Team 1220

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

Questions Relating to a Nuclear Accident and Sovereign Debt

The Federal States of Amuko,

Applicant.

v.

The Republic of Rentiers,

Respondent.

Fall 2011

Memorial for the Applicant

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF JURISDICTION 1

QUESTIONS PRESENTED 2

STATEMENT OF FACTS 3

SUMMARY OF ARGUMENT 5

ARGUMENT 6

I. Rentiers has a legal obligation to compensate Amuko for damages under international law 6

A. Rentiers is legally responsible for damage caused by the Nihon Nuclear Power Plant. 6

1. Rentiers is strictly liable for damage caused by nuclear activities. 7

2. The spent fuel rods were under the continuous control of Rentiers. 9

a. The sending operator remains liable during transport. 9

b. The sending operator remains liable during temporary storage. 10

B. Rentiers is responsible for damages caused to Amuko under the Joint Convention. ... 11

C. Rentiers is responsible for damages caused to Amuko under the Assistance Convention. 11

1. Article 10 mandates that Rentiers provide compensation. 13

a. Under Article 10, Rentiers must compensate Amuko for the deaths of AME personnel. 13

b. Under Article 10, Rentiers must compensate Amuko for the property losses suffered by the former residents of Robelynch.. 13

c. Under Article 10, Rentiers must compensate Amuko for the medical claims of the former residents of Robelynch... 14

d. The actions of AME do not preclude Amuko's Article 10 claims...................... 16

e. Rentiers failed to make declarations and therefore is bound by Article 10. 17

2. Article 7 mandates that Rentiers provide compensation.. 17

II. Rentiers violated international law through expropriation and debt restructuring. 18

A. Rentiers expropriated the investments of sovereign bondholders when it passed the Fresh Start Act and did not pay just compensation.. 18

1. Rentiers went beyond its role as a party to RABBIT when enacting the Fresh Start Act. 18

2. Rentiers has committed an internationally wrongful act by expropriating without providing just compensation.. 19

B. Treaty obligations must be performed in good faith.. 20

C. Rentiers' actions are not excused under international law... 21

1. Rentiers' actions are not excused by *force majeure*. 21

a. Rentiers' actions are not excused under the Draft Articles................................ 21

b. Rentiers' actions are not excused under the Gabcikovo-Nagymaros standard... 23

c. Rentiers' actions are not excused under nuclear law. 24

2. Rentiers' actions are not excused by the necessity doctrine.................................. 24

3. Rentiers' actions are not excused by its adherence to the precautionary principle. 26

CONCLUSION.. 28

TABLE OF AUTHORITIES

Treaties and Other International Instruments

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, IAEA Doc. INFCIRC/336 (Nov. 18, 1986) 13, 16, 17

Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.......... 8

Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, *with commentaries*, U.N. Doc. A/56/10; GOAR, 53d Sess., Supp. No. 10 (2001) 7

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, Sept. 5, 1997, 2153 U.N.T.S. 357 .... 11, 12

Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/49 (Vol. I)/Corr.4. (2001) 6, 20, 21, 22

U.N. Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development,* U.N. Doc. A/CONF.151/26, vol. I. 26

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 20

International Court Decisions and Documents

Claims of Italian Nationals, UNRIAA, vol. XV (Sales No. 66.V.3.) 6

Concerning Land Reclamation by Singapore in and Around the Straits of Johor (No. 12) (Malay. v. Sing.), 126 I.L.R. 487 (Int'l Trib. L. of the Sea 2003).......... 12

Convention on the Prevention and Punishment of Genocide (Bosn. & Herz. v. Yugosl.) 1996 I.C.J. Reports (July 11) 19

Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9) 11

Factory at Chorzow (Germ. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13). 19

Finnish Shipowners (Gr. Brit./Fin.), vol. III Sales No. 1949.V.2., p.1479 6

Gabcikovo-Nagymaros Project (Hung. V. Slov.) 1997 I.C.J. 7 (Sept. 25) .... passim

Immunity from Legal Process of a Special Rapporteur, ICJ Reports, 1999, pp.62; 121 ILR, p.367 6

Lake Lanoux Arbitration (Fr. v. Sp.), 12 R.I.A.A. 281 (1957) 12

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8) 11, 20

M/V Saiga (No. 2) Case (Saint Vincent and the Grenadines v. Guinea), ITLOS 120 ILR, pp. 143 19

Mox Plant Case (No. 10) (Ir. v. U.K.), 41 I.L.M. 405 (Int'l Trib. L. of the Sea 2001) 12

Nicaragua Case (Nicar. v. U.S.), 1984 I.C.J. 392 (Jun. 27) 20

Nuclear Tests (Austl., N.Z. v. Fr.), 1974 I.C.J. 253 (Dec. 20) 20

Rainbow Warrior Arbitration (N.Z. v. Fr.) (1990) 82 ILR 499 .... 19, 23

Salvador Commercial Company, vol. XV (Sales No. 66.V.3.), p.455 6

Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1905 (1938 & 1941) 11

Articles, Essays, and Journals

Alan E. Boyle, *Nuclear Energy and International Law: An Environmental Perspective*, 60 BRIT. Y.B. INT'L L. 257 (1990) 7

Helge Elisabeth Zeitler, *'Good Faith' in the WTO Jurisprudence Necessary Balancing Element or an Open Door to Judicial Activism?,* 8 J. INTL. ECON. L. 721 (2005) 20

Jon M. Van Dyke, *Liability and Compensation for Harm Caused By Nuclear Activities*, 35 DENV. J. INT'L L. & POL'Y 13 (2006) 7, 11, 15

Michael Waibel, *Opening Pandora's Box: Sovereign Bonds in International Arbitration*, 101 AM. J. INTL. L. 711 (2007) 18

Books

August Reinish, *Expropriation, in* THE OXFORD HANDBOOK OF INTERNATIONAL INVESTMENT LAW 407 (Peter Muchlinski, Federico Ortino, & Christoph Schreuer eds., 2008) 18

CARLTON STOIBER ET AL., HANDBOOK ON NUCLEAR LAW (2003) 9, 12, 15, 24

Christoph G. Paulus, *A Standing Arbitral Tribunal as a Procedural Solution for Sovereign Debt Restructurings, in* SOVEREIGN DEBT AND THE FINANCIAL CRISIS 317 (Carlos Primo Braga & Gallina Vicelette eds., 2011) 23

Jonathan B. Wiener, *Precaution, in* THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 597 (Daniel Bodansky, Jutta Brunnee, Ellen Hey eds., 2007) 26

MALCOLM SHAW, INTERNATIONAL LAW (2010) 7, 19, 20

MICHAEL WAIBEL, SOVEREIGN DEFAULTS BEFORE INTERNATIONAL COURTS AND TRIBUNALS (2011) 18

ORG. FOR ECON. COOPERATION & DEV. ET AL., LIABILITY AND COMPENSATION FOR NUCLEAR DAMAGE: AN INTERNATIONAL OVERVIEW (1994) 7, 9, 10, 15

PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (2003) 24

TARCISIO HARDMAN REIS, COMPENSATION FOR ENVIRONMENTAL DAMAGES UNDER INTERNATIONAL LAW (2011) 19

Yuefen Li et al., *Avoiding Avoidable Debt Crises: Lessons from Recent Defaults, in* SOVEREIGN DEBT AND THE FINANCIAL CRISIS 243 (Carlos Primo Braga & Gallina Vicelette eds., 2011) 23, 25

Miscellaneous

BALLENTINE'S LAW DICTIONARY (2010) 16

Gideon v. Johns-Manville Sales Corp., 761 F.2d 1129 (5th Cir. 1985) 15

Matthew Bunn et al., *Interim Storage of Spent Nuclear Fuel: A Safe, Flexible, and Cost-Effective Near-Term Approach to Spent Fuel Management*, (Jun., 2001), http://www.whrc.org/resources/publications/pdf/BunnetalHarvardTokyo.01.pdf 10

Metro-North Commuter Railroad Co. v. Buckley, 521 U.S. 424 (1997) 15

Panel Report, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/R (15 May 1998) 21

W. Va. Rezulin Litigation v. Hutchinson, 585 S.E.2d 52 (W. Va. 2006)..................................... 15

Recommendations of International Organizations

IAEA, *International Treaties for which the IAEA Director General is Depositary,* http://ola.iaea.org/ola/what_we_do/depository_functions.asp (last visited Nov. 14, 2011)..... 12

STATEMENT OF JURISDICTION

The Federal States of Amuko and the Republic of Rentiers submit the following dispute to the International Court of Justice. Pursuant to Article 40 of the Statute of the International Court of Justice, States may bring cases before the Court by special agreement. Statute of the International Court of Justice, art. 40, T.S. No. 993 (1945). On 6 June 2011, the Parties signed a special agreement and submitted it to the Registrar of the Court. *See* Special Agreement Between the Federal States of Amuko and the Republic of Rentiers for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to a Nuclear Accident and Sovereign Debt. The Registrar addressed notification to the Parties on 20 June 2011.

QUESTIONS PRESENTED

1. Whether the Republic of Rentiers has a legal obligation to compensate Amuko for damages caused by the accident and the Robelynch disaster.
2. Whether the Republic of Rentiers violated international law through expropriation and debt restructuring.

STATEMENT OF FACTS

On 5 February 2010, a 9.2 magnitude earthquake struck Rentiers along the Diablo Canyon fault line (R.15). Amuko received notification that Rentiers' Nihon Nuclear Power Plant experienced a partial core meltdown (R.16). The Rentiers Nuclear Regulatory Agency (RNRA) took control of the privately-owned Plant (R.16-17). RNRA stabilized the reactor core, but failed to control a leak in the containment pool for spent fuel rods (R.17).

Rentiers requested assistance from Amuko in accordance with the International Atomic Energy Agency (IAEA) Assistance Convention (Assistance Convention) (R.18). Amuko agreed that the Amuko Ministry of Energy (AME) would remove and transport the fuel rods to a more secure facility located in Amuko (R.18-19).

In the process of transporting Rentiers' spent fuel rods, a specially designed vehicle carrying the rods crashed and killed two AME employees. The accident occurred in Amuko and was caused by the negligence of the driver (R.21). The nearby village of Robelynch was evacuated and declared off limits for human habitation (R.24).

Amuko established a compensation fund for victims of the accident near Robelynch (R.25). The legislation compensates the families of the deceased AME employees (R.25). It also compensates the former residents of Robelynch for their property losses and establishes a lifetime medical monitoring program (R.25). Amuko requested compensation from Rentiers in accordance with the Assistance Convention and international law (R.26, 28). Rentiers denied responsibility and refused to provide compensation (R.27).

After the earthquake, RNRA closed five nuclear power plants built along the Diablo Canyon fault line (R.29). These closures resulted in intentional rolling blackouts that impaired Rentiers' economy (R.29-30). Rentiers subsequently defaulted on its sovereign bonds and

enacted the Fresh Start Act (R.30-31). Under this Act, bondholders lost 90% of the value of what their bonds would have otherwise been worth (R.31). Amuko investors owned approximately 3 billion tenge, or 80%, of all sovereign bonds issued by Rentiers (R.4 & C.10). Amuko requested Rentiers to honor the Rentiers-Amuko Bilateral Business Investment Treaty (RABBIT), which precludes expropriations (R.13, 32). Rentiers refused (R.33).

Unable to resolve this dispute, both parties have agreed to submit this matter to the International Court of Justice (ICJ) (R.37).

SUMMARY OF ARGUMENT

Rentiers has a legal obligation to compensate Amuko under international law. Rentiers is strictly liable for damage caused by its nuclear activities. The spent fuel rods, which caused the Robelynch diasaster, were under its continuous control. Rentiers is responsible for damages caused to Amuko under the Joint Convention on the Safety of Spent Fuel Management and the Assistance Convention. Furthermore, Rentiers violated international law when it did not pay just compensation for expropriations under the Fresh Start Act. Neither force majeure, the necessity doctrine, nor the precautionary principle excuse Rentiers from paying just compensation.

ARGUMENT

I. RENTIERS HAS A LEGAL OBLIGATION TO COMPENSATE AMUKO FOR DAMAGES UNDER INTERNATIONAL LAW.

A. RENTIERS IS LEGALLY RESPONSIBLE FOR DAMAGE CAUSED BY THE NIHON NUCLEAR POWER PLANT.

Rentiers is ultimately responsible for the RNRA-controlled Nihon Nuclear Power Plant. In the *Immunity from Legal Process of a Special Rapporteur* case, the ICJ recognized the well-established rule of customary international law that "the conduct of any organ of a State must be regarded as an act of that State."[1] Other international judicial decisions have also recognized that the State is responsible for the conduct of its own organs.[2]

After the earthquake,[3] RNRA took control of operations at the privately-owned Nihon Nuclear Power plant and proceeded to direct containment and response efforts.[4] Because RNRA is a national agency,[5] its conduct constitutes an act of the State, and Rentiers is responsible for such conduct.

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[1] Immunity from Legal Process of a Special Rapporteur, ICJ Reports, 1999, pp.62, 87; 121 ILR, p.367.

[2] *Responsibility of States for Internationally Wrongful Acts*, art. 2, U.N. Doc. A/56/49(Vol. I)/Corr.4., art. 4, comm. 3. (2001) [hereinafter Responsibility for Wrongful Acts]; *See*, *e.g.*, Claims of Italian Nationals, UNRIAA, vol. XV (Sales No. 66.V.3.), pp. 399 (Chiessa claim), 401 (Sessarego claim), 404 (Sanguinetti claim), 407 (Vercelli claim), 408 (Queirolo claim), 409 (Roggero claim) and 411 (Miglia claim); Salvador Commercial Company, ibid., vol. XV (Sales No. 66.V.3.), p.455, at p.477 (1902); and Finnish Shipowners (Gr. Brit./Fin.), ibid., vol. III (Sales No. 1949.V.2., p.1479, at p.1501 (1934)."

[3] R.15.

[4] R.16-17.

[5] R.17.

1. Rentiers is strictly liable for damage caused by nuclear activities.

Rentiers is strictly liable for the activities at the Nihon Nuclear Power Plant. A nuclear activity is an ultrahazardous activity[6] that possesses "a danger that is rarely expected to materialize but might assume, on that rare occasion, grave . . . proportions."[7] As such, nuclear activities are governed by a strict-liability regime rather than one of due diligence.[8] "In the absence of reciprocal acceptance of risk, making the victim suffer is not an attractive policy."[9]

Under the theory of strict liability, the installation State is ultimately responsible for controlling nuclear activities under its jurisdiction.[10] While the operator of a nuclear installation is responsible for the daily operations and for ensuring compliance with regulatory requirements, the installation State is responsible for deciding to permit nuclear activities in the first place, for licensing the particular installation, for enacting and enforcing safety legislation, for inspecting and monitoring the installation and its consequences, and for arrangements for emergency response.[11] Because the State has ultimate control over the nuclear installation, it must ensure that the installation does not cause damage in the territory of other States.[12]

Rentiers has ultimate control over nuclear installations within its territory and is strictly liable for the events arising out of the transfer of spent fuel rods from the Nihon Nuclear Power Plant. Rentiers, the installation State, authorized the construction of nuclear power plants within

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[6] MALCOLM SHAW, INTERNATIONAL LAW 888 (2010).
[7] *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, *with commentaries*, art. 1, comm.2, U.N. Doc. A/56/10; GOAR, 53d Sess., Supp. No. 10 (2001).
[8] Jon M. Van Dyke, *Liability and Compensation for Harm Caused By Nuclear Activities*, 35 DENV. J. INT'L L. & POL'Y 13, 25 (2006).
[9] Alan E. Boyle, *Nuclear Energy and International Law: An Environmental Perspective*, 60 BRIT. Y.B. INT'L L. 257, 294 (1990).
[10] ORG. FOR ECON. COOPERATION & DEV. ET AL., LIABILITY AND COMPENSATION FOR NUCLEAR DAMAGE: AN INTERNATIONAL OVERVIEW 104 (1994) [hereinafter OECD].
[11] *Id.*
[12] *Id.*

its territory. Rentiers conducted Environmental Impact Assessments ("EIAs")[13] to ensure that the nuclear power plants satisfied industry safety standards at the time of construction.[14] It developed national arrangements for emergency responses.[15] RNRA conducted subsequent EIAs of Rentiers' remaining operational plants in the aftermath of the earthquake.[16] Ultimately, RNRA, not the private operators, ordered the rapid closure of these plants.[17] Rentiers also performed a comprehensive evaluation of the location of the Nihon Nuclear Power Plant pursuant to IAEA standards.[18] RNRA conducted safety inspections of the Plant to ensure that it could withstand a meltdown in the event of a radiological emergency.[19]

In contrast, Amuko, the assisting State, is not directly implicated in the development of, nor did it benefit from, nuclear activities within Rentiers. There was no reciprocal acceptance of risk for such ultrahazardous activities. RNRA maintained continuous control over containment and response efforts relating to the fuel rods, while AME merely transported the fuel rods to a more secure facility.[20] Because Rentiers has ultimate control over nuclear activities within its territory, Amuko should not be forced to incur expenses for damages caused by spent fuel generated in Rentiers. Rentiers must reimburse Amuko for the compensation program created because of the Robelynch disaster.

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[13] C.5.
[14] C.7.
[15] C.15. *See* Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, art. 14(1)(e).
[16] R.29.
[17] *Id.*
[18] C.7.
[19] *Id.*
[20] R.18-9.

2. The spent fuel rods were under the continuous control of Rentiers.

Under nuclear law,[21] the continuous control principle states that even in circumstances where authorization has been granted to conduct certain activities, the operator of a nuclear installation must retain the ability to monitor those activities so as to ensure that they are being conducted safely and securely.[22] All liability is channeled exclusively to the operator, regardless of whose acts or omissions were the actual cause of the accident.[23]

RNRA, as the current operator of the Nihon Nuclear Power Plant, retains ultimate ownership of the spent fuel rods and ultimate control of the containment and response efforts to transport the fuel rods from the Nihon Nuclear Power Plant.

a. The sending operator remains liable during transport.

Regarding the carriage of nuclear substances, liability remains with the sending operator until responsibility is transferred to the receiving operator.[24] A written contract between the sending and receiving operator may shift liability from one operator to the other at a certain transport stage.[25]

RNRA controlled operations at the Nihon Nuclear Power Plant and directed containment and response efforts.[26] Under the authority and consent of RNRA, AME transported the fuel rods for the purposes of containment, response and cleanup previously carried out by the

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[21] CARLTON STOIBER ET AL., HANDBOOK ON NUCLEAR LAW 4 (2003) (Nuclear law is "The body of special legal norms created to regulate the conduct of legal or natural persons engaged in activities related to fissionable materials, ionizing radiation and exposure to natural sources of radiation.").
[22] *Id*. at 8.
[23] OECD, *supra* note 10, at 23. *See also* STOIBER ET AL., *supra* note 21, at 112.
[24] OECD, *supra* note 10, at 24.
[25] STOIBER ET AL., *supra* note 21, at 116.
[26] R.17.

RNRA.[27] AME's mere transport of fuel rods was not enough to channel liability from RNRA to AME. There was also no written contract that shifted liability from RNRA to AME during the transport stage.

b. The sending operator remains liable during temporary storage.

Temporary storage of spent fuel leaves ownership and liability with the entity that generated the spent fuel.[28] In contrast, permanent storage transfers ownership and liability to the entity managing the final storage, disposal, or reprocessing of the spent fuel. Most nuclear substances that are no longer used are held in temporary storage, awaiting arrangements for final disposal.[29]

RNRA retained ultimate ownership of the fuel rods generated at the Nihon Nuclear Power Plant. Amuko agreed to remove and transport the fuel rods to a more secure facility within its territory,[30] out of a duty to cooperate and the desire to "avert[] an environmental catastrophe" within Rentiers.[31] It did not agree to manage the final storage, disposal, or reprocessing of the spent fuel. Amuko's mere transport of fuel rods did not transfer ownership and liability to Amuko.

[27] R.28.
[28] Matthew Bunn et al., *Interim Storage of Spent Nuclear Fuel: A Safe, Flexible, and Cost-Effective Near-Term Approach to Spent Fuel Management*, (Jun., 2001), http://www.whrc.org/resources/publications/pdf/BunnetalHarvardTokyo.01.pdf, 76.
[29] OECD, *supra* note 10, at 118.
[30] R.18-9.
[31] R.27.

B. RENTIERS IS RESPONSIBLE FOR DAMAGES CAUSED TO AMUKO UNDER THE JOINT CONVENTION.

The Joint Convention reaffirms the ultimate responsibility of the State for the safety of spent fuel.[32] Article 21 mandates each Contracting Party to ensure that the prime responsibility for the spent fuel rests with the license holder and to take appropriate steps to ensure that the license holder meets its responsibility.[33] If there is no license holder or other responsible party, the responsibility rests with the Contracting Party having jurisdiction over the spent fuel.[34] The privately-operated Nihon Nuclear Power Plant[35] is now controlled by RNRA.[36] As such, Rentiers, the Contracting Party having jurisdiction over the Nihon Nuclear Power Plant, retains ultimate responsibility for the fuel rods stored there.

C. RENTIERS IS RESPONSIBLE FOR DAMAGES CAUSED TO AMUKO UNDER THE ASSISTANCE CONVENTION.

Customary international law requires States to ensure that activities under their jurisdiction or control do not cause damage to the resources, people, or environment of other States.[37] The no-harm rule is affirmed by Principle 21 of the Stockholm Declaration, Principle 2 of the Rio Declaration, Principle 3 of the Convention on Biological Diversity ("CBD"), and international cases,[38] including the 1997 *Gabcikovo-Nagymaros Project* case.[39] This principle

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[32] Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management pmbl. Vi, Sept. 5, 1997, 2153 U.N.T.S. 357. [hereinafter Joint Convention].
[33] Joint Convention, art. 21(1).
[34] *Id.* at art. 21(2).
[35] R.16.
[36] R.17.
[37] Van Dyke, *supra* note 8, at 13. *See* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8).
[38] *See* Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1905 (1938 & 1941); and Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9).
[39] Gabcikovo-Nagymaros Project (Hung. V. Slov.) 1997 I.C.J. 7, ¶ 53 (Sept. 25).

compels States to mitigate detrimental effects on the territories of other States and to pay compensation for damage suffered.[40]

The Assistance Convention establishes an international framework for cooperation and mutual assistance in the event of a nuclear accident or radiological emergency.[41] The duty to cooperate is well-established in customary international law and is affirmed by Principle 24 of the Stockholm Declaration, Principle 7 of the Rio Declaration, Principle 5 of the CBD, and international cases,[42] including the *Gabcikovo-Nagymaros Project*.[43]

The Joint Convention recognizes that any State has the right to ban the import of foreign spent fuel and radioactive waste.[44] However, Amuko, out of a spirit of cooperation, assisted Rentiers after the earthquake. Pursuant to Article 2(3), the AME removed spent fuel rods from the Nihon Nuclear Power Plant and transported them via highways in two specially manufactured vehicles.[45] The AME was successful in removing and transporting the fuel rods, but one of the vehicles crashed near Robelynch.[46] The Amuko Congress established a compensation fund for victims affected by the accident.[47]

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[40] STOIBER ET AL., *supra* note 21, at 79.
[41] IAEA, *International Treaties for which the IAEA Director General is Depositary,* http://ola.iaea.org/ola/what_we_do/depository_functions.asp (last visited Nov. 14, 2011).
[42] *See* Lake Lanoux Arbitration (Fr. v. Sp.), 12 R.I.A.A. 281 (1957); Mox Plant Case (No. 10) (Ir. v. U.K.), 41 I.L.M. 405 (Int'l Trib. L. of the Sea 2001) (opinion of Judge Wolfrum); Concerning Land Reclamation by Singapore in and Around the Straits of Johor (No. 12) (Malay. v. Sing.), 126 I.L.R. 487, ¶ 99 (Int'l Trib. L. of the Sea 2003).
[43] *Gabcikovo-Nagymaros* at ¶ 147.
[44] Joint Convention at pmbl.
[45] R.19-20.
[46] R.20-21.
[47] R.25.

AME's swift and heroic actions likely averted a nuclear catastrophe in Rentiers.[48] Under the Assistance Convention, Rentiers must compensate Amuko for the damages it suffered while providing assistance.

1. Article 10 mandates that Rentiers provide compensation.

a. <u>Under Article 10, Rentiers must compensate Amuko for the deaths of AME personnel.</u>

Rentiers failed to compensate Amuko for the deaths of two AME employees. Under Article 10(2)(d)(i), the requesting State is liable to compensate the assisting State for the death of personnel of the assisting party.[49] While AME was transferring the fuel rods, one of the vehicles crashed due to the driver's negligence. The driver and one security guard, both AME employees, died as a result of the accident. Consequently, Rentiers must reimburse Amuko for the deaths of AME personnel.

b. <u>Under Article 10, Rentiers must compensate Amuko for the property losses suffered by the former residents of Robelynch.</u>

Rentiers failed to compensate Amuko for the property losses suffered by the former residents of Robelynch.[50] Under Article 10(2)(d)(ii), the requesting State is liable to compensate the assisting State for property loss or damage related to the assistance.[51] After the accident, the fuel rod casings burned, releasing radioactive gases and particles.[52] Four hundred and sixty-four

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[48] R.27.
[49] *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*, at Art. 10(2)(d)(ii), IAEA Doc. INFCIRC/336 (Nov. 18, 1986). [hereinafter Assistance Convention].
[50] R.33.
[51] Assistance Convention at Art. 10(2)(d)(ii).
[52] R.23.

families were forced to evacuate Robelynch, a village two kilometers from the accident site.[53] The former residents left their homes and abandoned their possessions.[54] Their village is now off-limits for human habitation.[55] Consequently, Rentiers must reimburse Amuko for the property losses suffered by the former residents.

c. **Under Article 10, Rentiers must compensate Amuko for the medical claims of the former residents of Robelynch.**

Article 10(2)(b) commands the requesting State to assume responsibility for dealing with legal proceedings and claims brought by third parties against the assisting party.[56] Under this article, Rentiers must assume responsibility for dealing with legal proceedings and claims brought by the families of the two deceased AME employees and the former residents of Robelynch against the Amuko government. The legislation enacted by the Amuko Congress did not preclude nor preempt Rentiers from assuming responsibility. Such legislation is permitted under Article 10(3).[57]

Article 10(2)(b) specifically implicates the medical claims of the former residents of Robelynch against the Amuko government. These residents suffered radiation exposure as a result of the accident. Consequently, Rentiers must assume responsibility for such claims and provide compensation to the former residents.

According to the IAEA, claims for compensation for nuclear damage are permissible and typically submitted within thirty years in the event of personal injury and ten years in the event

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[53] R.24.
[54] *Id.*
[55] *Id.*
[56] Assistance Convention at Art. 10(2)(b).
[57] *Id.* at Art. 10(3). "This article shall not prevent compensation or indemnity available under any applicable international agreement or national law of any State."

of other damage.[58] The thirty-year period reflects the fact that radiation damage may be latent for years;[59] other damage should be evident within the ten-year period.[60] Claims may also involve monitoring future harms to human health, emotional distress, and fear of developing nuclear-related diseases.[61]

Furthermore, there is evidence of state practice for compensating long-term medical claims. In response to the 1986 Chernobyl catastrophe, Ukraine accepted responsibility for covering medical expenses, including regular medical monitoring every three-to-five years to confirm radiation disability and evaluate treatment results.[62] Ukraine's programs covers seven million individuals now receiving or eligible for special allowances and health benefits.[63]

Additionally, the United States recognizes "fear of cancer" claims under the theories of emotional distress, enhanced risk of disease claims, and claims for medical monitoring.[64] Regarding claims for medical monitoring, the plaintiff is allowed to recover "anticipated costs of long-term diagnostic testing necessary to detect latent diseases that may develop as a result of tortious exposure to toxic substances."[65]

Former residents of Robelynch have lawful claims against the Amuko government for radiation exposure. Rentiers, the requesting State, must assume responsibility for these claims

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[58] STOIBER ET AL., *supra* note 21, at 113.
[59] *Id.* at 113-14.
[60] OECD, *supra* note 10, at 108.
[61] Van Dyke, *supra* note 8, at 28.
[62] *Id.* at 30.
[63] *Id.* at 30.
[64] *Id.* at 42. *See* Metro-North Commuter Railroad Co. v. Buckley, 521 U.S. 424, 429-31 (1997) (emotional distress claims); Gideon v. Johns-Manville Sales Corp., 761 F.2d 1129, 1137 (5th Cir. 1985) (enhanced risk of disease claims); and W. Va. Rezulin Litigation v. Hutchinson, 585 S.E.2d 52, 73 (W. Va. 2006) (medical monitoring claims).
[65] Van Dyke, *supra* note 8, at 44. (citing Bower v. Washington Electric Corp., 522 S.E.2d 424, 429 (W. Va. 1999)).

under Article 10(2)(b) by covering the present and future medical expenses of the former residents.

d. **The actions of AME do not preclude Amuko's Article 10 claims.**

Rentiers' liability to compensate was not precluded by the actions of AME in the Robelynch disaster. Article 10(2) places liability on the requesting State "except in cases of wilful misconduct by the individuals who caused the death, injury, loss or damage."[66] Wilful misconduct is "[t]he intentional doing, or omitting to do something, either with the knowledge that such act or omission is likely to result in harm or with a wanton and reckless disregard of the consequences."[67]

The negligence, not wilful misconduct, of an AME employee caused the Robelynch disaster.[68] Negligence is the failure to exercise a duty of care or due diligence, which proximately causes the injury.[69] Unlike wilful misconduct, negligence is "[a] wrong characterized by the absence of a positive intent to inflict injury but from which injury nevertheless results."[70] Because Article 10(2) specifically requires wilful misconduct, Rentiers is not precluded from compensating Amuko for the deaths of two AME employees and the property losses and radiation exposure suffered by former residents of Robelynch.

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[66] Assistance Convention at Art. 10(2).
[67] BALLENTINE'S LAW DICTIONARY (2010).
[68] R.21.
[69] BALLENTINE'S LAW DICTIONARY (2010).
[70] *Id.*

e. <u>**Rentiers failed to make declarations and therefore is bound by Article 10.**</u>

Rentiers failed to make a declaration to Article 10 in accordance with Article 10.5.[71] As a result, Rentiers is bound to the provisions of Article 10.2.[72] It must reimburse Amuko for expenses related to the deaths of two AME employees and the property losses and medical claims suffered by the former residents of Robelynch. Even if Rentiers made a declaration, there is no evidence that Rentiers withdrew it by notification to the depository.[73]

2. Article 7 mandates that Rentiers provide compensation.

Under Article 7 of the Assistance Convention, unless otherwise agreed, the requesting State must reimburse the assisting State for the costs incurred for the assistance provided, and reimbursement must be provided promptly.[74] Amuko incurred substantial damages as a result of providing assistance to Rentiers.[75] Amuko did not offer its assistance to Rentiers without costs,[76] and it has been almost a year since Amuko presented its request for reimbursement.[77] Consequently, Rentiers must fully reimburse Amuko for the compensation program established by the Amuko Congress.[78]

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[71] Assistance Convention at Art. 10(5). "When signing, ratifying, accepting, approving or acceding to this Convention, a State may declare: (a) that it does not consider itself bound in whole or in part by paragraph 2 . . . ." *See* C.43.
[72] Assistance Convention at Art. 10(5)(a).
[73] *See id.* at Art. 10(6).
[74] *Id.* at Art. 7(2).
[75] *See* R.21-25.
[76] *See* R.26.
[77] R.21, 34.
[78] R.25.

II. RENTIERS VIOLATED INTERNATIONAL LAW THROUGH EXPROPRIATION AND DEBT RESTRUCTURING.

A. RENTIERS EXPROPRIATED THE INVESTMENTS OF SOVEREIGN BONDHOLDERS WHEN IT PASSED THE FRESH START ACT AND DID NOT PAY JUST COMPENSATION.

1. Rentiers went beyond its role as a party to RABBIT when enacting the Fresh Start Act.

When a state fails to pay its sovereign debt it may be violating a contractual obligation and/or a treaty obligation.[79] Violating a contractual obligation is an expropriation when a State goes "beyond its role as a mere party to the contract and has exercised the specific functions of a sovereign authority" to breach the contract.[80] Ample authority cites that "[c]oercive sovereign debt restructurings…could give rise to international liability."[81] A coercive sovereign debt restructuring denies bondholders any effective choice in deciding whether or not they wish to participate in the restructuring.[82]

On 1 December 2010, Rentiers Parliament passed the Fresh Start Act which changed the terms of the contract between Rentiers and its sovereign bondholders.[83] Rentiers was only a party to the contract when it issued the bonds in November 2000 and November 2005.[84] It went

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[79] August Reinish, *Expropriation, in* THE OXFORD HANDBOOK OF INTERNATIONAL INVESTMENT LAW 407, 417 (Peter Muchlinski, Federico Ortino, & Christoph Schreuer eds., 2008).
[80] Michael Waibel, *Opening Pandora's Box: Sovereign Bonds in International Arbitration*, 101 AM. J. INTL. L. 711, 745 (2007). *See also* August Reinish, *Expropriation, in* THE OXFORD HANDBOOK OF INTERNATIONAL INVESTMENT LAW 407, 418 (Peter Muchlinski, Federico Ortino, & Christoph Schreuer eds., 2008).
[81] Waibel, *supra* note 80, at 717.
[82] MICHAEL WAIBEL, SOVEREIGN DEFAULTS BEFORE INTERNATIONAL COURTS AND TRIBUNALS 290 (2011).
[83] R.27.
[84] R.4.

beyond being a party when its Parliament exercised functions of sovereign authority when passing the Act, which unilaterally changed the contract terms between Rentiers and the bondholders, thereby expropriating the bondholders' investment. There is no evidence that the bondholders had any choice in whether or not they were a party to the new contract. Thus, Rentiers' bond restructuring was coercive and resulted in an expropriation under international law.

2. Rentiers has committed an internationally wrongful act by expropriating without providing just compensation.

It is a general principle of international law that a breach of an international obligation involves a duty to make reparation, first recognized in the *Factory at Chorzow* case.[85] There, the Permanent Court of International Justice emphasized "that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[86]

This principle has been reaffirmed by numerous ICJ decisions,[87] including the *Gabcikovo-Nagymaros Project* in which the ICJ declared that "it is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it."[88] An internationally wrongful act of a State consists of an action or omission that (1) is attributable to the State under

[85] SHAW, *supra* note 6, at 801; *see also* TARCISIO HARDMAN REIS, COMPENSATION FOR ENVIRONMENTAL DAMAGES UNDER INTERNATIONAL LAW 83 (2011).
[86] Factory at Chorzow (Germ. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, ¶ 125 (Sept. 13).
[87] *See* ICJ, Rainbow Warrior Arbitration (N.Z. v. Fr.) (1990) 82 ILR 499; Convention on the Prevention and Punishment of Genocide (Bosn. & Herz. v. Yugosl.) 1996. I.C.J. Reports (July 11), p. 595; *see also* M/V Saiga (No. 2) Case (Saint Vincent and the Grenadines v. Guinea), ITLOS 120 ILR, pp. 143, 199.
[88] Gabcikovo-Nagymaros Project (Hung. v. Slov.) 1997 I.C.J. 7, 78 (Sept. 25).

international law and (2) constitutes a breach of an international obligation of the State.[89] The Fresh Start Act was attributable to Rentiers because it was a legislative act, and it breached the international obligation of providing just compensation for expropriations.

B. TREATY OBLIGATIONS MUST BE PERFORMED IN GOOD FAITH.

States have the sovereign right to enter into binding treaties with other States.[90] The principle of *pacta sunt servanda*, as described in the Vienna Convention on the Law of Treaties (VCLT), states that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."[91] The proposition of performing a treaty in good faith is one of the oldest principles of international law[92] and has been recognized by the ICJ in the *Nuclear Tests Cases*,[93] the *Military & Paramilitary Activities in and Against Nicaragua* case,[94] and the *Legality of the Threat of Use of Nuclear Weapons* case.[95] In March 2002, both Amuko and Rentiers agreed to be bound by RABBIT.[96] Therefore, each party should follow RABBIT under the rule of *pacta sunt servanda*.

One aspect of fulfilling a treaty obligation in good faith requires that States act with "the general obligation…to refrain from acts which would defeat the object and purpose of a treaty to which they are members."[97] The object and purpose of RABBIT is to encourage the reciprocal

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[89] Responsibility for Wrongful Acts, *supra* note 2.
[90] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, prmbl. (The convention recognizes that "free consent and of good faith and the pacta sunt servanda rule are universally recognized.").
[91] *Id.* at art. 26.
[92] SHAW, *supra* note 6 at 903-04.
[93] Nuclear Tests (Austl., N.Z. v. Fr.), 1974 I.C.J. 253 (Dec. 20).
[94] Nicaragua Case (Nicar. v. U.S.), 1984 I.C.J. 392 (Jun. 27).
[95] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 30 (July 8).
[96] R.12.
[97] Helge Elisabeth Zeitler, *'Good Faith' in the WTO Jurisprudence Necessary Balancing Element or an Open Door to Judicial Activism?,* 8 J. INTL. ECON. L. 721, 730 (2005) (citing Panel Report,

protection of investments to stimulate business and increase economic prosperity in both Rentiers and Amuko.[98] Both parties agreed under Article 10 of RABBIT that neither Contracting Party "shall take any measure of expropriation, nationalization, or other measures having effect equivalent to nationalization or expropriation...unless the measures taken for a purpose authorized by law and in return for payment of just compensation…[which] shall be the value of the investment immediately before the expropriation."[99]

The Fresh Start Act provides that investors would only receive 10% of what they would have otherwise been entitled to.[100] In order to provide just compensation under RABBIT, bondholders should have been given market value for their bonds. The market value of the bonds was 40% of their value at maturity.[101] The Act unjustly disadvantaged Amuko because investors in Amuko purchased 80% of the bonds while investors in Rentiers only purchased 10% of the bonds.[102]

C. RENTIERS' ACTIONS ARE NOT EXCUSED UNDER INTERNATIONAL LAW.

1. Rentiers' actions are not excused by *force majeure.*

a. <u>Rentiers' actions are not excused under the Draft Articles.</u>

A *force majeure* is "the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation."[103] The defense of *force majeure* is not available if the state employing the

United States-Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R, 15 May 1998, para 7.41).
[98] R.13.
[99] *Id.*
[100] R.31.
[101] C.27.
[102] C.10.
[103] Responsibility for Wrongful Acts at 76.

defense is, "either alone or in combination with other factors,"[104] responsible for causing the event, or if the "State has assumed the risk of that situation occurring."[105]

The three elements that are required for defense of *force majeure* to be successfully employed include: "(a) the act in question must be brought about by an irresistible force or an unforeseen event; (b) which is beyond the control of the State concerned; and (c) which makes it materially impossible in the circumstances to perform the obligation."[106] Rentiers' allegation that *force majeure* precludes its obligation to repay its sovereign debt fails on all three elements.

First, the earthquake and following debt crisis were not unforeseeable. Rentiers knew about the Diablo Canyon fault line for centuries[107] yet decided to build nuclear power plants along it.[108] The fault line had been quite active with five earthquakes measuring 7 on the Richter scale within the past twenty years.[109] Knowing the proximity of its nuclear power plants to this fault line should have spurred Rentiers to take greater safety measures to avoid such a disaster. Although the nuclear power plants were privately controlled, considering the extremely volatile nature of nuclear energy, there should have been more stringent state regulations in place.

Second, while the earthquake was beyond the control of Rentiers, the resulting default and expropriation were not. Rentiers had the sovereign power to decide how to meet its financial obligations after the earthquake, yet it passed the Fresh Start Act, which restructured the bonds so that their value was only 10% of what they should have been worth.[110]

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[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] C.3.
[108] R.Annex B.
[109] C.19.
[110] R.31.

Third, while repaying its bonds would have been inconvenient for Rentiers, the earthquake did not make the repayment materially impossible. The 1990 *Rainbow Warrior Arbitration* case explains that "a circumstance rendering performance more difficult or burdensome does not constitute a case of *force majeure*."[111] A *force majeure* requires "absolute and material impossibility."[112] Rentiers, like other countries facing a financial crisis, had several options that it could have employed to generate capital so that it could fulfill its financial obligations. For example, states may enter into mediation or arbitration with bond holders,[113] states can devalue their currency,[114] or states can hold off on taking any action until their financial picture becomes clearer.[115]

b. <u>Rentiers' actions are not excused under the *Gabcikovo-Nagymaros* standard.</u>

In the *Gabcikovo-Nagymaros Project*, Hungary raised the defense of impossibility of performance as reason for why it should not be required to comply with its contractual obligations.[116] Specifically, Hungary had entered into a treaty with Czechoslovakia in which Hungary promised to assist with the construction of a series of dams along the Danube River.[117] When the project became unpopular due to economic problems, Hungary wished to withdraw

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[111] Rainbow Warrior Arbitration (N.Z. v. Fr.) XX R.I.A.A. 215, 253 (Apr. 30 1990).
[112] *Id.*
[113] Christoph G. Paulus, *A Standing Arbitral Tribunal as a Procedural Solution for Sovereign Debt Restructurings, in* SOVEREIGN DEBT AND THE FINANCIAL CRISIS 317, 326 (Carlos Primo Braga & Gallina Vicelette eds., 2011).
[114] Yuefen Li et al., *Avoiding Avoidable Debt Crises: Lessons from Recent Defaults, in* SOVEREIGN DEBT AND THE FINANCIAL CRISIS 243, 254 (Carlos Primo Braga & Gallina Vicelette eds., 2011).
[115] *Id.* at 254. (Carlos Primo Braga & Gallina Vicelette eds., 2011). (This approach is called the Caribbean Approach as coined by Alexander Hamilton in 1790).
[116] Gabcikovo-Nagymaros Project (Hung. v. Slov.) 1997 I.C.J. 7, ¶ 102 (Sept. 25).
[117] *Id.*

from the project and be excused from its treaty obligations.[118] The ICJ explained that having serious financial difficulties is not enough to excuse a state's treaty obligations under the doctrine of impossibility.[119] To support its decision, the ICJ cited Article 61 of the VCLT, which "requires the 'permanent disappearance or destruction of an object indispensable for the execution' of the treaty to justify the termination of a treaty on grounds of impossibility of performance."[120] Similarly, Rentiers' serious financial difficulties are not enough to excuse it from its treaty obligations under RABBIT.

c. <u>**Rentiers' actions are not excused under nuclear law.**</u>

Under nuclear law, the operator of a nuclear facility remains liable for a nuclear incident caused by a *force majeure*.[121] The only types of events that exonerate an operator from liability are armed conflicts, civil wars, gross negligence of the victim, or an act or omission the victim committed with the intent to cause harm.[122] Rentiers has not alleged that the accident was caused by one of these events.

2. Rentiers' actions are not excused by the necessity doctrine.

If a State breaches an international obligation out of necessity its wrongful act may be excused.[123] The ICJ has adopted a five-part test for determining whether a state of necessity exists: (1) the breach must have been to protect an "essential interest" of the state which is the author of the act; (2) a state interest must have been threatened by a "grave and imminent peril;" (3) the act must have been the "only means" of safeguarding that interest; (4) that act must not seriously impair an essential interest of another the State; and, (5) the state which is the author of

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[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] STOIBER ET AL., *supra* note 21, at 113.
[122] *Id.*
[123] PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 472-73 (2003).

the act must not have "contributed to the occurrence of the state of necessity."[124] In order for Rentiers be excused from its internationally wrongful acts, it must satisfy all five elements of this test. Rentiers, however, cannot satisfy the last three elements of the test.

Rentiers fails part three of the test. It argues that it had to restructure its debt to safeguard an essential interest from grave and imminent peril.[125] This argument presumes that there are no alternatives other than expropriation available to countries with unsustainable debt burdens, but Rentiers did have other means it could have taken. Countries with debt burdens regularly restructure their public debt in ways that do not offend principles of international law, even when facing severe economic crises.[126]

There is no evidence that Rentiers considered any alternative method of "safeguarding" its essential interest. Had the Rentiers Parliament consulted with investors, a more just and equitable solution could have been reached, such as creating a more manageable liability profile over time, or altering the debt's original payment terms. There are several ways to restructure sovereign debt obligations legally, such as postponing the payment date or altering the original payment terms.[127] These actions, which require dialogue with the bondholders, are routine practice for countries facing debt solvency problems.[128]

Rentiers fails part four of the test. The Parliament's actions in passing the Fresh Start Act did harm Amuko's own interests. Amuko would have taxed the income investors received from their maturing bonds. Because 80% of bondholders were in Amuko[129] and the bonds were

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[124] *Gabcikovo-Nagymaros* at ¶ 52.
[125] R.33.
[126] *See supra* note 113, 114, & 115.
[127] *See* Li et al., *supra* note 114.
[128] *Id.*
[129] C.10.

worth 3 billion tenge,[130] Amuko has lost a substantial amount of income from taxes. Also, the Act seriously impaired an essential interest of Amuko when it devalued its bonds by 90%. The action taken by Rentiers contravened the very purpose of RABBIT, namely to "create favorable conditions for greater economic cooperation[.]"[131]

Rentiers fails part five of the test. Rentiers contributed to the state of emergency by authorizing the construction of the Nihon Nuclear Power Plant along an active fault line.[132] Rentiers knew about the fault line before the plant was constructed.[133]

3. Rentiers' actions are not excused by its adherence to the precautionary principle.

Principle 15 of the Rio Declaration requires states to act when threats of serious or irreversible environmental damage exist.[134] States use the precautionary principle as a reason for taking *ex ante* precautions or as justifications for enacting *ex post* remedies.[135] Rentiers, however, is attempting to use the precautionary principle as an affirmative defense.

Rentiers argues that the precautionary principle required it to close five nuclear power plants because they posed an unreasonable risk to human health if another earthquake of similar size occurs.[136] The reduced power generation resulted in intentional rolling power outages,[137] which created economic hardships for the country and caused it to default on its sovereign

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[130] R.4.
[131] R.13.
[132] C.3&5.
[133] C.5.
[134] U.N. Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development,* princ. 15, U.N. Doc. A/CONF.151/26, vol. I.
[135] Jonathan B. Wiener, *Precaution, in* THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 597, 602 (Daniel Bodansky, Jutta Brunnee, Ellen Hey eds., 2007).
[136] R.29&33.
[137] R.29.

bonds.[138] Rentiers argues the bond default was a result of its requirement to follow the precautionary principle.[139] The precautionary principle, however, would have called for Rentiers to prepare for a major earthquake and have a backup plan should it have to shut down its nuclear power facilities located along the country's known active fault lines. The proper time for Rentiers to consider the precautionary approach would have been at the time it authorized the construction of its nuclear power plant facilities and at the time it decided to rely on nuclear energy for 75% of energy needs.[140]

Amuko does not dispute the validity of RNRA's decision to close the nuclear power plants located in Rentiers. However, even if the closure of the nuclear power plant did further strain the financial recourses of Rentiers, the precautionary principle prevents Rentiers to export this cost to Amuko investors who purchased its sovereign bonds.

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[138] R.33.
[139] *Id.*
[140] R.3.

CONCLUSION

For the foregoing reasons, the Federal States of Amuko respectfully requests that this Honorable Court:

1. Declare that Rentiers violated international law by failing to properly compensate Amuko for expenses related to the deaths of the two AME employees, the property losses suffered by the former residents of Robelynch, and the medical monitoring and related medical expenses of the former residents of Robelynch;

2. Declare that Rentiers violated international law by expropriating without just compensation.

Respectfully Submitted,
Team 1220
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