



# Niagara Moot Court Competition 2011-2012

**United States (Applicant)**

**v.**

**Canada (Respondent)**

## **Case Concerning Intervention in Tangoon**

*Competition organizers' note: The "facts" set forth below, including the attached simulated UN documents, are purely fictional and are designed only for educational use in the context of the Niagara Moot Court Competition. It is the expectation of the competition organizers that teams will focus on the merits of the case; arguments about standing, exhaustion, indispensable third parties, and appropriate forum are beyond the intended scope of the competition.*

### **Jurisdiction**

1. This case has been jointly submitted by the United States (Applicant) and Canada (Respondent) under the International Court of Justice's ad hoc jurisdiction pursuant to Article 36(1) of the ICJ Statute. In accordance with Articles 26-28 of the Court's Statute, and following the precedent of the *Canada-US Gulf of Maine Case*, the two sides have agreed that the case will be referred to a "special chamber" of the ICJ, consisting of three judges. This *Compromis* and its attachments reflect the agreed facts as negotiated by the Parties.

### **Background: Tangoon and Samutra**

2. This dispute between the United States and Canada arises out of a crisis involving two States which are situated on Tanmutra, a 1,000 square kilometer island, located just south of the equator in the Pacific Ocean: the State of Tangoon on the mountainous western portion of the island, and the Republic of Samutra on the low-lying eastern portion. Each State is composed primarily of ethnic Tanmutrans, an ancient seafaring people who settled on the island over a thousand years ago and are adherents of the Tanmutra religion.

3. Over the last one hundred years, two distinct forms of the Tanmutran religion emerged on the island, with about five percent of the population adhering to the ultra-orthodox form of the religion. The most important distinctions between the two are that adherents of the ultra-

orthodox form pray to the Tanmutran deity in mountain-top temples three times a day; they believe in faith healing and shun the use of medicine; they believe the dead must be buried under a pile of stones and never incinerated; and they spurn consumption of alcohol and reject the use of most forms of modern technology. In contrast, adherents of the non-orthodox form of the Tanmutran religion commune with the deity while out of doors; they allow the use of medicines; they permit burial or incineration of the dead; and they have no rules against consumption of alcohol or use of technology.

4. In the 1800s France colonized the island as a single political entity known as French Samutra. The island achieved independence as the Republic of Samutra in February 1990, and ratified the Genocide Convention, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights at that time. A few months later, the island split into two separate independent States, when the ultra-orthodox Tanmutran religious faction, led by the Tanmutran High Priest Raffiiki Balthasar, seized control of the western part of the island, declared the creation of a State called Tangoon, and erected a twenty-foot-high border wall dividing the island in two. Raffiiki Balthasar became Head of State and leader of the Tangoon ruling regime, which quickly imposed a caste system, with adherents of the ultra-orthodox Tanmutran religion (the elites) receiving favored treatment. The ruling regime proceeded to further cut the population of Tangoon off from the rest of the world by banning civilian possession of telephones, radios, and other means of communications. The border wall is patrolled from the Tangoon side. There has been no large-scale cross-border movement of people or formal diplomatic relations between the two governments since the split.

5. In 1991 Tangoon and Samutra were admitted into the United Nations as two separate States. Upon admission, they each notified the UN Secretary General that the treaties ratified by Samutra in 1990 would continue in force for each of them. In 2010, Samutra became a party to the Rome Statute of the International Criminal Court (ICC). Tangoon is not a party to the ICC Statute.

6. Due to the efforts of its stable democratic and secular government, in the last two decades Samutra has prospered as a world-class tourist destination, known for its fine sand beaches, spectacular reefs, abundant sports fishing, and ruins of ancient Tanmutran temples that resemble those at Angkor Wat. A major Canadian hotel chain, Fairmont Hotels and Resorts, operates several extremely profitable resorts on Samutra. With ample foreign investment and tourist dollars, especially from Canada, the 200,000 citizens of Samutra enjoy one of the highest standards of living and average life expectancy in the world. Samutra has a commercial port and small coast guard, but no army.

7. Tangoon continues to be ruled by an autocratic ultra-orthodox religious regime. The approximately 10,000 members of the elite ultra-orthodox religious class live in lavish mountain-top temple compounds, while the 90,000 non-elites (referred to hereinafter as “the civilian population”), who live in the lower elevations, are among the poorest and least healthy in the world. The Tangoon ruling regime possesses a lightly armed military that serves as both a police and security force consisting of 500 personnel. Although Raffiiki Balthasar (now 71 years old) continues to hold the title Head of State and Government, the current de facto political and military leader of Tangoon is Raffiiki’s younger brother, 57 year-old Ishmael Balthasar, who

holds the title Minister of Internal Affairs.

### **The Demon Mine**

8. In 2007, an extremely rich cobaltite vein was discovered on the north face of Mont Demon, Tagoon's largest peak (elevation 7,100 feet). Geologists have confirmed that the vein contains the world's largest known deposit of cobaltite, from which the strategic mineral cobalt is derived. In August of that year, Ishmael Balthasar granted the US-incorporated Geomin Corp. an exclusive twenty-year license to mine and process the cobaltite/cobalt from Mont Demon for export to the United States in return for a \$100 million annual fee payable to the Tagoon regime. As part of the agreement, the Tagoon regime provided workers to help with mining operations from its "National Service Program." Geomin Corp., in turn, entered into a twenty-year contract with the U.S. Defense Logistics Agency Strategic Materials (formerly known as the Defense National Stockpile Center) to provide all of the cobalt mined at Mont Demon to the United States Government at a price of \$20 a pound. The CEO and chief geologist of Geomin Corp., Clyde Barrett, is a US citizen who has moved temporarily to Tagoon to supervise the Mont Demon mining operation. Ten thousand tons of the Tagoon cobalt was exported from the port of Tagoon to the United States in 2008, twelve thousand tons in 2009, and fifteen thousand tons in 2010.

9. Demonville is Tagoon's largest village with a population of approximately 14,000. The village is located on the lower elevations of the south face of Mont Demon. In January 2011, geologists from Geomin Corp. discovered that the village is situated directly on top of a second extremely rich cobaltite vein, located very close to the surface. Recognizing that the village occupies the optimum place to construct a large open-pit mining site to attain the cobaltite, Geomin Corp. offered to purchase the land from the villagers, but the residents of Demonville declined to sell, collectively taking the position that they would not depart their ancestral village for any price.

10. On April 15, 2011, Clyde Barrett met with Ishmael Balthasar in Balthasar's mountain-top compound to discuss establishment of a second mine at the Demonville location. According to Balthasar's notes of the meeting, Barrett urged the Tagoon leader to forcibly relocate the Demonville residents, promising in return for their land that Geomin Corp. would increase the annual license fees to the Tagoon regime by \$50 million. "Burn them out if you have to," Barrett urged. Ishmael Balthasar agreed to the deal, stating that he would find a way to "get rid of those godless villagers for Geomin Corp.," but he added that he had to bide his time since the Tagoon army was not large or powerful enough to stand up to 14,000 intransigent villagers. On May 23, 2011, Balthasar and Barrett had a follow up meeting, at which Barrett provided Balthasar weather reports of an approaching tropical cyclone and suggested the huge storm could provide the opportunity that Balthasar was looking for. These conversations were recorded in Ishmael Balthasar's diary, which was subsequently turned over to the Office of the Prosecutor of the International Criminal Court.

### **The May 25 Cyclone**

11. On May 25, 2011, a Severe Tropical Cyclone known as "Kodo" swept through the area of

the Pacific Ocean where Samutra and Tangoon are located, battering the island with winds as strong as 160 mph, over 40 inches of rain, and waves as high as 20 feet. The government of Samutra had issued timely warnings and taken effective steps to protect its population from the massive storm. In contrast, warnings were issued in Tangoon only to members of the ruling ultra-orthodox religious elite; the Tangoon authorities did nothing to notify the Tangoon civilian population of the imminent danger.

12. According to a May 30, 2011 Report of the UN Secretary General, in the aftermath of the cyclone, most of the civilian population of Tangoon was rendered homeless and without potable drinking water, and thousands of unburied corpses were present throughout the lowlands and in the rivers flowing east to Samutra. The village of Demonville was especially hard hit by mudslides, which destroyed nearly all of its structures. The day after the cyclone, Geomin Corp. began blasting and excavating a massive open-pit cobaltite/cobalt mining site on land that had been previously occupied by the Demonville residents. According to eye-witness accounts, Geomin Corp. was using a form of slave labor at the site provided by the Tangoon government under its so-called “National Service Program.” The Secretary General observed that following the storm the Tangoon regime had refused offers of humanitarian assistance from international NGOs and several States, and had taken no action to dispose of the thousands of diseased and rotting corpses, despite the Secretary General’s warning that the unburied corpses were spreading diseases including cholera, typhoid, and dysentery to downstream populations in both Tangoon and Samutra, and that thousands more would die in both countries if immediate action was not taken to address the spread of the disease and dispose of the corpses. A copy of the May 30 Report appears at **Tab 1**.

13. That same day, May 30, 2011, the government of Samutra referred the situation to the International Criminal Court and requested that the ICC bring charges against Ishmael Balthasar for Crimes Against Humanity for his wanton actions that were directly responsible for tens of thousands of deaths and the spread of disease in both Tangoon and Samutra. The ICC Office of the Prosecutor determined that the allegations came within the ICC’s jurisdiction and promptly initiated an investigation into the situation.

### **The Humanitarian Intervention**

14. On June 1, 2011, the government of Samutra requested an emergency session of the UN Security Council to address the continuing crisis in Tangoon. At the late-night session, France circulated a draft Security Council resolution which would have authorized a coalition of willing States, in coordination with the State of Samutra, “to use all necessary means to enter Tangoon and deliver vital humanitarian aid to its suffering people and take steps to prevent the spread of disease from decomposing corpses.” When the United States indicated that it would veto the resolution if brought to a vote, the Security Council promptly adjourned. No subsequent action was taken by the Council to respond to the crisis.

15. On June 2, 2011, at an emergency special session, the UN General Assembly, invoking its “Uniting for Peace” authority, adopted Resolution A/RES/65/299, recommending “all necessary means” to deliver humanitarian aid to the people of Tangoon. The resolution was adopted by a vote of 157 in favor, 3 against (the United States, Tangoon, and the Marshall Islands), and 30

abstentions. A copy of the Resolution and Record of Debate appear at **Tab 2**.

16. The next day, on June 3, 2011, acting at the request of Samutra, the Government of Canada sent the HMCS *Algonquin*, an Iroquois Class destroyer with a complement of 200 crew and commandos, to Samutra/Tangoon on a humanitarian relief operation.

17. A few hours after arriving at the Port of Samutra on June 7, 2011, the Canadian commandos employed explosives to demolish several portions of the wall separating the island. 120 armed Canadian commandos accompanying 500 medical and relief workers in 100 aid trucks from Samutra then entered Tangoon through the gaps in the border wall, and distributed food, clothing, medicine, and temporary shelters to the surviving Tangoon population. The Samutran relief workers also began to systematically dispose of the thousands of diseased and rotting corpses.

18. During the humanitarian operation, a group of Tangoon security personnel, personally led by Ishmael Balthasar, tried to block the convoy of aid trucks as it neared the ruins of Demonville. When the convoy broke through their barricade, the Tangoon security personnel opened fire on the convoy. The Canadian commandos returned fire, killing ten and taking seven Tangoon security personnel into custody including Ishmael Balthasar. When Balthasar was searched, the Canadian Commandos discovered an incriminating personal diary in his pocket, which indicated that he and Geomin Corp. CEO Clyde Barrett had concocted the plan to deny aid to the victims of the cyclone in order to make the Demonville site available for mining by Geomin Corp.

19. Shortly thereafter, the Canadian commandos came upon Geomin's blasting and excavating operations in the area that had a few days before been the village of Demonville. When they discovered teenage Tangoon workers engaged in the excavation who appeared to be suffering from conditions of slave-labor, the Canadian commandos shut down the operation by disabling the bull dozers, excavators, and scooptrams. A man identifying himself as Clyde Barrett approached the commandos to protest their actions, saying that they had no right to interfere in the mining as the Tangoon Minister of the Interior, himself, had given Geomin a permit to mine the site and provided the Tangoon laborers. Upon confirming his identity, the Commandos took Barrett into custody and transported him, along with the Ishmael Balthasar, back to the *Algonquin*, docked at the Port of Samutra, where the two men have been held to this day in the ship's brig.

20. In a letter to the Security Council dated June 8, 2011, Canada fully briefed the Council as to its actions, and indicated that as soon as the humanitarian operation is complete, the Canadian commandos would withdraw from the territory of Tangoon. The Canadian Report to the Council appears at **Tab 3**. The Council has not subsequently taken any action in regard to this matter.

21. The Canadian commandos turned Ishmael Balthasar's diary over to the Minister of Justice of Samutra, who immediately forwarded it to the ICC Prosecutor. Shortly after receiving Balthasar's diary, the ICC Prosecutor issued a Press Release dated June 9, 2011, stating: "We [have] received strong evidence that Ishmael Balthasar, the Tangoon Minister of the Interior, and Clyde Barrett, the CEO of Geomin Corp., were criminally responsible for the commission of crimes against humanity and genocide in Tangoon and Samutra," the later being a party to the

ICC. “Based on this evidence, the Prosecution has applied to Pre-Trial Chamber I for the issuance of arrests warrants against Ishmael Balthasar and Clyde Barrett, who are currently in custody in Samutra.” The ICC Prosecutor’s Press Release appears at **Tab 4**. The ICC Pre-Trial Chamber issued arrest warrants for Ishmael Balthasar and Clyde Barrett for crimes against humanity on June 20, 2011.

## **Dispute Resolution**

22. The government of Tagoon suspended the export of Cobalt to the United States in the aftermath of the Canadian-led intervention, stating in a Diplomatic Note to the United States dated June 10, 2011, that “the Mont Demon mines shall be shut down until Canada returns Ishmael Balthasar to Tagoon. If the United States wants our cobalt, it will need to obtain the return of our beloved leader.”

23. In a Diplomatic Note to Canada, dated June 15, 2011, the United States protested that Canada had violated Tagoon’s territorial sovereignty under Article 2(4) of the UN Charter when the Canadian commandos broke through the border wall and entered Tagoon’s territory, employing deadly force against the Tagoon security forces. The Diplomatic Note further protested that Canada violated international law when it abducted Ishmael Balthasar and U.S. citizen Clyde Barrett from Tagoon, that the ICC does not have jurisdiction over the nationals of non Party States for actions taken outside the territory of a State Party, and that Canada’s actions violated Ishmael Balthasar’s head of state immunity. According to the United States, their abduction and detention by Canada has caused a substantial disruption in America’s supply of cobalt, a strategic mineral vital to its ongoing military actions in Iraq, Afghanistan, and Libya. The United States therefore called on Canada to immediately release Ishmael Balthasar and Clyde Barrett.

24. Canada replied in a Diplomatic Note, dated June 22, 2011, arguing that its actions were justified under the principle of collective self-defense to protect Samutra from the spread of deadly disease from Tagoon, that the action was authorized by the UN General Assembly under its “Uniting for Peace” authority, and that the intervention was consistent with the “Responsibility to Protect” doctrine, and therefore did not violate international law. Canada also argued that the apprehension and detention of Ishmael Balthasar and Clyde Barrett was permissible because they had been responsible for serious international crimes within the jurisdiction of the ICC. Canada suggested that the two countries enter into high level talks to further discuss this matter, and said that it would postpone surrendering Balthasar and Barrett to the ICC until after such talks were undertaken.

25. High level representatives from Canada and the United States met periodically in June and July 2011 in an effort to resolve this dispute. Once it became clear that no negotiated resolution was possible, the United States and Canada agreed to submit this *Compromis* and the following legal questions to a special chamber of the International Court of Justice for a binding decision:

- (a) Whether Canada’s intervention into Tagoon was lawful under international law? and

(b) Whether Canada's apprehension, detention, and proposed surrender to the ICC of Ishmael Balthasar and Clyde Barrett are lawful under international law?

26. The United States and Canada agree that all standing and exhaustion requirements are met for the Court to proceed to the merits of this case. While Tagoon and Samutra have declined to intervene in this case, the United States and Canada agree that Tagoon and Samutra are not essential third parties. The United States and Canada further agree that the ICJ is a proper venue for resolving their questions relating to interpretation and application of the Rome Statute for the ICC. In addition, the United States and Canada have agreed to take no further action to enforce their positions with respect to this dispute pending the outcome of this case. Finally, both States have agreed to fully and immediately implement whatever decision the ICJ renders in the case.

**Signed this 29th day of August 2011 in Ottawa, Canada**

**/S/ John Baird  
Minister of Foreign Affairs, for Canada**

**/S/ Hilary Rodham Clinton  
Secretary of State, for the United States of America**

**ATTACHMENTS**

- (1) 30 May 2011 Report of the Secretary General
- (2) UN General Assembly Resolution 65/299 and Record of Debate
- (3) 8 June 2011 Report of Canada to the Security Council
- (4) 9 June 2011 ICC Prosecutor's Press Release

# Tab 1

[This is a fictional Report for use in the Niagara Moot Court Competition]

**United Nations**

**S/2011/5/30**

**Original: English**

**May 30, 2011**



## **Report of the Secretary General on The Situation in Tangoon**

1. Since 1990, the State of Tangoon has been ruled by an autocratic ultra-orthodox religious regime. The Tangoon ruling regime established a caste system, with adherents of the ultra-orthodox Tanmutran religion (the elites) receiving favored treatment. The Tangoon economy had long been dependent on farming and fishing, with the elites living off of a monthly “tribute” paid by each non-elite family. But since 2008 the chief export and source of income has been cobalt from the mines on Mont Demon. The government has distributed the profits from the cobalt mines to the 10,000 members of the ultra-orthodox religious class. Although the religious elite live in lavish mountain-top temple compounds and enjoy a high standard of living, the 90,000 non-elites (the civilian population) who live in the lower elevations of Tangoon are among the poorest and least healthy in the world, with an average life expectancy of just 25.5 years.

2. Tangoon has a small security force of about 500 personnel, who mostly patrol the border wall to prevent Tangoon citizens from leaving the country. Tangoon nationals who try to dig under or cross over the wall to neighboring Samutra, or who try to canoe along the shore to Samutra, are usually shot on site, though a few make it to Samutra each year. Representatives of human rights NGOs that have interviewed such Tangoon refugees in recent years report that the Tangoon regime has discriminated against those who do not adhere to the orthodox form of the Tanmutran religion (the non-elites) by banning them from serving as teachers, police, and other public positions in society; denied the non-elite population basic civil and political rights, such as to due process of law, free speech, and access to communications equipment; and required non-elites to serve in a “National Service Program,” in which children between the ages of 13 and 16 are drafted to work on public projects in return for a daily ration of food.

3. On 25 May 2011, a Severe Tropical Cyclone (designated “Kodo”) swept through the area of

the Pacific Ocean where Samutra and Tagoon are located, battering their island with winds as strong as 160 mph, over 40 inches of rain, and waves as high as 20 feet. The government of Samutra had issued timely warnings and taken effective steps to protect its population from the storm, while the government of Tagoon did nothing to warn its civilian population of the imminent danger, though it did issue warnings to the ruling religious elite who took steps to fortify their mountain-top temple compounds before the storm hit.

4. Satellite imagery of Tagoon from 27 May 2011, provided by the European Space Agency, indicated that nearly all the farms in the low lands were washed away by the flood waters, almost all of the fishing boats were destroyed, and over 80 percent of the residential structures on Tagoon were no longer standing, while the mountain-top temple compounds were almost entirely undamaged by the storm. The village of Demonville was particularly hard hit by mudslides, which destroyed 95 percent of its residential structures. Tens of thousands of corpses could be seen floating in the streams, rivers, and lakes of Tagoon.

5. During the next few days, two dozen Tagoon nationals made it over, under, or around the border wall to Samutra, seeking help for their families and friends back in Tagoon. These refugees were interviewed and treated by members of my emergency response team which I had dispatched to a temporary UN medical center at the Port of Samutra immediately after the storm. All of the refugees were diagnosed as suffering variously from cholera, typhoid, and dysentery, in addition to being severely dehydrated and malnourished.

6. The refugees reported that most of the population of Tagoon had been rendered homeless and without potable drinking water, and that deadly diseases were rapidly spreading among the people, with thousands of bloating corpses present everywhere. The refugees also reported that blasting and excavating operations by Geomin Corp. had commenced a day after the cyclone where homes once stood in Demonville. The refugees said that Geomin was using a form of child slave labor, provided by the government of Tagoon under its “National Service Program,” to help it excavate the huge open-pit mining site.

7. Meanwhile, hundreds of residents of Samutra have come down with similar illnesses, which my emergency response team believes is due to contamination of the water sources that flow from Tagoon. The diseased and decaying bodies in Tagoon are bacteria factories. Unless the victims in Tagoon are treated and the thousands of bodies are soon burned or buried, my team believes there is a very high risk that the epidemic spreading through Tagoon will devastate downstream Samutra as well. My staff estimates that as many as half the population of Tagoon and one-third the population of Samutra could perish if effective action is not taken within the next fourteen days.

8. On 29 May 2011, a representative of my office in Samutra traveled to the border wall and delivered a communiqué addressed from me to the rulers of Tagoon. The communiqué informed the Tagoon rulers that Samutra, Canada, and several NGOs have offered to donate over 100 million dollars (US) worth of food, clothing, medicine, and temporary shelters for delivery to Tagoon’s devastated population. Further, the communiqué warned the Tagoon leaders that if swift action was not taken to treat the epidemic spreading through Tagoon and hygienically dispose of the infected bodies floating in the lakes and streams, Tagoon would be

responsible for thousands of deaths in neighboring Samutra, as well as in Tangoon. My representative was denied entry at the border-wall, but a few hours later the Tangoon border guard passed an official response, signed by the Tangoon Minister of the Interior, Ishmael Balthasar, which stated:

“The government of Tangoon respectfully declines the offer of aid. Based on our religious beliefs, we will permit no assistance to the victims of the Cyclone, as it is in God’s hands. The deaths and spreading disease are God’s way of cleansing Tangoon and Samutra of those who are unworthy because they do not adhere to the true form of the Tanmutran faith.”

9. All subsequent attempts by my staff to establish communications with the Tangoon government have been summarily rebuffed.

10. On 30 May 2011, the government of Samutra requested an emergency session of the UN Security Council to address the crisis in Tangoon. This report was prepared to assist the Council in its deliberations. I believe this situation is governed by the newly emerging Responsibility to Protect doctrine, recognized by the Council in Resolution 1674 (April 28, 2006). I therefore urge the Council to act without delay to authorize humanitarian intervention into Tangoon.

## Tab 2

[This is a fictional resolution for use by the Niagara Moot Court Competition]

2 June 2011



## General Assembly

### GA Res 65/299

**Sixty-fifth General Assembly**  
**Plenary**  
**299<sup>th</sup> Meeting (PM)**

*The General Assembly*

*Welcoming* the Report of the Secretary General on the situation in Tagoon, dated 30 May 2011,

*Recalling* Security Council resolution 1674 of 28 April 2006, reaffirming the responsibility to protect doctrine,

*Recalling also* General Assembly Resolution 377(V) of 1950, known as the “Uniting for Peace Resolution,” in which the General Assembly resolved that “if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security,”

1. *Expresses* its grave concern about the humanitarian catastrophe unfolding in Tagoon in the aftermath of Cyclone Kodo, which constitutes a threat to international peace and security;
2. *Condemns* the government of Tagoon for failing to warn its civilian population about the oncoming cyclone, for subsequently refusing the offer of humanitarian assistance from several States and NGOs, and for failing to take any action to dispose of thousands of diseased corpses which are contaminating the water supply of both Tagoon and neighboring Samutra,

3. *Warns* the rulers of Tagoon that their actions could constitute a crime against humanity triggering individual criminal responsibility,
4. *Recommends* that States in coordination with Samutra employ all necessary means to ensure delivery of humanitarian aid and bring an end to this humanitarian catastrophe.

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## **Record of Debate on GA Resolution 65/299 (2 June 2011)**

*Switzerland* (translated from French). As President of the General Assembly, I am pleased to report that GA Resolution 65/299 has been adopted by a vote of 157 in favor, 3 against (the United States, Tagoon, and the Marshall Islands), and 30 abstentions. We will now hear from the delegates of Canada, Russia, the United States, and China, who have asked to provide explanations of their votes for the record.

*Canada*: The Tagoon government's decision not to warn its population of the coming of Cyclone Kodo and subsequently to prevent the provision of foreign aid to the victims of the cyclone while they die of starvation and disease by the thousands is an atrocity on par with Cambodia in 1976-1979, Bosnia in 1992-1995, and Rwanda in 1994. It was in response to the international community's failure to intervene to halt the Rwandan genocide that Canada launched the International Commission on Intervention and State Sovereignty, whose 2002 report developed the Responsibility to Protect Doctrine. At Canada's urging, the 2005 World Summit Outcome Document endorsed the Responsibility to Protect principles, and the Security Council followed suit in Resolution 1674 of 2006. As principal sponsor of General Assembly Resolution 65/299, Canada welcomes this historic action by the General Assembly which for the first time puts the Responsibility to Protect Doctrine into practice in a case in which the Security Council was blocked from authorizing a humanitarian intervention by the threat of a Permanent Member veto. The overwhelming vote in favor of this resolution indicates that the international community will not sit idly by while a humanitarian disaster unfolds in Tagoon and Samutra. This resolution also makes it clear that Tagoon's ruler must be brought to justice for his coldhearted actions.

*Russia* (translation from Russian): Russia applauds the generous offer of humanitarian assistance to the victims of Cyclone Kodo in Tagoon by several governments and aid organizations, and condemns the government of Tagoon for preventing the delivery of this desperately needed assistance to its ailing population. Just as Russia has had to implement the Responsibility to Protect Doctrine to protect ethnic Russians from systematic attacks in South Ossetia, this resolution makes clear that Samutra and her allies may take forceful measures to ensure that humanitarian aid gets to the thousands in need in Tagoon.

*United States*: The sympathies of the American people are with the people of Tagoon who have suffered so much over the past week. But tragedy is not a license for disregarding international law. Earlier this week, the United States indicated that it would veto a Security Council resolution authorizing the use of force in Tagoon because such action would constitute

an unwarranted intrusion into the domestic affairs of a member state without a showing of a real threat to international peace and security. The United States has likewise voted against this unprecedented General Assembly resolution because the General Assembly cannot legitimately go beyond authorizing a peace-keeping force under its Uniting for Peace powers. This is the first time in history that the General Assembly has used its Uniting for Peace authority to purport to authorize an invasion of a Member State. That is simply a bridge too far, even in the name of R2P, and any State that uses this so-called authority as a license to invade Tangoon would be in violation of international law.

*China* (translation from Chinese): China fully agrees with the United States that the General Assembly does not have the authority under the UN Charter to authorize an invasion of a Member State. But like many other States, we abstained on this resolution because we do not read it as authorizing use of force. Rather it only recommends that States work together to provide aid and bring an end to the humanitarian catastrophe in Tangoon. That aid must be provided in a manner that does not infringe the religious cannon's of the Tangoon people.

# Tab 3

[This is a fictional document for use in the Niagara Moot Court Competition]

**United Nations**

**S/2011/6/8**

**Original: English  
8 June 2011**



## **Communication by the Government of Canada to the Security Council on the Situation in Tangoon**

Dear Ambassadors:

Canada presents its compliments to the members of the Security Council. We write to inform you that yesterday Canada deployed a small military force to demolish several portions of the border wall separating the States of Tangoon and Samutra in order to provide urgent humanitarian assistance to the population of Tangoon and stop the spread of disease to neighboring Samutra.

Canada's 120 commandos were accompanied by convoys of Samutran doctors and aid workers, who distributed \$100 million worth of donated food, clothing, and medicine to the surviving members of the Tangoon civilian population. The Samutran aid workers also began to systematically burn the tens of thousands of diseased and rotting corpses; many of them were fished out of the lakes and rivers that flow into Samutra.

During the operation, the Canadian commandos apprehended Tangoon Minister of the Interior Ishmael Balthasar, who was leading Tangoon troops in an attack on the aid convoys. When the commandos found evidence in Balthasar's possession implicating Geomin Corp. CEO Clyde Barrett in a plot to use the storm's aftermath as a way of clearing villagers from land that Geomin wanted for a new Colbalt mine, they sought Barrett out as well. The commandos found Barrett directing Geomin's blasting and excavating operations in the area that had a few days before been the village of Demonville. Geomin was using hundreds of Tangoon teenage boys and girls, who appeared to be in conditions of slave labor, to excavate the site. To halt this abuse, the commandos shut down the mining operation by disabling the bull dozers, excavators, and scooptrams, and took Clyde Barrett into custody. The commandos transported Barrett and Ishmael Balthasar back to the HMCS *Algonquin*, at the Port of Samutra, where the two men have

been held to this day in the ship's brig, while awaiting surrender to the International Criminal Court pursuant to the referral of the situation by Samutra.

We believe this action to be clearly lawful under international law for two reasons: First, Samutra requested our assistance under Article 51 of the UN Charter in the face of what Samutra reasonably considered to be a purposeful biological assault on its territory and citizens by the Tangoon regime. Necessity for action was clear. As the Secretary General recognized in his report of 30 May, delay would lead to thousands more deaths in Samutra due to the spread of deadly disease from Tangoon. Our response was proportional to the biological attack. We employed a small force, which only employed deadly force when the aid convoy was fired upon.

Second, our actions were consistent with the Responsibility to Protect Doctrine and the General Assembly's authorization to intervene as contained in Resolution A/RES/65/299 (June 2, 2011), adopted under its "Uniting for Peace" authority.

Canada assures the Council that as soon as the humanitarian crisis is ameliorated, the Canadian troops and Samutra aid personnel will fully withdraw from Tangoon.

[signed]

Ambassador John McNee  
Permanent Representative of Canada

8 June 2011

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# Tab 4

[This is a fictional document for use in the Niagara Moot Court Competition]



## International Criminal Court Press Release 9 June 2011

### *ICC Prosecutor Files Request for Warrant of Arrest for Ishmael Balthasar, Head of State of Tangoon*

**ICC-CPI-20090404-PR494**

**Situation: Tangoon**

**ISSUED BY THE PROSECUTOR**

1. Ten days ago, on 30 May 2011, my office received a referral by Samutra, a State Party to the ICC, concerning the humanitarian crisis in Tangoon and its effects on Samutra. Appended to the referral was a report of the UN Secretary General, which had been issued earlier that day. The Secretary-General's report documented that the leaders of Tangoon had failed to warn the civilian population of an oncoming Severe Tropical Cyclone known as Kodo; that they had refused all offers of humanitarian assistance from the international community to help the thousands of victims in the aftermath of the storm; that they had refused to do anything to dispose of tens of thousands of corpses throughout the country which were spreading deadly diseases downstream to Samutra; and that thousands of Samutrans, as well as Tangoon citizens, would die due to these actions. According to the Secretary-General, the Tangoon rulers justified these actions as a way of "cleansing Tangoon and Samutra of those who are unworthy because they do not adhere to the true form of the Tanmutran faith." I deemed this situation to fall within the jurisdiction of the ICC and immediately opened an investigation.

2. Yesterday, my office received strong evidence that Ishmael Balthasar, the Minister of the Interior of Tangoon, and Clyde Barrett, the CEO of Geomin Corp., were jointly criminally responsible for the commission of crimes against humanity and genocide in Tangoon and Samutra. Specifically, we now have in our possession an authenticated copy of the diary belonging to Ishmael Balthasar which documents a criminal agreement between Ishmael Balthasar and Clyde Barrett under which Geomin Corp. would pay the Tangoon regime \$50 million per year and in return the Tangoon leader would seek an opportunity to "get rid of those godless villagers [who refused to sell their land for a cobalt mining site] for Geomin Corp." According to the diary, Clyde Barrett had suggested that the Tangoon leader should "burn them out if you have to," but the Tangoon leader said that he was "worried that his army was not large or powerful enough to stand up to 14,000 intransigent villagers." Ultimately, at Barrett's suggestion, Ishmael Balthasar accomplished his goal without resort to military force by failing to

warn the villagers of the approaching Cyclone and by preventing humanitarian assistance from reaching them. Immediately after the Cyclone passed, the Tangoon regime permitted Geomin Corp. to begin blasting and excavating a cobaltite/cobalt mine on land that had before the storm been occupied by the aforementioned villagers.

3. Based on this evidence, I have applied to Pre-Trial Chamber I for the issuance of arrests warrants for Ishmael Balthasar and Clyde Barrett, who are currently in custody in Samutra. The case is now before the judges, and I am optimistic that they will grant the request in due course. In the meantime, the Office of the Prosecutor will continue its investigations into this situation.