MOOT PREPOSITION

Questions Relating to Sovereign Immunities, Reparations and Genocide.

(Eastonia v. Nordway)

RECORD
VS Mani
Moot Court Competition
2023–2024

NOTIFICATION, DATED XX January 2024, ADDRESSED TO

THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF EASTONIA

AND

THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF NORDWAY

The Hague, XX January 2024

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 18 January 2024. I have the further honor to inform you that the case of Questions Relating to Sovereign Immunities and Reparations for Human Rights Violations (Eastonia v. Nordway) has been entered as 2024 General List No. 042. The written proceedings shall consist of memorials to be submitted to the Court by XX ?????????? 2024. Oral proceedings are scheduled for XX ?????????? 2024.

/s/_____

Registrar

International Court of Justice

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INTERNATIONAL LAW
MOOT COURT COMPETITION
2024

JOINT NOTIFICATION, DATED XX January 2024, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, XX January 2024.

On behalf of the Republic of Eastonia and the Republic of Nordway, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, Article 27 of the *United Nations Convention on Jurisdictional Immunities of States and Their Property*, and Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide,we have the honor to transmit to you an original copy of the English texts of the agreement Between Eastonia and Nordway for Submission of differences between them before the International Court of Justice concerning questions relating to Sovereign Immunities, Reparations and Genocide, signed at Zurich, Switzerland, on 18 January 2024.

For the Republic of Eastonia:

/s/_____
T.W. Courvoisier
Minister of Foreign Affairs

For the Republic of Nordway:

/s/_____
D.S. Planck
Minister of Foreign Affairs

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AGREEMENT
BETWEEN
THE REPUBLIC OF EASTONIA
AND
THE REPUBLIC OF NORDWAY
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING
QUESTIONS RELATING TO
SOVEREIGN IMMUNITIES, REPARATIONS & GENOCIDE

The Republic of Eastonia and the Republic of Nordway,

Recalling that Eastonia and Nordway are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Noting that Eastonia and Nordway signatories of the *United Nations Convention on Jurisdictional Immunities of States and Their Property*, which provides, under Article 27, the power for State Parties to refer their dispute to the International Court of Justice by request in accordance with the statute of the Court,

Noting that Eastonia, Nordway and Westfalia are signatories of the Convention on the Prevention and Punishment of the Crime of Genocide, which provides under Article IX, the power for the State Parties to refer their dispute to the International Court of Justice by request and in accordance with the statute of the Court,

Recognizing that differences have arisen between the Eastonia and Nordway concerning theproposed activities of PetroGlobal in the territory of the Westfalia

Acknowledging that Eastonia and Nordway have been unable to settle their differencesthrough negotiation or other forms of dispute settlement,

Desiring that the International Court of Justice, hereinafter referred to as "the ICJ"consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

Eastonia and Nordway, hereinafter referred to as "The Parties," shall submit the questions contained in Annex A of this Agreement to the Court pursuant to Article 40, paragraph 1 of the statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court's jurisdiction in the written or oral proceedings.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties, including the United *Nations Convention on Jurisdictional Immunities of States and Their Property*, the Treaty on Oil Exploration and Extraction Cooperation between the Sovereign State of Eastonia and the Republic of Westfalia, and Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

2. The Parties shall request the Court to decide this matter based on the agreedStatement of Facts, attached as Annex A, which is an integral part of this Agreement.

3. The Parties also shall request the Court to determine the legal consequences, includingthe rights and obligations of the Parties, arising from any judgment on the questionspresented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.

2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties. To the extent that the Parties make treaty-based arguments, theyshall focus on the treaties referenced in the Annexure, other treaties to which the State Members are Party to, customs and principles of and discussed within the Annexures.

3. The written pleadings shall be consistent with the Rules for the 2024 VS Mani Moot Court Competition.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them andshall execute it in its entirety and in good faith.

2. Immediately after the transmission of the Judgment, the Parties shall enter intonegotiations on the modalities for its execution.

3. If the Parties are unable to reach agreement within six months, either Party may requestthe Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Zurich, Switzerland, this 18th day of January, 2024, in two copies, each in the English language, and each being equally authentic.

For Eastonia:

/s/_____
T.W. Courvoisier
Minister of Foreign Affairs

For Nordway:

/s/_____
D.S. Planck
Minister of Foreign Affairs

Annex A

1. The Republic of Westfalia is a sovereign state in north-central Europe having a population of 8 million people. Its economy was historically agrarian until a recent boom in technology services, though still a poor nation which is yet to exploit its oil resources. Proven oil resources (oil in place) exceed 6.75 billion barrels, of which 4.25 billion are recoverable using present technology. The Republic of Westfalia is also home to world's largest indigenous population in the forests of Zamazon, called "Filstinos". This indigenous population has since thousands of years, protected the natural resources all around Republic of Westfalia. The corporate interests of the fossil fuel exploration entities and forest exploitation interests has been crushing the movement of "Filstinos" to protect their indigenous lands.

2. The State of Eastonia is a sovereign state in Eastern Europe which has a population of 44 million. It is a high-income country mainly due to the success of its fully state-owned oil company, PetroGlobal, which has a market cap of several billion dollars and is the third largest employer in the country. Eastonia's Ministry of Energy and Natural Resources, overseeing PetroGlobal and its international operations. The profits generated by PetroGlobal's activities are directly transferred, at the end of each financial year to Eastonia's sovereign pension fund. The PetroGlobal's contribution to the Eastonia sovereign fund from all around the worldis one of the largest commercial contribution to the sovereign pension fund of Eastonia. Out of the total contribution of PetroGlobal to the sovereign pension fund, from Westfalia, the contribution to the fund is 15%, from Nordway the contribution to the fund is 57% and the rest of the contribution comes from PetroGlobal's activities from around the globe.

3. In 2011 Republic of Eastoniaon behalf of its state owned oil company PetroGlobal signed a bilateral treaty with the Republic of Westfalia, granting it extensive rights to explore and extract oil in the forests of Zamazon and the coasts of Westfalia. The treaty is included in Annexure I. Immediately after signing the treaty, Filistinos protested against the exploration activities in the forests of Zamazon, claiming the Zamazonian forests are the lungs of the Earth and need to be protected at all costs, in order to save the world from climate change and other environmental catastrophes.

4. In 2012, PetroGlobal initiated its operations, establishing drilling sites, infrastructure, and logistic networks in Zamazonian forests. Their activities led to destruction of 25% of the Zamazonian forests. The initial reports of environmental impacts on the forest and the surface received minimal attention throughout Westfalia and internationally. The Filistinos also strengthened their protests by following the Indian idea of "Chipko movement", to protect the Zamazonian forest. Thousands of Filistinos each, hugged the tree in order to protect the trees. The Filistino leader made a statement to the Westfalian National Media, that with each tree cut, one Filistino will happily die hugging the tree. The said protest failed to stop PetroGlobal from carrying out its operation resulting into injury and killings of Filistino which led to the increasein the tension between PetroGlobal and indigenous population. PetroGlobal continues its work in the coastal areas of Westfalia where there is no report of violenceand the corporation is engaged in peaceful oil drilling, exploration and export. The Filistinos file a criminal case, against the Republic of Eastonia and PetroGlobal before the Supreme Court of Westfalia, alleging that both Republic of Eastonia and PetroGlobal should be held criminally responsible for the widespread and intentional killing of the Filistinos, and hence Genocide of Filistinos.

The Supreme Court of Westfalia, dismissed the case, stating that Westfalia does not have any national law concerning the international crime of Genocide, therefore the national courts of Westfalia are incapable of adjudicating this issue. The Filistinos appealed this judgement and are still fighting the case before the Supreme Court.

5. In 2016, however, an oil spill attributed to PetroGlobal, in the west coast of Westfalia impacted a significant freshwater source, affecting several villages. PetroGlobal acknowledges the spill but disputes that the oil spill is responsible for the loss of revenue by local farmers and the health problems that local residents complained of, such as dizziness, fatigue, headaches, and kidney cancer. The Filistinos organized a protest at the head office of the PetroGlobal in Westfalia which continued over 50 days. On 51st day of the protest, the PetroGlobal security used *"lathis"* to disperse the protester. This action of dispersal soon turned violent, injuring several Filistinos and causing the death of two Filistino Leaders. The death of the Filistinos created massive national unrest. In order to resolve the unrest, the PetroGlobal responded by conducting a public awareness campaign about the benefits of their work as an oil-exploration corporation and by making a one-time payment of 100,000 USD to the Government of Westfalia for the welfare of Filistinos and mitigating any environmental damage caused by such exploration. This one-time payment has yet not been released to the victims.

6. From 2017-2018, incidents of forced displacement are reported in Zamozonian forest as PetroGlobal expanded their exploration sites. Local protests intensified, including incidents where protestors attempted to storm the extraction facilities of PetroGlobal. These protests were met with violent responses by security forces used by PetroGlobal. Some unofficial reports indicated these forces were members of the Eastonian military acting as a private security to PetroGobal though that has been denied by PetroGlobal.

7. In 2018, several Filistinos disappear without a trace. Local activists and International human rights organizations accused PetroGlobal of being involved in their disappearance and Genocide of Filistinos. PetroGlobal denies having anything to do with their disappearance; however, a report by an investigative journalism committee shows that at least one Filistinowas detained by the security forces of PetroGlobal prior to their disappearance. The News Channel *Al-Fakeera*has also released videos of mass graves, allegedly of Filistinoson land owned by the Government of Eastonia. The Government of Eastonia dismissed these videos as propaganda videos. Many Westfalian workers resigned in protest of these activities. They are quickly replaced by laborers from State of Nordway and State of Fordan. The workers from State of Fordan who live on the facility have reported that they were acquired and 'employed' through methods of human trafficking and forced labor. Ninety percent of Laborers from State of Fordan belongs to "Filistino" Tribe, and their ancestors came from the Westfalian Tribe of Filistino. PetroGlobal dismissed such claims for want of sufficient proof and stated such claims as propoganda, co-incidence, or lies placed by the rival parties.The Filistinos of Westfalia, in January 2020, requested the Westfalian Government to investigate "Genocidal intent and conduct by PetroGlobal from 2011 to 2020". The Government set up a committee, which found in December 2020, that "there was no evidence of genocidal intent or conduct by PetroGlobal" and "PetroGlobal cannot be held liable for deaths and injuries caused to the Filistinos between 2011 to 2020. PetroGlobal operations have led to the economic development of Westfalia". From 2017-2018, increased incidents of forced displacement are reported as PetroGlobal expanded their exploration sites. Local protests intensify,

including incidents where protestors attempted to storm the extraction facilities of PetroGlobal. These protests were againmet with violent responses by security forces used by PetroGlobal. Media reports by *Al-fakira*, and social media videos alleged these forces as members of the Eastonian military acting as private security which was denied by PetroGlobal.

8. In early 2019, the victims of oil spill along with the victims of the Filistino tribe, supported by international legal advocacy group called 'Hoooman Rights Intra-national' attempted to file lawsuits before the Court at Westfalia, alleging Genocide and environmental and other human rights violations.The group faced legal and political hurdles, including claims that the treaty's arbitration clause precludes domestic legal action. The group argued that the arbitration clause does not govern *jus cogens* norms violations like Genocide, however, the Supreme Court of Westfalia by a majority judgement dismissed their claims. One Westfalian Judge, in his dissenting opinion was of the view that there are evidences of genocidal intent and conduct in form of media reports, public statements of Victims, the statements and actions of the PetroGlobal security officers which requires consideration.

9. In late 2019, attempts to initiate arbitration were made by the victims which was resisted by Eastonia and PetroGlobal questioning the rights of the victims to invoke the arbitration jurisdiction provided under the treaty as well as the admissibility of the claims citing sovereign immunity and the acts of governmental nature. Eastonia and PetroGlobal also argued that the issues concerning Genocide cannot be a subject matter of arbitration proceedings.

10. In early 2020, the victims having faced the deadlock in Westfalian courts and in arbitration, sought a new legal avenue by invoking the jurisdiction of the Courts of the Republic of Nordway as there are large assets of the Republic of Eastonia within the Republic of Nordway.The Republic of Nordway is a coastal northern European state with a history of positive diplomatic relations with both Eastonia and Westfalia. It is a signatory to the United Nations Convention on Jurisdictional Immunities of States and Their Property.

11. In late 2020, a comprehensive legal claim is filed by the victims before the Courts of Nordway against the Republic of Eastonia and Petroglobal. The victims seek reparation and criminal responsibility of PetroGlobal management and officers in command for Genocide of the Filistinos in Westfalia. The victims also sought damages and injunction against PetroGlobal's operations in the State of Westfalia. The victims argued that the gravity of *jus cogens* violations permits legal action before the courts in Nordway, notwithstanding the arbitration clause provided under the treaty. The Eastonian Minister of Energy and Natural Resources didn't submit to the jurisdiction of the Court and chose not to appear before the Court stating that the actions of the company were protected by Jurisdictional Immunity as acts of *jure imperii* and actions in Westfalia are subject matter of "commercial transactions between the State of Westfalia and State of Eastonia" therefore, covered under the jurisdictional immunities of the UN Convention on Jurisdictional Immunities of States and their Properties, 2004. On the other hand, victims argued that assests of PetroGlobal are not a commercial transaction protected under the sovereign immunity provisions of the UN Convention on Jurisdictional Immunities of States and their Properties, 2004. The lawyers of the victims also argued that the personal assets of the Minister of Energy and Natural Resources of the Republic of Eastonia

should also be utilized to pay the victims and that these assets are not covered under the immunities granted under the customary international law on diplomatic immunities and the Vienna Convention on Consular Relations, 1963.

12. In 2021, the Nordway Courts decided the case in favour of the Westfalian victims and in the absence of Estonia and PetroGlobal giving a finding of fact that PetroGlobal violated several international and jus cogens norms such as the prohibition of enforced disappearances, forced labour, human trafficking, the right to a clean environment, and negligence. Accordingly, PetroGlobal was ordered to pay damages to the tune of 75 Million US Dollars to the families of the victims. The decision of the court is final as the parties have not challenged the judgement. On the allegation of Genocide, the Nordway Court held that "*there is a strong evidence genocidal intent and conduct by the managing officers of the PetroGlobal. However, the court refused to pass any judgement on an issue concerning an international crime of Genocide, because there is no domestical law concerning crimes of Genocide in Nordway".*

13. In 2022, the case garners widespread media attention, with debates surrounding the principles of international law, genocide, state sovereignty, and corporate accountability. Facing PetroGlobal's refusal to pay, the victims file an enforcement action in Nordway seeking the awarded damages by liquidating the assets of the Republic of Eastonia and its ministers available within Nordway and attaching the Sovereign Pension Fund of Eastonia established for the pensioners of Eastonia which is maintained from the direct funds provided by the Republic of Eastonia including the joint profit fund set up in the treaty with Westafalia. The assets of PetroGlobal in Nordway are relatively insignificant as they have never carried on operations there, however, the Republic of Eastonia and the Sovereign Pension Fund of Eastonia both have a tremendous amount of assets due to the large number of pensioners.

14. In 2023, as hearings at the Court of Nordway on the enforcement action are set to begin, the Government of Eastonia sent a diplomatic note to the Government of Nordway indicating that the Ministry of Energy and Natural Resources, Republic of Eastonia is entitled to Jurisdictional Immunity for acts of *jure imperii*under customary international law and under the United Nations Convention on Jurisdictional Immunities of States and Their Property. Some of the properties belong to the Government of Eastonia which were purchased by the Ministers while acting as an agent of the Government of Eastonia. The PetroGlobal and Republic of Eastonia also claims that the awarded compensation is enormous and if enforced, the PeteroGlobal would go bankrupt in the State of Nordway. The Government of Eastonia and Government of Nordway request the Government of Switzerland to engage facilitate negotiations over these complex issues.

15. Negotiations between Nordway and Eastonia continued and were facilitated by the Government of Switzerland, to which Nordway and Eastonia express their deep appreciation. As a result of the negotiations, Eastonia and Nordway agreed to submit certain questions to the International Court of Justice (ICJ). Nordway agreed that their courts would not proceed with the enforcement action till the ICJ decides upon this issue.

16. Eastonia is an applicant State before the ICJ opposes the enforcement proceedings before the Courts at Nordway and seeks an order from the ICJ declaring that (1) the enforcement proceedings initiated in the courts of Nordway violate international law concerning the Jurisdictional Immunities as provided in customary and conventional international law.

Additionally, the Government of Westfalia is a necessary party to this dispute, therefore, any judicial or administrative proceeding or decision, will be invalid if the Government of Westfalia is not made a necessary party considering the effect of enforcement action upon the profits flowing from the treaty with Eastonia. (2) The ICJ should declare that the Government of Eastonia have not conducted Genocide of Filistinos in the State of Westfalia.

17. Nordway being the respondent opposes the claims made by the Eastonia and seeks an order from the ICJ declaring (1) that as a procedural and substantive matter, the Jurisdictional Immunities sought by Eastonia cannot be granted to the Eastonia in light of the several and severe international law and *jus cogens* violations committed by PetroGlobal and its actors, requiring reparations and hold the proceedings before the court at Nordway as valid and hold that as a procedural matter, the Republic of Westfalia is not a necessary party to this action for disbursing reparations from the profits flowing from their Treaty with Eastonia. (2) The ICJ should declare that the Government of Eastonia have conducted Genocide of Filistinos in the State of Westfalia, therefore Eastonia should pay an additional 100 billion USD.

18. The parties are free to make additional issues for acceptance and rejection of the claims before the ICJ. The parties should not raise issue concerning the jurisdiction of the present caseas the jurisdiction is established under the Special Agreement between the parties.

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Annex 1:

Treaty on Oil Exploration and Extraction Cooperation Between The Sovereign State of Eastonia and The Republic of Westfalia

Preamble

The Sovereign State of Eastonia ("Eastonia") and the Republic of Westfalia ("Westfalia"), recognizing the mutual benefits of cooperation in the field of oil exploration and extraction, and wishing to strengthen their economic and technical ties,

Mindful of the need to protect the environment and uphold the rights and welfare of the local communities affected by these activities,

Desiring to establish a clear legal framework for the operations of Eastonia's state-owned company, PetroGlobal, in Westfalia,

Have agreed as follows:

Article 1: Scope and Objectives

1. This Treaty outlines the terms under which PetroGlobal shall conduct oil exploration and extraction activities in designated areas within Westfalia.
2. The objectives of this Treaty are to ensure the efficient and sustainable exploitation of oil resources, promote economic development, and safeguard environmental and social standards.

Article 2: Rights and Obligations

1. PetroGlobal is granted the exclusive right to explore and extract oil within agreed areas in Westfalia, subject to the terms and conditions set forth in this Treaty and Westfalia's laws.
2. PetroGlobal shall conduct all operations in accordance with international best practices and standards for environmental protection, human rights, and labor rights.

Article 3: Environmental and Social Safeguards

1. PetroGlobal commits to undertaking comprehensive Environmental and Social Impact Assessments (ESIAs) prior to commencing any operations.
2. Measures shall be taken to mitigate adverse impacts on the environment and local communities, with a commitment to transparency and public consultation.

Article 4: Revenue Sharing and Economic Benefits

1. The revenues generated from oil extraction activities shall be shared between Eastonia and Westfalia and disbursed under this Treaty.
2. PetroGlobal shall contribute to the socio-economic development of local communities in the operational areas.

Article 5: Dispute Resolution

1. Any disputes arising from the interpretation or application of this Treaty shall be resolved amicably through negotiation between the Parties.
2. If a dispute cannot be resolved through negotiation within six months, it shall be referred to arbitration in accordance with the Domestic Arbitration law.

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Article 6: Arbitration Clause

1. The Parties hereby agree that any dispute relating to PetroGlobal's operations under this Treaty, including claims of environmental damage or human rights violations, shall be exclusively settled by arbitration.
2. The arbitration panel shall consist of three arbitrators: one appointed by Eastonia, one by Westfalia, and the third, who shall act as the presiding arbitrator, appointed jointly by the first two arbitrators.

Article 7: Sovereignty and Jurisdiction

1. Nothing in this Treaty shall be construed as a waiver of either Party's sovereignty, sovereign immunity, or jurisdictional rights, except as explicitly provided in the Arbitration Clause.

Article 8: Duration and Termination

1. This Treaty shall enter into force upon ratification by both Parties and remain in effect for a period of twenty years, renewable upon mutual agreement.
2. Either Party may terminate this Treaty by giving two years' written notice to the other Party.

Article 9: Final Provisions

1. This Treaty, including its Annexes, constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior communications, negotiations, and agreements.
2. This Treaty may be amended only by written agreement between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

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