had no confidence in the reliability of the Belterre Health Ministry, and that the counterproposal would not guarantee that cargoes transiting Richmond were not contaminated. A subsequent note stated that unless Belterre complied with its original demand by 1st September 1980, Richmond would suspend the use of the Highway by Belterre on that date.

Belterre's terms of reply on 20th August 1980 were that the use of the Highway by its nationals was in conformity with international law and with the treaty and that such use posed no threat of harm to the inhabitants or economy of Richmond. Richmond was reminded that Belterre would view any interference with its vehicles lawfully travelling on the Highway as a matter of utmost seriousness.

(d) The agricultural checkpoint

On 1st September 1980, Richmond established an "Agricultural Checkpoint" on the Highway at the Belterre-Richmond border. The sign which instructed "all vehicles carrying agricultural produce" to stop and submit to inspection

by Richmond Agricultural Service was, however, ignored by Belterre vehicles under orders from Belterre authorities. The use of the Highway by Belterre was not suspended on this date.

(e) The suspension of the treaty by Richmond

On 22nd September 1980, a single dreadfly was discovered in the groves of a citrus farm near the western end of the Highway. Immediately, Richmond erected concrete barriers on the Highway at the border with Belterre and at the port of Xanadu in Richmond. At a press conference the President of Richmond announced the suspension of the treaty, the sealing of the entire border with Belterre and the closure of Richmond's territory and airspace to all transit by Belterre. Belterre's ambassador was expelled and Richmond recalled its own.

(f) The blocking order

On 23rd September 1980, Belterre ordered the blocking of all assets of Richmond nationals within Belterre. "Dealing in" such blocked⁴ assets was prohibited as was the performance of any contract for the benefit of Richmond or its nationals. The effect of the blocking order was the suspension of \$1.2 billion in development projects then being conducted within Richmond by Belterre corporations.

(g) The confiscation

In response to the blocking order, on 15th October 1980, Richmond confiscated all Belterre goods at Xanadu awaiting transit to Belterre.

(h) The decree

On 1st November 1980, the President of Belterre announced in an executive decree that the blocking order would be amended to encompass "(i) all natural persons who are citizens of Belterre, (ii) all natural persons who are physically present in Belterre, (iii) all corporations and other commercial enterprises organized under the laws of Belterre, and (iv) all commercial enterprises anywhere in the world which are owned or controlled by any person or entity described in (i), (ii) or (iii) above."

(i) Tropical Fruits Ltd

Tropical Fruits Ltd is incorporated and headquartered in the Idyllic Islands. Three-quarters of its stock is owned by Belterre investors. The corporation held a "virtual monopoly" on citrus exports from Richmond.

The immediate effect of Belterre's decree was the suspension by Tropical Fruits Ltd of its marketing contract with Richmond. Diplomatic requests from Richmond that the Idyllic Islands protest on behalf of its corporation have gone unanswered. No other government has ordered its corporations to disobey Belterre's blocking order, as broadened by the decree.

(j) The present situation

No large scale outbreak of dreadfly has been confirmed. Since the suspension of transit rights across Richmond, Belterre has transported goods by air and railway lines over neighbour states other than Richmond. This has added an estimated 10% to the cost of imported goods and 5% to the cost of Belterre's exports. Although its citrus exports have not been interrupted,

their price has increased because of higher transportation costs and there has been a minor diminution in volume.

Belterre has not nationalized the blocked assets. Liquid assets are held in interest-bearing accounts; other goods are subject to official control and are immune from Belterre's legal process.

(k) Submission to the International Court of Justice

In April 1982, Richmond and Belterre agreed to submit the issues arising from the foregoing facts to the International Court of Justice.

(l) Relevant International Treaties

Richmond and Belterre are members of the United Nations and parties to the Vienna Convention on the Law of Treaties. Neither State is a party to the United Nations Law of the Sea Convention of 1982.

QUESTIONS PRESENTED

- I. Whether Richmond's cessation of all rights of transit across its territory to and from Belterre is in violation of international law.
- II. Whether Belterre's order of 25th September 1980 is in breach of international law.
- III. Whether Belterre is responsible to Richmond with regard to the actions of an enterprise incorporated in a third state.
- IV. Whether Richmond's confiscation of Belterre goods in transit to Belterre violated international law.

SUMMARY OF ARGUMENTS

The interests of international peace and security dictate that a strict view be taken of a state which disregards its international obligations. Richmond has persistently acted in total disregard of its international obligations to Belterre.

Richmond's cessation of all transit rights across its territory to and from Belterre since 22nd September 1980 was a double violation of its international obligations. First, there was a violation of its duty under the Chesterfield Highway Treaty (hereinafter "the Treaty") to grant permanent transit rights across Chesterfield Highway (hereinafter "the Highway"). Second, Richmond flouted its obligation under general international law to grant landlocked Belterre access to and from the sea. Any attempt to justify Richmond's action as a response to a fear of dreadfully infestation cannot be supported on the facts.

Adding insult to injury, Richmond on 15th October 1980 illegally confiscated Belterre goods in transit to Belterre. This was another blatant violation of its obligations under the Treaty. In addition, Richmond completely ignored the rules of international law governing the taking of alien property. The confiscation served on public purpose - indeed it was openly discriminatory - and no compensation was made.

Belterre in contrast has at all times acted in accordance with international law. Its use of the Highway was always consistent with its rights under the Treaty and international law. Further, the Blocking Order of 25th September 1980, was an act of justified economic retaliation to Richmonds illegal cessation of transit rights.

The resulting freezing of Richmonds assets in Belterre was therefore a reasonable exercise of the sovereign right to control economic activities within its territory. The exercise of jurisdiction over Belterre corporations in Richmond was in accordance with the nationality principle.

Any issue relating to the actions of Tropical Fruits Ltd, an Idyllic Islands Corporation, is entirely irrelevant to the proceedings. Only by a radical and unwarranted rewriting of the traditional rules of *locus standi* and state responsibility can it even be suggested that Belterre is somehow responsible to Richmond for the independent acts of an enterprise incorporated in a third state. In any case, any action by Belterre which affected Tropical Fruits is justifiable as an exercise of the nationality and protective principles.

I. RICHMOND'S CESSATION OF ALL RIGHTS OF TRANSIT ACROSS ITS TERRITORY TO AND FROM BELTERRE SINCE 22nd SEPTEMBER 1980 IS IN VIOLATION OF INTERNATIONAL LAW

A. Richmond is obliged under international law to grant Belterre, as a landlocked state, a right of access to and from the sea

1. Belterre's right as a landlocked state to have access to and from the sea is a firmly established principle of customary international law

There is an abundance of evidence establishing landlocked Belterre's right under customary international law to free access to and from the sea.¹ The right is firmly supported by General Assembly Resolutions² and the works of publicists.³ It is further reflected in numerous bilateral and multilateral treaties.⁴ In particular, the Geneva Convention on the High Seas, 1958,⁵ which is "generally declaratory"⁶ of international law gives express recognition to the

1. See generally **Explanatory Paper on Draft Articles Relating to Landlocked States**, 3 Official Records, Third U.N. Conference on the Law of the Sea 206-210, U.N. Doc. A/CONF. 62/C. 2/L. 29 (1974).
2. G.A. Res. 1028 (XI) 1125 (XI) 2086 (XX) and 2569 (XXIV) noted in Govindaraj, **Landlocked States and their Right of Access to the Sea**, 14 IND. J. INT'L L. 190, 211 (1974). See also Johnson, **The Effect of Resolutions of the General Assembly of the United Nations**, 32 BRIT. Y.B. INT'L L. 97 (1955-6).
3. Govindaraj, *supra* note 2; Lauterpacht, **Freedom of Transit**, 44 TRANSACTIONS OF THE GROTIUS SOCIETY 313 (1958-9).
4. For examples see **Question of Free Access to the Sea of Land-locked Countries: Memorandum by the Secretariat of the United Nations**, 1 Official Records, U.N. Conference on the Law of the Sea, 306-338, U.N. Doc. A/CONF. 13/29 and Add. 1 (1958); Govindaraj, *supra* note 2.
5. See Art. 3, Geneva Convention on the High Seas, 1958 (hereinafter "the High Seas Convention"), 450 U.N.T.S. 82 (1958).
6. These specific words in the preamble indicate that "the Convention on the High Seas must therefore be taken presumptively to be declaratory of customary international law." Baxter, **Multilateral Treaties as Evidence of Customary International Law**, 41 BRIT. Y.B. INT'L L. 276, 288 (1965-66).

right. Article 125 of the 1982 United Nations Convention on the Law of the Sea⁷ reaffirms the right and sums up the position in customary international law:

"Landlocked States shall have the right of access to and from the sea . . . (and) shall enjoy freedom of transit through the territory of transit States by all means of transport."

2. Belterre's right as a landlocked State to have access to and from the sea is in accordance with general principles of international law

International law recognises that the geographical fact of being landlocked *ipso facto* gives Belterre rights of access to the sea.⁸

First, implicit⁹ in Belterre's sovereign right to enjoy the freedom of the seas¹⁰ is the right of transit across the territories of other states to gain access to the sea. To exclude the right of access would be to render Belterre's right to the freedom of the seas meaningless.

Secondly, Belterre must of necessity¹¹ have access to the sea for purposes of communication. Its right of access to the sea, the *res*

7. U.N. Doc. A/CONF. 62/122 (1982).

8. For instances of legal rights arising from geographical facts see **Right of Passage Case** (Portugal v. India), 1960 I.C.J. 6 at 138 and **The Anglo-Norwegian Fisheries Case** (U.K. v. Norway) 1951 I.C.J. 116 at 133.

9. See **Right of Passage Case**, *supra* note 8, 138; Sinjela, **Freedom of Transit States and the Right of Access for Landlocked States: The Evolution of Principle and Law**, 12 G.A. J. INT'L L. 31, 32-33 (1982); Sarup, **Transit Trade of Landlocked Nepal**, 21 INT'L & COMP. L.Q. 287, 288 (1972).

10. Art. 2, the High Seas Convention, *supra* note 5, states that the freedom of the seas is "open to **all** nations . . . coastal and non-coastal." (emphasis added)

11. The concept of "way of necessity" is recognized in international law. See Lauterpacht, *supra* note 3; **Contemporary Practice of the United Kingdom in the Field of International Law** 8 INT'L COMP. L.Q. 146, 211 (1959).

communis, is analogous¹² to the right, uniformly recognised in municipal legal systems, of enclaved domains to have access to the public roads.¹³

Thirdly, equity¹⁴ demands that Belterre be able to use the sea to transport its goods to world markets. While the right of transit to trade is a matter of convenience to most states, it is a matter of survival to the landlocked.¹⁵ To permit uncertainty of access to and from the sea is to condemn landlocked Belterre to economic stagnation by denying it an important outlet for its goods.¹⁶ Granting Belterre rights of access is not only equitable, but completely consistent with the interests of the international community in promoting trade.¹⁷

12. Private law concepts are applicable on the international plane as indicators of policy and principles. **International Status of South-West Africa**, 1950 I.C.J. (Advisory Opinion) 128 at 148; B. CHENG, **GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL TRIBUNALS** 24 (1953).
13. See the study of Professor Max Rheinstein of 64 systems of municipal law, noted by F.A. KRENZ, **INTERNATIONAL ENCLAVES AND RIGHTS OF PASSAGE** 158-62 (1961).
14. Equitable principles have always applied in international law. **The Diversion of Water from the Meuse** (Netherlands v. Belgium), 1937 P.C.I.J. Ser. A/B, No. 7, at 76-7; **Barcelona Traction Case** (Belgium v. Spain), 1970 I.C.J. 3 at 48.
15. Caffish, **Landlocked States and Their Access to the Sea**, 49 BRIT. Y.B. INT'L L. 71, 74 (1978) cites uncertainty of access to the sea as part explanation why 20 out of 29 landlocked states are developing countries and 15 are among the 28 poorest in the world; "(Landlocked) countries must literally trade or die . . .", M.I. GLASSNER, **ACCESS TO THE SEA FOR DEVELOPING LANDLOCKED STATES** 13 (1970).
16. Sinjela, supra note 9; Childs, **The Interests of Landlocked States in Law of the Sea**, 9 SAN DIEGO L. REV. 701, 703-6 (1972).
17. Lauterpacht, supra note 3, at 319-22.

3. Richmond's actions in completely denying Belterre any right of transit across its territory since 22nd September 1980 are therefore in violation of international law

Richmond's cessation of all rights of transit to and from Belterre - by simultaneously closing Chesterfield Highway (hereinafter "the Highway"), sealing the border and suspending rights over its air space - is therefore in violation of its obligation under international law to grant Belterre rights of access to the sea.

Adopting by analogy this Court's approach in **The Corfu Channel Case**,¹⁸ the existence of alternative routes across other states, especially as they are more expensive and less direct, does not detract from Belterre's right of transit across Richmond. Indeed, transit across Richmond is of special importance as Belterre has grown to rely on it as a primary outlet for trade. In particular, the Highway is Belterre's only overland route for transporting its goods.¹⁹

Furthermore, Richmond's actions are not justifiable as regulation in good faith.²⁰ The cessation of **all** rights of transit across **all** routes, to **all** classes of goods, vehicles and persons²¹ is totally unrelated to its alleged fear of infestation from Belterre agricultural trucks.

18. (U.K. v. Albania) 1949 I.C.J. 4 at 28. For application of the judgment to general transit rights, see Lauterpacht, supra note 3 at 333; 1 D.P. O'CONNELL, INTERNATIONAL LAW 555 (1970).

19. See Clarifications 214.

20. **North Atlantic Coast Fisheries** (U.S. v. Great Brit.), 11 R. Int'l Arb. Awards 167 (1970). See also CHENG, supra note 12 at 123-29.

21. At least diplomatic representatives, L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 806 (8th ed. 1955), and returning nationals of Belterre, Viall, **The Transit of Persons to and from Lesotho**, I. COMP & INT. L.J. S. AFR. 81, 208 (1968), should retain the right of transit.

B. The Chesterfield Highway Treaty (hereinafter "the Treaty") granted Belterre a permanent right to use the Highway which thereafter exists independent of the Treaty

1. Article 2 of the Treaty granted the permanent and independent right

Given Belterre's use of the Highway prior to conclusion of the Treaty,²² the express grant of rights "in perpetuity"²³ makes sense only as a grant of permanent rights to Belterre. This interpretation is confirmed by the intention underlying the Treaty as expressed in its Article 1. Richmond in return for payments over ten years agreed to restrict its sovereignty over the Highway to the extent necessary to grant Belterre permanent access to the sea.²⁴ Such restriction is completely consistent with Richmond's sovereignty.²⁵

Article 2 operated in a manner akin to a conveyance,²⁶ and had its full effect when Belterre completed the payment to Richmond and acquired permanent rights to the Highway. Thereafter, "[Article 2] had nothing further to perform"²⁷ and Belterre's rights became independent of the Treaty.²⁸

22. Clarifications 190.

23. See Art. 2 of the Treaty, exhibit 1.

24. For examples of similar agreements granting permanent rights in foreign territory, see O'CONNELL, *supra* note 18 at 548; see also F.A. VALI, *SERVITUDES IN INTERNATIONAL LAW* (2nd ed. 1958) 146-7 describes a servitude in favour of Finland was created as a consequence of its special geographical position.

25. **The S.S. Wimbledon Case**, (France, Italy, Japan & UK v. Germany) 1923 P.C.I.J. Ser. A. No. 1 at 25.

26. A. McNAIR, *LAW OF TREATIES* 256-9, 740-3 (1961).

27. **Chirac v. Chirac**, 5 MOORE'S INT'L L. DIG. 387 (1817).

28. Fitzmaurice uses the term "executed provision" to describe provisions like Article 2. Fitzmaurice, **Second Report on the Law of Treaties**, 2 Y.B. INT'L. LAW COMM'N. 35, 67-8 (1957), U.N. Doc. A/CN. 4/SER. A./1957/Add. 1.

2. The closure of the Highway cannot be justified as regulation in good faith

In view of Belterre's right to use the Highway, Richmond could only make regulations in good faith.²⁹ The closure of the Highway, however cannot be justified as a reasonable response to fear of dreadfly infestation from Belterre.

There was no reasonable apprehension that Belterre was a source of infestation. New Hostia's timely spraying programme³⁰ and the absence of complaints of infestation from neighbouring states³¹ indicated the successful confinement of the dreadfly problem to New Hostia. Indeed, there is no evidence that dreadfly ever spread to Belterre much less that Belterre fruits, transported in closed refrigerated trucks,³² had become a source of infestation. Neither can it be shown that the solitary dreadfly found in a Richmond farm among Richmond lemons had come from Belterre or a Belterre truck.

Furthermore, good faith in regulating the Highway required Richmond at least to confirm its fears, for example, by requesting Belterre to submit to inspection by the World Health Organization. Instead, Richmond acted hastily, relying only on the finding of one dreadfly and the hurriedly performed tests of a local university.

In any case, Richmond's indiscriminate closure of the Highway to all traffic and all persons was disproportionate to its alleged fear of

29. See **Right of Passage Case**, supra note 8, and **North Atlantic Coast Fisheries**, supra note 20.

30. Clarifications 28.

31. Clarifications 116.

32. Clarifications 66.

infestation from agricultural trucks and cannot qualify as regulation in good faith.³³

C. The closure of the Highway by Richmond was in violation of its obligations under the Treaty

1. Richmond had no grounds for suspending the Treaty

Richmond was obliged by the Treaty to allow Belterre use of the Highway free from interference.³⁴ By closing the Highway, Richmond flouted the principle of *pacta sunt servanda*, one of the cornerstones of international law.³⁵ Richmond therefore bears the burden of proof to establish lawful grounds for suspending the Treaty.³⁶ In the light of rules of customary international law,³⁷ Richmond has not discharged this burden.

Richmond has not shown Belterre to be in breach of any provision of the Treaty. In refusing to submit its trucks to inspection by Richmond, Belterre was only acting in accordance with its rights

33. See Chinkin, **Crisis and the Performance of International Agreements: The Outbreak of War in Perspective**, 7 YALE J. WORLD PUBLIC ORDER 177 (1981).

34. See Art. 3 and 5 of the Treaty, Exhibit 1.

35. See Wehberg, **Pacta Sunt Servanda**, 53 AM. J. INT'L L. 775 (1959).

36. Art. 42, Vienna Convention on the Law of Treaties 1969 (hereinafter the "Vienna Convention") U.N. Doc. A/CONF. 39/29 (1971), is the equivalent of a presumption in favour of the validity and binding force of treaties. Nahlik, **The Grounds of Invalidity and Termination of Treaties**, 65 AM. J. INT'L L. 736, 746 (1971).

37. These rules have been to a large extent codified in the Vienna Convention, *supra* note 36. See the observations of Mustafa Kamil Yasseen, Chairman of Drafting Committee at Vienna, and of Sir Humphrey Waldock, Special Rapporteur, 2 Official Records, U.N. Conference on the Law of Treaties, Vienna, 321, 337, U.N. Doc. A/CONF. 39/11/Add. 1 (1969).

under Article 3 of the Treaty. Furthermore, Belterre's use of the Highway posed no danger to Richmond and was at all times consistent with Article 4 of the Treaty.³⁸

Richmond cannot in any case argue that Belterre has materially breached the Treaty. Article 60³⁹ of the Vienna Convention emphasizes that only a material breach may be invoked as a ground of suspension. It mandates in clear terms that only the breach of a provision "essential to the object or purpose of the treaty" may be characterised as such. This is a stringent test.⁴⁰ In the present case, Article 1 of the Treaty specifies its object. Only Article 2, which gives effect to the object of the Treaty by granting Belterre access to the sea across the Highway can be regarded as essential to the object. All other provisions are ancillary. As Belterre has clearly not breached Article 2, even if Richmond can show a breach of any other provision there would be no material breach.

Even assuming Richmond were able to point to any other provision as essential to the object of the Treaty, it cannot establish

38. See argument at Part I.B.2. supra, p. 5.

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

40. The more lax test of equating material breach to the frustration of "any of the objects or purposes of the treaty" (emphasis added) was rejected in the final draft. Schwelb, **Termination or Suspension of the Operation of a Treaty as a Consequence of its Breach**, 7 IND. J. INT'L L. 309, 315 (1967).

"such serious conditions as would operate to frustrate the treaty"⁴¹ so as to amount to material breach. It is entirely consistent with international peace and security that only serious breaches⁴² of essential provisions, justify a suspension of treaty obligations. Richmond, far from proving such serious violations by Belterre, has been unable to produce any evidence of damage or even of danger caused by Belterre.⁴³

Furthermore, Richmond cannot plead fundamental change of circumstances. The doctrine is of dubious validity and bears strict scrutiny.⁴⁴ Article 62 of the Vienna Convention, which codifies it,⁴⁵ is negatively worded, emphasizing its narrow ambit. Significantly, this Court and municipal courts have declined to apply the doctrine to any case before them.⁴⁶ Indeed, adopting this Court's approach in the **Fisheries Jurisdiction Case**,⁴⁷ the extent of obligations between Belterre and Richmond should remain the same.

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41. **Tacna-Arica Arbitration** (Chile v. Peru), 2 R. INT'L ARB. AWARDS, 929 at 943-4 (1925) cited with approval by the International Law Commission in its commentary on Art. 60, Vienna Convention, reprinted in 61 AM. J. INT'L L 423 (1967).
 42. See Schwelb, supra note 40; M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW, 137 (4th ed. 1982).
 43. Usually a history of incidents is required to establish a material breach. Chinkin, **Non-Performance of International Agreements**, forthcoming in TEX. INT'L L.J. (1983).
 44. **International Law Commission Commentary on draft Articles of the Law of Treaties**, reprinted in 61 AM. J. INT'L L. 241, 428-435 (1967).
 45. **Fisheries Jurisdiction Case** (U.K. v. Iceland) 1974 ICJ 3 at 18: "Art. 62 .. . may in many respects be considered as a codification of existing customary law."
 46. Supra note 44, at 429.
 47. Supra note 45, especially at 21.

2. The Treaty was not validly suspended

Even if there exist grounds therefor, Richmond has failed to comply with the procedural requirements for a valid suspension of a treaty under international law.⁴⁸

International law has always required proper notice of an intention to suspend a treaty.⁴⁹ Certainty in treaty relations dictates that there be formal written notice, setting out the legal basis for suspension and the date it is to take effect.⁵⁰ Richmond failed to provide such notice. Its diplomatic notes to Belterre made no mention of suspending the Treaty. Threats on 1st September to suspend Belterre's transit rights across the Highway cannot be interpreted as proper notice, particularly as the actual suspension in fact occurred three weeks later. Richmond's press conference was no substitute⁵¹ for a formal written notice directed specifically to Belterre, especially as the conference gave no legal basis for the suspension.

48. This Court in the **Fisheries Jurisdiction Case**, supra note 45 at 21 and the International Law Commission, supra note 44 at 439, have emphasized the need to comply with procedural requirements. Arts. 65-68 of the Vienna Convention may in many respects be treated as a codification of these requirements. See **Fisheries Jurisdiction Case**, supra note 45 at 21. (U.K. argument).

49. See Fitzmaurice, supra note 28 at 65-6; Waldock, **Second Report on the Law of Treaties**, 2 Y.B. INT'L LAW COMM'N 86 (1963), U.N. Doc. A/CN. 4/SER. A/1963/Add. 1.

50. **Id.** See also Arts. 65 and 67, Vienna Convention, supra note 36.

51. See Fitzmaurice and Waldock, supra note 49.

Further, equity⁵² requires that notice be given a reasonable time before suspension to serve as a warning of it. Adequate warning was especially necessary as the rights of access to the sea were essential to the economic survival of Belterre. In this regard, Article 65(2) of the Vienna Convention,⁵³ which demands three months' advance notice, is relevant as a yardstick to measure reasonable time.⁵⁴ Richmond gave only two weeks' notice. Moreover, the notice given, coupled with Richmond's inaction on 1st September misled Belterre into believing that Richmond had no intention of suspending the Treaty. Richmond's press conference provided no warning whatsoever as it came **after** the suspension was effected.

3. Article 2 was severable from the remainder of the Treaty and would not have been suspended along with the rest of the Treaty

(a) **Article 2 was not capable of suspension, at least not in the instant case**

The deliberate use of the phrase "in perpetuity"⁵⁵ to describe Belterre's rights to use the Highway makes it clear that these rights cannot be suspended. The ordinary meaning of a grant of rights "in perpetuity" is a grant of permanent rights.⁵⁶ This interpretation is reinforced by the object of the Treaty as expressed in Article 1. Article 2 was intended to grant Belterre permanent rights of access to the sea to offset its permanent geographical disadvantage of being

52. For application of equity in the interational plane, see note 14 supra. See also Tariq Hassan, **Good Faith in Treaty Formation**, 21 VA. J. INT'L L. 443, 444-7 (1981).

53. Supra note 36.

54. As both Belterre and Richmond are parties to the Vienna Convention its provisions should have special weight in the present dispute.

55. Art. 2 of the Treaty, Exhibit 1.

56. See **Sutton v. Sutton**, 1 Russell and Mylene 663 (1830).

landlocked.⁵⁷

Furthermore, Belterre has completed the payment to Richmond required by Article 2. Richmond, having benefited from the payment over a ten-year period, cannot with impunity suspend Belterre's rights under Article 2. The payment was clearly by way of a **quid pro quo** for the rights.⁵⁸

Article 2 therefore should be regarded as self-contained⁵⁹ and incapable of suspension, even if the rest of the Treaty were validly suspended. At most, article 2 may be suspended by Richmond in self-defence against an armed attack,⁶⁰ a situation far removed from the instant case.

(b) **Even if Article 2 were subject to suspension, the claimed grounds were not related to it and any attempt at suspension could not affect it**

The International Law Commission has stressed that it is "inappropriate that treaties . . . be capable of being . . . suspended in operation in their entirety even in cases where the ground of suspension . . . relate(s) to quite secondary provisions of the treaty."⁶¹ Indeed, this Court in **The Interhandel Case**⁶² has

57. "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Art. 31, Vienna Convention, supra note 36.

58. **Fisheries Jurisdiction Case**, supra note 45 at 18; **Legal Status of Eastern Greenland** (Denmark v. Norway), 1933 P.C.I.J. Ser. A/B No. 53.

59. See **The S.S. Wimbledon Case**, supra note 25 at 24.

60. UN CHARTER, Art. 51, 59 Stat. 1031 (1945) T.S. No. 993. But see Chinkin, supra note 33 at 40. "However . . . the creation of a real right has been an argument for not allowing any deviation from an agreement, even in the event of a conflict."

61. See International Law Commission Commentary on Draft Articles of the Law of Treaties, supra note 44 at 390. See also Art. 44, Vienna Convention, supra note 36.

has indicated its willingness to sever treaty provisions, so as to leave the remaining treaty obligations intact.

Richmond's claimed grounds relate only to its alleged fear of dreadfully infestation. At most it could suspend Article 3 of the Treaty, which granted Belterre freedom of inspection by Richmond authorities. As the rights under Article 3 were merely ancillary to the primary right to use the Highway under Article 2, suspension could be confined to Article 3 "without materially upsetting the balance of interests . . . under the treaty."⁶³

II. BELTERRE'S ORDER OF 25th SEPTEMBER 1980 (hereinafter "THE BLOCKING ORDER") IS NOT IN BREACH OF INTERNATIONAL LAW

A. Belterre's freezing of assets was a valid exercise of its sovereign right to control economic activities within its territories

Belterre has the right to exercise full permanent sovereignty over economic activities within its territory,⁶⁴ subject only to the principle of good faith in the exercise of its rights.⁶⁵ In the present case, Belterre's freezing of Richmond's assets within its territory was a reasonable exercise of its sovereign rights.⁶⁶ The Blocking Order

Footnote 62 brought forward

62. (Switzerland v. U.S.A.), 1959 I.C.J. 6 at 57, 77-78 and 116-117. See also **Norwegian Loans Case** (France v. Norway), 1957 I.C.J. 9 at 55-59.
63. International Law Commission Commentary on Draft Articles of the Law of Treaties, supra note 44, at 390.
64. See Art. 2, Charter of Economic Rights and Duties of States, 1974. G.A. Res. 3281 (XXIX), reprinted in 14 INT'L LEGAL MATERIALS 251 (1975); Para. 1, Resolution on Permanent Sovereignty over Natural Resources, 1962, G.A. Res. 1803 (XVII), 17 U.N. GAOR Supp. (No. 17) at 15.
65. A state must exercise its rights in a manner compatible with its various obligations arising from general law. CHENG, supra note 12, at 129-132.
66. "[J]urisdiction including legislative competence over national territory, may be referred to in the terms "sovereignty" or "sovereign rights". I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 290 (3rd ed. 1979).

was issued to suspend economic relations between the parties as a reasonable response to Richmond's illegal cessation of all rights of transit. As proof of Belterre's good faith, goods affected by the Blocking Order have been protected from Belterre's legal process while liquid assets are being held in interest-bearing accounts.

B. Belterre's exercise of jurisdiction over its corporations in Richmond was valid under international law

Belterre's corporations are juridical nationals⁶⁷ of Belterre. Consequently, Belterre has jurisdictional competence over the extra-territorial acts of its corporations under the nationality principle⁶⁸ of state jurisdiction. Given the interdependence of states control of Belterre's corporations by their national state will inevitably have effects within Richmond. Such an exercise of jurisdiction is acceptable in state practice so long as it does not amount to illegal interference in the legitimate affairs of Richmond or cause the Belterre corporations to act in a manner contrary to the laws of Richmond.⁶⁹ In the absence of clear evidence that the suspension of contracts violated Richmond's domestic laws, or that the action of Belterre amounted to illegal interference. Belterre is not responsible under international law for the actions of its corporations operating in Richmond.

67. **Barcelona Traction Case**, supra note 4. See also BRITISH FOREIGN AND COMMONWEALTH OFFICE, RULES REGARDING INTERNATIONAL CLAIMS, rule iv (1971).

68. See generally BROWNLIE, supra note 66, at 303.

69. See statement of principle appended to the U.K. **aide memoire** of 20th October 1969 addressed to the Commission of the European Communities, cited in D.E. ROSENTHAL & W.M. KNIGHTON, THE PROBLEM OF EXTRA-TERRITORIALITY 56 (1982).

C. The Blocking Order was justified economic retaliation

Economic retaliation is a permissible form of self help to compel Richmond to return to legality.⁷⁰ Belterre's Blocking Order has met the prerequisites for justified economic retaliation.⁷¹

- (1) Richmond has committed a prior international delinquency against Belterre by its cessation of all Belterre's transit rights across its territory.
- (2) There was no alternative open to Belterre because other means of redress had been exhausted or were unavailable. While diplomatic negotiations would have been a reasonable alternative, this was made unavailable when Richmond simultaneously expelled Belterre's ambassador and recalled its own.
- (3) The measures were proportionate to the wrong done to Belterre by Richmond. There has been no attempt to confiscate the blocked assets, and liquid assets have been kept in interest-bearing accounts since the Blocking Order came into effect.

D. The Blocking Order did not constitute illegal intervention under international law

In order for action by Belterre to amount to intervention, there must be evidence of illegal interference in the internal or external

70. Bowett, *Economic Coercion and Reprisals by States*, 13 VA. J. INT'L L. 1 at 9 (1972).

71. Bowett states the accepted preconditions for reprisals as:

1. A prior international delinquency against the claimant state.
2. Redress by other means must either be exhausted or unavailable.
3. The economic measures taken must be limited to the necessities of the case and proportionate to the wrong done.

Id. at 252. See also *THE LAW OF LIMITED INTERNATIONAL CONFLICT* 19 (1965).

affairs of Richmond.⁷² There is no evidence of such interference for although contracts were suspended, it has not been established that this violated Richmond's domestic laws. Even if there were such interference, interference *per se* is not illegal under international law. The characterization of acts which amount to illegal intervention is vaguely defined.⁷³ Bowett has therefore suggested characterizing unlawful economic measures by their intent.⁷⁴ Adopting this approach, there is no evidence that Belterre's purpose or motive was improper in the sense of having been intended primarily to injure the economic interests of Richmond. Instead, Belterre's action was justified retaliation aimed at securing Richmond's performance of its international obligations to Belterre in regard to transit over Richmond's territory.⁷⁵

The fact that "state economies are competitive and that promoting one's own economy may well be injurious to others,"⁷⁶ suggests that the interests of states in a dispute over interference must be balanced.⁷⁷ Even if Richmond has an interest in continuing business relations with Belterre, the latter has a compelling interest in securing the observance of its transit rights over Richmond. Belterre's action was therefore justified as essential to its national interests and incidental interference in Richmond did not amount to illegal intervention under international law.

72. BROWNLIE, *supra* note 66. The formulation is taken from Art. 8 of the Montivideo Convention on the Rights and Duties of States, 1933 U.S.T.S. 881.

73. Bowett, *supra* note 70, at 3.

74. *Id.* at 5. See also A. THOMAS & A.J. THOMAS, *NON-INTERVENTION* 409 (1956).

75. See THOMAS & THOMAS, *supra* note 74, at 409.

76. Bowett, *supra* note 70, at 6.

77. On the relativity of rights between states see generally BROWNLIE, *supra* note 66, at 298.

III. BELTERRE IS NOT RESPONSIBLE TO RICHMOND UNDER INTERNATIONAL LAW FOR THE ACTIONS OF TROPICAL FRUITS LTD. (hereinafter "TROPICAL FRUITS"), AN IDYLIC ISLANDS CORPORATION

A. The Executive Decree (hereinafter "the Decree") of 1st November 1980 was not illegal under international law

1. The burden of proof is upon Richmond to establish that the Decree was illegal

Restrictions upon sovereign and independent states cannot be presumed.⁷⁸ The burden is upon Richmond to prove rules of international law proscribing the Decree. Until and unless Richmond succeeds in so doing, the Decree stands as a legal exercise of prescriptive jurisdiction, an essential aspect of the sovereignty of a state.⁷⁹

2. Belterre's jurisdiction over its nationals is justified under the nationality principle of state jurisdiction

Nationality is recognized by practice and opinion as a basis of jurisdiction over extra-territorial acts.⁸⁰ To limit *locus* to territorial jurisdiction would greatly curtail the effectiveness of the Blocking Order. Its extension under the Decree to Belterre's nationals wherever located was therefore reasonable and lawful.

3. Jurisdiction by Belterre over natural persons within its territory is valid under the territorial principle of state jurisdiction

Territorial jurisdiction is an essential competence lying within Belterre's sovereign rights,⁸¹ with jurisdiction over the permanent

78. See *The Lotus Case* (France v. Turkey), 1927 P.C.I.J. Ser. A., No. 10.

79. BROWNLIE, *supra* note 66, at 298.

80. See Judge Moore's separate opinion in the *The Lotus Case*, *supra* note 78. See also Harvard Draft Convention on Jurisdiction with Respect to Crime, 1935, 29 AM. J. INT'L L. 443, 519 (1935); and Lowenfeld, *Extraterritoriality: Conflict and Overlap in National and International Regulation*, 74 AM. SOC. INT'L L. PROCEEDINGS 30, 42 (1980).

81. BROWNLIE, *supra* note 66, at 298.

population living within its territory, and that part of the Decree relating to persons within Belterre was thus certainly lawful.

4. Belterre's exercise of extra-territorial jurisdiction in respect of Tropical Fruits is not in breach of international law

(a) The nationality principle justifies jurisdiction over Belterre's nationals abroad

Jurisdiction was aimed at the Belterre shareholders of Tropical Fruits. This is clearly valid under the nationality principle of state jurisdiction. The fact that the entity Tropical Fruits is a national of Idyllic Islands does not detract from the validity of Belterre's application of the nationality principle to the Belterre shareholders.

(b) Any exercise of extra-territorial jurisdiction by Belterre over the Idyllic Islands corporation is justifiable under the protective and nationality principles of state jurisdiction

Even if Belterre extended enforcement jurisdiction over the corporation,⁸² the measure is justified by the protective⁸³ and nationality principles of state jurisdiction. The basis of protective jurisdiction is Belterre's interest in ensuring compliance with the Blocking Order. The measure is thus not unlawful in the absence of evidence that Belterre's conduct amounts to illegal intervention in the affairs of Idyllic Islands which has not protested the Decree.

(c) Application of the territorial principle to Tropical Fruits by Richmond is subject to the balancing of interests in good faith between the parties

Even if Tropical Fruits has operations in Richmond, of which there is no evidence, Richmond's right of territorial jurisdiction over

82. There is, however, no evidence that Belterre has exercised jurisdiction over the corporation of Idyllic Islands. See Part III. B., infra.

83. See BROWNIE, supra note 66, at 303. See also Harvard Draft Convention on Jurisdiction with Respect to Crime, 1935, supra note 80, at 373-5.

the corporation of a third state is not absolute or exclusive.⁸⁴ In an interdependent community of nations, the effects of policy do not always stop at national frontiers.⁸⁵ Given the complex of jurisdictional interests in Tropical Fruits, it is essential that both parties exercise their rights by balancing interests in good faith.⁸⁶ Richmond's rights must therefore be balanced with Belterre's interests in regulating the activities of its nationals who are shareholders, thereby giving effect to Belterre's policy of freezing trade relations between the parties.

B. Belterre is not responsible under international law for the act of Tropical Fruits

It is a controlling principle of state responsibility that the suspension of the contract by Tropical Fruits must have been caused by Belterre before responsibility can attach to it.⁸⁷ Richmond has failed to show such proof as would attribute to the Belterre

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84. See BROWNLIE, *supra* note 66, at 303. See also **European Communities: Comments on the U.S. Regulations Concerning Trade with the U.S.S.R.** (hereinafter "**European Communities Comments**"), 21 INT'L LEG. MATERIALS 891, 895, note 1 (1982). ("The application of the nationality principle would imply *ipso facto* some overlapping with the application of the territorial principle and this is acceptable under international law in some instances. . . .")
85. As Burchill has noted, "a certain grey area of jurisdictional overlap is the inevitable price of the high level of interdependence between our societies", 74 AM. SOC. INT'L L. PROCEEDINGS 34, 35 (1980).
86. See **European Communities Comments**, *supra* note 84, at 899-900. The U.S. view is also one of balancing interests. See, e.g., sec. 403, **Draft Restatement of Foreign Relations Law of the United States**, (Revised), (Tent. Draft No. 2, 1981); Leich, **Contemporary Practice of the United States: Transnational Corporations**, 76 AM. J. INT'L L. 839, 843-4 (1982).
87. A state has no responsibility unless a wrongful act can be attributed to it. See codification in Art. 1, Int'l Law Commission's Draft Articles on State Responsibility, (1975) 2 Y.B. INT'L L. COMM'N 99, U.N. Doc. No. A/CN. 4/Ser. A/1975/Add. 1.

shareholders of Tropical Fruits responsibility for the corporation's decision to suspend its contract with Richmond. It was an independent act of the Idyllic Islands corporation. Even if the corporation's decision is attributable to the shareholders, Belterre is not responsible for the conduct of persons not acting on its behalf,⁸⁸ and there is no evidence that the Belterre shareholders so acted. The Decree imposed no penalties for noncompliance and the motive behind Tropical Fruits' action cannot be presumed.

C. Richmond has no locus standi to bring a claim against Belterre in respect of the act of Tropical Fruits

In order to bring a claim in respect of the act of Tropical Fruits, Richmond must establish that Belterre has breached an obligation owed to it and that it has suffered loss, either directly or through its nationals.⁸⁹ There is no evidence that Richmond or its nationals have suffered any direct injury recognized under international law. Mere loss of sales or sales opportunities is not an injury for which international law provides a remedy.⁹⁰ In any case, a prerequisite for Richmond's adoption of its nationals' claims is their exhaustion of local remedies.⁹¹ Local remedies have not even been pursued and such claims may not be brought on the international plane.

It is also incumbent upon Richmond to establish that the act of Tropical Fruits constituted a breach of an obligation owed to Richmond

88. *Id.* Art. 11(1).

89. **Reparations for Injuries Suffered in the Service of the United Nations**, 1949 I.C.J. (Advisory Opinion) 181-2; **Barcelona Traction Case**, *supra* note 14.

90. State responsibility is not based upon delict in the municipal sense. BROWNIE, *supra* note 66, at 433.

91. C.F. AMERASINGHE, **STATE RESPONSIBILITY FOR INJURIES TO ALIENS** 169 (1967).

by Belterre. The effect of the Decree may have constituted an interference with Tropical Fruits and Belterre could thereby have breached an obligation to the Idyllic Islands.⁹² Richmond, however, cannot pursue the claim of another state's nationals.⁹³

With respect to the subsequent act of Tropical Fruits in suspending its contract with Richmond, the only state which could conceivably have broken an international obligation to Richmond is the Idyllic Islands. This was implicitly recognized by Richmond when it addressed its protests to that state.

IV. RICHMOND'S CONFISCATION OF BELTERRE'S GOODS IN TRANSIT TO BELTERRE VIOLATED INTERNATIONAL LAW

A. The requirements set by international law for a legal taking of property have not been met

The rules of international law which limit the right of a state to take private property protect *a fortiori* the property of another state. Richmond violated international law⁹⁴ by seizing Belterre's property in transit. There was no legitimate public purpose⁹⁵ to be served by expropriating goods awaiting transport to Belterre. There can be no assumption that Richmond acted to protect its fruit from dreadfly

92. *Barcelona Traction Case*, supra note 14.

93. On the link between the right to resort to international judicial proceedings and nationality, see *Panevezys - Saldutiskis Railway Case*, (Judgment), 1939, P.C.I.J., Series A/B, No. 76, 4, 16-17. See also Leich, *Contemporary Practice of the United States Relating to International Law: State Responsibility*, 76 AM. J. INT'L L. 837 (1982).

94. The conditions of customary international law which validate a taking of property are (a) public purpose, (b) non-discrimination, and (c) payment of compensation. AMERASINGHE, supra note 91, at 135-145.

95. Public purposes which justify restrictions on the use of property are tax laws, changes in state currency, actions in the interest of public health and morality, and belligerent rights, providing the action is not discriminatory, Christie, *What Constitutes a Taking of Property under International Law?* 38 BRIT. Y.B. INT'L L. 307, 311 (1962).

because the goods did not originate in Belterre. Richmond's act was also discriminatory as it was aimed solely at injuring Belterre. Richmond has, moreover, made no compensation at the time of taking or since as required by international law.

B. The confiscation was an illegal interference with Belterre's right of transit

1. It was an illegal interference with Belterre's right of transit under Richmond's treaty obligations

The Treaty granted Belterre use of the Highway free from any interference by Richmond. As the Treaty has not been validly suspended,⁹⁶ Richmond's obligations under it continue to operate. The confiscation of goods awaiting transport to Belterre via the Highway was a blatant interference with Belterre's rights to use the Highway unmolested and constituted a breach of Richmond's treaty obligations.

2. The confiscation was an illegal interference with Belterre's rights of transit under international law

Belterre's right of transit across Richmond is guaranteed by customary international law as well as by general principles of international law.⁹⁷ The confiscation effectively prevented Belterre from exercising its rights and, lacking justification, amounted to a violation of those rights.

C. The confiscation cannot be justified as a reprisal under international law

Richmond has failed to meet the conditions prescribed by international law for a legal act of reprisal. As explained above,

96. See Part I.C. supra.

97. See Part I.A.B. supra.

Belterre had committed no prior breach of international law.⁹⁸ Moreover, even if there had been a prior breach, Richmond was required to pursue an alternative recourse for redress⁹⁹ before making a reprisal. It was at all times open to Richmond to normalize diplomatic relations between the parties which Richmond disrupted on 22nd September 1980. Finally, the measure was not proportionate to any alleged prior illegal act.¹⁰⁰ Belterre's action was limited to a freeze on assets and dealings with Richmond. There was no deprivation of property and liquid assets are being held in interest bearing accounts. By comparison, Richmond resorted to outright confiscation of Belterre's goods in transit without regard to proportionality.

98. Lawful reprisals are premised upon a prior international wrong committed against the retaliating state. D.W. BOWETT, *SELF DEFENCE IN INTERNATIONAL LAW* 11 (1958).
99. The requirement that there should be no alternative recourse is an important measure of Richmond's good faith or non-abuse of rights in the matter. CHENG, supra note 12.
100. On the need for proportionality see *Angola Case* (Portugal v. Germany), 1928, 1930 2 R. INT'L ARB. AWARDS 1011; *Naulilan Case* (Portugal v. Germany), 1928 2 R. INT'L ARB. AWARDS 1012.

CONCLUSION AND REQUEST FOR RELIEF

CONSIDERING THAT Richmond's cessation of all rights of transit across its territory to and from Belterre was not in accordance with its obligations under international law and the Treaty;

CONSIDERING THAT Belterre's Blocking Order of 25th September 1980 is not in violation of international law;

CONSIDERING THAT Belterre is not responsible to Richmond for the actions of Tropical Fruits;

CONSIDERING THAT Richmond's action in confiscating Belterre goods awaiting transit to Belterre was not in conformity with international law;

The Republic of Belterre respectfully requests this Honourable Court to

- I. **Declare** that Richmond's cessation of all rights of transit across its territory to and from Belterre since 22nd September 1980 is in violation of international law, and
Order the payment of damages therefor;
- II. **Declare** that Belterre's Blocking Order of 25th September 1980 was not in violation of international law;
- III. **Declare** that Belterre is not responsible under international law for the suspension by Tropical Fruits of its contract with Richmond;
- IV. **Declare** that the action of Richmond in confiscating Belterre property awaiting transport to Belterre was in violation of international law, and
 - (a) **order** the payment of damages for the illegal confiscation and retention of such goods since 15th October 1980;

- (b) **order** the release by Richmond of all goods or the payment of damages in the value of such goods, and
 - (c) **order** the release of the two paintings; and
- V. **Deny** Richmond all relief sought in the proceedings.

RESPECTFULLY SUBMITTED

Yvonne Ang
Susan Mary de Silva
Alban Kang
Kenneth Tan

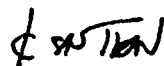
C E R T I F I C A T E

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


Yvonne Ang


Susan Mary De Silva


Alban Kang


Kenneth Tan