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IN THE

INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

THE CASE CONCERNING THE ELYSIAN FIELDS

REPUBLIC OF ACASTUS

Applicant

v.

STATE OF RUBRIA

Respondent

2006

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF JURISDICTION

In accordance with Article 40(1) of the Statute of the International Court of Justice, the Republic of Acastus and the State of Rubria have submitted a special agreement to this Court for the settlement of all differences concerning the Elysian Fields. Pursuant to Article 36(1), this Court has jurisdiction over such disputes related to the RABBIT. The State of Rubria filed a preliminary objection to the jurisdiction of this Court under Article 36(2) over matters of the dispute unrelated to the RABBIT, which the Court subsequently joined to the merits of the argument.

QUESTIONS PRESENTED

1. Whether this Court lacks jurisdiction over claims, other than those related to the RABBIT, since Acastus is not the continuation of Nessus and has not accepted the compulsory jurisdiction of the Court in its own right?

2. Whether Rubria complied with international law and was exercising its sovereign territorial rights in permitting the construction of the proposed pipeline?

3. Whether international law permits PROF's actions to be attributed to Rubria, or whether such actions violated any international legal obligation Rubria owed to Acastus?

4. Whether Acastus breached Article 52 of the RABBIT by virtue of the Acastian civil court's decision?

STATEMENT OF FACTS

In 2000, after decades of acrimonious disagreement, the Republic of Nessus dissolved. After dissolution, Nessus's territory was divided into the Republic of Acastus (Applicant) and the State of Rubria (Respondent). Acastus inherited the northern coastal plains with bustling industry and trade, while Rubria inherited the mineral rich, but undeveloped, landlocked southern regions.

The new border divides the countries along the 36th parallel, which runs through the Elysium. Approximately 5,000 indigenous Elysians occupy the Elysium. The Elysians have a language and religion unrelated to their neighbors. The residential villages of the Elysians are in Acastus, but they farm agricultural lands in Rubria. The Elysian economy is wholly agricultural and unchanged since before the industrial revolution. The Elysian villages in Acastus lack running water and basic medical facilities. Since the dissolution of Nessus, the Elysians have freely moved across the Acastus-Rubria border. Rubrian law requires proof of permanent residency to vote, which no Elysian has yet proved. Acastus has granted the Elysians the rights of citizenship and one seat in Parliament.

As a founding member of the UN, Nessus had accepted the compulsory jurisdiction of this Court. Rubria applied for UN membership in April 2001 and was admitted in October 2001. Rubria accepted this Court's compulsory jurisdiction with a reservation excluding disputes in which the opposing State has not been a party to the Statute of the Court for at least twelve months prior to its application to the Court. Instead of applying for UN membership, Acastus sent a note to the Secretary-General announcing that Acastus would continue Nessus's membership in all UN organizations, including this Court, as well as its party status to treaties deposited with the UN. In December 2001, the Security Council unanimously agreed that

Nessus had ceased to exist and that Acastus should apply for membership. The Under-Secretary-General interpreted this as not preventing Acastus from temporarily continuing Nessus's membership. Rubria and other States have consistently protested this interpretation, but Acastus has never applied for UN membership.

Since independence in 2000, Acastus has aggressively urged its private corporations to seek out foreign investment opportunities. Acastus passed the "Multinational Corporate Responsibility Act" (MCRA) to encourage its trading partners to increase business with Acastian corporations. Acastian Prime Minister Lethe promised "[y]ou can trust our corporate citizens" and assured that "compensation will be provided to anyone harmed by their actions." In order to promote bilateral investment, Rubria and Acastus signed the Rubria-Acastus Binding Bilateral Investment Treaty (RABBIT). Article 52 of the RABBIT incorporated the MCRA by reference, mandating that Acastus enforce its municipal corporate responsibility law. Article 62 establishes that Acastus and Rubria will submit any dispute relating to the RABBIT to this Court.

In 2002, the Trans-National Corporation (TNC) discovered rich oil deposits in the Rubrian portion of the Elysium. TNC is a privately-owned, limited-liability company incorporated and headquartered in Acastus. In May 2003, TNC and the Rubrian government formed the Corporation for Oil & Gas (COG), incorporated and headquartered in Rubria, to develop the oil deposits in the Elysium. COG's corporate governance was structured on a simple majority one-share, one-vote basis. TNC has a controlling 51% interest and Rubria has a 49% interest.

In June 2003, COG's experts began studying plans for the construction of a pipeline through the Rubrian Elysium. The experts proposed the most direct route to the nearest port in their April, 2004 presentation. This route could have a detrimental effect on the Elysians by

destroying fields they use for agriculture and blocking streams that serve as a water source to the fields. The plan was selected because all other plans were prohibitively expensive. COG authorized and paid for a private security service, Protection and Retention Operations Force (PROF), to protect COG personnel in the Elysium. PROF was to determine and procure the weapons or ammunition it might need.

COG began the pipeline project in August, 2004. On September 30, 2004, an Acastian Parliament member speaking before the Acastian Parliament alleged that PROF had been seizing young Elysian men and forcing them to work on the COG project. She read to Parliament the letter of Mr. Davide Borius, an Elysian, who wrote that PROF took the men in the morning and returned them after sunset, leaving them a small bag of sorghum.

That same day, Mr. Borius and a group of local NGOs brought an action against COG, Rubria, PROF, and TNC in Acastian civil court. The complaint alleged that on several occasions in August and September, PROF had seized Elysian men and forced them to work without compensation in violation of international law and the MCRA. The complaint based jurisdiction against Rubria, COG, and PROF on the Acastian International Rights Enforcement Statute (AIRES) which grants Acastian courts subject matter jurisdiction over cases regarding international law violations outside of Acastian territory. Under AIRES, the defendant must be present or found in Acastus. The complaint based jurisdiction over TNC on AIRES or, alternatively, the MCRA.

On November 8, 2004, the Acastian court dismissed TNC on the basis of its limited liability and the fact that as a private company, TNC is not a "subject" of international law under AIRES. The Court also dismissed PROF since it did not conduct business, nor did it have assets, in Acastus. On November 10, 2004, Rubria requested to be dismissed as a defendant on the

same grounds as TNC. The Court rejected this request since Rubria was sued as a direct violator of the plaintiff's international human rights and not as a COG shareholder. Rubria declined further participation in the lawsuit and COG never appeared. On January 15, 2005, the court issued a judgment against Rubria and COG for 200 million Euros in compensatory damages.

Rubria's President immediately sent a diplomatic note to Acastus's Prime Minister stressing that Rubria would not recognize the Acastian judgment. Rubria's President further indicated that following the Court's reasoning, TNC should be held responsible under the MCRA and, therefore, the RABBIT. Thus, Acastus must enforce its laws against TNC or else pay reparations to Rubria.

On March 1, 2005, Acastus instituted proceedings before this Court and asserted jurisdiction based on the RABBIT's compromissory clause and the Court's compulsory jurisdiction. Rubria filed a preliminary objection to Acastus's application, contesting the admissibility of all claims other than those relevant to the RABBIT. After negotiations, Acastus and Rubria submitted a *Compromis* to this Court agreeing to stipulated facts but not to the Court's *ad hoc* jurisdiction. As a gesture of good will, Rubria has suspended all work on the pipeline and Acastus will not permit any measures that may enforce the *Borius* litigation judgment against Rubria and COG.

SUMMARY OF PLEADINGS

I. This Court lacks jurisdiction to hear claims that do not relate to the RABBIT. Rubria's acceptance of compulsory jurisdiction does not apply since Acastus is not a member of this Court. Acastus is not the continuation of Nessus under customary law, as it lacks a majority of Nessus's territory and population, and it failed to reach a devolution agreement with Rubria. The Security Council agreed with this position when it passed Resolution 2386, and the Court should defer to the Council on such political matters. The Under-Secretary-General's interpretation of Resolution 2386 is not to the contrary, and any temporary UN membership rights Acastus may have enjoyed have expired.

As a new State, Acastus could not succeed to Nessus's UN membership. Both customary and conventional law reject the right to succession in international organizations. Acastus's unilateral acts cannot bypass the organization's formal admission requirements. Finally, Rubria's grant of compulsory jurisdiction should be interpreted in light of its explicit understanding that Acastus was not a member of the Court. This bars jurisdiction regardless of how this Court resolves Acastus's membership status.

II. Acastus lacks standing to bring claims on behalf of the Elysians. A State may only assert a right to diplomatic protection if the interested persons are its nationals and not nationals of the State the claim is asserted against. Since the Elysians are dual nationals of Acastus and Rubria, no standing exists.

Rubria has a right to extract resources from its sovereign territory, including the relevant parts of the Elysium. As a developing State, Rubria has an obligation to pursue development and improve its population's welfare. This outweighs the potential harm to the Elysians, as the Elysian fields in Rubria are not an "essential element" of their culture. The proposed pipeline

would not violate Elysian rights to self-determination or cultural integrity under the relevant conventions. There is no uniform State practice regarding indigenous land rights that rises to the level of customary international law. Consulting the Elysians was unnecessary, since any possible alternative path for the pipeline was infeasible.

III. Rubria did not violate any international legal obligation owed to Acastus. If this Court finds that Acastus has standing to bring claims against Rubria, Rubria has satisfied its legal obligations related to forced labor and to the protection of nationals.

PROF's actions are not attributable to Rubria. PROF is not a State organ. PROF did not exercise elements of Rubrian governmental authority as Rubria did not empower PROF to exercise a public function. Even if PROF exercised governmental authority, Rubria is not liable for PROF's *ultra vires* actions. Finally, PROF was not under Rubria's direction or control. Since shareholder status is not a recognized basis for attributing actions to a State, Rubria cannot be held liable for PROF's conduct. A finding in favor of Rubria, however, does not foreclose holding PROF directly responsible for its actions.

IV. Acastus has breached its obligations to Rubria under international law. RABBIT requires Acastus to impose liability on its corporations for illegal activities abroad. This includes situations where Acastian corporations control other actors abroad. By incorporating the MCRA into Article 52 of the RABBIT, Acastus assumed an international obligation to enforce the MCRA. Allowing Acastus to shield its companies under limited liability is inconsistent with the RABBIT's object and purpose. Due to Rubria's reliance on prior statements of the Acastian government, Acastus is now estopped from arguing that RABBIT does not impose liability for overseas companies controlled by Acastian firms.

The Acastian court's decision in the *Borius* litigation breached Acastus's treaty obligations. By refusing to hold TNC liable under the MCRA and by not recognizing TNC as having international legal personality, Acastus breached the RABBIT. The Acastian court's decision, however, is not binding on this Court. Acastus's municipal court cannot define Acastus's treaty obligations because the MCRA is a subject of international law by virtue of its incorporation into RABBIT. Even if the MCRA is not considered an instrument of international law, the Acastian municipal court violated the international norm of non-discrimination.

PLEADINGS

I. THE COURT LACKS JURISDICTION OVER ALL CLAIMS, EXCEPT THOSE CONCERNING THE RABBIT, AS ACASTUS IS NOT THE CONTINUATION OF NESSUS AND HAS NOT OTHERWISE ACCEPTED THE COMPULSORY JURISDICTION OF THIS COURT

This Court's jurisdiction is based on the consent of the parties before it.[1] Rubria has accepted this Court's compulsory jurisdiction only with respect to States (i) party to its statute twelve months prior to application to the Court,[2] and (ii) that accepted its compulsory jurisdiction during that time.[3] Acastus meets neither condition.

A. Acastus has not assumed Nessus's status as a party to this Court

There is a critical distinction between State *continuity* and *succession*, and "upon this distinction lies the basis of the law relating to State succession."[4] A continuous State maintains its identity as the same political agent, whereas a successor State may inherit only some particular rights and obligations of its predecessor.[5] In claiming that it has continued Nessus's status as a member of this Court, Acastus might claim either (i) it is the continuation of Nessus, or (ii) it is a new State that has succeeded to Nessus's membership to this Court. Neither claim has merit.

1. ACASTUS HAS NOT ASSUMED NESSUS'S PARTY STATUS THROUGH CONTINUATION

[1] Statute of the International Court of Justice, 26 June 1945, art. 36 [hereinafter I.C.J. Statute]; Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. U.S.*), Merits, 1986 I.C.J. 14, 32 [hereinafter *Nicaragua Opinion*].

[2] Compromis, para. 7.

[3] I.C.J. Statute, *supra* note 1, art. 36(2).

[4] Malcolm N. Shaw, *State Succession Revisited*, 5 FINN. Y.B. INT'L L. 34, 44 (1994); *see also* JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 400 (1979).

[5] KRYSTYNA MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW 10 (1968); Crawford, *supra* note 4, 401.

a. Acastus cannot be the continuation of Nessus under customary international law

State practice demonstrates that the three most important factors in evaluating State continuity are whether the State (i) maintained a majority of its population, (ii) maintained a majority of its territory, and (iii) reached an agreement with successor States, typically through a devolution agreement.[6] Each of these three factors generally exists when a State continues, and no State since the UN's inception has lacked all three and been treated as continuing.[7] For instance, all three of these factors were present when Russia continued the U.S.S.R.'s status and when India continued British India's.[8]

Acastus does not contain a majority of Nessus's territory or population, and the only other successor State, Rubria, does not support its claim of continuation.[9] These same factors were true of the Federal Republic of Yugoslavia [FRY] after the dissolution of the Socialist Federal Republic of Yugoslavia [SFRY]. The Security Council found that "the State formerly known as the [SFRY] has ceased to exist."[10] Other international institutions made the same legal

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[6] *Cf.* Edwin Williamson & John Osborn, *A U.S. Perspective on Treaty Succession and Related Issues in the Wake of the Breakup of the USSR and Yugoslavia*, 33 VA. J. INT'L L. 261, 268 (1993).

[7] *See* Olivier Ribbelink, *State Succession and the Recognition of States and Governments*, *in* STATE PRACTICE REGARDING STATE SUCCESSION AND ISSUES OF RECOGNITION 32, 44-79 (Klabbers et al. eds., 1999).

[8] Michael P. Scharf, *Musical Chairs: The Dissolution of States and Membership in the United Nations*, 28 CORNELL INT'L L.J. 29, 50 (1995).

[9] Compromis, para. 11; Clarification 2.

[10] S.C. Res. 777, U.N. Doc. S/RES/777 (1992).

determination.[11] Notably, the FRY's failed claim to continuation was stronger than Acastus's, as it had more territory and population than any other Yugoslav republic.[12]

b. The Security Council has rejected Acastus's claim of continuation

i. The Security Council conclusively rejected Acastus's claim

Determining membership in the UN is "prima facie a matter for the political organs of the United Nations."[13] Security Council Resolution 2386 unequivocally found that "Nessus has ceased to exist."[14] This language directly refutes any claim that Acastus is the continuation of Nessus. Absent special authorization of the Security Council, membership in the UN is a prerequisite to being a party to this Court's statute.[15] This Court should give substantial deference to Security Council resolutions, which are presumed valid.[16] If this Court should

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[11] Arbitration Commission established by the International Conference on the Former Yugoslavia, Opinion No. 10, 31 I.L.M. 1525, 1526 (1992); *Republic of Croatia v. Girocredit Bank A.G. der Sparkassen*, 36 I.L.M. 1520, 1528 (Austria, 1996); *see also* Vladimir-Djuro Degan, *Correspondents' AGORA: UN Membership of the Former Yugoslavia*, 87 AM. J. INT'L L. 240, 242 (1993).

[12] Yehuda Z. Blum, *U.N. Membership of the "New" Yugoslavia: Continuity or Break?*, 86 AM. J. INT'L L. 830, 833 (1992).

[13] Matthew C. Craven, *The Genocide Case, The Law of Treaties and State Succession*, 68 BRIT. Y.B. INT'L L. 127, 134 (1998).

[14] Compromis, para. 9.

[15] Charter of the United Nations, art. 93, 59 Stat. 1031 (1945) [hereinafter UN Charter].

[16] Certain Expenses of the United Nations, Advisory Opinion, 1962 I.C.J. 151, 168; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 16, 51-53.

contradict the Security Council, it could undermine the UN's organization and seriously impair its own ability to function as a judicial body.[17]

ii. The Under-Secretary-General's interpretation does not undermine the Security Council's rejection of Acastus's continuation claim

The Under-Secretary-General's interpretation of Resolution 2386 reiterates the unassailable fact that Nessus has ceased to exist. Moreover, the Secretariat does not have the authority to issue binding legal opinions.[18] The office of the Under-Secretary-General acknowledged this in a similar case regarding Pakistan's secession from India, stating that its opinion could "obviously . . . have no effect beyond furnishing guidance for the Secretariat."[19]

Alternatively, Acastus has far exceeded the timeframe for temporary membership. When interpreting the Under-Secretary-General's statement, the Court should look to the context and purpose behind it.[20] The purpose of temporary membership was to allow Acastus to participate in the UN until it was admitted in its own right. Rubria, for example, was granted membership to the UN approximately six months after its application.[21] While Acastus may have obtained temporary membership for a similarly brief period, it has been more than four years since the

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[17] Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v. U.S.*), Preliminary Objections, 1998 I.C.J. 115, 169-70 (dissenting opinion of President Stephen M. Schwebel).

[18] *Cf.* UN Charter, *supra* note 15, arts. 97-101.

[19] Statement by Dr. Ivan Kerno, Assistant Secretary-General, to the Sixth Committee, U.N. Doc. A/C.6/146 (1947).

[20] *Cf.* Vienna Convention on the Law of Treaties, art. 31(2), 8 I.L.M. 679 (1969) [hereinafter Convention on the Law of Treaties].

[21] Compromis, para. 7.

Under-Secretary-General's statement.[22] The Court should not reward Acastus's lethargy by granting it membership rights at this late stage.

2. ACASTUS HAS NOT ASSUMED NESSUS'S PARTY STATUS THROUGH SUCCESSION

A State may succeed to particular rights and obligations of its predecessor even though it lacks continuity.[23] However, it is clearly established that rights of succession "have no application to membership in international organizations."[24]

a. Customary law rejects a right of succession to membership in organizations

This Court has indicated that successor States may be bound by treaties that confer human rights[25] or control over territories[26] because succession is essential to implementing such treaties. Conversely, rights of membership in international organizations can never be succeeded to,[27] as an organization's control of its membership is paramount. Unlike treaties that protect individuals or territory, participatory rights in international organizations are considered personal to each organization.

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[22] Compromis, para. 10.

[23] *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia*), Preliminary Objections, 1996 I.C.J. 595, 611-13 [hereinafter *Genocide Convention Case*].

[24] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 637 (6th ed. 2003); *see also Report of the International Law Commission on the Work of its 26th Session, Draft Articles on Succession of States in Respect of Treaties*, at commentary to art. 4, para. 2, U.N. Doc A/9610/Rev.1 (1974) [hereinafter I.L.C. Commentary on VCSSRT]; KONRAD BÜHLER, STATE SUCCESSION AND MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS 31 (2001); L. OPPENHEIM, INTERNATIONAL LAW 152 (Lauterpacht, ed.) (7th ed. 1948).

[25] Genocide Convention Case, *supra* note 23, at 611.

[26] Gabcikovo-Nagymaros Project (*Hungary v. Slovakia*) 1997 I.C.J. 7, 71-72 [hereinafter *Gabcikovo-Nagymaros Project*].

[27] D. P. O'CONNELL, THE LAW OF STATE SUCCESSION 39 (1956); *see, e.g.*, G.A. Res. 47/1, U.N. Doc. A/RES/47/1 (1992); *see also supra* note 24.

For example, while the FRY succeeded to many rights and obligations of the SFRY, organizations such as the World Bank, International Monetary Fund and the United Nations "all refused to recognize its continued membership."[28] The Czech and Slovak Republics each had to apply for membership in the UN after Czechoslovakia's dissolution, and their attempts to *succeed* to membership in organizations like the International Labour Organization were uniformly rejected.[29] The example of Russia continuing the U.S.S.R.'s seat in the UN does not undermine this principle because it would be a mischaracterization to say that Russia succeeded to U.S.S.R.'s membership. It is widely accepted that Russia is *the continuation* of the U.S.S.R.,[30] thereby precluding any issues of succession.

Acastus's payment of Nessus's UN debt is consistent with this position. New States often succeed to their predecessors' debts.[31] While Rubria could have succeeded to UN debts as well, Acastus's assumption of the debt should be viewed in light of Rubria's inferior economic position and Acastus's voluntary assumption of the debt.[32] There is no indication that Acastus has ever paid *its own* membership dues to the UN.

b. The Vienna Convention rejects succession to international organizations

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[28] Paul R. Williams, *State Succession and the International Financial Institutions*, 43 INT'L & COMP. L.Q. 776, 802-03 (1994).

[29] HENRY SCHERMERS & NIELS BLOKKER, INTERNATIONAL INSTITUTIONAL LAW 87 (4th ed. 2003).

[30] Rein Mullerson, *The Continuity and Succession of States, By Reference to the Former USSR and Yugoslavia*, 42 INT'L COMP. L.Q. 473, 478 (1993); M. Bothe, *Sur quelques questions de succession posees par la dissolution de l'URSS et celle de la Yougoslavie*, 96 REVUE GENERALE DE DROIT INT'L PUB. 811 (1992).

[31] *See generally* Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 22 I.L.M. 298 (1983); *767 Third Ave. Assoc. v. Consulate Gen. of Socialist Fed. Republic of Yugoslavia*, 218 F.3d 152, 161 (2d Cir. 2000).

[32] Compromis, paras. 1, 12.

Article 4 of the Vienna Convention on the Succession of States in Respect of Treaties [VCSSRT] clearly states that the rules regarding succession are "without prejudice to the rules concerning acquisition of membership" in international organizations.[33] In interpreting this language, the International Law Commission made clear that "[n]ew States . . . [are] entitled to become Members of the United Nations only by admission, not by succession."[34]

Article 4 has risen to the level of customary international law,[35] precluding Acastus's succession to UN membership. However, the VCSSRT is otherwise not binding on the Court in this dispute, as Acastus is not a party to it.[36] The drafters of the VCSSRT recognized that "a convention on the law of succession in respect of treaties would *ex hypothesi* not be binding on the successor State," but codified the rules nonetheless with hope that they would eventually emerge as custom.[37] While Article 4 has received near universal support, the treaty as a whole has been ratified only by 34 States,[38] and cannot be viewed as customary law.

B. Acastus has not become a party to this Court in its own right

1. UNILATERAL ACTS CANNOT CONFER UN MEMBERSHIP

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[33] Vienna Convention on Succession of States in Respect of Treaties, art. 4, 17 I.L.M. 1488 (1978).

[34] I.L.C. Commentary on VCSSRT, *supra* note 24, at commentary to art. 4 para. 2.

[35] *See* Restatement 3d of Foreign Relations Law § 222 (1987); MALCOLM N. SHAW, INTERNATIONAL LAW 889-90 (5th ed., 2003); notes 24, 27, *infra*.

[36] Convention on the Law of Treaties, *supra* note 20, art. 36.

[37] I.L.C. Commentary on VCSSRT, *supra* note 24, at Introduction paras. 62-63.

[38] *See* Parties to the Vienna Convention on Succession of States in Respect of Treaties, *at* http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXIII/treaty2.asp (last visited Jan. 17, 2006).

UN membership requires "a decision of the General Assembly upon the recommendation of the Security Council."[39] It is well established that the UN "does not accept 'notifications of succession' as a basis for membership. This is true even for members of the UN which were subject to the regime of the organization prior to independence."[40] Acastus's note to the Secretary General indicating it was a member of the UN, and all subsequent similar acts, therefore, could not effectuate its UN membership.

2. THE UN'S TREATMENT OF ACASTUS HAS NOT CONFERRED MEMBERSHIP UPON IT

While Acastus has been seated behind its own nameplate in the General Assembly, this does not confer membership in the UN. This Court has long held that "the recommendation of the Security Council is the condition precedent to the decision of the Assembly by which the admission is effected."[41] In accordance with Security Council Resolution 2386, Acastus must go through the formal admissions procedures before gaining membership. Furthermore, there is no merit to the claim that Resolution 2386 recommended Acastus for membership, as its express terms clearly only recommended that Acastus "should apply."[42]

3. THIS COURT SHOULD REAFFIRM THE RULE REQUIRING FORMAL ADMISSION

Shortly after the UN's creation, the General Assembly's Sixth Committee confirmed that a State may not "claim the status of Member of the United Nations unless it has been *formally*

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[39] UN Charter, *supra* note 15, art 4(2).

[40] SCHERMERS & BLOKKER, *supra* note 29, at 90; *Secretariat Memorandum on Succession of States in Relation to Membership in the United Nations*, at 2, U.N. Doc. A/Cn.4/149 (1962).

[41] Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, 1950 I.C.J. 4, 8.

[42] Compromis, para. 9.

admitted as such in conformity with provisions of the Charter."[43] In the interest of sound policy, this Court should reaffirm this formal requirement. Each State "needs to know [their status] as a matter of sound administration."[44] Additionally, a lack of formal requirements would perpetuate the preferential treatment of politically powerful States,[45] violating the fundamental principle of equality among States.[46]

4. EVEN IF ACASTUS IS A PARTY TO THIS COURT IN ITS OWN RIGHT, IT HAS NEVER ACCEPTED THIS COURT'S COMPULSORY JURISDICTION

Rubria's acceptance of compulsory jurisdiction is subject to the condition of reciprocity,[47] by which Acastus must also have accepted compulsory jurisdiction. While Acastus previously declared itself a party to this Court's statute, it never declared itself bound by compulsory jurisdiction *prior to* its application in this dispute.[48] Compulsory jurisdiction involves a substantial risk for States,[49] and Acastus should not be allowed to invoke it offensively when it never clearly articulated that it accepted compulsory jurisdiction as well. Since Acastus never accepted compulsory jurisdiction, formally or otherwise, Acastus is barred by Article 36(2) of this Court's statute from bringing this claim.

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[43] UN GAOR, 1st Comm., Annex 14g, at 582-83, U.N. Doc. A/C.1/212 (1947) (emphasis added).

[44] Shabtai Rosenne, *Automatic Treaty Succession*, *in* ESSAYS ON THE LAW OF TREATIES 97, 105 (Klabbers & Lefeber eds., 1998).

[45] *See* Mullerson, *supra* note 30.

[46] UN Charter, *supra* note 15, art. 2(1).

[47] I.C.J. Statute, *supra* note 1, art. 36(2).

[48] Compromis, paras. 8, 33.

[49] Anne Peters, *International Dispute Settlement: A Network of Cooperational Duties*, 14 EUR. J. INT'L LAW 1, 17-18 (2003).

C. In the alternative, even if Acastus is a member of this Court, Rubria's acceptance of jurisdiction excludes this dispute

When determining its jurisdiction, "the Court's aim is always to ascertain whether an intention . . . exists to confer jurisdiction upon it."[50] Regarding grants of compulsory jurisdiction, this Court requires a clear conferral of jurisdiction with "due regard to the intention of the State concerned."[51] Rubria clearly intended for its reservation to bar potential compulsory claims brought by Acastus, as it has consistently objected to Acastus's participation in the UN[52] and does not recognize it as a member of this Court. Had it been clear at any time that Acastus was a party to this Court, Rubria could have restricted its grant of compulsory jurisdiction to exclude it, as a State is entitled "to limit the scope of its Declaration in any way it chooses."[53] It did not do so consistent with its position that Acastus is not a member of the UN.

II. IN BUILDING THE PROPOSED PIPELINE, RUBRIA WOULD EXERCISE ITS SOVEREIGN RIGHTS TO RESOURCES AND DEVELOPMENT, AND WOULD NOT VIOLATE ANY INTERNATIONAL DUTY OWED TO ACASTUS.

A. Acastus lacks standing to bring claims on behalf of the Elysians, as they are Rubrian nationals

Acastus's second claim espouses a right on behalf of the Elysians. Acastus has thereby asserted a right of diplomatic protection over the Elysians.[54] A State may only assert a right to

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[50] Factory at Chorzów (*Germany v. Poland*), 1928 P.C.I.J. Ser. A, No. 17, 32.

[51] Fisheries Jurisdiction (*Spain v. Canada*) 1998 I.C.J. 432, 454.

[52] Compromis, para. 11; Clarification 2.

[53] Anglo-Iranian Oil (*U.K. v. Iran*), Preliminary Objection, 1952 I.C.J. 93, 116 (Separate Opinion of Judge McNair).

[54] *See* Avena and Other Mexican Nationals (*Mexico v. U.S.*), 2004 I.C.J. 12, 36-37; Barcelona Traction, Light, and Traction Company, Limited (*Belgium v. Spain*), Second Phase Judgment, 1970 I.C.J. 3, 45; Mavrommatis Palestine Concessions (*Greece v. Great Britain*), 1924 P.C.I.J. Ser. A, No. 2, 12.

diplomatic protection if the interested person is its national, *and is not* a national of the State the claim is asserted against.[55] While the Elysians are Acastian nationals, they are also Rubrian nationals, barring any diplomatic protection claim.

1. ELYSIANS ARE DUAL NATIONALS OF ACASTUS AND RUBRIA UNDER SUCCESSION RULES

Citizens of dissolved States may attain the nationality of any predecessor State with which they maintain a "substantial connection,"[56] with specific regard to residence and "professional ties."[57] If they have substantial links to two States, they shall "end up with the nationality of [both] of these States" unless they choose otherwise.[58] The Elysians maintain a substantial connection to Rubria, as they occupy and labor on parts of its territory. While Doris Galatea declared Elysians to be Acastian nationals, the Elysians have taken no action suggesting they wish to renounce their Rubrian nationality.[59]

2. RUBRIA'S TREATMENT OF ELYSIANS DEMONSTRATES THEIR DUAL NATIONALITY

A State's treatment of individuals is critical in determining their nationality.[60] Rubria has treated Elysians as its nationals by (i) allowing them unrestricted movement across the border,[61]

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[55] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. 174, 186; Mergé Claim, 22 I.L.R. 443, 454 (Ital.-U.S. Conciliation Comm'n, 1955); Hague Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws art. 4, 179 L.N.T.S. 89 (1930); *Reply Regarding the Status of Mr. William Beausier*, 53 Brit. YB Int'l L. 492-93 (1982).

[56] *See* Nottebohm (*Liechtenstein v. Guatemala*), Second Phase, 1955 I.C.J. 4, 30 [hereinafter *Nottebohm*].

[57] International Law Commission, *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*, commentary to art. 1, at para. 4, U.N. Doc. A/RES/55/153 (2000).

[58] *Id.* at para. 5.

[59] Compromis, para. 24.

[60] *See* Tunis and Morocco Nationality Decrees, 1923 P.C.I.J., Ser. B, no. 4, at 24; BROWNLIE, *supra* note 24, at 391.

(ii) conditioning their voting rights on residence as many States do with dual nationals[62] and (iii) espousing its own diplomatic protection claim on behalf of the Elysians pursuant to the MCRA.[63] An attempt to exercise diplomatic protection on behalf of individuals is "cogent evidence of nationality."[64] The Elysians' dual nationality should foreclose any further inquiry into Acastus's claims on their behalf.

B. In permitting the pipeline's construction, Rubria is acting within its sovereign rights and obligations to develop national resources

A fundamental precept of international law is that each State enjoys exclusive sovereignty over its territory.[65] This includes the right to exploit its own resources, as evidenced by numerous international instruments[66] and overwhelming State practice.[67] Rubria has recognized this right as a party to the International Covenant on Civil and Political Rights

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[61] Compromis, para. 4

[62] *See* Constitución Política de los Estados Unidos Mexicanos, tit. I, ch. IV, art. 35, 37; Rey Koslowski, *Challenges of International Cooperation in a World of Increasing Dual Nationality*, *in* RIGHTS AND DUTIES OF DUAL NATIONALS 157, 177-78 (Martin & Hailbronner eds., 2003); FRANCIS DELPEREE, LES DROITS POLITIQUES DES ETRANGERS 122-23 (1995).

[63] Compromis, para. 32.

[64] BROWNLIE, *supra* note 24, at 391; *see also Nottebohm*, *supra* note 56, at 23.

[65] Island of Palmas (*U.S. v. Netherlands*), 2 R.I.A.A. 831, 838 (1928); ROBERT JENNINGS & ARTHUR WATTS, 1 OPPENHEIM'S INTERNATIONAL LAW 574 (9th ed., 1992).

[66] Rio Declaration on Environment and Development, Principle 2, U.N. Doc. A/Conf.151/26/Rev.1 (1992); Stockholm Declaration on the Human Environment, Principle 21, U.N. Doc. A/Conf.48/14 (1972).

[67] *See Legal Problems Relating to the Utilization and Use of International Rivers*, U.N. Doc. A/5409 (1974); Steven Schwebel, *Third Report on the Law of the Non-Navigational Uses of International Watercourses*, U.N. Doc. A/CN.4/348 (1982).

[ICCPR][68] and the International Covenant on Economic, Social, and Cultural Rights [ICESCR].[69] While sovereignty may be limited when resource development harms another State's territory,[70] the affected lands and waterways here are located entirely within Rubria.[71]

Each State has an obligation to pursue development and to improve the quality of life of its population.[72] This obligation is the basis of the ICESCR, which recognizes that resource development is critical to ensuring important human rights.[73] This is especially important for undeveloped countries, like Rubria, in attempting to eradicate poverty, poor education, and lack of healthcare.[74] Rubria has taken numerous steps to develop economically since independence.[75] Judge Ando of the Human Rights Committee recognized that an indigenous group's cultural rights may yield when "its traditional way of life may hamper the economic development of

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[68] International Covenant on Civil and Political Rights, art. 1(2)., 999 U.N.T.S. 171 (1966) [hereinafter ICCPR].

[69] International Covenant on Economic, Social, and Cultural Rights, art 1(2), 993 U.N.T.S. 3 (1966) [hereinafter ICESCR].

[70] *See* Trail Smelter Arbitration (*U.S. v. Canada.*), 3 R.I.A.A. 1905, 1965 (1941).

[71] Compromis, para. 21; Clarification 13.

[72] *See* Universal Declaration of Human Rights, art. 25(1), U.N. Doc. A/810 (1948); Declaration on the Right to Development, art. 3(1), U.N. Doc. A/RES/41/128 (1986).

[73] *See* ICESCR, *supra* note 69, art. 2(1); MATTHEW CRAVEN, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT 132-33 (1995).

[74] *See* CRAVEN, *supra* note 73, at 133; Michal Moore, *Renewable Technologies to Power and Empower the Developing World*, 16 COLO. J. INT'L ENVTL. L. & POL'Y 377, 384-90 (2005).

[75] Compromis, paras. 13, 17, 19.

society as a whole."[76] In furtherance of its obligation to develop, Rubria may build the pipeline through the Elysium as there is no feasible alternate route.[77]

C. Building the proposed pipeline would not violate the Elysians' rights

Rubria's right to develop outweighs the potential harm to the Elysians. Building the proposed pipeline would not violate Rubria's obligations under the ICCPR, ICESCR or customary international law.

1. BUILDING THE PIPELINE WOULD NOT VIOLATE RUBRIA'S ICCPR OBLIGATIONS

a. The project would not violate the Elysians' Article 27 minority rights

i. Article 27 only confers negative rights of governmental noninterference

While ICCPR Article 27 recognizes minority rights "to enjoy their own culture,"[78] it is properly understood to include "only negative rights of [governmental] noninterference, rather than positive rights to assistance."[79] This is evidenced by the *travaux preparatoires* to the ICCPR.[80] Building the pipeline would not amount to governmental interference since (i) it is being built by COG, not Rubria, and (ii) the proposal would only affect the public parks of

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[76] *Lubicon Lake Band v. Canada*, HRC Comm. No. 167/1984, U.N. Doc. A/45/40, Annex 9(A) (individual opinion of Judge Ando) (1990).

[77] Compromis, para. 21.

[78] ICCPR, *supra* note 68, art. 27.

[79] Will Kymlicka, *Theorizing Indigenous Rights*, 49 TORONTO L.J. 281, 284 (1999); *see also* TORE MODEEN, THE INTERNATIONAL PROTECTION OF NATIONAL MINORITIES IN EUROPE 108 (1969); Albert Verdoodt, *Ethnic and Linguistic Minorities and the United Nations*, 11 WORLD JUST. 66, 70-71 (1969).

[80] Statement of the Delegate from Mexico, ESCOR, 16th Session, at para. 53, U.N. Doc. E/2447 (1953); *see also* PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES 180-82 (1991).

Rubria.[81] Requiring Rubria to forego rights to utilize its own public lands would amount to Rubria's affirmative subsidization of the Elysians. Failure to subsidize the Elysians cannot be considered a violation of Article 27 absent government conduct directly prohibiting cultural activities. Article 27 does not prohibit activities that may indirectly cause a group's diminished ability to enjoy its culture.[82]

ii. The fields concerned are not essential to the Elysians' culture

Insofar as Article 27 does offer affirmative protection of lands, it only pertains when the land *itself* has cultural significance. For instance, Rehoboth peoples of Namibia could not sustain an Article 27 claim when the land they used for subsistence cattle grazing did not form the basis of their "distinctive culture."[83] The inquiry should focus on whether the fields are "an essential element of their culture."[84] While the Elysians use the fields for subsistence, there is no claim that the particular land has cultural or religious significance.

Moreover, ILSA's claim that Elysians will be forced to relocate is speculative and any subsequent harm to their culture is unsubstantiated at this time. This Court should not decide cases on such speculative facts.[85] This Court should only address the direct and definite harms posed by the pipeline's construction and disregard the speculative harm of relocation.

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[81] Compromis, para. 5.

[82] *See, e.g.*, *Mahuika v. New Zealand*, HRC Comm. No. 547/1993, paras. 9.4-9.8, U.N. Doc. CCPR/C/70/D/547/1993 (2000); *Länsman v. Finland*, HRC Comm. No. 511/1992, para. 9.4, U.N. Doc. CCPR/C/52/D/511/1992 (1994).

[83] *Diergaardt v. Namibia*, HRC Comm. No. 760/1997, para. 10.6 U.N. Doc. CCPR/C/69/D/760/1997 (2000).

[84] *Länsman v. Finland*, HRC Comm. No. 671/1995, para. 10.2, U.N. Doc. CCPR/C58/D/671/1995 (1996).

[85] Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), 2002 I.C.J. 3, 68 (separate opinion of Judge Higgins); Request for an Examination of the Situation in

b. The project would not violate the Elysians' Article 1 right to self-determination

The right to self-determination is a central principle underlying the ICCPR.[86] This right does not apply here, as it only protects States from *foreign* occupation or colonization. In drafting the ICCPR, an overwhelming majority of States explicitly rejected the provision's application to national minorities, such as the Elysians.[87] Some have espoused the broader view that self-determination should guarantee indigenous groups sovereign control over their territory,[88] but this view lacks support in State practice.[89]

Alternatively, insofar as it does protect minority groups from political disenfranchisement within a State based on race or ethnicity, no such discrimination occurred here. There is no evidence that Rubria's residency requirement for voting is applied discriminatorily.[90]

2. BUILDING THE PIPELINE WOULD NOT VIOLATE RUBRIA'S ICESCR OBLIGATIONS

While the ICESCR also protects self-determination and minority rights, its protections are inherently weaker since a State may limit the rights therein "for the purpose of promoting the general welfare."[91] Building the pipeline and bringing substantial resources to an undeveloped

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Accordance with Paragraph 63 of the Court's 1974 Judgment in the Case Concerning Nuclear Tests (*New Zealand v. France*), 1995 I.C.J. 288, 333 (dissenting opinion of Judge Weeramantry).

[86] *See* ICCPR, *supra* note 68, art. 1(1); *see also* ICESCR, *supra* note 69, art. 1(1).

[87] *See* ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES 51-52 (1995); *see, e.g.*, Statement of the Delegate from Greece, para. 32, U.N. Doc. A/C.3/SR.572 (1955).

[88] *See, e.g.*, Yoram Dinstein, *Self-Determination and the Middle East Conflict*, *in* SELF-DETERMINATION: NATIONAL, REGIONAL AND GLOBAL DIMENSIONS 249-53 (Alexander & Friedlander, eds., 1980).

[89] ANTONIO CASSESE, *supra* note 87, at 103-04 n.3.

[90] *See* Compromis, para. 4.

[91] ICESCR, *supra* note 69, art. 4.

State meets this criterion. The ICESCR also places lesser requirements on developing nations and, if this Court determines the Elysians are not Rubrian nationals, for the protection of non-nationals.[92] The failed claims under the ICCPR must also fail under the ICESCR.

3. THERE IS NO INTERNATIONAL CUSTOM ENSURING ANCESTRAL LAND RIGHTS FOR INDIGENOUS GROUPS

The Covenants considered above provide the broadest protection for indigenous rights. There is no customary international law recognizing indigenous rights to ancestral land.[93] Custom requires both uniform State practice and *opinio juris*.[94] Recently, States have repeatedly exploited lands occupied by indigenous peoples—far more aggressively than Rubria proposes—with no legal consequence.[95] Treaties which purport to expand indigenous rights beyond ICCPR Article 27 have received little support. The International Labour Organization's Convention No. 169 has only been ratified by seventeen States since it was adopted in 1989.[96] Articles 25-28 of the UN Draft Declaration on the Rights of Indigenous Peoples,[97] dealing with indigenous rights to land, were met with staunch opposition.[98] Advocates for expanding indigenous rights

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[92] *Id.* at art. 2(3).

[93] Feisal Hussain Naqvi, *People's Rights or Victim's Rights: Reexamining the Conceptualization of Indigenous Rights in International Law*, 71 IND. L.J. 673, 712-18 (1996).

[94] I.C.J. Statute, *supra* note 1, art. 38(1)(b).

[95] *See, e.g.*, *Indians, Oil, and the Internet*, THE ECONOMIST, June 6, 1998, at 34; *see also* Naqvi, *supra* note 93, at 715-18.

[96] *See* Ratifications of Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, *at* http://www.ilo.org/ilolex/english/convdisp1.htm (last visited Jan. 17, 2006).

[97] U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

[98] PATRICK THORNBERRY, INDIGENOUS PEOPLES AND HUMAN RIGHTS 392-94 (2002).

recognize that "governments typically have held that [the Draft Declaration] goes too far."[99] While States occasionally consult with indigenous groups before undertaking such projects, consultation is by no means uniform State practice, and it would have been *futile* in this case since all alternate routes were prohibitively expensive.[100]

III. RUBRIA DID NOT VIOLATE ANY INTERNATIONAL LEGAL OBLIGATIONS OWED TO ACASTUS AND PROF'S ACTIONS ARE NOT IMPUTABLE TO RUBRIA

A State is responsible for an internationally wrongful act only if (i) the act "constitutes a breach of an international obligation"[101] and (ii) the wrongful act "is attributable to the State under international law."[102] Moreover, the degree of harm must not influence the question of attribution.[103]

A. Acastus lacks standing based on either diplomatic protection or a violation of an *erga omnes* obligation

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[99] JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW 65 (2d ed. 2004).

[100] Compromis, para. 21

[101] Articles on Responsibility of States for internationally wrongful acts, art. 2(b), U.N. GAOR, Int'l Law Comm'n, 53d Sess., U.N. A/CN.4/L.602/Rev.1 (2001) [hereinafter Articles on State Responsibility]; *see also Gabcikovo-Nagymaros Project*, *supra* note 26, at 54; *Nicaragua Opinion*, *supra* note 1, at 117-18; Phosphates in Morocco (*Italy v. France*), 1938 P.C.I.J., ser. A/B, No. 74, at 10.

[102] Articles on State Responsibility, *supra* note 101, at art. 2(a); *see also* Corfu Channel (*U.K. v. Albania*), Merits, 1949 I.C.J. 4, 22-23; United States Diplomatic and Consular Staff in Tehran (*U.S. v. Iran*), 1980 I.C.J. 3, 29.

[103] JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES 81 (2002) [hereinafter I.L.C. Commentaries].

The only grounds available for Acastus to bring this claim are (i) if it is espousing a claim on behalf of its nationals based on diplomatic protection,[104] or (ii) if it is asserting the violation of an *erga omnes* obligation.[105] The dual-nationality of the Elysians bars any claim based on diplomatic protection.[106] Additionally, Acastus cannot assert standing based on a violation of an *erga omnes* obligation, since the duty to *prevent* forced labor is not an *erga omnes* obligation.[107] The UN and this Court have acknowledged *erga omnes* obligations in connection with the prohibition of slavery, genocide and apartheid, but not forced labor.[108] This is consistent with the fact that international law distinguishes slavery from forced labor.[109]

B. Rubria has fulfilled its international legal obligations to Acastus

1. RUBRIA FULFILLED ITS OBLIGATIONS RELATED TO FORCED LABOR

International law obligates all States to "suppress and not make use of" forced labor.[110] These obligations require Rubria to examine complaints and to apply relevant regulations and

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[104] EDWIN M. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD OR THE LAW OF INTERNATIONAL CLAIMS 25-29 (1915); BROWNLIE, *supra* note 24, at 391-92.

[105] D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 505 (2003); *Barcelona Traction*, *supra* note 54, at para. 34.

[106] *See* Part II.A., *infra*.

[107] *See* LAURI HANNIKAINEN, PEREMPTORY NORMS (JUS COGENS) IN INTERNATIONAL LAW 75-87 (1988).

[108] Articles on State Responsibility, *supra* note 101, art. 19; *Barcelona Traction*, *supra* note 54, at para. 34.

[109] Universal Declaration of Human Rights, *supra* note 72, at arts. 4, 23; ICCPR, *supra* note 68, art. 8.

[110] Convention Concerning the Abolition of Forced Labour, art. 1, 320 U.N.T.S. 291 (1957) [hereinafter Forced Labour Convention]; *see also* ICCPR, *supra* note 68, art. 8(3)(a); Convention Concerning Forced or Compulsory Labour, art. 1(1) June, 28, 1930 (ILO No. 29) 39 U.N.T.S. 55 [hereinafter Forced Labour Convention].

penalties.[111] Insofar as there is an obligation, domestic legislation and efforts to enforce that legislation fulfill the obligation.[112] The Rubrian Prosecutor-General is investigating PROF's activities and considering whether charges are appropriate under the relevant municipal law.[113] Therefore, Rubria has satisfied its international obligations related to forced labor.

2. RUBRIA FULFILLED ITS OBLIGATIONS RELATED TO THE PROTECTION OF FOREIGN NATIONALS

A host State fulfills the customary obligation to protect foreign nationals by treating aliens in accordance with ordinary standards of civilization.[114] In *Corfu Channel*, this Court cautioned that, in the absence of direct evidence, the occurrence of wrongful conduct on a State's territory is insufficient to find that the "State necessarily knew or ought to have known, of any unlawful acts . . . ."[115]

The U.S.-Mexican General Claims Commission stated that conduct violates the obligation to protect foreign nationals where it amounts to "an outrage, to bad faith, to willful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency."[116] Additionally, with regard to the activities of a corporation acting in a private capacity, the

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[111] Forced Labour Convention, *supra* note 110, art. 23(2), 24.

[112] Velásquez Rodríguez Case, 1988 Inter-Am Ct. H.R. (Ser. C) No. 4, at paras. 174-77 (1988); Forced Labour Convention, *supra* note 110, at arts. 23-5; ICESCR, *supra* note 69, at art. 2(1); General Comment 3, CESCR, 5th Sess., U.N. Doc. E/1991/23, para. 3 (1991).

[113] Clarification 1.

[114] *See Corfu Channel*, *supra* note 102, at 23; Neer v. Mexico (*U.S. v. Mexico*), 4 R.I.A.A. 60, para. 4 (1926) [hereinafter *Neer*]; HARRIS, *supra* note 105, at 564-68.

[115] *Corfu Channel*, *supra* note 102, at 18.

[116] *Neer*, *supra* note 114, at para. 4.

activities of the corporation must have been generally known.[117] Rubria cannot be held liable for willfully neglecting its duties to aliens because Rubria did not know, nor should it have known about PROF's actions. PROF's alleged actions were sporadic, isolated incidents and, until Doris Galatea made a statement in the Acastian parliament, never publicly mentioned.[118] Shortly thereafter Rubria suspend the pipeline project and initiated an investigation into PROF's actions.

C. PROF'S actions are not attributable to Rubria

The conduct of private persons or entities is generally not attributable to the State under international law.[119] PROF's conduct is only attributable to Rubria if PROF was acting as a State organ, exercising elements of governmental authority, or within Rubria's direction or control.[120]

1. PROF IS NOT A STATE ORGAN

The Articles on State Responsibility define an organ of the State as "any person or entity which has that status in accordance with the internal law of the State."[121] Private contractors are regarded as State organs only if they perform public functions essential to the very existence of the State, such as incarcerating criminals.[122] PROF is not a State organ because PROF is a private corporation under Rubrian law and was only hired to perform a service.[123]

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[117] *Kenneth P. Yeager and the Islamic Republic of Iran*, Partial Award No. 324-10199-1, 17 Iran-U.S. Cl. Trib. Rep. 92, 111 (1987) [hereinafter *Yeager*].

[118] Compromis, para. 26.

[119] I.L.C. Commentaries, *supra* note 103, at 110.

[120] Articles on State Responsibility, *supra* note 101, arts. 4, 5, 8.

[121] Articles on State Responsibility, *supra* note 101, art. 4; *Yeager*, *supra* note 117, at 101.

[122] S. Ellman, *A Constitutional Confluence: American "State Action" Law and the Application of South Africa's Socioeconomic Rights a Guarantees to Private Actors*, 45 N.Y.L. SCH. L. REV. 21 (2001); A. Rodeba, *The Death of Implied Causes of Action: The Supreme Court's Recent Bivens*

2. PROF DID NOT EXERCISE ELEMENTS OF RUBRIAN GOVERNMENTAL AUTHORITY

a. Rubria did not empower PROF with governmental authority

Private conduct is attributable to a State on the basis of exercising governmental authority only if the State's internal law specifically authorizes the conduct and recognizes it as a public function. It is not enough that the State's internal law permits the activity as part of its general regulation.[124] Even where an agency relationship exists, a State can be exonerated from vicarious liability for the wrongful conduct of private contractors.[125]

Acts which an entity commits in a purely private capacity, even if utilizing means the State has placed at its disposal, are not attributable to the State.[126] PROF is a private entity hired by COG. Rubria's internal law generally permitted PROF to operate as private security guards for a private corporation. Private security hired by a private corporation is not equivalent to a police force and must be distinguished from actors exercising a public function, such as prison

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Jurisprudence and the Effect on State Constitutional Tort Jurisprudence: Correction Services Corp. v. Maleskko, 33 NEW MEX. L. REV. 241 (2003); Street v. Coor. Corp. of Am., 102 F.3d 810, 814 (6th Cir. 1996).

[123] Compromis, para. 23; Clarification 6.

[124] I.L.C. Commentaries, *supra* note 103, at 101; Interpretation and Application of the Montreal Convention Arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v. U.S.*), Provisional Measures, 1992 I.C.J. 114, 199-202 (Dissenting opinion of Judge El-Kosheri).

[125] *See e.g.*, Canadian Pacific Railway Co. v. Lockhart, 1942 A.C. 591, 599 (Gr. Brit. 1942); *Momoivalu v. Nauru Air & Shipping Agency*, Civ. Act. No. 819 of 1985 (High Ct. of Fiji at Suva, 1992); Michael John Bottomley v. Todmorden Cricket Club, 2003 E.W.C.A. (civ.) 1575 (Eng. 2004); Gass v. Virgin Islands Telephone Corp., 311 F.3d 237, 240-41 (3rd. Cir. 2002).

[126] CHARLES BROWER & JASON BRUESCHKE, THE IRAN-UNITED STATES CLAIMS TRIBUNAL 446 (1998) [hereinafter BROWER]; *Int'l Tech. Products Corp. et al. and The Gov't of the Islamic Republic of Iran et al.*, Award No. 196-302-3, 9 Iran-U.S. Cl. Trib. Rep. 206, 239-40 (1985) [hereinafter *International Technical Products*].

guards.[127] Rubria's investment in COG does not alter PROF's status as a private security detail.[128] PROF lacked government police powers and was not exercising governmental authority.

b. Even if PROF exercised governmental authority, Rubria is not liable for PROF's ultra vires *actions*

Even if PROF was empowered with governmental authority, it was acting *ultra vires* and its actions cannot be attributed to Rubria.[129] In no circumstance would a private security force be empowered to recruit and force people to work; PROF was clearly acting outside the scope of its function in so doing. Additionally, PROF maintained a distinct identity from State officials.[130] Thus, PROF was not acting under apparent authority and its actions remain *ultra vires*.

3. PROF WAS NOT UNDER RUBRIA'S DIRECTION OR CONTROL

An entity's conduct can be attributed to the State if the entity is "in fact acting on the instructions of, or under the direction or control of" the State.[131] A State is only responsible for the specific operation that it instructed, directed or controlled.[132] The conduct to be attributed must be an "integral part of that operation."[133] Rubria did not instruct or direct PROF to force the Elysians to work.

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[127] I.L.C. Commentaries, *supra* note 103, at 100.

[128] *Id.* at 107.

[129] Articles on State Responsibility, *supra* note 101, art. 5; I.L.C. Commentaries, supra note 103, at 101.

[130] Clarification 6.

[131] Articles on State Responsibility, *supra* note 101, art. 8.

[132] I.L.C. Commentaries, *supra* note 103, at 110.

[133] *Id.*, at 104.

International law acknowledges the general separateness of corporate entities at the national level.[134] The Iran-U.S. Claims Tribunal stated that the claimant must show "orders, directives, recommendations or instructions issued to the corporations by the governmental agency controlling them" in order to find the government liable.[135] Acastus has provided no such proof about the relationship between Rubria and PROF.

This Court established a legal standard for attributing the acts of private actors to a State in *Military and Paramilitary Activities in and against Nicaragua.*[136] The Court found that, although the U.S. had financed, organized, trained, supplied, equipped and helped plan the operations of the Contras, there was insufficient evidence to find the U.S. responsible for the Contras' acts.[137] Rubria merely approved the creation of PROF through COG.[138] PROF had full discretion over its tactical ammunition.[139] Liability cannot be imputed to Rubria as it was far less involved in PROF's activities than the U.S. was with the Contras' activities.

4. STATE RESPONSIBILITY DOES NOT RECOGNIZE SHAREHOLDER STATUS AS A BASIS FOR LIABILITY

Rubria's status as a minority shareholder in COG on a one vote per share basis evidences a lack of governmental control over PROF.[140] TNC, as the majority shareholder in COG, had

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[134] *Id.*, at 112.

[135] *Flexi-Van Leasing, Inc.*, Award No. 259-36-1, 12 Iran-U.S. Cl. Trib. Rep. 206, 239 (1986) [hereinafter *Flexi-Van Leasing*]; *International Technical Products*, *supra* note 126, at 239; BROWER, *supra* note 126, at 450 n.2127.

[136] *Supra* note 1, at 14.

[137] *Id.*, at 64 para. 115.

[138] Compromis, para. 23.

[139] *Id.*

[140] *Id.*, at para. 19.

unilateral power to authorize COG's creation of PROF. The Iran-U.S. Claims Tribunal held that to establish State liability for the actions of a corporation in which the government is a shareholder, the claimant must show direct governmental interference, such as using its ownership interest to direct the private entity's operations.[141] As a shareholder in COG, Rubria approved PROF's contract, but there is no evidence that Rubria directly participated in or interfered with the creation or performance of the contract.

D. Finding for Rubria does not negate PROF's liability

Forced labor is among the handful of crimes to which the law of nations attributes individual liability without State action.[142] There are instruments, such as the United States' Alien Tort Claims Act,[143] to hold private corporations directly liable for human rights violations.[144] Moreover, the prohibition against forced labor is the most widely recognized of the UN-promulgated Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises directly applicable to corporations.[145] Thus, finding for Rubria will not result in the exoneration of PROF.

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[141] *Flexi-Van Leasing*, *supra* note 135, at 348-49.

[142] Tel-Oren v. Libya, 726 F.2d 774 (D.C. Cir. 1984) (Edwards, J., concurring); Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L. J. 443, 488 (2001); Daniel Aguirre, *Multinational Corporations and the Realisation of Economic, Social and Cultural Rights*, 35 CAL. W. INT'L L.J. 53, 72 (2004).

[143] Alien Tort Statute, 28 U.S.C. § 1350 (2002).

[144] *See* Doe v. Unocal Corp., 395 F.3d 932 (9th Cir. 2002).

[145] Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Eco.Soc. 55th Sess., U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2, at para. 20 [hereinafter UN Norms]; *see* Charter of the International Military Tribunal, art. 6, 82 U.N.T.S. 279 (1945); Carlos M. Vasquez, *Direct vs. Indirect Obligations of Corporations Under International Law*, 43 COLUM. J. TRANSNAT'L L. 927, 944 (2005).

IV. ACASTUS IS IN BREACH OF ARTICLE 52 OF THE RABBIT AND HAS BREACHED ITS OBLIGATIONS TO RUBRIA UNDER INTERNATIONAL LAW

Acastus and Rubria entered into the RABBIT to assure that Acastian corporations would be held liable for illegal conduct in Rubria.[146] The Acastian civil court in the *Borius* litigation improperly shielded TNC, an Acastian corporation, from liability for its actions in Rubria. Acastus thereby violated its obligations to Rubria.

A. Acastus has an obligation to hold its corporations liable for the actions of foreign companies under their control

RABBIT Article 52 requires Acastus to enforce the MCRA,[147] which states that an "[Acastian] firm shall, in its conduct abroad, comply with all governing norms of conventional and customary international law."[148] The RABBIT should be interpreted in good faith and in accordance with its plain meaning.[149] The ordinary meaning of "conduct abroad" includes situations where corporations control companies acting abroad.[150] Since TNC clearly had control over COG under applicable international norms since it was the majority shareholder,[151] Acastus was obligated to hold it accountable.

1. THE RABBIT REQUIRES ACASTUS TO IMPOSE LIABILITY ON ITS CORPORATIONS FOR FOREIGN ENTITIES UNDER THEIR CONTROL

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[146] Compromis, para. 17.

[147] Compromis, para. 15.

[148] Compromis, Annex A, §4.

[149] Convention on the Law of Treaties, *supra* note 20, art. 31.

[150] INTERNATIONAL MONETARY FUND, BALANCE OF PAYMENTS MANUAL 83 (1993), *available at* http://www.imf.org/external/np/sta/bop/BOPman.pdf (last visited Jan 17. 2005) [hereinafter IMF MANUAL]; C.D. WALLACE, THE MULTINATIONAL ENTERPRISE AND LEGAL CONTROL 30 (2002).

[151] IMF MANUAL, *supra* note 150, at 86; WALLACE, *supra* note 150, at 161-164; Compromis, para. 19; Clarification 5.

a. RABBIT Article 52's incorporation of the MCRA imposes an international obligation on Acastus to enforce the MCRA

Text incorporated into a treaty by reference must be construed according to the integrating clause's purpose.[152] The MCRA was incorporated under a heading of "Corporate Responsibility,"[153] suggesting that MCRA should be applied to ensure that Acastian firms take responsibility for their operations abroad. This interpretation is enforced by the UN's recognition of liability for violations by business entities "whatever their legal form, whether in their home country or country of activity."[154] It is further supported by the emerging norm of corporate responsibility, endorsed by the OECD[155] and adopted by the European Union, U.S., Argentina, and India.[156] Acastus's pronouncements and membership in OECD evidence its commitment to this emerging norm.[157]

b. The RABBIT's object and purpose support the imposition of liability for Acastian controlled companies abroad

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[152] *SGS v. Pakistan*, 42 I.L.M. 1290, para. 169 (W. Bank, 2003); M. P. Andrés Sáenz, *La Incorporación por referencia en el Derecho de los Tratados*, 37 R.E.D.I. 7, 25 (1985).

[153] Compromis, para. 15.

[154] UN Norms, *supra* note 145; P. Blumberg, *Accountability of Multinational Corporations: The barriers presented by concepts of the corporate juridical entity* 24 HASTINGS INT'L. & COMP. L. REV. 297, 303 (2001).

[155] OECD, OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications, DAFFE/IME/WPG(2000)15/FINAL, at 9 (2001).

[156] Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 8 I.L.M. 229 (1968); *Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002); P.T. MUCHLINSKI, MULTINATIONAL ENTERPRISES AND THE LAW 326 (1996); Michael W. Gordon, *Argentine Jurisprudence: the Parke-Davis and Deltec Cases*, 6 LAW. OF THE AM. 320 (1974).

[157] Compromis, para. 14, 36.

The Vienna Convention on the Law of Treaties allows consideration of circumstances surrounding a treaty's conclusion to resolve ambiguity.[158] Acastus guaranteed the accountability of its corporate citizens.[159] Rubrian President Fides indicated his understanding that RABBIT allows Rubrians to "enter into business relationships with Acastian enterprises without worry." These statements evidence a strong presumption that Acastian corporations controlling operations in Rubria, such as TNC, should be held liable for such activities.

c. Allowing Acastus to shield TNC under limited liability is inconsistent with the RABBIT

A treaty's terms must be construed to achieve its intended effect.[160] Acastus attempts to apply a strict principle of limited liability; liability is imposed only on firms "that operate directly in foreign countries."[161] However, creation of foreign subsidiaries for operations abroad is now the dominant form of industrial organization.[162] Only the smallest private businesses maintain the single operating company structure[163] that Acastus requires to impose liability. Acastus's interpretation of the RABBIT is untenable and undermines the treaty's intended effect, as it is clear that the parties' intent was to regulate more than small private businesses.

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[158] Convention on the Law of Treaties, *supra* note 20, art. 32.

[159] Compromis, para. 14.

[160] Free Zones of Upper Savoy and Gex (*France v. Switzerland*), 1929 P.C.I.J. (ser. A) No. 22, at 13; Hersch Lauterpacht, *Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties*, 26 BRIT Y.B. INT'L. L. 48, 67 (1949); M.G. MONROY CABRA, DERECHO DE LOS TRATADOS 125 (1978).

[161] Compromis, para. 28.

[162] *See* WALLACE, *supra* note 150, at 24.

[163] T. Hadden, *Inside Corporate Groups,* 12 INT'L J. SOC. L. 271, 272 (1984).

Applying the doctrine of *contra proferentum*, ambiguities should be construed against Acastus, as the drafter of the MCRA, and in accordance with the reasonable expectations of the non-drafting party.[164] Rubria reasonably expected Acastian corporations to be held liable, as evidenced by President Fides's statement, and could not foresee Acastus imposing such a strict principle of limited liability.

2. ACASTUS IS ESTOPPED FROM ARGUING THAT THE RABBIT DOES NOT IMPOSE LIABILITY ON TNC

This Court has recognized estoppel as a general principle of international law.[165] The Acastian Prime Minister made a clear and unambiguous statement that Acastian firms would be held liable for their actions abroad.[166] When a State agent makes a unilateral declaration in an official capacity, "interested States ... are entitled to require that the obligation thus created be respected."[167] Acastus's intention to induce reliance upon this statement is confirmed by the MCRA, which was meant "to encourage other States to enter into bilateral investment treaties with Acastus."[168] Rubria detrimentally relied on this statement[169] by concluding the RABBIT

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[164] BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 108 (1953); A. AUST, MODERN TREATY LAW AND PRACTICE 201 (2000).

[165] Nicaragua Opinion, *supra* note 1, 413-15; Arbitral Award by the King of Spain (*Honduras v. Nicaragua*), 1960 I.C.J. 192, 213.

[166] *See* Legal Status of Eastern Greenland (*Denmark v. Norway*), 1933 P.C.I.J. (Ser A/B) No. 53, at 69.

[167] Nuclear Test (*Australia v France; New Zealand v. France*), 1974 I.C.J. 253, 268; *see also* CHENG, *supra* note 164, at 148; BROWNLIE, *supra* note 24, at 613.

[168] Compromis, Annex A, §1.2.

[169] *See* North Sea Continental Shelf (*Federal Republic of Germany v. Denmark, Federal Republic of Germany v. Netherlands*), 1969 I.C.J. 3, 26.

and opening its economy to Acastian corporations. Acastus should be estopped from revoking its guarantee.

B. The Acastian court's decision in the Borius litigation breached Acastus's treaty obligations

A municipal court decision may constitute evidence of a breach of international obligations,[170] particularly if it interprets a binding treaty contrary to the parties' intentions.[171] The Acastian court's decision[172] breached Acastus's obligation to Rubria to hold its companies liable for harms on Rubrian territory.

1. ACASTUS BREACHED THE RABBIT BY REFUSING TO HOLD TNC LIABLE UNDER THE MCRA

The Acastian court found that the treatment of the Elysians during pipeline construction violated international law.[173] Under applicable international norms TNC had control over COG,[174] yet the Acastian court refused to hold TNC liable for its involvement. This amounts to a breach of the RABBIT.

2. ACASTUS ALSO BREACHED THE RABBIT BY NOT RECOGNIZING TNC'S INTERNATIONAL LEGAL PERSONALITY

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[170] Norwegian Loans (*France v. Norway*), 1957 I.C.J. 34, 36-8, 40 (separate opinion of Judge Lauterpacht) [hereinafter Norwegian Loans]; *Barcelona Traction*, *supra* note 54, at 234 (separate opinion of Judge Morelli); *Id.* at 272 (separate opinion of Judge. Gros); Interhandel (*Switzerland v. U.S.*) 1959 I.C.J.1, 26-27 [hereinafter Interhandel]; BROWNLIE, *supra* note 24, at 38.

[171] Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 V.A. J. INT'L. L. 431, 448-9 (2004).

[172] Clarification 12.

[173] Compromis, para. 31.

[174] *See supra* notes 150-151.

In dismissing TNC as a defendant in the *Borius* litigation, the Acastian court determined that TNC lacked international personality.[175] The MCRA requires all Acastian companies to comply with customary and conventional international law, thus making corporations subjects of international law for the purpose of Acastian-Rubrian relations.[176] States may create rights and obligations for non-States through treaty.[177] TNC was thus required to observe international law in its operation of COG. It also fell under the jurisdiction of AIRES, and it was a proper defendant in the *Borius* litigation. Since the RABBIT created an international obligation for Rubria to apply AIRES,[178] the Acastian court's failure to hold TNC liable under AIRES constitutes a breach of the RABBIT.

C. The Acastian court decision is not binding on this court

1. MUNICIPAL COURTS CANNOT DEFINE ACASTUS'S TREATY OBLIGATIONS UNDER THE RABBIT

RABBIT Article 52 establishes that enforcement of MCRA is a treaty obligation of Acastus.

a. The MCRA is an instrument of international law.

Text incorporated into a treaty which constitutes a pre-existing legal instrument becomes a subject of international law consistent with the purpose of the incorporating treaty.[179] The

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[175] Compromis, para. 28.

[176] Compromis, Annex A, § 4.

[177] Jurisdiction of the Courts of Danzig, 1928 P.C.I.J. (Ser B) No. 15, at 17-18.

[178] Compromis, para. 15.

[179] *SGS Societé Generale de Surveillance S.A. v. Philippines* (ICSID), Case No. ARB/02/6 (2004); G. Fitzmaurice, *Law of Treaties*, *in* 1960 INTERNATIONAL LAW COMM. Y.B. 69, paras. 44, 91; M. P. Andrés Sáenz, *supra* note 152, 13, 32, 37.

RABBIT incorporated the text of the MCRA.[180] Interpretation of the MCRA to determine the parties' treaty obligations is thereby subject to international legal principles of treaty interpretation.

b. Acastus cannot defend its breach based on the Acastian court's decision

A State may not assert municipal law provisions in response to an alleged breach of treaty obligations.[181] When a municipal court decision affects the international rights and obligations of States, the governing law is international, not municipal.[182] Therefore, a municipal court decision is not binding on other parties to the treaty or international tribunals.[183] The RABBIT incorporates the MCRA's text by reference and makes its enforcement an obligation under international law.[184] The question of whether or not Acastus has breached its treaty obligation must be determined by international law.

2. IN THE ALTERNATIVE, IF THE MCRA IS NOT AN INSTRUMENT OF INTERNATIONAL LAW, THE ACASTIAN MUNICIPAL COURTS HAVE VIOLATED ACASTUS'S OBLIGATIONS TO RUBRIA

a. The Borius litigation is a breach of Acastus's obligation to enforce domestic law under the RABBIT

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[180]Compromis, para. 15.

[181] Convention on the Law of Treaties, *supra* note 20, art. 27; *see also* BROWNLIE, *supra* note 24, at 34.

[182] Interhandel, *supra* note 170, at 11; Norwegian Loans, *supra* note 170, at 36-7 (separate opinion of Judge Lauterpacht); *see also* ARNOLD DUNCAN MCNAIR, THE LAW OF TREATIES 164 (1938); SIR GERALD FITZMAURICE, 2 THE LAW AND PROCEDURE OF THE INTERNATIONAL COURT OF JUSTICE 599 (1986).

[183] *In the Matter of* David J. Adams, Brit.-Am. Claims Arb. Trib., 16 A.J.I.L. 318 (1921); M.G. MONROY CABRA, MANUAL DE DERECHO INTERNACIONAL PÚBLICO 147 (1982).

[184] Compromis, para 15.

When municipal court decisions affect the international rights and obligations of States, the decisions are subject to international review.[185] Article 52 obligates Acastus to enforce its domestic law.[186] The MCRA established the international legal personality of Acastian firms abroad for purposes of domestic law[187] in accordance with international norms.[188] The Acastian court found TNC not to be a subject of international law and consequently not a proper party defendant under AIRES. This breached Acastus's treaty obligation to enforce its domestic law.

b. The Acastian court decision is a violation of the international norm of non-discrimination

The Acastian court, in holding Rubria liable while absolving TNC, violated the non-discrimination principle. An error of municipal law combined with discriminatory intent constitutes a violation of international law.[189] As demonstrated above, the Acastian civil court clearly erred, as AIRES provided subject matter jurisdiction over this case and the court applied an excessively strict concept limited liability.

The court also clearly discriminated when it imposed liability on Rubria, a minority shareholder in COG, while absolving TNC, the majority shareholder. While the court justified

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[185] *Avena*, *supra* note 54; LaGrand Case (*Germany v. U.S.*) 2001 I.C.J. 466; EDUARDO JIMÉNEZ DE ARÉCHAGA, EL DERECHO INTERNACIONAL CONTEMPORÁNEO 331 (1980); Robert B. Ahdieh, *Between Dialogue and Decree: International Review of National Courts*, 79 N.Y.U. L. REV. 2029, 2043-44 (2004).

[186] Compromis, para. 15.

[187] Compromis, Annex A, § 4.

[188] UN Norms, *supra* note 145; *The Paquete Habana*, 175 U.S. 677 (1900); W. BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND 66 (1st ed. 1769); M. Reimann, *From the Law of Nations to Transnational Law,* 22 PENN ST. INT'L. L. REV. 397, 404-06 (2004).

[189] BROWNLIE, *supra* note 24, at 507; Eduardo Jiménez de Aréchaga, *State Responsibility for Acts of Judiciary, in* TRANSNATIONAL LAW IN A CHANGING SOCIETY: ESSAYS IN HONOR OF PHILIP C. JESSUP 171, 179-185 (Friedman et al., eds.1972).

its holding by claiming it only imputed liability to Rubria directly, and not as a shareholder, the decision is better understood as an instance of discrimination against a foreign entity. Such discrimination violates customary international law.

V. CONCLUSION AND PRAYER FOR RELIEF

For all the aforementioned reasons, the State of Rubria respectfully requests that this honorable Court find, adjudge and declare as follows:

1. That this Court lacks jurisdiction over all claims other than those under the RABBIT; and
2. That Rubria may permit the construction of the proposed pipeline in accordance with international law and its right to sovereignty over territory and natural resources; and
3. That Rubria is not responsible for PROF's actions, and Rubria fulfilled all international legal obligations owed to Acastus; and
4. That Acastus breached Article 52 of the RABBIT by virtue of the Acastian civil court's decision.

Respectfully submitted,

Agents for the Respondent