TEAM CODE – TC-22

THE INTERNATIONAL COURT OF JUSTICE

THE HAGUE, THE NETHERLANDS

2ND SURANA & SURANA AND RGNUL

INTERNATIONAL LAW MOOT COURT COMPETITION 2018

CONCERNING THE CASE OF SURGICAL STRIKE

INTERNATIONAL COURT OF JUSTICE

REPUBLIC OF NEVERLAND……..….APPELLANT

Versus

REPUBLIC OF TOMORROWLAND.....RESPONDENT

MEMORIAL ON BEHALF OF THE APPELLANT

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- G.A. Res. 3314 (XXIX) (14 December 1974), Art. 1,3,5(2)
- G.A. Res. 2625 (XXV) (24 October 1970)
- Rio Declaration on Environment and Development,1992
- Stockholm Declaration ,1972
- Pacific Settlement, Art. 1, 2, 8
- Charter of United Nations 1945
- U.N. Doc. A/RES/25/2625, Preamble
- Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969

BOOKS

- THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, Vol. 10, OXFORD UNIVERSITY PRESS
- D J HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW, LONDON SWEET AND MAXWELL, (6th ed., 2004)
- H. STEINBERGER, 'SOVEREIGNITY', IN MAX PLANK INSTITUTE OF COMPARATIVE PUBLIC LAW AND INTERNATIONAL LAW, ENCYCLOPEDIA

FOR PUBLIC INTERNATIONAL LAW, OXFORD UNIVERSITY PRESS, Vol. 10 (NORTH HOLLAND, 1987)

- JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW, OXFORD UNIVERSITY PRESS (8th ed., 2012)
- IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSON IN TIMES OF WAR (Geneva, International Committee of the Red Cross 1958)
- REGULATIONS ANNEXED TO HAGUE COVENTION IV RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND, signed at The Hague, 18 October 1907, reprinted in A. ROBERTS AND R. GUELFF, DOCUMENTS ON THE LAWS OF WAR (London, OUP, 3rd ed. 2000)
- PATRICIA BIRNIE & ALAN BOYLE, INTERNATIONAL LAW AND THE ENVIRONMENT 149 (2 ed. 2002)

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STATEMENT OF JURISDICTION

The **Islamic Republic of Neverland (Neverland)** and the **Republic of Tomorrowland** have entered into a special agreement to submit this dispute concerning the surgical strike to the International Court of Justice pursuant to **Article 40(1) of the Statute of this Court**. It is agreed in this special agreement that Neverland would act as Applicant and Tomorrowland as Respondent. The states jointly notify to the International Court of Justice on 10th February 2018. **In accordance with the Article 36 (1) of the Statute, the court has jurisdiction**. Also, both parties shall accept the decision of the court as final and binding and execute it in good faith.

STATEMENT OF FACTS

Tomorrowland and Neverland are countries in South Krasia. Independence from Kritish resulted in partition and dispute over Taimur. An international daily published a report alleging Neverland as a host of militant organizations, including "**Kal Fayda**", targeting to liberate Taimur. It said that terrorists cross borders and infiltrate the territory of Tomorrowland with the help of Neverland Military. In 2008, terrorist attacks took place in the capital of Tomorrowland. It was alleged that Neverland carried out these attacks. Later, there were reports about illegal infiltration of militants from Neverland to Tomorrowland on a regular basis. The Prime Minister of Tomorrowland invited the President of Neverland to talk over these issues at Pace-Futura, where "The Pace Futura Agreement" was signed. It banned armed activity and illegal infiltration and strictly provided to maintain a line of control. On September 18, 2016, militants from Neverland crossed borders and attacked Tomorrowland army's brigade headquarters at Purvi, after unrest in Taimur due to killing of a deputy commander of Kal Fayda. Tomorrowland accused Neverland for attacks. On September 29, 2016 Tomorrowland carried out a military raid in Neverland occupied Taimur, targeting launch pads along the Line of Control, whereas Neverland said that no such strikes were carried out. The UN Sec. Gen. stated that the UN Observer Group noticed heavy firing and bombing near the border, causing environment loss. On October 9, Neverland confirmed the strike and instituted arbitral proceedings against Tomorrowland and sought compensation for environment damage. The Arbitration Panel asked Tomorrowland to pay 1 billion USD. Tomorrowland declared that it was not liable. On June 2, Neverland instituted proceedings against Tomorrowland for violating international law at ICJ.

STATEMENT OF ISSUES

ISSUE 1: THE USE OF FORCE BY TOMORROWLAND IS VIOLATIVE OF THE PACE FUTURA AGREEMENT AND IS CONTRARY TO THE TERRITORIAL SOVEREIGNITY OF NEVERLAND.

ISSUE 2: THE USE OF FORCE BY TOMORROWLAND IS THE VIOLATION OF CUSTOMARY INTERNATIONAL LAW AND INTERNATIONAL HUMANITARIAN LAW.

ISSUE 3: TOMORROWLAND HAS VIOLATED THE PROCEDURAL INTERNATIONAL LAW BY NOT INFORMING THE UNSC OF THE ARMED ATTACK.

ISSUE 4: REPUBLIC OF TOMORROWLAND CAUSED TREMENDOUS DAMAGE TO NATURAL ENVIRONMENT OF ISLAMIC REPUBLIC OF NEVERLAND AND IS LIABLE TO PAY COMPENSATION FOR THE SAME.

SUMMARY OF ARGUMENTS

ISSUE 1: THE USE OF FORCE BY TOMORROWLAND IS VIOLATIVE OF THE PACE FUTURA AGREEMENT AND IS CONTRARY TO THE TERRITORIAL SOVEREIGNITY OF NEVERLAND.

Tomorrowland has violated the Pace Futura Agreement by use of force in Neverland and has made a breach of obligation to establish peace, maintain line of control and adherence to the principle of non-intervention. The use of force by Tomorrowland has violated the territorial sovereignty of Neverland and amounted to aggression.

ISSUE 2: THE USE OF FORCE BY TOMORROWLAND IS THE VIOLATION OF CUSTOMARY INTERNATIONAL LAW AND INTERNATIONAL HUMANITARIAN LAW.

2.1 The use of force by Tomorrowland amounted to the violation of the provisions of the U.N. Charter on the use of force. Tomorrowland had no right to self-defense against Neverland under the U.N. Charter. The use of force and aggression by Tomorrowland violated the principles of jus cogens and obligations erga omnes

ISSUE 3: TOMORROWLAND HAS VIOLATED THE PROCEDURAL INTERNATIONAL LAW BY NOT INFORMING THE UNSC OF THE ARMED ATTACK.

Under the UN Charter Tomorrowland has violated the procedural laws of the right to exercise self-defense.

ISSUE 4: REPUBLIC OF TOMORROWLAND CAUSED TREMENDOUS DAMAGE TO NATURAL ENVIRONMENT OF ISLAMIC REPUBLIC OF NEVERLAND AND IS LIABLE TO PAY COMPENSATION FOR THE SAME.

Tomorrowland caused tremendous damage to natural environment of Neverland by destroying valuable natural resources which is in violation of provisions of international law and thus it is liabile to pay compensation to Neverland for the environmental damages.

ARGUMENTS ADVANCED

ISSUE 1: THE USE OF FORCE BY TOMORROWLAND IS VIOLATIVE OF THE PACE FUTURA AGREEMENT AND IS CONTRARY TO THE TERRITORIAL SOVEREIGNITY OF NEVERLAND.

1.1 Tomorrowland has violated the Pace Futura Agreement by use of force in Neverland.

Both the countries are bound by the Pace Futura Agreement signed by them and are under an obligation to maintain peace which, in the present case, has been violated by Tomorrowland.

A. Breach of obligation to establish peace and adherence to the principle of non-intervention of Pace Futura Agreement by Tomorrowland.

Under the Pace Futura Agreement, both the parties were under an obligation to maintain peace and adhere to the principle of non-intervention.[1] However, the bomb explosions at the bordering village[2] and cross-border attack[3] within the territory of Neverland amount to breach of the Agreement's Art.1 which the Vienna Convention defines as *'material breach of a treaty'* in "the violation of a provision essential to the accomplishment of the object or purpose of the treaty."[4]

B. Breach of obligation to maintain line of control under the Pace Futura Agreement.

[1] Annexure: 1, The Pace Futura Agreement, Art.1

[2] Fact Sheet ¶15

[3] Fact Sheet ¶12

[4] Vienna Convention, Art.60(3)(b)

As under the Pace Futura Agreement, both the parties have to maintain a strict line of control which "*no one pledges to violate under any circumstance*."[5] However, the armed attack by the Tomorrowlandanian army was, in contravention to and a flagrant violation of, Art.2 of the Pace Futura Agreement. The violation was a *material breach*[6] of the Agreement which is derogatory to the very object of the Agreement, that is, establishment of peace and non-intervention with the territorial sovereignty[7] as covered under the Vienna Convention.

The violation of the Agreement by Tomorrowland should also be seen in the light of the principle of *"pacta sunt servanda"*[8], according to which the parties are bound to perform in their part of the obligation in *good faith*. Thus, it is contended that Tomorrowland has violated the Pace Futura Agreement.

Moreover, it is contended that the refusal to obey the decision of the Arbitration held at Janta Garage, also amounts to the contravention of Art.6 of the Agreement, thereby amounting to violation of the Pace Futura Agreement.[9]

1.2 The use of force by Tomorrowland has violated the territorial sovereignty of Neverland and amounted to aggression.

A. Tomorrowland has violated the territorial sovereignty of Neverland.

[5] Annexure: 1, The Pace Futura Agreement, Art.2

[6] Vienna Convention, Art.60(3)(b)

[7] Annexure: 1, The Pace Futura Agreement

[8] Vienna Convention, Art.26

[9] Annexure: 1, The Pace Futura Agreement, Art.6

In the *Island of Palmas*[10] Case, the Permanent Court of International Justice pointed out that, "sovereignty in the relations between states signifies independence"[11], which "gives the right to a State, to the exclusion of any other State, to exercise its State functions within its territory." Further, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*[12], the ICJ highlighted the principle of non-intervention. The court further affirmed that acts which breach the principle of non-intervention "will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force."[13] The prohibition of interference is the most important corollary to the principle of sovereignty[14].

Territorial sovereignty[15] is the framework within which the public power is exercised[16]. It is the ostensible sign of the sphere within which the public power of the state is exercised[17]. In the *Corfu Channel* case, the International Court of Justice pointed out that, 'between independent states, respect for territorial sovereignty is an essential foundation of international relations'[18]. In the

[10] Netherlands v. USA (Island of Palmas Case) (1928) 2 Rep Intl Arbitral Awards 831

[11] Id.

[12] Nicaragua Case, p.108, ¶206

[13] Id.

[14] Jianming Shen, 'National Sovereignty and Human Rights in a Positive Law Context', (2002) 26 Brooklyn Journal of International Law 417, p. 420

[15] Nationality Decrees in Tunis and Morocco Case, 1923 P.C.I.J (ser. B) No. 4, (1923)

[16] D J HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW, LONDON SWEET & MAXWELL, p.890 (6th ed., 2004), p. 195

[17] Nationality Decrees in Tunis and Morocco case, P.I. J. Rep., Series B, No. 4, (1923) pp. 106, 108

[18] Corfu Channel Case

present case, the bombings in the Kutchi-Gudi village[19] were clearly a violation of the territorial sovereignty of Neverland.

B. Use of armed force by Tomorrowland against the sovereignty and territorial integrity of Neverland amounted to Aggression.

In International law, while dealing with the prohibition of use of force, aggression should also be examined.[20] Aggression is defined in the U.N. Assembly resolution[21], Art.1 of which states that: *"Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition."*[22]

The ICJ referred to this definition in the *Nicaragua*[23] case. Also, in *DRC v. Congo*[24] , the court took cognizance of the definition and decided in the favor of *DRC* in this matter. This highlights that this court has earlier referred to this definition in the previous landmark cases, and can refer the same in this case to determine the obligations of Tomorrowland.

It is submitted that Tomorrowland committed acts of aggression as defined under art.3 of the impugned resolution.[25] A *war of aggression* constitutes a crime against international peace for which

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[19] Fact Sheet ¶15

[20] The Max Planck Encyclopedia of Public International Law, Vol. 10, Oxford University Press, p. 611(supra note)

[21] G.A. Res. 3314 (XXIX) (14 December 1974) [Hereinafter referred as **G.A. Res. 3314**]

[22] G.A. Res. 3314, Art. 1

[23] Nicaragua Case

[24] DRC v. Congo Case

[25] G.A. Res. 3314, Art. 3

there is international responsibility[26]. Thus, it is contended that Tomorrowland should be held responsible for the acts of aggression committed against Neverland.

ISSUE 2: THE USE OF FORCE BY TOMORROWLAND IS THE VIOLATION OF CUSTOMARY INTERNATIONAL LAW AND INTERNATIONAL HUMANITARIAN LAW.

2.1. The use of force by Tomorrowland amounted to the violation of the provisions of the U.N. Charter on the use of force.

Tomorrowland and Neverland, being the member countries of the U.N.[27] are under an obligation to act in accordance with the U.N. Charter. The U.N. Charter has various provisions prohibiting the use of force[28]. It is submitted that the use of force by Tomorrowland violate the provisions of the U.N. Charter. *Firstly,* there was a use of force under Art. 2(4) by Tomorrowland (**A.**) *Secondly,* the use of force did not fall in the exception under Art. 51. (**B.**)

A. The use of force by Tomorrowland violated Art. 2(4).

[26] G.A. Res. 2625 (XXV) (24 October 1970), G.A. Res. 3314, Art 5 (2)

[27] Fact Sheet ¶ 20

[28] U.N. Charter Preamble, Art.1(1), 2(4), 42.

Art. 2(4) of the U.N. Charter prohibits the use of force by its members.[29] Further Art. 2(3) states that the international disputes between members shall be settled by *peaceful means*[30]. The ICJ in the *Corfu Channel*[31] case, *Congo*[32] case and the *Nicaragua*[33] case has highlighted that the use of force, without valid defense, violates art.2(4). In the present case, therefore it is contended that Tomorrowland violated Art2(4) by the use of force.

Art. 2(4) of the U.N. Charter and the norms of the Customary International Law [34](**CIL)** prohibit the use of force. In the *Nicaragua*[35] *Case,* it was state that the most grave forms of use of use of force are those involving armed attack[36] and the court further suggested that the term 'force' in Art. 2(4) includes armed forces[37]. It prohibits the use of armed forces, whether amounting to war or not[38]. Also, the prevailing practice of States and International Organization including the 1970 Declaration[39] is to treat military force as falling under the prohibition of the use of force[40].

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[29] BROWNLIE, USE OF FORCE, p. 364

[30] U.N. Charter Art. 2(3)

[31] United Kingdom v. Albania, Merits [1949] I.C.J. Rep. 4 [Hereinafter referred as **Corfu Channel Case**]

[32] DRC v. Uganda (Case concerning Armed Activities on the Territory of Congo) Judgment, ICJ Rep. 2005 ¶42-165 and 345 [Hereinafter referred as **DRC v. Congo**]

[33] Nicaragua v. U.S. (Military and Paramilitary Activities in and against Nicaragua), Merits, ICJ Rep. 1986 [Hereinafter referred as Nicaragua Case]

[34] Nicaragua Case, Jurisdiction and Admissibility, ¶73; Nicaragua Case, Merits,¶187-190

[35] Nicaragua Case, ¶191

[36] Iran v. US, Oil Platforms, Judgment, ICJ Rep. 2003 [Hereinafter referred as **Oil Platforms Case**]

[37] Nicaragua case, pp. 14, 128

[38] D J HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW, LONDON SWEET AND MAXWELL, P. 890 (6th ed., 2004)

[39] U.N. Doc. A/RES/25/2625, Preamble

In the present case, the use of force in the form of surgical strike by Tomorrowland is a flagrant violation of the UN Charter and the Customary International law.

B. Tomorrowland had no right to self-defense against Neverland under the U.N. Charter.

i. There has been no 'armed attack' against Tomorrowland.

a. There has been no use of military force against Tomorrowland.

Armed attack is a precondition for self-defense[41]. In the *Oil Platforms*[42] case, the court said that the right of self-defense is only allowed in response to an armed attack. The acts of *Kal-Fayda* lacked the standards of the armed attack defined by the ICJ in *Nicaragua Case*[43] in terms of aggression. Further, the force in exercise of the right of self-defense has to be *necessary and proportionate*, and that the envisaged target must be legitimate military target, open to attack in exercise of self-defense[44]. Accordingly, the excessive and disproportionate use of force by Tomorrowland coupled with the failure to report the same to the UNSC disqualifies Tomorrowland's plea of self-defense.

b. The attacks against Tomorrowland were by non-state actors; it was not imputable to Neverland.

In *Nicaragua Case*, an act of non-State actors is attributed to a State when the State has *"effective control"* over their acts[45], reaffirmed in *DRC v. Uganda*[46] *and Bosnia Herzegovina v. Serbia & Montenegro*[47].

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[40] H. STEINBERGER, 'SOVEREIGNITY', IN MAX PLANK INSTITUTE OF COMPARATIVE PUBLIC LAW AND INTERNATIONAL LAW, ENCYCLOPEDIA FOR PUBLIC INTERNATIONAL LAW, OXFORD UNIVERSITY PRESS, Vol. 10 (NORTH HOLLAND, 1987) p. 609

[41] U.N. Charter Art.51, Corfu Channel Case, Nicaragua Case ¶14

[42] Oil Platforms Case ¶51

[43] Nicaragua Case ¶194, 195

[44] Nicaragua Case ¶ 14, 94, 103; Threat or Use of Nuclear Weapons, 1996 I.C.J., pp.226, 245

[45] Nicaragua Case,¶64-65, 115

[46] DRC v. Uganda, ¶147

Further, the ICJ states that, leader's selection, organization, choosing of targets, etc. measures effective control[48]. But in the present case, there is no such fact which signifies any such control of Neverland over *Kal-Fayda.* In the *Tadic case*[49]*,* the 'overall control' theory over the group was propounded, which calls for financial and strategic control to establish overall control. However, since the Government of Neverland neither coordinated nor planned (or financially supported) the attacks, hence it is not liable for the alleged activities of *Kal-Fayda.*

The right of a State to act in self-defense is against an armed attack perpetrated by a non-state actor on behalf of another State[50]. Under GA Resolution 56/83, an initially private conduct becomes an act of the State only if, and to the extent, that the State acknowledges and adopts the conduct as its own. The article is codification of what various tribunals[51] have done in the past. As the actions of *Kal-Fayda* cannot be attributed to the Government of Neverland, the use of force by Tomorrowland does not come under the ambit of the right of self-defense.

ii. Tomorrowland does not have a right to self-defense against Neverland.

The use of force by Tomorrowland against Neverland is patently illegal, as the acts of *Kal-Fayda*, a non-state actor, cannot be attributed to the State of Neverland. In the connection with the ICJ's interpretation, the right of self-defense has long required the 'armed attack' to be *imputable to a state*[52].

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[47] Bosnia & Herzegovina v. Serbia & Montenegro, 2007, I.C.J., 91 ¶377- 415

[48] Nicaragua Case, ¶ 112

[49] Prosecutor v. Tadic, Case no.IT-94-I-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (2 October 1995) (ICTY Appeals Chamber), ¶ 131 [Hereinafter referred as **Tadic Case**]

[50] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion, 9 July 2004, ¶ 39, [Hereinafter referred as **Construction of the Wall Case**]

[51] Lighthouses Arbitration, 12 R.I.A.A. 155, 198 (1956); United States of America v. Iran (Diplomatic and Consular Staff in Tehran) Judgment of 24 May 1980, p. 24

[52] Giuliana Ziccardi Capaldo, Providing a right to Self-Defense against Large-Scale attacks by Irregular Armed Forces: The Israeli Hezbollah Conflict, 48 HARV,INT'L L.J. 101, 103 (2007)

As a result, in cases in which an armed attack comes from a non-state armed group, there is a need to demonstrate that it can be attributed to a state.

In the case of *Congo v. Uganda*[53], the ICJ held that there is no actual right to use military force triggered by a state, which is unwilling or unable to control militant groups based in their country. Therefore it is submitted that the alleged failure or inability of Neverland to take action against the alleged activities of *Kal-Fayda* against Tomorrowland, did not give rise to any right of Tomorrowland to exercise military forces on the territory of Neverland.

2.2. The use of force and aggression by Tomorrowland violated the principles of jus cogens and obligations erga omnes

The *Nicaragua* judgment[54] recalled that the International Law Commission (ILC) had in 1966[55] expressed the view that the prohibition of the use of force constitutes *jus cogens*. Also Ian Brownlie includes the prohibition of the use of force among the least controversial examples of jus cogens.[56]

Further, in its judgment in the *Barcelona Traction* case, it was recognized by the ICJ that 'outlawing of acts of aggression' is an obligation *erga omnes*.[57] Also since jus cogens norms are intransgressible by virtue of art. 53 of VCLT, therefore derogation of the same by Tomorrowland is impermissible. B. The use of force by Tomorrowland violated the customary international law. In ICJ's jurisprudence,

[53] DRC v. Uganda Case

[54] Nicaragua, Merits, ¶190.

[55] G.A. Res. 2625 (XXV) (24 October 1970), G.A. Res. 3314, Art 5

[56] James Crawford, Brownlie's Principles of Public International Law (8th ed., Oxford: Oxford University Press, 2012), 595-6

[57] Case Concerning the Barcelona Traction, Light and Power Co, Ltd (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment of 5 Feb 1970, ICJ Rep1970, ¶34

the ICJ in several judgments like the Nicaragua[58] case, Israeli Wall Advisory Opinion[59] case has acknowledged that the prohibition of the use of force is a part of customary international law. Thus, the prohibition of the use of force is today both a norm of treaty law and of international customary law.[60]

ISSUE 3: TOMORROWLAND HAS VIOLATED THE PROCEDURAL INTERNATIONAL LAW BY NOT INFORMING THE UNSC OF THE ARMED ATTACK.

The UN Charter, under Article 51 provides that *immediate report* should be made to the UNSC by the state using force under Article 51.[61] Undermining UNSC's authority y not informing it also frustrates the object of Art.39.

Tomorrowland was bound to inform the UNSC of the armed attack launched on Neverland. Tomorrowland's irresponsible attack over Neverland threatens the world peace, which is the sole

[58] Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, ¶ 73; Military and Paramilitary Activities in and against Nicaragua, Merits, ¶ 187-190

[59] Israeli Wall Advisory Opinion

[60] The Max Planck Encyclopedia of Public International Law, Vol., 10 Oxford University Press p. 609

[61] UN Charter, Art.51

purpose of all the international laws and organizations. The ICJ[62] has also had the view that *self-defensive force is not permitted at all against non-state actors*[63].

In the present case, Tomorrowland has not acted according to Art.51 of the UN Charter. Hence, Tomorrowland has violated the procedural and safeguarding norms of International Law and employed force without reporting it to the UNSC.

ISSUE 4: REPUBLIC OF TOMORROWLAND CAUSED TREMENDOUS DAMAGE TO NATURAL ENVIRONMENT OF ISLAMIC REPUBLIC OF NEVERLAND AND IS LIABLE TO PAY COMPENSATION FOR THE SAME.

4.1. Tomorrowland caused tremendous damage to natural environment of Neverland by destroying valuable natural resources which is in violation of provisions of international law.

The armed attack by Tomorrowland is in gross violation of International laws which prohibits the degradation of environment during armed conflict.

i. As per World Charter for Nature 1982, "nature shall be secured against degradation caused by warfare or other hostile activities and declared that military activities damaging nature shall be avoided".[64]

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[62] *Advisory Opinion on the Israeli Wall* [2004] ICJ Rep 136, at 194; Randelzhofer, 'Article 51', in B. Simma (ed.), The Charter of the United Nations: A Commentary (2nd edn, 2002), at 788, 802 agrees

63 Corten, supra note 37, at 126–197; Myjer and White, 'The Twin Towers Attack: An Unlimited Right to Self-Defence?', 7 J Conflict & Security L (2002) 5, at 7.

ii. Being a signatory to Rio Declaration Tomorrowland has to govern its activities as per the principles laid down in the abovementioned Declaration and Principle 24 of Rio Declaration 1992 states that "Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary."[65]

iii. Tomorrowland had damaged the coal and crude oil resources of Neverland through its military activities, which were under its control and caused damage to the environment of Neverland, which is beyond its jurisdiction. Hence it is in violation of Principle 2 of Rio Declaration.[66]

iv. Article 55 of Additional Protocol I adopted in 1977 to the Geneva Conventions 1949 prohibits the use of methods or means of warfare which are intended or may be expected to cause widespread, long term and severe damage to the natural environment and thereby to prejudice the health or survival of the population.[67]

v. Destruction of the environment or property is tolerated only when it comes within military necessity as per UN General Assembly Resolution 47/37 of 1992[68] , Article 53 of 4th Geneva Convention, 1949[69] and Article 23(g) of Hague Regulations, 1907.[70] In the present case,

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[64] A/RES/37/7 (28 October 1982)

[65] Principle 24,Rio Declaration on Environment and Development,1992

[66] Principle 2, Rio Declaration on Environment and Development,1992 ;See also Principle 21 ,Stockholm Declaration ,1972

[67] Article 55, Additional Protocol I adopted in 1977, Geneva Conventions (1949)

[68] A/RES/47/37(1992)

[69] Art.53,4th Geneva Convention(1949)

[70] Art.23(g), Hague Regulations (1907)

Tomorrowland has not acted under any military necessity while damaging the natural environment of Neverland as UN Observer Group reported that 'heavy bombing was the cause of fire to the rain-forest' which otherwise can be avoided in order to protect the environment since it was a well-coordinated and planned military surgical strike to achieve the desired outcomes as per DGMO-Gurmeet Singh.[71]

vi. As per Article 35(1) of Additional Protocol I adopted in 1977 to the Geneva Conventions 1949, "The right of belligerents to adopt means of injuring the enemy is not unlimited."[72] Article 56(1) of Additional Protocol I adopted in 1977 to the Geneva Conventions 1949 lay down that works or installations containing dangerous forces shall not be made the object of attack as it may cause the release of dangerous forces and consequent severe losses among the civilian populations.[73] Therefore Tomorrowland, by targeting the natural resources around the village of Kutchi-Gudi, have contravened these abovementioned provisions and must retain liability for the same. [74]

4.2 Liability of Tomorrowland to pay compensation to Neverland for the environmental damages.

In *Costa Rica v. Nicaragua*[75] the ICJ referred to a previous judgment that "while ascertaining the compensation it must be determined that '*whether there is sufficiently direct and certain causal nexus between*

[71] Fact Sheet ,15&13

[72] Article 35(1), Additional Protocol I adopted in 1977, Geneva Conventions (1949);See also Art.22 of Hague Regulations (1907)

[73] Article 56(1), Additional Protocol I adopted in 1977, Geneva Conventions (1949)

[74] Israel-Lebanon Conflict

[75] *Costa Rica v. Nicaragua* [2013] I.C.J. Rep.354

the wrongful act …and the injury suffered by the Applicant'[76]". Here in the present case, after the issuance of statement by the DGMO of Tomorrowland over the confirmation of surgical strike, the UN Observer Group in Neverland occupied Taimur reported heavy exchange firing and bombing especially in the village of 'Kutchi-Gudi' near the border.[77] So from the above mentioned fact it can be concluded that there is a causal connection between the activities done by Tomorrowland and damage suffered by Neverland.

By heavy exchange of firing and bombing Tomorrowland had destructed the natural resources of Neverland and fire into the rain-forest have resulted into the loss of habitat of various wildlife species as well as in air pollution and therefore causing huge environmental damage in Neverland.

There was violation by Tomorrowland of The Additional Protocol I adopted in 1977 to the Geneva Conventions 1949 and Hague Regulations of 1907 so, as per Article 91 and Article 3 of both the conventions respectively. Tomorrowland must pay compensation to Neverland for the loss caused by the acts committed by persons forming part of its armed forces.

The Security Council Resolution 687 (1991) held Iraq liable on the ground of 'direct loss, damage, including environmental damage and depletion of natural resources' arising out of the conflict with Kuwait under Environmental Modification Convention 19779[78], hence, in the same manner Tomorrowland must also be held liable to pay compensation to Neverland.

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[76] *Case Concerning Ahmadou Sadio Diallo, Guinea v Congo, the Democratic Republic*, [2012] ICJ Rep 324

[77] Fact Sheet,para15

[78]PATRICIA BIRNIE & ALAN BOYLE, INTERNATIONAL LAW AND THE ENVIRONMENT 149 (2 ed. 2002)

PRAYER

IN THE LIGHT OF THE ACTS STATED, QUESTIONS PRESENTED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, THE ISLAMIC REPUBLIC OF NEVERLAND, MOST RESPECTFULLY REQUESTS THIS HON'BLE COURT TO ADJUDGE AND DECLARE THAT:

(a) Tomorrowland has violated the provisions of the U.N Charter by using force and committing acts of aggression against Neverland.

(b) Tomorrowland has violated its IHL obligations.

(c) Tomorrowland is liable to pay compensation for the damage caused to Neverland, as a result of its armed attack.

AND TO PASS ANY SUCH ORDER, DISCRETION & JUDGEMENT AS THIS HON'BLE COURT MAY DEEM FIT IN THE INTEREST OF JUSTICE, EQUITY AND GOOD CONSCIENCE.

All of which is respectfully submitted

Sd/- _____

AGENTS FOR THE ISLAMIC REPUBLIC OF NEVERLAND

Place: The Hague, the Netherlands