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27TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2022

THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE

THE HAGUE, NETHERLANDS



THE CASE CONCERNING

DEEP-SEA MINING AND STATE RESPONSIBILITY

FEDERAL STATES OF AZARLUS

(APPLICANT)

V.

REPUBLIC OF RATHEARRE

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

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LIST OF ABBREVIATIONS

¶	Paragraph
AFZ	Azarlus Fracture Zone
CBD	Convention on Biological Diversity
CHS	Convention on the High Seas
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
ICJ	International Court of Justice
ILC	International Law Commission
IMO	International Maritime Organization
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
ISA	International Seabed Authority
NDC	Nationally Determined Contribution
NGO	Non-governmental Organization
ORCA	Ocean Researchers and Cetacean Avengers
PCIJ	Permanent Court of International Justice
R	27th Annual Stetson International Environmental Moot Court Competition Record
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
UN	United Nations

UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNCLOS	United Nations Convention on the Law of the Sea
WCFN	United Nations World Charter for Nation
VCLT	Vienna Convention on the Law of Treaties

QUESTIONS PRESENTED

- I. WHETHER RATHEARRE'S MINING ACTIVITIES IN THE AFZ VIOLATE INTERNATIONAL LAW
- II. WHETHER THE ACTIONS OF THE *BALEEN WARRIOR* CAPTAIN AND CREW CONSTITUTED PIRACY AND AZARLUS'S ACTIONS AND INACTIONS REGARDING THE *BALEEN WARRIOR* VIOLATED INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

In accordance with Article 40 of the Statute of the ICJ, the Federal States of Azarlus (“Azarlus”) and the Republic of Rathearre (“Rathearre”) have submitted to the ICJ by Special Agreement, questions concerning their differences relating to deep-sea mining and state responsibility as contained in Annex A, including the Clarifications. The parties transmitted a copy of the Special Agreement to the Registrar of the ICJ on July 25, 2022.

The Registrar of the Court, in accordance with Article 26 of the Rules of Court, addressed a notification of receipt of the Special Agreement to the parties on August 1, 2022.

The Parties have accepted the jurisdiction of the ICJ. Consequently, they request the Court to adjudge the merits of this matter based on the rules and principles of general international law, as well as any applicable treaties. The parties further request this Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgment on the questions presented in this matter.

The Parties have agreed to respect the decision of this Court.

STATEMENT OF FACTS

Azarlus and Rathearre are members of the UN (R¶3) and Parties to the Statute of the ICJ (R¶3), VCLT (R¶4), CBD (R¶7), ReCAAP (R¶12) and UNFCCC (R¶13). Azarlus is a Party to UNCLOS, but Rathearre is not (R¶8).

To fulfill its NDC, Rathearre established Verte Mining to conduct prospecting and exploration, and exploitation of the deep seabed for polymetallic nodules that can be used in the production of electric motor vehicles (R¶18).

Prior to Rathearre's prospecting and exploration, Azarlus expressed concern over these activities (R¶20). Rathearre responded that it had the right to do so, emphasizing the importance and benefits of mining (R¶21). Rathearre conducted an EIA, which found that mining was unlikely to significantly impact the marine environment (R¶22). Rathearre further explained its reasons for proceeding with mining and pledged to endeavor to avoid causing any serious harm to the marine environment (R¶25).

In July 2021, Verte Mining commenced mining activities in the AFZ. ORCA protested outside Rathearre's Embassy (R¶26). ORCA, an environmental NGO, purports to be authorized by the WCFN. For 18 years, ORCA has rammed, sunk, boarded, and used prop foulers on ships (R¶27). In September 2021, a dead royal frilled shark was netted within the Azarlusian EEZ (R¶28). More sharks were later netted (R¶32). No clear causal connection between Verte Mining's actions and the dead royal frilled sharks has been established (R¶33).

ORCA's vessel, the *Baleen Warrior*, intentionally interfered with Verte Mining's vessel, *The Crusher*. The *Baleen Warrior* blocked *The Crusher*, preventing *The Crusher* from maneuvering

and disrupting mining operations. The *Baleen Warrior* then fired paint balls at *The Crusher*, striking five crew members (R¶34).

Rathearre called on Azarlus to intercede (R¶35). Azarlus communicated that it would not take immediate law enforcement or military action against the *Baleen Warrior*. Rathearre renewed the demand that Azarlus take immediate action against the *Baleen Warrior*, but Azarlus declined (R¶36).

Rathearre sent a diplomatic note to Azarlus asserting that, as the flag state, Azarlus was responsible for the *Baleen Warrior*'s actions and demanded that Azarlus arrest and prosecute the captain and crew (R¶39). Azarlus responded that it would not arrest and prosecute the *Baleen Warrior* captain and crew for piracy (R¶40).

Negotiations between Azarlus and Rathearre ensued. Thereafter, the Parties agreed to submit the matter to the ICJ for determination (R¶42).

SUMMARY OF ARGUMENT

I. Rathearre's mining activities in the AFZ do not violate international law

Rathearre fulfilled its due diligence obligation to prevent transboundary harm under international custom. Rathearre fulfilled its duties to negotiate with Azarlus in good faith, take preventive measures, and conduct an EIA. It did not cause the death of the royal frilled sharks. Rathearre adopted a precautionary approach; in any event, the precautionary principle was not engaged. Rathearre did not breach its CBD obligations. Rathearre is not bound by UNCLOS as a non-party. International custom permits deep-sea mining, which should be a freedom of the high seas.

II. The actions of the *Baleen Warrior* captain and crew constituted piracy and Azarlus's actions and inactions regarding the *Baleen Warrior* violated international law

The actions of the *Baleen Warrior* captain and crew constituted piracy because the acts amount to illegal detention and violence, and were committed for private ends. The blocking of *The Crusher* from maneuvering amounted to detention, and the firing of paint balls amounted to violence. These acts were illegal as they are disassociated from a lawful authority. They were committed for private ends because ORCA lacked Azarlus's state sanction.

Azarlus incurs flag state liability by breaching its due diligence obligation concerning the safety of life at sea. Azarlus breached Article 3(1)(b), 3(1)(d), and 11 of the ReCAAP by failing to arrest the *Baleen Warrior*, failing to take measures to rescue *The Crusher*, and failing to act on Rathearre's requests. Additionally, Azarlus did not fulfil its duty to cooperate to repress piracy under international custom. Azarlus did not act in good faith regarding its due diligence obligation and duty to cooperate to repress piracy.

ARGUMENTS

I. RATHEARRE'S MINING ACTIVITIES IN THE AFZ DO NOT VIOLATE INTERNATIONAL LAW

Rathearre conducted mining activities to fulfill its obligation under the Paris Agreement to combat climate change¹ and obligations under UNFCCC to protect the climate system by taking measures to minimize the causes of climate change and mitigate its adverse effects.² Specifically, Rathearre is acting in accordance with its most recent NDC to reduce emissions.³ Rathearre's mining activities in the high seas⁴ are for benefit of humankind⁵ and are conducted consistently with its international law.

A. Rathearre fulfilled its due diligence obligation to prevent transboundary harm

States have a due diligence obligation under international custom to, as far as possible, take all necessary measures to prevent significant transboundary harm to other states.⁶ Significant harm is determined by factual and objective standards.⁷

(1) Rathearre fulfilled its duty to negotiate with Azarlus in good faith; in any event, Rathearre considered Azarlus's interests

States are to engage in consultations with a view of achieving acceptable solutions regarding measures to prevent significant transboundary harm, or to minimize the risk thereof.⁸ The

¹ Paris Agreement, Preamble.

² United Nations Framework Convention on Climate Change, art. 3(3).

³ R¶17.

⁴ R¶19.

⁵ R¶21.

⁶ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8) [Hereinafter Nuclear Weapons]; I.L.C., Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 151–154, arts. 2–3 (2001).

⁷ I.L.C., Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 152 (2001).

⁸ *Id.* at art. 9.

negotiations pay reasonable regard to the other state's legal rights.⁹ If the states do not reach an agreed solution, the state shall nonetheless consider the affected state's interest.¹⁰

Azarlus is likely to be affected by the proposed mining activities in the AFZ. Rathearre responded to Azarlus's reservations about the proposed mining with an explanation of the permissibility and necessity of the mining.¹¹ Rathearre did not insist on its own position without contemplating any modification of it¹² and volunteered to abide by the principles of the ISA's 2013 Regulations on Prospecting and Exploration for Polymetallic Nodules in The Area, exclusive of the notification or reporting requirements,¹³ though it is not bound by them. Rathearre acted in good faith by publicizing its mining plans and EIA results,¹⁴ and pledging to avoid causing any serious harm to the marine environment.¹⁵ Moreover, Rathearre has not refused to conduct further EIAs or continued monitoring.

(2) *Rathearre fulfilled its due diligence obligation to take preventive measures*

Measures to prevent significant transboundary harm should be based on an equitable balance of interests that considers the standards of the affected state, or comparable regional or international standards.¹⁶ Rathearre did so in three ways.

First, Rathearre volunteered to abide by the principles of the ISA 2013 Regulations, which Azarlus is bound by as a party to the Agreement relating to the Implementation of Part XI of the UNCLOS.¹⁷ Second, before starting mining, Rathearre conducted an EIA which showed

⁹ Fisheries Jurisdiction (U.K. v. Ice.), Judgment, 1974 I.C.J. 3, ¶78 (July 25) [Hereinafter Fisheries Jurisdiction].

¹⁰ *Id.* at art. 9(3).

¹¹ R¶21.

¹² North Sea Continental Shelf (Ger./Den. v. Ger./Neth), Judgment, 1969 I.C.J. 3, ¶85 (Feb. 20) [Hereinafter North Sea Continental Shelf].

¹³ R¶21. See generally ISA, Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ISBA/19/C/WP.1 (April 17, 2013) [Hereinafter ISA 2013 Regulations].

¹⁴ R¶19, 22.

¹⁵ R¶25.

¹⁶ I.L.C., Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 162, art. 10(f) (2001).

¹⁷ R¶10.

that the activities were unlikely to significantly impact the marine environment.¹⁸ Third, Rathearre pledged to not cause serious harm to the marine environment, indicating its willingness to continue monitoring its mining activities.¹⁹

(3) *Rathearre fulfilled its obligation to conduct an EIA prior to mining*

A state must conduct an EIA before commencing its proposed activity²⁰ if it risked causing significant transboundary harm.²¹ Since international custom does not specify the scope and content of an EIA,²² each state determines the EIA's specific content.²³

Recognizing that deep-sea mining carries a risk to the marine environment,²⁴ Rathearre exercised due diligence in carrying out an EIA prior to mining.²⁵ Rathearre's EIA is adequate as it addressed the issue of risk of significant harm caused by its mining to the AFZ's marine environment. The state must continue to monitor the effects the activity has on the environment.²⁶ Rathearre indicated willingness in continuing monitoring the mining activities when it pledged not to cause any serious harm to the marine environment and did not refuse to conduct further EIAs.

¹⁸ R¶22.

¹⁹ R¶25.

²⁰ *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14, ¶204 (Apr. 20) [Hereinafter *Pulp Mills*].

²¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica along the San Juan River (Nicar. v. Costa Rica)*, Judgment, 2015 I.C.J. 665, 842, ¶10 (Dec. 16) (separate opinion by Dugard, J. *Ad Hoc*) [Hereinafter *Certain Activities* (separate opinion by Dugard, J. *Ad Hoc*)].

²² *Pulp Mills*, ¶205.

²³ *Id.*

²⁴ *Certain Activities* (separate opinion by Dugard, J. *Ad Hoc*), ¶9; Travis W. Washburn, Phillip J. Turner, Jennifer M. Durden, Daniel O.B. Jones, Philip Weaver, Cindy L. Van Dover, *Ecological risk assessment for deep-sea mining*, 176 *Ocean and Coast Management* 24–39, 36 (June 15, 2019); Massachusetts Institute of Technology, *Mining the Deep Sea* (Dec. 5, 2019), <https://www.youtube.com/watch?v=MWvCtF1itQM>.

²⁵ R¶22.

²⁶ *Pulp Mills*, ¶205.

(4) *The duty to notify Azarlus of the risk of significant harm did not arise*

The state has a duty to notify the affected state only if the EIA indicates risk of causing significant transboundary harm.²⁷ Since Rathearre’s EIA showed that there was not likely to have a significant impact on the marine environment,²⁸ Rathearre’s duty to inform Azarlus did not arise.

B. *Rathearre did not cause the deaths of the royal frilled sharks*

A state’s internationally wrongful act is one that is attributable to the state under international law and constitutes a breach of an international obligation of the state.²⁹ For a state to be held internationally responsible for an injury, there must be a “sufficiently direct and certain causal nexus between the wrongful act ... and the injury suffered by the [victim state]”.³⁰ This threshold is met only if this Court can conclude with a “sufficient degree of certainty that [the injury] would in fact have been averted if [the respondent state] had acted in compliance with its legal obligations”.³¹

Azarlus alleged that the deaths of the royal frilled sharks netted in Azarlusian EEZ is caused by Rathearre’s deep-sea mining activities.³² However, Rathearre has not breached any international obligations, having acted in compliance with them. No causal connection has been established between the sharks’ deaths and Rathearre’s mining activities.³³

²⁷ Corfu Channel (U.K. v. Alb.), Judgment, 1949 I.C.J. Rep. 4, 22 (Apr. 9); I.L.C., Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 159, art. 8 (2001).

²⁸ R¶22.

²⁹ I.L.C., Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 49, U.N. Doc. A/RES/56/83, art 2. (Dec. 12, 2001).

³⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. and Montenegro), Judgment, 2007 I.C.J. 43, ¶462 (Feb. 26).

³¹ *Id.*

³² R¶30.

³³ R¶33.

In *Trail Smelter*, the U.S., in seeking compensation, had to prove with “clear and convincing evidence” that the damages or loss sustained was a result of the smelting company in Canada.³⁴ It supported its claim of environmental damage with reference to various reports by technical consultants and abundant scientific evidence based on experimental data.³⁵ Azarlus has not submitted clear evidence that the damage sustained in its jurisdiction was a result of Rathearre’s mining activities. Rathearre is not responsible for Azarlus’s injury and Azarlus cannot seek compensation from Rathearre.

C. Rathearre adopted a precautionary approach; in any case, the precautionary principle was not engaged

Azarlus alleged that Rathearre should adopt a precautionary approach and stop its mining until Rathearre agrees to comply with the regulations for exploitation that ISA was working on indefinitely.³⁶ However, the precautionary approach has a low threshold³⁷ that does not necessarily mandate a halting in the mining activities. Rathearre adopted a precautionary approach in conducting preventive measures.³⁸

Even if it were taken as a principle, there are inherent difficulties in its application because of the scarcity of arguments raised in support of it. The precautionary principle has barely been mentioned in this Court’s jurisprudence.³⁹ IUCN, the sole source of the precautionary

³⁴ *Trail Smelter*, (U.S. v Can.), 3 R.I.A.A. 1905,1964 (1938 & 1941) [Hereinafter *Trail Smelter*].

³⁵ *Id.*

³⁶ R¶24.

³⁷ U.N., Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992), Principle 15; Aline L. Jaeckel, *The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection*, 27 (BRILL, 2017) .

³⁸ See *supra* notes 19–21 and accompanying text.

³⁹ *The Gabčíkovo-Nagymaros Project* (Hung./Slov.), Judgment, 1997 I.C.J. 7, 88, 91, 108 (Sept. 25) (separate opinion by Weeramantry, Vice-President); Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgement of 20 December 1974 in the Nuclear Tests (N.Z. v. Fr.), Order, 1995 I.C.J. 288, 381, ¶91 (Sep. 22) (dissenting opinion of Palmer, J. *Ad Hoc*); *Nuclear Weapons*, 429, 502 (dissenting opinion by Weeramantry, J.).

principle,⁴⁰ is not usually an accepted source of law.⁴¹ and acknowledged the precautionary principle is not widely accepted as “legal principle” and could be more of a “guideline” or “sound policy approach”.⁴²

Should the precautionary principle form a part of international custom, it would oblige states to assess if all three elements are present: that there is a foreseeable threat of environmental damage, that the threat is serious and if there is scientific uncertainty.⁴³ Even if there was a foreseeable threat of mining causing environmental damage, Rathearre’s EIA shows that mining was not likely to have a significant impact on the marine environment,⁴⁴ much less a serious one. There was no scientific uncertainty about the royal frilled sharks because they were thought to have gone extinct in the mid-1850s.⁴⁵ Therefore, the precautionary principle was not engaged.

D. Rathearre has not breached its obligations under the CBD

Article 5 of the CBD requires a State to, as far as possible and as appropriate, cooperate with other state parties for the conservation and sustainable use of biological diversity.⁴⁶ Rathearre has not breached its obligations to cooperate with Azarlus. It has engaged Azarlus through diplomatic notes and volunteered to abide by the principles of the 2013 ISA Regulations, which Rathearre is not bound by as a non-party to UNCLOS. Rathearre did not delay or refuse to cooperate with Azarlus.

⁴⁰ IUCN, *Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management*, 67th meeting of the IUCN Council (May 14–16, 2007) [Hereinafter IUCN Guidelines].

⁴¹ Statute of the ICJ, art 38(1).

⁴² IUCN Guidelines, 1, 2 and 5.

⁴³ IUCN Guidelines.

⁴⁴ R¶22.

⁴⁵ R¶1.

⁴⁶ Convention on Biological Diversity, art. 5 [Hereinafter CBD].

Under Article 3 of the CBD, states have the responsibility, in their pursuit of exploitation of resources, to prevent transboundary environmental harm.⁴⁷ Rathearre fulfilled this obligation as it undertook preventive measures, such as the prospecting and exploration conducted in accordance with the principles of the 2013 ISA Regulations.⁴⁸

Article 14(1)(a) of the CBD requires states to, as far as possible and as appropriate, introduce procedures requiring EIA of proposed activities that are likely to have significant adverse impact on the biological diversity. States are also required under Article 14(1)(c) of the CBD to, as far as possible and as appropriate, promote notification, exchange of information and consultation on these activities. Rathearre also fulfilled its obligations in Articles 3, 14(1)(a) and 14(1)(c) of the CBD when it conducted an EIA before it started its mining activities and made public its findings of prospecting and exploration activities in the AFZ as well as that of the EIA.⁴⁹

E. Rathearre is not bound by UNCLOS

Rathearre is not a state party of UNCLOS and is not bound by UNCLOS provisions.⁵⁰ Azarlus alleged that Rathearre's activities, without ISA authorization, are against a central object and purpose of UNCLOS.⁵¹ However, Rathearre's obligation as a signatory to UNCLOS to not defeat the object and purpose of the treaty ceased when Rathearre made its intention clear to not become a party to the treaty.⁵² Azarlus is aware of this intention.⁵³

⁴⁷ Secretariat of the CBD, Handbook of the Convention of the CBD Including its Cartagena Protocol on Biosafety, 93 (3rd ed. 2005).

⁴⁸ R¶21.

⁴⁹ R¶22; CBD, art. 14.

⁵⁰ R¶20.

⁵¹ R¶20.

⁵² Vienna Convention on Law of Treaties, art. 18.

⁵³ R¶8, 21.

International custom is codified only in some provisions of UNCLOS.⁵⁴ Other UNCLOS provisions are not international custom, such as provisions that are “obviously special, contractual and confined to States Parties to UNCLOS”⁵⁵ and should not apply to non-signatories.⁵⁶

Similarly, Article 153 of the UNCLOS which provides for the system of exploration and exploitation regarding The Area contains a special procedure which is not accessible to non-State parties. The provision requires ISA authorization and for the plan of work to be in the form of a contract in accordance with Annex III of the UNCLOS. Given that it is a special provision for state parties and not an international custom, it is not applicable to Rathearre.

Furthermore, Rathearre has consistently disagreed with the deep-sea mining regime in UNCLOS.⁵⁷ Rathearre did not sign or ratify the 1994 Agreement relating to the Implementation of Part XI of the UNCLOS,⁵⁸ which provides for the deep-sea mining regime, including the declaration of the resources beyond the limits of national jurisdiction to be part of the “common heritage of mankind”.⁵⁹ Even if Azarlus asserts that the deep-sea mining regime is an international custom, according to the persistent objector rule, Rathearre should not be bound by it because it has persistently and openly dissented from it.⁶⁰

⁵⁴ See, e.g., United Nations Convention on the Law of the Sea, arts. 86–115, Dec. 10, 1982, 1833 U.N.T.S. 397 [Hereinafter UNCLOS]; J.A. Roach, Today’s Customary International Law of the Sea, 45 *Ocean Development & International Law* 239, 248 (2014).

⁵⁵ Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colum.), Judgment, 2016 I.C.J. 100, 208, ¶11 (Mar. 17) (Declaration of Robinson, J.).

⁵⁶ UNCLOS, art. 153(3); Territorial and Maritime Delimitation Dispute (Nicar. v. Colom.), Judgment, 2012 I.C.J. 624, 768, ¶19 (Nov. 19) (Declaration of Cot, Judge *Ad Hoc*).

⁵⁷ R¶8.

⁵⁸ R¶10.

⁵⁹ R¶20; UNCLOS, art.136.

⁶⁰ International Law Association, London Conference (2000), Committee on Formation of Customary (General) International Law, Final Report of the Committee, Statement of Principles Applicable to the Formation of General Customary International Law, 10.

F. International custom permits deep-sea mining

Rathearre exercised its right under international custom to conduct deep-sea mining activities in the AFZ, which is in the high seas.⁶¹ Contrary to Azarlus's assertion that Rathearre does not have such a right,⁶² international custom does permit deep-sea mining.

This Court in its *North Sea Continental Shelf* decision recognized Article 2 of the 1958 CHS on freedom of the seas as an international custom.⁶³ All states have freedom of the high seas, on the condition that they are exercised with reasonable regard for other states' interests in their exercise of the same freedom.⁶⁴ Given the wording of Article 2 of the CHS, the different categories of freedom listed are not exhaustive.⁶⁵ Since nothing in CHS prohibits deep-sea mining, and Article 24 of the CHS refers to it in the context of preventing the pollution of the seas,⁶⁶ deep-sea mining is permitted by international custom. Insofar as Rathearre's mining activities are peaceful and do not claim sovereignty over any part of the high seas, these mining activities should be admitted as a freedom of the high seas.

⁶¹ R¶19.

⁶² R¶20.

⁶³ *North Sea Continental Shelf*, ¶65. See *Convention on the High Seas*, Apr 29, 1958, 450 U.N.T.S. 11 [Hereinafter CHS].

⁶⁴ *North Sea Continental Shelf*, ¶65; CHS, art. 2; UNCLOS, art. 87(2). Churchill, R., Lowe, V. and Sander, A., *The high seas*, in *The law of the sea* (Manchester University Press, 4th ed. 2022).

⁶⁵ CHS, art. 2.

⁶⁶ CHS, art. 24.

II. THE ACTIONS OF THE *BALEEN WARRIOR* CAPTAIN AND CREW CONSTITUTED PIRACY AND AZARLUS'S ACTIONS AND INACTIONS REGARDING THE *BALEEN WARRIOR* VIOLATED INTERNATIONAL LAW

The *Baleen Warrior*'s actions satisfy the four requirements of piracy defined at international custom⁶⁷ as (a) illegal acts of violence, detention, or depredation (b) committed for private ends (c) against another ship and persons on board that ship (d) on the high seas.⁶⁸ The *Baleen Warrior*'s acts were against another vessel on the high seas.⁶⁹ It illegally detained and committed violence against *The Crusher* for private ends.

A. *The Baleen Warrior's acts amount to piracy*

(1) *The acts amount to illegal detention and violence*

The blocking of *The Crusher* is illegal detention. The *Baleen Warrior* prevented *The Crusher* from maneuvering.⁷⁰ This is reinforced by the fact that the *Baleen Warrior* successfully disrupted *The Crusher*'s operations,⁷¹ which shows *The Crusher*'s inability to move away to continue mining. Additionally, the *Baleen Warrior*'s act of firing paint balls forced *The Crusher*'s crew to remain below deck,⁷² thereby restricting their movement upon the already stationary ship.

⁶⁷ Anna Petrig, *Piracy*, in *The Oxford Handbook of The Law of the Sea* 843, 860 (Donald R. Rothwell et al. ed., 2015) [Hereinafter Petrig, *Piracy*]; Ian Brownlie, *Principles of Public International Law* 299 (7th ed., 2008) ; James L. Kateka, *Combating Piracy and Armed Robbery Off the Somali Coast and the Gulf of Guinea*, in *Law of the Sea, from Grotius to the International Tribunal for the Law of the Sea* 459 (Lilian del Castillo ed., 2015).

⁶⁸ UNCLOS art. 101; ReCAAP art. 1.

⁶⁹ R¶19, 34.

⁷⁰ R¶34.

⁷¹ R¶34.

⁷² R¶34.

Additionally, the *Baleen Warrior* committed illegal violence. Violence is not precisely defined in the modern law of the sea,⁷³ and should be defined as acts which pose risk of damage to persons or property.⁷⁴ This can be derived from three examples of piracy. First, Sea Shepherd Conservation Society's acts of ramming ships and hurling acid-filled projectiles were found to have endangered the victim ship's crew.⁷⁵ Second, Greenpeace's acts including cable-cutting and knife-threatening posed risk to the ship and crew respectively.⁷⁶ Third, piracy incidents reported by the ReCAAP Information Sharing Centre involve pirates armed with knives while the crew was not harmed.⁷⁷ Violence is therefore acts which endanger but do not necessarily cause harm to persons or property. The act of firing paint balls⁷⁸ is violent because the speed of fired paint balls⁷⁹ can cause injuries to persons and damage to property.⁸⁰ Even if firing paint

⁷³ Atsuko Kanehara, *So-Called 'Eco-Piracy' and Interventions by NGOs to Protest against Scientific Research Whaling on the High Seas: an Evaluation of the Japanese Position*, in 68 Selected Contemporary Issues in the Law of the Sea 195, 208 (Clive R. Symmons ed., 2011); Clive R. Symmons, *Use of the Law of Piracy to Deal with Violent Inter-Vessel Incidents at Sea beyond the 12-Mile Limit: The Irish Experience*, in 68 Selected Contemporary Issues in the Law of the Sea 169, 177 (2011) [Hereinafter Symmons, *Use of the Law of Piracy to Deal with Violent Inter-Vessel Incidents at Sea beyond the 12-Mile Limit: The Irish Experience*].

⁷⁴ Jasper Teulings, *Peaceful Protests against Whaling on the High Seas – A Human Rights-Based Approach*, in 68 Selected Contemporary Issues in the Law of the Sea 221, 225 (Clive R. Symmons ed., 2011) [Hereinafter Teulings, *Peaceful Protests against Whaling on the High Seas*].

⁷⁵ *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 725 F.3d 940, 944 (2013) [Hereinafter *ICR v. SSCS*].

⁷⁶ Symmons, *Use of the Law of Piracy to Deal with Violent Inter-Vessel Incidents at Sea beyond the 12-Mile Limit: The Irish Experience*, 177; Samuel P. Menefee, *The Case of the Castle John, or Greenbeard the Pirate?: Environmentalism, Piracy and the Development of International Law*, California Western International Law Journal, Fall 1993, at 13.

⁷⁷ ReCAAP, *3rd Quarter Report 2022*, 52–83 (January–September 2022), <https://www.recaap.org/resources/ck/files/reports/quarterly/ReCAAP%20ISC%203rd%20Quarter%20Report%202022%20v1.pdf>.

⁷⁸ R¶34.

⁷⁹ Martin Weil, *Mail carriers injured in paintball attacks in D.C. and Md., Postal Service says*, Washington Post (May 24, 2020), https://www.washingtonpost.com/local/public-safety/mail-carriers-injured-in-paintball-attacks-in-dc-and-md-postal-service-says/2020/05/24/0ece9dd4-9e12-11ea-81bb-c2f70f01034b_story.html; Replica Airguns, *RAP4 RAM X50 (Sig P226) .43 Caliber Blowback Paintball Pistol Table Top Review* (Jun. 16, 2012) <https://www.replicaairguns.com/posts/2012/6/16/rap4-ram-x50-sig-p226-43-caliber-blowback-paintball-pistol-t.html>.

⁸⁰ Mark Puente, *Paintball culprits assaulting bystanders and committing crimes, police say*, Los Angeles Times (June 13, 2019) <https://www.latimes.com/local/lanow/la-me-paintball-gun-attacks-lapd-20190613-story.html>; <https://www.ksdk.com/article/news/crime/paintball-attacks-vehicle-suspects-st-louis-area/63-1831e531-4290-4a62-b832-b0746d0ad6b4>; *Wicker Park Residents on Edge After Paintball Attacks Send Victims Fleeing for Cover*, NBC Chicago (Sept. 15, 2021) <https://www.nbcchicago.com/news/local/wicker-park-residents-on-edge-after-paintball-attacks-send-victims-fleeing-for-cover/2614358/>.

balls did not cause physical injury,⁸¹ it was nonetheless violent because violence is defined by the nature of the act rather than the existence of harm.⁸²

The detention and violence were illegal. It has been suggested the term “illegal” emphasize[s] that the act must “be to some degree dissociated from a lawful authority”.⁸³ Neither Azarlus nor the WCFN have authorized the *Baleen Warrior*’s acts. Azarlus never granted the *Baleen Warrior* permission to interfere with mining vessels.⁸⁴ The WCFN cannot legally authorize ORCA as it is a non-binding instrument.⁸⁵

(2) *The acts were committed for private ends*

Private ends neither require the intention to rob nor desire for gain.⁸⁶ Rather, they are defined as lacking state sanction⁸⁷ or acts not taken on behalf of a state.⁸⁸ This interpretation is supported by state practice,⁸⁹ such as conventions,⁹⁰ declarations,⁹¹ and municipal cases.⁹²

⁸¹ R¶34.

⁸² Teulings, *Peaceful Protests against Whaling on the High Seas*, 225; Symmons, *Use of the Law of Piracy to Deal with Violent Inter-Vessel Incidents at Sea beyond the 12-Mile Limit: The Irish Experience*, 179; In re Piracy Jure Gentium [1934] AC 586 (UKPC) 600.

⁸³ Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (2009), 43 [Hereinafter Guilfoyle, *Shipping Interdiction and the Law of the Sea*]; Clyde H Crockett, *Toward a Revision of the International Law of Piracy*, (1976) 26 De Paul Law Review 78, 82.

⁸⁴ R¶34.

⁸⁵ G.A. Res. 37/7 ¶21-24 (Oct. 10, 1982); General Assembly of the U.N., *Functions and powers of the General Assembly*, <https://www.un.org/en/ga/about/background.shtml> (last visited Nov. 9, 2022); U.N. Charter art. 25.

⁸⁶ ICR v. SSCS 943; Report of the I.L.C on the Work of its Eighth Session, U.N.I.L.C. 8th Session, U.N. Doc. A/3159 (1956), 282.

⁸⁷ Petrig, *Piracy*, 847; Guilfoyle, *Shipping Interdiction and the Law of the Sea*, 36-37; Douglas Guilfoyle, *Piracy off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts*, (2008) 57 *The International and Comparative Law Quarterly* 690, 693; Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, (1988) 82 *American Journal of International Law* 269, 290; Michael Bahar, *Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations*, (2007) 40 *Vanderbilt Law Review* 1, 17 [Hereinafter Bahar, *Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations*].

⁸⁸ ICR v. SSCS, 944.

⁸⁹ VCLT art. 31(3)(b), May 23, 1969, 1155 U.N.T.S. 331 [Hereinafter VCLT].

⁹⁰ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Mar. 10, 1988, 1678 U.N.T.S. 201; Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Nov. 1, 2005, LEG/CONF.15/21.

⁹¹ G.A. Res. 49/60, ¶3 (Feb. 17, 1995); G.A. Res. 51/210, ¶2 (Jan. 16, 1997).

⁹² ICR v. SSCS, 944; *Castle John v NV Mabeco* (Court of Cassation, Belgium), 19 December 1986, 77 ILR 537, 540 [Hereinafter *Castle John*].

ORCA's actions are not sanctioned by Azarlus for three reasons. First, Azarlus did not grant ORCA permission to interfere with mining vessels.⁹³ Second, ORCA's status as an NGO⁹⁴ and reliance on donations⁹⁵ from the public are evidence that it is not state-funded. Third, ORCA is not Azarlus's state organ—while it purports to act in a law enforcement role to implement international legal provisions,⁹⁶ ORCA does not claim to act on Azarlus's behalf. Even if ORCA claims to do so, the WCFN cannot legally authorize ORCA in this regard because WCFN was passed by a UNGA resolution⁹⁷ and is thus a non-binding instrument. ~~In fact~~, the argument that the WCFN may confer legal authority has been found invalid.⁹⁸

The perpetrators' subjective motivation, which may be altruistic or political in nature, is irrelevant to the finding of "private ends".⁹⁹ Therefore, motivations such as to "defend, conserve, and protect the ocean"¹⁰⁰ or "alert the public of harmful discharge to the environment" have been regarded as private ends.¹⁰¹ The *Baleen Warrior*'s claim "protect the marine environment by any means necessary"¹⁰² does not preclude it from acting for private ends. Hence, the *Baleen Warrior* has committed piracy.

Azarlus has responsibilities arising from the *Baleen Warrior*'s piracy, as Azarlus is the *Baleen Warrior*'s flag state¹⁰³ and a party to ReCAAP.¹⁰⁴ Therefore, it has obligations as a flag state,

⁹³ R¶27.

⁹⁴ R¶27.

⁹⁵ R¶38.

⁹⁶ R¶27.

⁹⁷ G.A. Res. 37/7 ¶21-24 (Oct. 10, 1982); General Assembly of the U.N., *Functions and powers of the General Assembly*, <https://www.un.org/en/ga/about/background.shtml> (last visited Nov. 9, 2022); U.N. Charter art. 25.

⁹⁸ R. v. Watson, 1999 CarswellNfld 196, para. 9, 15 (Can.Nfld.C.A.) (WL).

⁹⁹ *Ibid.*; Arron N Honniball, *Private Political Activists and the International Law Definition of Piracy: Acting for 'Private Ends'*, (2015) 36 *Adelaide Law Review* 279, 313 citing Republic v Ahmed (2011) (Unreported, Supreme Court of Seychelles, Criminal Side No. 21); Bahar, *Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations*, 32.

¹⁰⁰ Sea Shepherd Mission, <https://www.seashepherdglobal.org/who-we-are/our-mission/> (last visited Nov. 9, 2022).

¹⁰¹ ICR v. SCS, 944; Castle John, 540.

¹⁰² R¶27.

¹⁰³ R¶27.

¹⁰⁴ R¶12.

under ReCAAP, and under international custom, which it breached through its actions and omissions.

B. Azarlus failed to comply with its due diligence obligation to ensure that the Baleen Warrior crew observed the applicable international regulations concerning the safety of life at sea

Azarlus has flag state duties under international custom codified in Article 94 of the UNCLOS.¹⁰⁵ Under Article 94(3) of the UNCLOS, flag states shall take measures for ships flying its flag as are necessary to ensure safety of life at sea. In taking such measures, Article 94(5) of the UNCLOS requires states to take any steps necessary to secure observance of generally accepted international regulations, procedures, and practices. Azarlus must exercise due diligence regarding its flag state duties under Articles 94(3) and 94(5) of the UNCLOS. Azarlus breached this obligation through four actions and omissions.

(1) Azarlus did not monitor the Baleen Warrior's activities

To fulfil its due diligence obligation, Azarlus must adopt a certain level of vigilance when exercising administrative control over private operators, like the *Baleen Warrior*, by monitoring its activities.¹⁰⁶ ORCA and the *Baleen Warrior* have a history of violence on the high seas.¹⁰⁷ In fact, ORCA had expressed its opposition to Rathearre's mining activities by conducting multiple protests in the weeks leading up to the piracy.¹⁰⁸ Given this, Azarlus should have monitored the *Baleen Warrior's* movements when it departed towards *The Crusher*.

¹⁰⁵ See CHS, which codifies international custom as explained in North Sea Continental Shelf, ¶65.

¹⁰⁶ Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, Advisory Opinion of 2 April 2015, ITLOS Rep. 2015, ¶129, 146, 150 [Hereinafter ITLOS 2015 Advisory Opinion]; Pulp Mills, ¶197

¹⁰⁷ R¶27.

¹⁰⁸ R¶26, 31.

(2) *Azarlus did not taken any immediate law enforcement or military action*

Azarlus did not adopt a certain level of vigilance in exercising administrative control over the *Baleen Warrior* on 11 November 2021. Upon receiving Rathearre's multiple requests to intercede, Azarlus repeatedly communicated that it would not take any immediate action.¹⁰⁹

Safety of life at sea is threatened by piracy.¹¹⁰ By failing to exercise control over the *Baleen Warrior* to halt its piracy, the safety of *The Crusher's* crew was threatened. Azarlus should have taken measures to exercise due diligence, such as establishing radio communications with the *Baleen Warrior*¹¹¹ or sending navy ships to the piracy scene.¹¹² Azarlus must still exercise due diligence even though there was no physical injury¹¹³ since this obligation is one of conduct.¹¹⁴

(3) *Azarlus did not take measures against the Baleen Warrior for not observing applicable practices concerning the safety of life at sea*

Azarlus did not exercised a certain level of vigilance in its enforcement of appropriate rules and measures regarding piracy.¹¹⁵ These include timely investigations¹¹⁶ and enforcement mechanisms to monitor and secure compliance with laws concerning the safety of life at sea.¹¹⁷

¹⁰⁹ R¶36.

¹¹⁰ ReCAAP, Preamble; Maritime Safety Committee, 87th session: 12–21 May 2010 <https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/MSC-87th-Session.aspx>.

¹¹¹ UNCLOS art. 94 (3)(c).

¹¹² Int'l Maritime Org. [IMO], MSC.1/Circ.1333/Rev.1, *Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships* (June 12, 2015) [Hereinafter IMO 2015 Circular on Piracy]; IMO, MSC.1/Circ.1334, *Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships* (June 23, 2009),

¹¹³ R¶34.

¹¹⁴ Pulp Mills, ¶187; ITLOS 2015 Advisory Opinion ¶128; Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), Case No. 17, Advisory Opinion of 1 February 2011, ITLOS Rep. 2011, ¶111.

¹¹⁵ ITLOS 2015 Advisory Opinion, ¶129, 146, 150

¹¹⁶ IMO 2015 Circular on Piracy, Annex ¶23.

¹¹⁷ ITLOS 2015 Advisory Opinion, ¶138.

Azarlus's investigations regarding the *Baleen Warrior* took too long.¹¹⁸ As the flag state, Azarlus should lead investigations for piracy incidents¹¹⁹ and use the fastest means to send warning reports to IMO.¹²⁰ Instead, Azarlus took 2 months to investigate.¹²¹ Given that this piracy incident involves the safety of *The Crusher's* crew, Azarlus's inefficiency in concluding related investigations indicates its lack of vigilance in enforcing piracy investigation mechanisms.

Moreover, Azarlus did not arrested and prosecuted the *Baleen Warrior* captain and crew for piracy as requested by Rathearre on 10 December 2021.¹²² Piracy prosecution is a matter for domestic law.¹²³ As the flag state, Azarlus has jurisdiction to try the *Baleen Warrior* crew for piracy and related crimes before its domestic courts.¹²⁴ This is especially since Azarlus allowed all OCRA vessels, including the *Baleen Warrior*, to register under it in 2019 despite knowing of their 18-year piratical history.¹²⁵ Azarlus should have placed the *Baleen Warrior* through a trial to determine the *Baleen Warrior's* guilt. Instead, it sent a diplomatic note stating that its Ministry of Justice investigated and concluded that no piracy was committed.¹²⁶ Azarlus lacked vigilance in enforcing piracy laws against the *Baleen Warrior* and in enforcing measures to hold the *Baleen Warrior* accountable for threatening the safety of *The Crusher's* crew.

¹¹⁸ G.A. Res 64/71, ¶71 (Mar. 12, 2010).

¹¹⁹ IMO, Assembly Res. A.1025(2), Code of Practice for the Investigation of Crimes of Piracy And Armed Robbery Against Ships, at 7.

¹²⁰ IMO 2015 Circular on Piracy Appendix 2.

¹²¹ R¶36, 40.

¹²² R¶39-40.

¹²³ Mazyar Ahmad, *Maritime piracy operations: Some legal issues*, 4, *Journal of International Maritime Safety, Environmental Affairs, and Shipping*, 62, 65, (2020); G.A. Res. A/Res/67/78, *Oceans and the law of the sea* (Apr. 18 2013).

¹²⁴ *S.S. Lotus (France v. Turkey)*, Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 25 (Sept. 7) [Hereinafter *S.S. Lotus*].

¹²⁵ R¶27.

¹²⁶ R¶40.

(4) *Azarlus did not fulfil its due diligence obligation in good faith*

The principle of performing obligations in good faith is recognized in international custom¹²⁷ and treaties.¹²⁸ The good faith principle must be invoked with an obligation, and there must be a link between the obligation and the claim of lacking good faith.¹²⁹ Azarlus did not act in good faith regarding its due diligence obligation under Article 94 of the UNCLOS. Azarlus took no effort to ensure that the *Baleen Warrior* did not threaten the safety of life at sea, neglecting any requests from Rathearre to protect the safety of life at sea.¹³⁰

C. *Azarlus breached its ReCAAP obligations*

Per Article 3(1)(b) of the ReCAAP, Azarlus must make every effort to take effective measures to arrest pirates. Azarlus is the *Baleen Warrior*'s flag state. Additionally, since the piracy took place in the AFZ,¹³¹ it is the nearest coastal state to respond to the piracy.¹³² Azarlus is best placed to arrest the *Baleen Warrior*. However, it failed to do so.

Per Article 3(1)(d), Azarlus must make every effort to take effective measures to rescue victim ships and piracy victims. Azarlus continually declined to take effective measures¹³³ such as deploying navy ships.¹³⁴

Per Article 11, Azarlus must make every effort to take effective and practical measures for implementing an Article 10 request by another Contracting Party.¹³⁵ Rathearre made two types of requests to Azarlus under Article 10. First, under Article 10(2), Azarlus must take

¹²⁷ Nuclear Tests (Austral. v Fr.) (Merits), 1974 I.C.J. Rep. 253 (Dec. 20 1974) [Hereinafter Nuclear Tests], ¶46.

¹²⁸ UNCLOS art. 300; VCLT, art. 26.

¹²⁹ M/V "Norstar" (Pan. v. It.), Case No. 25, Judgment, ITLOS Rep. 2018–2019, ¶241.

¹³⁰ R¶36, 40.

¹³¹ R¶19, 34.

¹³² IMO 2015 Circular on Piracy, ¶9–10.

¹³³ R¶35, 36.

¹³⁴ IMO 2015 Circular on Piracy, ¶8.

¹³⁵ ReCAAP, art. 11.

appropriate measures including arrest and seizure against pirates.¹³⁶ Rathearre requested Azarlus to arrest the *Baleen Warrior* pirates.¹³⁷ However, Azarlus declined.¹³⁸ Second, under Article 10(3), Azarlus must take effective measures to rescue the victim ships and the victims of piracy.¹³⁹ Rathearre made multiple requests for Azarlus to intercede and rescue *The Crusher*.¹⁴⁰ Azarlus did not take effective measures.¹⁴¹

Azarlus should have followed the ReCAAP reporting process required for the nearest coastal state.¹⁴² However, it did not immediately report to ReCAAP focal points, use the fastest means to alert its security forces to act, or conduct immediate follow-up reports.¹⁴³

D. Azarlus did not fulfil its duty to cooperate to repress piracy under customary international law

Under international custom, all states must cooperate to the fullest possible extent in the repression of piracy on the high seas.¹⁴⁴ Any state having an opportunity of taking measures against piracy, and neglecting to do so, would be failing this duty at international law.¹⁴⁵ With the safety of *The Crusher*'s crew at stake, Azarlus's failure to act during and after the piracy¹⁴⁶ indicated its lack of cooperation to suppress piracy and actions that risk human life at sea.¹⁴⁷

¹³⁶ ReCAAP, art. 10(2).

¹³⁷ R¶39.

¹³⁸ R¶40.

¹³⁹ ReCAAP, art. 10(3).

¹⁴⁰ R¶35–36.

¹⁴¹ R¶36.

¹⁴² ReCAAP, Regional Guide 2 to Counter Piracy and Armed Robbery Against Ships in Asia, Annex B, [https://www.recaap.org/resources/ck/files/guide/Regional%20Guide%20to%20Counter%20Piracy%20%20Armed%20Robbery%20against%20Ships%20in%20Asia%20\(HR\)%20v1.pdf](https://www.recaap.org/resources/ck/files/guide/Regional%20Guide%20to%20Counter%20Piracy%20%20Armed%20Robbery%20against%20Ships%20in%20Asia%20(HR)%20v1.pdf).

¹⁴³ *Id.*

¹⁴⁴ Report of the I.L.C on the Work of its Eighth Session, U.N.I.L.C. 8th Session, U.N. Doc. A/3159 (1956), art. 38; UNCLOS art. 100.

¹⁴⁵ Report of the I.L.C on the Work of its Eighth Session, U.N.I.L.C. 8th Session, U.N. Doc. A/3159 (1956), art. 38.

¹⁴⁶ R¶36, 40.

¹⁴⁷ Int'l Whaling Commission, Resolution 2011-2, *Resolution on Safety at Sea* (2011).

Additionally, Azarlus did not fulfill this duty in good faith.¹⁴⁸ This is evident from Azarlus's passiveness towards the piratical acts despite being best placed to suppress the piracy.

¹⁴⁸ Nuclear Tests, ¶46; see also UNCLOS art. 300.

CONCLUSION AND PRAYER FOR RELIEF

The Respondent, the Republic of Rathearre, respectfully requests that Court to adjudge and declare that:

1. The Republic of Rathearre's mining activities in the AFZ do not violate international law, and
2. The actions of the *Baleen Warrior* captain and crew constituted piracy and the Federal States of Azarlus's actions and inactions regarding the *Baleen Warrior* violated international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT