

The 1990 PHILIP C. JESSUP INTERNATIONAL LAW  
MOOT COURT COMPETITION

CASE CONCERNING INTERNATIONAL ENVIRONMENTAL  
LAW AND ANTARCTICA

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IN THE INTERNATIONAL COURT OF JUSTICE

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State of Leonia,                      Applicant

versus

State of Vulpinia                      Respondent

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MEMORIAL FOR THE APPLICANT

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February 1990

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## **JURISDICTION**

The sovereign States of Leonia and Vulpinia submit their dispute to this Court pursuant to Article 36(1) of the Statute of the International Court of Justice, which provides that the jurisdiction of the Court comprises all cases which the parties refer to it. Thus, the Court has jurisdiction in the present controversy and may resolve all legal questions submitted by the parties.

## STATEMENT OF FACTS

### I.

The State of Vulpinia's leading expert in hazardous waste disposal, Dr. Detritus, operates a business which specializes in finding appropriate sites for the disposal of hazardous waste.(C.1). He has on occasion negotiated with governments of other States in order to procure disposal sites within the territory of those states.(C.1). Disposal of wastes in such instances was to be carried out in accordance with the particular States' environmental policies and applicable international law.(C.1).

Increased awareness of the potential dangers of hazardous waste disposal made Dr. Detritus' efforts to locate disposal sites for his customers difficult.(C.1). In April 1987, Dr. Detritus happened across an article about the recent return of a Leonian biologist from Antarctica. The article headline read: "THE LEONIA BIOLOGIST PROF. HANDLIN BACK FROM EXPEDITION IN ANTARCTIC TERRA NULLIUS." This headline gave Dr. Detritus the impression that there may exist parts of Antarctica which are still considered terra nullius.(C.2). Dr. Detritus' intention was to use these areas as sites for the disposal of his hazardous waste. Upon conferring with his attorney, Dr. Detritus was made aware of the existence of the Antarctic Treaty of 1959. Dr. Detritus was also informed that Vulpinia was not a party to the

treaty.(C.2).

To test the feasibility of his plan to create a waste disposal site in Antarctica, Dr. Detritus decided to place 100 drums of his hazardous waste in Antarctica for a period of one year after which he planned to return to examine the condition of the barrels.(C.2). Stella Maris, an isolated tongue of the ice shelf, was chosen as the location for the experiment.(C.2). Without publicizing his excursion, Dr. Detritus departed for Stella Maris on a Vulpinian flag vessel with 100 drums of hazardous waste.(C.2). On 10 January 1988, Dr. Detritus arrived at Stella Maris and deposited the hazardous waste on the ice shelf.

## II.

The State of Leonia, a Consultative Party to the 1959 Antarctic Treaty, observed the Vulpinian vessel in Antarctica by way of satellite.(C.2). Leonia closely monitored the vessel's activities.(C.2,3). Upon the vessel's departure, Leonia sent its Navy to investigate the activities which the Vulpinian vessel had engaged in.(C.3). The Leonian Navy notified its country of the presence of the 100 drums of hazardous waste.(C.3).

## III.

Upon being informed of the Vulpinian vessel's activities, Mr. Darkeye, the Leonian Minister of Foreign Affairs, contacted Minister Fox, his Vulpinian counterpart.(C.3). Minister Fox informed Minister Darkeye that Vulpinia was unaware of the disposal activities which had taken place in Antarctica.(C.3).

Minister Fox stated that while his country did not authorize the disposal, Vulpinia had no laws which would have prohibited Dr. Detritus from exporting the waste to Antarctica.(C.3). Minister Darkeye responded that Leonia had an obligation as a Consultative Party to the 1959 Antarctic Treaty to guard against any activity which may be incompatible with the text or spirit of the Treaty.(C.3). Minister Darkeye added that the disposal of the hazardous waste was indeed a violation.(C.3). Minister Fox agreed to investigate the matter.(C.3).

The next day Minister Fox contacted Minister Darkeye and informed him that, although his country was unaware of any law prohibiting the disposal made by Dr. Detritus, his government was willing to remove the waste material.(C.3,4).

On 2 February 1988, the two ministers exchanged notes outlining their agreement for the removal of the hazardous waste material.(C.4). The exchange of notes was registered in accordance with article 102 of the U.N. Charter. The text of the notes provided that:

Without any prejudice to their respective legal positions and aiming at the preservation of the unique and delicate Antarctic environment, Leonia and Vulpinia agree that:

1. Vulpinia shall recover the 100 drums of waste and remove them from the Antarctic Treaty area in order to re-establish the situation that previously existed.
2. Vulpinia shall grant Leonia the right to be represented by observers on board the vessel responsible for recovering the drums to monitor the activities.(C.4).

Before the expedition set out, Dr. Detritus' team of experts conducted experiments to determine the safest method of removing

the hazardous waste. On 7 January 1989, the Vulpinian ship, under the command of Captain Capablanca, arrived at the disposal site.(C.5). On board the vessel was a group of Leonian observers, under the command of Lieutenant Rubinetti, and the Vulpinian team of experts.(C.5). The disposal team was able to remove 95 of the 100 drums without incident.(C.5). The remaining five drums, however, were damaged and could not be safely removed.(C.5). The experts advised the leaders of both the Vulpinian and Leonian delegation that the best solution was to open the five drums and allow its contents to empty into the sea.(C.5). The experts contended that their tests showed that the sea water would dissolve the waste within ten days and that the hazardous waste would cause no permanent damage to the environment.(C.5). Both delegations informed their respective countries of the situation.(C.5).

Vulpinia instructed its officials to follow the Vulpinian's experts' advice and drain the drums.(C.5). Leonia advised its delegation not to interfere with any of the activities as they were there solely for observation purposes.(C.5). Subsequently, the five drums were opened and hazardous waste material was allowed to flow into the sea.(C.5). Ten days later, the experts' analysis indicated that the water had returned to normal.(C.5,6). They were unable to detect any resulting damage at that time.(C.6).

#### IV.

During the incidents involving the disposal and recovery of the hazardous waste material, Professor Handlin, whose trip to

Antarctica initially inspired Dr. Detritus' interest in Antarctica, was enthusiastically studying some marine life forms he had brought back with him.(C.6). Professor Handlin had discovered what he believed to be a new species of starfish (asteroid echinoderm).(C.6). Only five millimeters in length, this particular starfish was unlike any species he had ever encountered.(C.6). Professor Handlin discovered that the starfish was very sensitive to subtle changes in its environment and that minute changes in the surrounding waters could be fatal to them.(C.6). Professor Handlin's discovery was made in the same area where Vulpinia had emptied its hazardous waste into the sea.(C.6).

Professor Handlin had delayed announcing discovery until he could conclude further experiments with them.(C.6). In December 1988, Professor Handlin was sure that he had discovered a new species of starfish.(C.6). On 10 Feb 1989, Professor Handlin returned to Stella Maris to conduct further studies of the newly discovered species, only to find that the entire species had been destroyed by the waste material that Vulpinia had drained into the sea.(C.6,7). Professor Handlin returned to Leonia and informed his government of what had happened.(C.7).

After the incident had become public, Leonia and Vulpinia issued a joint communique expressing their regret for the destruction of the starfish.(C.7). Both States reiterated their commitment to the preservation and protection of the Antarctic environment.(C.7).

Shortly thereafter, Leonia and Vulpinia commenced

negotiations to discuss the matter of reparations for the damage that had been caused.(C.7). Leonia, as a Consultative Party to the 1959 Antarctic Treaty, claimed that Vulpinia was obligated to pay compensation to them for the loss of the species.(C.7). Leonia pledged to use the funds in ways which would aid in the protection of the Antarctic environment.(C.7,8). Leonia also claimed that Vulpinia's actions were in violation of both customary international law and the 2 February 1988 exchange of notes.(C.8).

Vulpinia argues that it violated none of its international obligations as it took all possible measures to correct the situation.(C.8). Vulpinia asserted that Leonia was at fault for not sooner making public the discovery of the new species of starfish.(C.8). Vulpinia also claimed that Leonia was fully aware that the dumping of the waste materials was about to occur and that by doing nothing, Leonia acquiesced in its actions.(C.8). Vulpinia insists that neither international law nor its own domestic law prohibits it from dumping its hazardous waste in Antarctica.(C.8).

Negotiations having reached an impasse, both parties have agreed to submit the dispute to the International Court of Justice.(C.8,9).

## QUESTIONS PRESENTED

- I. Is the State of Vulpinia responsible for any breach of right pertaining to Leonia by virtue of any rule of customary or conventional international law binding upon Vulpinia?
  
- II. In the case of an affirmative answer to question number one, is Vulpinia under any obligation to Leonia to take remedial measures or to provide reparations for the injury to the Antarctic environment caused in the Stella Maris incident, and, if so, what type of remedial measures or reparations would be appropriate under the instant circumstances?

## SUMMARY OF PLEADINGS

### I.

The Antarctic Legal Regime has become an objective regime expressing customary international law which must be respected by all States regardless of whether they are parties to the Antarctic Treaty. Leonia, as a Consultative Party to the Antarctic Legal Regime has undertaken an internationally recognized obligation to protect and preserve the rare and fragile ecosystem of Antarctica. Thus, Leonia as a Consultative Party has standing to bring a claim against Vulpinia for violating the environmental protections imposed by the Antarctic Legal Regime.

The dumping of hazardous wastes causing irreparable damage to the environment beyond the limits of national jurisdiction implicates internationally recognized prohibitions. All States are recognized to have a legal interest where such activities are concerned. Thus, Leonia has standing to bring a claim where a State engages in such activity.

Vulpinia has also undertaken specific treaty obligations with Leonia. Leonia will have standing for a breach of these treaty obligations.

### II.

Vulpinia's actions resulting in irreversible damage to the Antarctic ecosystem are violative of customary norms of international law as expressed by the Antarctic Legal Regime. By dumping hazardous waste into the Southern Ocean Vulpinia violated

not only the spirit of the Antarctic Treaty but also specific provisions of the legal structure that has grown up to protect the Antarctic environment.

The Antarctic Legal Regime is an objective regime that has evolved to protect the Antarctic environment. The Antarctic Legal Regime has merged into customary law. It adopts a global perspective and enunciates principles that are respected by all States. All States that have shown an active interest in the Antarctic have accepted the Antarctic Legal Regime. Moreover, no third State has ever acted in violation of the Antarctic Legal Regime prior to Vulpinia's actions.

Vulpinia violated general customary norms of environmental protection as they were expressed in the United Nations Convention on the Law of the Sea. The Law of the Sea requires States to minimize the release of harmful or noxious substances. It also mandates that States take the steps necessary to protect and preserve rare or fragile ecosystems. The dumping of hazardous wastes in the Southern Ocean, however, was in complete disregard of the delicate nature of the Antarctic ecosystem.

Vulpinia violated general customary norms of environmental protection as set forth in the Stockholm Declaration on the Human Environment. This Declaration announces internationally recognized standards designed to minimize pollution and preserve the human environment. It obligates States to take steps to ensure that their activities do not cause harm to areas beyond the limits of national jurisdiction. Specifically, the Stockholm Declaration forbids the release of toxins which the environment

cannot render harmless. Vulpinia failed to abide by the standards set forth in the Stockholm Declaration.

Vulpinia also failed to adhere to treaty obligations. Vulpinia, a signatory to the Convention on the Control of Transboundary Movement of Hazardous Waste, engaged in actions that worked to defeat the purpose of the Treaty. The Treaty obligated Vulpinia to take actions to prohibit the transport of hazardous waste to the Antarctic. Vulpinia had not however, taken any action in response to this obligation. Thus, the actions of Dr. Detritus were permissible under Vulpinian municipal law. Vulpinia in an exchange of notes also committed itself to return the Antarctic to the condition that had previously existed. Instead, their actions resulted in irreparable damage.

Even if the Court were to find Vulpinia's actions to be lawful, Vulpinia must still be liable for the harm they caused to the Antarctic environment. International law need not find a discernible wrong to hold a State liable for the harm caused as a result of that State's activities. This concept is specifically designed to guard against environmental damage. To ensure vigilant protection of the environment Vulpinia must be liable for the consequences of their actions.

Under international law Vulpinia has a duty to make reparations for the damage caused by its unlawful act. Vulpinia must make reparations that will, as far as possible, return the Antarctic environment to the status quo. Vulpinia must also pay monetary damages that will be used to ensure the future

preservation of the Antarctic environment. Punitive damages are also appropriate as a means of both deterring potential violators and condemning Vulpinia's actions as an international crime. Relief such as a declaratory judgment or the imposition of nominal damages would be inconsequential, and hence, an unacceptable remedy for the damage caused by Vulpinia. Firm action is necessary to protect the global environment and to foster the continued growth of environmental protection law.

## PLEADINGS

### I. LEONIA HAS STANDING UNDER INTERNATIONAL LAW TO BRING A CLAIM AGAINST VULPINIA FOR THE VIOLATION OF INTERNATIONAL OBLIGATIONS.

To bring a claim under international law a State must first establish that it has the requisite legal interest.<sup>1</sup> The claimant State must assert that it is owed a legal obligation by the defendant State and that the actions of the defendant State constitute a breach of this obligation.<sup>2</sup> However, no specific injury need be shown in order to have the legal interest necessary for standing before the International Court of Justice.<sup>3</sup>

#### A. Leonia Has Standing As A Consultative Party To The Antarctic Legal Regime.

The Antarctic Treaty<sup>4</sup> and the accompanying set of rules which it generated have evolved through general practice and opinio juris into an objective regime which expresses customary international law binding upon all States.<sup>5</sup> Where the actions of

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<sup>1</sup>Barcelona Traction Light and Power Co. (Belg. v. Spain), 1970 I.C.J. 3, 37. See also I. Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 434 (3d ed. 1979).

<sup>2</sup>Reparations For Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, 181-82. "[O]nly the party to whom an international obligation is due can bring a claim in respect of its breach."

<sup>3</sup>Barcelona Traction Light & Power Co. (Belg. v. Spain), 1970 I.C.J. 3; Ethiopia and Liberia v. South Africa, 1966 I.C.J. 47; S.S. Wimbledon, 1923 P.C.I.J. (ser. A) No. 1.

<sup>4</sup>Antarctic Treaty, 1 Dec. 1959, 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71 [hereinafter Antarctic Treaty].

<sup>5</sup>The Vienna Convention on the Law of Treaties, 23 May 1969, art. 38, 1155 U.N.T.S. 331, U.N. Doc. A/CONF.39/27 [hereinafter Vienna Convention]: "Nothing in articles 34 to 37 precludes a

a third party State are in violation of the Antarctic Legal Regime the Antarctic Treaty itself imposes an affirmative obligation on Consultative Parties to undertake steps to ensure compliance with international law. Article X of the Antarctic Treaty specifically requires Consultative Parties "to exert appropriate efforts consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty."<sup>6</sup>

**B. Leonia Has A Legal Interest In Guarding Against Activities Which Cause Irreparable Damage To The Environment.**

The International Court of Justice has recognized that there are certain obligations which are owed to the international community erga omnes.<sup>7</sup> These are obligations that all States have a legal interest in upholding. Consequently, any nation has standing to complain of the breach of such an obligation.

Customary international law recognizes the obligation on the part of all States to "protect and preserve rare or fragile ecosystems . . . ."<sup>8</sup> All nations have tacitly accepted the

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rule set forth in a treaty from becoming binding on a third State as a customary rule of international law recognized as such."

<sup>6</sup>Antarctic Treaty, supra note 4, art. X.

<sup>7</sup>Nuclear Test Case (Austl. v. Fr.), 1974 I.C.J. 3, 32; Nuclear Test Case (New Zealand v. Fr.), 1974 I.C.J. 253, 267; 312, 369-70 (Jt. Disop); Barcelona Traction Light & Power Co. (Belg. v. Spain), 1970 I.C.J. 3, 32.

<sup>8</sup>Third U.N. Convention on the Law of the Sea, 7 October 1982, art. 194, para. 5, U.N. Doc. A/CONF.62/122, reprinted in 21 I.L.M. 1261 (1982) [hereinafter LOS].

obligation to ensure against activities that "cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."<sup>9</sup> The duty to protect the environment must, therefore, be regarded as an obligation that all States have a legal interest in enforcing.

**C. Leonia Has Standing To Bring A Claim Against Vulpinia For The Breach Of A Mutually Binding Agreement.**

The exchange of notes executed between Leonia and Vulpinia on 2 February 1988 constitutes a mutually binding agreement.<sup>10</sup> Therefore, Leonia has standing to bring a claim for the breach of the obligations created by this exchange of notes.

**II. VULPINIA'S ACTIONS RESULTING IN ENVIRONMENTAL DAMAGE IN ANTARCTICA ARE VIOLATIVE OF BOTH CUSTOMARY NORMS OF INTERNATIONAL LAW AND TREATY OBLIGATIONS.**

Vulpinia violated the rules of a legal regime which are binding as customary law specifically protecting the Antarctic environment. Vulpinia's actions also constituted a violation of general customary norms of international environmental protection as set forth in the United Nations Convention on the Law of the Sea<sup>11</sup> and the Stockholm Declaration on the Human Environment.<sup>12</sup> Further, Vulpinia violated specific treaty obligations owed directly to Leonia. These violations were the

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<sup>9</sup>United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14 and Corr. 1. Prin. 21 (1972)[hereinafter Stockholm Declaration].

<sup>10</sup>Vienna Convention, supra note 5, art. 13.

<sup>11</sup>LOS supra note 8, art. 192 et seq.

<sup>12</sup>Stockholm Declaration, supra note 9.

direct cause of irreversible damage to the marine environment.

By agreeing to remove the hazardous materials from the Antarctic, Vulpinia acknowledged responsibility for the initial placement of the hazardous materials on the Stella Maris ice shelf.

**A. Vulpinia Violated Customary Norms Of International Law Specifically Protecting The Antarctic Environment.**

**1. Environmental protection is the focal point of the Antarctic Legal Regime.**

The Antarctic<sup>13</sup> is governed by a set of rules known as the Antarctic Legal Regime. The obligation to protect the Antarctic environment pervades the entire Antarctic Legal Regime. This obligation springs from the recognition "that the Antarctic environment is unique and vulnerable to contamination and disturbance"<sup>14</sup> and that "the protection of the unique Antarctic environment and its dependent ecosystems should be a basic consideration."<sup>15</sup> This basic consideration finds its way into several of the conventions and formally accepted recommendations that compose the Antarctic Legal Regime. Vulpinia, in the dumping of hazardous wastes, therefore, violated not only the general spirit of the Antarctic Treaty but also certain specific

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<sup>13</sup>The Antarctic has been defined as the "area south of 60 degrees South latitude, including all ice shelves . . . ." Antarctic Treaty, supra note 4, art. VI.

<sup>14</sup>Man's Impact on the Antarctic Environment, Ninth Consultative Meeting 1977, Recommendation IX-5 [hereinafter Man's Impact].

<sup>15</sup>Id. at Ninth Consultative Meeting 1977, Rec. IX-7(4) (iii).

provisions of the legal structure that has been created to protect the Antarctic environment.

The General Rules of Conduct for Preservation and Conservation of Living Resources in Antarctica,<sup>16</sup> which were unanimously accepted at the First Consultative Meeting in 1962, are an important component of the Antarctic Legal Regime. These rules specifically mandate that "[a]nimals and plants indigenous to Antarctica shall not be unnecessarily disturbed and shall not be destroyed or injured."<sup>17</sup> This obligation was reiterated in 1977 when it was recognized that all nations had the duty to "refrain from activities having an inherent tendency to modify the Antarctic environment . . . ."<sup>18</sup> In more specific language, the 1980 Convention on the Conservation of Antarctic Resources<sup>19</sup> obligates nations to refrain from activities which "risk changes in the marine ecosystem which are not potentially reversible over two or three decades."<sup>20</sup>

**2. The Antarctic Legal Regime is an objective regime expressing customary international law binding on Vulpinia.**

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<sup>16</sup>Id. at First Consultative Meeting 1962, General Rules of Conduct for Preservation and Conservation of Living Resources in Antarctica.

<sup>17</sup>Id. at First Consultative Meeting 1962, General Rules of Conduct for Preservation and Conservation of Living Resources in Antarctica, art. 1.

<sup>18</sup>Id. at Ninth Consultative Meeting 1977, Rec. IX 5(3).

<sup>19</sup>Convention on the Conservation of Antarctic Marine Living Resources, 20 May 1980, 33 U.S.T. 3476, T.I.A.S. 10240 [hereinafter CAMLR].

<sup>20</sup>Id. at art. II(3)(c).

The International Court of Justice has recognized the process by which a convention or a portion of a convention can become part of the general body of customary international law.<sup>21</sup> The Court said that the "norm creating" effect of certain conventions "does from time to time occur; it constitutes indeed one of the recognized methods by which new rules of customary law may be formed."<sup>22</sup>

For a treaty regime to attain the status of customary international law, it is important that all nations who have demonstrated an interest in that area participate.<sup>23</sup> Thus, a practice, even if exercised by only a small number of interested States, may be accepted as customary international law.<sup>24</sup>

In the Antarctic, all nations that have demonstrated an active interest in that region have become parties to the

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<sup>21</sup>North Sea Continental Shelf Cases (W.Ger. v. Den.; W.Ger. v. Neth.), 1969 I.C.J. 4, 42.

<sup>22</sup>Id. See also Baxter, Multilateral Treaties as Evidence of Customary International Law, 41 Brit. Y.B. Int'l L. 275 (1965-66); A. D'Amato, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW 107, 164 (1972).

<sup>23</sup>North Sea Continental Shelf Cases (W.Ger. v. Den., W.Ger. v. Neth.), 1969 I.C.J. 4, 43. The Court said that for State practice to create customary law in regard to a treaty, "State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision involved . . . ." See also, Fifth Report of 1960 by Sir Gerald Fitzmaurice, [1960] 2 Y.B. Int'l L. Comm'n 69, U.N. Doc. A/CN.4/130/1960 at 93.

<sup>24</sup>Akehurst, Customs as a Source of International Law, 47 Y.B. Int'l L. Comm'n 1, 12 (1974-75).

Antarctic Treaty.<sup>25</sup> Under Article XIII of the Antarctic Treaty, any State which is a member of the United Nations may accede to the Treaty.<sup>26</sup> Thirty-two nations have become parties to the Antarctic Treaty. Together these nations comprise over half the earth's population. Prior to Vulpinia's actions, no third party State had ever undertaken actions in violation of either the text or the spirit of the Antarctic Legal Regime.<sup>27</sup>

For a treaty regime to merge into customary law it must express the real interests and normative aspirations of the international community.<sup>28</sup> The Antarctic Legal Regime adopts a global perspective and seeks to promote universally recognized goals and objectives.<sup>29</sup> The preamble to the Antarctic Treaty sets forth general goals and objectives that are designed to advance "the interest of all mankind." Moreover, it expresses the general commitment that all activities in the Antarctic be in furtherance of "the purposes and principles embodied in the

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<sup>25</sup>Zegers Santa Cruz, The Antarctic System and the Utilization of Resources, 33 U. Miami L. Rev. 427, 433 (1978).

<sup>26</sup>Since its entry into force in 1961, twenty nations have acceded to the Antarctic Treaty, four of whom demonstrated sufficient interest to become Consultative Parties.

<sup>27</sup>W.M. Bush, ANTARCTIC AND INTERNATIONAL LAW: A COLLECTION OF INTERSTATE AND INTERNATIONAL DOCUMENTS 103 (1982). See also, Rich, A Minerals Regime For Antarctica, 31 Int'l & Comp. L.Q. 709, 715 (1982).

<sup>28</sup>Charney, International Agreements and the Development of Customary International Law, 61 Wash. L. Rev. 971, 992 (1986).

<sup>29</sup>W.M. Bush, supra note 27, at 103.

Charter of the United Nations."<sup>30</sup>

Article IX of the Antarctic Treaty requires that the parties undertake actions in "furtherance of the principles and objectives of the Treaty." Specifically it charges nations with the task of implementing measures for the "preservation and conservation of living resources in Antarctica."<sup>31</sup> Thus the Treaty is reinforced by a number of recommendations adopted at Consultative Meetings and a number of related international treaties<sup>32</sup> all of which come together to create a regime that expresses customary law for Antarctica which is recognized as binding on all nations.<sup>33</sup>

**B. Vulpinia Violated Customary International Law Of The Sea.**

**1. Customary norms of international law mandate the vigilant protection of the marine environment.**

Under part XII of the 1982 United Nations Convention on the Law of the Sea (LOS)<sup>34</sup> all nations are recognized to have the general obligation "to protect and preserve the marine

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<sup>30</sup>Antarctic Treaty, supra note 4, preamble.

<sup>31</sup>Id. at art. IX(f).

<sup>32</sup>CAMLR, supra note 19; Convention for the Conservation of Antarctic Seals, 1 June 1972, 29 U.S.T. 441, T.I.A.S. No. 8826.

<sup>33</sup>During the I.L.C. debates some members pointed to the Antarctic Regime as an example of an objective regime. Draft Articles on the Law of Treaties, [1966] 2 Y.B. Int'l L. Comm'n 51. See also, Zegers Santa Cruz, supra note 25, at 433. "It's [the Antarctic Treaty] dispositions, and resultant activities by the Consultative Parties, have been, at least tacitly, accepted by the international community."

<sup>34</sup>LOS supra note 8.

environment."<sup>35</sup> States, therefore, must take "all measures . . . that are necessary to prevent, reduce and control pollution of the marine environment."<sup>36</sup> Specifically, States are obligated to take measures which are "designed to minimize to the fullest extent . . . [the] release of toxic, harmful or noxious substances . . . ."<sup>37</sup> Further, States must also take measures "necessary to protect and preserve rare or fragile ecosystems as well as the habitat of . . . threatened . . . species and other forms of marine life."<sup>38</sup>

Vulpinia, in dumping the hazardous wastes into the Southern Ocean did not uphold its obligation to "protect and preserve" what has come to be recognized as a "rare or fragile ecosystem."<sup>39</sup> This breach in fact caused irreparable damage to the ecosystem by bringing about the death of a species.

**2. The environmental protections embodied in LOS codify customary international law binding on Vulpinia.**

The provisions of LOS relating to the preservation of the environment codify customary international law.<sup>40</sup> The United States, one of the prominent non-signatories to LOS, while

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<sup>35</sup>Id. at art. 192.

<sup>36</sup>Id. at art. 194, para. 1.

<sup>37</sup>Id. at art. 194, para. 3(a).

<sup>38</sup>Id. at art. 194, para. 5.

<sup>39</sup>See generally United Nations Secretary General, Report on Antarctica, U.N. Doc. A/39/583 (Part 2) (1984).

<sup>40</sup>Restatement (Revised), Part V, Introductory Note. Joyner, The Southern Ocean and Marine Pollution: Problems and Prospects, 17 Case W. Res. J. Int'l L. 165, 180 (1985).

rejecting the provisions dealing with deep sea-bed mining,<sup>41</sup> nonetheless recognizes that the Convention otherwise expresses customary international law: "the convention . . . contains provisions with respect to traditional uses of the oceans which generally confirm maritime law and practice and fairly balance the interests of all States."<sup>42</sup> Thus, obligations to protect and preserve the marine environment, as set forth in part XII of LOS must be regarded as customary law binding on Vulpinia.

The LOS Convention, as it expresses customary law in regard to the preservation of the marine environment, merely reiterates provisions set forth in an earlier treaty -- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (DUMP).<sup>43</sup> In this Treaty, States are specifically prohibited from dumping hazardous wastes at sea.<sup>44</sup> This prohibition must be regarded as part of customary international law of the Sea that is binding on Vulpinia.

**C. Vulpinia Violated Treaty Obligations Owed To Leonia As A Signatory To The WASTE Treaty.**

**1. Vulpinia breached its treaty obligations under the Convention on the Control of Transboundary Movements of Hazardous Wastes.**

Under Vulpinian municipal law, there existed no prohibition

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<sup>41</sup>The Law of the Sea Convention, White House Office of Policy Information, Issue Update No. 10 at 8 (April 15, 1983).

<sup>42</sup>83 Dep't State Bull. No. 2075 at 70 (1983).

<sup>43</sup>Convention on the Prevention of Marine Pollution By Dumping of Wastes and Other Matter, 29 Dec. 1972, 26 U.S.T. 2403, T.I.A.S. No. 8165 [hereinafter DUMP].

<sup>44</sup>Id. at art. IV, para. 1(a).

against the export of hazardous waste to the Antarctic. Vulpinia's failure to implement law prohibiting the export of hazardous waste to the Antarctic was in violation of the Convention on the Control of Transboundary Movement of Hazardous Waste (WASTE).<sup>45</sup> Under the provisions of the Convention "the parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60 degrees South latitude, whether or not such wastes are subject to transboundary movement."<sup>46</sup>

**2. Vulpinia, as a signatory to the WASTE Treaty, was under an obligation not to defeat the object and purpose of the Treaty.**

The purpose of the WASTE Treaty is to "protect . . . the environment against the adverse effects which may result from the generation and management of hazardous waste and other waste."<sup>47</sup> Under international law, Vulpinia, a signatory to the WASTE Treaty, owes Leonia, also a signatory to the WASTE Treaty, the obligation to refrain from acts which will defeat the object and purpose of the treaty.<sup>48</sup> Vulpinia's failure to prohibit the export of hazardous waste to the Antarctic, which eventually resulted in the irreversible loss of a species, effectively

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<sup>45</sup>Environmental Program & Conference of Pleni-potentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 22 March 1989, reprinted in 28 I.L.M. 646 (1989) [hereinafter WASTE].

<sup>46</sup>Id. at art. 4, para. 6.

<sup>47</sup>Id. at preamble.

<sup>48</sup>Vienna Convention, supra note 5, art. 18.

defeated the object and purpose of the WASTE Treaty.

**D. Vulpinia Violated Customary Norms Of International Environmental Protection.**

**1. Customary international law imposes a general duty to protect the global environment.**

It is the recognition that man has the capability to cause harm, which is beyond the earth's recuperative power, that underlies the global commitment to environmental protection. This commitment to environmental protection is reflected in Trail Smelter<sup>49</sup> where the Arbitral Commission ruled that "no State has the right to use or permit the use of its territory in such a manner as to cause injury . . . to the territory of another or the property or persons therein."<sup>50</sup> The Arbitral Commission found that the pollution from a Canadian smelter was causing harm to the environment of the State of Washington and was therefore illegal under international law. Subsequent international decisions in Corfu Channel<sup>51</sup> and Lake Lanoux<sup>52</sup> support this prohibition against extraterritorial pollution.

This commitment to environmental protection is also reflected in numerous international conventions which command the

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<sup>49</sup>Trail Smelter Arbitration (U.S. v. Can.), 9 Ann. Dig. & Repts. Pub. Int'l L. Cases 315 (1941).

<sup>50</sup>Id. at 317. See also Legal Aspects of the Conservation of the Environment, Report of the Committee, International Law Association Report of the Fifty-Eighth Conference Held at Manila 383 (1978).

<sup>51</sup>Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4.

<sup>52</sup>Lake Lanoux Arbitration (Fr. v. Spain), 12 I.L.R. 101 (1957).

parties to respect the environment,<sup>53</sup> as well as international declarations that have enunciated principles respected by all nations.<sup>54</sup> One of the most important statements expressing the affirmative duty of all States to protect the environment is the Stockholm Declaration on the Human Environment (Stockholm Declaration).<sup>55</sup>

Under the celebrated Principle 21 of the Stockholm Declaration there exists an internationally recognized obligation on the part of all States to "ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or to areas beyond the limits of national jurisdiction."<sup>56</sup> More specifically, Principle 6 of the Stockholm Declaration forbids the discharge of toxins which "exceed the capacity of the environment to render them harmless"<sup>57</sup> and Principle 7 obligates States "to take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to . . . living resources and marine life . . . ."<sup>58</sup>

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<sup>53</sup>See e.g. DUMP, supra note 43, art. 1 and LOS, supra note 8, art. 194.

<sup>54</sup>See e.g. Report of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States, reprinted in 17 I.L.M. 1094 (1978); Stockholm Declaration, supra note 9.

<sup>55</sup>Stockholm Declaration, supra note 9.

<sup>56</sup>Id. at Principle 21.

<sup>57</sup>Id. at Principle 6.

<sup>58</sup>Id. at Principle 7.

It is particularly the passage of these declarations by the United Nations General Assembly that has helped to crystallize these principles into rules of international law which are binding on all States.<sup>59</sup> Although United Nations resolutions are not per se binding, they may be a source of legal obligations.<sup>60</sup> The circumstances surrounding the passage of these declarations are significant. The Arbitral Commission in Texaco Overseas Petroleum,<sup>61</sup> in determining the legal effect to be given to a United Nations Resolution, looked at both the circumstances surrounding the passage of the Resolution, particularly the voting record, as well as relevant state practice.<sup>62</sup> When the Stockholm Declaration, one of the most important statements expressing the affirmative duty of all States to protect the environment, was brought before the General Assembly there was overwhelming support. The Declaration passed by 112 votes to none with 10 abstentions.<sup>63</sup> Thus, the passage of the United Nations Resolution, coupled with subsequent State practice which has been consonant with its principles, has resulted in the recognition of the Stockholm Declaration as a

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<sup>59</sup>Brownlie, A Survey of Customary Rules of Environmental Protection, 13 Nat. Resources J. 179, 187 (1973).

<sup>60</sup>G. Fitzmaurice, Special Report to the Institut de Droit International in Livre du Centenaire 1873-1973, 269 (1973).

<sup>61</sup>Texaco Overseas Petroleum v. Libyan Arab Republic, 17 I.L.M. 1 (1978).

<sup>62</sup>Id. at 29.

<sup>63</sup>Resolution 2994, U.N. Doc. A/PV 2112, at 6 (prov. ed. 1972).

document which expresses customary international law binding on all States.<sup>64</sup>

The recognized universal application of these rules, reinforced by the specific language, "beyond the limits of national jurisdiction" clearly makes these obligations applicable Antarctic.<sup>65</sup> These obligations may in fact take on a special meaning in the Antarctic where both the terrestrial and marine life are highly sensitive to the activities of man.<sup>66</sup>

**2. Vulpinia's actions in the Antarctic region constitute an international crime.**

International law recognizes that the serious breach of customary norms of environmental protection may constitute an international crime.<sup>67</sup> The International Law Commission (ILC) in the 1976 Draft Convention on State Responsibility,<sup>68</sup> set forth a list of those acts which are recognized as international crimes. Prominent on this list is "a serious breach of an international

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<sup>64</sup>Brownlie, RULES OF ENVIRONMENTAL PROTECTION 188; Bilder, The Present Legal and Political Situation in Antarctica, in THE NEW NATIONALISM AND THE USE OF COMMON SPACES: ISSUES IN MARINE POLLUTION AND THE EXPLORATION OF ANTARCTICA 193 (J. Charney 1982); Restatement (Revised) sec. 601.

<sup>65</sup>Bilder, THE PRESENT LEGAL AND POLITICAL SITUATION IN ANTARCTICA 195 (J. Charney ed. 1982).

<sup>66</sup>See generally, Gulland, THE MANAGEMENT REGIME FOR LIVING RESOURCES IN THE ANTARCTIC LEGAL REGIME 219 (C. Joyner & S. Chopra eds. 1988).

<sup>67</sup>Graefath, Responsibility and Damages Caused: Relationship Between Responsibility and Damages in 185 Academie De Droit International, Recueil Des Cours 54 (1984).

<sup>68</sup>Draft Articles on State Responsibility, [1980] 2 Y.B. Int'l L. Comm'n, art. 19, para. 3, U.N. Doc. A/CN.4/SER.A/1980/Add.1 (pt.2).

obligation of essential importance for the safeguarding and preservation of the human environment."<sup>69</sup>

The dumping of hazardous waste leading to the irreversible loss of a species must be regarded as a "serious" breach of customary norms of environmental protection. Any unlawful act that causes the death of a species will necessarily have a "serious" effect on the ecosystem. The death of a species may have deleterious consequences which are not always readily ascertainable. Moreover, such action is violative of the "solemn responsibility to protect and improve the environment for future generations."<sup>70</sup> Since the survival of species and the preservation of the human environment are inextricably linked, the activities engaged in by Vulpinia must necessarily be regarded as an international crime.<sup>71</sup>

**E. The Exchange Of Notes Between Two Countries Constitutes A Mutually Binding Agreement.**

**1. Vulpinia violated obligations set forth in the exchange of notes executed 2 February 1988.**

Under the exchange of notes executed between Vulpinia and Leonia on 2 February 1988, Vulpinia had undertaken the obligation to remove the 100 drums of waste "from the Antarctic Treaty area in order to re-establish the situation that previously

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<sup>69</sup>Id. at art. 19(3)(d).

<sup>70</sup>Stockholm Declaration, supra note 9, principle 1.

<sup>71</sup>Graefath, Responsibility and Damages Caused: Relationship Between Responsibility and Damages in 185 Academie De Droit International Recueil Des Cours 57 (1984). International law recognizes the gravity of acts injurious to the environment by considering all States as "injured states" if such an act occurs.

existed."<sup>72</sup> Vulpinia violated this obligation in that it failed to return the area to the status quo. Vulpinia's actions instead had the effect of permanently damaging the Antarctic environment through the death of a species.

**2. The obligations set forth in the exchange of notes are binding on Vulpinia.**

Under the Vienna Convention on the Law of Treaties, a State may express its consent to be bound through an exchange of notes.<sup>73</sup> The solemn and binding character of the exchange of notes between Vulpinia and Leonia is reinforced by the fact that these notes were registered in compliance with Article 102 of the United Nations Charter.<sup>74</sup>

**III. ASSUMING, ARGUENDO, THAT VULPINIA'S ACTIONS ARE LAWFUL, VULPINIA IS STILL LIABLE FOR CAUSING HARM TO THE ANTARCTIC ENVIRONMENT.**

**A. Vulpinia Is Liable Under The Doctrine Of International Liability For Injurious Consequences Arising Out Of Acts Not Prohibited By International Law.**

There is a growing recognition of the notion that a State may be held liable even though its activities have not been found to be wrongful.<sup>75</sup> The ILC has in fact given its approval to the

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<sup>72</sup>Compromis, p. 4.

<sup>73</sup>Vienna Convention, supra note 5, art. 13.

<sup>74</sup>U.N. Charter, art. 102. "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it."

<sup>75</sup>International Liability For Injurious Consequences Arising Out of Acts Not Prohibited By International Law, [1983] 2 Y. B. Int'l L. Comm'n 212, U.N. Doc. A/CN.4/373 [hereinafter International Liability].

general concept of liability without unlawfulness.<sup>76</sup>

The concept of liability without unlawfulness has grown out of the recognition that even the lawful activities of man have come to pose a serious threat to the world ecosystem.<sup>77</sup>

Liability without unlawfulness is predicated, therefore, largely on the fact that something is necessary to "discourage the shabby compromises that assail the biosphere and leave the victims of avoidable disaster with inadequate redress."<sup>78</sup> For if international law forces us to wait for a discernible wrong before engaging state liability, it may not secure sufficient protection for the global environment.

To ensure vigilant protection of the environment, Vulpinia must be liable for the harm caused by its actions. Thus, even if Vulpinia is adjudged not to have violated any law, it is nonetheless under an obligation to compensate for the harm caused by its actions.

**B. Vulpinia Is Liable Under The Doctrine Of Abuse Of Rights.**

The doctrine of abuse of rights recognizes that co-equal States must not exercise their rights in a manner that may cause

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<sup>76</sup>International Liability For Injurious Consequences Arising Out of Acts Not Prohibited By International Law, [1985] 2 Y. B. Int'l L. Comm'n 97, 98-99, U.N. Doc. A/CN.4/394.

<sup>77</sup>Magraw, Transboundary Harm: The International Law Commission Study of "International Liability", 80 Am. J. Int'l L. 305, 321 (1986).

<sup>78</sup>International Liability, supra note 75, at 218.

harm beyond their boundaries.<sup>79</sup> Exercising a right without regard to the possible extraterritorial harm that may ensue cannot claim protection from the law.<sup>80</sup> Assuming, arguendo, that Vulpinia's actions were lawful, the dumping of the hazardous waste in the Southern Ocean created a significant risk. For while Vulpinia knew that the waste would dissolve in ten days, they acted without regard to the possible damage that could be done to the fragile Antarctic ecosystem in the interim.

**IV. INTERNATIONAL LAW OBLIGATES VULPINIA TO MAKE REPARATIONS FOR THE DAMAGE IT CAUSED OR TO TAKE OTHER REMEDIAL MEASURES NECESSARY TO PROTECT THE ANTARCTIC ENVIRONMENT.**

Having violated international law, Vulpinia now has a duty to repair the damage caused by its unlawful act.<sup>81</sup> As this Court pointed out in Chorzow Factory, "it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."<sup>82</sup> Additionally, other remedies are available that would assist in the goal of "safeguarding the environment and protecting the integrity of the ecosystem of the seas surrounding Antarctica."<sup>83</sup>

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<sup>79</sup>H. Lauterpacht, *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY* 286, 298 (1933).

<sup>80</sup>B. Cheng, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS* 122 (1953).

<sup>81</sup>M. Whiteman, *DAMAGES IN INTERNATIONAL LAW* 829 (1976).

<sup>82</sup>Chorzow Factory (Ger. v. Pol.), 1927 P.C.I.J. (ser.A) No. 13, at 29.

<sup>83</sup>CAMLR, supra note 19.

**A. Vulpinia Must Make Reparations To Restore The Antarctic Environment As Far As Possible To The Status Quo.**

Restitutio in integrum has long been recognized as the primary redress for the violation of international law.<sup>84</sup> Ordering restitutio in integrum would make Vulpinia responsible for the restoration of the condition that existed before the damage was done by its illegal act. Vulpinia, having damaged the Antarctic environment, is now responsible for the cost of restoration.

The fact that it is impossible to completely restore the situation in the case of the destruction of an entire species does not relieve Vulpinia from its obligation to make restitution. It is well established that:

The essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would . . . have existed if that act had not been committed.<sup>85</sup>

Several factors must be taken into consideration in determining the amount of restitution needed in order to restore the Antarctic environment "as far as possible" to its original state. First, an extensive study of the Stella Maris area will need to be conducted to ensure that no previously undetected damage has been done due to Vulpinia's dumping of hazardous

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<sup>84</sup>United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 4; Chorzow Factory (Ger. v. Pol.), 1927 P.C.I.J. (ser.A), No. 13.

<sup>85</sup>Chorzow Factory (Ger. v. Pol.), 1928 P.C.I.J. (ser.A), No. 17 at 41 (Merits) (emphasis added).

waste. This study will need to determine the extent to which the death of the species has adversely affected the region's ecosystem. Vulpinia should pay to Leonia the cost of such research as part of its restitution. Second, Vulpinia should be required to pay for periodic follow-up studies of the region to be certain that the damage it caused has had no long-term effects on the unique Antarctic environment. Third, while species are not interchangeable, an attempt should be made to locate another species of Antarctic marine life similar to the one destroyed which is capable of living in the environment once enjoyed by the now extinct starfish. Members of this species should be transplanted to the waters off the Stella Maris ice shelf. This could mitigate any damage that may possibly have been done to the region's ecosystem.

The cost of restoration should be awarded to Leonia which is in a better position than Vulpinia to make the necessary efforts to repair the damage. As a Consultative Party to the 1959 Antarctic Treaty, Leonia has a special duty towards the maintenance of the Antarctic environment. Leonia also has the experience and knowledge needed to effectively monitor and protect the Antarctic region.<sup>86</sup>

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<sup>86</sup>As a prerequisite to becoming a Consultative Party to the 1959 Antarctic Treaty, Leonia has "demonstrate[d] its interest in Antarctica by conducting substantial scientific research activity there . . . ." Antarctic Treaty, supra note 4, art. IX, para. 2.

**B. Vulpinia Must Pay Additional Pecuniary Damages To Be Used By Leonia In Its Efforts To Preserve The Antarctic Environment.**

In both the Wimbledon case<sup>87</sup> and in the Corfu Channel case<sup>88</sup> this Court has recognized the need for an offending State to pay monetary damages in addition to those awarded for restitution. The Court also addressed the issue of monetary damages in the Chorzow Factory case stating that:

Restitution in kind . . . [,]payment of a sum corresponding to the value which restitution in kind would bear . . . [and] the award if need be of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which would serve to determine the amount of compensation due for an act contrary to international law.<sup>89</sup>

Vulpinia's violation of international law has resulted in an injury which should be compensated for by the award of monetary damages. Such damages are especially appropriate in cases involving irreversible damage to the environment. Due to the extreme nature of the injury, it is crucial to ensure that it does not happen again. The monies awarded will be used by Leonia to devise preventative measures to preserve the Antarctic environment and to promote and support the objectives of the Antarctic Legal Regime.

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<sup>87</sup>S.S. Wimbledon, 1923 P.C.I.J. (ser.A), No. 1.

<sup>88</sup>Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4.

<sup>89</sup>Chorzow Factory (Ger. v. Pol.), 1928 P.C.I.J. (ser. A), No. 17 at 41 (Merits) (emphasis added).

C. Vulpinia's Disregard For The Antarctic Environment And The Resulting Damage Justify The Award Of Punitive Damages.

Punitive damages are a means of "mark[ing] disapproval of the wrongdoer's acts . . . ." <sup>90</sup> While the Court has been hesitant in awarding punitive damages on the international plane, this has generally been due to either the fact that the compromis did not provide for such damages <sup>91</sup>, or that the facts of the particular case did not warrant such an award. <sup>92</sup> In both the Mokes <sup>93</sup> case and the I'm Alone case <sup>94</sup>, an international arbitral tribunal did recognize and award punitive damages as a means of condemning the particular State's actions.

The Court should award punitive damages against Vulpinia as a means of signalling potential violators and discouraging similar activity in the future. Vulpinia's illegal act has resulted in the permanent loss of a species -- a loss that can never be fully restored. Assessing punitive damages against

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<sup>90</sup>D. Gray, JUDICIAL REMEDIES IN INTERNATIONAL LAW 26 (1987).

<sup>91</sup>Eagleton, Measure of Damages in International Law, 39 Yale L.J. 52, 62 (1929).

<sup>92</sup>Cheek's Case & Delagoa Bay Railway Case, collected in J.B. Moore, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE U.S. HAD BEEN A PARTY 1899; 1865 (1898). See also Metzger Case (Ger. v. Venez.), 10 R. Int'l Arb. Awards 417 (1903); Torrey Case (U.S. v. Venez.), 9 R. Int'l Arb. Awards 225 (1903).

<sup>93</sup>See J. B. Moore, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE U.S. HAS BEEN A PARTY 3411 (1898). The Court awarded damages to condemn the practice of forcing loans.

<sup>94</sup>Canada v. United States, 3 R. Int'l Arb. Awards 1609 (1935). In addition to compensatory damages, the Court awarded the petitioner \$25,000 to formally acknowledge the illegal act perpetrated by the United States.

Vulpinia would act as a preventative measure by sending a message to States that such violations of international law will be condemned by the international community.

Awarding punitive damages would also be consistent with the notion of Vulpinia's actions as an international crime,<sup>95</sup> the punishment of which is necessary in order to maintain the integrity of international law.

**D. There Exist Other Remedies Which The Court May Order To Prevent A Similar Incident From Occurring In The Future.**

**1. The Court should issue injunctions which would require Vulpinia to assist in the effort to maintain the Antarctic's pristine environment.**

The Court should issue an injunction prohibiting Vulpinia from disposing of any additional hazardous waste in the Antarctic region.<sup>96</sup> As a signatory to the WASTE Treaty,<sup>97</sup> Vulpinia is already under an obligation to refrain from any activities which may frustrate the object and purpose of that Treaty.<sup>98</sup> An injunction by the Court would reinforce Vulpinia's obligation under the Treaty and would only be necessary until Vulpinia's ratification of the Treaty.

The Court should also issue an injunction ordering Vulpinia

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<sup>95</sup>See supra notes 69-72 and accompanying text.

<sup>96</sup>"The Court shall have the power to indicate . . . any provisional measures which ought to be taken to preserve the respective right of either party." Statute of the International Court of Justice, 59 Stat. 1055, T.S. No. 993, 3 Bevens 1179, art. 41, para. 1.

<sup>97</sup>WASTE, supra note 45.

<sup>98</sup>Vienna Convention, supra note 5, art. 18.

to fully cooperate with Leonia in its efforts to repair the Antarctic environment, including the provision of any technical assistance that would be needed.

**2. The issuance of a declaratory judgement or the imposition of nominal damages would be an unacceptable remedy to satisfy the damage caused by Vulpinia's actions.**

The claim against Vulpinia can only be satisfied by the award of a remedy which will make available the funds necessary to repair the damage done by Vulpinia. A declaratory judgment or imposition of nominal damages will have no effect on efforts to repair the damage that Vulpinia has done to the Antarctic environment.

The Court has before it the opportunity to foster the growth of international environmental protection law. Awarding a remedy without any deterrent effect, such as a declaratory judgment or nominal damages, would greatly impede the growth of this important area of international law.

#### **CONCLUSION**

For the foregoing reasons, the Applicant State of Leonia respectfully requests that this Honorable Court find, adjudge and declare as follows:

1. That the dumping of hazardous waste in the Southern Ocean by Vulpinia was illegal under international law.
2. That Vulpinia is liable for the violation of customary international law and treaty obligations.