THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

1985

ICBAM

(Applicant)

v.

MIRVA

(Respondent)

THE NUCLEAR FREE ZONE CASE

MEMORIAL FOR THE APPLICANT

TEAM NO. 17

TABLE OF CONTENTS

		PAGE
1.	Jurisdiction	(i)
2.	Statement of Facts	(i)
3.	Summary of Arguments	(i)
4.	Bibliography	(iii)
CHAPTER 1:	SCOPE OF THE APPLICANT'S SUBMISSION	1
CHAPTER 2:	ICBAM'S POSSESSION OF NUCLEAR WEAPONS WAS NOT IN BREACH OFINTERNATIONAL LAW	1
2.1	Icbam was not in breach of the express terms of any treaty to which it was a party.	1
2.2	Possession of nuclear weapons was not contrary to customary international law.	1
2.3	Possession of nuclear weapons was not in breach of regional custom.	3
2.4	Possession of nuclear weapons is not in breach of any jus cogens of international law.	3
2.5	The particular circumstances of the case did not render Icabams possession of nuclear weapons illegal.	4
CHAPTER 3:	ALTERNATIVELY, IF ICBAM'S POSSESSION OF NUCLEAR WEAPONS WAS ILLEGAL, MIRVA'S RIGHT OF ACTION WAS RESTRICTED TO THOSE REMEDIES PROVIDED BY THE U.N. CHARTER.	5
CHAPTER 4:	MIRVA'S ACTIONS DO NOT FALL WITHIN ANY OF THE EXCEPTIONS TO THE PROHIBITION ON THE USE OF FORCE IN ARTICLE 2.4 OF THE U.N. CHARTER.	7
4.1	Mirva failed to exhaust all reasonable menas of peaceful settlement of the dispute before resorting to the use of force.	8
4.2	Mirva's actions were not an exercise of the right of self-defence under Article 51.	9
4.3	The Conclave was not entitled to authorize Mirva to act under Chapter VIII of the Charter .	10
4.3.1	Mirva was not entitled to act under the Conclave Consitution.	10
4.3.2	Mirva's actions were not authorized by Article 53.1 of the U.N. Charter.	13

4.4 Mirva's actions cannot be justified as an exercise of a right of humanitarian intervention. 18

4.5 Mirva's actions cannot be justified as a legitimate reprisal. 18

4.5.1 Reprisals are no longer available under Article 2.4. 18

4.5.2 Alternatively, the conditions for a legitimate reprisal have not been met. 19

CHAPTER 5: ICBAM IS ENTITLED TO THE DAMAGES SOUGHT 20

5.1 Icbam has an entitlement irrespective of the legality of Mirva's actions. 20

5.2 Icbam is entitled to the compensation claimed for the loss of the three technicians. 20

JURISDICTION

Mirva and Icbam have agreed to submit the present dispute for resolution by the International Court of Justice.

The parties have not qualified the jurisdiction of this Court nor have they agreed that the Court may decide the issues ex aqueo et bono, pursuant to paragraph 2 of Article 38 of the Statute of the International Court of Justice.

STATEMENT OF FACTS

The parties have agreed to the statement of facts as appear in the Compromis and Clarifications. The nationality of the three deceased technicians is not clarified and has been argued in the alternative that they are all of Icbam nationality or that they are all of other nationality.

SUMMARY OF ARGUMENT

In the light of the general prohibition on the use of force in Article 2.4 of the U.N. Charter Mirva can only claim legal justification for its attack either if its actions fall within one of the exceptions to Article 2.4, or alternatively if there exists some independent right to use of force arising separately from and over-riding the U.N. Charter. It is the Applicant's submission that neither situation arises on the facts of this case, and that the Mirva's attack thus lacks legal justification.

It will be submitted that Icbam's proposed acquisition of nuclear weapons was not illegal, in the sense that it was not in breach of the express terms of any treaty to which Icbam was a party; nor was it in breach of customary international law; nor of any binding regional custom. Alternatively it will be submitted that even if Icbam had breached such a treaty or custom the breach was a mere delict which does not confer a right upon an injured party to use force to remedy the breach.

It will further be submitted that the mere possession of nuclear weapons is not caught within the ambit of any alleged jus cogens prohibiting 'crimes against humanity', or 'threats to the survival of mankind'. Alternatively, if such a jus cogens does apply to possession of nuclear weapons nevertheless breach of the jus cogens did not provide Mirva with a right of independent self-help. To allow such a doctrine of enforcement outside the scope of the U.N. Charter is either contrary to the doctrine of state sovereignty or de lege feranda which cannot retrospectively justify Mirva's actions.

Finally it will be submitted that Mirva's actions do not fall within any of the exceptions to Article 2.4, since they fail to meet the requirement of 'necessity' upon which self-defence is predicated; they were taken without exhausting all reasonable means of peaceful settlement as required by the Charter; they did not satisfy the requirements for either 'reprisal' or 'humanitarian intervention' (to the extent to which such doctrines might still be available); and they failed to meet the requirements for an enforcement action pursuant to Chapter VIII of the Charter.

BIBLIOGRAPHY

TREATISES

FRIEDMAN, THE LAW OF WAR - A DOCUMENTARY HISTORY, (1972).

MOORE, LAW AND CIVIL WAR IN THE MODERN WORLD (1974).

GANJI, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1962).

KELSEN, PURE THEORY OF LAW (1967).

REISMAN, NULLITY AND REVISION (1971).

SCHWARZENBERGER, THE LEGALITY OF NUCLEAR WEAPONS (1958).

KOOIJMANS, THE DOCTRINE OF THE LEGAL EQUALITY OF STATES (1964).

M. BASSIOUNI and U. NANDA (eds), A TREATISE ON INTERNATIONAL CRIMINAL LAW (1973).

D. BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW (1958)

I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (3rd Ed. 1979).

H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW (1966).

H. KELSEN, RECENT TRENDS IN THE LAW OF THE UNITED NATIONS (1951).

M. McDOUGAL & F. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER. THE LEGAL REGULATION OF INTERNATIONAL COERCION (1961).

F. NORTHEDGE, THE USE OF FORCE IN INTERNATIONAL RELATIONS (1974).

L. GOODRICH & E. HAMBRO, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS (2nd ed. 1949).

L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS (3rd ed, 1969).

A. ROSS, CONSTITUTION OF THE UNITED NATIONS: ANALYSIS OF STRUCTURE AND FUNCTION (1950).

D. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW (2nd ed, 1979).

CUBAN CRISIS OF 1962: SELECTED DOCUMENTS AND CHRONOLOGY (D. Larson ed. 1963).

DOCUMENTS OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION, 22 Vols. (1945).

L. SOHN, CASES ON UNITED NATIONS LAW (2nd ed., 1967).

P. JESSUP, A MODERN LAW OF NATIONS (1949).

R. RUSSELL, A HISTORY OF THE UNITED NATIONS CHARTER (1958).

B. BOSKEY & M. WILLRICH, NUCLEAR PROLIFERATION: PROSPECTS FOR CONTROL (1980).

I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (3rd ed., 1979).

M. SHAKER, THE NUCLEAR NON-PROLIFERATION TREATY: ORIGINS AND IMPLEMENTATION 1959-1979, Vol. I, II & III (1980).

ECONOMIC COERCION AND THE NEW INTERNATIONAL ECONOMIC ORDER (R. Lillich, ed. 1976).

FONTEYNE, FORCIBLE SELF-HELP BY STATES TO PROTECT HUMAN RIGHTS: RECENT VIEWS FROM THE UNITED NATIONS, in Humanitarian Intervention and the United Nations, 197 (R.B. Lillich ed. 1973).

I. BROWNLIE, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS.

J.L. BRIERLY, THE OUTLOOK FOR INTERNATIONAL LAW.

LORD McNAIR, LAW OF TREATIES (1961).

TREATIES AND OTHER INTERNATIONAL AGREEMENTS

THE ANTARCTIC TREATY done at Washington December 1, 1959 12 UST 794; TIAS 4780; 402 UNTS 71.

TREATY BANNING NUCLEAR WEAPONS TEST IN THE ATMOSPHERE, IN OUTER SPACE AND UNDER WATER, done at Moscow, August 5, 1963, 14 UST 313; TIAS 5433; 480 UNTS 43 (Partial Test Ban Treaty).

TREATY ON THE PROHIBITION OF THE EMPLACEMENT OF NUCLEAR WEAPONS AND OTHER WEAPONS OF MASS DESTRUCTION ON THE SEABED, AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF. Done at Washington, London and Moscow on February 11, 1971, 23 UST 701; TIAS 7337. (Seabed Arms Control Treaty).

TREATY ON THE PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES. Done at Washington, Rowdon & Moscow January 27, 1967. 18 UST 2410; TIAS 6347; 610 UNTS 205 (Outer Space Treaty).

TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA. Done at Mexico 14 February, 1967, 22 UST 762; TIAS 7137; 634 UNTS 281 (Treaty of Tlatelolco).

ADDITIONAL PROTOCOL I TO THE TREATY OF FEBRUARY 14, 1967 FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA. Done at Mexico February 14, 1967. TIAS 10147.

ADDITIONAL PROTOCOL II TO THE TREATY OF FEBRUARY 14, 1967 FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA. Done at Mexico February 14, 1967, 22 UST 754; TIAS 7137; 634 UNTS 364.

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS. Done at Washington, London and Moscow July 1, 1968. 21 UST 483; TIAS 839; 729 UNTS 161.

VIENNA CONVENTION ON THE LAW OF TREATIES, opened for signature May 22, 1969, U.N. Doc. A/CONF 39/27 (1969).

RIO TREATY, September 2, 1947, 64 Stat. (2) 1681, T.I.A.S. No. 1838.

CHARTER OF THE ORGANIZATION OF AFRICAN UNITY, opened for signature May 25, 1963, 479 U.N.T.S. 39.

CHARTER OF THE ORGANIZATION OF AMERICAN STATES, opened for signature April 30, 1948, 2.2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3

TREATY ESTABLISHING THE ORGANIZATION OF EASTERN CARRIBEAN STATES, June 18, 1981, 20 I.L.M. 1166.

PART OF THE ARAB LEAGUE, opened for signature March 22, 1948, 70 U.N.T.S. 237.

BAGHDAD PACT, February 24, 1955, 233 U.N.T.S. 199.

COVENANT OF THE LEAGUE OF NATIONS, 1 Hudson, International Legislation 1 (1931).

ARTICLES

Castren, The Illegality of Nuclear Weapons, 3 U. TOLEDO L. REV. 89 (1971).

Falk, Toward a Legal Regime for Nuclear Weapons, 38 McGILL L.J. 519 (1983).

Falk, Meyrowitz & Sanderson, Nuclear Weapons and International Law, 20 INDIAN J. INT'L L. 542 (1980).

Franck & Rodley, After Bangladesh: The Law of Humanitarian Intervention by Military Force, 67 AM. J. INT'L L. 275 (1973).

Lillich, Intervention to Protect Human Rights, 15 McGILL L.J. 205 (1969).

Lillich. Forcible Self-Help by States to Protect Human Rights, 53 IOWA L. REV. 325 (1967).

Bender, Self-Defence in Cambodia: A Critical Approach, 50 B.U.L. REV. 130 (1976).

Birnberg, The Sun Sets on Tamuz 1: The Israeli Raid on Iraq's Nuclear Reactor, 13 CAL. WEST INT'L. L.J. 86 (1983).

Christol and Davis, Maritime Quarantine: The Naval Interaction of Offensive Weapons and Associated Material to Cuba, 1962, 57 AM. J. INT'L. L. 25 (1963).

Friedlander, Might Can Also Be Right: The Israel Nuclear Reactor Bombing and International Law, 28 CHITTY L.J. 325 (1980).

Frolick, The Present State of International Law Regarding Individual and Collective Self-Defence, 2 GA. J. INT'L. L. & COMP. L. 25 (1972).

Glover, International Law in the Falkland Islands, N.Z.L.J. 191 (1982).

Higgins, The Legal Limits to the Use of Force by Sovereign States: U.N. Practice, BRITISH Y.B. INT'L. L. 37 (1961).

Kaplan, The Attack on Osarik: Delimitation of Self-Defence Under International Law, 4 N.Y.J. INT'L. L. & COMP. L. 155 (1982).

Kunz, Individual and Collective Self-Defence in Article 51 of the Charter and the U.N., 41 AM. J. INT'L. L. 872 (1947).

Mallison & Mallison, The Israeli Aerial Attack of June 7, 1981, Upon the Iraqi Nuclear Reactor: Aggression or Self-Defence?, 15 U.A.N.D. J. TRANSNAT'l L. 418 (1982).

Moore, Legal Dimensions of the Decision to Intercede in Cambodia, 65 AM. J. INT'L. L. 39 (1971).

Nydell, Tensions Between International Law and Strategic Security: Implications of Israel's Pre-emptive Raid on Iraq's Nuclear Reactor, 24 U.A. J. INT'L. L. 459 (1984).

Polebaum, National Self-Defence in International Law: An Emerging Standard for a Nuclear Age, 59 N.Y. U.L. REV. 187.

Rohlik, Some Remarks on Self-Defence and Intervention: A Reaction to Reading, 6 G.A. J. INT'L L. & COMP. L. 395 (1976).

Schou, The U.N. and Collective Security: Some Normative and Empirical Considerations, 2 G.A. J. INT'L. L. & COMP. L. 128 (1972).

Singh, The Right of Self Defence in Relation to the Use of Nuclear Weapons, 5 INDIAN Y.B. INT'L. AFF. 3 26 (1956).

Waldock, The Regulation of the Use of Force, 81 RECUEIL DES COURS 455 (1952 II).

Schacter, The Legality of Pro-Democratic Invasion, 78 AM. J. INT'L. L. 645 (1984).

Goldman, Action by the Organization of American States: When is Security Council Authorization Required under Article 53 of the United Nations Charter? 10 U.C.L.A.L. REV. 837 (1963).

Hogg, Peace-Keeping Costs and Charter Obligations - Implications of the International Court of Justice Decision on Certain Expenses of the United Nations, 62 COLUMB. L. REV. 1230 (1962).

Acevedo, The U.S. Measures against Argentina resulting from the Malvinas, 78 AM. J. INT'L. L. 323 (1984).

Halderman, Regional Enforcement Measures and the United Nations, 52 GEO. L. J. 89 (1963).

Claude, The O.A.S., the U.N. and the United States, 547 INT'L CONCILIATION 1 (1964).

MacDonald, The Developing Relationship between Superior and Subordinate Bodies at the International Level, CANADIAN Y.B. INT'L L. 21, 1964.

Draper, Regional Arrangements and Enforcement Action, 20 REVUE EGYPTIENNE DE DROIT INTERNATIONAL 1 (1964).

Anonymous, World Court and United Nations Charter: The Principle of Effectiveness in Interpretation, 85 DUKE L.J. 85 (1962).

Reisman, Coercion and Self-Determination: Construing Charter Article 2.4, 78 AM. J. INT'L. L. 642 (1984).

Adler, Keeping the Match Away from the Fuse: A US-Soviet Response to South Asian Nuclear Proliferation, 12 COL. HUMAN RIGHTS L. REV. 247 (1980).

Brownlie, Some Legal Aspects of the Use of Nuclear Weapons, 14 INT'L. & COMP. L. Q. 437 (1965).

Bunn, The Nuclear Non-Proliferation Treaty, WISC L. REV. 766 (1968).

Cowan, A Look at US Nuclear Non-Proliferation Policy, 73 AM. SOC. INT'L. L. POL'Y 158 (1979).

Dai, Treaty on Non-Proliferation of Nuclear Weapons with Special Reference to Canada's Position, 6 CANADA Y.B. INT'L. L. 226 (1968).

Ehrlich, The NPT and Peaceful Uses of Nuclear Explosives, 56 VA.L. REV. 584 (1970).

Falk, The Shimoda Case: A Legal Appraisal of the Atomic Attacks upon Hiroshima & Nagasalu, 59 AM. J. INT'L. L. 759 (1965).

Fernandez, Nuclear Proliferation: Dim Prospects for Control, 3 BROOKLYN J. INT'L. L. 57 (1976).

Firmage, Anarchy or Order? The Nth Country Problem and the International Rule of Law, 29 MISS. L. REV. 138 (1964).

Firmage, The Treaty on Non-Proliferation of Nuclear Weapons, 63 AM. J. INT'L. L. 711 (1969).

Franck, World Made Law: The Decisions of I.C.J. in 'Nuclear Test Cases', 69 AM. J. INT'L. L. 612 (1975).

Gleissner, Recent U.S. Efforts to Control Non-Proliferation, 10 VA. J. of TRANSN'L L. 271 (1977).

Greig, The Interpretation of Treaties and Article IV 2 of the NPT, 6 AUST. Y.B. INT'L. L. 77 (1978).

Lenefsky, The United Nations Security Council Resolution on Security Assurances for Non-Nuclear Weapons States, 3 NYUJ INT'L. L. AND POL'Y 56 (1970).

Leng, Communist China's Position on Nuclear Arms Control, 7 VA.J.INT'L. L. 101 (1966).

Maggs, Soviet Viewpoint on Nuclear Weapons in International Law, 29 L. & CONTEMP. PROB. 956 (1964).

Parker, International Safeguards Against the Diversion of Nuclear Materials to Non-Peaceful Uses, 27 INT'L. & COMP. L.Q. 711 (1978).

Paust, Controlling Prohibited Weapons & Illegal Use of Permitted Weapons, 28 McGILL L.J. 608 (1983).

Roser, Nuclear Energy & International Relations: The Case for the Federal Republic of Germany, 73 AM. SOC. INT'L. L. PROC. 166 (1979).

Rowles, Nuclear Power & Non-Proliferation: The View from Brazil, 14 VA. J. TRANSN'L L. 711 (1981).

Siegal, Proposals for a True Comprehensive Nuclear Test Ban Treaty, 27 STAN. L. REV. 387 (1975).

Smith, NATO Nuclear Information Sharing Arrangements & the NPT: Collective Defence Confronts Arms Control, 13 A.E.L.J. 331 (1972).

Szasz, The Adequacy of International Nuclear Safeguards, 10 J. INT'L. L. & ECO. 423 (1975).

Szasz, Sanctions and International Nuclear Controls, 11 CONN. L. REV. 545 (1979).

Triggs, Prospects for Non-Proliferation & It's Control, 6 DENVER J. INT'L. L. & POL'Y 159 (1976).

Voorhees, A Survey of US Treaties & Agreements Involving the Peaceful Uses of Nuclear Energy, 10 CASE W. RES. J. INT'L. L. 671 (1978).

Walczak, Legal Implications of Indian Nuclear Development, 4 DEN. J. INT'L. L. & POL'Y 237 (1974).

Weston, Nuclear Weapons v. International Law. A Contextual Reassessment, 28 McGILL L. J. 543 (1983).

White, H. Bomb Tests & the International Court, 123 NEW L.J. 615 (1973).

Willrich, West Germany's Pledge not to Manufacture Nuclear Weapons, 7 VA. J. INT'L. L. 90 (1966).

Willrich, The Treaty on Non-Proliferation of Nuclear Weapons: Nuclear Technology Confronts World Politics, 77 YALE L.J. 1447 (1968).

Higgins, The Legal Limits to the Use of Force by Sovereign States: United Nations Practice, 37 BRITISH Y.B. INT'L L. 269 (1961).

Fitzmaurice, The Foundations of the Authority of International Law and the Problem of Enforcement, 19 MOD. L. REV. 1

Green, The New Law of Armed Conflict, 1977 CANADIAN Y.B. INT'L L. 3.

Buckley, New Protocols Broaden Definition of "Armed Conflict", 29 MERCER L. REV. 1163 (1978).

Sinclair, Vienna Conference on the Law of Treaties, 19 INT'L & COMP. L.Q. 47 (1970).

Wozencraft, United Nations Arithmetic and the Vienna Conference on the Law of Treaties, 6 INT'L L. 205 (1972).

de Arechaga, International Law in the Past Third of a Century, 159 RECUEIL DES COURS 1 (1978).

U.N. RESOLUTIONS AND OTHER U.N. DOCUMENTS

G.A. Res. 1576(XV), 15 U.N. GAOR, Supp, (No. 16)3, U.N. Doc. A/4684 (1960).
G.A. Res. 1632(XVI), 16 U.N. GAOR. Supp, (No. 17)3, U.N. Doc. A/5100 (1961).
G.A. Res. 1648(XVI), 16 U.N. GAOR, Supp, (No. 17)3, U.N. Doc. A/5100 (1961).
G.A. Res. 1652(XVI), 16 U.N. GAOR, Supp, (No. 17)4, U.N. Doc. A/5100 (1961).
G.A. Res. 1653(XVI), 16 U.N. GAOR, Supp, (No. 17)4, U.N. Doc. A/5100 (1961).
G.A. Res. 1660(XVI), 16 U.N. GAOR, Supp, (No. 17)5, U.N. Doc. A/5100 (1961).
G.A. Res. 1664(XVI), 16 U.N. GAOR, Supp, (No. 17)5, U.N. Doc. A/5100 (1961).
G.A. Res. 1665(XVI), 16 U.N. GAOR, Supp, (No. 17)5, U.N. Doc. A/5100 (1961).
G.A. Res. 1762(XVII)A, 17 U.N. GAOR, Supp, (No. 17)3, U.N. Doc. A/5217 (1962).
G.A. Res. 1762(XVII)B, 17 U.N. GAOR, Supp, (No. 17)4, U.N. Doc. A/5217 (1962).
G.A. Res. 1801(XVII), 17 U.N. GAOR, Supp, (No. 17)5, U.N. Doc. A/5217 (1962).
G.A. Res. 1884(XVIII), 18 U.N. GAOR, Supp, (No. 15)13, U.N. Doc. A/5515 (1963).
G.A. Res. 1909(XVIII), 18 U.N. GAOR, Supp, (No. 15)14, U.N. Doc. A/5515 (1963).
G.A. Res. 1910(XVIII), 18 U.N. GAOR, Supp, (No. 15)14, U.N. Doc. A/5515 (1963).
G.A. Res. 1911(XVIII), 18 U.N. GAOR, Supp, (No. 15)14, U.N. Doc. A/5515 (1963).
G.A. Res. 1962(XVIII), 18 U.N. GAOR, Supp, (No. 15)15, U.N. Doc. A/5515 (1963).
G.A. Res. 2033(XX), 20 U.N. GAOR, Supp, (No. 14)9, U.N. Doc. A/6014 (1965).
G.A. Res. 2153(XXI) A, 21 U.N. GAOR, Supp, (No. 16)9, U.N. Doc. A/6316 (1966).
G.A. Res. 2153(XXI) B, 21 U.N. GAOR, Supp, (No. 16)10, U.N. Doc. A/6316 (1966).
G.A. Res. 2162A(XXI), 21 U.N. GAOR, Supp, (No. 16), U.N. Doc. A/6316 (1966).
G.A. Res. 2936(XXVIII), 27 U.N. GAOR, Supp, (No. 30), U.N. Doc. A/8730 (1972).
Charter of the United Nations
Uniting for Peace Resolution, G.A. Res. 377, 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950).
S.C.O.R. 19th Yr., 1106th Meeting, April 8.
36 U.N. S.C.O.R. (2288th Meeting), U.N. Doc. S/INF 37 (1981).

CASES

North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands) [1969] I.C.J. Rep. 3.

Advisory Opinion on Certain Expenses of the United Nations [1962] I.C.J. 151.

The Naulilaa Case, Portugal v. Germany (1928), 2 R.I.A.A. 1012.

Case Concerning United States Diplomatic and Consular Staff in Tehran [1979] I.C.J. 7.

CHAPTER 1 SCOPE OF THE APPLICANT'S SUBMISSION

In order to claim legal justification for its attack, Mirva must establish both that Icbam's possession of nuclear weapons was in breach of international law, and that the breach was of a type giving Mirva the right to use armed force as a remedy. The Applicant will submit that neither proposition is satisfied on the facts of the case. In Chapter 2 it will be submitted that Icbam's possession of nuclear weapons was not illegal either per se or in the particular circumstances. In Chapter 3 it will be submitted that even if Icbams's actions were illegal, Mirva's right to use force in response could only arise by virtue of the U.N. Charter and not by the operation of any independent doctrine. Chapter 4 will submit that the U.N. Charter provides no such right to use force. Finally the question of damages will be addressed in Chapter 5.

CHAPTER 2 ICBAM'S POSSESSION OF NUCLEAR WEAPONS WAS NOT IN BREACH OF INTERNATIONAL LAW

2.1 Icbam was not in breach of the terms of any treaty to which it was a party.

Icbam was never a party to the Treaty of Telleraviv, and consistently declined to become a party to it(1). It was thus not bound by its express terms. In regard to the Treaty on the Non-Proliferation of Nuclear Weapons (1968)('NPT')(2), Icbam was a signatory to the treaty but never ratified it, and it withdraw its signature as it would have been entitled to do by the terms of the instrument itself even if it had ratified the treaty.(3) There is no suggestion that during the period while it was a signatory Icbam engaged in any activity which was antithetical to the underlying principle of non-proliferation.(4) Consequently Icbam was not in breach of any treaty to which it was expressly bound to adhere.

2.2 Possession of nuclear weapons was not contrary to customary international law.

The emergence of rules of customary international law binding on all States is subject to stringent requirements evidencing the formation of custom, these requirements not having been met in regard to nuclear non-proliferation. In the North Sea Continental Shelf Case (5) this Court required that the formation of

custom be evidenced by widespread and generally consistent State practice,(6) adhered to in the belief that the practice was legally obligatory, usually but not necessarily over a substantial period but in the event of a shorter period then with the acquiescence of those States whose interests are especially affected.(7).

Neither the N.P.T. nor its underlying principles have enjoyed widespread or consistent State acceptance in the relatively short period of fourteen years since the treaty came into force. In that period eight nations have acquired, attempted to acquire, or stated their desire to acquire nuclear weapons(8). Three other nations are believed to be adapting their existing peaceful nuclear technology to a military capacity(9). Moreover many nations which are signatories to the N.P.T. nevertheless align themselves closely with the nuclear powers, allow nuclear weapons to be stationed on their territory(10), and provide guidance systems or berthing facilities for nuclear warships or aircraft. In addition, the majority of parties to the N.P.T. are States whose technological and industrial infrastructures are incapable of supporting nuclear weapons, and whose adherence to the N.P.T. is thus entirely academic and provides negligible evidence of State practice in support of non-proliferation.

Moreover the limited adherence to the N.P.T.'s principles which is discernible does not bear the hallmarks of opinio juris (belief in legal obligation) but rather indicates a policy ideal, or a tactical step towards an end result of total disarmament rather than non-proliferation(11). General Assembly resolutions on the subject have only been adopted by small majorities(12) and those approaching unanimity have merely enshrined policy rather than imposed legal obligations(13). Similarly such resolutions tend to support complete and total disarmament, with non-proliferation being merely a subsidiary argument to this wider ideal.(14)

It is concluded that the principle of non-proliferation does not meet the tests for the formation of customary international law, and that Icbam's possession of nuclear weapons was not in breach of such custom.

2.3 Possession of nuclear weapons was not in breach of regional custom.

The Compromis does not indicate the precise dates on which Conclave States signed or ratified the N.P.T. Conceivably it could have been as late as September 1982.(15) Such a relatively short period would generally be regarded as insufficient for the formation of regional custom.(16) Consequently the Treaty of Telleraviv would at best be regarded as a crystallization of what had previously been an emerging regional custom. Since Icbam had indicated its opposition to the principle of non-proliferation prior to the crystallization of the custom, it must be regarded as a persistent objector and was therefore not bound by such a custom.(17) This is particularly the case since Icbam was the only nation in the region with a peaceful nuclear capacity and therefore with a special interest in the matter.(18)

2.4 Possession of nuclear weapons was not in breach of any jus cogens of international law.

A jus cogens is a peremptory norm of international law which has evolved by the consensus of nations as a fundamental principle which cannot be derogated from or contracted out of.(19) No jus cogens, whether expressed as a prohibition of 'crimes against humanity' or of acts 'threatening the survival of mankind',(20) attracts within its ambit the mere possession of nuclear weapons. Whereas it is at least arguable that the use of nuclear weapons offends against such a jus cogens, it is submitted that possession is not in breach of any such fundamental principle.

If possession of nuclear weapons was contrary to the massive consensus required to establish a jus cogens, one would expect to see clear evidence of State practice rejecting such possession. To the contrary, State practice does not reflect even a clear consensus against use(21), so a fortiori there cannot be a clear consensus against possession. There is no express customary rule of law prohibiting the possession of nuclear weapons. None of the various conventions on rules of warfare which prohibit the use or possession of various weapons, explicitly refer to nuclear weapons.(22) It has been suggested that such specific reference is not required as a general prohibition on all inhumane methods of warefare has evolved as custom, encompassing nuclear weapons.(23) However the world community has twice considered

the possibility of expressly banning nuclear weapons, and has twice declined to do so. In the General Assembly debate on Resolution 2444 which reafirmed the principles of humanitarian warfare, an amendment was accepted deleting a paragraph specifically including nuclear weapons.(24) Similarly prior to signing the 1977 Protocol 1 to the 1949 Geneva Convention the United Kingdom, United States, France and the U.S.S.R. all formally declared their understanding that the rules included in the Protocol did not regulate or prohibit the use of nuclear weapons.(25) It is submitted that State practice as outlined above does not approach the level of consensus which would be expected if mere possession of nuclear weapons was within the prohibition of a jus cogens. This conclusion is supported by the analysis of State practice in Chapter 2.2 above. Furthermore the very widespread acceptance of the theory of deterrence is in stark contradiction to any notion that mere possession is illegal. Deterrence is predicated on the belief that possession of nuclear weapons increases the chances of mankind's survival, and reduces the likelihood that the weapons will ever be used. The prospect of mutual destruction is, by this theory, sufficient to ensure that no nation will use the weapons. Whether the theory be correct or not, it has underpinned the strategy of the nuclear powers for the past forty years, and is thus further evidence that there is no general consensus that mere possession of nuclear weapons is illegal.

2.5 The particular circumstances of the case did not render Icbam's possession of nuclear weapons illegal.

Icbam asserts that its proposed acquisition of nuclear weapons was a legal exercise of its sovereign right to organize and prepare its own self-defence, and is not amenable to any reasonable suspicion of any sinister motive. Nor did it represent a threat of force or a threatened breach of the peace and security of the Conclave.

The right to organize self-defence is recognized in customary international law(26) and is enshrined in Article 51 of the U.N. Charter. Icbam's membership of the Conclave in no way derogates from this right as no provision of the Conclave Constitution requires it to surrender this right.(27) The only possible indications that Icbam had aggressive designs on the Conclave are its reassertion of irredentist

policies, and its stated intention to 'protect its historic patrimony'.(28) However it is submitted that policies of reunification and protection are utterly inconsistent with the possible use of nuclear weapons against the area to be reunified and protected, or even their use against areas in the general vicinity of the region to be reunified. Destruction of the object of one's desire is scarcely a credible means of pursuing that object.

On the other hand there are clear indications of Icbam's bona fide self-defence motivations. Firstly, the widespread acceptance of the theory of deterrence(29) lends credibility to the notion that Icbam was simply wishing to discourage possible attacks by external nations. Secondly, the fact that external nations possess nuclear weapons (30) raises a clear perception of the need for such a deterrence capability. Thirdly, Icbam's December 14 1983 assurance(31) that its weapons would be used exclusively for defensive purposes against States external to the Conclave is a statement by which its 'freedom of action is to be limited'(32), such statements having been held by the I.C.J. in the past to be not available to be called into question by the Court.

It is further submitted that the possession of nuclear weapons by Icbam would not expose the Conclave to the risk of being embroiled in a pre-emptive strike launched by external States against Icbam. Icbam's retaliatory capacity renders the Conclave less likely to be attacked by external States, by virtue of the deterrence theory.

It is concluded that the circumstances of the case did not render Icbam's possession of nuclear weapons illegal.

CHAPTER 3: ALTERNATIVELY, IF ICBAM'S POSSESSION OF NUCLEAR WEAPONS WAS ILLEGAL, MIRVA'S RIGHT OF ACTION WAS RESTRICTED TO THOSE REMEDIES PROVIDED BY THE U.N. CHARTER

It will be submitted in Chapter 4 that Mirva's attack cannot be justified by the terms of the U.N. Charter. In Chapter 3 hereunder it will be submitted that no right of action exists independently of the Charter.

Prior to the scheme of world security established by the U.N. Charter, it is submitted that customary international law recognized only very limited rights to use force. These included a right of self-defence; a 'right of reprisal' (by virtue of persistent practice rather than by strict custom); and perhaps a right of retortion. It was the absence of any legal regime for the settlement of disputes which caused States to adopt the legal fiction of the bellum justum to provide at least some moral justification for resort to force.

It is submitted that since the adoption of the U.N. Charter, to which both Icbam and Mirva are parties, any vestigial remnants of previously existing rights have been swept away by the Charter scheme except to the extent expressly preserved by the Charter (e.g. Article 51 reference to the 'inherent' right of self-defence). Consequently it is asserted that a mere delict such as a breach by Icbam of a treaty provision, or of a rule of either international or regional custom, provides Mirva with no right to use force in self-help outside the terms of the Charter. To acknowledge such a right would be contrary to both customary law and to the express terms of the Charter, the void which previously existed having been filled by the Charter and its judicial arm (the I.C.J.).

In the light of the foregoing, for this Court to grant its imprimatur to acts of self-help outside the Charter would involve the following implications:

a) It would be a denial of the fundamental doctrine of State sovereignty which underpins international law and which is enshrined in Article 2.1 of the Charter. International law is created by the voluntary assumption of obligations by States in the exercise of their individual rights of sovereignty.(33) For a State to accept the jurisdiction of a particular enforcement agency is an exercise of sovereignty, not a derogation from it. Both parties to this action have expressly accepted the jurisdiction of the U.N. and of the I.C.J., and no other body or regional organization can assume such a responsibility unless its members expressly signify their amenability to the creation of a regional jurisdiction and its accompanying judicial and enforcement organs.

For any such organization to assert an enforcement role is utterly contrary to the doctrine of sovereignty. The Constitution of the Eurasian Conclave contains no such provisions, in stark contrast the to European Community which has established by treaty both a parliament and a court with supranational jurisdiction. By contrast Article 16 of the Conclave Constitution establishes the I.C.J. as the arbiter of disputes.

b) Acceptance by this court of any doctrine limiting State sovereignty would at best be recognition de lege ferenda. This court may crystallize an emerging practice of limitation on sovereignty, but it is submitted that such a declaration would apply only prospectively and could not be used to retrospectively justify Mirva's actions.

c) To the extent to which this Court might hold that possession of nuclear weapons threatens mankind's survival, it is submitted that to grant States a right of independent self-help is at least equally threatening of survival. Now more than at any time in history, survival depends on adherence to a system of law for resolving disputes. It is a small step from self-help to vigilante-ism to anarchy and the breakdown of the world security system in a manner reminiscent of the demise of the League of Nations. It is submitted that the assertion of a right to independent action outside the Charter framework is simply too dangerous to be tolerated.

Finally it is submitted that while every State may have an interest in the observance of jus cogens, such an interest extends only to giving any nation locus standi before this court to complain of a breach. It does not give any nation the right to use force to redress the breach of a jus cogens.

CHAPTER 4 MIRVA'S ACTIONS DO NOT FALL WITHIN ANY OF THE EXCEPTIONS TO THE PROHIBITION ON THE USE OF FORCE IN ARTICLE 2.4 OF THE U.N. CHARTER

The reference to "territorial integrity or political independence" in Article 2.4 of the Charter does not constitute a limitation on the ambit of the prohibition on the use of force.. Rather, it was adopted from Article 10 of the League of Nations Covenant(34) at the behest of smaller States seeking an extra guarantee that force would not be used against them by more powerful States.(35) Therefore the adoption of this formula was meant to strengthen, not weaken, the prohibition on the use of force.

4.1 Mirva failed to exhaust all reasonable means of peaceful settlement of the dispute before resorting to the use of force.

Article 2.3 of the Charter requires Members to settle their disputes by peaceful means. This requirement is reiterated in Articles 33.1 and 52.2, establishing bona fide attempts at peaceful settlement as a precondition to the use of force. In this case, Mirva's attempts to resolve the matter peacefully fell far short of satisfying this threshold test.

The General Assembly could have been requested to arbitrate the situation under the 'Uniting for Peace' Resolution(36) after the Security Council reached an impasse. The Secretary-General of the U.N. could have been invited to use her good offices to effect a settlement.(37) The Eurasian Conclave could have requested an interim (and if necessary ex parte) declaration of illegality from the I.C.J. against Icbam, as was obtained by the United States in United States v Iran.(38) The representatives of third-party nations or other Regional Organizations could have been invited to mediate the situation.(39) Subsequent to the Security Council tabling of the matter on September 29 1983, Mirva could again have requested the Council to carry out its imperative duty under Article 39 to determine the existence of a threat to the peace and to decide on measures to be taken, in the light of the new developments of December 14 1983.(40) The fact that Icbam was unprepared to discuss the matter further with the Conclave due to that body's non-negotiable attitude, does not mean that it was unprepared to enter into a dialogue with other nations or bodies.

It is clear that many avenues of peaceful settlement were open to Mirva and were not pursued.

4.2 Mirva's actions were not an exercise of the right of self-defence under Article 51

Mirva's actions cannot be justified as an exercise of its 'inherent right of individual self defence' as prescribed by Article 51 of the United Nations Charter under either an expansive or restrictive interpretation of that document. Read restrictively, Article 51 dictates that the Charter has replaced any customary right to self defence with a fully inclusive Charter-given right.(41) Self-defence may thus only be exercised in response to an 'armed attack'.(42) The Charter makes no provision for force utilized in mere anticipation of armed attack.(43) Mirva's pre-emptive strike on the complex cannot be justified as it was not preceded by actual armed attack.

An expansive interpretation of Article 51 recognizes the continued validity of the customary law of self defence including a right of anticipatory self defence.(44) The Charter has expressly recognized custom by referring to an 'inherent' right of self defence.(45) The customary right of anticipatory self defence as sanctioned by State practice(46) cannot, however, be claimed by Mirva. The requirements of necessity and proportionality of response deemed basic to the exercise of self-defence,(47) have not been satisfied. Mirva's actions are thus an unlawful use of force, contrary to Article 2(4) of the Charter.

The level of necessity required to justify anticipatory self defence is higher than if self defence is utilized in response to an actual armed attack.(48) It must be "instant, overwhelming, and leaving no choice of means, and no moment for deliberation".(49) The mere development of nuclear weapons for purely defensive purposes outside the Eurasian Conclave posed no danger, imminent or remote, to any member of the Conclave. Nor can necessity be said to have reached the level of

urgency required to validate armed attack in exercise of the right of self defence{50} until all such peaceful methods of settlement as can reasonably be expected have first been utilized{51} (as discussed in paragraph 4.1 above).

Proportionality of methods becomes a meaningless element if there is no necessity for the exercise of anticipatory self defence, and thus no right of self defence.{52} But even if some response was called for, the imposition of diplomatic and/or economic sanctions would have been a far more appropriate response to Icbam's alleged illegality than was the draconian step of armed attack.

The attack by Israel on the Iraqi nuclear reactor was condemned by the Security Council as being 'in clear violation of the Charter of the United Nations and the norms of international conduct'.{53} This condemnation was despite the fact that a clear state of hostilities existed between the two nations.{54}

The Conclave can not justify their actions as an exercise of the collective right of self-defence under Article 51 of the United Nations Charter. Exercise of the collective right of self defence requires the elements of necessity and proportion to be met.{55} As neither have been satisfied, self defence conducted upon a collective basis cannot justify Mirva's actions.

4.3. <u>The Conclave was not entitled to authorize Mirva to act under Chapter VIII</u>

4.3.1 <u>Mirva was not entitled to act under the Conclave Constitution</u>

(a) <u>The possible manufacture of nuclear weapons by Icbam was not a situation for which the Conclave may meet to agree on measures to be taken under Article 7 of the Conclave Constitution.</u>

(i) There has been no "armed attack"{56} by Icbam for such a meeting to be called. Armed border conflicts in pursuit of Icbam's irredentist policies ceased in March of 1980.{57}

(ii) Icbam has not performed any "act of aggression not being an armed attack",(58) against either Conclave members or non-members. Icbam had clearly and conclusively declared that its nuclear weapons were for exclusively defensive purposes(59) and only as a defence against States external to the Eurasian region.(60)

(iii) There has been no "extra-regional conflict"(61) shown to be in existence at the time. Neither was there an "intra-regional conflict"(62) endangering the peace of the region. An Article in substantially similar terms to Article 7 of the Conclave Constitution is Article 6 of the Inter-American Treaty of Reciprocal Assistance.(63) The meaning of the word "conflict" is elaborated upon in Article 7 of the Rio Treaty, which clearly only contemplates armed conflict, as it requires the High Contracting Parties to the Rio Treaty to call upon the "contending"(64) States to "suspend hostilities".(65) The word "conflict" is always referred to in the context of armed conflict.(66)

Treaties or treaty provisions which are restrictive of or affect a State's territorial sovereignty must be interpreted carefully in order to uphold the principle of territorial sovereignty and independence as entrenched by the United Nations Charter(67) and, indeed, by the Conclave Constitution.(68) Given this restriction, "conflict" must not be read to extend to any dispute between the Member States, no matter what its nature, but must only refer to armed conflict. In the instant case, there is no state of war existing, nor is there any armed attack or exchange, nor is there any threat of such armed attack or exchange. At most, there is a dispute as to the proper method for defending the Eurasian region, which is well short of a "conflict" as envisaged by Article 7 of the Conclave Constitution.

(iv) There is no "other fact or situation"(69) endangering the peace of the region. Treaties must be interpreted "in their context".(70) The whole tenor of Article 7 of the Conclave Constitution envisages action of an aggressive and/or armed nature. The words "any other fact or situation" must be interpreted in this context otherwise the use of armed force may be justified under Article 7 on flimsy or baseless grounds. This interpretation is supported by the ejusdem generis rule,

a rule of construction recognized and applied by international tribunals(71) and confirmed by Article 31 of the Vienna Convention on the Law of Treaties(72) by its obligation to interpret words "in their context",(73) Articles 31-33 of the Vienna Convention on the Law of Treaties reflecting "the preponderant opinion among jurists and practitioners on the relative value to be attached to the various elements of treaty interpretation".(74) It should be noted that the only real debate about interpretation at the Convention was concerned with whether the hierarchy set up by Articles 31 and 32, relegating travaux preparatoires to a supplementary means of interpretation, should be incorporated as one Article;(75) and that Articles 31 and 32 were adopted unanimously at the Plenary Session of the Vienna Convention,(76) a convention attended by 110 States, including 41 States which have become independent since the Second World War.(77) The legal rules in Articles 31-33 of the Vienna Convention "may be considered as declaratory of existing law".(78)

In the present case, Icbam is organizing its own defence as a matter of its domestic jurisdiction(79) and has clearly declared that all nuclear weapons manufactured would be "exclusively for defensive purposes against States external to the Conclave of Eurasian Unity".(80) With no intention on Icbam's part to use these nuclear weapons offensively nor indeed to use them for defensive purposes within the Eurasian region against any Member State of the Conclave, the peace of the region is not endangered and would, in fact, be enhanced by the deterrent effects of having nuclear weapons.

(b) "Measures" taken under Article 7 of the Conclave Constitution must include seeking peaceful settlement of disputes rather than the use of armed force.

(i) Article 7 of the Conclave Constitution must be interpreted in light of the object and purposes of the Conclave Constitution, according to Article 31 paragraph 1 of the Vienna Convention on the Law of Treaties.(81) One of the major purposes of the Conclave is "to promote unity and solidarity among the Member States",(54) which is not promoted by the use of force by Member States against another Member State without first resorting to less draconian means.

It is also a major purpose of the Conclave to defend "the sovereignty, territorial integrity and independence" of Member States.(83) However, Mirva and the other supporting Member States of the Conclave have clearly offended the sovereignty, territorial integrity and independence of Icbam in the most flagrant possible manner. Any "measures" taken under Article 7 should seek to defend each Member State's sovereignty, territorial integrity and independence and undertake peaceful means of settlement and lesser measures of force to deal with this situation.

(ii) When interpreting Article 7(a), "any relevant rules of international law applicable in the relations between the parties" must be taken into account,(84) such as the requirement for seeking peaceful settlement of disputes.This is a major requirement of the United Nations Charter and a primary goal of all members of the United Nations,(85) of which Icbam and Mirva are two. Moreover, State practice in the formation of regional organizations recognizes the responsibility of Members of such organizations to seek pacific settlement in resolution of their disputes, especially conciliation. Some clear examples are Articles III and XIX of the Charter of the Organization of African Unity,(86) Article 2 of the Rio Treaty(87) and Articles 20-24 of the Charter of the Organization of American States,(88) Article 14 of the Treaty Establishing the Organization of Eastern Caribbean States,(89) Article 5 of the Pact of the Arab League(90) and Article 3 of the Baghdad Pact.(91)

4.3.2 Mirva's actions were not authorized by Article 53.1 of the U.N. Charter

Fundamental to the scheme established by the U.N. was avoidance of a similar failure to that of the League of Nations due to the right of individual States to unilaterally resort to force. Thus for the U.N. "... the rule against unilateral recourse to force (except in self-defence) is a fundamental tenet of international law. In recent years it has been widely characterized as jus cogens".(92) It is not submitted that the system, as envisaged in 1945, has worked perfectly. But it is submitted that to regard the achievement of perfection as the relevant test in deciding whether to totally abandon such a system, is both misguided and counterproductive. Since 1945 genuine steps have been taken in the direction of a

world security system and the one way of ensuring that this system is never achieved, is to totally abandon the goal now, merely because the political selfishness of individual nations is making it harder to achieve than one would like.

Only the Security Council and General Assembly have an inherent right to deal with the maintenance of international peace and security because of their unique ability to act for the world community as a whole. The partial failure of the Security Council to fully carry out its function has been offset in large part by the expanded role of the General Assembly under the aegis of the 'Uniting for Peace' Resolution, which has acted under the Resolution in crises involving the Suez (1956), Lebanon and Jordan (1958) and Pakistan (1972).(93) Moreover the Security Council has not totally abrogated its role, having been responsible for the establishment of U.N. forces in Korea (1950),(94) the Congo (1960),(95) Cyprus (1964),(96) and Lebanon (1978).(97) The contribution made by the continued active roles of both these bodies towards the establishment of the ideal order proposed in 1945 cannot be discounted. On the other hand, to sanction the violent resolution of disputes outside the Charter would be to undermine the eventual establishment of such a world system. To allow Mirva to resort to self-help, and to claim as justification the failure of the U.N. security system, is to affirm that the goal of a world security order must be abandoned. As President Winiarski pointed out in his dissenting opinion in the Certain Expenses Case: "The intention of those who drafted it [the Charter] was clearly to abandon the possibility of useful action rather than to sacrifice the balance of carefully established fields of competence".(98)

At the inception of the Charter it was clear that Regional Organizations could only use force in the exercise of a right of self-defence under Article 51, or as part of a Council-authorized enforcement action under Article 53(1). They were to have no independent right of recourse to force, and this interpretation is reinforced by the terms of Articles 43.3 and 47.4. The effect of the veto on the authorization of regional action by the Security Council was carefully considered at San Francisco.

Three proposals which jointly suggested that authorization of regional action should require only the votes of three permanent members and, in the event of failure to act or authorize such action, the signatories to a regional arrangement should be free to take action in accordance with that arrangement, were decisively rejected(99) because they would allow regional organizations to take the law into their own hands. Instead Article 51 was inserted in Chapter VII as a sole concession to the use of regional force outside U.N. authority. Moreover the Security Council's monopoly on the use of force was underscored by the adoption of Article 54, requiring Regional Organizations to notify the Council of acts which they have "in contemplation" - a requirement flouted by Mirva in this case.A Regional Organization can not thus legitimize use of force contrary to Article 2(4). It has been argued by some writers(100) that the foregoing requirements have been modified by State and U.N. practice. It is submitted that no such clear or consistent pattern emerges. Further, this Court cannot de facto re-write the Charter in the absence of such established practice. Proposals to give the I.C.J. the power to conclusively interpret the Charter have been rejected,(101) and the better opinion seems to be that a binding interpretation of the Charter only arises by a combination of court opinion and substantial majority support of the U.N. organ concerned.(102) It is therefore submitted that any reinterpretation of the nature of "enforcement action" or the removal of the authorization requirement in Article 53 requires the clear agreement of the responsible U.N. body, i.e. the Security Council. No such agreement exists.

"Enforcement actions" are those measures which the Security Council is entitled to take under Chapters VII and VIII in order to fulfill its primary responsibility under Articles 1.1 and 2.4 to "maintain international peace and security". As Kutznetsov, for the U.S.S.R., pointed out during the 1960 Dominican Debates, Article 41 (non-military) and Article 42 (military) measures are by definition "enforcement measures because they are employed by the Security Council for the very purpose of forcing an aggressor to cease acts of aggression against another State and of preventing the recurrence of aggression".(103) The alleged modification of the ambit of Article 53 is based principally on the actions of the O.A.S. However,

there has been no consistent line of development of interpretation, but rather a series of cynical ad hoc pronouncements in line with whichever interpretation favours the O.A.S. policy-of-the-day, many of which are contradictory. For example, in draft Charter proposals O.A.S. members supported the view that enforcement measures requiring authorization included military, economic, commercial and financial measures.(104) This was similarly the O.A.S. view in formulating the Rio Treaty.(105) In 1948 in reference to the Palestine Crisis, the U.S. characterized the actions of the Arab League as enforcement actions despite the fact that the League's decisions were only "recommendatory".(106) Likewise the U.S.A. originally argued against O.A.S. imposition of economic sanctions against the Dominican Republic in 1960(107) on the grounds that such action was within the ambit of Article 53. Thus until at least 1960 the U.S.A. and O.A.S. adopted the 'conventional' view of Article 53.

Yet this view altered dramatically in a period of only two weeks, with the U.S. arguing in the Security Council(108) that enforcement actions did not include non-military measures - a reversal of position due entirely to U.S.S.R. initiatives for the Security Council to control and/or discipline the O.A.S. The outcome of the issue in the Council was not determinative of the authorization question. In 1962 when Cuba was suspended from the O.A.S. and subjected to economic sanctions at Punta del Este, a similar interpretation of "enforcement action" was proposed. However, the U.S. again changed its view at the time of the Cuban Missile Crisis, maintaining that its military action was instead not enforcement since it was authorized by an O.A.S. recommendation.(109) This was totally inconsistent with its Punta del Este view, and irreconcilable with its denial of the Arab League's "recommendatory" action in 1948. The Security Council did not pronounce upon the issue.

Rather than establishing any new meaning for Article 53, this history simply demonstrates that the O.A.S. and in particular the U.S.A. under the cover of O.A.S. action, is prepared to enforce the Monroe Doctrine(110) irrespective of the legality of its actions, and to rely on its power of veto to avoid Security Council supervision. The fact that the U.S.A. has gotten away with its actions does not make them legal.

Ironically, in 1982 the O.A.S. asserted that economic measures against Argentina by the U.S.A. and E.E.C. were coercive measures which were "incompatible" with the Charter because they had not been "covered", i.e. authorized, by Security Council Resolution 502.(111) So when not acting as an instrument of U.S. foreign policy, the O.A.S. recognizes that enforcement measures include both military and economic coercion, and require Security Council authorization. No consistent line of State practice or Security Council practice has evolved which can in any way be said to have narrowed or abolished the requirements of Article 53. Bowett in 1976, well after the crises of the 1960's, still felt himself able to say that any '"enforcement action' would need the authorization of the Security Council, and the concept of 'enforcement action' embraces both military and economic sanctions".(112)

Alternatively, if world events since 1945 have narrowed the scope of Article 53, in the sense that the Security Council has abrogated its right to authorize regional action, this does not mean that Regional Organizations have acquired the ability to use force in their own right. Article 2.4 still prohibits the use of force. Chapter VIII does not confer a right to use force on any body but the Security Council, and if it fails to exercise its rights the only consequence is that no-one can take regional action. Article 51 remains as the sole justification for use of force by a regional body.

Alternatively, if this court feels that it must give its imprimatur to a Charter amendment, two choices are available. The first, to allow regional organizations to act unilaterally as they see fit, would constitute a dangerous and radical departure from the world order envisaged in 1945. In Halderman's words: "It is obvious that regional groups may sometimes have their own ideas as to what is necessary or appropriate in particular situations, and that these may be at variance from what is considered right or appropriate in other parts of the world, or in the world as a whole".(113) The second (and preferable) alternative, which would not be a significant departure from the goals of the Charter or the concept of responsibility for world security, would be to allow regional groups to approach the General

Assembly under the 'Uniting for Peace' Resolution and to seek authorization for enforcement actions under Article 53.1. The second strand of this moderate reform would be to clearly recognize the right of anticipatory self-defence in urgent situations where there is no time to go to the General Assembly.

It is submitted that, of these two alternative modifications of the U.N. Charter, the court should choose the latter as being a lesser departure from the clear words of the Charter, and as being the one most likely to encourage the establishment of an effective world security order.

4.4 Mirva's actions cannot be justified as an exercise of a right of humanitarian intervention

Customary international law has never recognized the doctrine of humanitarian intervention as a justification for the use of armed force. An exhaustive survey of State practice up until 1960 has concluded that "... the doctrine of humanitarian intervention does not seem to claim the authority of a customary rule of international law",(114) and no such practice has been adopted by States since then. The doctrine has been invoked on a few recent occasions,(115) but as Brownlie has pointed out, "these cases can only be recruited as examples of 'ex post factoism'", where States have attempted to retrospectively legitimize their otherwise illegal use of force employed in the furtherance of national self-interest.(116) A small number of jurists have argued for recognition of the principle as a moral imperative,(117) but even if their view is endorsed by the Court it cannot be employed by Mirva as a shield. Icbam has at no time evinced any intention of using its nuclear weapons within the region and it is somewhat farfetched to suggest that the mere possession of such devices constitutes a fundamental violation of the human rights of all Eurasians.

4.5 Mirva's actions cannot be justified as a legitimate reprisal

4.5.1 Reprisals are no longer available under Article 2(4)

The use of armed force as a reprisal is specifically prohibited by the clear words of Article 2.4, and this prohibition has been affirmed by U.N. practice.(118) The words of Article 2.4 contain no reference to such an exception and are uncompromising in their rejection of any resort to forcible self-help.(119)

The absence of an intention to read Article 2.4 as being subject to exceptions is demonstrated by the rejection by the General Assembly of the claim that "territorial integrity and political independence" limited the prohibition,(120) a large majority affirming that the Article "contained an absolute and unconditional prohibition that made any goal or intention of the State initiating force irrelevant; any use of force, regardless of motive or purpose, was a violation of the Charter unless justifiable under one of the explicit exceptions".(121) This unequivocal attitude leaves no room for a doctrine of armed reprisal. The doctrine has been specifically rejected by the Security Council in the context of a reprisal by Great Britain against Yemen in 1964.(122)

To acknowledge a right of armed reprisal would be contrary to the clear words of Article 2.4 as interpreted, and to the underlying policy of the Article. There can be no solid foundation for peace in the world if Regional Organizations such as the Conclave are allowed to take unilateral military action whenever they claim to see a threat to their security.(123) "It would be a logical impossibility to hold at one and the same time that States are bound to respect each others independence and rights and yet be free to attack each other at will".(124)

4.5.2 Alternatively, the conditions for a legitimate reprisal have not been met.

The Naulilaa Case(125) established that for a reprisal to be justified there are three preconditions; (1). the violation of a rule of international law by the State against which the reprisal was directed; (2) a demand by the injured State to remedy the alleged wrong, which has remained unsatisfied; and (3) a proportional relationship between the illegal act and the reprisal.

None of the above preconditions has been met. Icbam did not commit an international wrong by the possession of nuclear weapons.(126) There was no demand made by Mirva to Icbam to dismantle its nuclear plant and dispossess itself of nuclear weapons. The Conclave resolutions of September 22nd and December 21st 1983, while making it clear that the Conclave disagreed with the actions of Icbam, did not constitute a proper and unequivocal demand. Furthermore, Mirva failed to proceed under Article 2(3) of the United Nations Charter and seek all possible means of peaceful resolution of the dispute,(127) as discussed in Chapter 4.1 above.

Proportionality between act and response is important and it cannot be maintained that the bombing of Icbam's nuclear facility was in any way proportional to any illegal act of Icbam as alleged by Mirva, as discussed in Chapter 4.2. above.

CHAPTER 5 ICBAM IS ENTITLED TO THE DAMAGES SOUGHT

5.1 Icbam has an entitlement irrespective of the legality of Mirva's actions.

It is submitted on behalf of Icbam that even if Mirva's actions are held to be legal,a valid claim for damages still exists as international law recognises liability for damage caused by lawful acts. In addition to the doctrine of 'abuse of rights'(128), international law provides the where a State injures an alien through the commission of a lawful act such as that of rationalization it must nevertheless pay 'prompt', 'adequate' and 'effective' compensation for causing the loss or injury.(129)

5.2 Icbam is entitled to the compensation claimed for the loss of the three technicians.

If the three technicians were nationals of Icbam(130) then it is entitled to claim compensation on their behalf.(131) Alternatively, if they were of foreign nationality then Icbam is nevertheless entitled to claim compensation because they were in the service of the Icbamese State(132) while working on the Sorgred Desert project.

Respectfully submitted

Andrew Hamlyn-Harris

John Jarrett

Katherine Schneeberger

Jonathan Slonim

Alan Swanwick

(Agents for the Applicant)

FOOTNOTES

1. Comprises 2
2. 729 U.N.T.S. 161 (signed July 1 1968, entered into force March 5 1970).
3. Article X (N.P.T.).
4. Article 18 of Vienna Convention on the Law of Treaties.
5. North Sea Continental Shelf Case (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands) [1969] I.C.J. 3, 43.
6. [1969] I.C.J., para. 73 (majority judgement).
7. Id.
8. India, Pakistan, Israel, South Africa, Iraq, Libya, Cuba, Icbam.
9. Argentina, Chile, Brazil.
10. E.g. all the nations of N.A.T.O. and the Warsaw Pact.
11. Standing Committee of People's National Congress, January 21, 1960. 3 PEKING REV., No. 4, 19 (1960) referred to in Leng, Communist China's Position on Nuclear Arms Control, 7 VA. J. INT'L. L. 101 (1966). Argentina: GAOR, 13th Session, 1st Committee, 1135th meeting, 19 December 1960, para. 38, referred to in M. SHAKER, THE NUCLEAR NON-PROLIFERATION TREATY: ORIGIN AND IMPLEMENTATION 1959-1979, 7 (1980). Poland: GAOR, 15th Session (Part I); 1st Committee, 1135th meeting, 19 December 1960, para. 38, referred to in M. SHAKER, THE NUCLEAR NON-PROLIFERATION TREATY: ORIGIN AND IMPLEMENTATION 1959-1979, 20 (1980).
12. G.A. Res. 1380(XIV), 14 U.N. GAOR, Supp. (No. 16)4, U.N. Doc A/4354 (1959); G.A. Res. 1576(XV), 15 U.N. GAOR, Supp, (No. 16)3, U.N. Doc. A/4684 (1960); G.A. Res. 1632(XVI), 16 U.N. GAOR, Supp, (No. 17)3, U.N. Doc. A/5100 (1961); G.A. Res. 1762(XVII)A, 17 U.N. GAOR, Supp, (No. 17)3, U.N. Doc. A/5217 (1962). G.A. Res. 1762(XVII)B, 17 U.N. GAOR, Supp, (No. 17)4, U.N. Doc. A/5217 (1962)
13. G.A. Res. 1665(XVI), 16 U.N. GAOR, Supp, (No. 17)5, U.N. Doc. A/5100 (1961); G.A. Res. 1910(XVIII), 18 U.N. GAOR, Supp, (No. 15)14, U.N. Doc. A/5515 (196H.
14. G.A. Res. 1660(XVI), 16 U.N. GAOR, Supp, (No. 17)5, U.N. Doc. A/5100 (1961); G.A. Res. 1884(XVIII), 18 U.N. GAOR, Supp, (No. 15)13, U.N. Doc. A/5515 (1963); G.A. Res. 2162A(XXI), 21 U.N. GAOR, Supp, (No. 16)10, U.N. Doc. A/6316 (1966).
15. Compromis 2.
16. North Sea Continental Shelf Case, supra note 5..
17. A requirement expressed in the North Sea Continental Shelf Cases [1969] I.C.J., para. 73, which is valid for both international and regional custom.D.
18. Id.
19. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 513 (3rd ed., 1979).
20. Compromis 4.
21. G.A. Res. 35/152D purporting to prohibit use of nuclear weapons, acheived only a small majority in the face of negative votes by all N.A.T.O. nations an abstentions by all Warsaw Pact nations. Similarly the definition of aggression adopted by G.A. Res. 3314 (XXiX), 29 U.N. GAOR, Supp.(No.31), U.N. Doc. A/1963 (1974), explicitly excluded the use of nuclear weapons as being per se an act of aggression.
22. For a comprehensive survey of such conventions: L. FRIEDMAN, THE LAW OF WAR:
23. Falk, Meyrowitz and Sanderson, Nuclear Weapons and International Law, 20 INDIAN J. INT'L. L. 542-595 (1980).
24. Stated in Moore, Nuclear Weapons and the Law: Enhancing Strategic Stability, 9 BROOKLYN J. INT'L. L. 265 (1983).
25. Weston, Nuclear Weapons Versus International Law: A Contextual Reassessment, 28 McGILL L. J. 542, 566 (1983).

26. H.KELSEN TRENDS IN THE LAW OF THE UNITED NATIONS, 915 (1951).
27. Constitution of the Conclave of Eurasian Unity, Article 7(a).
28. Compromis 2,3.
29. This theory was supported by A.D'Armato, The Purposive Dimension of International Law, 9 BROOKLYN J. INT'L. L. 314 (1983).
30. Compromis 3.
31. Id.
32. Nuclear Tests Case (Australia v. France) [1974] I.C.J. 253 as reprinted in D. HARRIS, CASES AND MATERIAL ON INTERNATIONAL LAW, 572 (3rd ed., 1983).
33. The Lotus Case (France v. Turkey), P.C.I.J. Series A, No. 10.
34. 1 HUDSON, INTERNATIONAL LEGISLATION 1 (1931).
35. L. GOODRICH, E. HAMBRO and A. SIMONS, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS, (3rd ed., 1969).
36. 5 U.N. GOAR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950)
37. E.g. U Thant during the 1962 Cuban Missile Crisis; Hammarshjold during the Berlin Blockade (1948).
38. Case Concerning United States Diplomatic and Consular Staff in Tehran, [1979] I.C.J. 7.
39. E.g. Secretary of State Kissenger in Middle East and Vietnam; Evatt during the formation of Israel; E.E.C. peace initiatives in the Middle East.
40. Compris 3.
41. H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW 72 (1966).
42. Kunz, Individual and Collective Self-Defense in Article 51 of the Charter of the U.N., 41 AM. J. INT'L. L. 872, 878 (1947).
43. Id.
44. The Caroline Case, 29 BRITISH AND FOREIGN STATE PAPERS 1129, 1138 (1840-41).
45. D. BOWETT, SELF-DEFENCE IN THE INTERNATIONAL LAW 185 (1958).
46. For example: (i) The Israeli attack on the Iraqi Osirak Nuclear research reactor June 7, 1981; (ii) United States-South Vietnamese action in Cambodia April 30, 1970; (iii) the sinking of Argentinian warship General Belgrano, by British submarine. Falkland Islands May 2, 1982.
47. I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 261 (1963).
48. M. McDOUGAL & F. FELICIANO, LAW AND MINIMUM WORLD MPUBLIC ORDER 237 (1961).
49. American Secretary of State Webster, supra, note 44.
50. M. McDOUGAL & F. FELICIANO, supra at 241-2.
51. Birnberg, The Sun Sets on Tamuz 1: The Israeli Raid on Iraq's Nuclear Reactor, 13 CAL. WEST. INT'L. L. J. 86, 105 (1983).
52. Id.
53. U.N. Sec. Res. 487, 36 U.N. Scor (2288th mtg.) U.N. Doc. S/RES/487 (1981).
54. Birnberg, supra at 98.
55. I. BROWNLIE, supra at 264.
56. Article 7(a) of the Conclave Constitution.
57. Compromis 1.
58. Article 7(a) of the Conclave Constitution.
59. Compromis 3.
60. Id.
61. Article 7(a) of the Conclave Constitution.
62. Id.
63. September 2, 1947, 64 Stat. (2) 1681, T.I.A.S. No. 1838 (hereinafter Rio Treaty).
64. Rio Treaty, supra; Article 7.
65. Id.
66. E.g. see Green, The New Law of Armed Conflict, 1977 CANADIAN Y.B. INT'L. L. 3; Buckley, New Protocols Broaden Definition of "Armed Conflict", 29 MERCER L. REV. 1163 (1978).
67. See Article 2(4) of the U.N. Charter.
68. Article 4(b) of the Conclave Constitution.
69. Article 7(a) of the Conclave Constitution.
70. Article 31(1) of the Vienna Convention on the Law of Treaties, opened for signature May 22, 1969, U.N. Doc. A/CONF 39/27 (1969).
71. See LORD McNAIR, LAW OF TREATIES, 393-9 (1961).
72. See supra note 70.

73. Id.
74. Sinclair, Vienna Conference on the Law of Treaties, 19 INT'L & COMP. L. Q. 47, 66 (1970).
75. See discussion in Sinclair, supra, 61-5. Note: United States amendment defeated with 8 votes in favour, 66 against with 19 abstentions (Sinclair, supra, 65).
76. Sinclair, supra, 65.
77. Wozencraft, United Nations Arithmetic and the Vienna Conference on the Law of Treaties, 6 INT'L. LAW. 205, 206 (1972).
78. Arechaga, International Law in the Past Third of a Century, 159 RECUEIL DES COURS 1, 42 (1978).
79. Compromis 3.
80. Id.
81. See supra note 74.
82. Article 4(b) of the Conclave Constitution.
83. Id.
84. Article 31(3)(c) of the Vienna Convention on the Law of Treaties, supra.
85. See discussion in Section 4.1, supra.
86. Opened for signature May 25, 1963, 479 U.N.T.S. 39.
87. See supra note 63.
88. Opened for signature April 30, 1948, 2.2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3.
89. June 18, 1981, 20 I.L.M. 1166.
90. Opened for signature March 22, 1945, 70 U.N.T.S. 237.
91. February 24, 1955, 233 U.N.T.S. 199.
92. Schachter, The Legality of Pro-Democratic Invasion, 78 AM. J. INT'L. L. 645 at 648 (1984).
93. D. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 707 n.4 (2nd ed. 1979).
94. June 27, 1950, reprinted in HARRIS, supra at 697.
95. July 14, 1960, Id. at 716.
96. March 4, 1964, Id. at 721.
97. March 19, 1978, Id. at 722.
98. Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 167.
99. D. BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW 184 n. 2 (1958); Draper, Regional Arrangements and Enforcement Action, 20 REVUE EGYPTIENNE DE DROIT INTERNATIONAL 1 at 7 (1964).
100. E.g. MacDonald, The Developing Relationship between Superior and Subordinate Political Bodies at the International Level, CANADIAN Y.B. INT'L. L. (1964) 21 at 49; contra, Draper, supra at 28-29.
101. Hogg, Peace-Keeping Costs and Charter Obligations - Implications of the International Court of Justice Decision on Certain Expenses of the United Nations, 62 COLUMB. L. REV. 1230 at 1247 n. 74 (1962).
102. Id. at 1249-50.
103. Reprinted in L. SOHN, CASES ON UNITED NATIONS LAW 957 (2nd ed. 1967).
104. Claude, The O.A.S., the U.N. and the United States, 547 INT'L. CONCILIATION 1 at 50 (1964).
105. Id.
106. Draper, supra at 12-13.
107. Claude, supra at 51.
108. Id.
109. Draper, supra at 21-24.
110. Id at 28-29.
111. Acevedo, The U.S. Measures against Argentina resulting from the Malvinas, 78 AM. J. INT'L. L. 323 at 338-39 (1984).
112. International Law and Economic Coercion, ECONOMIC COERCION AND THE NEW INTERNATIONAL ECONOMIC ORDER 87 at 97 (R. Lillich ed. 1976).
113. Regional Enforcement Measures and the United Nations, 52 GEO. L. J. 89 at 110 (1963).
114. M. GANJI, INTERNATIONAL PROTECTION OF HUMAN RIGHTS, 43 (1962).
115. Most notably by Belgium after the Stanleyville operation, and by India after intervention in Bangladesh.

116. Brownlie, Humanitarian Intervention, in LAW AND CIVIL WAR IN THE MODERN WORLD, 217 (G.N. Moore ed. 1974).
117. The leading proponent of this doctrine is Richard Lillich.
118. Two specific incidents of the Security Council condemning reprisals are the Harib Fort Incident 1964 and the bombing of the Iraqi nuclear reactor by Israel in 1981. In the first case, reprisals were condemned as "incompatible with the purposes and principles of the United Nations" S.C.O.R. 19th Yr., 1106th Meeting, April 8 and in the second case, as a "clear violation of Article 2.4", 36 U.N. S.C.O.R. (2288th Meeting) at 10, U.N. Doc. S/INF 37 (1981). See also, Higgins, The Legal Limits to the Use of Force by Sovereign States: United Nations Practice, 37 BRITISH Y.B. INT'L. L. 269 (1961); Fonteyne, Forcible Self-Help by States to Protect Human Rights: Recent Views from the United Nations, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS, 197 (R.B. Lillich ed. 1973).
119. I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES, 281, n. 4 (1963) gives a comprehensive list of authorities; A.P. HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITE NATIONS, 202-205, 217-218 (1963).
120. 6th Committee of the General Assembly 1961-1970; Fonteyne, supra.
121. Supra, 215-216, n. 74, 75 and 76.
122. The Harib Fort Incident (1964), supra.
123. See the Statement of General U Thant on the Introduction to the Annual Report of the Secretary General on the work of the O.A.S. covering the period 16 June 1967 - 15 June 1968, September 24, 1968, 23rd Session, Supp. No. 1A/U.N. Doc A/7201/Add.1 (1968), 21-22.
124. J.L. BRIERLY, THE OUTLOOK FOR INTERNATINOAL LAW, 21; Fitzmaurice, The Foundations of the Authority of International Law and the Problem of Enforcement, 19 MOD. L. REV. 1, 4 (1956).
125. Portugal v. Germany (1928); 2 R.I.A.A. 1012. The Tribunal held there was an unlawful reprisal in this case.
126. See Chapter 2, supra.
127. Article 2.3 states that, "All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."; BROWNLIE, supra, 113, "The obligation of Article 2, paragraph 4, is complemented by paragraph 3 ...".
128. I. BROWNLIE, supra at 430-432
129. The principle is discussed most fully in R. LILLICH and B. WESTON, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS, PART II (1975).
130. This is not made clear in the Compromis and Clarifications.
131. WHITEMAN, DAMAGES IN INTERNATIONAL LAW, 82 (1937); BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 481-2 (1979).
132. Fitzmaurice, The Law and Procedure of the International Court of Justice: General Principles and Substantive Law, 27 BRITISH Y.B. INT'L. L. 1, 25; BROWNLIE, supra, 481.