

# **BENCH MEMORANDUM**

THE CASE CONCERNING THE CLARENT BELT

VERSION 2.0

*9 February 2023*

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OF THE 2023 PHILIP C. JESSUP  
INTERNATIONAL LAW MOOT COURT COMPETITION

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The purpose of this document is to provide judges with a guide for some of the claims that teams might raise within their memorial or oral rounds' pleadings. By no means should this document be considered restrictive, teams are likely to come up with other arguments or different sources.

This year we have modified the structure of the Bench Memorandum, ILSA welcomes feedback, comments, or recommendations. Please send all suggestions to [jessup@ilsa.org](mailto:jessup@ilsa.org).

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## PART I: INTRODUCTION

### KEY NAMES/LOCATIONS

- The Kingdom of **AGLOVALE** (Applicant): a landlocked constitutional monarchy in the Gais Peninsula; the most economically advanced country in the region and Ragnell’s most important trading partner.
- The Federation of **BALAN**: a developing parliamentary republic in the Gais Peninsula; under the Trilateral Treaty of Lasting Peace, Balan leased the Clarent Belt to Ragnell.
- **CAMLANN CORRECTIONAL CENTER**: a maximum-security prison in the north of Ragnell's territory.
- The **CLARENT BELT** (“the Belt”): a mountainous, largely inaccessible coastal region, universally acknowledged as part of Balan’s territory until the early 1950s. The focus of the “Clarent War” between Balan and Ragnell. In accordance with the 1958 Trilateral Treaty of Lasting Peace, the Belt was leased by Balan to Ragnell for a period of 65 years.
- The **CLARENT WAR** (1952 – 1958): an armed conflict between Ragnell and Balan. During the War, Ragnell secured control of all of the Belt, seizing the seaport and nationalizing the Park’s factories. Aglovale remained neutral throughout the conflict.
- **COMPOUND ARDAN**: a factory in the Belt believed to be used by UAC militants to launch attacks.
- **COVID-19** pandemic: emerged in the Gais Peninsula in May 2020 and caused a regional and global surge in demand for plastics-based medical supplies.
- **DAN VORTIGERN**: the 2018 candidate for president of the “Ragnellian Progressive Party” (RPP) for President; elected on a platform that was openly skeptical of international institutions and treaties.
- The **EAMONT THRUWAY**: a railway and road system that crosses the Belt into Balan and Aglovale; the only land route between Aglovale and Tintagel Coast.
- **ETNA**: an island state located near the Gais Peninsula and a close ally of Ragnell.
- The **GAIS PENINSULA**: is comprised of three countries Aglovale, Ragnell, and Balan.
- **INTERNATIONAL LANDFILL SOLUTIONS ALLIANCE (ILSA)**: a global not-for-profit specializing in research into safe methods of hazardous materials disposal.
- **KAY ECTOR**: a Ragnellian national and a major donor to the RPP. In May 2022, Aglovale seized Ector’s summer home, Prydwen Place, in accordance with the sanctions legislation against Ragnell.
- **LES LAUDINE**: Aglovale’s Foreign Minister.

- **MEIR DALFER:** Balan’s Prime Minister.
- **OPERATION SHINING STAR:** a military campaign launched by Ragnell against UAC cells on Tintagel Coast. Announced by Vortigern in mid-July 2021.
- **QUEEN CLARINE:** Aglovale’s ruling monarch since 1956, the driving force behind the peace talks between Balan and Ragnell.
- The State of **RAGNELL** (Respondent): a constitutional democracy and Aglovale’s most important trading partner. Leased the Clarent Belt from Balan in accordance with the Trilateral Treaty of Lasting Peace.
- **RAGNELLIAN PROGRESSIVE PARTY (RPP):** formed in 1967, with a platform of commercial deregulation, strengthening Ragnell’s military and economic power, and protecting Ragnellian interests in the Belt.
- **TINTAGEL COAST:** the only habitable portion of the Belt, covering an area of about 1,200 square kilometers.
- **TINTAGEL PARK:** established in the 1900s. By 2010, factories in the Park were producing in aggregate more than two million metric tons of plastic per year.
- **TINTAGEL PORT:** a deep-water port, a major hub for trade and transport since the 1930s.
- The **TRILATERAL TREATY OF LASTING PEACE** ("the Treaty"): signed and ratified by Aglovale, Ragnell and Balan on 16 September 1958. Under the Treaty:
  - Balan retained sovereignty over the Belt and agreed to lease the Belt’s entire territory to Ragnell for a 65-year term, for a specified annual payment, commencing 16 October 1958.
  - Ragnell was responsible for government services and maintenance of public order in the Belt.
  - Balan and Ragnell guaranteed Aglovale use of the seaport and the Eamont Thruway.
  - Aglovale agreed to monitor the parties’ compliance with the terms of the Treaty.
- **UAC (“UNITYK AI CHYVON”/“UNITED AND WHOLE”):** initially, a group of Balani military veterans who opposed the Treaty Peace. In the decades after the Treaty was signed, and especially following Dan Vortigern’s election, UAC began a campaign of attacks against Ragnellian facilities in Tintagel Park.
- **WAREHOUSE 15:** structure within Compound Ardan, targeted by Ragnell due to erroneous intelligence suggesting it was being used to store weapons and ammunition.

## **TIMELINE**

**1951 – 1958** - A dispute between Ragnell and Balan escalated into “The Clarent War.”

**16 September 1958** - Aglovale, Balan, and Ragnell signed and ratified the Trilateral Treaty of Lasting Peace.

**19 September 1958** - Ragnell withdrew its troops from the Clarent Belt and Aglovale, deploying lightly armed peacekeeping forces.

**August 2018** - UAC produced videos, presenting Dan Vortigern’s potential election as a catastrophe, and calling upon Balanis to stand together to defend their ancestral territory.

**12 November 2018** - Vortigern was elected President of Ragnell. UAC’s tactics began to shift to sporadic physical attacks and cyber-attacks against factories owned by Ragnellians and Ragnell’s law enforcement units in the Belt.

**07 Jul 2021** - UAC members carried out attacks on three Ragnellian factories in the Belt, bringing their operations to a temporary halt and killing 50 employees.

**Mid July 2021** - Vortigern announced the launch of Operation Shining Star.

**14 July 2021** - Ragnell submitted a letter to the President of the UN Security Council, in accordance with Article 51 of the UN Charter, stating that Operation Shining Star was launched in response to UAC armed attacks.

**20 July 2021** - Aglovale withdrew its peacekeeping forces from the Belt due to the escalating violence.

**22 July 2021** - At Aglovale’s request, the Security Council convened an emergency meeting to address the situation in the Gais Peninsula.

**September 2021** - Sustained fighting broke out between UAC and Ragnell’s forces. Over the next month, more than 400 UAC fighters were captured and held at Fort Caerleon. Their treatment met or exceeded relevant international standards.

**15 September 2021** - the UAC’s senior commander submitted a declaration to the Swiss Federal Council, depositary of the Additional Protocols to the Geneva Conventions. A few days later, the depositary issued a notice that the declaration “had the effects mentioned in Article 96, paragraph 3, of Additional Protocol I.”

**15 November 2021** - The main waste treatment plant of The Plastics Conglomerate was destroyed by the fighting between UAC units and Ragnell's forces. Plastic waste accumulated in Tintagel Park and the port area.

**Early December 2021** - Ragnell made several requests to transfer the waste for processing in Aglovale, the location of the only suitable facility in the Peninsula.

**12 December 2021** - Representatives from Ragnell and Aglovale met in Stirling to negotiate a transfer arrangement. They failed to reach an agreement but committed to resuming talks on 27 December 2021.

**20 December 2021** - Balan ordered the evacuation of all Balani workers living in Tintagel Park's residential area, declaring the Eamont Thruway a "humanitarian corridor."

**22 December 2021** - Ragnell's Defense Minister received an urgent call from Etna's Defense Minister Tess Caridad, who claimed that dozens of UAC fighters were set to launch a surprise attack on Ragnell's forces in the Belt.

**23 December 2021** - At 3:43 a.m. Ragnell's air force dropped two bombs that destroyed Nant Gateway, completely halting all movement into and out of Tintagel Coast. A military spokesperson released a statement noting that over 30 UAC fighters had been killed in the bombing raid and that no civilians had been harmed.

**26 December 2021** - Foreign Minister Les Laudine of Aglovale, in a *note verbale*, canceled the negotiations scheduled for 27 December as a consequence of the bombing of Nant Gateway.

**20 January 2022** - Ragnell signed a bilateral agreement with Etna to export all the accumulated plastic waste in the Belt for disposal. Ragnell ordered UAC detainees in Fort Caerleon to help load the waste onto ships. Ragnell paid the detainees wages and provided them with basic safety gear.

**22 February 2022** - International Landfill Solutions Alliance (ILSA), issued a report entitled "Waste Wars: The Environmental Impacts of the Situation in the Clarent Belt," concluding that Etna's sites were likely to engage in unsustainable and environmentally harmful practices.

**Early March 2022** - Ragnell determined that Compound Ardan was being used to launch ground attacks against its forces.

**07 March 2022** - Ragnell's military leadership authorized a bombing raid on Compound Ardan's four main buildings and Warehouse 15. The Ragnellian military determined later that no ammunition was stored in Warehouse 15, but 68 Balani women and children, along with eight Aglovalean aid workers, hiding there, all died as a result of the attack.

**21 March 2022** - Ragnell announced that it was transferring the UAC detainees, who by then numbered almost 1,000, to Camlann Correctional Center.

**22 March 2022** - Foreign Minister Laudine published a diplomatic note declaring Ragnell's "repeated war crimes" were violations of the Geneva Conventions and customary international humanitarian law.

**15 April 2022** - Ragnell's Parliament adopted a resolution directing the government not to begin discussions with Balan concerning withdrawal from the Belt.

**22 April 2022** - the governments of Aglovale and Balan jointly released a "decisive repudiation" of Ragnell's attacks, calling for the immediate return of Balani detainees to the Belt, which the statement referred to as "occupied Balani territory."

**23 April 2022** - The following day Aglovale's Parliament enacted sanctions legislation against Ragnell.

**4 May 2022** - Aglovale seized Prydwen Place, Kay Ector's Aglovalean summer home.

**15 June 2022** - Balan's Ambassador to Ragnell personally delivered a letter to President Vortigern demanding the initiation of negotiations for the transition of the Belt to Balani control, in accordance with Article 18.1 of the Treaty.

**16 June 2022** - President Vortigern agreed to begin discussions with Balan over the future of the Clarent Belt but made any measures to transfer control contingent upon guarantees, including the criminalization of UAC membership, a tri-national committee to manage Tintagel Park, and the return of Aglovalean peacekeeping forces.

**13 July 2022** - After negotiations failed to produce an agreement, Ragnell filed an Application with the Registry of the Court instituting proceedings against Aglovale, invoking Article 41 of the Treaty as the basis for the Court's jurisdiction.

**21 July 2022** - Aglovale indicated its intention to file counterclaims, also invoking the Treaty as its jurisdictional basis. Balan chose not to intervene, reserving the right to bring a subsequent action against Ragnell.

**15 August 2022** - the Court entered an Order recommending that the parties draft a Statement of Agreed Facts.**30 August 2022** - After negotiations, the Agents of the Parties jointly communicated the Statement of Agreed Facts to the Court.

## **RELEVANT TREATIES AND LEGISLATION**

### **AGLOVALE & RAGNELL**

At all relevant times:

- Member States of the United Nations and the World Trade Organization
- State Parties:
  - Statute of the International Court of Justice
  - Vienna Convention on the Law of Treaties
  - International Covenant on Civil and Political Rights
  - International Covenant on Economic, Social and Cultural Rights
  - Four Geneva Conventions of 1949 and their two Additional Protocols of 1977.
- **2003-2005**, adopted domestic legislation based on producer responsibility but are **not** parties to the Basel or Stockholm Conventions.

### **BALAN**

**2003** - ratified the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

**2006** - ratified the Stockholm Convention on Persistent Organic Pollutants.

### **ETNA**

Party to the Basel and Stockholm Conventions.

## **PART II: ANALYSIS OF THE LAW**

### **PRELIMINARY MATTERS**

#### **Jurisdiction**

Oralists should be able to answer general questions concerning the Court’s jurisdiction. The jurisdiction of the Court in the present case is based on Article 36 (1) of ICJ Statute, and Article 41 of the Trilateral Treaty of Last Peace (“Treaty”).

This year’s Problem is not based on a *Compromis*. Therefore:

- When citing the Problem, teams should use the term “Statement of Agreed Facts” or “Problem,” not “*Compromis*” or “Special Agreement.”
- In the Statement of Jurisdiction of their written memorials, teams should state that the Court’s jurisdiction is based on Article 41 of the Treaty, along with Article 36(1) of the ICJ Statute.
- Some Teams might (but need not) raise objections to the Court’s jurisdiction over one or more of the claims.

#### **Existence of a Dispute**

Teams cannot object to the jurisdiction of the Court based on the absence of a “dispute.” The 15<sup>th</sup> of September 2023 Order of the Court (which can be found at the beginning of the *Problem*) states that Aglovale and Ragnell “have agreed that a ‘dispute’ between the Parties exists with respect to each of the... claims and counterclaims within the meaning of Article 41 of the Treaty.”

#### **Claims and Counterclaims**

In accordance with the Order of the Court, Aglovale appears as Applicant and Ragnell as Respondent. Therefore, Aglovale’s claims against Ragnell are “claims,” and Ragnell’s claims against Aglovale are “counterclaims.”

No jurisdictional claims should be raised with respect to the counterclaims beyond those discussed concerning the claims. Aglovale and Ragnell’s claims, and counterclaims are based on the same articles of the Treaty. Moreover, as the Order of the Court notes, Aglovale and Ragnell agree “all of the counterclaims are directly connected with the subject matter of at least one of the claims.”

## Admissibility

Regarding admissibility, Teams might argue (1) based on the *Monetary Gold* principle, whether Balan’s involvement is necessary for QPs 1, 2, and 4; and (2) that specific provisions of the Treaty, including its compromissory clause, was suspended or terminated.

**Monetary Gold Principle:** The Court may not exercise jurisdiction if the rights or obligations of a third *absent* state form the “very subject-matter” of its decision ([Monetary Gold](#) case and [East Timor](#) case).

<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"><li>• The Court has limited the scope of this principle and the scope of what is considered an <i>indispensable</i> party.</li><li>• The Court has established that other affected parties may file separate claims. (<a href="#">Nicaragua</a> case, para. 74)</li></ul>	<ul style="list-style-type: none"><li>• The Court lacks jurisdiction to determine the wrongfulness of the Operation without determining the legality of Balan’s actions.</li></ul>

### **Specific provisions of the Treaty, including its compromissory clause, were suspended.**

- Either party might claim that a specific provision of the Treaty was suspended as a result of the armed conflict between Balan and Ragnell. ([Draft articles on the effects of armed conflicts on treaties](#), arts. 6, 7, 9(1), 9(5), 11; [ICAO Council](#) case).
- Either party might claim that the Treaty was suspended due to a fundamental change of circumstances and/or supervening impossibility of performance. ([VCLT](#) arts. 61, 62 & 65(4); [Gabcikovo-Nagymaros](#) case paras. 102-104).
- For the Treaty to be suspended, it is necessary to prove compliance with the requirements established in article 65 of the VCLT, including the suspending party notifying the other parties of its suspension and the reasoning behind it.
- The parties may argue whether Ragnell is an aggressor state and thus prohibited from claiming suspension of the Treaty, in accordance with art. 15 of the Draft articles.

Since neither State ever claimed that the Treaty was terminated, and in fact, the issue was raised and then dismissed (para. 50), Teams are not likely to argue that the Treaty was terminated.

*Note: if the judges accept that the requirements for suspension of the Treaty in its entirety are met, but that the conditions for claiming separability of treaty provisions under Article 11 are not, the Court will lack jurisdiction over any claim by either Party arising out of the Treaty.*

**QP1: Armed Conflict**

This question concerns: (1) whether Ragnell violated its obligations under the Treaty, and in particular Arts. 2, 14 and 15, when launching Operation Shining Star and carrying out the attacks on Nant Tunnel and Compound Ardan; and (2) whether Ragnell is obligated to compensate Aglovale for the deaths of eight Aglovalean nationals resulting from these actions.

**1. Ragnell’s obligations under the Treaty when launching Operation Shining Star and carrying out the attacks on Nant Tunnel and Compound Ardan.**

[Article 42 of the 1907 Hague Regulations \(HR\)](#) mentions that a "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

<b>Whether the territory of the Clarent Belt is considered occupied territory.</b>	
<b>Applicant</b>	<b>Respondent</b>
<p>Ragnell is an occupier in the Belt:</p> <ul style="list-style-type: none"> <li>• The Lease did not change the situation of occupation.</li> <li>• Alternatively, once Operation Shining Star began the Belt was once again “placed under the authority of a hostile army”: (<a href="#">Hague Regulations 1899, art. 42</a>).</li> <li>• Assuming arguendo that Ragnell was not an occupier in the Belt, Operation Shining Star constituted a violation of Art. 2(4) of the UN Charter, and consequently a violation of Art. 2(1) of the Treaty.</li> </ul>	<p>Ragnell is not an occupier in the Belt:</p> <ul style="list-style-type: none"> <li>• The law of occupation does not extend to situations of consensual leasing of territory, at least as long as the Peace Agreement remains in force between the Parties.</li> <li>• Alternatively, the law of occupation applies only from the start of Operation Shining Star. Therefore, the rules of <i>jus ad bellum</i> apply.</li> <li>• If indeed Ragnell is an “occupier,” self-defense (UN Charter Art. 51) justifies the use of force.</li> </ul>

<b>Whether <i>jus ad bellum</i> and self-defense can be invoked regarding Operation Shining Star.</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• Self-defense may not be invoked in the case of armed force employed in occupied territory (<a href="#">Wall Advisory Opinion</a>), since IHL never ceased to apply.</li> </ul>	<ul style="list-style-type: none"> <li>• Article 20.5 of the Treaty establishes that the inherent right of self-defense, derived from <a href="#">UN Charter Art. 51</a>, has not been affected by the demilitarized zone within the Belt.</li> </ul>

<ul style="list-style-type: none"> <li>● There is no right of self-defense vis-à-vis non-state actors.</li> <li>● Moreover, the UAC's actions did not amount to an "armed attack" as defined in UN Charter Art. 51.</li> <li>● Even if the UAC's actions amounted to an armed attack, such an attack on Ragnell's nationals in Balan's sovereign territory, which was never relinquished under the Treaty, does not constitute grounds for self defense.</li> <li>● Assuming rules <i>jus ad bellum</i> rules apply, Shining Star was unnecessary and disproportionate (<a href="#">Oil Platforms case</a>, para. 51).</li> <li>● The violation cannot be justified by necessity.</li> </ul>	<ul style="list-style-type: none"> <li>● Terrorist attacks by UAC in the Belt, which was under Ragnell's administration, constituted an armed attack against Ragnell, triggering the customary right of self-defense (which extends to non-state actors) and, furthermore, the Operation was necessary and proportionate.</li> <li>● Assuming arguendo the Operation violated international law, it can be justified by necessity (ARSIWA, Art. 25), since it was the only way for Ragnell to safeguard its essential interests against grave and imminent peril, and since it did not seriously impair an essential interest owed under the Treaty; moreover, Ragnell did not contribute to the situation and therefore is not precluded from invoking necessity.</li> </ul>
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<b>Attack on Nant Tunnel</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>● Since the Belt was occupied, and given the substantial harm to the civilian population, targeting Nant Gateway was a violation of the prohibition on collective punishment (<a href="#">GCIV, Art. 33</a>).</li> <li>● Assuming the Belt was not occupied, targeting Nant Gateway, which was not a military target, was unnecessary and disproportionate (ICTY <a href="#">Prosecutor v. Prlic Trial Chamber Judgment</a>, 29 May 2013).</li> </ul>	<ul style="list-style-type: none"> <li>● Nant Gateway was a military target because of its nature, location, purpose, and use (the movement of UAC fighters and supplies from Balan to the Belt).</li> <li>● Targeting Nant Gateway was thus necessary and proportionate (ICTY <a href="#">Prosecutor v. Prlic, Appeal Chamber Judgement</a>, 29 November 2017).</li> </ul>

<b>Attack on Compound Ardan</b>	
<b>Applicant</b>	<b>Respondent</b>

<ul style="list-style-type: none"> <li>● Ragnell’s reliance on unreliable intelligence was a violation of the customary obligation to “do everything feasible to verify” targets of an attack and “take all feasible precautions in the choice of means and methods of attack with a view of avoiding, and in any event, to minimizing incidental loss of civilian life.” (<a href="#">API Art. 57(a)(i) -(ii)</a>; <a href="#">Rule 15</a>, ICRC Customary IHL Study).</li> <li>● Violation of the right to life set forth in art. 6 of the ICCPR</li> </ul>	<ul style="list-style-type: none"> <li>● Unintended harm to a civilian population resulting from legitimate targeting is not collective punishment.</li> <li>● The obligation to do everything feasible is high but not absolute. (<a href="#">ICTY Expert Committee</a>) A military commander must merely set up an effective intelligence gathering system and employ available technical means to properly identify targets during operations.</li> </ul>
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**2. Ragnell’s obligation to compensate Aglovale for the deaths of eight Aglovalean nationals resulting from these actions.**

<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>● Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. (<a href="#">UN GA Res. 60/147</a>, <a href="#">Gabcikovo Nagymaros</a>)</li> </ul>	<ul style="list-style-type: none"> <li>● As demonstrated above, the harms involved do not constitute a violation of international law.</li> <li>● Alternatively, the harms involved do not constitute a war crime or other gross or serious violation of IHL or IHRL; therefore, they do not trigger the obligation to compensate. (<a href="#">UN GA Res. 60/147</a>)</li> <li>● The practice of states in similar situations has been voluntary, non-binding <i>ex gratia</i> payments.</li> </ul>

## **QP2: Regulation of Detention in Occupation and Armed Conflict**

This question examines whether Ragnell's treatment of UAC detainees violated its obligations under Article 2.2 of the Treaty. Specifically, it refers to (1) whether the transfer of detainees to Camlann Correctional Center (CCC) is a violation of international law; and (2) whether the engagement of the detainees in the transport of plastic waste to Etna is lawful.

### **1. Whether the transfer of detainees to Camlann Correctional Center (CCC) is a violation of international law.**

Teams are expected to make claims regarding the legality of both transportation of detainees to CCC, which is located outside the Belt, and detention in a maximum-security facility.

The following issues may arise in connection with this question:

1. **Occupation:** Whether Ragnell is an occupying force within the Belt (see above).
2. **Diplomatic Protection:**
  - Ragnell may claim that Aglovale does not have *locus standi* to exercise diplomatic protection on behalf of UAC members, citing a lack of nationality link and claiming local remedies were not exhausted. ([Draft articles on diplomatic protection](#))
  - Aglovale may reply that Article 41 of the Treaty grants all parties standing to bring any violation thereof before the Court. Additionally, the applicant could claim to have an [erga omnes partes obligation](#), since these states are parties to the same treaty, which purports to provide legal standing for states not directly injured.
3. **POW Status:**
  - Aglovale will likely claim that UAC fighters meet the conditions for classification of Prisoners of War (POWs), as set forth in article 44 of [Protocol I of the Geneva Conventions of 1949](#) (API) and as described under article 4 of the [Third Geneva Convention of 1949](#) (GCIII), to which both States are parties.
  - Ragnell may claim that UAC fighters do not qualify as POWs under GCIII Article 4 (no indication that they had a fixed distinctive sign). However, the UAC fighters still meet the conditions under API Art. 44, or at least are entitled to equal protection.
  - UAC's 15 September 2021 declaration to the Swiss Federal Council, and the depositary's notice that the declaration had the effects mentioned in [API Art. 96, para. 3](#), which is almost unprecedented, strengthen Aglovale's claim regarding UAC fighter status as POWs.

<b>Transfer of detainees to CCC</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>● Ragnell violated <a href="#">GCIII Art. 46</a> when it transported UAC fighters to CCC, outside of the Belt, especially since this transfer makes it more difficult for them to be repatriated to Balan.</li> <li>● <a href="#">GCIV Art. 76</a> requires an occupying power to detain protected persons accused of offenses within an occupied country, and <a href="#">GCIV Art. 49</a> prohibits forcible transfers or deportations of protected persons from the occupied territory of the Belt into Ragnell. Ragnell violated both when it transferred UAC fighters outside the territory of the Belt.</li> </ul>	<ul style="list-style-type: none"> <li>● <a href="#">Art. 47 GCII</a> allows transfer of POWs to a safer location when fighting draws close, and they are exposed to greater risk by staying.</li> <li>● Assuming the Belt is occupied territory and UAC fighters are protected persons, the security of the population demanded their transfer from their position in the Belt, and material reasons (active combat and limited transportation) necessitated their transfer into Ragnell, away from active combat. Therefore, the transfer was in accordance with <a href="#">GCIV Art. 49</a>.</li> </ul>

<b>The legality of Detention in CCC</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>● Under <a href="#">Art. 21 GCIII</a>, POWs “may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.” Under <a href="#">Art. 22 GCIII</a>, POWs may not be interned in penitentiaries, “except in particular cases which are justified by the interest of the prisoners themselves.”</li> <li>● The exception under Article 22(1) must be applied in good faith and not used to circumvent the prohibition, as stated in the <a href="#">2020 commentary to Article 22</a>.</li> <li>● Ragnell violated these provisions by detaining UAC detainees in CCC, a maximum-security facility, rather than transferring them to a</li> </ul>	<ul style="list-style-type: none"> <li>● The Problem states Ragnell housed UAC fighters separately from other prisoners, and their treatment met or exceeded international standards. There is no indication that the fighters were held in close confinement.</li> <li>● The internment of UAC fighters in CCC was necessary in order to protect their interests – their safety from attacks – in accordance with Art. 22 GCIII.</li> <li>● Even assuming the UAC fighters were at some point held in close confinement, the move was, and remains, necessary in order to safeguard their health and lives.</li> <li>● Ragnell may cite to state practice, but the existing state practice (e.g., Guantanamo Bay) is limited and controversial.</li> </ul>

camp or detention center with similar facilities to Fort Caerleon.	
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**2. Whether the engagement of the detainees in the transport of plastic waste to Etna is lawful.**

<b>Transport of Plastic Waste</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>● Ragnell violated the prohibition on employing POWs who were not volunteers in dangerous conditions (<a href="#">GCIII Arts. 51 &amp; 52</a>). In particular, the means of protection provided to UAC fighters was not suitable.</li> <li>● Employing UAC fighters to transport plastic waste to Etna constitutes a violation of <a href="#">GCIV Art. 40</a>, concerning employment of protected persons. This claim may be harder to substantiate, as the workers were provided with the same safeguards as national workers, and it appears that the work was necessary to ensure public health.</li> </ul>	<ul style="list-style-type: none"> <li>● Ragnell’s employment of UAC fighters in removal of plastic waste was in accordance with the provisions of GCIV Art. 40: the work was necessary to ensure the health of human beings. Moreover, UAC fighters were compelled to work only to the same extent as Ragnellian nationals and were provided with the same equipment.</li> <li>● Alternatively, Ragnell’s employment of UAC fighters was in accordance with GCIII Arts. 51 and 52 – in particular, UAC fighters were provided with means of protection identical to those accorded Ragnellian nationals.</li> </ul>

### **QP3: Regulation of Unilateral Sanctions and Neutrality**

The question concerns whether Aglovale's imposition of sanctions upon Ragnell was in violation of its obligations under Articles 2 and 6.4 of the Treaty.

The following jurisdictional issues are expected to arise in connection with this question:

#### Human rights:

- Aglovale may claim that the human rights claim is inadmissible because the injured persons (except for Kay Ector) have not exhausted local remedies and Ragnell is not entitled to exercise diplomatic protection. ([Draft articles on diplomatic protection](#))
- Ragnell may counter that the claim is admissible, since:
  - The injured persons do not need to exhaust local remedies because they did not have a relevant connection with Aglovale at the time of injury.
  - Kay Ector's failed appeal to the Supreme Court of Aglovale suggests that no effective redress was available.

#### Trade law:

- Aglovale may claim that [GATT Article XXI\(b\)](#) is a non-justiciable self-judging clause regarding determination by a State of its essential security interests and the necessity of an action for the protection of these interests. ([Nicaragua](#) case)
- Ragnell may counter:
  - The Court did not make it clear whether it would decline to exercise jurisdiction if faced with a dispute arising out of Article XXI(b), GATT.
  - ICJ Statute Art. 59 makes a decision of the Court binding only upon the parties in a specific case.
  - When an action is taken under Article XXI, "all contracting parties affected by such action retain their full rights under the General Agreement," including the dispute resolution procedure provided in Article XXIII of the GATT. (1982 [Decision concerning Article XXI](#))

After the jurisdictional question, to resolve the main issue, teams may present claims regarding (1) whether Aglovale can justify imposing sanctions as countermeasures under international law; (2) whether the sanctions violate dispositions under international trade law; (3) whether the sanctions violate IHRL; (4) whether imposition of sanctions violated the principle of non-intervention; and (5) whether imposing sanctions changes Aglovale's status of neutrality.

## 1. Imposing sanctions as countermeasures under international law.

Applicant	Respondent
<ul style="list-style-type: none"> <li>• <a href="#">Article 22 of the Responsibility of States for Internationally Wrongful Acts</a> (ARSIWA) discusses the preclusion of wrongfulness of a countermeasure. The conditions for countermeasures met, as set forth below:</li> </ul>	<ul style="list-style-type: none"> <li>• Countermeasures in accordance with <a href="#">ARSIWA</a> Art. 22 cannot preclude wrongfulness in the present instance.</li> </ul>
<p>1) <u>Prior wrongful act</u></p> <p>Ragnell violated its Treaty obligations:</p> <ul style="list-style-type: none"> <li>○ Art. 14: demilitarization of the Belt; unjustified use of force</li> <li>○ Art. 15 – to protect and preserve the integrity of the Thruway and the port</li> </ul> <p>The attack increased risks to the safety and lives of people unable to evacuate.</p> <p>The attack on Ardan Compound, based only on an unreliable informant with a history of providing inaccurate and misleading information, was an unjustified use of force disguised as a peace mission.</p> <p>In addition, Aglovale may argue that Ragnell’s invocation of emergency circumstances is incompatible with the clean hands principle or the <i>ex iniuria ius non oritur</i> doctrine. (<a href="#">Gabcikovo</a> case)</p>	<p>1) <u>No prior wrongful act:</u></p> <p>The emergency situation - infiltration of UAC fighters and weapons into the Belt via the Eamont Thruway - necessitated the attacks on Nant Gateway and Ardan Compound in order to restore peace and order in the Belt.</p>
<p>2) <u>Proportionality</u></p> <p>The countermeasures were proportionate (<a href="#">ARSIWA Art. 51</a>).</p> <p>Aglovale may distinguish <i>Gabcikovo</i> from the present instance: the sanctions, which are all economic, are proportional to the casualties, environmental harm, and property damage</p>	<p>2) <u>Proportionality</u></p> <p>The countermeasures were disproportionate.</p> <p>Ragnell may refer to <i>Gabcikovo</i> in an attempt to prove the imbalance between its alleged breach of the Treaty and the sanctions’ effect on its economy in order to claim that the sanctions are in fact a reprisal against Ragnell.</p>

<p>caused by Ragnell’s breach of its Treaty obligations.</p>	
<p>3) <u>Purpose</u></p> <p>Notwithstanding <a href="#">ARSIWA Art. 52</a>’s notification and negotiation requirement, Art. 52.2 allows a state to take urgent countermeasures necessary to preserve its rights.</p> <p>Aglovale intended to induce Ragnell to comply with its Treaty obligations, guarantee non-repetition, and/or demand reparation.</p>	<p>3) <u>Purpose</u></p> <p>The requirement set forth in <a href="#">ARSIWA Art. 52</a> regarding the purpose of countermeasures is not met, because the violations are not ongoing, and since Ragnell has expressed willingness, in principle, to negotiate with Balan.</p>

**2. Imposing sanctions under international trade law.**

<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• The purported violations fall under the security exception in <a href="#">Article XXI(b), GATT</a> and <a href="#">Article XIV bis, GATS</a>, and are therefore exempted from the obligations under the conventions.</li> <li>• Under <a href="#">Article XX(b)(iii) of the GATT</a>, the convention does not prevent a State from taking any action which the State “considers necessary for the protection of its essential security interests” if the action is “taken in time of war or other emergency in international relations.”</li> <li>• Aglovale met all requirements to invoke the security exception: <ul style="list-style-type: none"> <li>(1) taken in time of war or other emergency in international relations: “political or economic conflicts” between States are only considered emergencies in international relations under this article when “they give rise to defence and</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Aglovale’s sanctions constitute a violation of: <ul style="list-style-type: none"> <li>○ <a href="#">GATT</a> Articles I:1, XI:1 and XIII:1</li> <li>○ GATS Articles II:1, XVI:1, XVII:1</li> </ul> </li> <li>• The sanctions did not meet the requirements of the <a href="#">GATT</a>’s security exception, since they did not meet the following requirements: <ul style="list-style-type: none"> <li>(1) taken in time of war or other emergency in international relations; since there is no armed conflict between Aglovale and Ragnell, the security exception is not justified in this case; (WTO Panel, <a href="#">Russia-Traffic in Transit</a>)</li> <li>(2) Whether the sanctions were aimed to protect the essential security interests of Aglovale.</li> </ul> <p>The obligation of good faith under Articles 26 and 31(1) of the <a href="#">VCLT</a> requires States “not use the exceptions in Article XXI as</p> </li> </ul>

military interests, or maintenance of law and public order interests.” In this case, the situation gave rise to interests of both law and public order and defence and military interests;

(2) the sanctions were aimed to protect the essential security interests of Aglovale. Subject to good faith requirements, the [GATT](#) leaves it to the discretion of States to define their essential security interests. In general, the term refers to interests “relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally.”

(3) the sanctions were necessary to protect the essential security interests of Aglovale.

#### Public Morals Exception

- Under [Article XX of the GATT](#) and Article XIV(a) of the GATS, the sanctions met the cumulative requirements of the security exception:

(1) the sanctions were imposed to protect public morals.

(2) the sanctions were “necessary” - an objective standard assessed through weighing and balancing various factors ([WTO Panel United States-Gambling](#)): a) assessment of the “relative importance of the interests or values furthered by the challenged measure”; (b) weighing and balancing other factors, such as “the contribution of the measure to the realization of the ends pursued by it” and “the restrictive impact of the measure on international commerce”; and (c) “comparison between the challenged measure and possible alternative”, taking into account the importance

a means to circumvent their obligations under the [GATT 1994](#).” (WTO Panel, [Russia-Traffic in Transit](#))

In this case, Aglovale used the security exception as a means to circumvent its obligations under [GATT](#).

- (3) Whether the sanctions were necessary to protect Aglovale’s essential security interests – these interests were not threatened, and therefore there was no need for sanctions in order to protect them.

#### Public Morals Exception:

- The sanctions did not meet the cumulative requirements of the public morals exception. In particular, the sanctions failed to meet the non-discrimination requirement set forth in Article XIV’s chapeau.

<p>of the interest or values at issue, to see whether another “WTO-consistent measure is ‘reasonably available’” for the State to achieve the same objectives.</p> <p>(3) the sanctions satisfied the requirements laid down in the chapeau of Article XIV, (see <a href="#">analysis</a>) that a measure must not be applied “in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”</p>	
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### 3. Sanctions under international human rights law.

Applicant	Respondent
<ul style="list-style-type: none"> <li>• <b>ICCPR</b></li> </ul> <p><u>Extraterritorial Application</u></p> <ul style="list-style-type: none"> <li>• <a href="#">ICCPR Art. 2</a> confines a State’s obligations to individuals who are “within its territory” or “subject to its jurisdiction.” (<a href="#">Wall</a> case)</li> <li>• For the Convention to apply to an individual outside a State’s territory, that State must exercise effective control over the area, or exercise control and authority over the individual through its agents. (<a href="#">General Comment 31</a>)</li> <li>• Aglovale did not exercise control over the individuals or the area where the individuals were located. As such, Aglovale bears no obligations towards them under the ICCPR.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>ICCPR</b></li> </ul> <p><u>Extraterritorial Application</u></p> <ul style="list-style-type: none"> <li>• The <a href="#">ICCPR</a> is applicable because the affected persons under Aglovale’s jurisdiction, i.e., “within the power or effective control” of the State. (<a href="#">General Comment 31</a>)</li> <li>• The enactment of the sanctions was an extraterritorial act, which placed the affected persons under the prescriptive jurisdiction of Aglovale. The legislation was the direct and immediate cause of injuries suffered by the affected persons. Therefore, the affected persons were subject to Aglovale’s jurisdiction and the <a href="#">ICCPR</a> is applicable. (ECHR, <a href="#">Andreou v. Turkey</a>)</li> </ul>

**ICESCR:**

Extraterritorial Applicability:

- The Court’s jurisprudence and the interpretation of the CESCR indicate that the applicability of the Convention is dependent upon an effective control test.
- This effective control test is also supported by a contextual interpretation. [Art. 2 of the ICESCR Optional Protocol](#) provides that only individuals or groups of individuals “under the jurisdiction of a State Party” may submit communications to the CESCR.
- Since the affected persons were not under the effective control of Aglovale, the [ICESCR](#) is not applicable.

Right to the Highest Attainable Standard of Health

- Assuming extraterritorial application of the [ICCPR](#), despite the requirement to strive to provide the widest possible enjoyment of relevant rights, Aglovale is required to provide only core minimum essential levels of rights. ([CESCR General Comment 3](#))

**ICESCR:**

Extraterritorial Applicability:

- The Covenant does not contain a jurisdiction clause. In contrast, Articles 2, 11(2), 22 and 23 of the [ICESCR](#) place an emphasis on international assistance and cooperation.
- The claim that the [ICESCR](#)’s applicability is extraterritorial is also supported by numerous soft-law instruments, including the [Maastricht Principles](#).
- Alternatively, the obligation of international cooperation and assistance in Article 2 of the [ICESCR](#) is an inter-State obligation. Thus, it precludes the conditions of exhaustion of local remedies and extraterritorial application.

Right to the Highest Attainable Standard of Health

Article 12 of the [ICESCR](#) provides the right to the enjoyment of the highest attainable standard of physical and mental health. Aglovale violated this Article because

- (1) the embargo hindered access to essential medicines;
- (2) Aglovale failed to undertake the duty to international cooperation and assistance;
- (3) Aglovale did not fulfil its due diligence obligation when imposing the sanctions;
- (4) the sanctions violate the non-discrimination requirement.

([CESCR General Comment 14](#))

#### 4. The principle of non-intervention.

Applicant	Respondent
<ul style="list-style-type: none"> <li>● According to the ICJ, the element of coercion defines and indeed forms the very essence of prohibited intervention (<a href="#">Nicaragua</a> case).</li> <li>● In this case, any purported intervention did not rise to the level of coercion.</li> <li>● Moreover, Aglovale's direct intervention in Ragnell's affairs was minimal, and the majority of the effects claimed by Ragnell were the result of third-party states' actions.</li> </ul>	<ul style="list-style-type: none"> <li>● The principle of non-intervention originates from the principle of sovereignty guaranteed under Article 2(1) of the UN Charter (<a href="#">Nicaragua</a> case).</li> <li>● The sanctions:               <ol style="list-style-type: none"> <li>(1) intervene in Ragnell's internal affairs – the situation in the Belt and the need to maintain its nationals' property and security therein. Aglovale's sanctions are coercive and their extreme effect on Ragnell's economy prevents Ragnell from exercising sovereignty;</li> <li>(2) exceed Aglovale's role as a compliance monitor under the Treaty.</li> </ol> </li> </ul>

#### 5. Illegal Expropriation

Applicant	Respondent
<ul style="list-style-type: none"> <li>● Aglovale's seizure of Ragnellian assets, including Prydwen place did not amount to expropriation –               <ol style="list-style-type: none"> <li>1) There was no direct expropriation, since there was no transfer of title</li> <li>2) In this case there is also no indirect expropriation, since the measure was temporary (See UNCTAD p. 69)</li> </ol> </li> <li>● Alternatively, the seizure constituted a lawful expropriation since compensation is not required in the circumstances of the case and the other three cumulative requirements (public purpose or interest, non-discriminatory, due process) were met.</li> <li>● For these reasons, Ragnell is not entitled to demand return of assets or compensation</li> </ul>	<ul style="list-style-type: none"> <li>● Aglovale's seizure of Ragnellian assets constituted expropriation (see definition in "<a href="#">Expropriation: UNCTAD Series on Issues in IIA's</a>", p.12) of property, since there is effective loss of access .</li> <li>● The seizure constitutes unlawful expropriation because not all of the four cumulative requirements (public purpose or interest, non-discriminatory, due process, compensation, see UNCTAD series p. 27) for lawful expropriation were met. In particular, the following requirements may be emphasized:               <ol style="list-style-type: none"> <li>1) Expropriation enacted in a non-discriminatory manner</li> <li>2) Against payment of prompt, adequate and effective compensation</li> </ol> </li> <li>● Ragnell is entitled to return of ts assets and compensation for losses</li> </ul>

**6. Aglovale’s status of neutrality.**

<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• Aglovale fulfilled its obligation to maintain neutrality:               <ul style="list-style-type: none"> <li>○ its armed forces maintained neutrality throughout the conflict, as required under the Treaty.</li> <li>○ insofar as the Treaty requirement of neutrality extended to Aglovale’s economic measures, the requirement of neutrality does not mean a requirement of absolute equality of treatment, especially considering the difference between Ragnell and Balan’s offensive actions in the Belt.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Article 6.4 of the Treaty requires that Aglovale in performing its monitoring and peacekeeping functions in the Belt abide by the principles of neutrality, impartiality, and fairness.</li> <li>• Under the same Article, Aglovale is limited to documenting any infringements of the Treaty, fairly and impartially recording, investigating, and reporting on complaints of infringements alleged by either Ragnell or Balan.</li> <li>• The term “neutrality” could be interpreted literally in the context of the Treaty as not favoring one side over another.</li> <li>• Several facts surrounding the sanctions indicate that Aglovale is biased toward Balan, including a lack of acknowledgement regarding Balan’s contributing fault in failing to combat UAC’s violence in the Belt despite Ragnell’s repeated calls for effective measures.</li> <li>• Aglovale's obligation of neutrality required it to act as an independent mediator between Ragnell and Balan, rather than punishing one side and supporting the other.</li> </ul>

**QP4: Regulation of Transboundary Movement of Hazardous Plastic Waste**

This question concerns whether obligations under Art. 28 of the Treaty were violated by either State when Ragnell transported hazardous plastic waste to Etna or when Aglovale conditioned cooperation with Ragnell regarding the treatment of the waste in the Belt upon the cessation of military activity therein.

In order to resolve this question, we expect that teams will present claims regarding the following issues: (1) Whether Ragnell violated its environmental obligations; (2) Whether environmental obligations can be suspended due to armed conflict; and (3) Whether Aglovale violated its obligation to cooperate.

**1. Ragnell’s environmental obligations.**

The issue of the customary nature of the obligations under the Basel and Stockholm Conventions is expected to arise in connection with this claim:

<b>Are the Basel and Stockholm Conventions reflective of customary international law?</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• The Basel Convention is reflective of customary international law (189 Parties). The 2019 plastic amendments, which entered into force in 2021, are also reflective of custom. The Stockholm Convention is reflective of customary international law (185 parties).</li> <li>• The practice of non-party states also leads to this conclusion – for example, although the US is not a party to the Basel or Stockholm treaties, it has adopted certain internal legislation similar to the provisions of the Conventions.</li> </ul>	<ul style="list-style-type: none"> <li>• The mere fact that the majority of states have ratified the Basel and Stockholm conventions does not confirm their customary status. There are significant outliers in this regard, i.e., the East Timor, Fiji, Haiti, San Marino, South Sudan, and United States.</li> </ul>

<b>Environmental Obligations under the Treaty</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• Ragnell violated its environmental obligation under Article 28 of the Treaty, which required</li> </ul>	<ul style="list-style-type: none"> <li>• Ragnell acted in accordance with its obligations under Article 28.</li> </ul>

<p>the parties, <i>inter alia</i>, to prevent or remedy environmental pollution and harm through compliance with all relevant rules of international law.</p> <ul style="list-style-type: none"> <li>• Even assuming that the Basel and Stockholm conventions in their entirety do not reflect customary law (discussed above), the relevant provisions of these conventions are customary.</li> <li>• More specifically, the articles 4, 6, 10 and 11 of the Basel convention regarding environmentally sound management of exported waste reflect customary international law.</li> <li>• Ragnell violated its obligation to comply with the principle of prevention through due diligence (<i>Pulp Mills</i> para.101), by allowing Etna’s disposal of the hazardous waste without ensuring adequate facilities. This is especially true considering Etna's status as a developing country.</li> </ul>	<ul style="list-style-type: none"> <li>• There is no evidence that suggests that the relevant provisions of the Basel and Stockholm Conventions are considered customary international law, and so Ragnell was not obligated to act in accordance with their provisions. More especially, the <a href="#">2019 Plastic Waste Amendment</a> does not constitute a provision of customary international law, and therefore Ragnell was not required to act in accordance with its more stringent requirements.</li> </ul>
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<b>Violation of Ragnell’s Environmental Obligations</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• The transboundary transfer of the hazardous plastic waste violates customary obligations:               <ol style="list-style-type: none"> <li>(1) to reduce the transboundary movement of such wastes “to the minimum... in a manner which will protect human health and the environment against the adverse effects which may result from such movement” (<a href="#">Basel Convention</a>, art. 4(2)(d)).</li> <li>(2) to take measures to ensure that such wastes are handled, collected,</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• There is no prohibition to export waste, the Basel Convention 4(2)(d) only speaks of an obligation to reduce “to a minimum” such transboundary transfers, and the Stockholm Convention creates caveats in the form of an open-ended “sound manner,” taking into account unspecified “rules, standards and guidelines.” States around the world export waste as a regular practice, including the United States, Japan, Germany and the United Kingdom.</li> </ul>

<p>transported, and stored in an environmentally sound manner; and disposed of in such a way that the persistent organic pollutant is destroyed or irreversibly transformed, taking into account international rules, standards, and guidelines, and relevant global and regional regimes governing management of hazardous wastes. (<a href="#">Stockholm Convention</a>, Art. 6(d)).</p>	<ul style="list-style-type: none"> <li>• Ragnell’s transfer of waste to Etna is necessary under the circumstances. Keeping the hazardous waste in the Belt poses more severe risks to human health and the environment than shipping it to Etna for disposal.</li> <li>• Ragnell complied with the general obligations of the <a href="#">Basel Convention</a>, the most significant being prior informed consent from Etna, which Ragnell received, prior to authorizing the shipments.</li> <li>• According to the information available to Ragnell regarding Etna’s capabilities at the time of concluding the agreement, the transfer of waste to Etna met or exceeded Ragnell’s obligations since Etna is party to the <a href="#">Basel Convention</a> and therefore obligated to act in conformity with it.</li> </ul>
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**2. Whether environmental obligations can be suspended due to armed conflict.**

<b>Suspension Due to Armed Conflict</b>	
<b>Applicant</b>	<b>Respondent</b>
<ul style="list-style-type: none"> <li>• An armed conflict does not <i>ipso facto</i> suspend the operation of a treaty (<a href="#">ILC Draft Articles on the Effects of Armed Conflicts on Treaties</a> Art. 3), and the Peace Agreement in particular is not susceptible to suspension in light of its object and purpose and its content (<a href="#">ILC Draft Articles</a> Art. 6).</li> <li>• Moreover, the requirements for a suspension under <a href="#">VCLT</a> Art. 61(2) or 62(2) (b), impossibility of performance and change of circumstances are not met; since the facts are the result of a breach of the Treaty by Ragnell.</li> </ul>	<ul style="list-style-type: none"> <li>• Ragnell’s environmental obligations under the Peace Agreement are suspended due to the armed conflict and the situation within its waste sorting and management facilities.</li> <li>• Alternatively, the obligation under the Peace Agreement was suspended on the grounds of impossibility of performance (<a href="#">VCLT</a> Art. 61) or Fundamental Change of Circumstance (<a href="#">VCLT</a> Art. 62). These grounds were not the result of any alleged breach of the Treaty by Ragnell.</li> </ul>

### 3. Aglovale’s obligation to cooperate.

Applicant	Respondent
<ul style="list-style-type: none"> <li>● Aglovale complied with the Treaty in conditioning continued negotiations and cooperation regarding treatment of the waste on the termination of Ragnell’s aggression in the Belt.</li> <li>● Aglovale showed its willingness to cooperate in good faith with Ragnell by entering into extensive negotiations regarding the treatment of the plastic waste, and only stopped negotiations and conditioned cooperation following Ragnell’s violations of its obligations under the Treaty.</li> <li>● Aglovale’s actions are justified as countermeasures. “Operation Shining Star” was in breach of the Treaty and of the UN Charter and constituted an act of aggression against Balan. Aglovale stopped the negotiations as a result of those actions, as allowed under article 22 of <a href="#">ARSIWA</a>.</li> <li>● Ragnell comes before the Court with unclean hands, since its own actions (bombing Nant Tunnel) destroyed the chief means of transporting waste to Aglovale (Guys, I’m not sure whether we should include this – it’s a creative claim, but Aglovale never cited lack of ability as a reason for not accepting the waste...)</li> </ul>	<ul style="list-style-type: none"> <li>● Aglovale violated its obligation under Article 28 of the Treaty by failing to cooperate in good faith in the management of plastic waste, since it cancelled the waste management negotiations, conditioning their continuation on a complete halt of Ragnell’s necessary military activities in the Belt.</li> <li>● Article 28 requires Parties to the Treaty to comply with all relevant rules of international law. This customary obligation can be seen as a further means of interpreting the Treaty duty or a standalone obligation that may be violated separately. The ICJ in the <a href="#">Nuclear Tests Case</a> at para. 46 noted that “One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperation, in particular in an age when this co-operation in many fields is becoming increasingly essential.”</li> <li>● Ragnell did not have the obligation to seek prior consent of the affected states since this is not required under customary international law (<a href="#">Lake Lanoux arbitration</a>) and so long as the Treaty does not mandate it, Ragnell is entitled to pursue alternative solutions without further consulting Aglovale.</li> <li>● Aglovale’s refusal to cooperate cannot be justified as a countermeasure under <a href="#">ARSIWA</a>, since the result of Aglovale’s actions affect not only Ragnell but also Balan. According to the ICJ countermeasures must, first, be taken in response to a previous international wrongful act of another State and must <u>be directed against that State</u> (<a href="#">Gabcikovo-Nagymaros Project case</a> para. 83).</li> </ul>

## Judging Oral Rounds

Please keep in mind the following:

- Each question or intervention is meant to create a conversation between judges and the agent.
- Agents are excited and eager to learn, judges should be open to introducing themselves at the beginning of a match and giving constructive feedback at the end. (Please do not give substantive feedback on arguments or the applicable law)
- We encourage judges to be time conscious and avoid phrasing questions in an unnecessary lengthy or convoluted manner.
- Judges may ask anything; we encourage judges to test international law knowledge, focus on the connection of the presented law with the facts of the case, and check the veracity of the facts presented by the agent.

Apart from topic-specific questions arising from the topics in the Bench Memorandum, there are some generally-applicable questions that every oralist should be able to answer. These include:

- In what circumstances will the International Court of Justice have jurisdiction to determine a dispute between States?
- Can objections to jurisdiction be considered by the ICJ proprio motu (i.e., without the other party invoking such an objection)? Does the same apply to the admissibility objections?
- What is customary international law? What are the elements of customary international law?
- What is *opinio juris*? How is it proven?
- What is State practice? Where can it be found? What are the basic rules of treaty interpretation?
- Is the ICJ bound by its previous decisions?
- What are the principal international documents concerning State responsibility? Is there universal agreement on the issues of State responsibility?
- What are the elements of an internationally wrongful act of a State?
- Where is that fact stated in the Problem?
- What is the source of law that supports that statement?
- How does that legal source apply to the facts of the problem?
- Please explain the facts of the case you are citing and explain whether they are relevant to the current case.