

THE 1983 PHILIP C. JESSUP INTERNATIONAL  
LAW MOOT COURT COMPETITION

The Chesterfield Highway Case

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IN THE INTERNATIONAL COURT OF JUSTICE

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March 1983

Between:

FEDERATION OF RICHMOND  
Applicant

and

REPUBLIC OF BELTERRE  
Respondent

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MEMORIAL FOR THE APPLICANT

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International Covenant on Economic, Social and Cultural Rights, arts. I and V, <u>opened for signature</u> 16 Dec. 1966 G. A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 .....	15
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<u>German Interests in Polish Upper Silesia</u> , 1926 P.C.I.J. 510 ..	10
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<u>TREATIES, DIGESTS AND RESTATEMENTS</u>	
R. P. Anand, Legal Regime of the Seabed and Developing Countries (1980) .....	7
D. Anzilotti, Corso di Diritto Internazionelle (3d ed. 1929) .....	6
O. Asamoah, The Legal Significance of the Declarations of the General Assembly of the United Nations Resolutions (1969) .....	14
S. Bemis, A Diplomatic History of the United States (5th ed. 1965) .....	12

Borchard, Les Principes de la Protection Diplomatique des Nationaux a L'Etranger (1924) .....	18
D. W. Bowett, Self-Defense in International Law (1958) .....	6
J. Brierly, The Law of Nations (6th ed. 1963) .....	6
H. Brosche, Zwang beim Abschluss Volkerrechtlicher Vertrage: Eine Untersuchung der in der Wiener Vertragsrechts Konvention von 1969 Getroffenen Regelung (1974) .....	14
I. Brownlie, Principles of public International Law (3d ed. 1979) .....	16
J. Casteneda, Legal Effects of the United Nations Resolutions (1969) .....	14
B. Cheng, General Principles of Law as Applied by Inter- national Courts and Tribunals (1953) .....	1
M. DeVisscher, Theory and Reality in Public International Law (1957) .....	19
Draft Convention on Human Rights, PAU Doc. CIJ-43 (1959) .....	15
T. O. Elias, The Modern Law of Treaties (1974) .....	3
C. Fenwick, International Law (4th ed. 1965) .....	6, 7
J. Gathings, International Law and American Treatment of Alien Property (1940) .....	16
D. Greig, International Law (2d ed. 1976) .....	3
G. Hackworth, Digest of International Law (1942) .....	1
Harvard Draft Convention on International Responsibility of States for Injuries to Aliens, <u>reprinted in</u> 55 Am. J. Int'l L. 577 (1961) .....	9, 10
Harvard Draft Convention on the Law of Treaties, <u>reprinted</u> <u>in</u> , 29 Am. J. Int'l L. (Supp.) (1935) .....	5
A. Hinomarsch, Force in Peace (1933) .....	12
P. Jessup, A Modern Law of Nations (1948) .....	6, 7
G. Ignatenko & D. Ostapenko, Mezhdunarodnoe Pravo (1978) .....	14
H. Lauterpacht, <u>Delictual Relations Between States: State</u> <u>Responsibility</u> , in International Law: Collected Papers 383-86 (E. Lauterpacht ed. 1970) .....	1

H. Lauterpacht, <i>Law in the International Community</i> (1966) ....	1
H. Lauterpacht, <i>Oppenheim's International Law</i> (7th ed. 1952) .....	7, 9, 18, 19
J. de la Pradelle, <i>Projet Provisoire de Resolutions</i> (1950) ...	11
Restatement (Second) of the Foreign Relations Law of the United States (1972) .....	16
G. Schwartzberger, <i>International Law and Order</i> (1971) .....	1
J. Stone, <i>Legal Controls of International Conflict</i> (1954) ....	12
M. Struff, <i>Elements du Droit International Public</i> (1930) .....	6
O. Svarlien, <i>Introduction to the Law of Nations</i> (1955) .....	5
M. Whiteman, <i>Digest of International Law</i> (1965) .....	6
<u>JOURNALS</u>	
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Bouve, <u>The National Boycott as an International Delinquency</u> 28 Am. J. Int'l L. 19 (1934) .....	12
Bowett, <u>Economic Coercion and Reprisals by States</u> , 13 Va. J. Int'l L. 1 (1972) .....	13
Christie, <u>What Constitutes a Taking of Property Under International Law?</u> , 38 Brit. Y.B. Int'l. L. 307 (1962) ..	10
Comment, <u>Western European Sovereignty and American Export and Trade Controls</u> , 9 Colum. J. Transnat'l L. 107, 110 (1970) .....	18
Craig, <u>Application of the Trading with the Enemy Act to Foreign Corporations Owned by Americans: Reflections on Fruehauf v. Massardy</u> , 83 Harv. L. Rev. 579, 586 (1970) .....	17
Domke, <u>Foreign Nationalizatoins</u> , 55 Am. J. Int'l. L. 585 (1961) .....	11
Fawcett, <u>The Exhaustion of Local Remedies</u> , 31 Brit. Y.B. Int'l L. 452 (1954) .....	9
Giraud, <u>La Theorie de la Legitime Defense</u> , 49 Hague Recueil des Cours 687 (1934) .....	6

Govindaraj, <u>Land-Locked States and Their Right of Access to the Sea</u> , 14 Indian J. Int'l L. 190 (1974) .....	8
Greene, <u>The Arab Economic Boycott of Israel: The International Law Perspective</u> , 11 Vand. J. of Transnational L. 77 (1978) .....	12
Grundman, <u>The New Imperialism: The Extraterritorial Application of United States Law</u> , 14 Int'l Law 257 (1980) .....	18
Herz, <u>Expropriation of Foreign Property</u> , 35 Am. J. Int'l L. 243 (1941) .....	11
Laferriere, <u>Le Boycott et le Droit International</u> , 17 Revue de Droit International Public 288 (1910) .....	12
Lauterpacht, <u>Boycott in International Relations</u> , 14 Brit. Y.B. Int'l L. 125 (1933) .....	12
Lauterpacht, <u>Freedom of Transit in International Law</u> , 44 Grotius Society Transactions 313 (1958-59) .....	7
Lee, <u>U.S. Trade Embargo on China</u> , 4 N.Y.U. J. Int'l L. & Pol. 1 (1971) .....	12
McDougal, <u>The Maintenance of Public Order at Sea and the Nationality of Ships</u> , 53 Am. J. Int'l L. 1 (1960) .....	18
Milic, <u>Access of Land-Locked States to and from the Sea</u> , 13 Case Western Reserve J. Int'l L. 501 (1981) .....	7
Neff, <u>The Law of Economic Coercion</u> , 20 Columbia J. of Transnational L. 411 (1981) .....	14
Neville, <u>The Present Status of Compensation by Foreign States for the Taking of Alien-Owned Property</u> , 13 Vand. J. Transnational L. 51 (1980) .....	11
Rosenstock, <u>The Declarations on Principles of International Law Concerning Friendly Relations: A Survey</u> , 65 Am. J. Int'l L. 713 (1971) .....	14
Russell, <u>The Helsinki Declaration: Brobdingag or Lilliput</u> , 70 Am. J. Int'l L. 242 (1976) .....	14
Shneyer, <u>The Legality of the U.S. Economic Blockade of Cuba Under International Law</u> , 13 Case Western Res. J. Int'l L. 451 (1981) .....	12
Skol & Patterson, <u>Export Control Laws and Multinational Enterprises</u> , 11 Int'l Law 29 (1977) .....	16

Waldock, <u>The Regulation of the Use of Force by Individual States in International Law</u> , 81 <u>Recueil de Cours</u> 455 (1952) .....	19
Weiden, <u>Necessity in International Law</u> , 24 <u>Grotius Society Transactions</u> 105 (1939) .....	6
Yusof, <u>The Impact on International Law Relations of the "Legislative" Activity by the General Assembly</u> , 1 <u>Singapore L. Rev.</u> 216 (1969) .....	14, 15

#### UNITED NATIONS MATERIALS

Draft Convention of the Law of the Sea, U.N. Doc. A/Conf. 62/WP.10/Rev.3/Add. 1 (1980) .....	7, 8
Report of the Commission to the General Assembly, <u>reprinted</u> in 2 <u>Y.B. Int'l L. Comm.</u> 207 (1963) .....	3
Report of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf. 48/14/Rev. 1 ( 1973) .....	6
Report submitted by the Secretary General of the U.N. (Trygve Lie), 7 <u>U.N. GAOR Supp. (No. 20)</u> , U.N. Doc. A/2211 (1952) .....	6
U.N. Declaration on Friendly Relations, G.A. Res. 2625, 25 <u>U.N. GAOR Supp. (No. 28)</u> at 121, U.N. Doc. A/8028 (1970) .....	14
U.N. Declaration on the Inadmissability of Intervention in the Domestic Affairs of States, G.A. Res. 2131, 20 <u>U.N. GAOR Supp. (No. 14)</u> at 11, U.N. Doc. A/6220 (1965) .....	14

#### MISCELLANEOUS

Comments of the European Community on the Amendments of 22 June 1982 to the U.S. Export Administration Regulations, 21 <u>Int'l Leg. Mat.</u> 1891 (1982) .....	17
Report of the Committee on Nationalization of Property, of the American Branch of the International Law Association, <u>published in Proceedings and Committee Reports of the American Branch of the International Law Association</u> 63 (1957-58) .....	10

## JURISDICTION

The parties have submitted the present dispute to this Court pursuant to the Statute of the International Court of Justice, Article 36, paragraph 1.

## STATEMENT OF FACTS

The parties have accepted the facts as presented to this Court in the Compromis and clarifications thereto.

## QUESTIONS PRESENTED

### I.

Whether Richmond's suspension of the Chesterfield Highway Treaty was in accord with international law.

### II.

Whether Richmond is properly bringing the claims of its nationals before this Court.

### III.

Whether Belterre's blocking order of September 25, 1980, was in accord with international law.

### IV.

Whether Belterre's November 1, 1980, amendment to the blocking order violates accepted principles of jurisdiction in international law.

## V.

Whether Richmond's nationalization of property at the Port of Xanadu was in accord with international law.

## VI.

Whether either party is entitled to relief.

## SUMMARY OF ARGUMENT

Richmond's suspension of the Chesterfield Highway Treaty was in full conformity with fundamental principles of international law. Richmond had the right to suspend the Highway Treaty because of Belterre's prior breach. Belterre abused its rights under the Treaty by exercising those rights in a manner injurious to Richmond, thereby breaching its obligation to use the Highway in compliance with international law and respectful of Richmond's territorial sovereignty. Richmond's suspension was also justified under the doctrine of rebus sic stantibus (fundamental change of circumstances). The emergence of the dreadfully in New Hostia in 1978 presented a set of circumstances non-existent and unforeseen at the time of the conclusion of the Highway Treaty. Finally, Richmond's suspension of the Highway Treaty was justified as an act of self-defense in response to a threat of economic destruction.

In contrast, Belterre's blocking order clearly contravened established norms of international law. Belterre's blocking order of September 25, 1980, constitutes a taking of property and is therefore a violation of international law because just compensation was not rendered and because it was discriminatory. In the event that this

Court should find that the blocking order does not constitute a "taking," it is nevertheless a violation of international law because: it violates the premise that international investment will be protected, it violates the principle of non-intervention, it constitutes an act of economic aggression, it discriminates on the basis of nationality, and it infringes on the right to pursue economic freedom and possess property. Furthermore, Belterre's prohibition of the performance of any contract for the benefit of Richmond or its nationals imposes an illegal economic boycott. The blocking order cannot be justified as a measure of redress because it is neither a valid act of retorsion nor a lawful reprisal.

The November 1, 1980, amendment to the blocking order grossly exceeds the legal scope of Belterre's jurisdiction. In attempting to assert jurisdiction over corporations which are not located within its borders and which are not its nationals, Belterre has violated international law.

The Rule of Exhaustion of Local Remedies should not be invoked to bar the claims of Richmond's nationals before this Court because any attempt on the part of those nationals to exhaust local remedies would be futile. Moreover, by voluntarily submitting the issue of the blocking order to this court, Belterre has waived its right to raise the Rule of Exhaustion of Local Remedies as a bar to this Court's jurisdiction.

Richmond's act of expropriating property at the Port of Xanadu was a valid response to Belterre's act of economic coercion. Richmond's response was justified as a lawful act of reprisal and therefore was a proper measure of redress.

I. RICHMOND'S SUSPENSION OF THE CHESTERFIELD HIGHWAY TREATY<sup>1</sup> WAS IN ACCORD WITH INTERNATIONAL LAW.

A. Richmond was justified in unilaterally suspending the Highway Treaty.

1. Richmond's suspension of the Highway Treaty was justified because of Belterre's breach of its obligations under the Treaty.

a. Belterre abused its rights under the Highway Treaty.

1) An abuse of rights constitutes a breach of treaty.

The principle of good faith which governs obligations under treaties also controls the exercise of rights under those same agreements.<sup>2</sup> The exercise of an otherwise legal right becomes unlawful when that right is abused by exercising it in a manner which results in injury to others.<sup>3</sup> An abuse of rights endows the act with the character of a breach of treaty,<sup>4</sup> justifying the termination or suspension of the treaty by the other parties to the agreement.<sup>5</sup>

2) Belterre's importation of dreadfly-infested fruit into Richmond constitutes an abuse of rights. Although Belterre has the right under the Highway Treaty to transport its goods along the Highway

1. Treaty Concerning the Use of Xanadu Harbor and the Chesterfield Highway, Jan. 1, 1965, Richmond-Belterre [hereinafter cited as Highway Treaty].

2. Anglo-Norwegian Fisheries Case (U.K. v. Norway), 1951 I.C.J. 116, 142. See also H. Lauterpacht, Delictual Relations Between States: State Responsibility, in International Law: Collected Papers 383-386 (E. Lauterpacht ed. 1970); G. Schwarzenberger, International Law and Order 85 (1971).

3. H. Lauterpacht, Law in the International Community, 286 (1966); B. Cheng, General Principles of Law as Applied by International Courts and Tribunals, 136 (1953). See generally 4 G. Hackworth, Digest of International Law 275 (1942).

4. H. Lauterpacht, supra note 3, at 288.

5. Vienna Convention on the Law of Treaties, opened for signature 22 May 1969, art. 60, U.N. Doc. A/Conf. 39/27 [hereinafter cited as Vienna Convention].

without inspection,<sup>6</sup> the exercise of that right in a manner injurious to Richmond constitutes an abuse of rights. The presence of the dreadfly in citrus groves near western Belterre created a substantial risk that continued shipment of citrus exports via the Chesterfield Highway without inspection could lead to the importation of dreadflies into Richmond territory, causing grave injury to Richmond's economy. The dreadfly found in Richmond near the Chesterfield Highway confirms that this possibility was not a mere vacuity. Belterre's continued insistence on exercising its right to use the Highway without inspection, ignoring the possible injurious effect upon Richmond, was an abuse of that right.

b. Belterre breached its obligations under Paragraph 4 of the Highway Treaty to use the Highway in a manner consistent with international law and respectful of the territorial sovereignty of Richmond.

1) Belterre, by abusing its rights under the Highway Treaty, breached its obligation to use the Highway in a manner consistent with international law.<sup>7</sup>

2) Belterre did not use the Highway in a manner consistent with Richmond's territorial sovereignty. Under paragraph 4 of the Highway Treaty, Belterre covenanted to use the Highway in a manner respectful of the territorial sovereignty of Richmond.<sup>8</sup> Belterre breached this obligation by introducing the dreadfly into Richmond territory.

2. Richmond's suspension of the Highway Treaty is justified under the doctrine of "fundamental change of circumstances."

a. Article 62 of the Vienna Convention represents a codification of customary international law regarding the doctrine of fundamental change of circumstances. It is well recognized in international

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6. Highway Treaty, supra note 1, para. 3.

7. See argument at I.A.l.a., supra.

8. Highway Treaty, supra note 1, para. 4.

law that a treaty is subject to the implied condition of fundamental change of circumstances (rebus sic stantibus), and may be terminated or suspended by a change in the state of facts existing at the time the agreement was made.<sup>9</sup> This doctrine, as it exists in customary international law,<sup>10</sup> is embodied in Article 62 of the Vienna Convention, which provides that a change of circumstances may be invoked as a ground for termination or suspension of a treaty if four requirements are met: 1) the change must have occurred with regard to those circumstances existing at the time of the conclusion of the treaty; 2) the change must not have been foreseen by the parties; 3) the circumstances which existed at the time of the conclusion of the agreement must have constituted an essential basis of the parties' consent; and 4) the effect of the change must be to transform radically the extent of obligations still to be performed under the treaty.<sup>11</sup>

b. Suspension of the Highway Treaty is justified under the requirements of Article 62.

1) The change has occurred with regard to those circumstances existing at the time of the conclusion of the Treaty. In 1965, at the time of the conclusion of the Highway Treaty, there were no dreadflies in Richmond, Belterre, or anywhere in the surrounding region. The recent introduction of the dreadfly into New Hostia constitutes a state of facts which had not existed at the time of the conclusion of the Treaty.

9. T. O. Elias, *The Modern Law of Treaties* 119 (1974); Report of the Commission to the General Assembly, 2 Y.B. Int'l. L. Comm., 207 (1963).

10. In the Fisheries Jurisdiction Case this Court recognized that Article 62 represents "a codification of existing customary international law on the subject of the termination of a treaty relationship on account of change of circumstances." (U.K. v. Ice.) 1973 I.C.J. 3.

11. Vienna Convention, supra note 5, art. 62. See D. Greig, *International Law* 504-508 (2d ed. 1976).

2) The infestation of dreadfly was not foreseen by the parties. The infestation of dreadflies in New Hostia in 1978 was the first outbreak of any agricultural pest in the region surrounding Richmond and Belterre.<sup>12</sup> Thus, it is inconceivable that in 1965 Richmond and Belterre could anticipate that more than ten years later their citrus crops would be threatened by an insect which could render their entire citrus yield commercially valueless.

3) The circumstances which existed in 1965 constituted an essential basis of the consent of the parties to be bound. Had the danger of dreadfly infestation existed at the time of the conclusion of the Highway Treaty, Richmond would not have consented to the Treaty. Richmond would never have endangered its economic existence by allowing unrestricted importation of possibly infested fruit from Belterre. Since Richmond would not have entered into the Treaty if the dreadfly problem had existed, the absence of that problem at the time the Treaty was concluded constitutes an essential basis of Richmond's consent.

4) The effect of the change is to radically transform the extent of obligations still to be performed under the Treaty. Richmond's continued allowance of importation of citrus fruit under the terms of the Highway Treaty could have lead to the complete destruction of Richmond's citrus crop.<sup>13</sup> The obligation to permit such an eventuality is incomparable to that which existed before the presence of the dreadfly.

c. Richmond is allowed to suspend the Highway Treaty pending a determination of whether a fundamental change of circumstances has occurred.

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12. See Clarifications, no. 225, at 25.

13. See Compromis, p. 2.

1) The procedural requirements of Article 65 of the Vienna Convention do not apply to this Treaty. Article 4 of the Vienna Convention specifically provides that, except for those portions of the Convention which codify customary international law, the Convention only applies to those treaties concluded after January 27, 1980.<sup>14</sup> The Highway Treaty was concluded in 1965; therefore, the procedural provisions for suspension in Article 65<sup>15</sup> are not applicable to the Highway Treaty.<sup>16</sup>

2) Customary international law permits a State to suspend a treaty pending a determination of whether a fundamental change of circumstances has occurred. Under customary international law, a State may provisionally suspend performance of its obligations under a treaty, pending a determination by a competent international tribunal that the state of facts has been essentially changed.<sup>17</sup> Thus, Richmond is justified in unilaterally suspending performance of its obligations under the Highway Treaty pending a determination by this Court of whether a fundamental change of circumstances has occurred.

3. Richmond's suspension of the Highway Treaty was justified by self-defense.

a. International law recognizes the right of self-defense in safeguarding economic interests. Self-preservation is recognized in

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14. Vienna Convention, supra note 5, art. 4.

15. Id., art. 65.

16. The Convention embodies customary international law only to the extent that evidence exists to substantiate that a particular provision reflects international custom. In the absence of such proof, a provision is presumed not to embody customary international law.

17. Harvard Draft Convention on the Law of Treaties, art. 28(b), 29 Am. J. Intl. L. (Supp.) 653, 1096-97 (1935). See O. Svarlin, Introduction to the Law of Nations 280 (1955).

customary international law as a fundamental right of States.<sup>18</sup> Even acts which otherwise might be characterized as illegal under international law are sanctioned when undertaken in self-defense.<sup>19</sup> Although this right may at one time have been limited to responses to armed attack, threats of an economic nature have "now come to be feared even more than war itself."<sup>20</sup> Thus, the right of self-defense has been given a broader definition, encompassing a State's interest in the safe preservation of its national economy.<sup>21</sup>

b. Richmond's economic existence was threatened. The introduction of the dreadfly into the region surrounding Richmond presented a threat to Richmond's economy of the most severe magnitude. The dreadfly possessed the capability to completely destroy a crop which constitutes at least twenty percent of Richmond's gross national product.<sup>22</sup> Faced with such a threat, Richmond had a duty to protect the health, safety and welfare of its nationals.<sup>23</sup> While Richmond fully comprehends and appreciates the importance of treaties in international law and order, Richmond submits that, in concluding the Highway Treaty, it cannot be

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18. J. Brierly, *The Law of Nations* 49 (6th ed. 1963); C. Fenwick, *International Law* 271-72 (4th ed. 1965); 1 M. Struff, *Elements du Droit International Public* 343 (1930); Ago, *Le Delit International*, 68 *Hague Recueil des Cours* 419, 544 (1939). See also Giraud, *La Theorie de la Legitime Defense*, 49 *Hague Recueil des Cours* 687 (1934).

19. See P. Jessup, *A Modern Law of Nations*, 163-64 (1948); D. Anzilotti, *Corso di Diritto Internazionale* 451 (3d ed. 1929); Weiden, *Necessity in International Law*, 24 *Grotius Society Transactions* 105 (1939).

20. Report submitted by the Secretary General of the U.N. (Trygve Lie), 7 U.N. GAOR Supp. (No. 20), U.N. Doc. A/2211 (1952). See also D. W. Bowett, *Self-Defense in International Law* 106 (1958).

21. D. W. Bowett, *supra* note 20, at 106. See generally 5 M. Whiteman, *Digest of International Law* § 25, at 981 (1965).

22. See *Clarifications*, no. 120, at 14.

23. *Mauromnatis Palestine Concessions*, 1924 P.C.I.J., ser. A, No. 2. See also Report of the United Nations Conference on the Human Environment 5, U.N. Doc. A/Conf.48/14/Rev.1 (1973).

presumed to have bargained away its right to economic survival. No State can be expected to sacrifice its very existence in order to fulfill the terms of a treaty.<sup>24</sup>

c. Richmond's suspension of the Highway Treaty was required by international law as an alternative to resort to force. Richmond had the right under international law to resort to force in self-defense, but only if the end could not be obtained through other means.<sup>25</sup> Since Belterre would not submit to inspection of fruit to be transported over the Chesterfield Highway, the only effective means of ensuring that no dreadflies were imported into Richmond territory--short of resort to force--was suspension of the Highway Treaty.

B. Belterre's right of access to the sea is not absolute.

1. Belterre's right of access to the sea does not exist outside of the Highway Treaty. Customary international law does not give an inherent right to land-locked States of access to and from the sea over the sovereign territory of coastal States.<sup>26</sup> While recognizing the principle that land-locked States should enjoy such access, the Draft Convention of the Law of the Sea,<sup>27</sup> which is widely recognized to encompass customary international law,<sup>28</sup> provides that no right exists outside

24. C. Fenwick, supra note 18, at 546.

25. P. Jessup, supra note 19, at 163-64; 1 H. Lauterpacht, Oppenheim's International Law § 155 (8th ed. 1955); 92 Recueil des Cours 5, 173 (1952).

26. H. Lauterpacht, Freedom of Transit in International Law, 44 Grotius Society Transactions 313, 323 (1958-59); Milic, Access of Land-Locked States to and from the Sea, 13 Case West. Res. J. Int'l L. 501, 502 (1981).

27. Draft Convention of the Law of the Sea, U.N. Doc. A/CONF.62/WP.10/Rev. 3/Add.1 (1980).

28. See R. P. Arand, Legal Regime of the Seabed and Developing Countries (1980). See also Case Concerning the Continental Shelf (Tun. v. Lib.), 1982 I.C.J. 157.

of an agreement between the landlocked and coastal States.<sup>29</sup> When Richmond justifiably suspended the Highway Treaty, Belterre's right of access was suspended as well.

2. Even if Belterre's right of access exists independent of the Highway Treaty, that right is limited.

a. A land-locked nation cannot use its right of access to the detriment of the coastal State. Assuming arguendo that customary international law, as evidenced by multilateral conventions, grants a land-locked State an inherent right of access to and from the sea, this right is subject to the limitation that the land-locked nation cannot use its right of access in a manner injurious to the coastal State. Each convention upon which a claim to customary law status is based<sup>30</sup> contains this limitation and recognizes the right of the coastal State to protect against injurious use.<sup>31</sup> The Convention of Transit Trade of Land-Locked States<sup>32</sup> specifically provides that the coastal State may prohibit the transport of goods "as a precaution ... against pests."<sup>33</sup>

b. Belterre used its right of access in a manner which presented great danger to Richmond.<sup>34</sup>

II. RICHMOND IS PROPERLY BRINGING THE CLAIMS OF ITS NATIONALS BEFORE THIS COURT.

A. Richmond's nationals are relieved of their duty to exhaust local remedies because their claims arise from the actions of the

29. Draft Convention of the Law of the Sea, supra note 27, art. 125.

30. See Govindaraj, Land-locked States and Their Right of Access to the Sea, 14 Indian J. Intl L. 190, 191 (1974).

31. Draft Convention on the Law of the Sea, supra note 27, art. 125; Convention on Transit Trade of Land-Locked States, art. 2, 8 July 1965, 597 U.N.T.S. 42, 48; General Agreement on Tariffs and Trade, art. 5, para. 2, opened for signature 30 Oct. 1947, 55 U.N.T.S. 187, 210.

32. Supra, note 31.

33. Id. art. 11.

34. See argument at I.A.3.b., supra.

government of Belterre. It is a point of controversy whether the nationals of Richmond sought to exhaust their local remedies prior to the institution of this action. The resolution of that controversy, however, is purely academic; a widely recognized exception to the rule of exhaustion of local remedies provides that remedies which would be futile need not be exhausted.<sup>35</sup> Among the situations in which exhaustion of local remedies would be futile is "when the injury to the alien is the result of an act of the government as such."<sup>36</sup> Accordingly, since the blocking order was issued by the Belterrian government, the nationals of Richmond have no duty to seek redress in Belterrian courts. The Federation of Richmond may bring an action on their behalf directly to this Court.

B. Belterre has waived the issue of exhaustion of local remedies. Both parties to this action have agreed to submit their disputes to this Court.<sup>37</sup> If Belterre had wished to assert the rule of exhaustion of local remedies as a jurisdictional bar in this case, it had the option of refusing to submit to jurisdiction, thereby forcing Richmond to request this Court to exercise compulsory jurisdiction over Belterre as a party to the ICJ Statute.<sup>38</sup> As recognized by this Court in the Interhandel Case,<sup>39</sup> this is the proper procedure for raising objections to jurisdiction. By voluntarily submitting the issue of the blocking

35. Finnish Ships Case, 3 R. Int'l Arb. Awards 1479 (1934); Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens, art. 19, reprinted in 55 Am. J. Int'l L. 577 (1961).

36. 1 H. Lauterpacht, supra note 25, § 162. See also F. Dunn, The Protection of Nationals 167 (1932); Fawcett, The Exhaustion of Local Remedies, 31 Brit. Y.B. Int'l L. 452 (1954).

37. Compromis, p. 6.

38. See Statute of the International Court of Justice, art. 26.

39. Interhandel Case (Switz. v. U.S.) 1959 I.C.J. 5.

order to this Court,<sup>40</sup> Belterre has waived its right to assert the failure to exhaust local remedies as a bar to the exercise of this Court's jurisdiction.

III. BELTERRE'S BLOCKING ORDER OF SEPTEMBER 25, 1980, WAS NOT IN ACCORD WITH INTERNATIONAL LAW.

A. Belterre's blocking order constitutes an illegal taking of property under international law.

1. Belterre's blocking order constitutes a "taking".

a. The freezing of assets constitutes a taking of property under international law. A "taking" of property need not be an outright expropriation;<sup>41</sup> title need not pass,<sup>42</sup> nor must a taking be intended.<sup>43</sup> Any "interference with the use, enjoyment or disposal of property as to justify an inference that the owner thereof will not be able to use, enjoy, or dispose of the property after a reasonable period of time after the inception of such interference," constitutes a taking of property under international law.<sup>44</sup> Belterre's freezing order deprived Richmond nationals of the use and beneficial ownership of their property and is, as a consequence, tantamount to a "taking."

b. Belterre's prohibition of the performance of contracts with Richmond and its nationals constitutes a taking of property under

40. Belterre specifically requested that this Court rule upon the legality of the blocking order. See Compromis, p. 7.

41. American Branch of the International Law Association, Report of the Committee on Nationalization of Property, published in Proceedings and Committee Reports of the American Branch of the International Law Association 63 (1957-58).

42. Id.

43. Christie, What Constitutes a Taking of Property Under International Law?, 38 Brit. Y.B. Int'l L. 307, 309 (1962); German Interests in Polish Upper Silesia, 1926 P.C.I.J. ser. A, No. 7 (1966); Norwegian Shipowners Case (Nor. v. U.S.), 1 R. Int'l Arb. Awards 207 (1922).

44. Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens, supra note 35, art. 10, para. 3.

international law. Contract rights are property under international law which are capable of being expropriated by a State and for which compensation must be given.<sup>45</sup> In the Norwegian Shipowners' Case,<sup>46</sup> this Court recognized that the interference with the performance of contracts can constitute a "taking" of property under international law. Thus, Belterre, through its prohibition of performance of contracts, has "taken" property, in the form of valuable contract rights, belonging to Richmond nationals.

2. Belterre's taking of property is illegal under international law because just compensation was not given. It is a widely accepted rule of international law that once a taking has been established, just compensation must be rendered.<sup>47</sup> Belterre has provided no compensation to the nationals of Richmond affected by the blocking order; neither has it made an offer to do so.

3. Belterre's taking of property is illegal under international law because it is discriminatory. A taking of property, even if otherwise lawful, is illegal under international law if directed against particular aliens by reason of their nationality.<sup>48</sup> This principle, accepted even by Communist nations,<sup>49</sup> prohibits the type of differential

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45. Claim of Frederick Fraenkel, Foreign Claims Settlement Commission, Decision No. 356, Docket No. 706 (1954).

46. Norwegian Shipowners Case, supra note 43.

47. Charzow Factory Case, 1929 P.C.I.J. 183; Anglo-Iranian Oil Case, 1952 I.C.J. 166 (Dissenting Opinion). See also, Neville, The Present Status of Compensation by Foreign States for the Taking of Alien-Owned Property, 13 Vand. J. Transnat'l L. 51 (1980); 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).

48. Norwegian Shipowners Case, supra note 43 at 336. See also J. de la Pradelle, Projet Provisoire de Resolutions (1950); Herz, Expropriation of Foreign Property, 35 Am. J. Int'l L. 243 (1941).

49. Domke, Foreign Nationalizations, 55 Am. J. Int'l L. 585, 605 (1961).

treatment afforded the nationals of Richmond by the Belterrian order.

B. Belterre's order prohibiting the performance of any contract for the benefit of Richmond or its nationals constitutes an unlawful imposition of a boycott.

1. Belterre's order constitutes an economic boycott. A boycott is defined in international law as an act of retaliation whereby a State interrupts or terminates its commercial and trade relationships with another.<sup>50</sup> The order of September 25, 1980, forbade "the performance of any contract for the benefit of Richmond or any Richmond national."<sup>51</sup> Because international trade is generally conducted through contracts between the nationals of two States, any decree prohibiting the performance by nationals of one State of contracts with the nationals of another would serve to suspend trade relations between those States, thereby imposing a boycott.

2. State-imposed boycotts are illegal under international law. Leading publicists have noted that governmental participation or sponsorship of a boycott is a violation of international law.<sup>52</sup> Even those who question State responsibility for private boycotts readily agree that State participation in the boycott constitutes an international delinquency for which the State may be held responsible.<sup>53</sup> Thus, the

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50. J. Stone, Legal Controls of International Conflict 291 (1954). See also Greene, The Arab Economic Boycott of Israel: The International Law Perspective, 11 Vand. J. Transnat'l L. 77 (1978); Shneyer, The Legality of the U.S. Economic Blockade of Cuba Under International Law, 13 Case West. Res. J. Int'l L. 45 (1981); Lee, U.S. Trade Embargo on China, 4 NYU J. Int'l L. & Pol. 1 (1971).

51. Compromis, p. 4.

52. Bouve, The National Boycott as an International Delinquency, 28 Am. J. Int'l L. 19, 36 (1934); Laferriere, Le Boycott et le Droit International, Revue Generale de Droit International Public 288 (1910); A. Hinomarsch, Force in Peace 58 (1933); S. Bemis, A Diplomatic History of the United States 355 (5th ed. 1965).

53. Lauterpacht, Boycott in International Relations, 14 Brit. Y.B. Int'l L. 125, 134 (1933).

government of Belterre--which not only participated in the boycott, but ordered it--violated international law.

3. Belterre's boycott of Richmond cannot be condoned under any recognized justification for a boycott.

a. Belterre's boycott of Richmond was not authorized by an international organization. One situation in which an otherwise illegal boycott may be justified is when the boycott is authorized by an international organization,<sup>54</sup> such as the United Nations.<sup>55</sup> There is, however, no indication that Belterre ever sought or received approval of its boycott from the U.N. or any other international organization.

b. Belterre's boycott of Richmond was not an act of self-defense. A boycott also may be justified when it is instituted in self-defense.<sup>56</sup> Richmond's closing of the Highway presented no military or economic threat to Belterre sufficient to warrant resort to self-defense. Unlike Richmond's necessary resort to self-defense to protect the very existence of its citrus crop,<sup>57</sup> Belterre was faced only with a relatively small increase in its export and import costs.<sup>58</sup>

c. Belterre's boycott of Richmond was not a valid reprisal.<sup>59</sup>

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54. Bowett, Economic Coercion and Reprisals by States, 13 Va. J. Int'l L. 1 (1972).

55. The U.N. Security Council has the authority to approve such measures under Articles 39 and 41 of the U.N. Charter.

56. Bowett, supra note 54.

57. See argument at I.A.3. supra.

58. Compromis, p. 4.

59. See argument at V.B. infra.

C. Belterre's blocking order violates customary international law as evidenced by resolutions of the U.N. General Assembly<sup>60</sup> and multi-lateral agreements.

1. Belterre's blocking order constitutes an act of economic coercion and violates the principle of non-intervention. Customary international law, as evidenced by resolutions of the United Nations General Assembly<sup>61</sup> and the Helsinki Accords,<sup>62</sup> prohibits the use of economic coercion. The Declarations on Principles of International Law,<sup>63</sup> a U.N. resolution recognized as an authoritative interpretation of the U.N. Charter,<sup>64</sup> forbids the use of economic measures to "coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."<sup>65</sup> By issuing the blocking order, Belterre hoped to coerce

60. Although at one time considered mere recommendations, U.N. Resolutions are now recognized as evidence of customary international law. See Southwest Africa Cases, 1966 I.C.J. 4, 446 (Jessup, J., dissenting). See also O. Asamoah, The Legal Significance of the Declarations of the General Assembly of the United Nations Resolutions 171 (1969); J. Casteneda, Legal Effects of the United Nations Resolutions 171 (1969); Yusof, The Impact on International Law and Relations of the "Legislative" Activity by the General Assembly, 1 Singapore L. Rev. 216 (1969).

61. U.N. Declaration on Friendly Relations, G. A. Res. 2625. U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970); Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, G. A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11, U.N. Doc. A/6220 (1965); Charter of Economic Rights and Duties of States, supra note 47.

62. Final Act, Conference on Security and Cooperation in Europe, reprinted in 14 Int'l Leg. Mat. 1292 (1975). Although Richmond and Belterre are not signatories, the Helsinki Accords have been accepted as reflecting customary international law. See Russell, The Helsinki Declaration; Brobdingag or Lilliput?, 70 Am. J. Int'l L. 242, 248 (1976); G. Ignatenko & D. Ostapenko, Mezhdunarodnoe Pravo 72-73 (1978).

63. Supra note 61.

64. Rosenstock, The Declarations on Principles of International Law Concerning Friendly Relations: A Survey, 65 Am. J. Int'l L. 731, 715 (1971).

65. Declarations on Principles of International Law, supra note 61, art. v. See generally H. Brosche, Zwanzig Jahre beim Abschluss Völkerrechtlicher Verträge: Eine Untersuchung der in der Wiener Vertragsrechtskonvention von 1969 Getroffenen Regelung 90, 170 (1974); Neff, The Law of Economic Coercion, 20 Colum. J. Transnat'l L. 411 (1981).

Richmond into reversing its justified decision to close the Chesterfield Highway.

2. Belterre's blocking order is a violation of international law because it discriminates on the basis of nationality. The International Covenant on Economic, Social and Cultural Rights<sup>66</sup> stipulates that discrimination in the grant of economic rights on the basis of national origin is a violation of international law.<sup>67</sup> Belterre, which did not dissent to the passage of this resolution,<sup>68</sup> deprived Richmond nationals of economic rights solely on the basis of nationality.

3. Belterre's blocking order is a violation of international law because it infringes the rights of Richmond nationals to pursue economic freedom and to possess property. International law grants to every individual the right to pursue economic freedom<sup>69</sup> and to use and enjoy his property.<sup>70</sup> Belterre's blocking order has denied these rights to Richmond nationals.

D. Belterre's blocking order violates the premise that international investment will be protected. Interference with international investment is a violation of international law; when a government grants aliens the right to have and hold property within its borders, there is an implied promise on the part of the government of protection and

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66. G. A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).

67. Id. art. 2, para. 2.

68. A State which abstains from a vote of the U.N. General Assembly may be presumed to have acquiesced if there is a general consensus in favor of the resolution. Yusoff, supra note 60, at 224-26.

69. International Covenant on Economic, Social and Cultural Rights, supra note 66, arts. I and V.

70. Draft Convention on Human Rights, PAU Doc. CIJ-43, p. 57 (1959); American Convention on Human Rights, signed 22 Nov. 1969, Treaty Series No. 36, OAS Off. Rec. OEA/Ser. A/16 (1969).

security.<sup>71</sup> In the Barcelona Traction case, Judge Gros and Judge Tanaka, in separate opinions, emphasized the need for protection of foreign investment.<sup>72</sup> The mere existence of a controversy between nation and nation should not be allowed as an excuse to interfere with the property of innocent individuals;<sup>73</sup> such an act violates both political and moral principles.<sup>74</sup> Thus, by freezing the assets of Richmond nationals in retaliation for an act of the Richmond government, Belterre is guilty of an international delinquency.

IV. BELTERRE'S NOVEMBER 1, 1980, AMENDMENT TO THE BLOCKING ORDER VIOLATES ACCEPTED PRINCIPLES OF JURISDICTION IN INTERNATIONAL LAW.

A. International law provides that jurisdiction may be based on either territoriality or nationality. Jurisdiction in international law is based on two accepted principles--territoriality and nationality. The territoriality principle limits a State's jurisdiction to persons and legal entities within its borders.<sup>75</sup> The nationality principle allows a State to assert its jurisdiction over all nationals regardless of where they are located.<sup>76</sup>

B. Under either theory of jurisdiction, paragraph (iv) of the amendment violates international law.

1. Paragraph (iv) extends to corporations not located in Belterre's territory. The impact of paragraph (iv) of the November 1,

71. Alexander Hamilton, quoted by J. Gathings, International Law and American Treatment of Alien Property vii (1940).

72. Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain), 1970 I.C.J. 4.

73. Hamilton, supra note 57, at vii.

74. Id., at viii.

75. Restatement (Second) of the Foreign Relations Law of the United States § 17 (1972); I. Brownlie, Principles of Public International Law 291 (3d ed. 1979).

76. Id. § 30; Skol & Peterson, Export Control Laws and Multi-national Enterprises, 11 Int'l Law. 29 (1977).

1980, amendment to the blocking order is to extend Belterrian jurisdiction to corporations, such as Tropical Fruits, Ltd., which are not located within the borders of Belterre. To this extent, Belterre cannot rely upon the territoriality principle to justify its exercise of jurisdiction.

2. Paragraph (iv) extends to corporations which are not nationals of Belterre. Because the corporations encompassed by paragraph (iv) are not located within Belterre, any claim of jurisdiction must be based upon an assertion that these corporations are nationals of Belterre. In the Barcelona Traction Case,<sup>77</sup> however, this Court stated that a corporation's nationality is determined by its place of incorporation and its registered office,<sup>78</sup> not by stock ownership. The character of nationality is such that it demands clarity.<sup>79</sup> Determination of nationality based upon stock ownership could not provide that clarity.<sup>80</sup> A corporation which is this week a national of Nation "A" could, simply through a shift of ownership, next week be a national of Nation "B". Stock ownership is simply not a proper determination of a corporation's

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77. Supra note 72.

78. Id. at 35.

79. Nottebohn Case, 1955 I.C.J. 4, 46.

80. Indeed, the recent U.S. attempt in the case of Siberian Pipeline exports to the U.S.S.R. to assert extra-territorial jurisdiction based on stock ownership has drawn sharp criticism from the world community. See Comments of the European Community on the Amendments of 22 June 1982 to the U.S. Export Administration Regulations, 21 Int'l Leg. Mat. 1891 (1982). See also Fruehauf Corp. v. Massardy (1968) D.C. 147, (1965) J.C.P.II 14, 274 his.; Craig, Application of the Trading with the Enemy Act to Foreign Corporations Owned by Americans: Reflections on Fruehauf v. Massardy, 83 Harv. L. Rev. 579, 586 (1970).

nationality.<sup>81</sup> Paragraph (iv) of the amendment, therefore, exceeds Belterre's lawful jurisdiction.

V. BELTERRE'S BLOCKING ORDER CANNOT BE JUSTIFIED AS REDRESS.

A. Belterre's blocking order cannot be justified as an act of retorsion.

1. Retorsion consists of a legal and proportionate response.

As defined by Lauterpacht, a valid act of retorsion is a proportionate response to an unfriendly but legal act by means of another legal action.<sup>82</sup>

2. Belterre's blocking order was not a valid act of retorsion.

a. Belterre's blocking order was not a legal response.<sup>83</sup>

b. Belterre's blocking order was not a proportionate response.

Belterre's blocking order was far more serious than the act which provoked it. The effect of the closing of the Chesterfield Highway was simply a relatively minor increase in the cost of Belterre's exports and imports.<sup>84</sup> In response, Belterre froze all the assets of Richmond nationals located in Belterre and instituted an economic boycott of Richmond. The figures show the staggering disproportionality of Belterre's response: the closing of the Chesterfield Highway added approximately \$8 million to the cost of exporting Belterre's citrus crop; Belterre's boycott halted \$1.2 billion in development projects alone, without considering the

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81. Borchard, *Les principes de la protection diplomatique des nationaux a l'e'tranger* 634 (1924); McDougal, *The Maintenance of Public Order at Sea and the Nationality of Ships*, 53 *Am. J. Int'l L.* 1 (1960). See Grundman, *The New Imperialism; The Extraterritorial Application of United States Law*, 14 *Int'l Law*. 257 (1980); Comment, *Western European Sovereignty and American Export and Trade Controls*, 9 *Colum. J. Transnat'l L.* 109, 110 (1970). See also *American President Lines, Ltd. v. China Mut. Trading Co., Ltd.* and the *Hong Kong & Kowloon Wharf and Godown Co., Ltd.* (1953) *A.M.C.* 1510.

82. 2 H. Lauterpacht, *supra* note 25, § 31.

83. See argument at III *supra*.

84. *Compromis*, p. 4.

freezing of assets and other trade contracts which could not be completed because of the blocking order.

B. Belterre's blocking order cannot be justified as an act of reprisal.

1. A valid act of reprisal must meet three conditions: prior delinquency, proportionality, and denied request for redress. An otherwise illegal act may be justified as a valid reprisal.<sup>85</sup> International law recognizes three requirements for a valid reprisal.<sup>86</sup> First, a nation must be responding to a prior international delinquency by the other party.<sup>87</sup> Second, the response must be proportionate.<sup>88</sup> Finally, the nation must have made a prior request for redress which has been denied.<sup>89</sup>

2. Belterre's blocking order did not meet any of these conditions.

a. Belterre was not responding to an illegal act. Belterre's blocking order was a direct response to Richmond's closing of the Chesterfield Highway. As noted supra, Richmond's closing of the Highway fully conformed with international law.<sup>90</sup> Thus, Belterre was not responding to an international delinquency on the part of Richmond.

b. Belterre's response was not proportionate.<sup>91</sup>

c. Belterre made no request for redress prior to initiating the blocking order. There is absolutely no indication that Belterre

85. 2 H. Lauterpacht, supra note 25, § 33. See also DeVisscher, Theory and Reality in Public International Law 287-289 (1957).

86. The Naulilaa Case (Port. v. Ger.), 2 R. Int'l Arb. Awards 325 (1933).

87. 1 H. Lauterpacht, supra note 25, § 35; Waldock, The Regulation of the Use of Force by Individual States in International Law, 81 Recueil des Cours 455, 458 (1952). See also North Atlantic Coast Fisheries Case, Hague Ct. Rep. (Scott) 141 (Perm. Ct. Arb. 1910).

88. 2 H. Lauterpacht, supra note 25, § 39.

89. Id., § 41.

90. See argument at I. supra.

91. See argument at I.A.2.B. supra.

made any attempt to seek redress following the closing of the Highway. Having failed to make any request for redress prior to initiation of the blocking order, that action cannot be justified as an act of reprisal.

VI. RICHMOND'S NATIONALIZATION OF PROPERTY AT THE PORT OF XANADU WAS A VALID ACT OF REPRISAL.<sup>92</sup>

A. Richmond was responding to an illegal act. Richmond siezed Belterrian property at the Port of Xanadu in response to Belterre's blocking order. This prior international delinquency by Belterre justifies Richmond's resort to an act of reprisal.

B. Richmond's response was proportionate. Richmond acted to sieze the only easily accessible Belterrian property as a symbolic gesture in response to the devastating impact of Belterre's blocking order. The value of the property siezed at the port does not even begin to approach the magnitude of Belterre's blocking order.

C. Richmond was not required to make a futile request for redress. Under the Rule of Exhaustion of Local Remedies, redress need not be sought from local courts if such an attempt would be futile.<sup>93</sup> By analogy, a State need not seek redress prior to an act of reprisal when the request would be nothing more than a fruitless gesture. Any attempt at redress by Richmond would have resulted in a demand by Belterre that the Highway be re-opened. Richmond could not allow Belterrian vehicles into Richmond territory because of Belterre's obstinate stance in refusing to submit its fruit to inspection. Thus, any request for redress by Richmond would have been a futile gesture, thereby relieving Richmond of a duty to merely go through the motions.

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92. For a discussion of the elements of reprisals, see notes 70-73 supra and accompanying text.

93. See supra notes 35-36 and accompanying text.

## CONCLUSION

It is respectfully requested that this honorable Court:

- 1) DECLARE that Richmond's actions in closing the Chesterfield Highway were in accord with international law.
- 2) DECLARE that Belterre's blocking order is in violation of international law.
- 3) ORDER that Belterre and non-Belterre entities release property held by them.
- 4) ORDER that Belterre cease to interfere with the performance of contracts with Richmond and its nationals.
- 5) AWARD to Richmond damages for contracts which were prohibited by Belterre's order.
- 6) DENY all of Belterre's claims for relief; and
- 7) GRANT Richmond such further relief as this Court may deem just.

Cathy A. Anderson

James A. Jones

Marjory A. Appel

John S. Brocks

T. Patrick Baynham

Agents for the Federation of Richmond

