

CASE ON 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 RESPONDENT

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

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- ❖ <https://www.icj-cij.org/en>
(last accessed on 24th October 2018, 7.30 AM)
- ❖ http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
(last accessed on 24th October 2018, 9.00 pm)

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 an act of self defense
- ❖ The Republic of Tomorrowland is not liable to pay compensation to the Neverland
- ❖ The Islamic Republic of Neverland has violated the “Pace-Futura” agreement, by regularly indulging in illicit infiltration activities.

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 Khaton' 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

- Whether Tomorrowland's surgical strike was breach of Neverland's sovereignty or an act of self defense?

Tomorrowland's military surgical strike on valleys of Neverland's is undoubtedly an act of self defense as article 51 of UN charter clearly states that Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. In this case the well coordinated surgical strike was to uproot the terrorists and militants who were infiltrating Tomorrowland's sovereign. It was an surgical strike against the terrorists rather than against the sovereign country of Neverland.

- Whether Tomorrowland should pay for the damages claimed by Neverland or not?

Tomorrowland must not fall prey to the dubious approach framed by Neverland to extort monetary gains. The deceitful nature of Neverland can be ascertained by the conflicting approach of Neverland on claiming Surgical Strike. Furthermore the army personnel never reported of any environmental damage and the surgical strike was targeted on the terrorist launch pads rather than the environment or the civilians of the Neverland.

- Whether Neverland violated the Pace Futura Agreement or not?

Neverland blatantly violated the Pace Futura agreement as it violated Articles 1, 2 and 3 of the Pace Futura agreement. Furthermore Neverland have breached the principle of non intervention. Lastly Neverland have violated the principle of Pacta Sunt Servanda

ARGUMENTS ADVANCED

• Tomorrowland's Surgical strike was an act of self defense

TOMORROWLAND, officially the Republic of Tomorrowland, is a country in South Krasia. It has shared a violent and rough history with its neighbouring country Neverland, which was formed after independence of Tomorrowland from the British raj. Neverland is a separated part of Republic of Tomorrowland, and is a Muslim dominant country. Neverland has now and then taken violent measures to claim the territory of Taimur as their sovereign territory which is a part of Tomorrowland's sovereign. Since independence 4 wars have been fought between Neverland and Tomorrowland.

It is no hidden fact that Neverland is a hub and a breeding ground of terrorism on global basis. As per the findings of leading international daily 'Epoch Times', it was found that Neverland is the host country of deadliest militant organizations in the world. The report claimed that Neverland was a perfect hide out and a capacious

home to the "Kal Fayda", one of the world's most dangerous terrorist organizations which carried out some of the worst various terrorist attacks in some powerful nations and is especially targeting to liberate Taimur from the Tomorrowland. Surprisingly the report emphasized that on various occasions, the terrorists easily cross the borders and infiltrate in the territory of Tomorrowland with the help secretly rendered by the Neverland Military officials. The report steered worldwide controversy over the activities of Neverland.

Also in 2008, a standoff between the two nations took place as a result of highly planned and coordinated terrorist attack which took place in the capital of Tomorrowland Pace- Futura. The extreme brutality of said attack took toll of 307 civilians lives. This resulted in heightened tensions between the two nations as Tomorrowland firmly believed that it was Neverland on whose instructions this terrorism brutality took place. Neverland placed its air force on alert and moved troops to the Border voicing concerns over provocative movements of Tomorrowland Army. However the tensions defused in short time and Neverland moved its troops from border and peace was restored.

The peace was short lived as various reports revealed the illegal infiltration of militants from Neverland to Tomorrowland on regular basis. The Prime Minister of Tomorrowland invited the President of Neverland to talk over these issues at Pace-Futura. The two leaders did meet at Pace-Futura on 10th December, 2010 and an Agreement to ceasefire and to Maintain a Line of Control "The Pace Futura Agreement" was signed which banned any armed activity at the border, prohibited illegal infiltration and strictly provided to maintain a line of control.

On September 18, 2016, militants from Neverland crossed the borders and attacked the Tomorrowland army's brigade headquarters at Purvi, a small village near the border 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.

10 days after the vicious attacks on Purvi, on September 29, 2016 the Tomorrowland army carried out a coordinated military raid in Neverland occupied part of Taimur targeting launch pads along the Line of Control, the de facto border between Tomorrowland and Neverland.

On September 30, 2016, the Director General of Military Operations (GDMO) of Tomorrowland, Dr. Gurmeet Singh Arora issued a statement stating that the Tomorrowland Military carried out well coordinated military surgical strike by eliminating at least 67 militants among whom several were members of Neverland armed forces. The operation was basically focused to ensure that these terrorists do not succeed in their design of infiltration.

This surgical strike was a completely justifiable action on Tomorrowland's part due to following reasons:-

- The past history of both nations is that of a violent nature. Neverland has now and then unjustifiably attacked the sovereignty of Tomorrowland with the aid of terrorism and therefore being a constant threat to the security and integrity of the nation. The brutal militant attack on Purvi headquarters of Tomorrowland and other past events were enough for Tomorrowland to anticipate the ill motives of Neverland, hence the surgical strike to demolish the launching pads of terrorists was an act of self defense to protect the sovereign of Tomorrowland from unauthorized infiltration of terrorists from Neverland.
- Article 51 of United Nations charter defines self defense as 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.' In this case Tomorrowland's surgical strike was direct method of self defense as to counterattack the unauthorized infiltration from the terrorist launch pads located in Neverland occupied Taimur.
- The use of force on Tomorrowland's part was justified and not unnatural aggression as the surgical strike was not an act of unprovoked nature rather it was an act to eliminate the breeding terrorism on the

grounds of Neverland occupied Taimur. Therefore it is clear that it was an act of self defense rather than unnatural aggression.

➤ Furthermore Tomorrowland's surgical strike falls under the customary rule of International Humanitarian Law of 'Necessity and Proportionality'¹. This principle of Necessity and Proportionality is an inherent principle in nature of armed conflict .Necessity and proportionality are cumulative considerations of international humanitarian law (also known as the laws of armed conflict, the laws of war, and *jus in bello*). In an armed conflict, both conditions must be met in order to justify the type of force used. While it has since evolved, the crux of the principle remains the same. Today, in times of armed conflict, the use of force must be necessary to obtain an anticipated specific strategic military objective. The prohibition against the use of force under *jus ad bellum* is not conditional on necessity or proportionality. Instead, there exist exceptions, and there are only two of them, to the use of force. These exceptions have been codified in the Charter of the United Nations and are,

1) acting in self-defence, and

2) by Security Council authorization where it is acting under its Chapter VII powers and in accordance with its obligations under the Charter. Therefore Tomorrowland is justified to use force against Neverland as an inherent need to exercise self defense.

➤ Also the surgical strike was aimed at the launching pads of terrorists located near the de-facto border , i.e. Line Of Control located in Neverland occupied Taimur. Taimur is a disputed territory and Neverland cannot consider it as a part of their sovereign. Hence Neverland cannot accuse Tomorrowland of breaching the sovereignty and integrity of Neverland as:-

- The surgical strike attacks were aimed at terrorists rather than sovereign of Neverland.
- These attacks were carried out in a territory which does not belong to the sovereign of Neverland.

In the landmark Nicaragua case² , US was funding and training paramilitary forces namely Contra forces, which were causing mayhem in Nicaragua. Nicaragua pleaded defence of self defence. Honourable International Court of Justice ruled in favour of Nicaragua and asked US to do reparations for the damage caused by violent acts of contra forces.

The facts of Nicaragua Case and Tomorrowland's case are strikingly similar. Both Tomorrowland and Nicaragua had been subjected to unjustified use of force by Neverland and US respectively. While US trained and funded the paramilitary forces of Contra in Nicaragua, terrorists and extremists have been breeding in Neverland causing constant mayhem and brutal attacks to Republic of Tomorrowland. Both Nicaragua and Tomorrowland pleads the defence of Self Defence.

¹ Held as customary principle of International Law in case of The Republic of Nicaragua v. The United States of America (1986) ICJ 1

² The Republic of Nicaragua v. The United States of America (1986) ICJ 1

Therefore It is pleaded before the honourable International Court of Justice to consider Tomorrowland's surgical strike as an act of self defence rather than an act of unnatural aggression.

• **The Republic of Tomorrowland is not liable to pay compensation to the Neverland**

The Republic of Tomorrowland is not liable for uncorroborated allegations framed by Neverland as there was no damage reported to be caused on the natural environment nor civilians by the armed personnel. The surgical strike was targeted specifically on eliminating the cradle of terrorism uprooted on the grounds of Neverland. Tomorrowland is well aware with the international duties with respect to environmental matters. It is a blatant lie furnished by The Islamic Republic of Neverland to extort unnecessary monetary gains in form of damages from The Republic of Tomorrowland. It is quite evident from the facts of the case that Neverland is having an approach of duality and deceit. While giving preliminary statements regarding surgical strike Neverland completely denied the Surgical Strike carried out by Tomorrowland. It was after the statement issued by The United Nations Secretary General, Mr. Chand Nawab regarding an exchange of heavy bombing near the kutchi gudi area, Neverland issued a statement accepting surgical strike and accusing the Tomorrowland for loss of environment. This conflict ridden approach clearly shows the ill intent of Neverland for taking extortion as a threat to diminish and tarnish Tomorrowland's credibility on international platform.

Furthermore the observer group of United Nations never accused Tomorrowland for the bombing in the area of kutchi-gudi. The statement of Mr. Chand Nawab cannot be held as a credible proof for accusing Tomorrowland for environmental damage in Kutchi-gudi. Moreover it is known to all that Neverland is an arena of breeding terrorism, it is quite evident that the supposedly caused environmental damage and loss to civilians life is collateral to their terrorism schemes and Tomorrowland is nowhere liable to pay up the compensation demanded by Neverland.

Furthermore it was known that the local businesses surrounding ‘Kutchi-Gudi’ including some where few of the powerful Neverland government officials had vested interests owed a large sum of money to the foreign investors including one who happened to hail from Tomorrowland. Thus, it seems to be a clear trap laid down on Tomorrowland by the Neverland to pay their foreign debt through these lethargic means and wild allegations. The Republic of Tomorrowland shall never fell prey to these traps.

Tomorrowland have also signed all the four Geneva conventions of 1949 including the UN Framework Convention on Climate Change, 1992, the Rio Declaration on Environment and Development, 1992, and the Paris Agreement under the United Nations Framework Convention on Climate Change, 2015. Tomorrowland have also ratified the Rio Declaration on Environment and Development, 1992. This makes

Tomorrowland a bearer of utmost responsibility towards environment and in no way Tomorrowland would treat environment as a collateral or would hamper the environmental harmony ,as accused by Neverland, as it would stand against the very principles of Tomorrowland. A surgical strike is a well planned and coordinated procedure to eliminate predetermined targets, Tomorrowland victoriously eliminated the terrorists launch pads in Neverland with highly skilled plans and army personnel. Tomorrowland would never make a blatant err to obliterate natural resources rich region of kutchi-gudi . Furthermore it is Neverland who violated the Human Rights under the Universal Declaration of Human Rights by infiltrating the sovereign territory of Tomorrowland and causing repeated mayhem. Lately the attacks carried out by non-state actors from Neverland on the military base of Purvi claimed lives of 35 army personnel and 10 civilians. This act of Neverland is quite evident to establish their genocidal mind-set which is a constant threat towards the Security of Tomorrowland. Lately the attacks carried out by Neverland on the city of Pace Futura which claimed lives of 307 civilians was a mass Genocide in itself. Neverland have now and then violated Article 2 and 3 of UDHR, by interfering in the sovereign territory of another state and killing its populace with aid of terrorism ridden hatchets.

Therefore it is pleaded before Hon'ble International Court of Justice to not pay heed to blatant lies furnished by the Islamic Republic of Neverland and shall condemn its pity methods to extort Neverland for monetary reparations by accusing Tomorrowland for genocide and damaging environmental resource rich area of kutchi gudi.

- **The Islamic Republic of Neverland has violated the “Pace-Futura” agreement, by regularly indulging in illicit infiltration activities.**

The Islamic republic of Neverland and Republic of Tomorrowland have entered into ‘the pace future agreement’ which imposes obligation on both the nations according to article 1 of the agreement

Article 1 of the Pace Futura agreement states obligation to establish peace in the territory of both Neverland and the Tomorrowland and adherence to the principle of non-intervention The Parties agreed to establish, by mutual efforts, peace in the territory of both the Nations and to decline to resort to any violent activities and to refrain from intervention of any kind into each others’ internal state affairs³.

Islamic republic of Neverland have breached article 1 of the “pace future” agreement by blatantly violating the principal

³ Pace futura agreement as mentioned in the compromise.

In international law, the principle of non-intervention includes, but is not limited to, the prohibition of the threat or use of force against the territorial integrity or political independence of any state⁴. The principle of non-intervention in the internal affairs of States also signifies that a State should not otherwise intervene in a dictatorial way in the internal affairs of other States. The International Court referred in the Nicaragua case to ‘the element of coercion, which defines, and indeed forms the very essence of, prohibited intervention’⁵. As Oppenheim's International Law puts it, ‘the interference must be forcible or dictatorial, or otherwise coercive, in effect depriving the state intervened against of control over the matter in question. Interference pure and simple is not intervention’⁶. But the extent to which acts other than the use of force are, or should be, prohibited is uncertain.

Intervention even military intervention with the consent, properly given, of the Government of a State is not precluded.

As mentioned in article 1 of Pace Futura agreement, ‘states must decline to resort any violent activities and to refrain from intervention’ the Islamic republic of Neverland as resort to violent activities many times. The Islamic republic of Neverland hasn’t followed the obligation imposed on them by this agreement.

Article.2. States the Obligation to maintain a line of Control wherein Both the parties remain under obligation to maintain a strict line of control which no one pledges to violate under any circumstance⁷

Neverland has breached article 2 of Pace Futura agreement time and again. As undersigned “parties remain under an obligation to maintain strict line of control” Neverland have mostly crossed line of control to execute their violent activities, the act of Neverland has also become a grave threat to the national security of republic of Tomorrowland.

Article 3. States the obligation to Cease Fire wherein both the parties remain under obligation to cease fire especially in the Taimur region and alongside the border areas⁸.

Neverland have violated article 3 of the Pace Futura agreement and therefore withdrawn its obligation by continuously violating cease fire along border areas.

Therefore Neverland have breached the principle of ‘Pacta Sunt Servanda’ which states that ,every treaty in force is binding upon the parties to it and must be performed by them in good faith⁹

⁴ Article 2.4 of the UN Charter

⁵ ICJ Reports 1986, p. 108, para. 205

⁶ Vol. I, 9th ed., 1992, p. 432

⁷ Article 2 of pace future agreement as mentioned in the compromise.

⁸ Article 3 of pace future agreement as mentioned in the compromise.

⁹ Article 26 of The Vienna Convention of Law of Treaties 1969

Broadly, it is quite evident from all the Articles of Pace Futura agreement, that failure in complying to the set principles of the same would lead in breakdown of peace and harmony between the two nation, which would ultimately result in distrust and unhinged violence.

The direct threat which Tomorrowland faces from the unchecked cease fire violations and terrorism overhauling the sovereign territory of Tomorrowland can't be ignored as it is a clear and blatant violation of The Pace Futura agreement signed between the two countries.

Terrorism must not be tolerated by any state, Tomorrowland holds the authority to keep a check on terrorism which flows in their sovereign territory from The Islamic Republic of Neverland at several times by infiltrating the line of control.

The 1997 International Convention for the Suppression of Terrorist Bombings Creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.¹⁰

Furthermore 1999 International Convention for the Suppression of the Financing of Terrorism

- Requires parties to take steps to prevent and counteract the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or which also engage in illicit activities such as drug trafficking or gun running;
- Commits States to hold those who finance terrorism criminally, civilly or administratively liable for such acts; and
- Provides for the identification, freezing and seizure of funds allocated for terrorist activities, as well as for the sharing of the forfeited funds with other States on a case-by-case basis. Bank secrecy is no longer adequate justification for refusing to cooperate.¹¹

These two conventions quiet evidently signifies that Tomorrowland's Surgical Strike was not a violation of Pace Futura agreement rather it was a counter measure to the unhinged acts of terrorism which was funded and bred by Neverland. Neverland being a repeated defaulters of infiltration and cease fire violations along the line of control is in no where of the authority to hold Tomorrowland liable for violation of Pace Futura agreement as Tomorrowland's acts were justified as a counter measure towards terrorism which is its inherent right as to protect the National Security of the state.

Therefore it is pleaded before Hon'ble International Court of Justice to condemn and penalize Neverland breaching the treaty of Pace Futura and threatening the peace and harmony of Tomorrowland by the means of terrorism and extortion

¹⁰ Instrument regarding prevention of terrorist bombing by United Nations

¹¹ Instrument regarding prevention of financing Terrorism by United Nations

PRAYER FOR RELIEF

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

- To consider Tomorrowland's surgical strike as an act of self defence rather than an act of unnatural aggression.
- That the republic of Tomorrowland has not violated the territorial sovereignty of the Neverland.
- The Republic of Tomorrowland is not liable to pay compensation to the Neverland.

And further may grant any other order in the ends of justice , equity, and good consciences.

RESPECTFULLY SUBMITTED

AGENTS OF RESPONDENT