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THE 1998 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION

CASE CONCERNING THE INTERNATIONAL CRIMINAL TRIBUNAL

IN THE INTERNATIONAL COURT OF JUSTICE

BETWEEN

REMORRA

(Applicant)

and

ARDEN

(Respondent)

MEMORIAL FOR THE APPLICANT

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STATEMENT OF JURISDICTION

The parties submit the present dispute to this Court by Special Agreement, dated November 10, 1997, pursuant to Article 40(1) of the Court's Statute. The parties have agreed to the contents of the *Compromis* submitted as part of the Special Agreement. In accordance with Article 36(1) of the Court's Statute, each party shall accept the judgment of this Court as final and binding and shall execute it in good faith and in its entirety.

STATEMENT OF FACTS

The state of Remorra was formed after a civil war in the former Integra between the Integran Army and the Nylesian People's Army (NPA), led by Malu Terraq. During the conflict, officials of the Integran government moved Integra's capital to the Remorran-dominated area of Integra. From its new capital, Harbaar, the government issued warrants for the arrest of members of the NPA, and in particular, Terraq. For the next six months, the conflict waged between forces led by the NPA and the Integran government forces.

The war came to an end following the intervention of a multilateral force. The warring factions signed a Peace Treaty which divided the old nation of Integra into two states, Nylesia and Remorra. The territorial boundaries were established along the traditional territorial areas of each distinct ethnic group's cultural heritage, as established centuries earlier. The Treaty also provided that each citizen of Integra would acquire automatically the citizenship of the area of their birth.

In the months after, the United Nations established a tribunal, the ICTFI, to investigate various human rights violations committed during the conflict. The ICTFI's jurisdiction is based on Security Council Resolution 1024. Resolution 1024 provided that the ICTFI's jurisdiction was not to be interpreted in a manner inconsistent with pre-existing obligations, and was to be complementary to that of national criminal courts. Indictments were to be issued to those persons associated with the human rights violations.

On November 20, 1996, the ICTFI formally indicted Terraq. The panel reported that Terraq had committed a number of acts in violation of international humanitarian law, notably

the mistreatment of persons detained in, and expelled from, the province of Telfin, a Remorran-dominated area of Integra. These violations occurred throughout March of 1995. The nation of Integra was in anarchy as the ethnic Nylesian majority mobilized against their Remorran countrymen, storming houses and killing entire families. Terraq incited this massacre by sending out false reports through radio and television stations captured by his fellow members of the Nylesian People's Army (NPA).

On December 1, 1996, officials of the Arden government arrested and imprisoned Terraq. Terraq entered Arden illegally in November 1996, in flight from an attempted capture by Remorran Intelligence in Nylesia. Arden is a developed island nation which has had extensive trade relations with Remorra. Arden and Remorra have full diplomatic relations, and each has an embassy in the other's capital.

On December 2, 1996, Remorra formally requested that Arden extradite Terraq to stand trial in Remorra. This was done pursuant to the 1965 Extradition Treaty between Arden and the former Integra. At the same time, the ICTFI formally requested that Arden surrender Terraq to its control. Arden refused Remorra's request on the basis that it was contrary to the rule of law. As such, Arden decided to surrender Terraq to the ICTFI as soon as the investigation of Terraq's other activities in Arden was completed. Remorra immediately delivered a diplomatic reply, protesting Arden's failure to extradite Terraq pursuant to the Treaty.

In the meantime, the Remorran government obtained a default judgement against Terraq in the amount of US$20 million for injuries suffered by Remorran citizens during the war of

national liberation. Terraq has bank accounts in Arden totalling US$18 million, which was deposited during the most intense periods of conflict, in four installments of US$4.5 million.

Arden authorities impounded the accounts on the grounds that they were suspicious. The freeze order was subsequently overturned by the local courts. In reply, Remorra sent a diplomatic note to Arden demanding that the bank accounts be liquidated and the proceeds be delivered to Remorra.

In order to prevent the escalation of the conflict, Remorra and Arden have agreed to submit the dispute to the International Court of Justice. Terraq remains in custody in Arden, pending the outcome of this case.

STATEMENT OF QUESTIONS PRESENTED

I.

Whether the Extradition Treaty between Remorra and Arden requires that Malu Terraq be extradited to Remorra.

II.

Whether the establishment of the International Criminal Tribunal was an *ultra vires* act of the Security Council.

III.

Whether, if the International Criminal Tribunal is constitutionally valid, Arden is nevertheless still obligated to extradite Terraq to Remorra.

IV.

Whether Remorra is entitled to monetary damages in the event that Arden breaches the Extradition Treaty.

V.

Whether Remorra is entitled to an accounting and payment of funds currently being held in the First Arden National Bank under the name of Malu Terraq.

SUMMARY OF PLEADINGS

Remorra objects to Arden's decision to send Malu Terraq to be tried by the International Criminal Tribunal for the Former Integra (ICTFI), rather than the Remorran courts. The ICTFI's jurisdiction is to be interpreted in a manner not inconsistent with pre-existing obligations under international law.

The ICTFI has no jurisdiction in the case at bar because the Extradition Treaty concluded by Integra and Arden is now binding as between Remorra and Arden. Because the Remorran government is essentially the same as the Integran, Remorra is a party to the Extradition Treaty as the successor state. In any event, Remorra has succeeded to the Treaty as a separating state under both the Vienna Convention on Succession of States with Respect to Treaties and international customary law. Furthermore, Arden cannot argue that extradition to Remorra would be contrary to the rule of law or that the political offence exception bars extradition.

Whether or not the Extradition Treaty is binding, Arden cannot send Terraq to the ICTFI. The Security Council decision to create the ICTFI was *ultra vires* and may be reviewed by this Court. The creation of a judicial body is outside the intended powers of the Security Council under Chapter VII of the UN Charter. In any event, the Integran Conflict did not constitute a threat to international peace and security so intervention under Chapter VII was inappropriate. Finally, circumstances which gave rise to international tribunals in the past are distinguishable from the circumstances existing when the ICTFI was created in the case at bar.

Regardless of the constitutionality of the ICTFI, Remorra is the more appropriate forum to try Terraq. The ICTFI's jurisdiction is merely complementary to that of a sovereign state. Remorra, as a sovereign state, has a right to try its own nationals for crimes committed in its territory. As

such, it would be a violation of international law for Arden to send Terraq to the ICTFI as Remorra has the requisite jurisdiction and is fully competent to try crimes of this nature.

In lieu of extradition, the appropriate remedy for Arden's breach of its international obligations is damages. Without custody of Terraq, Remorra is denied access to information concerning crimes committed during the Integran Conflict. Additionally, Arden's refusal of extradition amounts to an affront to the dignity of the state of Remorra and its nationals. This injury can only be redressed by an award of US$100 million to establish the Truth and Reconciliation Commission to investigate violations of human rights which will provide the same healing and closure that a trial of Terraq in Remorra would have.

Finally, Terraq has deposited funds connected to the illegal acts in the First Arden National Bank. Arden's bank secrecy laws cannot be advanced as a bar to its international obligations. Since Arden has breached its duty to cooperate against money laundering by allowing its territory to be used for that purpose, this court must order that Arden provide an accounting and payment of funds.

PLEADINGS

I. THE EXTRADITION TREATY REQUIRES ARDEN TO EXTRADITE TERRAQ TO REMORRA.

A. THE EXTRADITION TREATY IS BINDING ON ARDEN.

i. Remorra is the successor state to the international personality of Integra and its rights and obligations under the Extradition Treaty.

1. Where a state cedes a portion of its territory and remains unaffected in its legal personality, its treaty rights and obligations survive with it.[1] A loss of the territory controlled by the Integran government does not extinguish its international personality. As a result of the Nylesian revolution, the Integran government moved to Harbaar and declared the city to be its new capital.[2] Subsequently, this government negotiated the Peace Treaty with the rebels. The rebels were allowed to establish a new state on the territory of what is now Nylesia. The Integran government retained the capital city and the existing government continued to administer the economically developed area of Integra, now renamed Remorra. Since the state of Remorra is the same personality as Integra, the natural conclusion is that Remorra succeeds to all treaties not dealt with specifically in the Peace Treaty[3]. Therefore, the Extradition Treaty concluded between Integra and Arden remains binding as between Remorra and Arden.

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[1] Vienna Convention on Sucession of States in Respect of Treaties, U.N. Doc. A/CONF.80/31 (1978), U.N.J.Y.B. 106, 17 I.L.M. 1488, art. 34 [hereinafter VCSS]; K.Marek, Identity and Continuity of States in Public International Law (1968) at 15; D.P. O'Connell, State Succession in Municipal Law and International Law (1967) at 39 [hereinafter O'Connell].

[2] *Compromis* at para. 14.

[3] *Compromis* at para. 18.

ii. Alternatively, Remorra succeeds to the Extradition Treaty as a separating state.

a) Remorra is a party to the Extradition Treaty as a separating state under the Vienna Convention on Succession of States in Respect to Treaties (VCSS).

2. The Peace Treaty stipulates that "all other matters" are to be settled in accordance with the VCSS.[4] Under the VCSS, when a state divides into two or more states, the treaties in force at the time of disintegration remain in force with respect to the new states, whether or not the predecessor continues to exist.[5] Both Remorra and Nylesia were formed from Integra. Therefore, both succeed to the Extradition Treaty concluded between Arden and Integra, regardless of whether Remorra or Nylesia is deemed the successor to the international personality of Integra.

b) In any event, Remorra succeeds to the Extradition Treaty under customary international law.

3. Customary international law recognizes a doctrine of inheritance rather than "clean slate";[6] the former is more conducive to international stability than the latter.[7] The clean slate approach is no longer applied at international law except to "newly independent states."[8] A successor state will

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[4] *Compromis* at para. 18.

[5] VCSS supra note 1, art.34.

[6] Exchange of Notes, Ukraine and US regarding USSR Treaties, note No. 420/95 cited in M. Nash, Contemporary Practice of the US Relating to International Law (1995) 89 Am. J. Int. L. at 761 at 761; O'Connell, supra note 1 at 5; A.M. Beato, Newly Independent and Separating States' Succession to Treaties (1994) 9 Am.U.J. Int. L. & P'y 525 at 543.

[7] Y. Makonnen, International Law and the New States of Africa (1983) at 129 [hereinafter Makonnen].

[8] VCSS supra note 1, art. 24; Lighthouses Arbitration (1956) P.C.A. No. XXIV; 12 R.I.A.A. 155, 23 I.L.R 79 at 92; I. Brownlie, Principles of Public International Law (4th Ed.)(1990) at 653 [hereinafter Brownlie]; Lord McNair, Law of Treaties (1961) at 601 [hereinafter McNair]; Harvard Law Review Association, Taking Reichs Seriously: German Unification and State Secession (1990), 104 Harv. L. Rev. 588 at 599; R.D. Kearney, The 26th

only be deemed a "newly independent state" if it previously had colonial, protectorate, trust, or mandate status.[9] Remorra has never had that status.

4. Under the inheritance doctrine, although one of the parties to a treaty may have ceased to exist, the legal position created by the treaty survives.[10] State practice has been overwhelmingly in favour of transmissibility of treaties.[11] Therefore, even though Integra may have ceased to exist, Remorra succeeds to the Extradition Treaty.

5. Even if the clean slate approach is applicable, Remorra succeeds to the Extradition Treaty. Under the clean slate approach, it is the prerogative of the new state to make declarations of succession with regard to its treaty obligations.[12] The operation of treaties is extended by acquiescence by other parties to the treaty.[13] Remorra has indicated its intention to retain its treaty rights and obligations by demanding extradition pursuant to its Treaty with Arden. Although Arden

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Session of the I.L.C. (1975), 69 Am.J.Int'l L. 591 at 599.

[9] J. Crawford, The Creation of States in International Law (1979) at 187; Y. El-Ayouty, The UN and Decolonization (1971) at 210; H.D.Hall, Mandates, Dependencies, and Trusteeship (1948) at 336; Williams and Osborne, A US Perspective on Treaty Succession and Related Issues in the Wake of the Breakup of the USSR and Yugoslavia (1993), 33 Va. J. Int'l L. 261 at 262.

[10] O'Connell, supra note 1, at 164-82.; C.J. Garis, Bosnia and the Limitations of International Law, 34 St. Cla.L. R. 1039 at 1063.

[11] Brownlie, supra note 8, at 654; Makonnen, supra note 7, at 133; O'Connell supra note 1, at 30; International Law Association, The Effect of Independence on Treaties, Committee on State Succession to Treaties (1965) at 3.

[12] K.Zamenek, State Succession after Decolonization, Vol III (1965) 116 Haq. Rec. 190 at 244 [hereinafter Zamenek].

[13] G. Schwartzenburger, International Law as Applied by International Courts and Tribunals, Vol 1 (1957) at 176.

has refused to return Terraq on other grounds[14], it has never objected to the further operation of this Treaty between it and Remorra.

iii. Arden cannot argue any other circumstances which render the Treaty inapplicable.

a) Arden cannot argue it has not consented to the continued operation of Treaty.

6. Agreement to treaty succession may be implied by conduct.[15] As a signatory to the VCSS[16], Arden was aware of the existing customary practice concerning state succession to treaties. Further, Article 34 of the VCSS imposes a positive duty on a state to communicate its absence of consent.[17] This, Arden did not do. Arden recognized Remorra and established diplomatic relations without indicating any intention to modify its treaty relationships.[18] If a state represents its acceptance of another state's rights, it cannot later deny the existence of those rights.[19] Because Arden never objected to the continued operation of the Extradition Treaty, it cannot object now.

b) Arden cannot rely on the doctrine of *rebus sic stantibus*.

7. The principle of *rebus sic stantibus* is contrary to the stability of an international society based on adherence to agreements.[20] Accordingly, the scope of the doctrine is confined within narrow

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[14] *Compromis* at para 34.

[15] Zamanek, supra note 12, at 244.

[16] *Compromis* at Statement of Issues.

[17] VCSS supra note 1, art. 34(2)(a).

[18] *Compromis* at para. 40.

[19] Legal Status of Eastern Greenland Case (1933), P.C.I.J. Ser.A/B, No .53 ; McNair, supra note 8 at 487.

[20] W. Levi, Contemporary International Law (1991) at 213.

limits.[21] A treaty is voidable only where circumstances constituting an essential basis of consent have changed in a manner unforseen by the parties, and where the effect of the change is to radically transform the obligations under the treaty.[22] The only change which has occurred in Integra is a change in the distribution of power from one government to two. A particular political structure cannot be advanced as an essential basis of consent unless specifically mentioned in the treaty.[23] Similarly, conflict, in and of itself, is not a bar to the continuance of treaty obligations.[24] Finally, no evidence exists which suggests any fundamental difference in the rights accorded to subjects of extradition as between Integran and Remorran courts. Therefore, Arden cannot argue its obligations have been radically transformed.

B. THE EXTRADITION TREATY REQUIRES THAT TERRAQ BE EXTRADITED TO REMORRA.

i. Terraq falls within the terms of the Extradition Treaty.

8. Remorra is entitled to demand extradition pursuant to Article 7 of the Extradition Treaty whenever it has jurisdiction over a criminal for an offence of dual criminality.[25] The common crime of murder meets this dual criminality requirement. Clearly, Remorra has jurisdiction to enforce its laws against Terraq based on the nationality[26], passive personality[27], territoriality[28], and protective[29]

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[21] *Clausula Rebus Sic Stantibus*, [1966] Y.B.I.L.C II at 257-58.

[22] Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331, 8 I.L.M 679, art. 62 [hereinafter VCLT]; Free Zones Case (1929/32), P.C.I.J., Ser. A, No. 22, & A/B, No. 46.

[23] McNair, supra, note 8, at 682.

[24] Id., at 696.

[25] *Compromis Clarifications* at para. 18.

[26] Lotus Case (1927), P.C.I.J., Ser. A, No.10 at 92; US v. Baker (1955) I.L.R. 22; Re

principles of jurisdiction. He is a Remorran national by virtue of the terms of the Peace Treaty,[30] and his crimes were committed against the Remorran people. Terraq committed the majority of his crimes in Telfin, which is located in Remorran territory. Finally, Terraq continues to be a threat to Remorra and its people through his ability to incite Nylesian hatred against Remorrans.

ii. Arden cannot argue that Terraq's criminal acts do not fall within the political offence exception.

9. Although the Extradition Treaty gives Arden discretion to refuse extradition on political grounds,[31] Arden has not exercised this discretion. Rather, Arden claims to have denied extradition because it would be contrary to the rule of law.[32]

10. In any event, Arden cannot argue Terraq's crimes are political offences. Terraq is not accused of any purely political crimes. This is clearly the case for murder, a common crime, but it is also true, in these circumstances, for treason and sedition. Purely political offences are limited to those acts directed against the state that do not injure private persons, property, or interests, and are not

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Guitierrz, (1957) I.L.R.24; Brownlie, supra note 8 at 303; R.Y. Jennings, General Course on Principles of International Law, Vol II (1967) 121 Hag. Rec. 331 at 523 [hereinafter Jennings].

[27] Cutting Case (1887) Moore's Digest of International Law (1906) Vol 11 at 228; Jennings, Id. at 533; Brownlie, supra note 8 at 303.

[28] Lotus, supra note 26, at 23; Brownlie, supra note 8 at 300.

[29] Joyce v. DPP [1946] AC 347; Brownlie, supra note 8 at 304; M.R.Garcia-Mora, Treason, Sedition, and Espionage as Political Offences (1957) 19 U. Pitt. L. R. 567 at 590.

[30] *Compromis* at para 17.

[31] *Compromis Clarifications* at para. 18.

[32] *Compromis* at para. 34.

accompanied by the commission of common crimes.[33] The crimes of treason and sedition, which Terraq is accused of, resulted in injury to private persons and property.[34] Moreover, the common crime of murder accompanied the crimes of treason and sedition.

11. Nor can Arden argue that these offences are political by virtue of any accepted test of political incidence. The Anglo-American political incidence test is the test most consistently applied.[35] To be deemed a political act, the test requires that a crime be committed during the course of a political uprising.[36] Terraq's crimes were directed at ethnic Remorrans rather than the Integran government.[37] Even if the Integran conflict were characterized as a political uprising, Terraq committed the crimes he is accused of after he gained control over the Telfin province.[38] Common crimes must be contemporaneous with the uprising to be deemed incidental to political uprisings.[39]

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[33] I.A. Shearer, Extradition in International Law (1971) at 169 [hereinafter Shearer]; C. Van den Wijnaguert, The Political Offense Exception to Extradition (1980) at 106 [hereinafter Van den Wijnaguert].

[34] *Compromis* at para 15.

[35] Van den Wijnaguert, supra note 33, at 120.

[36] R. v. Governor of Brixton Prison, ex p. Kolozyski,[1955], 1 QB 540 [hereinafter Kolozyski];R. v. Governor of Brixton Prison, ex p. Schtraks [1962] 3 All E.R. 529 HL at 538 [hereinafter Schtraks]; Re Meunier ([1894] 2 QB) 5 Brit. Int. L. C 572 at 415 [hereinafter Meunier]; Lubet and Czaches, The Role of the American Judiciary in the Extradition of Political Terrorists (1980) 71 J. Crim.L. & Crim'y 193 at 201 [hereinafter Lubet].

[37] *Compromis* at para. 9, 10, 12, 15.

[38] *Compromis* at para. 15.

[39] Schtraks, supra, note 36.

12. The Swiss test is less widely accepted and criticized for its lack of objectivity.[40] However, Terraq's offences fail to meet this test as well. The test requires a nexus between the crimes and a political struggle.[41] Further, the interests at stake must be sufficient to justify the actions taken.[42] Since there was no political struggle[43] in the case at bar, there can be no nexus established. Even if there was a political struggle, Terraq's crimes were motivated by ethnic hatred rather than a desire to overthrow the Integran government.[44] Finally, Terraq's crimes could hardly be described as necessary to the overthrow of the government since he had already gained control of the area where the crimes were committed.[45] Since there was no political interest at stake, the crimes cannot meet this test.

13. The French test has been deemed too broad.[46] It has fallen out of favour in civilian courts,[47]

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[40] P. Papadatos, Le Delit Politique (1955) at 81; B.A. Wortley, Political Crime in English Law(1971) 45 B.Y.I.L. 233 at 239.

[41] Van den Wijnaguert, supra note 33, at 127; Re: Kavic (1952) 19 I.L.R 371 (Switz. Fed. Trib.)

[42] Ktir v. Ministere Public Federal (1961) 34 I.L.R. 143 at 144 [hereinafter Ktir]; G.S. Gilbert, Terrorism and the Political Offence Exception (1986) 34 Int. & Comp. L.Q. 695 at 701 [hereinafter Gilbert]; Van den Wijnaguert, supra note 33 at 129.

[43] Supra para 11.

[44] *Compromis* at paras. 9, 10, 12, and 15.

[45] *Compromis* at para.15.

[46] Gilbert, supra note 42 at 701; Van den Wijnguert, supra note 33 at 123.

[47] Re: Peruzzo (1951) 19 I.L.R 369 (Switz. Fed. Trib.); Van den Wijnaguert, supra note 34 at 126.

and has never been used by common law courts.[48] Even recent French decisions have rejected it.[49] In any event, Terraq's offences do not meet even this broad test. Under this test, Arden must prove Terraq had a political objective in committing his crimes.[50] Efforts directed primarily against the general body of citizens are not politically motivated.[51] Terraq's crimes were directed against ethnic Remorrans and not the Integran government. Moreover, there is evidence that Terraq personally profited from his crimes, which is indicative of a non- political objective.[52]

14. Even if Terraq's crimes are deemed political, the current trend in state practice is to extradite for common crimes regardless of whether a political element exists.[53]

II. ARDEN HAS NO RIGHT TO DELIVER TERRAQ INTO THE CUSTODY OF THE INTERNATIONAL TRIBUNAL FOR THE FORMER INTEGRA (ICTFI).

A. ARDEN CANNOT DELIVER TERRAQ TO THE ICTFI BECAUSE THE ICTFI HAS NO BASIS IN LAW.

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[48] Ex parte Tzu-Tsai Cheung [1973] 1All ER at 935; Jiminez v. Aristequieta (1967) USCA, 33 Int. L. Rep. at 353; Kolozyski, supra note 37; Meunier supra note 36 at 572; Schtraks, supra note 36, at 538; Lubet supra note 36 at 201.

[49] Croissant (1978) Ct. of App. Paris, 93 J. Trib. at 52; Piperno, Ct. of App. of Paris, arrêt no. 1343-79 at 14; American Law Institute, Restatement (Third) of foreign Relations Law, Vol. I (1987) at § 476 note 7 [hereinafter Restatement]; C.L. Blakesley, The Evisceration of the Political Offence Exception (1986) 15 Den. J. Int. L. & Pol'y 109 at 113.

[50] Garcia-Mora, supra note 29, at 1251; Van den Wijnaguert, supra note 33 at 127.

[51] Meunier, supra note 36 at 572.

[52] B.L. and B.L. (1968) Ct. Of App. Douai, Doss 27.361 E and Doss. 27.368 E; Van den Wijnaguert, supra note 33 at 179.

[53] L. Henkin, International Law: Politics, Values and Functions (1989) Ac. de Droit Int. II at 303; Restatement, supra note 49 at § 476.

i. This Court may review Resolution 1024 which established the ICTFI.

15. The Security Council does not exercise unfettered power.[54] For example, the UN Charter prescribes an express limitation by imposing a positive duty on the Security Council "to act in accordance with the Purposes and Principles of the United Nations"[55] when exercising its powers under Chapter VII.

16. Concomitantly, this Court is the principal guardian of legality in the international system.[56] As such, the International Court of Justice (ICJ) cannot "cooperate with a resolution that [i]s clearly void or contrary to the rules of the Charter."[57] The ICJ's power of review is implicitly supported by Article 12 of the Charter[58] and by this Court's *de facto* review in Namibia[59] as well as the express

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[54] Prosecutor v. Dusko Tadic (Preliminary Motion), Case No. IT-94-I-AR72, Balkens War Cr. Trib. (Oct. 2, 1995) at para. 28 [hereinafter Tadic Appeal]; Aerial Incident at Lockerbie (Provisional Measures) 31 I.L.M. 662 (1992) [hereinafter Lockerbie] at 674, 686, 694; Certain Expenses of the United Nations (1962) I.C.J. Rep. 151 at 168 [hereinafter Expenses Case]; J. Alvarez, The Likely Legacies of Tadic (1997) 3 ILSA J.Int. & Comp. L. 611 at 617; M. Bedjaoui, The New World Order and the Security Council: Testing the Legality of its Acts, (Kluwer Law International, The Hague 1994) at 28 [hereinafter Bedjaoui].

[55] Charter of the United Nations, 26 June 1945, 59 Stat. 1031 T.S. No 993, 3 Bevans 1153, 1Y.B.U.N. 831 [hereinafter UN Charter].

[56] UN Charter, supra note 55, art. 92; Statute of the International Court of Justice, 26 June 1949, 59 Stat. 1055, U.N.T.S. 993, 3 Bevans 1153, art. 38; Lockerbie, supra. note 54 at 677, 692, 700, 713; Expenses Case, supra note 54, at 217-218; Namibia (Advisory Opinion) (1971) I.C.J. Rep. 16 at 72, 131, 143-144, 180 [hereinafter Namibia]; Bedjaoui, supra.note 54 at 17; Vera Gowland-Debbas, The Relationship Between the International Court of Justice and the Security Council in the Light of the *Lockerbie* Case (1994) 88 Am. J. Int. L. 643 at 662.

[57] Expenses Case, supra note 54, at 180 (Separate Opinion of Justice Morelli).

[58] UN Charter, supra note 55; Tehran Hostages Case (1980) I.C.J.Rep.3 at 22 at para. 40; Lockerbie, supra note 54, at 675.

[59] Namibia, supra note 56, at 53 para. 115.

review recently undertaken by the Hague Tribunal.[60] If this Court were to hold otherwise, the Security Council would effectively be exempt from the duty to respect the Charter.[61]

ii. Arden cannot deliver Terraq to the ICTFI because the creation of the ICTFI is an *ultra vires* act of the Security Council.

a) The conflict in the former Integra did not constitute a threat to international peace and security sufficient to justify Security Council action under Chapter VII.

17. Article 39 restricts the authority of the Security Council to act only "to maintain or restore international peace and security."[62] The situation in the former Integra was an internal conflict and therefore, did not constitute a threat to international peace and security. The conflict did not spill over into any other nation and did not involve injuries to non-Integran nationals. At most, this situation could be characterized as "likely to impair the general welfare or friendly relations among nations"[63] and as such is more appropriately handled by recommendations of the General Assembly.

18. Even if the Integran conflict had originally posed a threat to international peace, this was no longer the case by the time the Security Council acted. The conflict in the former Integra had ended six months before the creation of the ICTFI.[64] Furthermore, Remorra and Nylesia had signed apeace treaty, duly implemented its provisions, and maintained peaceful relations throughout the intervening period. Finally, the courts of Remorra are willing and able to prosecute all persons

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[60] Tadic Appeal, supra note 54 at para. 28.

[61] Bedjaoui, supra note 54 at 28.

[62] UN Charter, supra note 55.

[63] UN Charter, supra note 55, art. 14.

[64] *Compromis*, at paras. 16 and 22.

accused of crimes committed during the conflict.[65]

b) The Chapter VII powers were never intended to be used to establish a judicial body like the ICTFI.

19. The powers of the Security Council to act under Chapter VII are limited to those contemplated in Article 41 and 42. Although Article 41 is drafted broadly, the discretion given to the Security Council is not absolute.[66] Article 41 contemplates measures directed at an interruption of economic relations or communications [67] and clearly does not contemplate the establishment of a judicial body.

20. According to the UN Secretary-General, in his report on the establishment of the Yugoslavia Tribunal, an international tribunal should normally be created by treaty or through a specially convened conference.[68] This approach respects state sovereignty[69] and promotes representativeness participation through the involvement of the General Assembly.[70] The Secretary-General acknowledged that urgency was the sole reason for excluding the General Assembly in the Yugoslavia case.[71] As Resolution 1024 was enacted six months after the conflict had been

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[65] *Compromis*, at para. 23.

[66] Lockerbie, supra note 54 at 674, 686 and 694; Bedjaoui, supra note 54, at 28.

[67] UN Charter, supra note 55, art.41.

[68] Report of the Secretary-General Pursuant to Para. 2 of Security Council Resolution 808 at para. 19, U.N. Doc. S/25704 (1993).

[69] Id.

[70] Id., at para. 21.

[71] Id., at para. 21.

peacefully settled, the element of urgency was lacking in the case at bar.[72] Therefore, the ICTFI is not properly constituted.

21. Even if it were within the authority of the Security Council to establish an international criminal tribunal, the creation of the ICTFI is nevertheless invalid as a result of its overbroad jurisdiction. The Security Council purported to grant the ICTFI jurisdiction over crimes against peace, crimes against humanity and "other violations of law", committed in the territory of the former Integra since 1994.[73] Allowing an *ad hoc* body such as the ICTFI to exercise unrestricted jurisdiction over other violations of law in the former Integra, could lead to the absurdity of shoplifters and looters being tried for their crimes in an international court.

iii. Arden cannot rely on the past practice with respect to other international criminal tribunals to support the creation of the ICTFI in this case.

22. The mere fact that international tribunals were established in Yugoslavia and Rwanda does not mean that the ICTFI is properly constituted. The Yugoslavian conflict was international in nature, involving organized military action between states.[74] Additionally, the spillover effect was substantial and the conflict, which involved military action by the United Nations, was still ongoing when the Security Council acted under Chapter VII to establish the Criminal Tribunal.[75]

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[72] *Compromis* at para. 22.

[73] *Compromis* at para. 20.

[74] Final Report of the Commission of Experts - Established Pursuant to Security Council Resolution 780 (1992) U.N. Doc. S/1994/674; T. Meron, International Criminalization of Internal Atrocities (1995) 89 Am. J. Int. L.554 at 555 [hereinafter Meron, International Criminalization]; T. Meron, War Crimes in Yugoslavia and the Development of International Law (1994) 88 Am. J. Int. L. 78 at 81; J.C. O'Brien, The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia (1993) 87 Am. J. Int. L. 639 at 640.

[75] Security Council Resolution 827, S/RES/827 (1993); O'Brien, supra note 74 at 640;

23. The Rwandan crisis is also distinguishable from the case at bar. The Rwandan conflict was also international in nature, as evidenced by the cross-border military activities and the refugee crisis.[76] Even if the Rwandan crisis could be characterized as internal, the international impacts of the conflict far outweigh those in the case at bar. The sheer magnitude of the refugee crisis and the genocidal nature of the crimes internationalized that conflict. The Rwandan conflict had also not yet been settled when the Security Council acted under Chapter VII.[77]

24. In contrast, the conflict in Integra had been over for six months when the Security Council acted[78], there was no inter-state conflict, there was no widespread refugee crisis and any impact on surrounding states was negligible. Even though the multi-lateral force did intervene, it disarmed most of the combatants in one day[79]; therefore, this intervention had little internationalizing effect on the conflict. In the result, the past practice of the Security Council provides little justification for the creation of the ICTFI.

B. ARDEN MUST DEFER TO REMORRA AS THE MORE APPROPRIATE FORUM TO TRY TERRAQ.

M.P. Scharf, The Prosecutor v Dusko Tadic: An Appraisal of the First International War Crimes Trial Since Nuremberg (1997) 60 Alb. L. Rev. 861 at 874.

[76] Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994), U.N. Doc. S/1994/1405/Annex at para.108, 109 and 111; M.H. Morris, Justice in the Wake of Genocide: The Case of Rwanda (1997) 3 ILSA J. Int. & Comp. L. No.2 689 at 689.

[77] Security Council Resolution 955, S/RES/955 (1994), UN Doc. S/1994/1168 [hereinafter SC Res. 955].

[78] *Compromis* at paras. 16 and 20.

[79] *Compromis* at para. 16.

i. Even if the ICTFI has jurisdiction, it is only complementary and Arden must defer to Remorra as the more appropriate forum.

25. Remorran courts have jurisdiction to try Terraq.[80] Furthermore, under the principle of *aut dedere aut judicare*, it is the sovereign right of any state to try its own citizens.[81] Moreover, international criminal tribunals are intended only to supplement national courts[82], not to replace them. This is evidenced by the Draft Statute for the International Criminal Court, which provides that any extradition request for a crime within that Court's jurisdiction, requires the consent or acceptance of the requesting state.[83] For an international tribunal to attain primacy over a national courts, it must be expressly stated in its constitutive statute, as in Yugoslavia[84] and Rwanda[85] tribunals. The ICTFI was given no such primacy in the instant case; therefore Arden must defer to the Remorran courts.

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[80] Supra para. 8.

[81] Lockerbie, supra note 54 at 674, 676 and 699.

[82] I.L.C., Report of the Preparatory Committee on the Establishment of an International Criminal Court, Vol.I (Proceedings) U.N. GAOR-51st Sess., Sup. No. 22 at paras. 154, 157 & 158, U.N. Doc. A/51/22 (1996) [hereinafter ILC Proceedings]; E.T. Bloom, Comments on the International Criminal Court, (1996) 2 ILSA J. Int. & Comp. L. No.3 649 at 650; J.Crawford The ILC Adopts a Statute for an International Criminal Court (1995) 89 Am. J. Int. L. 404 at 413 [hereinafter ILC Adopts]; J. Crawford, The ILC's Draft Statute for an International Criminal Court (1994) 88 Am. J. Int. L. 140 at 142 [hereinafter ILC Draft Statute];

[83] I.L.C., Report of the Preparatory Committee on the Establishment of an International Criminal Court, Vol. II (Compilation of Proposals) U.N. GAOR-51st Sess., Sup. No. 22A at art. 22 of Draft Statute, U.N. Doc A/51/22 (1996) [hereinafter ILC Proposals];Crawford, ILC Adopts, id. at 413; Crawford, ILC Draft Statute, id., at 144.

[84] Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 9(2) U.N. Doc. S/25704/Annex (1993) [hereinafter Yugoslavia Statute].

[85] Statute of the International Criminal Tribunal for Rwanda, art. 8(2), U.N.Doc. S/1994/1168/Annex, S/RES/955 (1994) [hereinafter Rwanda Statute].

26. The presumption in favour of the jurisdiction of the Remorran courts is further strengthened by the restrictive wording of Resolution 1024 which provides the ICTFI's jurisdiction "shall be interpreted in a manner not inconsistent with pre-existing obligations under treaties and customary international law."[86] In addition, the word "complementary" was used to characterize the relationship between the ICTFI and domestic courts rather than the word "concurrent" as was used for the tribunals of Yugoslavia[87] and Rwanda.[88] Moreover, in Yugoslavia, the question of a contest between competing jurisdicitions did not arise. Indeed, in the *Tadic* case, Bosnia and Herzegovina (where the crimes were committed) and Germany (where Tadic was arrested) both unconditionally accepted the jurisdiction of the international tribunal.[89] In Rwanda, the *de jure* government in exile accepted the jurisdiction of the tribunal although it later recanted[90]. By contrast, Remorra has always maintained its exclusive right to prosecute crimes committed during the Integran conflict.

27. Even if the ICTFI had been granted concurrent jurisdiction, the Remorran courts would nevertheless be the more appropriate forum to try Terraq. All of the crimes committed by Terraq are justiciable within municipal law principles and there is therefore no need to tax the limited resources of the ICTFI.[91] Furthermore, Remorran courts would be more sensitive to the needs of the local community and the judgments of the Remorran courts would provide greater symbolic force to the

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[86] *Compromis*, at para. 22.

[87] Yugoslavia Statute supra note 84, art. 9(1).

[88]Rwanda Statute supra note 85, art. 8(1).

[89] Tadic Appeal, supra note 54, at para. 41.

[90] SC Res. 955, supra note 77; Morris, supra note 76 at 690.

[91] ILC Proceedings, supra note 82 at para. 155.

Remorran people.[92] Finally, Remorra has recently emerged from a divisive and protracted ethnic conflict and needs to bring a sense of closure to that conflict.

ii. Arden cannot argue that the nature of Terraq's crimes support the ICTFI taking precedence over Remorran courts.

28. The crimes committed by Terraq are not properly characterized as crimes against humanity and therefore do not have an international dimension which justifies the jurisdiction of the ICTFI. Crimes against humanity are those gross violations of humanitarian law committed by persons linked to an armed conflict "as part of an official policy based on discrimination against an identifiable group of persons."[93] There was no official policy of discrimination on the part of the NPA. In addition, Terraq's crimes were only isolated and sporadic acts of violence by a single individual and cannot, therefore, be considered as crimes against humanity.[94]

iii. Nor can Arden argue any lack of due process to support the ICTFI's jurisdiction.

29. There is no evidence that accused persons would not be given their rights to due process in Remorra. All statements made by Remorran officials with regard to Terraq stressed only the need for justice.[95] Nor can Arden argue that the trials of the other three NPA members are evidence of a lack of due process. These individuals were given a fair trial before an impartial court and were

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[92] Interim Report of the Commission of Experts on the Establishment of an International Criminal Tribunal for Rwanda, at para. 134, U.N. Doc. S/1994/1125 (1994).

[93] The Final Report of the Commission of Experts on Rwanda, UN Doc. S/1994/1405, annex, para.135 (1994).

[94] M.C. Bassiouni, Crimes Against Humanity in International Criminal Law (1992) at 39; Report of the I.L.C. on the work of its 49th session, Chapter II Draft Code of Crimes Against the Peace and Security of Mankind at Part D paras. 3 - 5, U.N. Doc A/52/10 (1996).

[95] *Compromis* at paras. 23, 24 and 31.

granted the right to due process, including the right of appeal, which they did not exercise.[96] In any event, Arden has the burden to show that there would be a lack of due process in Remorra, and this, it cannot do.

III. ALTERNATIVELY, ARDEN'S VIOLATION OF INTERNATIONAL LAW ENTITLES REMORRA TO AN ORDER FOR COMPENSATORY DAMAGES IN THE AMOUNT OF US$100 MILLION FOR THE ESTABLISHMENT OF A TRUTH AND RECONCILIATION COMMISSION.

A. ARDEN'S FAILURE TO DELIVER TERRAQ INTO THE CUSTODY OF REMORRA HAS RESULTED IN INJURY TO THE STATE OF REMORRA.

i. Without custody of Terraq, Remorra has been denied access to valuable information.

30. Arden's failure to deliver Terraq has frustrated Remorra's ability to procure information on his human rights violations in the Integran conflict. Remorra also has an interest in obtaining information on the funds Terraq illegally diverted during the Integran conflict. This diversion is inherently bound to his human rights violations. Such a connection could have been established had Arden honoured its international obligation to Remorra and extradited him.

ii. Furthermore, Arden's refusal to extradite Terraq is an affront to the dignity of the state of Remorra and its nationals.

31. Arden's breach of the Extradition Treaty implies that Remorran courts do not have the capacity to effectively and impartially try someone such as Terraq. This slur on Remorra's reputation jeopardizes its ability to conclude treaties or to engage in diplomatic interactions with other states. Arden's breach of the Extradition Treaty has also deprived Remorra of the ability to try Terraq in its national courts and thereby heal its national psyche.

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[96] *Compromis Clarifications* at para. 3.

B. REMORRA IS ENTITLED TO AN AWARD OF US$100 MILLION FROM ARDEN AS COMPENSATION FOR THE INJURIES SUFFERED.

32. A breach of an international obligation gives rise to state responsibility and a duty to make reparation.[97] In the absence of restitution in kind, the most commonly employed remedy is monetary compensation, as confirmed by this Court,[98] its predecessor,[99] and learned writers.[100] This compensation "...must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[101] In the case at bar, reparation for the material harm suffered by Arden requires the payment of sufficient funds to allow the state of Remorra the ability to obtain the same information it would have obtained had Terraq been extradited, as the Treaty required.

33. The principle of monetary compensation extends not only to material loss but also to non-material injuries.[102] Breaches of international obligations which cause injury to the national honour

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[97] Chorzów Factory Case (1928) P.C.I.J. Ser. A, No. 17, at 21, 47 [hereinafter Chorzów]; Spanish Zone of Morocco Claims (1925) 2 R.I.A.A. 617 at 641 [hereinafter Spanish Zone]; Restatement, supra note 49, Vol II at 338 and §901; Brownlie, supra note 8 at 434; C.D. Grey, Judicial Remedies in International Law (1990) at 18, 79 [hereinafter Grey]; P. Allott, State Responsibility and the Unmaking of International Law (1988) 29 Harv. Int. L. J. 1 at 11-12.

[98] Spanish Zone, id; Temple of Preah Vihear Case, (1962) I.C.J. Rep. 6 at 2; B.P. v. Libya (1973) 53 I.L.R. 297 at 356-357; Tehran Hostages Case, supra note 58.

[99] Chorzów, supra note 97 at 47, 48; Martini Case (1930) 2 R.I.A.A. 975 at 975; Phosphates in Morocco (Prelimn objections) (1938), P.C.I.J., Ser. A/B, No. 74 at 28.

[100] Restatement, supra note 49 at Vol II 339, 340, 342-344; Brownlie, supra note 8 at 435; Grey, supra note 97, at 18; D.W. Grieg, International Law, 2nd ed. (1976) at 596 [hereinafter Grieg]; M.M. Whiteman, Damages in International Law, Vol. II (1937) at 833.

[101] Chorzów, supra note 97 at 47.

[102] Lusitania Case (1925-6) 7 R.I.A.A. 32 at 34-38; I'm Alone Case (1935) 3 R.I.A.A. 1609; Restatement, supra note 49, at 341, 342; Schwarzenburger, supra note 13, at 653, 658.

of the victim state are fully compensable by pecuniary awards[103] The remedy for an insult to the honour or dignity of a state is not limited to an apology. This is evidenced in case law[104] and is confirmed by learned writers[105]. Furthermore, the fact that an injury is not easily quantifiable does not prevent an award of damages for that injury.[106] In the case at bar, Arden's breach of the Extradition Treaty has deprived Remorra of its ability to heal its psyche and has injured its international prestige and dignity. Remorra is therefore entitled to pecuniary compensation.

34. The appropriate remedy to compensate Remorra for all of the injury it has suffered is the establishment of the Truth and Reconciliation Commission at a cost of US$100 million. The Commission is the only effective method of obtaining the information which the custody of Terraq would have provided. The Commission is also the only method of reestablishing Remorra's dignity and honour in the international community, by illustrating to the world that it is capable of conducting a fair and effective investigation of the Integran conflict. Furthermore, the Commission is essential for the healing of Remorra's national psyche by achieving closure to this dark period of Remorran history. In any event, the cost of this Commission is not at issue before this Court.

IV. THIS COURT SHOULD ORDER THAT ARDEN PROVIDE AN ACCOUNTING AND PAYMENT OF FUNDS IN THE FIRST ARDEN NATIONAL BANK.

A. ARDEN MUST PROVIDE AN ACCOUNTING AND PAYMENT OF FUNDS.

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[103] Grieg, supra note 100, at 598, 599; Restatement, supra note 49, Vol II at 341, 342.

[104] I'm Alone Case, supra note 102; Rainbow Warrior Case (1987), 26 I.L.R. 74, 241; Mavrommatis Palestine Concession (Jurisdiction), (1924) P.C.I.J., Ser. A, No. 2, at 12.

[105] Brownlie, supra note 8, at 460, 461; Grieg, supra note 100, at 528, 598; Whiteman, supra note 100 at 155-7.

[106] Lusitania Case, supra note 102, at 34-38; Grieg, supra note 100, at 604.

i. Arden has breached its duty to cooperate in efforts against money laundering.

35. The duty on states to cooperate in efforts against money laundering has achieved the status of a customary international norm. This is reflected in domestic proceeds of crime legislation,[107] international agreements regarding money laundering[108], the relaxation of bank secrecy laws[109] and general global concern[110]. Particularly striking is the number of states involved in the OAS Model

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[107] Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, 106 Stat. 3672 (1992) [hereinafter Annunzio-Wylie Act]; Foreign Bank Supervision Enhancement Act, 12 U.S.C. s.3105 (Supp. IV 1992); Money Laundering Control Act, Pub. L. No. 99-570, 100 Stat. 3207 (1986) [hereinafter Laundering Control Act]; Money Laundering Suppression Act, Pub. L. No. 103-325, 407(a)(1), 108 Stat. 2169, 2247-48 (1994)[hereinafter Laundering Suppression Act].

[108] European Council Directive on the Prevention of Money Laundering, 91/308, 1991 O.J. (1164) 77; OAS/CICAD Model Regulations Concerning Laundering Offences Connected to Illicit Drug Trafficking and Related Offences, AG/RES. 1198 (1992)(XXII/O-92) [hereinafter OAS Model Regulations]; U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. Doc. E/Conf. 82/14 (1988) [hereinafter the U.N. Convention].

[109] Hungarian Civil Code [CIV. CODE] arts. 534 and 535; Luxembourg Penal Code, art. 458; OAS Model Regulations, supra note 108, art.11; Swiss Federal Law on Criminal Procedure, R.S. 312.0, art. 77; Swiss Federal Law on Debt and Bankruptcy, R.S. 281.1; Swiss Penal Code (SPC) amendment to art. 305 bis; Treaty on Mutual Assistance in Criminal Matters, Aug. 18, 1987, US-Bahamas, S. Doc. No. 17, 100th Cong., 2nd Sess., D.S.B. 11.87; Treaty on Mutual Assistance in Criminal Matters,US-Switzerland, May 25 1073, 27 U.S.T. 2019, T.I.A.S. No.8302 (1977); Treaty Relating to Mutual Legal Assistance in Criminal Matters, July 3, 1986, US-United Kingdom, S.Doc. No.8, 100th Cong., 1st Sess., 26 I.L.M. 537 (1987) [Cayman Islands Treaty].

[110] Control of the Proceeds of Crime, Report of the Secretary General, U.N. Doc. E/CN. 15/1993/4;; G-7 Economic Summit, Financial Action Task Force 1989; Organization for Economic Cooperation and Development, Directorate for Financial, Fiscal & Enterprise Affairs, "Financial Action Task Force on Money Laundering, Annual Reports & Annexes, 1991, 1992, 1993"; World Ministerial Conference on Organized Transnational Crime, Global Action Plan, Nov. 1994.

Regulations[111], representing a multitude of political, social and cultural systems, and the speed by which one hundred and six states adopted the U.N. Convention on point.[112]

36. Money laundering can be defined as disguising the origin and ownership of money derived from illegal sources, often by placing it in a bank and moving it through multiple transactions.[113] Deposits of four increments of US$4.5 million each were made into Terraq's bank account in Arden during the most intense periods of the Integran conflict.[114] These funds are undoubtedly the proceeds of crime as they are connected to the unlawful procurement of munitions and to material wealth plundered from Remorran nationals.[115] This clearly illustrates the existence of a money laundering scheme. In refusing to provide assistance to Remorra concerning the disposition of these funds, Arden has failed to meet even the most minimal standards of cooperation.

ii. Arden has breached its duty to prevent its territory from being used for the purposes of money laundering.

37. Every state is under a duty to prevent its territory from being used for acts contrary to the rights of other states.[116] Money laundering is contrary to the rights of other states because it poses

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[111] OAS Model Regulations, supra note 108.

[112] U.N Convention, supra note 108.

[113] Office of Technology Assessment, United States Congress, Information Technologies For the Control of Money Laundering, (1995) at xii; P.L. Jerez, Brazilian Money Laundering Legislation, 12 Am. U.J. Int. L. & P'y 329 at 331 [hereinafter Jerez].

[114] *Compromis* at para. 36.

[115] *Compromis* at para. 21.

[116] Corfu Channel Case (1949) I.C.J. Rep. 4, at 22; Military and Paramilitary in and against Nicaragua (1986) I.C.J. Rep 14 at 111-12, 128-9; Trail Smelter Arbitration (1931-1941), 3 R.I.A.A. 1905, at 1965.

a threat to the maintenance of global law and order, and challenges the integrity, reliability and stability of governments and financial institutions[117]. Through its bank secrecy laws, Arden permitted its territory to be used for the purposes of money laundering. Arden's bank secrecy laws are an impediment to criminal prosecution[118] and to the return of plundered national wealth[119].

38. The duty of a state to prevent its territory from being used for purposes contrary to the rights of other states carries with it a standard of care which Arden has failed to meet. Other states with secrecy laws have met the standard by legislating exceptions to absolute secrecy[120], entering into mutual assistance conventions[121] and implementing both the "know your customer rule"[122] and reporting requirements[123]. By failing to take any preventative measures to discourage money

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[117] U.S. Department of Treasury, Treasury News: Summit of the Americas Ministerial Conference Concerning the Laundering of Proceeds and Instrumentalities of Crime, Dec.2, 1994; Summit of the Americas Meeting of Western Hemisphere Finance Ministers, New Orleans, Louisiana, May 18, 1996.

[118] Senate Report No. 99-130, Crime and Secrecy: The Use of Offshore Banks and Companies, 99th Cong., 1st Sess. (1985) at 1.

[119] Republic of the Philippines v. Marcos, 862 F.2d 1355, 1361 (9th Cir. 1988); United States v. Noriega, 746 F. Supp. 1541, 1542 (S.D. Fla.1990); R. Herring and F. Kubler, The Allocation of Risk in Cross Border Deposit Transactions, (1995) 89 N.W.U. L. R. No.3 at 953.

[120] Supra at note 109.

[121] Id.

[122] Basle Committee on Banking Regulations and Supervisory Practices, Statement of Principles (1989) 1 Fed. Bkg. L. R. (CCH) at 87, 606; Basle Committee New 'Minimum Standards', (1992) Special Supp., F.R.R. at 1; Jerez, supra note 113 at 340.

[123] Annunzio-Wylie Act, supra note 107; Currency & Foreign Transactions Reporting Act as Title II of the Bank Secrecy Act, Pub. L. No. 92-508, 84 Stat. 114-1124 (1970); Laundering Control Act, supra note 107; Laundering Suppression Act, supra note 107; OAS Model Regulations art. 13, supra note 108.

laundering in its territory, Arden failed to exercise due diligence in meeting the standard of care to fulfill its international obligations.

iii. As a result of Arden's breach of its international obligation, Remorra is entitled to an accounting and payment of funds.

39. A state which committed an internationally wrongful act, is under a duty to undo the wrong in such a way that the situation *ex ante* is re-established[124]. This principle has been confirmed by this Court[125], its predecessor[126] and learned writers[127]. Injured states have the right to require a state which has committed a wrongful act to "release and return the persons and objects held as a result of such act [and] to prevent the continuing effects of such act".[128] Had Arden not breached its obligations with respect to money laundering, Remorra would have access to both an accounting and payment of these funds. Remorra is therefore entitled to restitution in the form of an accounting and payment.

B. ARDEN'S BANK SECRECY LAWS ARE NO BAR TO REMORRA RECEIVING THE REQUESTED REMEDY.

40. Arden cannot rely on its bank secrecy laws as an excuse for its failure to fulfill its international obligations. Obligations are binding on states even though their performance may

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[124] Temple of Preah Vihear Case, supra note 98; Encyclopedia of Public International Law, Vol. 10, at 376.

[125] Tehran Hostages Case, supra note 58; Nicaragua, supra note 116.

[126] Chorzów, supra note 97.

[127] Grey, supra note 97, at 107.

[128] I.L.C., Draft Articles on State Responsibility, Pt. 2 art. 6, U.N.Doc.A/CN.4/380(1980)

require the enactment or modification of legislation.[129] Arden, not this Court, must settle domestic or municipal problems that may arise with the fulfilment of its international obligations[130].

CONCLUSION

It is respectfully submitted that this Honourable Court adjudge and declare that:

1. The Extradition Treaty between the Former Integra and Arden requires that Malu Terraq be extradited to Remorra forthwith;
2. Arden has no right to deliver a Remorran national to the custody of the ICTFI;
3. Arden must provide compensation in the amount of US$100 million to Remorra for the establishment of a Truth and Reconciliation Commission; and
4. Arden must provide an accounting of the funds in the First Arden National Bank to which Malu Terraq is record owner, and that such funds, with interest, be paid over to Remorra as its own property.

All of which is respectfully submitted.

Agents for the State of Remorra.

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[129] Exchange of the Greek and Turkish Population. (1925), P.C.I.J., Ser, B, no.10, at 21; Lockerbie, supra note 54 at 679.

[130] Polish Nationals in Danzig, 1931 P.C.I.J. (ser. A/B) No. 79, 194., at 24.