

THE 1999 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION

BEFORE THE
INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

THE REPUBLIC OF BRETORIA,

Applicant,

v.

THE KINGDOM OF PAGONIA,

Respondent.

The Case Concerning Cultural Identity and Intellectual Property

SPRING TERM 1999
ON SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE

MEMORIAL FOR THE APPLICANT

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STATEMENT OF JURISDICTION

The Governments of the Republic of Bretoria and the Kingdom of Pagonia have submitted the present dispute by special agreement to the International Court of Justice pursuant to Article 36(1) of the Statute of the Court, for final resolution. There is no dispute as to the Court's jurisdiction in this matter.

STATEMENT OF FACTS

Bretoria has the largest entertainment industry in the world with Bretorian films and music being popular throughout the world. Since the overthrow of the totalitarian regime, Bretoria has made significant investments in the development of Pagonia's cultural sector. By 1991 approximately 25% of foreign investment capital in Pagonia came from Bretorian investors.

Pagonia's culture is observed within its own territory and in the "discrete communities of ethnic Pagonians in many nations throughout the world". These expatriate communities were established in the last century. The robustness of the Pagonian culture is demonstrated by the continued observance of traditional Pagonian cultural values by overseas Pagonians.

Despite the popularity of foreign language materials in Pagonia, the Pagonian Cultural Watch Group has been "extremely vocal" in lobbying the Pagonian Government to restrict the availability of such materials. This group was founded by Madeleine Crispell who is the majority owner of Grace Publications. It is the stated intention of Ms. Crispell to make Grace Publications "the largest publishing company in the nation". In 1994, Ms. Crispell was elected to Parliament but retained her ownership interest in Grace Publications.

In September 1997 the Pagonian Government adopted a bill introduced by Ms. Crispell which became Civil Law No. 51. This law was one of a number of drafts introduced by Ms. Crispell immediately on becoming a Member of Parliament.

Civil Law No. 51 prohibits majority foreign ownership of any commercial entity providing goods or services in the cultural sector. Foreign owners of a majority interest in such entities were required to divest themselves of their interests within a period of 90 days. If the foreign owner is unable to divest their interest it is compulsorily acquired by the Pagonian Ministry of Culture for merely the book value of the assets. As a necessary consequence of this law, a number of foreign investors immediately divested themselves of their majority interests. A number of these investors complained that the urgency of the sales resulted in a failure to obtain even book value. The Pagonian Ministry of Culture acquired the majority ownership interests remaining in the hands of foreign investors through court proceedings. Any challenge by foreign investors to the quantum of compensation was rejected by Pagonian courts.

The Pagonian Communication Commission later adopted regulations pursuant to Civil Law No. 51 requiring 75 percent of prime time television and radio content to be Pagonian in origin. Prior to this regulation 42 percent of the television programmes broadcast in Pagonia originated in Bretoria. As a necessary consequence of these regulations all Pagonian television networks cancelled pre-existing contracts for the supply of a number of television films and programmes. The cited reason for these cancellations was the doctrine of *force majeure*. Several Bretorian distributors who were affected by these cancellations sought legal and equitable relief in the Pagonian courts. However, the courts held that the terminations were authorised under Civil Law No. 51 and neither reinstated the contracts nor awarded any compensation.

The Pagonian Minister of Culture made regulations requiring all foreign publishers of foreign language periodicals to publish with Pagonian as the dominant language. This regulation does not apply to domestic publishers. This regulation was the result of a petition, by a consortium of publishers including Ms. Crispell to the Ministry of Culture asking the Ministry to force the Bretorian publisher, Benjamin Publications, to sell a Pagonian language version of their newsmagazine, *This Week*, in Pagonia. *This Week* has been sold direct to retail establishments in Pagonia since the overthrow of the totalitarian regime in 1975.

In 1996 a panel of experts from the World Intellectual Property Organisation visited Pagonia and published a report stating that “ inexpensive and obviously unlicensed copies of foreign movies and music cassettes are easily found throughout the streets of the large cities of Pagonia” The panel concluded that copyright owners were losing \$100 million per year in profits through copyright infringement in Pagonia. Bretoria and Pagonia agree that approximately 30% of that revenue would have gone to Bretorian copyright owners. The parties further agree that the panel was independent and objective.

Pagonia does not have any formal law directly prohibiting copyright infringement. Criminal prosecutions for copyright infringement are made under the theft provision of the Pagonian Criminal Code. Theft is defined in the Code as “depriving another of his property, or of the right to use his property as he sees fit, without his permission”. Pagonia has nine regional prosecuting offices. The regional prosecutors determine whether an action for theft shall be brought. Only three out of nine regions in Pagonia have a functioning unit for the prosecution of theft of

intangible property. In those three regions over the last four years an average of 150 individuals have been prosecuted for copyright infringement. In all cases the work infringed was the work of a Pagonian author or composer. There are no prosecution records in the six remaining regions. Pagonia provides a private action which is akin to the common law tort of conversion. There is no record of a criminal prosecution for theft of intellectual property and a successful private suit arising from the same copyright infringement.

In June 1998 the Bretorian Association of Copyright Owners alleged that “uncontrolled copyright infringement” was occurring in Pagonia and requested that the Bretorian Government lodge an official protest with the Pagonian Government. Benjamin Publications made a similar request in relation to the new restriction on the sale of *This Week*.

Following its own investigation, the Bretorian Government sent an official communique, strongly protesting the enactment and application of Civil Law No. 51. The communique also expressed dissatisfaction with Pagonia’s failure to protect copyright owners in accordance with international law. Pagonia responded by denying that it was in breach of any customary international law in relation to Civil Law No. 51 and its associated regulations. Furthermore, Pagonia stated that it provided “adequate protection for copyright owners according to any internationally accepted measure”.

As diplomatic negotiations have been unsuccessful, Bretoria and Pagonia have agreed to submit this dispute to the International Court of Justice.

QUESTIONS PRESENTED

1. Whether Bretonia has standing to bring an action.

2. Whether expropriation of foreign shareholdings without full compensation breaches customary international law.

3. Whether Pagonia is required to pay full compensation for the cancellation of the television programme contracts.

4. Whether Pagonia's local content regulation and Pagonian language requirement breach customary international trade or human rights obligations.

5. Whether Pagonia's protection of foreign copyright fail to meet customary international law requirements.

SUMMARY OF PLEADINGS

I. Bretoria can sue on behalf of Bretorian shareholders in Regulated Entities as these shareholders are directly affected by Civil Law No. 51. Bretoria may also sue on behalf of Benjamin Publications, other media distributors incorporated in Bretoria, and the Bretorian copyright holders who suffered injury due to Pagonia's breaches of international law.

II. Pagonia's expropriation of the majority interests in Regulated Entities is unlawful. The expropriation discriminated between foreign and domestic investors, was not for a public purpose, and did not provide appropriate compensation. The customary standard for appropriate compensation is the fair market value of the asset. The local content regulation amounts to an expropriation as it resulted in the deprivation of the fundamental rights associated with the television content contracts. Pagonia must pay compensation for this expropriation as the cancellation of the contracts was due to its regulation. This expropriation was unlawful as no compensation was paid.

Pagonia must pay compensation equivalent to *restitutio in integrum* for these unlawful expropriations. Local remedies have been exhausted.

III. Pagonia's local content requirement and the Pagonian language regulation breach the customary trade obligation of national treatment, by providing a worse regulatory framework for imported goods than for domestic products. This breach is not justified by the protection of cultural identity or any general trade exception.

The local content regulation also breaches Bretorian's right to freedom of expression. This breach is not justified as it is not proportionate to any pressing social need. The Pagonian language requirement breaches the customary rule prohibiting

discriminatory limitations on the right to freedom of expression. The discrimination against foreign publishers is not permitted as it is not proportionate to a pressing social need.

Pagonia cannot defend its regulations by the alleged purpose of the protection of cultural identity. No general right to protect cultural identity exists at international law. Any right to protect cultural identity extends only to the protection of specific groups or the protection of fundamental individual rights that help the development of a culture. Pagonia's regulations do not fall within these categories.

IV. Pagonia has breached the customary international law obligation requiring adequate and effective protection of foreign copyright on a national treatment basis. Pagonia's current criminal and civil laws do not provide adequate or effective protection.

Pagonia has also failed to exercise due diligence to prevent injury to the property of aliens within its territory. Pagonia has not exercised due diligence as it has failed to meet the international standard of protection, which requires the provision of adequate and effective copyright legislation. Pagonia has also failed to ensure that its authorities take reasonable steps to apprehend and prosecute individuals within its territory who wrongfully injure the property of aliens.

The quantum of damages that Pagonia must pay is equivalent to the loss of profits that its breaches have caused Bretorian copyright holders. The requirement of exhaustion of local remedies has been met as no adequate or effective remedies are available.

PLEADINGS

I. BRETORIA HAS STANDING TO BRING AN ACTION

A State may bring an action on behalf of its nationals and entities incorporated within its territory for damage caused by the unlawful acts of another State.¹ Civil Law No. 51 is aimed at “persons having a Foreign Interest in a Regulated Entity,”² and not the regulated entities themselves. Therefore, Bretoria can sue on behalf of the effected Bretorian shareholders.³ Bretoria may also sue on behalf of the Bretorian copyright owners who have been injured by Pagonia’s failure to adequately protect copyright, Benjamin Publications, and other media distributors incorporated in Bretoria who suffered loss as a result of Pagonia’s regulations.

¹ *Mavrommatis Claim* (1924) P.C.I.J. Ser.A No.2, p.12; *Panevezya-Saldutiskis Case* (1939) P.C.I.J. Ser.A/B No.76, pp.16-17.

² *Compromis*, para.16, Civil Law Number 51, Art 2(d) and (e).

³ *Barcelona Traction, Light and Power Co. Ltd. (Belgium v Spain)* [1970] I.C.J. Reports 3, para.47.

II. PAGONIA MUST PROVIDE FULL COMPENSATION FOR THE EXPROPRIATION OF INTERESTS IN REGULATED ENTITIES AND THE TELEVISION CONTENT CONTRACTS

A. THE FORCED SALE OF INTERESTS IN REGULATED ENTITIES IS AN EXPROPRIATION

An expropriation is a compulsory taking of property rights from a foreign national.⁴ A compulsory taking can be by direct acquisition of property rights by a State or by acts attributable to the State which deprive an alien of fundamental rights of ownership.⁵ It is unnecessary to show that a State has an intention to expropriate.⁶

A forced sale of property rights is an expropriation as it is a deprivation of the fundamental rights of ownership.⁷ Civil Law No. 51 led to the forced sale of majority interests in Regulated Entities to either Pagonian citizens or the Pagonian

⁴ *Amoco International Finance Corp. v. Islamic Republic of Iran* (1987) 15 Iran-U.S. C.T.R. 189, p.220.

⁵ *Chorzow Factory Case (Indemnity)* (1928) P.C.I.J. Ser.A. No.17, p.47; *Norwegian Ship Builders Case (Norway v. USA)* (1952) 1 R.I.A.A. p.307; *Revere Copper and Brass Inc. v. Overseas Private Investment Corp.* (1978) 56 I.L.R. 258, pp.290-296; *Starrett Housing Corporation v. Islamic Republic of Iran* (1987) 16 Iran-U.S. C.T.R. 112, p.154; *Tippetts, Abbett, McCarthy, Stratton v. TAMS – AFTFA Consulting Engineers of Iran* (1984) 6 Iran-U.S. C.T.R. 219, p.225; *Harza Engineering Co v. the Islamic Republic of Iran* (1982) 1 Iran-U.S. C.T.R. 499, p.504.

⁶ *Tippetts, Abbett, McCarthy, Stratton v. TAMS – AFTFA Consulting Engineers of Iran supra* n.5, pp.225-226.

⁷ *Berstein v. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, supra* n.5; Higgins “The Taking of Property by the State: Recent Developments in International Law” (1982) 176 Hague Recueil 259, p.326; Weston, “Constructive Takings Under International Law: A Modest Foray into the Problem of Creeping Expropriation” (1975) 16 Va.J.I.L. 103, p.133.

government.⁸ The potential choice of purchaser does not prevent Civil Law No. 51 being an expropriation, as in either event the sale was forced.

B. PAGONIA'S DEPRIVATION OF FUNDAMENTAL RIGHTS UNDER THE TELEVISION CONTENT CONTRACTS IS AN EXPROPRIATION

The deprivation of the fundamental rights associated with the television content contracts is an expropriation of the contractual rights.⁹ Pagonia's local content regulation caused the cancellation of programming contracts by Pagonian television stations with Bretorians. This conclusion follows from the Pagonian Court's view that the termination of the contracts was authorised by Civil Law No. 51.¹⁰ Therefore, Pagonia has expropriated the contractual rights.

C. THESE EXPROPRIATIONS ARE UNLAWFUL AS THEY FAIL TO MEET THE MINIMUM INTERNATIONAL STANDARD

Expropriations are unlawful at international law if they do not have a public purpose, are discriminatory or do not provide for "appropriate" (prompt, adequate and effective) compensation.¹¹

⁸ *Supra* n.2.

⁹ *German Interests in Polish Upper Silesia (Germany v Poland)* (1926) P.C.I.J. Ser.A, No.7, p.41; *Norwegian Claims Case (Norway v. USA)* R.I.A.A. 1, p.307; *Revere Copper and Brass Inc. v Overseas Private Investment Corp.* (1978) 56 I.L.R. 258, pp.290-296; *Texaco Overseas Petroleum Co. and California Asiatic Oil Co. v. Libya Arabic Republic* (1977) 53 I.L.R. 420; *Kuwait v. American Independent Oil Co.* (1982) 66 I.L.R. 519; *Starrett Housing Corporation v. Islamic Republic of Iran* *supra* n.5, pp.156-157.

¹⁰ *Compromis*, para. 21.

1. Pagonia's expropriation of majority interests is discriminatory and not for a public purpose

An expropriation must not discriminate between foreign and domestic investors. This non-discrimination requirement is acknowledged by judicial and arbitral decisions¹² and human rights conventions.¹³ Pagonia has breached this requirement as only foreign, and not domestic shareholders, are required to sell their interests.¹⁴

Furthermore, an expropriation is unlawful if it is not based on reasons of public utility, security or the national interest.¹⁵ Pagonia's expropriation of Regulated Entities does not meet this requirement as it merely serves the financial interests of Ms Crispell and the private citizens of Pagonia who acquired an interest in Regulated

¹¹ Diplomatic Exchange, United States of America-Mexico (1938), in Steiner, Vagts, *Transnational Legal Problems*, 2nd ed. (1976); *Oscar Chin Case* (1934) P.C.I.J. Ser.A/B No. 63, p.87; *Amoco International Finance Corporation supra* n.4, p.270; Asian-African Legal Consultative Committee, Models for Bilateral Agreement on Promotion and Protection of Investments 23 I.L.M. 237 (1984) Art.7.

¹² *Oscar Chin Case supra* n.11, p.87; *BP Exploration Co. (Libya) Ltd. v. Libyan Arab Republic* (1977) 53 I.L.R. p.329; *Banco Nacional de Cuba v First National City Bank of New York*, 207 F.Supp. 1004, (SD NY 1967).

¹³ Universal Declaration on Human Rights ["U.D.H.R."] G.A.Res. 217A (III) (1948), Arts.2,17; American Convention on Human Rights ["Am.C.H.R."] 9 I.L.M. 673 (1970), Arts.1,13(1); African Charter on Human and Peoples Rights ["Af.C.H.R."] O.A.U. Doc.CAB/LEG/67/3/Rev.5 (1981) Arts.2,14; Arab Charter on Human Rights ["Ar.C.H.R."], Council of the League of Arab States, Resolution 5437 (1994), Arts.2, 25; European Convention for the Protection of Human Rights and Fundamental Freedoms ["E.C.P.H.R.F.F."] 213 U.N.T.S. 222 (1950) Art.14, First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No.9 (1952) Art.1.

¹⁴ *Compromis*, para.16, Civil Law No. 51, Art. 2.

¹⁵ Resolution on Permanent Sovereignty over Natural Resources G.A. Res. 1803 (XVII) (1963) Art. 4; Verwey, Schrijver, "The Taking of Foreign Property Under International Law: A New Perspective" (1984) N.Y.I.L. 1, p.15.

Entities for less than fair market value. The protection of cultural identity does not justify this discrimination as the mere transfer of ownership into Pagonian hands does not of itself promote the Pagonian culture.

2. Pagonia has failed to provide appropriate compensation for the expropriation of majority interests

Appropriate compensation is equal to the fair market value of the expropriated assets. This standard of compensation is supported in a long line of judicial and arbitral decisions,¹⁶ multilateral¹⁷ and bilateral investment treaties,¹⁸ and studies by international organisations.¹⁹ Fair market value is the value of the entity, on a going

¹⁶ *Chorzow Factory Case supra* n.5, p.47; *Norwegian Shipowners Claim (Norway v. U.S.A.)* 1 R.I.A.A. 307, pp.443-45; *Libyan American Oil Co. v. Libya* (1977) 20 I.L.M. 1; *Texaco Overseas Petroleum Co. and California Asiatic Oil Co. v. Libyan Arab Republic supra* n.9, pp.486-490; *Benvenuti et Bonfant v. Congo* (1986) 21 I.L.M. 740; *American International Group Inc. v. Iran* (1983) 4 Iran-U.S. C.T.R. 96.

¹⁷ European Energy Charter Treaty, 34 I.L.M. 360 (1995) Art.13(1); North American Free Trade Agreement ["N.A.F.T.A."] 32 I.L.M. 605 (1993) Art.1110.2; ASEAN Agreement for the Promotion and Protection of Investments, Art.VI.

¹⁸ For example: Australia – Vietnam (Agreement on the Reciprocal Promotion and Protection of Investments (1991)); China – Turkey (Agreement Concerning the Reciprocal Promotion and Protection of Investments, (1990)); Sri Lanka – Switzerland (Agreement for the Reciprocal Promotion and Protection of Investments (1981)); U.S.A. Bilateral Investment Treaties, United States – Russian Federation (Treaty Concerning the Encouragement and Reciprocal Protection of Investment (1992) Art. III).

¹⁹ World Bank Guidelines on the Treatment of Foreign Direct Investment, 31 I.L.M. 1363 (1992) 4th Guideline; Asian-African Legal Consultative Committee: Models for Bilateral Agreement on Promotion and Protection of Investments *supra* n.11, Art.7.

concern basis, immediately prior to the changes that led to the expropriation.²⁰ It includes the goodwill and future prospects of the entity.²¹

Exceptions to this requirement of fair market value compensation are limited to cases of fraud,²² unjust enrichment,²³ and situations when the expropriating state is unable to afford full market value compensation.²⁴ These exceptions are not applicable to Pagonia as there is no evidence of fraud or unjust enrichment, and the expropriations result in little or no financial burden on Pagonia as the foreign ownership interests are sold directly to other Pagonian investors or auctioned by the government to private citizens.²⁵

Pagonia does not meet this international standard as it has only paid book value compensation.²⁶ This is less than the fair market value because it does not include payment for goodwill or the future prospects of the entity.²⁷

²⁰ *Phillips Petroleum Company Iran v. Islamic Republic of Iran* (1989) 21 Iran-U.S. C.T.R. 79, p.96; *Phelps Dodge Corp v. Islamic Republic of Iran* (1986) 10 Iran-U.S. C.T.R. 121, pp.129-30.

²¹ *Shahin Shaine Ebrahimi v. Islamic Republic of Iran* (1994) Award No. 560-44/46/47-3, para.104; *Amoco International Finance Corporation v. Islamic Republic of Iran supra* n.16, p.270.

²² Lillich, *The Valuation of Nationalized Property in International Law*, (1972) p.198.

²³ Lagergren, *Five Important Cases on Nationalization of Foreign Property: The Iran-U.S. Claims Tribunal* (1988) p.11.

²⁴ Amerasinghe, "Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Principle" (1992) 41 I.C.L.Q. 22, p.48.

²⁵ *Compromis*, para.17; *Clarifications*, para.12.

²⁶ *Compromis*, para.16; Civil Law No. 51, Art 2(e).

²⁷ *Clarifications*, para.13.

3. Pagonia's expropriation of the television content contracts is unlawful as it fails to provide any compensation

The expropriation of the television content contracts is unlawful as no compensation whatsoever has been paid.²⁸

D. THE APPROPRIATE QUANTUM OF DAMAGES IS EQUAL TO *RESTITUTIO IN INTEGRUM*

As the expropriations were illegal, Pagonia must pay damages equivalent to *restitutio in integrum*.²⁹ This requires Pagonia to pay the Bretorian shareholders: (a) the difference between the fair market value of the expropriated assets (*damnum emergens*) and the amount of compensation the shareholder has already received; (b) future profits until the date of judgment (*lucrum cessans*); and (c) interest on these amounts.³⁰ The failure of the Bretorians who sold directly to private individuals to receive even book value is attributable to the economic environment created by Civil Law No. 51. Therefore, this damage suffered is attributable to Pagonia. *Restitutio in integrum* for the expropriation of the contracts will amount to the loss of profits from the contracts and interest on this amount.³¹

²⁸ *Amoco International Finance Corp. v. Islamic Republic of Iran supra* n.4, pp.248-250; *Sedco Inc. v National Iranian Oil Co.* (1987) 15 Iran-U.S. C.T.R. 23, pp.24-25; *Compromis*, para.21.

²⁹ *Chorzow Factory Case supra* n.5, p.47.

³⁰ *Ibid.*

³¹ *Ibid.*

The failure of some Bretonian's to exhaust local remedies does not prevent commencement of an international action as there was no "reasonable possibility" of adequate and effective remedies being awarded in Pagonian courts.³² As Civil Law No. 51 only provides for book value compensation,³³ there is no reasonable possibility of Bretonian shareholders receiving the fair market value of their assets. Furthermore, holders of contractual interests have no reasonable possibility of adequate and effective remedies as Pagonian courts have concluded that Civil Law No. 51 authorises the cancellation of the contracts.³⁴

III. PAGONIA MUST PROVIDE COMPENSATORY DAMAGES TO BRETORIA FOR THE LOSS OF PROFIT CAUSED BY ITS UNLAWFUL REGULATIONS

A. PAGONIA'S REGULATIONS BREACH THE CUSTOMARY TRADE LAW REQUIREMENT OF NATIONAL TREATMENT

1. Pagonia's regulations must comply with customary trade obligations for goods

Pagonia's regulations must comply with the customary trade rules for goods as they affect the competitive trade conditions for the goods of broadcast programmes³⁵ and periodicals.³⁶

³² *Barcelona Traction Case supra* n.3, pp.144-145; *Norwegian Loans Case* [1957] I.C.J. Reports 9, pp.39-41; *Elettronica Sicula (USA v Italy)* [1989] I.C.J. Reports 1, p.42.

³³ *Compromis*, para. 16, Civil Law No. 51, Art 2(e).

³⁴ *Compromis*, para. 21.

³⁵ Case 155/173 *State v. Sacchi*, [1974] E.C.R. 409, p.426.

³⁶ *Canada - Certain Measures Concerning Periodicals*, Appellate Body Report, adopted 30 June 1997, WT/DS31/AB/R, p.17.

2. Pagonia's regulations breach customary trade law by failing to provide national treatment

Article III:4 of the General Agreement on Tariffs and Trade³⁷ ("GATT") expresses the customary international law rule of national treatment, which requires imported products be provided with a regulatory regime no less favourable than for like domestic products. A treaty provision, such as the national treatment obligation, becomes a rule of custom if there is widespread state practice in the belief that the obligation is required by law (*opinio juris*).³⁸ State practice and *opinio juris* for this obligation is evidenced by the extremely widespread and representative membership of the GATT,³⁹ and key regional trade treaties.⁴⁰ The norm creating character of the national treatment obligation is shown by its drafting history⁴¹ and the reluctance of GATT panels to allow any erosion from the obligation.⁴²

Pagonia's local content regulation breaches this national treatment rule by limiting the amount of imported, but not domestic programmes which can be

³⁷ General Agreement on Tariffs and Trade ["G.A.T.T."], October 30, 1947, 55 U.N.T.S. 188.

³⁸ *North Sea Continental Shelf Cases (West Germany v. Denmark; West Germany v. The Netherlands)* [1969] I.C.J. 3, p.44.

³⁹ Nichols, "GATT Doctrine" (1996) 36 Va.J.I.L 379, p.381.

⁴⁰ N.A.F.T.A., Art.301; Treaty Establishing the European Economic Community, 298 U.N.T.S. 11, Art.9.

⁴¹ Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, U.N.Doc. EPCT/TAC/PV/10 (1947) p.3.

⁴² *EEC - Payment and Subsidies Paid to Processors of Oilseeds and Related Animal-Fee Protein* (1990), BISD 37S/86, para. 154.

broadcast. The Pagonian language regulation breaches the national treatment obligation by requiring foreign, but not domestic publishers to use Pagonian as the dominant language in their periodicals.

3. The protection of cultural identity does not justify a derogation from trade obligations

Even if a right to protect cultural identity exists, it does not justify derogations from customary trade obligations. Trade regimes are noticeably reluctant to permit derogations for trade obligations for social issues.⁴³ This reluctance extends to cultural matters, as shown by the rejection of the proposed cultural identity exception in the General Agreement on Trade in Services⁴⁴ (“GATS”)⁴⁵ and judicial decisions.⁴⁶ Therefore, Pagonia cannot justify its breach of the national treatment obligations due to their alleged purpose of protection of cultural identity.

⁴³ Singapore Ministerial Declaration, World Trade Organisation Document WT/MIN(96)/DEC (1997), para. 4; *United States - Restrictions on Imports of Tuna*, unadopted, 3 September 1991, DS21/R.

⁴⁴ General Agreement on Trade in Services [“G.A.T.S.”], 33 I.L.M. 44 (1994).

⁴⁵ Cahn, Schimmel, “The Cultural Exception: Does it exist in GATT and GATS Frameworks? How Does it Affect or is it Affected by the Agreement on TRIPS?” (1997) 15 *Cardozo Arts and Ent.L.J.* 281, p.301.

⁴⁶ E.C.J. Case 229/83, *Leclerc v. Au Blé Vert Sarl*, [1985] E.C.R. 1.

4. Furthermore, Pagonia's breach is not justified by any general trade exception

Any exception to the national treatment obligation for trade in cinematograph films⁴⁷ does not extend to trade in television or radio programmes. The failure of a GATT review session to accept a proposal that television be included within the cinematograph film exception supports this construction.⁴⁸ Furthermore, general trade exceptions⁴⁹ do not justify Pagonia's breaches as less discriminatory or restrictive trade measures could have been implemented.⁵⁰ The Pagonian language requirement could have uniformly targeted both foreign and domestic periodicals. The 75 percent local content requirement could have been replaced by a subsidy scheme for domestic programmes, or by a lower local content requirement. Given the robust nature of the Pagonian culture, as illustrated by the continued practice of the Pagonian culture by Overseas Pagonians,⁵¹ there is no necessity for such a high local content requirement.

⁴⁷ G.A.T.T., Art. IV.

⁴⁸ *Application of GATT to International Trade in Television Programs: Report of the Working Party*, G.A.T.T. Doc. L/1741 (1962) para.10.

⁴⁹ G.A.T.T., Arts. XVIII, XIX, XX(a), XX(b).

⁵⁰ *United States - Section 337 of the Tarriff Act of 1930* (1989) BISD 36S/345, para. 5.26; *Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes*, BISD 37S/200 (1990) para. 74.

⁵¹ *Compromis*, para. 2.

B. PAGONIA'S REGULATIONS BREACH BRETORIAN CITIZENS' CUSTOMARY RIGHT TO FREEDOM OF EXPRESSION

1. The customary right to freedom of expression encompasses the right to impart information

There is a customary international law right to “seek, receive and impart information and ideas through any media, regardless of frontiers.”⁵² This right is supported by international conventions,⁵³ General Assembly Resolutions,⁵⁴ domestic constitutions⁵⁵ and judicial decisions.⁵⁶ This right encompasses the freedom of the press.⁵⁷

⁵² U.D.H.R., Art.19.

⁵³ U.D.H.R., Art.19; International Covenant on Civil and Political Rights [“I.C.C.P.R.”], 999 U.N.T.S. 171 (1966), Art.19(2); Af.C.H.R., Art.9.; Am.C.H.R., Art.13(1); E.C.P.H.R.F.F., Art.10(1); European Parliament Declaration of Fundamental Rights and Freedoms, Bulletin of the European Communities No.C 120 (1989), Art.5.

⁵⁴ Calling of an International Conference of Freedom of Information, G.A. Res. 59(I) (1946); Freedom of Information, G.A. Res. 2448 (XXIII) (1968).

⁵⁵ Constitution of the U.S.A., Bill of Rights, 1st Amendment (1971); Constitution of India (1950) Art.19; Federal Constitution of Malaysia (1981) Art.10; Constitution of Pakistan (1973) Art.19; Constitution of the Independent State of Papua New Guinea, s46; Constitution of Mauritius, Art.12.

⁵⁶ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Compulsory Membership)* (1986) 25 I.L.M. 123, para. 70; *Lingens v. Austria* (1986) 88 I.L.R. 513, pp.528-529.

⁵⁷ Report by the International Commission for the Study of Communication Problems, the MacBride Commission, *Many Voices, One World* (1980) p.223; Council of Europe Declaration on Mass Communication Media and Human Rights, Resolution 428 (1970) Arts.2,3,5; *Lingens v. Austria supra* n.55, pp.528-529; Constitution of Albania (1998) Art.22; Constitution of Belgium (1970) Art.26; Constitution of Bahrain (1973) Art.24; Constitution of Cambodia (1993) Art.41, Constitution of Congo (1992) Art.27; Constitution of Germany (1948) Art.5; Constitution of Iran (1979) Art.24; Constitution of Japan (1947) Art.21; Constitution of Kuwait (1962) Art.37; Constitution Luxembourg (1968) Art.24; Constitution of Paraguay (1992) Art.26; Constitution Portugal (1976) Art.38; Partsch, “Freedom of Conscience and

2. Bretonian's right to impart information is breached by the 75 percent local content requirement

The 75 percent local content regulation breaches the right to freedom of expression, as it limits the ability of Bretonian programme distributors to impart their information and ideas. Pagonia can only justify this breach if the protection of Pagonian culture is such a "pressing social need" as to be proportionate to this severe restriction on Bretonians' right to impart information.⁵⁸ The severity of the restriction is not justified as the Pagonian culture can survive with significant foreign influences.⁵⁹

3. Pagonia's language regulation is unlawful as it places a restrictive burden on Benjamin Publications

The imposition of a fiscal burden on the press which results in a restriction on circulation has been held to breach the right to freedom of expression.⁶⁰ The requirement that *This Week* must be published with Pagonian as the dominant language places a financial burden on the Bretonian publisher, which will consequently reduce their competitiveness and restrict their circulation.

Expression, and Political Freedoms", in Henkin (ed), *The International Bill of Rights* (1981) pp.209-245.

⁵⁸ *The Sunday Times v. The United Kingdom* (1979) 58 I.L.R. 491; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Compulsory Membership)* supra n.56.

⁵⁹ *Compromis*, para. 2.

⁶⁰ *Indian Express Newspapers v Union of India* [1985] 2 S.C.R. 287; *Grosjean v American Press Company* 297 US 233 [1936].

4. Pagonia's language regulation is unlawful as it discriminates against foreign periodicals without adequate justification

Limits on the right to freedom of expression that discriminate on the basis of national origin are only permitted if the effect of the discriminatory treatment is proportionate to the purpose served by the discrimination. This customary international rule is supported by international conventions⁶¹ and judicial decisions.⁶² Pagonia's language regulations discriminate between foreign and domestic publishers by only requiring foreign publishers to use Pagonia as the dominant language. As the exemption of domestic publishers from the language requirement does not serve to promote the Pagonian culture, the discriminatory regulation is not justified.

C. PAGONIA'S BREACHES ARE NOT JUSTIFIED BY THE ALLEGED PURPOSE OF PROTECTION OF CULTURAL IDENTITY

States have no general customary right to protect their cultural identity. The major human rights treaties do not include any general reference to the protection of cultural identity.⁶³ References to a State's right to protect cultural identity are limited to the protection of the cultural identity of specifically defined groups such as children⁶⁴ or minorities.⁶⁵ Any general right of a State to protect cultural identity

⁶¹ U.D.H.R., Art.2; I.C.C.P.R., Art.2(1); E.C.P.H.R.F.F., Art.14; Am.C.H.R., Art.1; Af.C.H.R., Art.2; American Declaration on the Rights and Duties of Man, OEA/Ser.L.V/II.4 Rev. (1965), Art.2; Ar.C.H.R., Art.2.

⁶² *Proposed Amendments to the Naturalisation Provisions of the Political Constitution of Costa Rica (Proposed Amendments)*, (1984) 5 H.R.L.J. 161, para. 57 citing the *Belgian Linguistics Case* Eur. Ct. H.R., Series A, No. 24.

⁶³ U.D.H.R.; I.C.C.P.R.; International Covenant on Economic, Social, and Cultural Rights U.N.T.S. 993 3 (1966); Am.C.H.R.; Ar.C.H.R.; E.C.P.H.R.F.F.

⁶⁴ Convention on the Rights of the Child 28 I.L.M. 1457 (1989) Art.8(1).

extends only to the protection of a collection of individual human rights essential to the creation of a culture⁶⁶ such as the right to freedom of expression, freedom of religion, and the right to take part in that culture. The right does not extend to the right to limit an individual's choice of cultural identity.⁶⁷ Therefore, Pagonia's regulations cannot be justified as they do not protect the individual rights which create a culture. Instead they serve to derogate from the right to freedom of expression by limiting access to foreign material.

D. PAGONIA MUST PAY DAMAGES EQUAL TO THE LOSS OF PROFITS SUFFERED BY THE MEDIA DISTRIBUTORS AND BENJAMIN PUBLISHERS

Given these breaches of trade and human rights obligations, Pagonia must pay damages to Bretoria equal to the damage caused to Bretorian nationals and corporate entities.⁶⁸ These damages can include compensation for loss of profits.⁶⁹ The damage

⁶⁵ I.C.C.P.R., Art.27; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995) 17 H.R.L.J. 159, Art.21.

⁶⁶ Prott, "Cultural Rights as People's Rights in International Law", in Crawford, *The Rights of Peoples* (1988), p.95; Complaint of the Miskito Indians, OEA/Ser.L/VII.62 (1984), p.82; Declaration of the World Conference on Cultural Policies (Mexico City Declaration) (1982); Intergovernmental Conference on Cultural Policies for Development Action Plan on Cultural Policies UNESCO CLT-98/COF.210/CLD.18 (1998), Preamble.

⁶⁷ UNESCO General Conference Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It, Doc.No.ST/HR/2/Rev.3, p.177; Donnelly, *Universal Human Rights in Theory and Practice* (1989), p.152. Deaux, "Report Presented to the 8th International Colloquy on the European Convention of Human Rights" (1995) Y.B.Eur.Conv.On Human Rights 27, p.36; Pierre-Caps, "The Anthropological Aspects of Cultural Rights" (1995) 38A Y.B.Eur.Conv.On. Human Rights, p.66; Merkel, "The Right to Difference" (1998) 72 A.L.J. 939, p.939.

⁶⁸ *Chorzow Factory Case supra* n.5, p.47; *United States v. Caro-Quintero and Others* (1983) 80 I.L.R. 649, pp.665-666; *Re Letelier and Moffitt* (1992) 88 I.L.R. 727, p.733.

caused by the 75 percent local content requirement is the loss of profits from (a) the cancellation of the television content contracts; and (b) any fall in sale price of Bretonian content due to the regulation. The damage caused by the Pagonian language requirement is the loss of profits due to the increased costs of publication due to translation and formatting changes. The precise quantum of damages may be determined by an expert committee established by the court.⁷⁰

IV. PAGONIA MUST PROVIDE COMPENSATORY DAMAGES FOR ITS FAILURE TO ADEQUATELY PROTECT BRETORIAN'S COPYRIGHT

A. PAGONIA HAS FAILED TO PROTECT FOREIGN COPYRIGHT UP TO THE REQUIRED CUSTOMARY STANDARD

1. Custom requires the protection of foreign copyright to a minimum standard on a national treatment basis

The Berne Convention⁷¹ and the Agreement on the Trade Related Aspects of Intellectual Property⁷² (“TRIPS”) require a minimum standard of copyright protection⁷³ and the provision of equal protection to both foreigners and nationals

⁶⁹ *Draft Articles on State Responsibility, Report of the ILC on the Work of the 48th Session*, U.N.Doc.A/51/10 (1996) Art.44(2); *Libyan American Oil Company v. The Government Libyan Arab Republic supra* n.16, pp.202-204.

⁷⁰ Statute of the International Court of Justice (1945) U.N.C.I.O.D. 355, Art.50; *Corfu Channel Case* [1949] I.C.J. Reports 235.

⁷¹ Berne Convention for the Protection of Literary and Artistic Works [“Berne Convention”] 1886 (1972) 828 U.N.T.S. 211.

⁷² Agreement on Trade Related Aspects of Intellectual Property Rights [“TRIPs”] (1994) 33 I.L.M. 81.

⁷³ Berne Convention, Arts.7,15,36; TRIPs, Art.9,12,41, and Part III.

(“national treatment”).⁷⁴ These fundamental norms represent custom due to the extremely widespread and representative membership of these treaties,⁷⁵ and uniform State practice.⁷⁶ This State practice extends beyond those countries which are party to the copyright conventions.⁷⁷

The customary minimum standard of copyright protection, evidenced by virtually uniform state practice,⁷⁸ requires (a) legislation which provides an extensive and exhaustive definition of copyright; (b) laws formally proscribing copyright infringement; (c) the provision of criminal sanctions which include seizure of infringing copies; and (d) civil redress for copyright infringement providing relief including damages, account of profits, injunctions, and delivery up of unauthorised

⁷⁴ Berne Convention, Art.5; TRIPs, Art.3,9.

⁷⁵ *North Sea Continental Shelf Cases supra* n.39, p.44.

⁷⁶ Australia (Copyright Act 1968); Austria (Copyright Act 1936); Barbados (Copyright Act 1981-82); Belgium (Law of 30 June 1994 on Copyright and Neighbouring Rights); China (Copyright Law of the People’s Republic of China 1990); France (Articles L 111-1 to L335-10 of the Intellectual Property Code); Germany (Act on Copyright and Related Rights 1965); Greece (Copyright, Related Rights and Cultural Matters Law No 2121/1993); Hong Kong (Copyright Act 1956 (UK) and Copyright Ordinance Cap 39); Japan (Copyright Law 1970); Mexico (Federal Law on Copyright 1997); Netherlands (Copyright Act 1912); Nigeria (Copyright Decree Law 1970); Republic of Korea (Copyright Act 1987 Law No 3916); Romania (Copyright Law No 9/1996); Russian Federation (Copyright Law 1993); Taiwan (Copyright Law 10 July 1985); Thailand (Copyright Act BE 2521 1978); Trinidad and Tobago (Copyright Act 1985); Uganda (Copyright Act 1964); United Kingdom (Copyright, Designs and Patents Act 1988); United States of America (Copyright Act 1976); Venezuela (Copyright Law 1993); Vietnam (Ordinance on Copyright 1994); Zambia (Copyright Act 1965).

⁷⁷ Kazakstan (Law on Copyright and Neighbouring Rights 1996); Oman - Law on the Protection of Copyright (as approved by Royal Decree No 47 of 1996); Seychelles (Copyright Act 1982); Sudan (The Copyright and Neighbouring Rights Protection Act 1996); Uzbekistan (Law on Copyright and Neighbouring Rights 1996); Yemen (Law No 19 on Intellectual Property 1994).

⁷⁸ *Supra* nn.76,77.

copies.⁷⁹ This obligation requires not only the enactment of legislation but also the enforcement of the legislation in good faith.⁸⁰ This minimum standard must be applied equally to both foreign and national copyright holders.⁸¹

2. Pagonia's laws do not meet this customary minimum standard of protection

Pagonia fails to meet this customary minimum standard for the protection of copyright. No Pagonian statute, including the Pagonian Criminal Code, adequately defines the scope of copyright protection.⁸² There is no law specifically proscribing copyright infringement and providing for criminal sanctions. The private cause of action similar to “conversion” does not provide adequate civil redress, as conversion does not cover the full scope of rights associated with copyright⁸³ or all the possible

⁷⁹ *Ibid.*

⁸⁰ *Nuclear Test (Australia v. France)* [1974] I.C.J. Report 253, p.268; O'Connor, *Good Faith in International Law* (1991), p.107.

⁸¹ *Supra* n.73.

⁸² *Compromis*, para 9.

⁸³ *Fouldes v. Willoughby* (1841) 151 ER 1153, p.1157; Ricks, “The Conversion of Intangible Property: Bursting the Ancient Trover Bottle with New Wine” (1991) *Brig.Y.U.L.R.* 1681, p.1693.

types of infringement.⁸⁴ The private action also fails to provide remedies of account of profits, injunctions or delivery up of unauthorised copies.⁸⁵

B. ALTERNATIVELY, PAGONIA HAS FAILED TO EXERCISE DUE DILIGENCE TO PROTECT THE PROPERTY OF ALIENS

1. Bretorian copyright is property in Pagonia

Bretorian copyright exists as property in Pagonia. The principle that copyright is property outside of legislative grant is supported by conventions,⁸⁶ common law and private law decisions,⁸⁷ and eminent jurists.⁸⁸ The creator of an intellectual work has an inherent absolute and exclusive right to their work irrespective of legislative grant.⁸⁹ Furthermore, Pagonia is estopped from denying that copyright is property

⁸⁴ American Law Institute, *Restatement (Second) of Torts* (1977) s242; *Lloyds Banks v. Chartered Bank of India, Australia and China* [1929] 1 K.B. 40, pp.55-6 per Scrutton LJ; *Associated Midland Corporation Ltd v. The Bank of New South Wales* (1984) 51 A.L.R. 641; Balkin, Davis, *Law of Torts Second Edition* (1996) p.74.

⁸⁵ *BRMB Finance v. Eda Holdings Ltd* [1991] 2 All ER 129, p.131 per Lord Templeman; Australian Copyright Law Review Committee, *Report on Conversion Damages* (1990) pp.3,7.

⁸⁶ U.D.H.R., Art.27(2); Berne Convention, Preamble para. 1; Universal Copyright Convention (as revised) (1952) 25 U.S.T. 1341 Art.1.

⁸⁷ *Millar v. Taylor* (1769) 4 Burr 2303; *Urheberrecht and Magnettonaufnahme* (1955) 17 B.G.H.Z. 266, p.278; *Societe Fox Europa and American Twentieth Century Fox v. Societe "Le Chant Du Monde" and Lartigue* 39 I.L.R. 431 (1959).

⁸⁸ Bowker, *Copyright Its History and Its Law, being a Summary of the Principles and Practice of Copyright with Special Reference to the American Code of 1909 and the British Act of 1911* (1912) p.3; Nimmer, *Nimmer on Copyright*, (1985) 3rd edn, s1.03[A]; Drahos, *A Philosophy of Intellectual Property* (1996) p.119; Chafee, "Reflections on the Law of Copyright" (1945) 45 Colum.L.Rev. 503, p.719; Davies, *Copyright and the Public Interest* (1994) pp.20-22,78.

⁸⁹ Drahos, *supra* n.85, p.119; Mostert, "The Development of the Natural-Law Principle as one of the Principles Underlying the Recognition of Intellectual Property" (1987) 104 S.A.L.J. 480, pp.494-497

outside of legislative grant as this principle has been recognised in Pagonia's municipal system.⁹⁰

2. Pagonia's failure to enact specific copyright legislation breaches its duty to exercise due diligence in the protection of aliens property

A State must exercise due diligence to prevent injury to the property of aliens by acts of individuals within its territory.⁹¹ The State is responsible only for the failure of its organs to prevent the injurious acts and not for the acts of the private individuals themselves. This duty requires a State to take measures which accord with international standards to prevent such injury.⁹² An international standard is determined by reference to general State practice. This State practice does not need to amount to custom. Virtually uniform State practice establishes that the required international standard is the enactment of specific copyright legislation.⁹³ Pagonia has

⁹⁰ Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1981) p.142; *Life-Insurance Claims Case* (1924) Dec. Op. 103, p.139.

⁹¹ Garcia Amador, "Responsibility of the State for injuries caused in its territory to the person or property of aliens: Revised Draft" [1961] 2 Y.B.I.L.C. 46, Art.7; Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens (1961) 55 A.J.I.L. 545, Art.13(1); Harvard Research in International Law, *Responsibility of States for Damage Done in Their Territory to the Person or Property of Foreigners* (1929) 23 A.J.I.L. Spec. Supp. 133, p.187, Art.10; *British Property in Spanish Morocco* [1925] 2 R.I.A.A. 615, p.636; *Boyd Case (U.S.A. v Mexico)* [1928] 4 R.I.A.A. 380, p.381; *Chapman (U.S.A. v Mexico)* [1930] 4 R.I.A.A. 632, p.634; *Noyes Case (U.S.A. v Panama)* [1933] 6 R.I.A.A. 308, p.311; Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" (1982) 32 A.U.L.R. 1.

⁹² *Neer Claim (U.S.A. v Mexico)* [1926] 4 R.I.A.A. 60, pp.61-2.

⁹³ *Supra* nn.76,77.

failed to meet this standard, despite being aware of significant damage to Bretorian property within its territory since at latest 1996.⁹⁴

3. Pagonia is responsible for the failure of its authorities to take reasonable steps to apprehend and prosecute individuals responsible for Bretorian copyright violations

A State is responsible for the negligence of its authorities in failing to take reasonable steps to apprehend and prosecute individuals in its territory who wrongfully injure the property of aliens.⁹⁵ Pagonia is aware of significant copyright violations⁹⁶ and has sufficient resources to prosecute at least some of these violations.⁹⁷ Its failure to prosecute any copyright infringements of Bretorian work⁹⁸ shows that Pagonian officials have not taken reasonable steps to apprehend and prosecute individuals responsible for injuring Bretorian property.

⁹⁴ *Compromis*, para. 7.

⁹⁵ *Janes Case (U.S.A. v. Mexico)* [1925] 4 R.I.A.A. 86, p.86; *The Kennedy Case (U.S.A. v. Mexico)* [1927] 4 R.I.A.A. 194, p.197; *The Venable Case (U.S.A. v. Mexico)* [1927] 4 R.I.A.A. 219, p.228; *The Canahl case (U.S.A. v. Mexico)* [1928] 4 R.I.A.A. 389; Brierly, "Theory of Implied State Complicity in International Claims" (1928) B.Y.B.I.L. 42; Freeman, *The International Responsibility of States for Denial of Justice* (1938) pp.20,27; Lillich, Paxman, "State Responsibility for Injuries to Aliens Occasioned by Terrorist Activities" (1977) 26 A.U.L.R. 217, p.278.

⁹⁶ *Compromis*, para. 7.

⁹⁷ *Compromis*, para. 9.

⁹⁸ *Ibid.*

Alternatively, Pagonia breached their duty because they have failed to give equal treatment to the theft of both alien property and Pagonian property.⁹⁹ While there have been numerous prosecutions for theft of Pagonian copyright there have been no prosecutions for theft of Bretorian copyright. Pagonia has no valid justification for this significant imbalance.

C. PAGONIA MUST PAY DAMAGES EQUAL TO THE LOSS OF PROFITS SUFFERED BY BRETORIAN COPYRIGHT HOLDERS

The quantum of damages that Pagonia must pay is equivalent to the loss of profits suffered by Bretorian copyright holders¹⁰⁰ that is attributable to its failure to adequately protect copyright.¹⁰¹ The quantum of these damages may be determined by an expert committee established by this Court.¹⁰²

The failure of Bretorian copyright holders to bring actions in Pagonian courts does not prevent Bretoria bringing an international action.¹⁰³ This is because neither the Pagonian criminal or private remedies provide a reasonable possibility of adequate and effective remedies.¹⁰⁴

⁹⁹ Amerasinghe *supra* n.24, p.44.

¹⁰⁰ *Chorzow Factory Case supra* n.5, p.47.

¹⁰¹ *Draft Articles on State Responsibility supra* n.67, Art. 44(2); *Libyan American Oil Co. v. Libya supra* n.16, pp.202-204.

¹⁰² Statute of the International Court of Justice (1945) 15 U.N.C.I.O.D. 355, Art. 50; *Corfu Channel (Assessment of Compensation) supra* n.70, p.238.

¹⁰³ *Barcelona Traction Case supra* n.3, pp.144-145; *Norwegian Loans Case supra* n.33, pp.39-41; *Elettronica Sicula supra* n.32.

¹⁰⁴ *Supra* nn.81-84 and text.

V. PRAYER FOR RELIEF

The Government of Bretoria respectfully requests that this Honourable Court:

1. AWARD compensatory damages equivalent to restitutio in integrum for the expropriation of majority interests in Regulated Entities, and the contractual rights of Bretorian media distributors;
2. DECLARE that Pagonia's local content regulation and the Pagonian language regulation breach customary trade law and Bretorian's right to freedom of expression.
3. AWARD compensatory damages for the loss of profits that Pagonia's unlawful regulations have caused Bretorian nationals and corporate entities.
4. DECLARE that Pagonia's laws fail to provide adequate protection for Bretorian copyright owners.
5. AWARD compensatory damages for the loss of profits that Bretorian copyright owners have suffered due to Pagonia's failure to protect copyright.

Respectfully submitted,
Agents for Bretoria.