

Team # 2

In the
International Court of Justice

At the Peace Palace
The Hague, Netherlands

Concerning the Shipping and Processing of Highly-Enriched Uranium

The Republic of Sandia

Applicant,

v.

The United Commonwealth

Respondent.

Applicant's Memorial

2002 International Environmental
Moot Court Competition

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STATEMENT OF THE JURISDICTION

The Republic of Sandia and the United Commonwealth submit the following dispute to the International Court of Justice pursuant to Article 40 of the Statute of the International Court of Justice. Accordingly, this Court has jurisdiction to adjudicate the questions presented by the parties.

QUESTIONS PRESENTED

- I.** Whether the United Commonwealth's shipping of highly enriched uranium violates its obligation to protect and preserve the environment as set forth in customary environmental law and legal norms.

- II.** Whether the United Commonwealth's refusal to conduct an Environmental Impact Assessment and confer with the Republic of Sandia regarding the processing and shipping of highly enriched uranium violates International Law.

STATEMENT OF FACTS

The Republic of Sandia (Sandia) is home to nearly five million people.¹ Almost sixty percent of them live and work on Sandia’s eastern seaboard where they rely heavily upon the sea for their survival.² In fact, the people of this developing State earn a significant proportion of their livelihood from tourism and fishing.³ As part of its commitment to living in harmony with the environment, Sandia declared itself a “Nuclear Free Zone,” to ensure that the potentially deadly effects of nuclear technology will never threaten Sandia’s people or environment.⁴ Twenty miles to the east, across the Sea of Sandia and the median line that divides the two States, lays the United Commonwealth (UC).⁵

UC is a developed State with a population of approximately three-hundred million.⁶ It has a diverse economy and uses nuclear power.⁷ In fact, nuclear power accounts for forty percent of its energy consumption.⁸ Further, UC possess an arsenal of

¹ R.7.

² Id.

³ R.9,10.

⁴ R.7.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

hundreds of nuclear weapons.⁹ Until 1992, UC participated in a nuclear arms race with the Union of Democratic Republics (UDR).¹⁰

After UDR dissolved, UC decided to down-blend some of its weapons-grade highly enriched uranium (HEU) to create low enriched uranium (LEU) for sale and use as fuel for nuclear power plants.¹¹ UC unilaterally conducted an Environmental Impact Assessment (EIA); then, despite Sandia's environmental safety concerns, UC unilaterally built the Chellystone nuclear installation.¹² UC chose to build Chellystone only twenty miles away from Sandia, on its westernmost coast, and next to the Sea of Sandia.¹³

Chellystone began processing HEU in August of 1997.¹⁴ By August 1999, Chellystone experienced four known nuclear releases and had to be closed.¹⁵ Six months later, without conducting an EIA in light Chellystone's demonstrated safety failings, the installation commenced operation.¹⁶

In May 2001, UC seized the opportunity to acquire even more HEU.¹⁷ The additional two metric tons equates to an increase of nearly ten percent more HEU than

⁹ R.8.

¹⁰ R.7.

¹¹ R 8.

¹² Id.

¹³ R 7.

¹⁴ R 9.

¹⁵ R 8-9.

¹⁶ R.9.

¹⁷ Id.

Chellystone was designed to process.¹⁸ UC plans to import the HEU from fledgling Tuvastan, a State newly formed from the dissolution of UDR.¹⁹ Fear of terrorist attack or sale to a rogue State prompted Tuvastan to rid itself of the HEU.²⁰ Still, despite the increase in HEU and increased threat of terrorist attack, UC refuses to conduct an EIA to protect the environment. Further, UC refuses to inform its close neighbor Sandia about any aspect of the purchasing, shipping, and processing of HEU. In fact, the people of Sandia learned from a newspaper article of UC's unilateral decision to engage in the proposed new activity.²¹

¹⁸ R.9.

¹⁹ Id.

²⁰ Id.

²¹ R.10.

SUMMARY OF THE ARGUMENT

The United Commonwealth (UC) and the Republic of Sandia (Sandia) possess numerous international legal obligations to protect and preserve the environment. These obligations stem from customary law, international legal norms and from the numerous treaties, conventions, and agreements to which both States are parties or signatories. UC violated these fundamental obligations by: (1) processing highly enriched uranium near the coast Sandia's shoreline; (2) preparing to ship HEU through the Sea of Sandia; (3) endeavoring to begin a new and potentially devastating activity without conducting an EIA; and, (4) refusing to confer with Sandia in undertaking a new and potentially devastating activity.

UC violated customary law by processing and preparing to ship HEU near Sandia's shoreline. The United Nations Convention on the Law of the Sea (UNCLOS), the Cartagena Protocol on Biosafety (Cartagena Protocol), and Rio Declaration on Environment and Development (Rio Declaration) establish the precautionary principle as a custom. The precautionary approach forbids activities when the activity's risk of environmental harm outweighs the activity's utility. The risks of environmental harm associated with processing HUE outweigh the utility of UC's processing near Sandia's shoreline. The risks of environmental harm associated with shipping HUE outweigh the utility of UC's processing near Sandia's shoreline. Therefore, customary law obligates UC to discontinue HEU processing and HEU shipping near Sandia's shoreline.

UC violated international legal norms by processing and shipping HEU near Sandia's shoreline. The Vienna Convention on the Law of Treaties recognizes *jus cogens* as a fundamental international legal norm. *Jus cogens* establishes peremptory norms of general international law from which no State may deviate. UC deviates from the peremptory norms of general international law by risking devastating harm to Sandia's people and environment through its processing and shipping of HEU near Sandia's shoreline. Therefore, *jus cogens* obligates UC to cease processing and shipping near Sandia's shoreline.

UC violated international law by endeavoring to begin a new and potentially devastating activity without conducting an EIA. The Convention on Environmental Impact Assessment in a Transboundary Context, Convention on Nuclear Safety, and Convention on Biological Diversity require States to conduct EIAs for new activities. UC proposes to engage in the new activity of shipping additional HEU through the Sea of Sandia and blending the highly dangerous substance. Therefore, international law obligates UC to conduct a new EIA.

UC violated international law by refusing to confer with Sandia in undertaking a new and potentially devastating activity. The Convention on Environmental Impact Assessment in a Transboundary Context, Convention on Nuclear Safety, and Convention on Biological Diversity require States to cooperate with neighboring States in conducting EIAs. UC proposes to engage in the new activity of shipping additional HEU through the Sea of Sandia and blending the highly dangerous substance. Therefore, international law obligates UC to consult with Sandia in conducting a new EIA.

ARGUMENTS

I. The United Commonwealth's Handling of Highly Enriched Uranium Violates Its Obligations Under Treaties and Customary International Environmental Law.

A. The United Commonwealth's Handling of Highly Enriched Uranium Violates Its Obligations Under International Law.

States should strive to preserve and improve the human environment.²² The Vienna Convention on the Law of Treaties mandates that parties to a treaty are bound by that treaty.²³ UC and Sandia are both (1) parties to the Vienna Convention on the Law of Treaties (VCLT), (2) parties to United Nations Convention on the Law of the Sea (UNCLOS), (3) contracting parties to the Convention on Biological Diversity (COBD), (4) signatories to the Cartagena Protocol on Biosafety (Cartagena Protocol), and (5) signatories to the Rio Declaration on Environment and Development (Rio Declaration).²⁴ UC's operation of a nuclear processing facility next to the Sea of Sandia and UC's desire to ship HEU through the Sea of Sandia violates these agreements. Therefore, this Court should require UC to find an alternative mode of HEU transportation and move Chellystone away from the shoreline to a location that will pose a less hazardous threat to the marine environment and the people of Sandia.

²² Declaration of the United Nations Conference on the Human Environment, Preamble (entered into force 16 June 1972), Supplement of Basic Documents to International Environmental World Order, p. 106.

²³ Vienna Convention on the Law of Treaties, Article 2 (entered into force 27 January 1980), <<http://archive.greenpeace.org/~intl/w/vien-tr.html>>.

²⁴ R.7.

1. The United Commonwealth's Handling of Highly Enriched Uranium Violates the United Nations Convention on the Law of the Sea.

States have the "obligation to protect and preserve the marine environment."²⁵ Parties to a treaty consent to be bound by that treaty.²⁶ As a party to UNCLOS, UC violated its obligations under this treaty by processing HEU directly on the shoreline of the Sea of Sandia. Additionally, UC violated its UNCLOS obligations by preparing to ship more HEU through the Sea of Sandia.

States must prevent pollution of the marine environment from land-based sources "to the fullest extent possible."²⁷ UC operates a very lucrative business of down-blending and selling twenty-two metric tons of HEU.²⁸ The market value of UC's HEU is approximately one hundred and fifty one thousand dollars per pound, totaling over seven and one-half billion dollars.²⁹ As a large, developed nation, UC possesses the means to relocate Chellystone away from the shoreline where the impact on the Sea of Sandia will be significantly reduced.³⁰

²⁵ United Nations Convention on the Law of the Sea, Article 192 (entered into force 16 November 1994), <<http://xs2.greenpeace.org/~intl/laws82-2.html>>.

²⁶ *Supra* n. 2.

²⁷ *Supra* n. 4, Article 207 (1), (5).

²⁸ R.8.

²⁹ MSNBC, International News, Weapons Grade Uranium Seized, <<http://www.msnbc.com/news/814321.asp>>, (29 September 2002).

³⁰ R.7.

States shall create policies concerning their land-based sources of pollution and any activity within their jurisdiction or control that harmonize with surrounding states.³¹ Because Chellystone is only twenty miles away, even a small accident can deposit nuclear material into the water upon which the people of the Sandia rely.³² Even though UC classified Chellystone's nuclear releases as having no significant off-site risk, another series of incidents or accidents would cause considerable environmental risk because of the near impossibility of removing nuclear radiation from the atmosphere and marine environment.³³ UC's actions regarding the handling of HEU in close proximity to the people of Sandia and their life-sustaining marine environment constitutes a significant environmental risk. Therefore, UC's actions violate its duty to harmonize its policies with the regional environment.

States must evaluate how their hazardous marine activities affect regional states economically.³⁴ Chellystone's nuclear releases and UC's decision to import more HEU through the Sea of Sandia is public knowledge.³⁵ Because a significant portion of Sandia's economy depends upon tourism, Sandia's economy will suffer even with the mere threat of exposure to nuclear radiation.³⁶

³¹ *Supra* n. 25, Article 194(1), 207(3).

³² R.8.

³³ R.9.

³⁴ *Supra* n. 25, Article 207(4).

³⁵ R.10.

³⁶ Id.

As a party to UNCLOS, UC has a duty to evaluate whether a proposed activity harmonizes with its neighbors and whether that activity violates UC's international legal obligations to protect and preserve the marine environment. UC violated these obligations by operating Chellystone next to the marine environment and intending to ship HEU through the narrow waters of the Sea of Sandia. Therefore, UC should suspend operations at Chellystone until UC finds a more appropriate location. Additionally, UC should find a less hazardous method of shipping the new HEU to the new processing facility.

2. The United Commonwealth's Handling of Highly Enriched Uranium Violates the Vienna Convention on the Law of Treaties By Being Contrary to the Purpose of the Rio Declaration and the Cartagena Protocol.

The VCLT requires States to "refrain from acts which would defeat the object and purpose of a treaty" if the State "has expressed its consent to be bound" before the treaty's entry into force.³⁷ Therefore, UC is obligated under the VCLT to not defeat the object and purpose of either the Rio Declaration or the Cartagena Protocol.

People "are entitled to a healthy and productive life in harmony with nature."³⁸ Although the Rio Declaration is not binding, UC is a signatory. Therefore, UC cannot participate in any activity that is contrary to the purpose of the agreement.³⁹ The Rio Declaration's purpose is to encourage states to consider the potential environmental

³⁷ *Supra* n. 23, Article 18.

³⁸ Rio Declaration on Environment and Development, Principle 1, (adopted 13 June 1992), <<http://www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163>>.

³⁹ *Supra* n. 23, Article 18. *See also* The Texaco/Libya Arbitration, Award of 19 January 1977 17 I.L.M. 1 (1978).

effects of its activities on other States.⁴⁰ Accordingly, States should adopt the precautionary principle when their activities have the potential to cause harm to the environment.⁴¹ UC's operation of Chellystone twenty miles away from the people of Sandia and transportation of HEU through the Sea of Sandia, upon which the people of Sandia rely, contradicts the object and purpose of its obligations under the Rio Declaration.

States have the "responsibility to ensure that activities within [their] jurisdiction or control do not cause damage to the environment of other [S]tates."⁴² This reaffirms UC's obligation as a party to UNCLOS to protect and preserve the environment. The precautionary approach of principle 15 requires States to take measures to prevent irreversible damage.⁴³ The Cartagena Protocol, although not entered into force, reiterates the importance of the precautionary principle in the international community.⁴⁴

In the Communication from the Commission on the Precautionary Principle (CCPP), the Commission of the European Communities (CEC) explained how the benefits of an activity must be proportional to the risk.⁴⁵ When the risk surrounding an

⁴⁰ *Supra* n. 38.

⁴¹ *Id.*, Principle 15.

⁴² *Id.*, Principle 2.

⁴³ *Id.*, Principle 15.

⁴⁴ Cartagena Protocol of Biosafety, Preamble (29 January, 2000), <<http://www.biodiv.org/biosafety/articles.asp?lg=0&a=bsp-00>>.

⁴⁵ Commission of the European Communities, Communication from the Commission on the Precautionary Principle, Section 6.3.1 (02 February, 2000), <http://europa.eu.int/eur-lex/en/com/cnc/2000/com2000_0001en01.pdf>.

activity is too great, the proportional precautionary response is to refrain from such an activity.⁴⁶ Essentially, this creates a balancing test that weighs the risk of an activity against its utility. The risks associated with operating Chellystone with its poor safety record next to the Sea of Sandia outweigh the expense of relocating Chellystone to a more appropriate location. Furthermore, the risks associated with transporting HEU through the narrow waters of the Sea of Sandia greatly outweigh the convenience of shipping by sea. Therefore, because the risks of UC's proposed new activity greatly outweigh the utility of the activity, UC is obligated to refrain from that proposed new activity.

The CEC also emphasizes the need to protect against risks that may not have an immediate impact but could have unnoticed long term affects.⁴⁷ This applies to UC's handling of HEU because Chellystone's nuclear releases may have already had undetected adverse affects on the marine environment. The same is true with shipping vessels, which undoubtedly protect less against possible nuclear releases.

States should cooperate in the protection of the environment giving the needs of developing nations and the "environmentally vulnerable" special preference.⁴⁸

Additionally, the Rio Declaration sets forth that developed States such as UC should be

⁴⁶ Id.

⁴⁷ Id. See also The Trail Smelter Case, U.S. v. Canada, 1941, U.N. Rep. Int'l Arb. Awards 1905, 1938 (1949).

⁴⁸ *Supra* n. 38, Principle 6, 7.

very respectful of environmentally vulnerable developing States like Sandia.⁴⁹ UC's unilateral decision to ship HEU through the Sea of Sandia, as close as ten miles off Sandia's shoreline, violates the intent of the Rio Declaration.⁵⁰ Sandia's economy is based on the Sea of Sandia for fishing and tourism, making it environmentally vulnerable.⁵¹ Furthermore, sixty percent of the people of Sandia live on the east shoreline, a scant twenty miles away from Chellystone.⁵² Because HEU can have a devastating and permanent effect upon the environment, even a small nuclear release will deprive the people of Sandia of vital natural resources. Even if the likelihood of an accident is small, the risk is too great, especially considering both States agree that shipments of hazardous material such as HEU are tempting targets for terrorist attack.⁵³ The terrorist attack on the U.S.S. Cole on October 12, 2000, demonstrates the ability of terrorists with one small boat packed with explosives to deliver a devastating blow.⁵⁴ If the U.S.S. Cole were an average shipping vessel packed with tons of the most dangerous substance known to man, the result would be catastrophic. UC's unilateral decision to

⁴⁹ Id., Principle 6.

⁵⁰ R.8.

⁵¹ R.9,10.

⁵² R.7.

⁵³ R.13.

⁵⁴ Evan Thomas and Sharon Squassoni, Desperate Hours, (26 March 2001), <<http://www.msnbc.com/news/544702.asp>>.

ship HEU through the narrow waters of the Sea of Sandia contradicts the object and purpose of the Rio Declaration.

In addition to treaties and agreements, UC's hazardous activities go against the very nature of *jus cogens*. The VCLT defines *jus cogens* as "peremptory norms of general international law" from which no state can deviate.⁵⁵ *Jus cogens* embodies fundamental moral principles from which all laws of humanity stem. UC's placement of twenty-two tons of HEU close to the people of Sandia with only a narrow vulnerable body of water to separate them contradicts the entire purpose of *jus cogens*. Even if UC's handling of HEU does not violate international law, which Sandia submits it does, these actions are morally reprehensible. Essentially, the fate of the people of Sandia lies entirely in the hands of UC.

Sandia should not have to suffer the long-term consequences of UC's accident-prone handling of potentially devastating materials. The precautionary principle and *jus cogens* demand that UC use all means at its disposal to guarantee that no threat of harm to the environment exists by discontinuing the use of Chellystone. Therefore, this Court should order UC to discontinue the operation of Chellystone and find an alternative mode of transporting the new HEU.

⁵⁵ *Supra* n. 45, Article 53.

B. The United Commonwealth’s Handling of Highly Enriched Uranium Is in Violation of Customary International Law.

Customary international law obligates States to “protect and preserve” the environment.⁵⁶ The International Court of Justice established two elements of international custom: (1) State practice and (2) *opinio juris*.⁵⁷ State practice consists of a State’s pattern of behavior.⁵⁸ UC’s long history of signing treaties, conventions and agreements regarding the preservation and protection of the environment establishes state practice. To satisfy *opinio juris*, a State must recognize a legal duty to comply with established international custom.⁵⁹ UC’s previous compliance with these policies reflects UC’s understanding of its legal obligations to the international community.⁶⁰

1. The United Commonwealth’s History Demonstrates a State Practice.

States’ consistent patterns of behavior over a period of time reflect the States’ practices.⁶¹ UC established a pattern of signing treaties, conventions and agreements regarding the establishment of ecologically sound policies.⁶² The Declaration of the United Nations Convention on the Human Environment (Stockholm Agreement) was the

⁵⁶ *Supra* n. 25.

⁵⁷ See North Sea Shelf Cases, (20 February 1969), <<http://www.dal.ca/~wwwlaw/kindred.intllaw/northsea.htm>>.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ See also Lotus Case, (1927) P.C.I.J., Ser. A. No. 10.

⁶¹ Id.

⁶² R.7.

first attempt from the international community to codify a duty to “protect and preserve” the human environment.⁶³ The Stockholm Agreement emphasizes States’ need to take “more than prudent care” when activities have the potential to cause environmental harm.⁶⁴ UC and Sandia, along with many other states, recognized the growing importance to protect the human environment by demonstrating their commitment to protecting the environment for future generations by signing UNCLOS in 1982.⁶⁵ UC and Sandia reaffirmed these commitments in the following two decades by signing the Cartagena Protocol and the Rio Declaration.⁶⁶ Although the Cartagena Protocol is not yet in force, UC did sign this agreement, along with the Rio Declaration, all of which emphasize the need to adhere to the precautionary principle.⁶⁷

The precautionary principle is not limited to the agreements mentioned above but is emerging in a variety of international agreements concerning all aspects of the human environment. For example, the Convention on Climate Change, the Convention for the Protection of the Marine Environment of the North-East Atlantic and the 1996 Protocol to the London Dumping Convention States all incorporate the precautionary principle.⁶⁸

⁶³ *Supra* n. 25.

⁶⁴ *Supra* n. 22, Preamble, Principle 7.

⁶⁵ R.7.

⁶⁶ R.7.

⁶⁷ *Supra* n. 44, Preamble, Article 1.

⁶⁸ Report to the Secretary General of the United Nations on the Work of the Commission on Sustainable Development, “*Rio Declaration on Environmental Development: Application and Implementation*,” (7-25 April, 1997), <Gopher://gopher.un.org/00/esc/cn17/1997/off/97--8.en>.

Additionally, the CEC has integrated the precautionary principle into “the fields of environmental protection” and human health.⁶⁹ These treaties, conventions, and agreements demonstrate that the international community has accepted the precautionary principle as a customary norm. UC has acknowledged its awareness of this acceptance. Furthermore, as a member of the International Atomic Energy Agency, and a contracting party to the Convention on Nuclear Safety and the Joint Convention of Spent Fuel Management and on the Safety of Radiological Waste, UC attempted to conform to the commitment to safety in the context of nuclear materials.⁷⁰ The cumulative affect of these commitments demonstrates that UC’s actions affect States, especially when nuclear material is involved. Therefore, this Court should require UC to cease operation of the Chellystone facility and find an alternative mode of transporting the new HEU.

2. The United Commonwealth’s Prior Adherence to Rules of International Law Establishes Its Acknowledgement of an Obligation Under Customary International Law.

The International Court of Justice defines *opinion juris* as a State’s compliance with customary international legal obligations due to recognition of those obligations.⁷¹ Because UC conducted an EIA before opening Chellystone and then closed Chellystone after several nuclear releases, UC acknowledged its affirmative legal duty to conduct an EIA under the treaties, conventions, and other agreements to which it is a party.⁷² In a

⁶⁹ *Supra* n. 45, Section 3.

⁷⁰ R.7.

⁷¹ *Supra* n. 34. *See also Paquete Habana*, 175 U.S. 677, 20 S.Ct. 290, 44 L.Ed. 320 (1900).

⁷² R.8,9.

letter dated 5 September 2002, UC acknowledged its duty to comply with these international legal obligates principles when it claimed to have fulfilled its duties as required by the UNCLOS.⁷³ Furthermore, UC's submission of the Special Agreement to the International Court of Justice further demonstrates UC's understanding of its obligation to the international community.⁷⁴ Therefore, UC's compliance with international norms demonstrates UC's recognition of its legal obligations under customary international law.⁷⁵

Although UC has recognized its obligations to "protect and preserve" the environment under international law, UC has not fulfilled its obligations to the extent required by the treaties, conventions, agreements and customary international law discussed above.⁷⁶ Because Sandia is a mere twenty miles away, an off-site nuclear release will eventually flow into Sandia's territorial waters. Sandia should not have to wait until a major accident such as Chernobyl before UC considers the devastating health and economic impacts of its activities on Sandia. To that end, UC and Sandia must cooperate to evaluate how UC's handling of HEU will effect the environment. Therefore, this Court should require UC to cease handling HEU in a manner inconsistent with its international legal obligations.

⁷³ R.11,12,13.

⁷⁴ R.4.

⁷⁵ See The Asylum Case, Colombia v. Peru, 1950 I.C.J. 266, 1950 WL 10.

⁷⁶ *Supra* n. 25.

II. The United Commonwealth has a Duty to Conduct an Environmental Impact Assessment in Cooperation with the Republic of Sandia.

The VCLT requires a good faith treaty interpretation “in the light of its object and purpose.”⁷⁷ Interpretations may derive from the text and intent of the document but not lead to a “manifestly absurd or unreasonable” result.⁷⁸ Additionally, States must “refrain from acts which would defeat the object and purpose of a treaty” if the State “has expressed its consent to be bound” before the treaty’s entry into force.⁷⁹ Through their actions, UC and Sandia expressed consent to be bound by becoming parties or signatories to numerous conventions and treaties related to environmental protection. Among others, these treaties include: the Vienna Convention on the Law of Treaties (VCLT), the United Nations Convention on the Law of the Sea (UNCLOS), the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), the International Atomic Energy Agency’s Convention on Nuclear Safety (CONS), and the Convention on Biological Diversity (COBD). While UC and Sandia clearly must follow the binding international legal obligations of each treaty and convention, the applicability of the Espoo Convention and CONS require special clarification.

UC and Sandia must fulfill their obligations under the Espoo Convention because to do otherwise would violate international legal obligations. As parties to the

⁷⁷ *Supra* n. 23, Article 31. *See also* Case Concerning Oil Platforms, Islamic Republic of Iran v. U.S., (Preliminary Objection) Judgment of the I.C.J. of 12 December 1996.

⁷⁸ *Supra* n. 23, Article 32.

⁷⁹ *Id.*, Article 18.

convention, UC and Sandia are obligated to implement the convention's provisions.⁸⁰ To the extent the Espoo Convention has not entered into force, UC and Sandia have a good faith obligation to "refrain from acts which would defeat" the convention's purpose.⁸¹ The Espoo Convention's purpose is to assess the environmental impact of certain proposed new activities through cooperative environmental protection, especially in a transboundary context.⁸² It achieves this purpose, in part, by obligating States to consult and conduct cooperative EIAs before engaging in a proposed new activity. Accordingly, this Court should require UC in good faith to consult and conduct a cooperative EIA with Sandia to avoid defeating the Espoo Convention's purpose.

UC and Sandia must fulfill their obligations under CONS because Chellystone should be defined as a "nuclear installation."⁸³ CONS requires States to safeguard dangerous radioactive materials at nuclear installations. It defines a nuclear installation as "any land-based nuclear power plant ... including such storage, handling and treatment facilities for radioactive materials as are on the same site and are directly related to the operation of the nuclear power plant."⁸⁴ This definition must be assessed in light of CONS three clear purposes: (1) promotion of nuclear safety through international

⁸⁰ R.7.

⁸¹ *Supra* n. 23, Articles 18, 31.

⁸² Convention on Environmental Impact Assessment in a Transboundary Context, Preamble (adopted on 25 February 1991), <<http://sedac.ciesin.org/pidb/texts/environmental.impact.assessment.1991.html>>.

⁸³ Convention on Nuclear Safety, Article 2(i) (adopted on 17 June 1994), <<http://www.iaea.or.at/worldatom/Documents/Infcircs/Others/inf449.shtml>>.

⁸⁴ Id.

cooperation; (2) establishment of defenses against “harmful effects of ionizing radiation;” and, (3) prevention of radiological accidents and mitigation of their harmful effects.⁸⁵

These purposes clarify CONS’s definition of nuclear installation.

First, Chellystone is a civil installation. Its operation supplies fuel for nuclear power plants that in turn supply almost 40 percent of UC’s power.⁸⁶ Nothing in the Record, except UC’s unilateral assertion, indicates that Chellystone operates as a military installation. If this Court identifies Chellystone as military, UC could bypass its international legal obligation under CONS by merely labeling any of its nuclear installation as military. Such a precedent would allow any State to unilaterally label any nuclear installation as military and avoid the States’ international legal obligations under CONS. This would be a “manifestly absurd and unreasonable” interpretation which would defeat the “object and purpose” of the convention by allowing States to circumvent their obligations.⁸⁷ Therefore, this Court should find that Chellystone is a civil installation.

Second, Chellystone stores and handles radioactive material.⁸⁸ Chellystone’s existence relates to the operation of nuclear power plants.⁸⁹ However, Chellystone is not

⁸⁵ Id., Appendix III.

⁸⁶ R.7.

⁸⁷ *Supra* n. 23, Article 31.

⁸⁸ R.8.

⁸⁹ Id.

located “on the same site” as a nuclear power plant.⁹⁰ Regardless, Chellystone’s location alone should not in good faith negate UC’s international legal obligations under CONS. If this Court construes “on-site” as an indispensable and inflexible controlling standard, UC could simply avoid its legal obligations under the entire convention by removing storage, handling or treatment facilities to another location.⁹¹ This precedent would encourage States to fracture nuclear installations into component parts, and thereby increase, instead of decrease, the safety risks associated with storage and transportation. Such an interpretation violates the object and purpose of CONS.⁹² Therefore, this Court should find that Chellystone qualifies as a nuclear installation within the scope of CONS object and purpose.

A. The United Commonwealth’s New Activity Requires a New Environmental Impact Assessment.

Numerous conventions, treaties, and other agreements bind UC and Sandia to ensure international environmental safety. Beginning with the principles of the Stockholm Agreement, UNCLOS codified that States must cooperate to take all necessary measures to “protect and preserve” the environment for their own use and the use of other States.⁹³ To this end, the Espoo Convention, CONS, and COBD obligate UC to conduct an EIA to protect the environment.

⁹⁰ R.12.

⁹¹ *Supra* n. 83, Article 2(i).

⁹² *Supra* n. 23, Article 18.

⁹³ *Supra* n. 25, Article 193, 194(1), (2).

1. The Espoo Convention Requires the United Commonwealth to Conduct a New Environmental Impact Assessment.

States must conduct EIAs whenever they propose a major change to an activity such as the “reprocessing of irradiated nuclear fuels.”⁹⁴ This major change must be “likely to cause a significant transboundary impact.”⁹⁵ States may use three criteria to determine if a proposed activity is likely to have a significant transboundary impact.⁹⁶ First, States may consider the size of the activity.⁹⁷ Second, States may consider the location of the activity, with special consideration to environmentally important areas and the proximity to humans or to an international border.⁹⁸ Third, States may consider potentially adverse effects, including effects particularly hazardous to humans and “those which threaten the existing or potential use of an affected area.”⁹⁹

Nearly eight years after its 1994 EIA, UC accepted almost ten percent more HEU to blend at Chellystone.¹⁰⁰ UC’s transportation plans will bring two new metric tons of highly radioactive material extremely close to the borders and people of Sandia and through life-sustaining waters of the Sea of Sandia.¹⁰¹ Meanwhile, both Chellystone and

⁹⁴ *Supra* n. 82, Article 3.

⁹⁵ *Id.*

⁹⁶ *Id.*, Appendix III.

⁹⁷ *Id.*, Appendix III(1)(a).

⁹⁸ *Id.*, Appendix III(1)(b), (2).

⁹⁹ *Id.*, Appendix III(1)(c).

¹⁰⁰ R.9.

¹⁰¹ *Id.*

the proposed shipments labor under an increased threat of terrorist attack.¹⁰²

Additionally, since the last EIA, Chellystone experienced four nuclear releases, which required the installation to close for nearly six months.¹⁰³ Another nuclear release in or near the sea could irreparably devastate the people and economy of Sandia.¹⁰⁴ All of these factors demonstrate a major change to Chellystone and prove that the proposed new activity is “likely to cause a significant adverse transboundary impact.”¹⁰⁵ Therefore, this Court should requires UC to conduct a new EIA.

2. The Convention on Nuclear Safety Requires the United Commonwealth to Conduct a New Environmental Impact Assessment.

States must reevaluate “all site-related safety factors” throughout the lifetime of a nuclear installation “to ensure the continued safety” to “individuals, society and the environment.”¹⁰⁶ These reevaluations must be made “in light of operating experience and significant new safety information.”¹⁰⁷ Chellystone’s HEU increase of nearly 10 percent, new ocean shipping route, and four nuclear releases coupled with the increased threat of

¹⁰² R.13,14.

¹⁰³ R.8,9.

¹⁰⁴ Former I.C.J. Justice C.G. Weeramantry observed that “tremendous pollution of the ocean” could cause significant adverse affects to biological diversity by leading “to the extermination of some life forms and to the permanent detriment of others.” Such an extermination or permanent detriment to biodiversity will adversely affect Sandia’s fishing industry. Justice C.G. Weeramantry, Nuclear Weapons and International Law, 9 MSU-DCL 3. Int’l L. 255 (Summer 2000).

¹⁰⁵ *Supra* n. 82, Article 3(1).

¹⁰⁶ *Supra* n. 83, Article 17(ii), (iii).

¹⁰⁷ Id., Article 14.

terrorist attack qualify as new operating experiences and significant new safety concerns since UC's last EIA in 1994.¹⁰⁸ Although CONS does not use the terminology "environmental impact assessment," its requirement to reevaluate "all site-related safety factors" for impact on "society and the environment" acts as the functional equivalent of an EIA.¹⁰⁹ Therefore, this Court should find that, essentially, CONS requires UC to conduct a new EIA.¹¹⁰

3. The Convention on Biological Diversity Requires the United Commonwealth to Conduct a New Environmental Impact Assessment.

States must, "as far as possible and appropriate," conduct EIAs for activities "likely to have significant adverse transboundary effects on biodiversity."¹¹¹ Further, States should act to "avoid or minimize" the threat of possible damage on biological diversity.¹¹² Chellystone's HEU increase of nearly ten percent, new ocean shipping route, and four nuclear releases coupled with the increased possibility of terrorist attack¹¹³ comprise a threat "likely to have a significant adverse effect[] on biological diversity"¹¹⁴

¹⁰⁸ R.8,9.

¹⁰⁹ *Supra* n. 83, Article 17(iii).

¹¹⁰ See Trail Smelter Case, U.S. v. Canada, 1941, U.N. Rep. Int'l Arb. Awards 1905, 1938 (1949).

¹¹¹ *Supra* n. 83, Article 14(1)(a).

¹¹² Convention of Biological Diversity, Preamble (first ordinary meeting 9 December 1994), <<http://www.biodiv.org/convention/articles.asp?lg=0&a=cbd-14>>.

¹¹³ R.8,9.

¹¹⁴ *Supra* n. 83, Article 14(1)(a).

on the environment.¹¹⁵ UC proved that an EIA was “possible” when it conducted one in 1994.¹¹⁶ Because the possible inconvenience of conducting another EIA is insignificant when compared with the devastating nature and impact of a nuclear release upon a biologically diverse environment that sustains the people of Sandia, a new EIA appropriate. Therefore, this Court should find that UC must conduct a new EIA because it is possible and appropriate.

B. The United Commonwealth Must Consult with the Republic of Sandia to Conduct an Environmental Impact Assessment.

The VCLT recognizes cooperation between States and good faith resolution of disputes.¹¹⁷ To this end, the Espoo Convention, CONS, and COBD obligate UC to cooperate and consult with Sandia before conducting an EIA.

1. The Espoo Convention Requires the United Commonwealth to Consult with the Republic of Sandia Regarding a New Environmental Impact Assessment.

States affected by the proposed activities of other States may participate in the requisite EIA.¹¹⁸ An affected State is one likely affected by the transboundary impact of a proposed activity.¹¹⁹ A “transboundary impact” means any impact” arising in one State

¹¹⁵ *See Supra* n. 104.

¹¹⁶ R.8.

¹¹⁷ *Supra* n. 23, Article 31.

¹¹⁸ *Supra* n. 82, Article 3(3).

¹¹⁹ *Id.*, Article 1(iii).

and affecting “the jurisdiction of another.”¹²⁰ This impact includes any environmental effect relating to socio-economic conditions.¹²¹

Because UC’s proposed new activity requires a new EIA, UC must consult with affected States that wish to participate in the preparation of a new EIA. The operation of Chellystone adversely affects Sandia’s tourism industry and it will further adversely affected by UC’s proposed new activity.¹²² Sandia wishes to participate in the preparation of a new EIA.¹²³ Therefore, this Court should require UC to consult with Sandia in the preparation of a new EIA.

2. The Convention on Nuclear Safety Requires United Commonwealth to Consult with the Republic of Sandia Regarding a New Environmental Impact Assessment.

To promote nuclear safety, States with nuclear installations must consult other “States in the vicinity.”¹²⁴ This requirement serves two purposes. First, it protects States possessing a nuclear installation by obligating them to prepare and regularly test “off-site” emergency plans.¹²⁵ Second, it protects neighboring States by obligating them to take appropriate steps to prepare for a “radiological emergency.”¹²⁶ These obligations

¹²⁰ Id., Article 1(viii).

¹²¹ Id., Article 1(vii).

¹²² R.10.

¹²³ Id.

¹²⁴ *Supra* n. 82, Article 16(2).

¹²⁵ Id., Article 16(1).

¹²⁶ Id., Article 16(3).

must be read in the light of the purpose of CONS—to promote international cooperation and advance “fundamental safety principles.”¹²⁷

Sandia is only twenty miles “off-site” across a narrow sea from Chellystone.¹²⁸ Sandia’s economy depends significantly upon the sea.¹²⁹ Because a nuclear release could permeate the water and land of Sandia, UC and Sandia must take appropriate steps to prevent or mitigate damage from another nuclear release. Sandia cannot realistically plan for a “radiological emergency” without discussing its environmental impact with UC.¹³⁰ Additionally, UC cannot make “off-site” emergency plans without consulting its close neighbor Sandia.¹³¹ Therefore, to fulfill both States’ obligations with regard to emergency preparedness, this Court should require UC to consult with Sandia in preparation of a new EIA.

3. The Convention on Biological Diversity Requires the United Commonwealth to Consult with the Republic of Sandia Regarding a New Environmental Impact Assessment.

States engaged in activities “likely to cause significant adverse effects to biological diversity” must, “as far as possible and as appropriate,” notify, exchange information, and consult with other likely affected States.¹³² The notification,

¹²⁷ *Id.*, Preamble (vi), (vii).

¹²⁸ R.2.

¹²⁹ R.9-10.

¹³⁰ *Supra* n. 82, Article 16(3).

¹³¹ *Id.*, Article 16(1).

¹³² *Supra* n. 112, Article 14(1)(c).

information exchange, and consultation include issues of liability and redress for possible damage to biological diversity.¹³³

All of UC's obligations stemming from its proposed new activity under COBD must be possible and appropriate.¹³⁴ UC proved that an EIA was "possible" when it conducted one in 1994.¹³⁵ The issue of appropriateness cannot be solved by UC's unilateral and unfounded assertion that its actions are "appropriate" without regard for the well-being of Sandia as a State likely affected by UC's potentially harmful actions.¹³⁶ Instead, the appropriateness of UC's actions should account for the potential harm to the environment weighed against the inconvenience of consultations between UC and Sandia.

UC's proposed new activity potentially devastates Sandia. Sandia's economy depends heavily upon fishing and tourism.¹³⁷ A nuclear release could devastate the biological diversity of the sea, and of the small island State, by destroying the means for the people of Sandia to make a living.¹³⁸ Accordingly, this possibility of harm requires notification, information exchange and consultations for issues of liability and redress.¹³⁹

¹³³ *Id.*, Article 14(1)(a).

¹³⁴ *Id.*, Article 14.

¹³⁵ R.8.

¹³⁶ R.12.

¹³⁷ R.9-10.

¹³⁸ *See Supra* n. 104.

¹³⁹ *Supra* n. 112, Article 14(1)(a).

Given that consultations for assessing the environmental impact of its actions with Sandia would be at worst a minor inconvenience to a developed State like UC, and that failure to do so could devastate the biological diversity of Sandia’s waters and land, UC must follow its responsibilities under COBD and consult with Sandia. Therefore, this Court should require UC to consult with Sandia.

C. The United Commonwealth May Not Invoke a National Security Exception to Avoid Its International Legal Obligations.

States may “protect information the supply of which would be prejudicial to ... national security.”¹⁴⁰ At the same time, the Espoo Convention requires that its provisions “shall not prejudice any obligation of the [States] under international law with regard to activities having or likely to have a transboundary impact.”¹⁴¹ These two provisions, with a good faith interpretation of the object and purpose of the Espoo Convention,¹⁴² do not allow a “national security” interest to eclipse UC’s numerous international legal obligations under for at least three reasons.¹⁴³

First, supplying information to Sandia during discussions and through an EIA would not be prejudice UC’s “national security” interest.¹⁴⁴ Sandia has a vital interest in maintaining the highest possible security to Chellystone and to the vessels full of HEU

¹⁴⁰ *Supra* n. 82, Article 2(8).

¹⁴¹ *Id.*, Article 2(10).

¹⁴² *Supra* n. 23, Article 31.

¹⁴³ *Supra* n. 82, Article 2(8).

¹⁴⁴ *Id.*, Article 2(8).

that pass close to Sandia's shoreline.¹⁴⁵ Any nuclear release, from terrorists attack or operational carelessness, would devastate the people, resources, and economy of Sandia. Accordingly, Sandia has at least as great an interest in the safety of Chellystone and the shipments of HEU as UC. Therefore, Sandia would maintain the privacy of any information and would not prejudice UC's "national security."¹⁴⁶

Second, UC's assertion of a "national security" interest would violate its international legal obligations.¹⁴⁷ To claim "national security" necessarily disallows consultation and cooperation with Sandia in an EIA in violation of numerous legally binding international obligations, including COBD. Such an interpretation would be "manifestly absurd or unreasonable."¹⁴⁸ The Espoo Convention's requirement for cooperation and environmental safety would be violated. CONS's obligations for safety and cooperation would be violated. COBD's requirements to protect biological diversity and mitigate damage to the environment would be violated. Therefore, UC cannot in good faith hide behind a "national security" exception to relieve its obligations under the Espoo Convention and other international legal obligations.¹⁴⁹

¹⁴⁵ R.7.

¹⁴⁶ *Supra* n. 82, Article 2(8).

¹⁴⁷ *Id.*, Article 2(8).

¹⁴⁸ *Supra* n. 23, Article 32.

¹⁴⁹ *Supra* n. 82, Article 2(8).

Finally, the only mention of a “national security” exemption in any binding treaty, convention, or other agreements comes from the Espoo Convention.¹⁵⁰ No customary legal principle recognizes a “national security” exception which might relieve a State of its international legal obligations. Accordingly, because the Espoo Convention’s “national security” language does not apply to UC, no “national security” exemption can be claimed and UC must fulfill its international legal obligations to conduct an EIA and consult with Sandia. Therefore, this Court should find that no national security concerns exist and that UC should fulfill its international legal obligation to conduct an EIA and consult with Sandia.

¹⁵⁰ Id.

CONCLUSION AND PRAYER FOR RELIEF

In consideration of the aforementioned, The Republic of Sandia requests this Court to:

1. declare that this Court require United Commonwealth to stop operations at the Chellystone processing facility in its current environmentally dangerous location, and
2. declare that United Commonwealth cannot transport highly enriched uranium through the Sea of Sandia, and
3. declare that United Commonwealth must conduct a new Environmental Impact Assessment and confer with The Republic of Sandia regarding United Commonwealth's handling of highly enriched uranium.

Respectfully submitted,

Agents for the Republic of Sandia