IN THE

INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

THE GOVERNMENT OF ATLANTIS

APPLICANT,

v.

THE GOVERNMENT OF BERGENIA

RESPONDENT.

FEBRUARY TERM

1992

On Submission to the

International Court of Justice

MEMORIAL FOR THE APPLICANT

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MOOT COURT PROBLEM

STATEMENT OF JURISDICTION

This memorial is submitted to the International Court of Justice (ICJ) as provided for in the Compromis between the States of Atlantis and Bergenia in accordance with Article 36, paragraph 1 of the ICJ Statute. Article 38 of the ICJ Statute states that the Court, when determining a dispute in accordance with international law, shall apply:

1. international conventions . . . establishing rules expressly recognized by contesting states;

2. international custom, as evidence of a general practice accepted as law;

3. the general principles of law recognized by civilized nations;

4. judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law.

STATEMENT OF FACTS

Four oil producing states- Atlantis, Bergenia, Carola and Devon occupy an area bordering on a semi-enclosed sea known as the Media Gulf. To regulate oil production, the states joined the Organization of Oil-Producing States (OPS). The OPS controls prices, production and purchasers of oil.

Atlantis and Bergenia signed the Pipeline Treaty in 1978 to transport Bergenian oil through the country of Atlantis. Oil began flowing through the pipeline in 1980.

During the 1980's, Bergenia passed laws creating ethnic discrimination against the Ethlantians, a group of the same cultural and racial characteristics as the people of Atlantis. The Ethlantians resided in Province, an area within the territory of Bergenia. Bergenia required the Ethlantians to live in defined areas, killed demonstrators, executed them without trial, tortured people to force confessions to crimes they had not committed, and transported them to ghetto communities.

Atlantis complained to Bergenia concerning its oppressive treatment of the Ethlantians. Atlantis also called Bergenia's attention to the fact that Bergenia was exporting double the amount of oil above its quota agreement set with the OPS. Oil prices had fallen 17% since Bergenia's excessive output.

On 1 January 1990, Atlantis made a formal demand upon Bergenia to correct its policies of oppressive treatment towards the Ethlantians warning Bergenia that Atlantis would take any actions necessary to end the oppression. International teams reported the Ethlantians had been oppressed by the Bergenian government and deprived of their rights.

On 1 July 1990, after repeated requests of Bergenia to reform its excess export practices, Atlantis shut down the pipeline to compel Bergenia to fulfill its OPS commitments.

Bergenia formed a coalition of states consisting of Carola, Devon, Victoria, and Bergenia which would act as a unified military force under the control of Bergenia.

On 10 August 1990, Atlantis sent military forces into Province claiming its right to self defense, its rights under the United Nations Charter, and its rights relating to humanitarian intervention. Control of Province was quickly attained by Atlantis.

Bergenia petitioned the United Nations Security Council, which passed Resolution 910, condemning the invasion and demanding withdrawal of Atlantisan forces. Resolution 928 was passed and authorized coalition member states to use all necessary means to uphold and implement Resolution 910 unless Atlantis fully complied with Resolution 910 by 15 October 1990.

Atlantis did not withdraw and on 16 October 1990, Coalition forces under the military control of Bergenia engaged Atlantisan forces in Province and Atlantis itself.

Coalition forces destroyed the Alpha power station in Atlantis which resulted in the death of 500 civilians. A bridge in the capital of Atlantis was destroyed, creating a shortage of food and medical supplies to the civilian population. Finally, the Delta Sanitation Plant was destroyed, which resulted in a cholera outbreak in the civilian population of Atlantis.

Victorian ground troops executed Atlantisan prisoners of war near the Epsilon caves while the prisoners were attempting to surrender. Bergenian troops executed 30 members of the Ethlantian Liberation Front in the village of Zeta.

While Bergenian armies attempted to force march 800 Atlantisan captives to the Fort Mu prison camp, 100 prisoners died.

Atlantis launched a missile attack against a missile-launching site in the capital of Bergenia. This attack caused some damage to a nearby hospital, which Bergenian forces had located only one-eighth of a mile from the missile site.

Atlantisan airmen attacked a general targeting area in the Bergenian city of Lambda inflicting civilian casualties.

Bergenia spilled oil from the Atlantis' Theta Refinery Complex causing damage to desalination plants and environmental destruction.

Atlantis ignited the Iota oil fields in Province to obstruct attacks by Coalition forces. Bergenian forces ignited the Kappa oil fields in Atlantis creating widespread environmental destruction.

Fighting continued until 30 December 1990, when a provisional cease-fire agreement was made. The Security Council adopted Resolution 930 which instructed the signatory states to take measures to assure peace and promptly resolve their claims against each other. Atlantis and Bergenia signed a Compromis bringing their disputes regarding Atlantis' closing of the pipeline, Bergenia's oil export practices, and the recent military actions, before the International Court of Justice.

SUBMISSIONS TO THE COURT

I. Declare that Applicant's closure of the oil pipeline was in full compliance with international law, and its duties owed under the Pipeline Treaty.

II. Declare that Respondent's oil export activities were in violation of their duties under the Pipeline Treaty, the OPS agreement, and international law.

III. Declare that Applicant's actions in Province were a valid exercise of the right of self-defense, humanitarian intervention, and intervention to support self-determination of the Ethlantian peoples.

IV. Declare that Applicant's war conduct was legal.

V. Declare that Respondent violated international law by launching hostilities against Applicant and by committing war crimes.

QUESTIONS PRESENTED

I

WAS APPLICANT'S CLOSING OF THE PIPELINE CONSISTENT WITH APPLICABLE INTERNATIONAL AGREEMENTS?

II

DID THE CLOSING OF THE PIPELINE BY APPLICANT CONSTITUTE A USE OF A NON-FORCIBLE COUNTERMEASURE WHICH WAS VALID UNDER INTERNATIONAL LAW?

III

DID RESPONDENT'S OIL EXPORT PRACTICES VIOLATE INTERNATIONAL LAW AND APPLICABLE INTERNATIONAL AGREEMENTS?

IV

WAS APPLICANT'S MILITARY EFFORTS COMMENCING AGAINST RESPONDENT IN COMPLIANCE WITH INTERNATIONAL LAW?

V

DID RESPONDENT'S ATTACK UPON APPLICANT AND ITS SUBSEQUENT WAR CONDUCT VIOLATE INTERNATIONAL LAW?

SUMMARY OF THE ARGUMENT

The closing of the oil pipeline is consistent with Applicant's responsibilities under the Pipeline Treaty. The Treaty may be held in suspension as a result of Respondent's prior breach of the Treaty by refusing to abide by OPS export quotas.

Interpreted in light of Article 31 of the Vienna Convention on the Law of Treaties, Respondents had a duty under the Pipeline Treaty to abide by OPS export quotas. By exporting double the amount of oil authorized by the OPS agreement, Respondents committed a material breach of the Pipeline Treaty. Because Respondent committed a material breach of the Treaty, Applicant is authorized by customary international law as codified in the Vienna Convention to hold the Treaty in suspension. Because Applicants may hold the Treaty in suspension, the closure of the pipeline does not violate the terms of the treaty.

Applicants' closure of the pipeline is valid under international law because it was a legal use of an economic non-forcible countermeasure. NFC's are recognized under customary international law within the Charter of the United Nations and International Court of Justice opinions.

Applicant's use of a countermeasure meets the tests as outlined by the I.C.J. in the *Naulilaa* case. Respondent committed a prior breach of international law by failing to fulfill their duty under both the Pipeline Treaty and the OPS agreement. Applicant made prior attempts to redress the problem before closing the pipeline by repeatedly requesting Respondent to reduce oil exports. Applicant's countermeasure was proportional to Respondent's breach. The countermeasure temporarily prevented Respondent from exporting oil through the pipeline in order to allow oil prices to stabilize.

Reducing oil prices and promoting economic stability were a result proportional to Respondent's breach.

Respondent's oil export activities violate standards of international law by breaching their general duty to refrain from harmful economic activity and their duty to promote economic progress. Respondents have additionally violated standards of international law by breaching their duties under the OPS agreement. The United Nations has codified the custom of international law that gives states the duty to avoid interference with the economic rights and development of other countries. Moreover, the United Nations noted in the "Charter of Economic Rights and Duties of States" that nations also have a duty to promote economic development and cooperation. Respondent breached its duties to avoid economic interference and promote development. By refusing to comply with OPS quotas, Respondent caused damage to Applicant's economy and threatened to destroy the OPS.

Applicant's actions in Province were lawful and justified as a legitimate act of self-defense. Article 51 of the U.N. Charter should be interpreted to authorize Applicant to act in individual self defense when Respondent possessed great quantities of first strike weaponry, and had fully mobilized its military forces on the Atlantisan border. Article 51 should additionally be interpreted to allow Applicant to exercise anticipatory self-defense when facing Respondent's aggressive military posture.

Applicant was justified in intervening on behalf of the Ethlantians based on humanitarian grounds. Humanitarian intervention is a well recognized exception to the general principle of non-intervention under customary international law. The United Nations Charter recognizes an individual's fundamental human rights. The Applicant had a duty to intervene on behalf of the Ethlantians based on the principle of erga omnes. After repeatedly

requesting and being denied assistance by the U.N., Applicant was left with no recourse but to take unilateral action. Respondent's oppression of the Ethlantian minority shocked the conscience of mankind thus provoking Applicant's intervention.

The Ethlantians have a right to self-determination, a principal objective of the United Nations Charter. Oppression by the Respondent prevented the Ethlantians from exercising that right. The Applicant intervened to allow the Ethlantians to express their rights of self-determination.

Respondent lacked authority to attack the sovereign territory of Applicant because U.N. Resolution 928 was invalid. The U.N. Security Council must first seek peaceful settlement of disputes. Resolution 928 attempted to authorize Respondent to "use all available means" to settle its dispute with Applicant. Because the resolution did not first require Respondent to attempt a peaceful means of dispute resolution, it is invalid. In addition, Respondent's escalation of the conflict vastly exceeded their legitimate state interests.

The Respondent committed numerous war crimes during its conduct of hostilities. Their attacks upon the natural environment were in gross violation of U.N. Protocol. Bridges and a power station were destroyed with great cost to the Applicant's civilian population while resulting in little military advantage gained. International law prohibits targeting of the civilian population.

The Respondent introduced biological hazards through destruction of a sanitation plant despite the condemnation of biological warfare by the international community.

Prisoners of war were mistreated and executed by the Respondent. Surrendering soldiers were executed needlessly. Liberation Front members were

executed despite their status as prisoners of war. From lack of proper care, the Respondent caused the loss of excessive numbers of prisoners during a forced march to a prison camp.

Applicant respectfully requests that this honorable Court adjudge and declare that 1) the oil export practices of Bergenia violate international law and applicable international agreements; 2) that the launching of hostilities by Bergenia on 16 October 1990, as well as its conduct of those hostilities violated international law; 3) that Atlantis was justified in closing the pipeline and 4) that the actions of Atlantis to protect the Ethlantians and to defend itself are consistent with international law, the UN Charter, and applicable international agreements.

ARGUMENT AND AUTHORITIES

I. APPLICANT'S CLOSING OF THE PIPELINE IS CONSISTENT WITH APPLICABLE INTERNATIONAL AGREEMENTS.

A. APPLICANT IS UNDER NO DUTY TO ALLOW RESPONDENT TO EXPORT OIL THROUGH THE PIPELINE BECAUSE APPLICANT MAY HOLD THE PIPELINE TREATY IN SUSPENSION.

Respondent had a duty to observe the OPS oil production limits, and its failure to observe those limits constituted a breach of their duties under the Pipeline Treaty. As a result of this breach, Applicant has a right under international law to suspend its obligations to keep the pipeline open.

1. THE PIPELINE TREATY MUST BE INTERPRETED IN LIGHT OF THE OPS AGREEMENT.

In its *Namibia* advisory opinion to the U.N. Security Council, the I.C.J. stated that the "Vienna Convention is a codification of the existing customary law on the subject (of treaty interpretation)."[1] Accordingly, the Court should give a great deal of weight to the Vienna Convention when interpreting treaties.

Article 31 of the Vienna Convention on the Law of Treaties provides that "interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty."[2] The Gulf states concluded the OPS agreement to regulate oil exports and production in the region.[3] Executed later, the objective of the Pipeline Treaty was to provide Respondent with a means to export oil over Applicant's territory. Because the OPS agreement controls the object of the Pipeline Treaty (oil exports), the Vienna Convention requires that the Treaty be interpreted in accordance with the oil export quotas set by the OPS council.

Although its directives and resolutions are not legally binding, the OPS agreement still creates important obligations for the signatory parties. Oscar Schachter, an important international legal scholar noted that "even

non-binding agreements can be authoritative and controlling for the parties."[4] While the OPS agreement does not allow a judicial remedy for the breach of its provisions, the agreement does impose important restrictions on Respondent and should be interpreted as part of the Pipeline Treaty.

2. RESPONDENT'S BREACH OF THE PIPELINE TREATY WILL ALLOW APPLICANT TO SUSPEND THE OPERATION OF THE TREATY UNDER ARTICLE 60 OF THE VIENNA CONVENTION.

During the early 1980's, Respondent began exporting double the amount of oil called for by the OPS member states.[5] According to Article 60 of the Vienna Convention, a material breach of a treaty consists of a violation of a provision essential to the accomplishment of the object or purpose of the treaty.[6] The Pipeline Treaty provided Respondent with a means to export oil within the limits set by the OPS member nations. By violating the OPS quotas, Respondent committed a material breach of an essential provision of the Pipeline Treaty which must be interpreted in light of the OPS agreement.

The Vienna Convention provides that "a material breach of a bilateral treaty by one of the parties entitles the other party to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part."[7] Because Respondent breached its duty under the Pipeline Treaty by exporting double the amount of oil allocated to it by the OPS agreement, Applicant may hold the Pipeline Treaty in suspension and has no duty to allow Respondent to export oil through the pipeline.

II. THE CLOSING OF THE PIPELINE BY APPLICANT CONSTITUTED A USE OF A NON-FORCIBLE COUNTERMEASURE, AND WAS VALID UNDER INTERNATIONAL LAW.

The validity of NFC's are recognized through customary international law. The International Law Commission, a body of experts charged with interpreting the progressive development and codification of international

law, concluded by a unanimous vote that "non-forcible countermeasures are valid under contemporary international law."[8] In addition to their validity under international law, NFC's have been in common use by leading world powers for some time. For example, Germany seized Portuguese property in 1928 in response to the killing of German officers.[9] The International Court of Justice took notice of the United States seizure Iranian assets in response to the hostage crisis without objection.[10] Finally, economic reprisals were used by England, France, and the United States in response to the Egyptian nationalization of the Suez canal in 1956.[11]

B. APPLICANT MET THE *NAULILAA* CASE REQUIREMENTS FOR THE IMPLEMENTATION OF A NON-FORCIBLE COUNTERMEASURE.

The German-Portuguese Arbitral Tribunal in the *Naulilaa Case* determined three prerequisites for the legitimate use of economic reprisals. These include a prior breach of international law by the nation against which reprisals are to be taken; prior attempts to seek redress for the illegal action by the state utilizing the countermeasure; and forming a reprisal proportional to the breach.[12]

1. RESPONDENT COMMITTED A PRIOR BREACH OF INTERNATIONAL LAW.

Respondent's violation of the OPS agreement and Pipeline Treaty constituted prior breaches of international law. *Pacta Sunt Servanda*, a generally accepted principle of international law states that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Respondents breached the Pipeline Treaty by exporting double the amount of oil authorized under the treaty. Because the Pipeline Treaty must be interpreted to reflect the intentions of the parties at the time of ratification, and Applicant's intention was to limit Respondent's oil exports

to the levels set by OPS, the Treaty required Respondent to limit oil exports to a quantity acceptable to the OPS. Respondent's breach authorized Applicants to close the pipeline as an economic reprisal.

In the alternative, Applicant may suspend its duties under the Treaty as a result of Respondent's breach of the OPS agreement itself. Under contemporary international law as interpreted by Oscar Schachter, if one party to a non-binding agreement acts in conformity with that agreement, and a co-party relies on that conformity, then the first party may be estopped from violating the provisions of the agreement.[13] Respondent adhered to the OPS quotas for a long period of time before breaking them. This long standing practice created Applicant's expectation that Respondent would continue to adhere to the production quotas. As a result of this expectation, Applicant relied on Respondent's compliance with the OPS agreement in order to maintain economic integrity through stable oil prices, and as a necessary pre-condition to signing the Pipeline Treaty. By failing to comply with the OPS quotas, Respondent breached its duty to Applicant and violated international law.[14]

2. APPLICANT PROVIDED PRIOR NOTICE OF GRIEVANCE

Applicant warned Respondent about its destructive oil export practices well before shutting off the pipeline. While some legal experts feel that the imposition of NFC's should be "relatively free of any procedural conditions," most agree that any countermeasure should be preceded by prior notice of grievance.[15] The *Naulilaa* tribunal formulated the modern rule that a countermeasure must be preceded by an adequate attempt by the aggrieved state to obtain redress for the consequences of the illegal conduct.[16] Here, Applicant repeatedly requested Respondent to reduce its oil exports over a period of months before closing the pipeline. Indeed, Applicant had even warned the states in the region that Respondent "threatened to destroy" the

OPS coalition as a result of its exports.[17] The repeated warnings served to give ample notice to Respondent that Applicant would not tolerate Respondent's unlawful economic activity. As a result, Applicant met its burden of providing adequate notice before initiating a countermeasure.

3. APPLICANT'S COUNTERMEASURE WAS PROPORTIONAL TO RESPONDENT'S BREACH

A non-forcible countermeasure must be proportional to the alleged harm according to generally accepted principles of international law.[18] The court in *Air Services Case* provided a convenient test to determine the proportionality of a NFC. This test includes two pertinent questions: "(Did the measure) bear on a simple principle of reciprocity measured in economic terms? Was it a pressure aiming at achieving a quicker procedure of settlement?"[19]

The closing of the pipeline by Applicant was a model of simple economic reciprocity. Due to the tumbling oil prices caused by Respondent's export practices, Applicant chose the only available measure to restore economic stability and security for all of the Gulf nations. The motivation for the closure was strictly economic, proportional to the breach, and resulted in little harm to Bergenian citizens.

III. RESPONDENT'S OIL EXPORT PRACTICES VIOLATE INTERNATIONAL LAW AND APPLICABLE INTERNATIONAL AGREEMENTS.

The oil export practices of Respondent violated international law and the OPS agreement. The Court should not hesitate to condemn the action of the Respondent because their actions have threatened the economies of the Applicant and neighboring Gulf states.

A. RESPONDENT'S OIL EXPORT ACTIVITIES VIOLATE STANDARDS OF INTERNATIONAL LAW BECAUSE THEY VIOLATE THEIR OBLIGATION TO REFRAIN FROM HARMFUL ECONOMIC ACTIVITY.

Although Respondent retains sovereignty over its own natural resources, it owes a duty to its neighboring states to refrain from using those resources in a manner which harms neighboring states. The United Nations General Assembly stated that nations "have the duty conduct their mutual economic relations in a manner which takes into account the interests of other countries."[20] The General Assembly also indicated that states have an affirmative duty to promote economic development and cooperation: "In the exploitation of natural resources shared by two or more countries, each state must co-operate...to achieve optimum use of such resources without causing damage to the legitimate interest of others."[21]

The export practices of Respondent have breached their general duty of non-interference with international economic stability, as well as their specific duty to promote regional development through cooperative economic activities. Respondent directly threatened the economic interests of Applicant by exporting double the amount of oil called for under the OPS agreement. All of the Gulf states have a critical interest in maintaining stable oil prices. Indeed, 75% of the GNP of Applicant comes from the sale of oil. Because Respondent's exports caused a 17% drop in the price of oil, their practices directly prejudiced the right of development shared by Applicant and the neighboring Gulf states.[22]

Using the same facts, the court can also determine that Respondent violated its duty to promote economic co-operation because it repeatedly refused to discontinue oil export activities which had a damaging effect on the regional states. By exporting double the amount of oil allotted to it under the OPS agreement, Respondent engaged in economic coercion and directly threatened the existence of the OPS coalition.[23]

B. RESPONDENT BREACHED ITS DUTY TO OBSERVE THE PROVISIONS OF THE OPS AGREEMENT.

1. RESPONDENT VIOLATED INTERNATIONAL LAW BY FAILING TO ABIDE BY OPS QUOTAS.

Respondent violated international law by failing to abide by OPS quotas when Applicant relied on continued export compliance. Oscar Schachter again notes that "By entering into an international pact with other states, a party may be presumed to have agreed that the matters covered are no longer exclusively within its concern. ...There is no *a priori* reason to assume that undertakings are illusory simply because they are not legal."[24] Applicant expected and relied on Respondent's continued observance of the OPS provisions in order to maintain a healthy economy and to preserve the existence of the OPS council. This reliance should have estopped Respondent from violating the export quotas. When Respondent violated those quotas, it also violated international law under the theories of both estoppel and reliance.

IV. SELF-DEFENSE

A. APPLICANT'S ACTIONS IN PROVINCE CONSTITUTED A LEGAL AND LEGITIMATE ACT OF SELF-DEFENSE.

Article 51 of the U.N. Charter authorizes individual self-defense in the event of an armed attack. The U.N. Resolution on the Definition of Aggression, notes that although the first use of armed forces is *prima facie* evidence of an act of aggression, this presumption of aggression can be overcome by taking into account other relevant circumstances which can justify the use of force.[25]

Considering the deadly technological advances made in modern warfare, international law must now recognize that an armed attack takes place when offensive weapons threaten the immediate destruction of a neighboring state. Moreover, it would be foolish to require a state to wait until it has been

destroyed by an offensive first strike before it has a right to act in self-defense.

Prior to hostilities, Respondent was spending nearly 23% if its GNP on the acquisition of first strike weapons such as ballistic and cruise missiles, and had fully mobilized its military forces along Applicant's border.[26] Respondent's weapons could deliver a crippling military blow to Applicant within a matter of minutes. Because Applicant was facing a massive offensive military buildup along its borders, its actions in Province were a proper exercise of individual self-defense.

B. APPLICANT'S ACTION IN PROVINCE WAS A LEGAL AND LEGITIMATE ACT OF ANTICIPATORY SELF-DEFENSE.

International legal scholar Michael Reisman notes that "Many scholars consider the (U.N.) Charter's post hoc requirement for the activation of the right of self-defense quite obsolete and contend that the Charter must now be interpreted to permit an anticipatory self-defense."[27]

The traditional test for anticipatory self-defense comes from a diplomatic note written U.S. Secretary of State Daniel Webster concerning the *Caroline* incident of 1837. According to this test, military response was deemed legal if the danger posed by a potential first strike was "instant, overwhelming, and ...leaving no moment for deliberation."[28] Applicant faced just such a situation prior to sending forces into Province. Prior to hostilities, Respondent had fully mobilized its offensive military forces, and had massed troops on Applicant's border.[29] These forces could deliver a crippling military blow to Applicant within a matter of minutes. Article 51 of the Charter should be interpreted by the Court in light of the modern military realities faced by Applicant. Indeed, at the time Applicant

intervened, its right of anticipatory self-defense had been triggered because it was facing forces which posed an "instant and overwhelming" danger.[30]

Before a county can claim anticipatory self-defense under international law, a showing must be made that they first exhausted peaceful means of settlement.[31] Applicant met this standard when it used diplomatic requests for relief, economic sanctions, and appeals to the U.N. Human Rights Commission protesting Respondent's actions in Province. With no other available alternative, Applicant acted first in self-defense.

A legitimate act of self-defense should be proportional to the threat faced by the defending state.[32] Applicant's actions were proportional to the threat posed by Respondent's forces. Prior to Respondent's counter-attack on 16 October, Applicant limited its military actions to an operational theater within Province.[33] This use of military force was limited to an area necessary to secure the border and assist the native Ethlantian people.

V. APPLICANT'S INTERVENTION IN PROVINCE TO PROTECT THE PERSECUTED ETHLANTIAN MINORITY WAS JUSTIFIED UNDER BOTH THE U.N. CHARTER AND CUSTOMARY INTERNATIONAL LAW.

A. RESPONDENT'S OPPRESSION OF THE ETHLANTIAN PEOPLE DEPRIVED THEM OF THEIR BASIC HUMAN RIGHTS REQUIRED BY THE U.N. CHARTER.

The preamble to the U.N. Charter affirms the organization's commitment to supporting "fundamental human rights." Respondent enacted statutes creating ethnic discrimination against the Ethlantian people. The Respondent required Ethlantians to live in defined areas including forcibly transporting them to, and confining them in, ghetto communities.[34] This repressive resettlement is in direct contravention of customary international law as reflected in the United Nation's International Convention on Civil and Political Rights. The Convention requires liberty of movement, and the freedom for men and women to

chose their residence.[35] Respondent also established a separate legal process for the Ethlantian people in contravention of the United Nation's declaration prohibiting distinction of any kind based on race or social origin.[36] Respondent routinely tortured innocent Ethlantians to coerce confessions of crimes which they did not commit. These actions violate the U.N. Declaration on Human Rights.[37] Lastly, Respondent executed Ethlantians without benefit of trial and killed peaceful demonstrators, a gross violation of the U.N. Declaration on Human Rights.[38]

B. THE U.N. CHARTER PROVIDES A BASIS FOR INTERVENTION IN A FOREIGN STATE TO PROTECT BASIC HUMAN RIGHTS.

Though Article 2 of the U.N. charter expressly prohibits the use of force against another sovereign state, there are recognized exceptions to the prohibition of forceful intervention, such as, self-defense of the state itself and intervention to protect a state's citizens.[39]

International law should recognize an exception to United Nations Article 2(4) and allow intervention when a government commits extensive violations of its people's human rights.[40] In many cases such as Tanzania's intervention in Uganda in 1971 and Vietnam's intervention in Cambodia in 1979, the moral calculus clearly favors the intervention.[41] Similarly, the Respondent's extensive and prolonged human rights violations demanded intervention as well.

Article 2(4) states that force shall not be used against "the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."[42] Genuine humanitarian intervention does not result in territorial gains or political subordination. Rather, it is intended to protect a group of people from inhumane treatment. The protection of human rights is certainly consistent with the purposes of

the U.N., and thus none of the three prohibitions of 2(4) apply to Applicant's humanitarian intervention into Province.

The concept of humanitarian intervention has the support of many noted publicists including Reisman, McDougal, D'Amato and Moore.[43] The prohibition against intervention does not apply to human rights and self-determination cases, preventing a state from continuing violations of international law by hiding behind domestic jurisdiction.[44]

The U.N. has denounced some humanitarian interventions such as the Indonesian intervention in East Timor and the Belgian intervention in Zaire.[45] In these specific cases however, the U.N. denunciation arose only upon later discovery of ulterior motives, such as Indonesia's annexation of East Timor, and Belgium's participation in a civil war to protect commercial interests.[46] The Applicant has no territorial ambitions nor are commercial interests at stake. The sole intent was to save the Ethlantian population from Respondent's oppression.

The trend in recent years has been towards a more liberal construction of the U.N. Charter on this issue. Philip C. Jessup was among the first to assert that Charter Articles 55 and 56 removed human rights from the exclusive sphere of domestic jurisdiction- thus recognizing the historic development of humanitarian intervention.[47]

C. APPLICANT'S HUMANITARIAN INTERVENTION ON BEHALF OF THE ETHLANTIAN PEOPLE IS SUPPORTED BY CUSTOMARY INTERNATIONAL LAW.

Humanitarian intervention has been a viable doctrine in customary international law since the time of Grotius, who in 1625 regarded a sovereign state's maltreatment of its citizens just grounds for war.[48] The

doctrine of humanitarian intervention is so clearly established under customary international law that only its limits are open to debate.[49]

The Restatement of Foreign Relations Law of the United States (3d) 703, comment e, provides that "it is increasingly accepted that a state may act to rescue victims or potential victims in an action strictly limited to that purpose and not likely to invoke disproportionate destruction of life or property..."[50] The limited purpose of Applicant's intervention and the virtual absence of damage clearly fits within the Restatement and was justified under customary international law.

Publicists have long recognized that when a state's treatment of its own citizens falls far below the standards of civilized people that it shocks the conscience of mankind, another state may intervene under humanitarian considerations.[51] Under such conditions, any state willing to undertake humanitarian intervention has a right to do so.[52] Clearly Respondent's treatment of the Ethlantian people shocks the conscience of humanity and Applicant was therefore justified in assisting the them.

D. APPLICANT HAD A DUTY TO INTERVENE ON BEHALF OF THE ETHLANTIANS UNDER THE PRINCIPLE OF *ERGA OMNES*.

A state's obligations concerning the customary law of human rights are *erga omnes* (obligations to all states). Under this doctrine, any state may pursue remedies for violations, even if the victims were not nationals of the complaining state and the violations did not affect any other interest of that state.[53]

The Applicant repeatedly requested action from the Respondent and the U.N. Human Rights Commission to halt serious human rights abuses by the Respondent.[54] The Applicant's protracted pursuit of a remedy through these means proved unsuccessful. After the failure of these efforts, the Applicant

fulfilled its obligations under *erga omnes* and intervened to prevent further abuses and deaths.

E. APPLICANT HAD A RIGHT TO AID THE ETHLANTIANS IN THEIR EFFORT AT SELF-DETERMINATION.

1. THE ETHLANTIANS HAVE A RIGHT TO SELF-DETERMINATION.

A principle objective of the United Nations is stated in Article 1 of the Charter, is to "develop ...self-determination of peoples". Respondent's enforced resettlements and the virtual abolishment of the Ethlantian's human rights, in direct contravention of the U.N. Declaration on Human Rights, clearly violates this objective of the Charter. Nothing should prejudice people's right to self-determination, nor their right to receive support.[55]

2. APPLICANT'S INTERVENTION IN SUPPORT OF ETHLANTIAN SELF-DETERMINATION IS CONSISTENT WITH INTERNATIONAL LAW.

In accordance with the duty of all states to promote the realization of the principle of equal rights and self-determination, Applicant acted to protect the right of the Ethlantian people.[56] When appeals to the Respondent and the U.N. Human Rights Commission proved futile, Applicant followed its duty to promote universal respect for fundamental freedoms through independent action to stop abuses against the Ethlantians.[57] The U.N. Definition of Aggression in Article 7 expressly allows other countries to give support to peoples struggling against a racist regime that deprives them of the right to self-determination and freedom.[58] Accordingly, Applicant's acts supporting the rights of the Ethlantians against the oppressive acts of Respondent are in compliance with the U.N. Charter.

VI. RESPONDENT'S ATTACK UPON APPLICANT VIOLATED INTERNATIONAL LAW.

A. SECURITY COUNCIL RESOLUTIONS 910 AND 928 ARE CONTRARY TO THE U.N. CHARTER AND ARE NOT LEGALLY BINDING.

In order for a resolution of the Security Council to be legally binding it must be adopted in conformity with the purposes and principles of the Charter and in accordance with Articles 24 and 25.[59] The purposes and principles of the Charter are found in Article 1, which advocates the peaceful resolution of disputes, equal rights, self-determination, and the promotion of human rights and fundamental freedoms for all without distinction of race.[60] Resolutions 910 and 928 are directly at odds with the purpose of the Charter, and are therefore *ultra vires*.

If Resolutions 910 and 928 were followed, the Ethlantians would be forced to live under a racist government which denies them their fundamental human rights. Clearly, the intent of the U.N. Charter does not support such activity. Article 55 states that the U.N. shall promote human rights without distinction as to race, and avoid returning "slaves to their master." Resolution 910, which would force Ethlantians to live under the domination of Respondent, is clearly against the purpose of the Charter and should not be valid.

B. RESOLUTION 928 OF THE SECURITY COUNCIL IS VOID AND RESPONDENT INVADED APPLICANT'S SOVEREIGN TERRITORY WITHOUT AUTHORITY.

The U.N. Security council must first seek a peaceful settlement of disputes. Resolution 928, adopted by the Security Council on 29 August 1990, authorized Respondent to "use all necessary means to uphold and implement Resolution 910," namely the unconditional withdrawal of all forces from Province. Respondent interpreted this resolution to authorize immediate military action which it quickly commenced following enactment. However, before the Security Council can authorize military force under Article 42 of the U.N. Charter, it must determine that "measures provided for under Article 41 would be inadequate." Article 41 sanctions must be undertaken before

military action is taken under Article 42. The Security Council had the authority under Article 41 to first sanction "interruption of economic relations, rail, sea, air ... communications and the severance of diplomatic relations." No peaceful sanctions were ever sought. This is a clear violation of the intent of Chapter VII of the Charter. Because the Security Council did not first seek a peaceful solution to the dispute, Resolution 928 is void and Respondent had no authority to attack Applicant.

C. RESPONDENT'S ATTACK UPON APPLICANT WAS UNJUSTIFIED AND VIOLATED THE DOCTRINE OF PROPORTIONALITY.

The objective of any counter-measure is to protect the interest of the aggrieved state and to bring about a speedy settlement of disputes.[61] The Applicant has not committed an act which justified a countermeasure by the Respondent. The Applicant intervened for the Ethlantians on humanitarian grounds to stop abuses. The Applicant did not seek territory from the Respondent, nor pursue its destruction. The Respondent therefore had no standing to seek a countermeasure.

Respondent carried their response beyond any legitimate state interests. Air attacks on civilian targets within the territorial boundaries of Applicant had little impact on Applicant's assistance efforts.[62] If Respondent's objective was solely the removal of Applicant's troops from Province, it was unwarranted to carry the war deep into Applicant's territory. By so doing, Respondent lengthened the duration of hostilities, needlessly killed many people, and cannot claim their attack reasonably proportional to Applicant's alleged misconduct.

VII. RESPONDENT AND THEIR ALLIES COMMITTED NUMEROUS WAR CRIMES VIOLATING INTERNATIONAL LAW.

A. RESPONDENT'S IGNITION OF THE KAPPA OIL FIELDS VIOLATED UNITED NATIONS PROTOCOL.

In time of war, Article 55 of the U.N. Protocol Additional to the Geneva Conventions prohibits attacks intended "to cause such damage to the natural environment and thereby to prejudice the health and survival of the population."[63] Applicant set fire to the Iota oil fields to hinder Respondent's continuous attacks against its military forces and civilian population.[64] While Applicant concedes this act led to environmental damage, that was not their intent. Acts which are "intended or may be expected" to cause environmental damage are prohibited.[65] The Applicant neither expected nor intended this damage.

Respondent ignited the Kappa oil fields in reprisal for Applicant's action. This clearly contravenes Article 55 of the Protocol which states "Attacks against the natural environment by way of reprisals are prohibited." Their intent was not a military necessity.

Military necessity did not exist when Respondent spilled oil from the Theta refinery complex.[66] Applicant had no plans to invade Devon as Respondent alleges. In releasing this oil, Respondent intentionally caused long term and severe damage to the natural environment, again in contravention of Protocol Article 55.

B. RESPONDENT INFLICTED EXCESSIVE AND INDISCRIMINATE DESTRUCTION UPON THE APPLICANT'S CIVILIAN POPULATION

The civilian population should not be the object of attack.[67] Indiscriminate attack which creates excessive loss of civilian life or property in relation to the anticipated military advantage is prohibited.[68] When in doubt as to whether an object is military or civilian dedicated, it is presumed to be civilian.[69] The key factor is the military advantage to be secured from the attack.[70] The Alpha power station was used to supply the civilian community and did not contribute to the Applicant's ability to wage

war.[71] Even if there were a small percentage of power supplied for military purposes, destruction of the facility would not warrant the excessive civilian casualties of 500 deaths and numerous additional wounded.

Respondent and the coalition sought to destroy power stations indiscriminately without considering whether any particular power station supports civilian or military activities. Respondent's indiscriminate conduct did not take all necessary precautions to avoid injury or damage to the civilian population.[72]

Like the power stations, the bridges dividing the capital of Atlantis were primarily for civilian use. Food and medical supplies for the civilian population were disrupted due to the destruction of the bridges.[73] Moreover, the attacks resulted in no discernable military advantage for Respondent.

The destruction of the Delta sanitation plant wrought biological damage upon the population of Atlantis.[74] Biological warfare is prohibited under the 1925 Geneva Protocol, a codification of customary international law.[75] Biological warfare's indiscriminate and uncontrollable nature led to its condemnation in the international community.[76] The only function of a sanitation plant is to provide a biologically safe water supply and waste disposal system. The Coalition intended to destroy that function and introduce a biological hazard to the Applicant's population.

1. RESPONDENT ASSUMES RESPONSIBILITY FOR ANY DAMAGE TO GAMMA HOSPITAL DUE TO ITS LOCATION NEXT TO A MISSILE SITE.

The Applicant's destruction of the Bergenian missile site, located 1/8 of a mile from a hospital, is justified. Hospitals should be situated as far as possible from military activities.[77] Respondent did not take this precaution, and chose to locate a missile site close to a hospital. A party failing to take the precautions necessary to separate military and civilian

activities accepts the civilian damage resulting from an otherwise valid attack upon a military objective.[78] Any damage which Gamma Hospital incurred is regrettable, but resulted from Respondent's failure to adequately distance their missile site from civilian areas.

B. RESPONDENT AND THEIR ALLIES VIOLATED INTERNATIONAL LAW BY EXECUTING AND MISTREATING PRISONERS OF WAR

Victoria's ground troops, acting under the leadership and military command of Respondent, would not accept the lawful surrender of the Applicant's troops while on open ground in the vicinity of the Epsilon Caves. Article 23 (c) of the Hague Convention specifically forbids the killing of an enemy who has laid down his arms in surrender.[79] Ignoring the surrender pleas of Atlantisan troops, Victorian officers murdered them while they were blinded by tear gas and had their hands in the air.

Respondent violated international law by executing members of the Ethlantian Liberation Front organized resistance movement who enjoyed status as prisoners of war. To qualify as an organized resistance movement they must be centrally organized, openly carry arms and display insignia.[80] The front's ability to control the town of Zeta indicates their organization and use of weapons. The confiscated flags indicate open display of their insignia. Despite their status as prisoners of war, Respondent's troops executed 30 members of the front following capture. Respondent was required to treat these prisoners of war humanely, but chose to kill them instead.[81]

Prisoners of war must be provided sufficient food, water and medical attention.[82] A forced march of Atlantisan captives to the Fort Mu prison camp by Coalition forces killed 100 of 800 captives through lack of care. Had the prisoners been properly cared for, this excessive and needless loss of life would not have occurred.

Once the prisoners arrived at the camp, they were fed an inadequate diet. Coalition forces are under an obligation to provide sufficient rations to keep the prisoners in good health and prevent loss of weight.[83]

C. APPLICANT'S EXECUTION OF RESPONDENT'S SPIES AND MERCENARIES IS LAWFUL.

The Applicant's execution of 3 spies and 27 mercenaries in the city of Eta is lawful. Spies and mercenaries are not given protection as prisoners of war.[84] The death penalty may be imposed for espionage.[85] The Applicant executed the spies to deter further espionage which could have lead to greater Applicant casualties. Similarly, the mercenaries, who act solely for private gain and are without prisoner of war protection, were executed to deter further Atlantisan casualties.

Conclusion

WHEREFORE, for the reasons set forth above, Respondent respectfully prays that the International Court of Justice render its decision in favor of the State of Atlantis:

1. The closing of the oil pipeline by Atlantis was valid under the Pipeline Treaty, OPS agreement and international law.

2. Atlantis is excused from its obligations under the Pipeline Treaty as a result of Bergenia's prior breach of the Treaty, and changed circumstances surrounding the duty owed by Atlantis under the Treaty. 3. The oil export practices of Bergenia violate the OPS agreement, the Pipeline Treaty, and international law.

4. The actions of Atlantis in Province were a legal exercise of self-defense and humanitarian intervention.

5. The war conduct of Bergenia and their allies violate international law and agreements.

Endnotes

[1]Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), (Advisory Opinion), 1971 I.C.J. 16 (hereinafter Namibia).

[2]Vienna Convention on the Law of Treaties 1155 U.N.T.S. 331, U.N. Doc. A/CONF. 39/27, art. 31 (hereinafter Vienna Convention).

[3]1991 Jessup International Moot Court Problem, at 1 (hereinafter Compromis).

[4]Oscar Schachter, The Twilight Existence of Nonbinding International Agreements, 71 A.J.I.L. 296, 304 (1977) (hereinafter Schachter).

[5]Compromis, *Supra* note 3, at 2.

[6]Vienna Convention, *Supra* note 2, at art. 60(3)(b).

[7]Id., art. 60(1).

[8]Summary records of debate on draft art. 30 on state responsibility concerning Legitimate application of a Sanction, (1976) 1 Y.B. Int'l L. Comm'n 55-63, (hereinafter Debates).

[9]Naulilaa Incident Case, 4 Ann. Dig. 526; 2 R. Int'l Arb. Awards 1013, (1949) (hereinafter Naulilaa Incident Case).

[10]Case Concerning U.S. Diplomatic and Consular Staff in Teheran (Judgement), 1980 I.C.J. 3.

[11]O.Elagab, The Legality of Non-Forcible Countermeasures in International Law, 70 (1988). *See* also E. Zoller, Peacetime Unilateral Remedies: An Analysis of Countermeasures (1984).

[12]Weston, Falk & D'Amato, International Law and World Order 908 (1980) (hereinafter Weston).

[13]Schachter, *Supra* note 4, at 299.

[14]Although nonbinding agreements are not governed by international law, they still have legal implications. *See generally* Id. at 301.

[15]Debates, *Supra* note 8 at 65-6.

[16]Naulilaa Incident Case, *Supra* note 9, at 526, 527.

[17]Compromis, *Supra* note 3, at 2-3.

[18]Naulilaa Incident Case, *Supra* note 14 at 526, 527 para (c). *See* also North Sea Continental Shelf Case (Judgement), 1969 I.C.J. 4.

[19]54 I.L.R. 337 para. (78).

[20]*Charter of Economic Rights and Duties of States,* 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1975) (hereinafter CERDS).

[21]CERDS, *Supra* note 25, art. 3. *See also Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations,* U.N.G.A. Res. 2625 (XXV), 25 U.N. GAOR, Supp. (No.28), 121 U.N. Doc. A/8028 (1971).

[22]Compromis, *Supra* note 3, at 2.

[23]Id.

[24]Schachter, *Supra* note 4, at 304.

[25]*Resolution on the Definition of Aggression,* 29 U.N. GAOR 3314 (XXIX) at art.2 (1974).

[26]Compromis, *Supra* note 3, at 3.

[27]Michael Reisman, The Regime of Straits and National Security: An Appraisal of International Lawmaking, 74 A.J.I.L. 48 (1980) (hereinafter Regime).

[28]Id., at 413.

[29]Compromis, *Supra* note 3, at 3.

[30]McDougal, 57 A.J.I.L. 597, 599-601 (1963).

[31]Regime, *Supra* note 27.

[32]Schachter, The Right of States to Use Armed Force, 82 Mich. L. Rev. 1620, 1637 (1984).

[33]Compromis, *Supra* note 3 at 5.

[34]Compromis, *Supra* note 3 at 2.

[35]International Convention on Civil and Political Rights, art.12 (1966).

[36]*Universal Declaration on Human Rights,* G.A. Resolution 217 A (III), at art. 2 (1948).

[37]Id., at art. 5.

[38]Id., at art. 3, 10.

[39]Jean-Pierre L. Fonteyne, International Law at the Time of the Codification, 39 Int'l & Comp. L. Q. 482, (1990).

[40]Levitin, The Law of Force and the Force of Law: Grenada, the Falklands, and Humanitarian Intervention, 27 Harv. Intl. L.J. 621, 652 (1986).

[41]Id., at 652.

[42]U.N. CHARTER, 2 (4).

[43]Fernando Teson, Humanitarian Intervention: Inquiry into Law and Morality (1988) 124.

[44]Jean-Pierre Fontegue, Forcible Self-Help by States to Protect Human Rights: Recent View from the U.N. 200.

[45]Id., at 64.

[46]Id., at 65

[47]Office of Public Information, The UN and Human Rights 87 (1978).

[48]H. Grotius, The Law of War and Peace chap 2 (1625) (hereinafter Grotius).

[49]O. Schachter, Philip Jessup's Life and Ideas, 80 A.J.I.L. 878, 890.

[50]RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §703 comment e (1986).

[51]L. Oppenheim, International Law 312 (8th ed. 1955).

[52]Walzer, Just and Unjust Wars 107,108 (1977).

[53]Henkin, Pugh, Schacter & Smit, International Law, Cases and Materials 1019 (1987).

[54]Compromis, *Supra* note 3, at 6.

[55]Draft Code of Crimes Against the Peace and Security of Mankind, at art. 12(4)(h)(1989).

[56]*Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States...*, U.N. GAOR 2625 (XXV), at preamble (1970).

[57]Id.

[58]*Resolution on the Definition of Aggression*, U.N. GAOR 3314 (XXIX), at art.7 (1974).

[59]Namibia, *Supra* note 1 at 41.

[60]U.N. CHARTER, art. 1.

[61]Jennings, The Caroline and McLoud Cases, 32 A.J.I.L. 82 (1938).

[62]Compromis, *Supra* note 3 at 6.

[63]O. Elagab, The Legality of Non-forcible Countermeasures in International Law 94 (1988).

[64]Compromis, *Supra* note 3 at 8.

[65]*Protocol Additional to the Geneva Conventions of August 12, 1949*, at art. 55 (1977) (hereinafter PAGC).

[66]Compromis *Supra* note 3 at 7.

[67]PAGC, *Supra* note 65 at art. 51,2.

[68]Id., art 51,55(b).

[69]Id., art. 52, 53.

[70]Royse, Aerial Bombardment (1928).

[71]Compromis, *Supra* note 3 at 6.

[72]*Resolution on the Protection of Civilians in Time of War*, U.N. GAOR 2675,(XXIV).

[73]Compromis, *Supra* note 3 at 7.

[74]Id.

[75]Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, 26 U.N.T.S. 571 (1925).

[76]Dept. of Air Force, International Law - The Conduct of Armed Conflict and Air Operations 4,6 (1976) (hereinafter ACAO).

[77]*Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 75 U.N.T.S. 287, art. 18 (1949) (hereinafter CPW).

[78]ACAO, *Supra* note 76 at 5-13.

[79]Geneva Convention (No. IV) Respecting the Laws and Customs of War on Land, T.S. no.539, at art 23(c) (1907).

[80]Geneva Convention Relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, at art.2 (1950).

[81]Id., at art. 13.

[82]PAGC, *Supra* note 65 at art. 46, 47.

[83]*See Generally* PAGC, *Supra* note 65.

[84]Id., at art. 20.

[85]Id., at art. 26.