

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



THE ISLAMIC REPUBLIC OF NEVERLAND
APPLICANT

V.

THE REPUBLIC OF TOMORROWLAND
RESPONDANT

MEMORIAL FOR THE APPLICANT

2ND SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT COMPETITION,
2018

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- ❖ http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

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STATEMENT OF JURISDICTION

On behalf of the Islamic Republic of Neverland ("the Applicant"), the Republic of Tomorrowland ("the Respondent"), in accordance with Article 40 (1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Compromis for submission to the International Court of Justice of the Differences Concerning the Surgical Strike signed in The Hague, The Netherlands, on the Tenth day of February in the year Two Thousand and Eighteen.

STATEMENT OF ISSUES

- ❖ Tomorrowland's surgical strike was a clear violation of sovereignty and integrity of Neverland.
- ❖ Tomorrowland is liable to pay compensation for their acts of aggression resulting in loss of environment and loss of life
- ❖ Pace future agreement was violated due to the surgical strike carried out by the Republic of Tomorrowland.

STATEMENT OF FACTS

- Tomorrowland and Neverland are two conflict infested countries in South Krasia with a volatile history.
- On 10th December 2010, an agreement to ceasefire and to maintain a Line Of Control also known as Pace Futura Agreement was signed by leaders of both countries which banned any armed activity at border, prohibited illegal infiltration and strictly provided to Maintain Line Of Control.
- On September 18, 2016, militants from Neverland crossed the borders and attacked Tomorrowland army's brigade headquarters at Purvi, and killed 35 soldiers and 10 civilians during the ambush. The attack came after two months of extreme unrest in Taimur caused due to killing of one of the Deputy Commanders of Kal Fayda named 'Kala Khatoon' in an encounter with Tomorrowland Security forces. The Tomorrowland Prime Minister issued a public statement directly accusing Neverland responsible for Purvi attacks and pledged to avenge the same.
- Ten days after the Purvi attack, on September 29, 2016 the Tomorrowland army carried out a military raid in Neverland occupied part of Taimur, targeting launch pads along the Line of Control, the de facto border between Tomorrowland and Neverland. A Tomorrowland soldier was captured by the Neverland army the next day, but it was claimed that he inadvertently crossed the border and that his capture was unrelated to the 'surgical strikes' conducted the night before.
- On September 30, 2016, the Director General of Military Operations (GDMO) of Tomorrowland, Dr. Gurmeet Singh Arora issued a statement confirming the Surgical Strike.
- On October 1, 2016, The Minister for External Affairs, Neverland, Mr. Adaab Jamura issued a counter-statement refuting Tomorrowland's claims of Surgical Strike
- The United Nations Secretary General, Mr. Chand Nawab, issued a statement that, The UN observer group noticed heavy bombing in 'Kutchi Gudi', a resource rich region which was greatly obliterated. Later on On October 9, 2016, , The Minister for External Affairs, Neverland, Mr. Adaab Jamura, once again issued a statement confirming the Surgical Strike on a deeper investigation.
- On December 12, 2016, the Neverland instituted arbitral proceedings against the Tomorrowland
- On June 2, 2017, the Neverland instituted proceedings against the Tomorrowland

Summary of arguments

1. Whether Tomorrowland's surgical strike was breach of Neverland's sovereignty or an act of self defence?

On 29 sept 2016 Tomorrowland's army carried out a military raid in Neverland's occupied part of Taimur, targeting the launch pads along the line of control. The Republic of Tomorrowland have violated the territorial sovereignty of Neverland under Article 2 (4) UN charter, all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. Tomorrowland has blatantly violated this article by entering into the territorial sovereignty of Neverland's, without any valid ground. Tomorrow land has also damaged the natural resources surrounding the village 'kutchi-gudi' which was the major economic source of Neverland's income.

2. Whether Tomorrowland is liable to pay compensation for their acts of aggression resulting in loss of environment and loss of life?

Tomorrowland blatantly violated the principles of UDHR and various environmental treaties signed and ratified by them. It is quite evident from the reports of the United Nations observer group that Their was an exchange of heavy bombing at Kutchi Gudi which demolished the environmental harmony and livelihood there.

Hence Tomorrowland is liable to pay off the reparations to Neverland for the damages created by them.

3. Whether Tomorrowland violated the Pace Futura Agreement or not?

It is quite evident from the scenario that the Pace Futura agreement was shredded apart by the illicit acts of Tomorrowland which obliterated economic and environmental harmony of the region.

Tomorrowland have violated articles 4,5 and 6 of the Pace Futura agreement, furthermore provisions of UDHR and certain major environmental laws were violated by the Republic of Tomorrowland. Therefore it can be safely inferred that Tomorrowland violated the Pace Futura agreement by showcasing its dictatorial approach in international matters

Arguments advanced

❖ **Tomorrowland's surgical strike was a clear violation of sovereignty and integrity of Neverland.**

Sovereignty is the full right and power of a governing body over itself, without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme authority over some polity. It is a basic principle underlying the dominant Westphalian model of state foundation.

Neverland, officially the Islamic republic of Neverland, is yet another country in South Krasia.

Tomorrowland's surgical strike was an act of violation of territorial sovereignty. Neverland is the separated part of Tomorrowland. When Tomorrowland got independence Muslim community were minority, therefore they decided to form an, All Tomorrowland Muslim League and demanded a separate country for Muslims.

The relations between Tomorrowland and Neverland are highly volatile as Tomorrowland habitually makes allegation and distasteful comments against Neverland whenever there are militant attacks on Tomorrowland. In a fit of rage and recklessness Tomorrowland conducted a coordinated military strike on the sovereign grounds of Neverland. In Neverland's initial investigation, Neverland did not find any evidence of surgical strike. But after the official statement made by United Nation Secretary General, Mr Chand Nawab, regarding the findings of UN Observer Group in Neverland occupied Taimur who noticed that there was a heavy exchange of firing and Bombs were exploded especially in the village of 'Kutchi-Gudi' near the border. The Kutchi-Gudi village was spanned roughly over eight Kilometres & was one of the villages carrying rich natural resources from coals to crude oil. Many foreign investors who invested in the local coal and oil businesses went bankrupt overnight. Besides this, the village was also adjacent to one of the major rain-forest valleys in the region. Due to heavy bombings, the whole village was set on fire and the adjacent rain-forest valley was totally demolished causing a huge environment devastation and enormous loss not only to the Neverland's but to the World. UN Observers were saddened to watch the catastrophic effect of the attacks and condemned it strongly. United Nations cautioned the States that deviates from its behaviour to be aware of the legal consequences at the international forum.

after this statement Neverland conducted second investigation and it found strong evidences of aggression attacks in the area of Neverland occupied Taimur, especially affecting the 'Kutchi-gudi' area which is indeed an natural resources rich, the said area was pummeled and obliterated exponentially.

Tomorrowland .has breached Article 2 (4) UN charter which states that All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues. A war of aggression constitutes a crime against the peace, for which there is responsibility under international law. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

Neverland strongly condemned the unprovoked and naked aggression of Tomorrowland's forces resulting not only loss of lives but also destruction of natural resources. So what Tomorrowland did was not a surgical strike but unprovoked and naked act of aggression. What Tomorrowland termed as its operation along LoC a surgical strike is duly denied by Neverland and termed that an act of aggression.

Article 1 of 'definition of aggression' adopted by UNGA says that "Aggression is the use of force by a State against the sovereignty, territorial integrity or political independence of another State. The First use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression. Use of any weapons by a State against the territory of another State or an attack by the armed forces of a State on the land of another State constitutes an act of aggression.

In the landmark case :

Democratic Republic of the Congo v. Uganda

On 23 June 1999, the Democratic Republic of the Congo (DRC) instituted proceedings against Uganda in respect of a dispute concerning acts of armed aggression perpetrated by Uganda on the territory of the DRC, in violation of the United Nations Charter and of the Charter of the Organization of African Unity.

On 15 December 2005, the Court found that Uganda violated the principles of non-use of force in

international relations and of non-intervention, that it violated its obligations under international human rights law and international humanitarian law, and that it violated other obligations owed to the DRC. The Court additionally found that the DRC in turn violated obligations owed to Uganda under the Vienna Convention on Diplomatic Relations of 1961. Again in the case of DRC v. Uganda (or Armed Activities), Court aptly interpreted Art. 51 of the Charter and concluded that right to self-defence under Art. 51 does not extend to armed attack by non-State actors.

In this case, Tomorrowland owed certain diplomatic duties towards the sovereign of Neverland which it blatantly violated by showcasing an unprovoked and aggressive surgical strike. The said strike obliterated the natural resources rich area of Kutchi-gudi which hampered business exponentially and was a complete disregard to the precious natural resources on part of Tomorrowland .This surgical strike also greatly demolished human life and is a fit example of how far Tomorrowland can stoop low to hamper the peace and sovereignty of Neverland

Furthermore both the countries agreed on the arbitration for any activity damaging the environment of border. The Neverland instituted an arbitral proceeding against Tomorrowland's and the arbitration took place at Janta garage a city in south east Prussia and capital of Kuberesia. The decision of arbitration was in . of Neverland and Tomorrowland was held liable for compensation. But the Tomorrowland didn't follow the decision.

Therefore with reference to the D.R.C v. Uganda case the council wants compensation and reparation for the vicious acts of Tomorrowland. The unjustified acts of Tomorrowland must be condemned to ensure no such acts of aggression happen in future on Tomorrowland's part.

• **Tomorrowland is liable to pay compensation for their acts of aggression resulting in loss of environment and loss of life**

The unprovoked Surgical Strike carried out by Tomorrowland on the sovereign territory of Neverland was a catastrophe. The damage caused by Tomorrowland's army personnel is blighted and irreparable. The environmental damage and the loss of human lives are strongly condemned by The Islamic Republic of Neverland. The findings of the United Nations observer group stating exchange of heavy bombing in the Kutchi Gudi area and the rainforest adjacent to it are quite evident and credible for ascertaining that the Surgical Strike was an planned attack to obliterate environment rich region of Kutchi Gudi which was an important source of livelihood for the populace of Neverland and to cause mayhem by killing and maiming the populace.

It saddens Neverland that such a blatant and unhinged act of aggression is celebrated by Tomorrowland as an accomplishment in name of surgical strike without paying any heed to loss of life and environment which was a part and parcel to this Surgical Strike

Under the protective principle which is a rule of law in International law, Tomorrowland shall be penalized as per violating the territorial sovereignty and disrupting an essential economic resource rich area of Neverland. According to the protective principle, states have the right to exercise jurisdiction over crimes against their security and integrity or their vital economic interests under international law. The jurisdiction exercised by them thus ,is known as protective principle.¹

Furthermore Tomorrowland have also violated the United Nations Framework Convention on Climate Change 1992 which was a treaty duly signed by Tomorrowland. Principles of environmental protection enshrined in Article 3 of UNFCCC states that The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country .Parties should take the lead in combating climate change and the adverse effects thereof.

Hon'ble International Court of Justice has held that the principle of prevention of environmental damage must be taken into account when interpreting the terms of the right to self-defence.²

Furthermore ,according to the customary International law of 'no-harm' rule, wherein a State is duty-bound to prevent, reduce and control the risk of environmental harm to other states. The Trail Smelter Case was also decided on the basis of this customary law of no harm principle.³ And stated that no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to

¹ Akehurst's modern introduction to International Law

² Legality of the threat or Use of weapons, ICJ Reports 1996,p.226 (legality of Nuclear weapons), para. 140

³ Trail Smelter Arbitration, RIAA, vol. 3, OP. 1905-82('Trail Smelter'),p. 1965.

the territory of another or the properties or persons therein ,when the case is of serious consequences and the injury is established by clear and convincing evidence⁴.

The Hon'ble International Court of Justice confirmed the customary nature of no harm rule in 1949, in the Corfu Channel Case⁵

Tomorrowland violated this principle also, by paying no heed to the environmental resources of Neverland and aggressively obliterated the environment rich area of Kutchi-gudi in Neverland and thus damaging the environmental harmony of fellow state. This act of non compliance with international customary laws by Tomorrowland must be condemned and punished severely.

Principle 21 of the Stockholm Declaration went beyond the simple idea of trans-boundary harm, referring also to the duty not to cause damage 'to the environment of other states or of areas beyond the limits of National jurisdiction. Tomorrowland violated this principle by engaging in the internal affairs of Neverland and damaging Human life and natural resources and hence exceeding their jurisdiction boundaries. This dictatorial approach of Tomorrowland must be condemned and dissed on the international platform and Tomorrowland must perform reparations for the environmental damage caused by them in mode of compensation.

Furthermore the unprovoked surgical strike caused mayhem resulted in loss of many lives which is genocidal in nature and is a clear violation of 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Genocide is one of the greatest crimes under international law, often called the "crime of crimes" after the Nuremburg Trials⁶. According to Article 2 of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group."⁷

⁴ Ibid.,p.1965

⁵ *Corfu Channel Case (United Kingdom v. Albania); Merits*, International Court of Justice (ICJ), 9 April 1949, available at: <http://www.refworld.org/cases,ICJ,402399e62.html>

⁶ Nuremberg judgment, France and ors v Göring (Hermann) and ors, Judgment and Sentence, [1946] 22 IMT 203, (1946) 41 AJIL 172, (1946) 13 ILR 203, ICL 243 (IMTN 1946), 1st October 1946, International Military Tribunal [IMT]

⁷ <http://www.un.org/en/genocideprevention/international-law.html>

Furthermore the Surgical Strike performed by Tomorrowland is a direct violation of Article 2 and 3 of Universal Declaration of Human Rights which states that Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty and Everyone has the right to life, liberty and security of person.

Tomorrowland violated these essential principles of UDHR by killing the populace of Neverland and causing grave mayhem. Such violent acts of aggression must be condemned on international platform by penalizing Tomorrowland for their vicious actions .

• **Pace future agreement was violated due to the surgical strike carried out by the Republic of Tomorrowland.**

Tomorrowland's unhinged surgical strike bluntly violated the Pace futura agreement. As mentioned in Article 4 of Pace Futura agreement:

“The Parties shall make every attempt to promote the respect for human rights and shall take initiatives to spread awareness on human rights”.

An important international declaration is the Universal Declaration of Human Rights, 1948(UDHR) It is an amalgamation of rights and duties regarding the humanitarian laws on an international platform. UDHR is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948⁸ as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.⁹

⁸ General Assembly resolution 217 A

⁹ <http://www.un.org/en/universal-declaration-human-rights/>

Human rights law obliges States, primarily, to do certain things and prevents them from doing others.

States have a duty to respect, protect and fulfil human rights. Respect for human rights primarily involves not interfering with their enjoyment.

Tomorrowland have blatantly violated the humanitarian laws covered under the umbrella of United Nations Declaration of Human Rights (UDHR) by illicitly entering the sovereign territory of Neverland in the name of Surgical Strike and hampering the peace and harmony by causing mayhem and taking a toll of lives of Neverland's populace.

Articles 2 and 3 of the UDHR are majorly violated here by Tomorrowland as they have completely ignored their duty to respect human life and took a toll of civilians life in the pursuance of their surgical strike. The exchange of heavy bombing near the kutchi gudi area as reported by MR. Chand Nawab is an evident proof of the same. Therefore Tomorrowland must pay the reparations for their naked acts of aggression which took a toll of civilians life in Neverland.

Furthermore Tomorrowland have violated Article 5 of Pace Futura agreement which states that "The Parties must take measures to ensure that their territories should not be used in a way as to detriment the interests of the other state."

Tomorrowland have blatantly violated two of the most important declarations on international law which are

- The Declaration of the United Nations Conference on the Human Environment¹⁰: - This declaration represented a first major attempt at considering the global human impact on the environment, and an international attempt to address the challenge of preserving and enhancing the human environment. The Stockholm Declaration espouses mostly broad environmental policy goals and objectives rather than detailed normative positions. The UN website provides introductory information, procedural history and preparatory documents associated with the Declaration, as well as the full text of the Declaration.
- The Rio Declaration on Environment and Development¹¹ was a short document produced at the 1992 United Nations Conference on Environment and Development (UNCED), known as the Rio Earth Summit. The Rio Declaration consists of 27 principles intended to guide future sustainable development around the world.

Tomorrowland have signed both these declarations and even ratified the Rio Declaration on Environment and Development. Yet they obliterated and destroyed the environment rich region of kutchi-gudi in

¹⁰ the 1972 Stockholm Declaration (UN Doc. A/CONF/48/14/REV.1 (1972)

¹¹ UN Doc. A/CONF.151/26 (vol. I)

Neverland which is not only saddening for Neverland but is a global loss to environment. Their reckless Surgical Strike took a toll of the Kutchi gudi area, the rainforest adjacent to it and to the occupations of local business persons. Such a shameful act of Tomorrowland must be penalized and must provide reparations to Neverland for the damaged caused by their army personnel.

Tomorrowland has breached Article 6 of the Pace Futura agreement which states that

“In any case of dispute as to the application of the provisions of this treaty arises, any of the party may bring the matter before any negotiation or arbitration proceedings. The decision of the Arbitration Panel shall be binding on parties.

As an aftermath to the grave damages caused by Tomorrowland on the sovereign territory of Neverland, the latter decided to initiate an arbitral proceeding in ‘Janta Garage’ to which Tomorrowland readily agreed. Just before 10 days of proceedings, Tomorrowland refuted to be a part of arbitral proceeding by stating an arbitrary excuse of bribery by Neverland to Arbitrators. Nevertheless the arbitration decision was in favor of Neverland and the arbitration court on April 12, 2017, commenced the award in favour of Neverland and asked the Tomorrowland to hand over 1 billion USD as compensation to the Neverland. Tomorrowland refused to follow the decision delivered by the Arbitration panel and hence violated Article 6 of the Pace Futura agreement, as it was a ground condition for both the parties to sought arbitration in case of any discrepancies if ever occurred

Tomorrowland have violated the international principle of "PACTA SUNT SERVANDA"¹² which states, that ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith’ Tomorrowland clearly violated the agreement of Pace Futura by sorting to unnatural acts of aggression¹³, hampering lives of citizens of a fellow state, obliterating the economic rich resources of Neverland and by not following the decision issued by the Arbitral court.

It is humbly pleaded before Hon’ble International Court of Justice to condemn such dictatorial approach of Tomorrowland by penalizing Tomorrowland and to make reparations for the catastrophic damages created by them.

¹² Article 26 of The Vienna Convention on Law of Treaties

¹³ United Nations General Assembly 3314

PRAYER FOR RELIEF

In light of the above mentioned facts , arguments advanced and authorities cited , it is most humbly prayed before this Honourable Court

- ❖ The unjustified act of Tomorrowland must be condemned to ensure no such acts of aggression happens in future on Tommorowwland,s part.
- ❖ Tomorrowland must compensate Neverland for the irreparable damage to the natural resources of ‘Kutchi Gudi’ region in Neverland.

And further may grant any othr order in the ends of justice,equity and good conscience

RESPECTFULLY SUBMITTED

AGENTS OF APPLICANT