465R

INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

THE 2006 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION

CASE CONCERNING
THE ELYSIAN FIELDS

THE REPUBLIC OF ACASTUS
(APPLICANT)

v.

THE STATE OF RUBRIA
(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

Table of Contents

List of Abbreviations

Ad.Op.	Advisory Opinion
aff'd,	Affirmed
AIRES	The Acastian International Rights Enforcement Statute
AJIL	American Journal of International Law
A.L.R3d	American Law Reports 3d
ARIEL	Austrian Revue of International and European Law
Ariz. J. Int'l & Comp. Law	Arizona Journal of International and Comparative Law
Art(s).	Article or articles
B.U. Int'l L.J.	Boston University International Law Journal
BYBIL	British Yearbook of International Law
BIT	Bilateral investment treaty
Berkeley J. Int'l L	Berkeley Journal of International Law
CERD	Committee on the Elimination of Racial Discrimination
Comm.	Committee
Cornell Int'l L.J.	Cornell International Law Journal
COG	Corporation for Oil and Gas
Commentary	Commentary to the Draft Articles on Responsibility of States For Internationally Wrongful Acts
Draft Articles	Draft Articles on Responsibility of States For Internationally Wrongful Acts
Del. J. Corp. L.	Delaware Journal of Corporate Law

Doc.	Document(s)
Diss. Op.	Dissenting Opinion
Draft UNDRI	Draft United Nations declaration on the rights of indigenous peoples
EPIL	Encyclopedia of Public International Law
ed./eds.	Editor(s) or edition
e.g.	*ex gratia*
ELR	Environmental Law Report
et al.	et alii, and others
ECHR	The European Convention on Human Rights
Emory Int'l L. Rev.	Emory International Law Review
Envt Rep Cas	Environmental Report Case
FYIL	Finnish Yearbook of International Law
FRY	Federal Republic of Yugoslavia
GA	General Assembly
GAOR	General Assembly Official Records
HRC	Human Rights Committee
ICJ Rep.	International Court of Justice Reports
ILC	International Law Commission
ILM	International Law Material
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights

Ind. Op.	Individual Opinion
ILO	International Labour Organization
J. Int'l Econ. L.	Journal of International Economic Law
LALR	Louisiana Law Review
MCRA	Mulitinational Corporate Responsibilty Act
Mtg	Meeting
Mich. J. Int'l L	Michigan Journal of International Law
MNE	Multinational enterprise
N.Y.U. J. Int'l L. & Pol.	New York University Journal of International Law and Politics
No.	Number or Numbers
OECD	Organization of Economic Cooperation and Development
OLA	Office of Law Affairs
Para(s)	Paragraph or paragraphs
Rep.	Report(s)
RABBIT	The Rubria-Acastus Binding Bilateral Investment Treaty
RIAA	Report of International Arbitral Awards
RdC	Recueil des Cours de l'Académie de Droit International de la Haye, Collected Courses of the Hague Academy of International Law
Res.	Resolution or resolutions
SC	Security Council
SCOR	United Nations Security Council Official Records

Sess.	Session
SG	Secretary General
The Charter/UN Charter	Charter of the United Nations
The Court	The International Court of Justice
The Court's Statute	Statute of the International Court of Justice
TRGS	Transactions of the Grotius Society
TNC	The Trans-National Corporation
UN	United Nations
UN Norms	UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights
UNIDO	United Nations Industrial Development Organization
USG	Under-Secretary-General
USSR	Union of Socialist Soviet Republics
USA/US	United States of America
UNGAR	UN General Assembly Resolution
VCLT	Vienna Convention on the Law of Treaties
Vol.	Volume or volumes
v.	versus
Va. J. Int'l L.	Virginia Journal of International Law
VCSS	Vienna Convention on Succession of States in Respect of Treaties
YBILC	Yearbook of the International Law Commission

Index of Authorities

International Cases and Arbitral Decisions

National Case-Law

Treatises and Digests

Eagleton, The Responsibility of States in International Law, New York University Press, (1928).....24

Epstein, Takings: Private Property and the Power of Eminent Domain, Harvard University Press, 1985.....18

Goodwin-Gill and Talmon eds., The Reality of International Law: Essays in Honour of Ian Brownlie, Oxford, (1999) -----Lamb, Legal Limits to United Nations Security Council Powers.....4

H.Schermers/N.Blokker, International Institutional Law, Martinus Nijhoff Publishers, 3rd ed., (1995).....5

Joshua &Allen, Title to territory in International law, Ashgate publisher, (2002).....17

Klabbers/Koskenniemi/Ribbelink/Zimmermann, State Practice Regarding State Succession and Issues of Recognition: the Pilot Project of the Council of Europe, Kluwer Law International, (1999).....7

Marjorie M. Whiteman, Damages in International Law Vol. 3, Washington, United States Government Printing Office, (1943).....19

Nowak, UN Covenant on Civil and Political Rights (CCPR) Commentary, NP Engel Publisher, (1993).....13

O'Connell, State Succession in Municipal Law and International Law, Cambridge, (1967).....1, 8

Oertman, Interests and Concepts, in Schoch(ed.), The Jurisprudence of Interests,(1948).....28

Oppenheim, International Law, (Jennings &Watts) Longman Publisher,9th ed., Vol.I, (1992).....11

Powell, Parent and Subsidiary Corporations, (1931).....16

Rousseau, 1 Droit international public, 1970.....28

Simma, The Charter of the United Nations - A Commentary, Oxford, (1994).....9

Essays, Articles and Journals

Scharf, Musical Chairs: The Dissolution of States and Membership in the United Nations, 28 Cornell Int'l L.J. 29, (1995).....2, 6

Schermers, International Organizations, Membership, 2 EPIL 1320, (R.Bernhardt ed.1995).....8

Stanley □ Keeping Big Brother out of Our Backyard: Regulatory Takings as Defined International Law and Compared to American Fifth Amendment Jurisprudence, 15 Emory Int'l L. Rev. 349, (2001).....19

Townsend, State Responsibility For Acts of De facto Agents, 14 Ariz. J. Int'l & Comp. L, (1997).....19

Treves, The Expansion of the World Community and Membership of the UN, 6 FYIL 248, (1995).....2

Vallat, Some Aspects of the Law of State Succession, 41 TRGS 123, (1955).....1, 8

Villalpando, Attribution of Conduct to the State: How the Rules of State Responsibility May be Applied Within the WTO Dispute Settlement System, 5 J. Int'l Econ. L., (2002).....19

Weissbrodt& Kruger, Norms on the Responsibilities of Transnational Corporations and Other Business enterprises with regard to Human Rights, AM.J.INT'L L.,(1997).....31
Zemanek, State Succession after Decolonization, 116 RdC 187, (1965).....8

Treaties

Agreement Establishing the Commonwealth of Independent States, 8 Dec. 1991, 31 ILM 138, (1992).....6

Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, (24 Oct. 1945).....1, 2

International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, (23 Mar.1976).....12,13,14,22,23

International Covenant on Economic, Social and Cultural Rights (ICESCR), 999 U.N.T.S. 3, (3 January 1976).....16

United Nations Documents

Miscellaneous

Statement of Facts

Nessus was a large, polyethnic state. For centuries, there was a significant divide between the people of Nessus, principally along geographic lines. In 2000, Nessus dissolved into two new states, Acastus (home to successful industry and trade) and Rubria (mountainous, landlocked, though rich in oil and minerals, remained largely undeveloped). After independence, Rubria immediately attempted to boost its economy by encouraging investment by multinational companies, especially those involved in extracting mineral and oil resources.

The border between the two new states runs through the Elysium, where about 5,000 indigenous Elysians inhabit. They have little or no access to electricity, running water, or modern communications, and lack basic medical facilities. Most of them are illiterate. They live in the Acastian portion of the Elysium, and farm in the Rubrian portion of the Elysium, which is owned by Rubrian public authorities.

Acastus has granted the Elysians all rights of citizenship. While to date, no Elysians satisfy as Rubrian permanent resident under Rubrian law.

In 2001, Rubria was admitted to UN membership. Rubria accepted the compulsory jurisdiction of the ICJ with one reservation requiring any opposing state to have been a party to the Court's Statute for at least twelve months at the time of the application to the Court.

When Rubria applied for UN membership, Acastus sent a note to the SG, claiming to continue Nessus's UN membership. In response, the SC adopted Res.2386, stating that "Considering that ... Nessus has ceased to exist; ... Decides that Acastus too should apply for membership in the UN". The USG for Legal Affairs interpreted Res.2386 as not preventing Acastus from temporarily continuing Nessus's UN membership until its admission as a new member state.

Rubria, among other states' protest, has persistently protested this interpretation, arguing that Acastus was not entitled to "continue" Nessus's UN membership, *inter alia* because: there was no devolution agreement assigning Nessus's UN membership to Acastus, Acastus does not encompass a majority of the land mass or of the population of the former Nessus, and Nessus's armed forces were divided more-or-less evenly between Acastus and Rubria. They also contend that the USG's opinions are not binding upon the UN organizations. Most third-party States that had bilateral treaties with Nessus have considered the treaties terminated by virtue of the dissolution of Nessus. However, Acastus has never submitted an application for new membership in the UN.

In Dec. 2002, the Parliament of Acastus passed the MCRA, which bears the purpose to ensure that business entities incorporated within Acastus, in their conducts abroad, comply with all governing norms of conventional and customary international law.

In Feb. 2003, Rubria and Acastus signed the RABBIT. At Rubria's insistence, the following

section was included in the Treaty: "Art.52 Corporate Responsibility....Acastus undertakes that, in carrying out its obligations under this Treaty, it will enforce all aspects of its domestic law, including the MCRA".

TNC is a privately-owned limited-liability company incorporated and headquartered in Acastus. TNC geologists discovered a very rich deposit of oil in the Rubrian portion of the Elysium. TNC intended to exploit these resources as soon as possible. In May 2003, TNC and Rubria announced the formation of COG, a joint-venture corporation incorporated and headquartered in Rubria, soly for the purpose of developing and exporting these resources. 51% of the shares of COG are owned by TNC, and 49% are owned by the Rubrian Ministry of Natural Resources. Under the corporate charter of COG, all shareholder decisions are made by simple majority vote, on a one-share, one-vote basis. Further, COG's board of directors consists of nine members, five of whom are appointed by TNC.

In Apr. 2004, after 10 months review, COG experts recommended the construction of an oil and gas pipeline going from the Elysium to the nearest site of refining and seagoing export facilities. Any possible alternative route was dismissed as prohibitively expensive, though the route chosen would require the destruction of half of the Rubrian portion of the Elysium.

To accompany and guard their personnel, COG created a private security company – PROF, which is a separate corporation that relates to COG by contract.

In Sep. 2004, Mr. Borius, an Elysian, and an unincorporated group brought an action for

damages in an Acastian civil court against COG, Rubria, PROF, and TNC. They alleged that PROF had seized Mr. Borius, along with scores of other Elysians, forced them to perform dangerous work without compensation.

The court found Rubria and COG as proper defendants under the AIRES and held them jointly and severally liable to the plaintiffs. However, the court held that TNC was not a proper defendant under the AIRES since it is not a "subject" of international law. Thus TNC was dismissed bearing no responsility for the activities of COG abroad. President Fides, representing the government of Rubria, refused to recognize this judgement, contending that TNC bears responsibility under the MCRA for the unlawful activities of its subsidiary abroad.

The Rubrian government is currently aware of the activities of PROF in connection with the Elysian laborers. The Rubrian Prosecutor-General is investigating these activities and considering whether criminal charges may be appropriate.

In Mar. 2005, Acastus applied for proceedings before the ICJ. Rubria filed a preliminary objection to the admissibility of the application, which stated, in relevant part: "Rubria has no objection to the admissibility of the matters concerning the RABBIT. With respect to all other matters, however, including Rubria's alleged direct responsibility for alleged human rights violations, admissibility is contested ... Acastus is neither a member of the UN nor a party to the Statute of the Court ..."

Rubria is, and Nessus was, a party to the VCLT, the ICCPR, the ICESCR, and the VCSS. Acastus has not signed any of these treaties in its own capacity. Rubria is a member of the UN and the ILO. Acastus is a member of the OECD.

Statement of Jurisdiction

The Republic of Acastus and the State of Rubria have submitted by Special Agreement their differences concerning the Elysian fields, and transmitted a copy thereof to the Registrar of the Court pursuant to article 40(1) of the Statute. Therefore, both parties have accepted the jurisdiction of the ICJ pursuant to Article 36(1) of the Statute of the Court.

Summary of Pleadings

I. The court lacks jurisdiction over all claims other than those under the RABBIT, since:

First, Acastus is not entitled to continue Nessus's UN membership since it is not the continuation of Nessus. Acastus should apply for UN membership in accord with SC Res.2386. Should the Court find that SC Res.2386 is not binding upon Acastus, Acastus is nevertheless NOT entitled to continue Nessus's UN membership, since it is not the continuation of Nessus. Also, the participation of Acastus in the UN does not grant Acastus the status of *de facto* continuation of Nessus's UN membership.

Second, Acastus, an equal successor state of Nessus like Rubria, can neither succeed to Nessus's party status to the Court's Statute through UN membership succession, nor through treaty succession, since there is neither succession to UN membership, nor succesion to the UN Charter.

Third, should the Court find that Acastus has succeeded to Nessus's party status to the Statute, Acastus has nevertheless NOT accepted the compulsory jurisdiction of the Court in its own right.

II. By permitting the construction of the pipelines as proposed, Rubria would exercise rights attendant to its sovereignty over territory and natural resources, and would not

violate international law.

First, by permitting the pipeline construction, Rubria is exercising its inalienable sovereign right freely to dispose of its oil resources within the agricultural lands, as to promote the economic, social and cultural development of its people.

Second, Rubria's permit of the pipeline construction would not violate its conventional obligations towards the Elysians' cultural, religious and linguistic rights under Art.27 of the ICCPR, or their economic rights under the ICESCR. Nor would Rubria violate its obligations under customary international law. Should this Court recognize that indigenous peoples have land use rights under customary international law, Rubria's pipeline construction would still be justified as a bona fide regulation, promoting the economic development of both the entire Rubrian nation and the Elysians.

III. The actions of PROF are not imputable to Rubria under international law, or in the alternative, did not violate any international legal obligation owed by Rubria to Acastus.

The actions of PROF are not imputable to Rubria under international law. First, PROF did not exercise elements of Rubrian public authority. PROF's activities were not authorized by Rubria, nor for public interests. Second, the actions of PROF were not on the instruction, or under the direction and control of Rubria. Neither the test of effective control, nor the test of overall control applied in this case. Third, Rubria did not acknowledge and adopt PROF's actions as its own.

Alternatively, as a state party of the ICCPR and the ICESR, Rubria violated neither its obligations under conventional international law owed to Acastus, nor under customary international law to protect the aliens from harm. In fact, the Rubrian government did not know what happened at the time PROF's actions occurred. Now that Rubria is currently aware of them, its Prosecutor-General is investigating them and considering whether criminal charges may be appropriate.

IV. Acastus is in breach of Art.52 of the RABBIT by virtue of the Acastian civil court's decision. i.e. Acastus failed to enforce the MCRA and the AIRES by dismissing TNC as a defendant while holding COG liable for PROF's actions in connection with the Elysian laborers.

First, TNC should be held liable for the activities of COG under the MCRA, since: (i) the MCRA imposes on TNC an obligation to ensure that its subsidiary – COG, comply with international law; (ii) alternatively, COG is a mere instrumentality of TNC, thus the corporate veil herein should be lifted.

Second, the dismissal of TNC as a defendant breached the AIRES, while COG was deemed as a proper defendant under the same statute. TNC satisfies all the conditions of exercising jurisdiction under the AIRES. Alternatively, the Acastian civil court adopted double standards between TNC and COG while they have the same status as private companies. Thus Acastus failed to enforce the AIRES.

Questions Presented

1. Whether the Court has jurisdiction over all claims in this case?

2. Whether Rubria violated international law by permitting the construction of the pipeline?

3□Whether actions of PROF are imputable to Rubria under international law, or in the alternative, violate any international legal obligation owed by Rubria to Acastus□

4□Whether Acastus is in breach of Art.52 of the RABBIT by virtue of the Acastian civil court's decision□

I. The Court lacks jurisdiction over all claims other than those under the RABBIT, since Acastus is not the continuation of Nessus and has not accepted the Court's compulsory jurisdiction in its own right.

All UN members are ipso facto parties to the Court's Statute,[1] and the Court exercises compulsory jurisdiction only upon both state parties' acceptance of it.[2] When Rubria accepted such jurisdiction, it stated a reservation requiring any opposing party to have been a party to the Statute for at least 12 months at the time of application to the Court. We submit that the Court lacks jurisdiction over all claims other than those under the RABBIT, Art.62 of which demonstrated both states' consent to the Court's jurisdiction in accord with Art.35(2) of the Statute. While UN precedents[3] and many commentators[4] distinguish state continuity from state succession (the former means the same state continues to exist; the latter means one or more successor states have replaced the former state), Acastus, an equal successor state of Nessus like Rubria, is entitled neither to continue Nessus's UN membership as the continuation of Nessus (1.); nor to succeed to Nessus's party status to the Statute through UN membership succession or treaty succession (2.). If the Court finds that

---

[1] UN Charter, in force Oct. 24, 1945, Art.93(1).

[2] ICJ Statute, in force Oct. 24, 1945, Art.36(2).

[3] Letter from Chairman of the Sixth Committee to the Chairman of the First Committee, UN GAOR, 1st Comm., Annex 14g, 582-83, UN Doc.A/C.1/212 (1947).

[4] e.g. O'Connell, State Succession in Municipal Law and International Law, Cambridge, 1967, 183; Crawford, The Creation of States in International Law, Oxford,1979, 400; Vallat, Some Aspects of the Law of State Succession, 41 TRGS 123, 1955, 134; Jenks, State Succession in Respect of Law-making Treaties, 39 BYBIL 105, 1952, 133-34; Schachter, The Development of International Law Through the Legal Opinions of the United Nations Secretariat, 25 BYBIL 91, 1948,105.

Acastus has succeeded to Nessus's party status to the Statute, Acastus has nevertheless NOT accepted the Court's compulsory jurisdiction in its own right (3.).

1. Acastus is not entitled to continue Nessus's UN membership, since it is not the continuation of Nessus.

1.1. Acastus is not a UN member, since SC Res.2386 is binding upon Acastus, while the USG's interpretation thereof is not binding upon the UN organization.

1.1.1. SC Res.2386, which decides that Acastus should apply for UN membership, is binding upon Acastus.

The binding nature of SC resolutions depends on the Charter provisions invoked and their wording.[5] SC Res.2386 is binding upon Acastus, since it is consistent with the Charter, and its use of the word "decides" indicates imperative effect.

Arts.4-6 of the UN Charter empowers the SC to make recommendations to the GA on issues of admission, suspension and expulsion of UN membership. The ICJ reaffirmed the importance of such recommendations, based upon the SC's primary responsibility for the preservation of world peace (Art.24 of the Charter).[6] Although there is no express Charter provision for cases of dissolution of a member state, in analogy to the aforementioned Charter procedure concerning membership questions,[7] it is submitted that, by way of treaty

---

[5] *Case Concerning the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, (Namibia Case), (Ad.Op.), ICJ Rep., 1971, 114.

[6] UN Charter, *supra* note 1, Art.4(2); *The admission to membership of the UN*, (Ad. Op.), ICJ Rep., 3 Mar. 1950.

[7] Statement by Sir David Hannay (UK), GA Verbatim Record (7th Mtg.), 144; Wood, Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties, Max Planck Yearbook of United Nations Law, 1997, 248; Treves, The Expansion of the World Community and Membership of the UN, 6 FYIL 248, 1995, 275; Scharf, Musical

interpretation, the SC is impliedly and necessarily empowered to determine the preliminary question of state continuity/extinction prior to making recommendations on admission under Art.4 of the Charter.

In interpreting the SC's power herein, reference shall be made to subsequent UN practice under Art.4 of the Charter (Art.31(3)(b) of the VCLT). Subsequent practice is a most important element in the interpretation of any treaty.[8] As this Court reaffirmed in the *Namibia* case,[9] consistent SC practice has led to uniform interpretation and application by UN members of Art.27(3) of the Charter (interpreting "concurring" votes of the permanent members as "not objecting" thus negating "abstention" in SC decision-making process).[10] Similarly, the SC has demonstrated consistent practice concerning the question of state continuity/extinction. In the India/Pakistan and USSR cases, the SC deemed India and Russia respectively to be the continuations of British India and USSR, but Pakistan (initially claimed for automatic membership)[11] and all the other former Soviet republics were designated new states.[12] More importantly, in the Yugoslavia case, the SC adopted Res.777 reading "Considering ... the SFRY has ceased to exist ... therefore recommends to the GA

Chairs: The Dissolution of States and Membership in the United Nations, 28 Cornell Int'l L.J. 29, 1995, 57.

[8] Aust, Modern Treaty Law and Practice, Cambridge, 2000, 194.

[9] *Namibia Case*, *supra* note 5, 16, paras.20-2.

[10] Aust, *supra* note 8, 195.

[11] UN SCOR, 2nd Sess., 186th mtg., 2027&2030, UN Doc.S/496, A/CN.4/149 (1947).

[12] Admissions of Armenia, Kyrgystan, Tajikstan and Uzbekistan, UN GAOR, 46th Sess., Agenda Item 20, UN Docs.A/46/859, A/46/860, A/46/862, A/46/861 (1992).

that it decides that the FRY (Serbia and Montenegro) should apply for membership in the UN".[13] The FRY was not a UN member until its admission in 2000.[14]

Similarly in this case, the SC unanimously adopted Res.2386 reading "Considering ... Nessus has ceased to exist ... Decides that Acastus too should apply for membership in the UN". Since UN members are obliged to accept and carry out SC's decisions (Art.25 of the Charter), SC Res.2386 is binding upon Acastus. Thus, Acastus is not a UN member until its formal admission.

1.1.2. In any case, the validity of the SC Res.2386 is not subject to judicial review.

No procedures exist for determining the validity of acts of UN organs.[15] This Court has recognized the inherent limitations of its judicial function,[16] and that it lacks the power of judicial review of SC decisions.[17] In fact, neither the Charter nor the Court's Statute nor their *travaux preparatoires* indicate that such power was intended to be attributed to the

---

13 SC Res. 777, adopted 19 Sep.1992.

14 GA Res. 55/12, adopted 10 Nov. 2000.

15 *Case Concerning Certain Expenses of the United Nations*, (Expenses Case), (Ad.Op.), 34 ICJ Rep., 1962, 168; *Case Concerning Questions of Interpretation and Application of the Montreal Convention Arising Out of the Aerial Incident at Lockerbie*, (Lockerbie Case), (Libya v. USA), (Dis.Op. Weeramantry), ICJ Rep., 14 April 1992.

16 *Case Concerning the Northern Cameroons*, (Cameroun v. UK), ICJ Rep., 1963, 30.

17 *Namibia Case*, *supra* note 5, 89.

Court.[18] Thus, the validity of the SC Res.2386 is not subject to judicial review.

1.1.3. The USG's interpretation, which purportedly entitles Acastus to temporarily continue Nessus's UN membership, is not binding upon the UN organization.

It is up to the GA and the SC to decide whether a state can become a UN member (Art.4 of the Charter),[19] where the Secretariat is directed by them in carrying out its work.[20] Thus the interpretation of the USG for Legal Affairs, head of the OLA (a sub-division of the Secretariat[21]), should be a restrictive one, as all decisions limiting membership rights shall be so interpreted in case of doubt.[22] The USG had restrictively interpreted GA Res.47/1 clarifying the status of the FRY in the Yugoslavia case.[23]

However, the USG's interpretation of SC Res.2386, which purportedly entitles Acastus to temporarily continue Nessus's UN membership, is *ultra vires*, and thus is not binding upon the UN organization. Such interpretation clearly contradicts the SC's intent that Acastus is

---

[18] UN Doc.664, IV/2/33, 13 UNCIO Docs.633, (1945); Lamb, Legal Limits to United Nations Security Council Powers, In: Goodwin-Gill and Talmon eds., The Reality of International Law: Essays in Honour of Ian Brownlie, Oxford, 1999, 363; Gowland-Debbas, The Relationship Between the International Court of Justice and the Security Council in Light of the Lockerbie Case, 88 AJIL 643, 1994, 664.

[19] Malone, Correspondent's Article: UN Membership of the Former Yugoslavia: Letter, 87 AJIL 246, 1993, 248.

[20] The UN in Brief: How the UN Works, http://www.un.org/Overview/brief1.html (visited on 1 Jan. 2006).

[21] SG's bulletin ST/SGB/1997/8, entitled "Organization of the OLA", (1997).

[22] H.Schermers/N.Blokker, International Institutional Law, Martinus Nijhoff Publishers, 3rd ed., 1995, 76.

[23] Bühler, State Succession and Membership in International Organizations: Legal Theories versus Political Pragmatism, Kluwer Law International, 2001, 256.

not a UN member until its admission to such as a result of Nessus's extinction, and also contradicts the principles of the Sixth Committee of the GA concerning state succession and UN membership,[24] which offer states only two ways of obtaining UN membership: continuing to be a UN member as the continuation of its predecessor state, or becoming one by formal admission as a new state. Today there exists no precedent of temporary continuation of UN membership.

Therefore, Acastus cannot claim temporary continuation of Nessus's UN membership by reference to the non-binding USG's interpretation, which was persistently protested against by Rubria and other states.

1.2. Should the Court find that SC Res.2386 is not binding upon Acastus, Acastus is nevertheless NOT entitled to continue Nessus's UN membership since Acastus is not the continuation of Nessus.

1.2.1. Acastus is not the continuation of Nessus consistent with UN precedents.

A UN member state ceases to be a member upon its extinction as a legal personality, thus a newly created state cannot claim the status of a UN member unless it has been formally admitted.[25] In UN precedents of the India/Pakistan, USSR, Yugoslavia, and Czechoslovakia cases, all of those states were deemed new states but only India and Russia were deemed to be the continuations of their predecessor states, on the grounds, *inter alia*, that they maintained a substantial majority of their predecessor states' territory, a majority of the population, resources and armed forces, and entered into devolution agreements on UN

[24] UN Doc.A/C.1/212, *supra* note 3.

[25] *Id.*

membership with the other components of the predecessor states. Also, their claims of state continuity were widely recognized by third states[26] - the significance of which has been finding growing support in both legal doctrine[27] and practice[28] in marginal cases.

In this case, Acastus does not satisfy these criteria of state continuation. First, Acastus does not encompass a majority of the land mass, or of the population or armed forces of Nessus. Second, there was no devolution agreement assigning Nessus's UN membership to Acastus. Third, the SC unanimously considered Nessus to have ceased to exist, and most third states which have had bilateral treaties with Nessus have considered them terminated by virtue of the dissolution of Nessus. This is reflected also by the significant, century long division between Nessus's peoples principally along geographic lines.

1.2.2. The participation of Acastus in the UN does not grant Acastus the status of *de facto* continuation of Nessus's UN membership.

---

[26] Crawford, *supra* note 4, 406; Scharf, *supra* note 4, 50; Müllerson, New Developments in the Former USSR and Yugoslavia, 33 Va. J. Int'l L. 299, 1993, 304; Grant□A Panel of Experts for Chechnya: Purposes and Prospects in Light of International Law, 40 Va. J. Int'l L. 115, 1999, 136-137; Agreement Establishing the Commonwealth of Independent States, 8 Dec. 1991, 31 ILM 138, 1992, 138.

[27] e.g. Crawford, *supra* note 4, 406; Brownlie, Principles of Public International Law, 4th ed., 1990, 83.

[28] *Republic of Croatia et al. v. Girocredit Bank AG der Sparkassen*, Austrian Supreme Court, 4 Ob 2304/96v, (Decision of Dec. 17, 1996), reprinted in 36 ILM 1523 (1997), 2 ARIEL 489 (1997); Bühler, Casenote: Two Recent Austrian Supreme Court Decisions on State Succession from an International Law Perspective, 2 ARIEL 213, 1997, 225; Klabbers/Koskenniemi/Ribbelink/Zimmermann, State Practice Regarding State Succession and Issues of Recognition: the Pilot Project of the Council of Europe, Kluwer Law International, 1999, 34.

The mere fact of participation in the UN does not grant Acastus the status of *de facto* continuation of Nessus's UN membership, since there exist only two ways of obtaining UN membership: continuation or admission, as set by the Sixth Committee mentioned above. In the 1992 Yugoslavia case, the FRY participated in the UN but did not obtain UN membership until its formal admission in 2000.[29]

2. Acastus, an equal successor state of Nessus like Rubria, can neither succeed to Nessus's party status to the Statute of the Court through UN membership succession, nor through treaty succession.

2.1. Acastus cannot succeed to Nessus's UN membership.

As a general rule, membership in international organizations, which is a personal right,[30] cannot be obtained by way of succession.[31] This principle is firmly established both by practice[32] and legal doctrine.[33]

---

[29] GA Res. 55/12, *supra* note 14.

[30] Mikulka, State Succession and its Impact on the Nationality of Nature and Legal Persons and State Succession in Respect of Membership to International Organizations, in Outlines Prepared by Members of the Commission on Selected Topis of International Law, UN GAOR I LC, 45th Sess., 34, UN Doc.A/CN.4/454 (1993); Zemanek, State Succession after Decolonization, 116 RdC 187, 253 (1965 III).

[31] Report of the ILC on the Work of its 26th Session, Draft Articles on succession of States in respect of Treaties, with commentaries, UN Doc.A/9610/Rev.1, Reprinted in 2 YBLIC, Pt.1,174, commentary to Art.4.

[32] *Id.*

[33] O'Connell, *supra* note 4, 183; Brownlie, *supra* note 27, 672; Vallat, *supra* note 4, 134; Jenks, *supra* note 4, 133; Schermers, International Organizations, Membership, 2 EPIL 1320, 1321 (R.Bernhardt ed.1995).

Within the UN system, although the Charter is silent on issues of state succession, new states can become UN members only by way of admission, but not by succession, pursuant to the principles of the Sixth Committee as mentioned above.[34] This elementary axiom of non-succession to membership became established practice not only of the UN (i.e. the India/Pakistan, USSR, Yugoslavia and Czechoslovakia cases etc.), but virtually of all specialized agencies and other international organizations.[35]

Thus, Acastus, as a new state and equal successor state of Nessus like Rubria, cannot succeed to Nessus's UN membership, and could only become a UN member by formal admission.

2.2. Acastus cannot succeed to Nessus's party status to the Court's Statute through treaty succession under the VCSS.

The Court's Statute is annexed to the UN Charter, of which it forms an integral part (Art.92 of the Charter). Accordingly, the Charter and the Statute should be read as one instrument.[36] Thus, we submit that Acastus cannot succeed to the Statute via succeeding to the UN Charter.

Membership rules of international organizations are *lex specialis* which take precedence

---

[34] Beemelmans, State Succession in International Law: Remarks on Recent Theory and Atate Praxis, 15 B.U. Int'l L. J. 71, 1997, 85; Müllerson, *supra* note 26, 5-32.

[35] ILC commentary to Art.4, *supra* note 31.

[36] Sameh, The Role of the International Court of Justice as the Principle Organ of the United Nations, Kluwer Law International, 2003, 25; Simma, The Charter of the United Nations - A Commentary, Oxford, 1994, 978.

among the general rules of state succession to treaties.[37] Art.4 of the VCSS stipulates that the VCSS applies to constituent instruments of international organizations without prejudice to the rules concerning acquisition of membership therein. Since membership is a corollary to party status to UN Charter,[38] and there is no succession to UN membership as proven above, succession to the Charter is denied. Also, as the Charter is a treaty of a personal character, which cannot be succeeded to by successor states under customary international law,[39] Acastus cannot succeed to it.

3. Should the Court find that Acastus has succeeded to Nessus's party status to the Statute, Acastus has nevertheless NOT accepted the compulsory jurisdiction of the Court in its own right.

Even if this Court should find that Acastus has succeeded to Nessus's party status to the Statute and thus met Rubria's 12-month party requirement for its acceptance of the Court's compulsory jurisdiction, the Court still lacks jurisdiction over all claims other than those under the RABBIT, since Acastus has not accepted the compulsory jurisdiction of the Court in its own right. The Court exercises compulsory jurisdiction over cases upon both state parties' acceptance of it.[40] Such acceptance is a unilateral declaration[41] which can be made

---

[37] Beemelmans, *supra* note 34, 92; Bühler, *supra* note 28, 290-291.

[38] Bühler, *supra* note 23, 19.

[39] Aust, *supra* note 8, 307; Schachter, State Succession: The Once and Future Law, 33 Va. J. Int'l L. 253, 1993, 256; Müllerson, *supra* note 26, 317; Emanuelli, State Succession, Then and Now, With Special Reference to the Louisiana Purchase (1803), 63 LALR 1277, 2004, 1286.

[40] ICJ Statute, Art.36(2).

at any time, by any state parties to the Court. Therefore, Acastus should make its own declaration if it wishes to accept the Court's compulsory jurisdiction.

II. By permitting the construction of the pipeline as proposed, Rubria would exercise rights attendant to its sovereignty over territory and natural resources, and would not violate international law.

1. By permitting the pipeline construction, Rubria would exercise rights attendant to its sovereignty over territory and natural resources.

With state sovereignty, each state has the power to exercise supreme authority over everything within its territory, including its natural resources.[42] The inalienable right of all states freely to dispose of their natural wealth and resources, in accordance with their national interests, has been repeatedly recognized by the international community in numerous UN resolutions,[43] and by this Court in the *East Timor* case.[44] In exercising this

---

[41] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. US), Jurisdiction and Admissibility, ICJ Rep., (Judgment), 392&418, para.59 (26 Nov. 1984); *Fisheries Jurisdiction* (Spain v. Canada), ICJ Rep., (Judgment) , para.46 (quoting *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nig.), ICJ Rep.,(Judgment) , paras.25&30 (11 Jun. 1998)) (4 Dec. 1998); Szafarz, The Compulsory Jurisdiction of the International Court of Justice, Martinus Nijhoff Publishers, 1993, 12.

[42] Oppenheim, International Law, (Jennings &Watts) Longman Publisher, 9th ed., Vol.I, 1992, 382&384.

[43] e.g. GA Res.523(VI), 12 Jan. 1952; GA Res.626(VII), 21 Dec. 1952; GA Res.1515 (XV), 15 Dec. 1960; GA Res.1803 (XVII), 14 Dec. 1962; UNCTAD I, 16 Jun. 1964, General Principle Three; GA Res.2158 (XXI), 25 Nov. 1966; GA Res.2692 (XXV), 11 Dec. 1970; GA Res.3016 (XXVII), 18 Dec. 1972; GA Res.3171 (XXVIII), 17 Dec. 1973; GA Res.3201 (S-VI), 1 May 1974; GA Res.3202 (S-VI), 1 May 1974; GA Res.3281 (XXIX), 12 Dec. 1974; Secretary General Conference of the UNIDO, 27 Mar. 1975.

[44] *Case Concerning East Timor* (Portuguese v. Australia), ICJ Rep., Judgment, para.33 ,(Diss. Op. Weeramantry), 197 (30 Jun. 1995).

right, every state has the right and the responsibility to choose means and goals of development suitable to its own situation, fully to mobilize and use its resources.[45] This right bears particular importance to landlocked,[46] undeveloped[47] states. Thus, their urgent need to concentrate all their resources for development shall be fully respected.[48]

In this case, Rubria is a landlocked, fledging state which remains largely undeveloped, though rich in oil and minerals. Rubria undisputedly has sovereignty over the agricultural lands, the oil resources and the underground spring, which are all within its territory. Thus, by permitting the pipeline construction, Rubria is exercising sovereignty rights over its natural resources, and is discharging its primary responsibility to promote the economic, social and cultural development of its people.[49]

2. By permitting the pipeline construction, Rubria would not violate international law.

---

[45] GA Res.3281 (XXIX), *supra* note 43, Art.7; GA Res.3201 (S-VI), *supra* note 43, para.4(e); Declaration on the Right to Development, GA Res.41/128, 4 Dec. 1986; Schrijver, Sovereignty over Natural Resources: Balancing Rights and Duties, Cambridge University Press, 1997, http://dissertations.ub.rug.nl/FILES/faculties/jur/1995/n.j.schrijver/h11.pdf(visited on 3 Jan. 2006), 372.

[46] GA Res.3201 (S-VI), *supra* note 42, para.4(c).

[47] GA Res.523(VI), *supra* note 43; GA Res.626(VII), *supra* note 43.

[48] GA Res.3201 (S-VI), *supra* note 43, para.4(r).

[49] GA Res.3281 (XXIX), *supra* note 43 Art.7.

It is generally accepted that sovereignty and sovereign rights must be exercised in conformity with the rights and duties of the states under international law.[50] In this case, by permitting the pipeline construction, Rubria would not violate its conventional obligations under the ICCPR or the ICESCR, nor under customary international law.

2.1. Rubria would not violate the Elysians' cultural, religious and linguistic rights under Art.27 of the ICCPR.

Art.27 of the ICCPR acknowledges minorities' rights to enjoy their own culture, to profess and practice their own religion, and to use their own language. In this case, the indigenous Elysians constitute a minority under Art.27, based on their numerical inferiority.[51] However, Rubria's pipeline construction would not violate the Elysians' rights under Art.27 as proven below.

2.1.1. No evidence indicates that the Elysians' way of life is closely related to the agricultural lands within Rubria.

The right to enjoy one's culture cannot be determined abstractly but has to be placed in context.[52] Culture manifests itself in many forms, including a particular way of life closely

---

[50] GA Res.1803 (XVII), *supra* note 43.

[51] Nowak, UN Covenant on Civil and Political Rights (CCPR) Commentary, NP Engel Publisher, 1993, 493.

[52] *Kitok v. Sweden*, Communication No.197/1985, UN Doc.CCPR/C/33/D/197/1985, 1988, para.9.3; *Ilmari Länsman et al. v. Finland* ,Communication No.511/1992, UN Doc.CCPR/C/52/D/511/1992, 26 Oct. 1994, para.9.2; *Apirana Mahuika et al. v. New Zealand*, Communication No.547/1993, UN Doc.CCPR/C/70/D/547/1993 (2000), para.9.4.

associated with the use of land resources.[53] In various HRC cases, lands occupied by indigenous peoples are of special significance to their traditional ways of life for spiritual reasons.[54] However, in this case, the Elysians' agricultural activities do not fall under the protection of Art.27, because no evidence indicates that their way of life is closely related to the agricultural lands for spiritual reasons. In fact, the Elysians use the lands just for food.

2.1.2. Should this Court find that the Elysians' way of life is closely related to the agricultural lands within Rubria, Rubria would still not violate Art.27.

First, the Elysians' cultural rights under Art.27 cannot prejudice Rubria's sovereignty to construct the pipeline for its national interests.[55] Indeed, Art.47 of the ICCPR stipulates that "[n]othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".

Second, the cultural right of the 5,000 Elysians does not imply that it must be preserved intact at all cost,[56] especially at the cost of hampering the development of the entire Rubrian

---

[53] The Rights of Minorities, HRC General Comment No.23, UN Doc.CCPR/C/21/Rev.1/Add.5, 1994, para.9.

[54] *Lubicon Lake Band v. Canada,* Communication No.167/1984, UN Doc.Supp.No.40 (A/45/40) at 1 (26 Mar.1990), para.16.4; *Jouni E. Länsman et al.v. Finland,* UN Doc.CCPR/C/58/D/671/1995, paras.9.3; *Apirana Mahuika et al. v. New Zealand, supra* note 52, paras.5.4&8.2; Lorenzo Nesti, The Mapuche-Pehuenche and the Ralco Dam on the Biobio River: the Difficult Problem Protection of Indigenous Peoples' Right to (Their) Land, http://www.unisi.it/ricerca/centri/cisai/nesti.htm (visited on 22 Dec. 2005).

[55] The Rights of Minorities, supra note 53, para.3.2.

[56] *Lubicon Lake Band v. Canada,* (Ind. Op. Nisuke Ando), *supra* note 54.

population. Indeed, outright refusal by a group in a given society to change its traditional way of life may hamper the economic development of the society as a whole.[57] Thus, states enjoy a certain degree of discretion in the application of Art.27 - which is normal in all regulation of economic activities.[58] This view is supported by the decisions of the highest tribunals of states parties to the ICCPR and the ECHR.[59] Hence, Rubria's pipeline construction - necessary restrictions to the Elysians' rights, in a democratic society for public interests of vital importance and consistent with the other provisions of the Covenant - is justified.[60]

Besides, measures which have a limited impact will not amount to a violation of Art.27.[61] In this case, only part of the agricultural lands would be destroyed by the pipeline construction. The Elysians can continue their agricultural activities in the remaining lands, and can fully enjoy their culture, religion and language within their residential villages in Acastus.

Further, Rubria has no other choice but to have the pipeline go through the agricultural lands.

---

[57] *Id.*

[58] *Ilmari Länsman et al. v. Finland*, *supra* note 52, Finland's submission, para.7.12; *Kitok v. Sweden*, *supra* note 52, para.9.2.

[59] *Ilmari Länsman et al. v. Finland*, *Id.*

[60] *Sandra Lovelace v. Canada*, Communication No.R.6/24, UN Doc.Supp.No.40 (A/36/40) (1981), 166, paras.15&16; *Kitok v. Sweden*, para.4.3; *Ilmari Länsman et al. v. Finland*, para.7.9; *Apirana Mahuika et al. v. New Zealand*, para.7.2.

[61] *Jouni E. Länsman et al.v. Finland*, *supra* note 54, paras.6.7; *Ilmari Lansman et al.v. Finland*, *supra* note 58, paras.9.4.

Any possible alternative route is prohibitively expensive according to the 10-month review of COG experts.

Third, Art.27 not only protects traditional means of livelihood of minorities, but also allows for adaptation of those means to the modern way of life and ensuing technology.[62] For example, the Eskimo's adaptation to modern life has been successful,[63] and the Indians continue to enjoy their culture after their emigration into cities.[64] In this case, the Elysian economy is insular and wholly agricultural. Most Elysians are illiterate. They have little or no access to electricity, running water, or modern communications, and lack basic medical facilities. Thus, persistence in agricultural activities is very unlikely to improve the Elysians' well-beings, while oil exploration would lead to economic growth in the Rubrian part of the Elysium, contributing to poverty reduction[65] and development of the Elysians.

For all the foregoing reasons, should this Court find that the Elysians' way of life is closely

---

[62] *Apirana Mahuika et al. v. New Zealand, supra* note 52, para.9.4.

[63] Phylosopyh Forum, Posted by Sundog, 13 Jun.05 http://forum.darwinawards.com/index.php?act=Print&client=printer&f=3&t=6691(visited on 1 Jan. 2006).

[64] The Mexican way of life, http://www.worldbook.com/wc/popup?path=features/cinco&page=html/modern.html&direct=yes(visited on 1 Jan. 2006).

[65] Robinson, Bridging the Gap between Human Rights and Development: from Normative Principles to Operational Relevance (3 Dec. 2001), http://www.unhchr.ch/huricane/huricane.nsf/view01/2DA59CD3FFC033DCC1256B1A0033F7C3?opendocument (visited on 1 Jan. 2006).

related to the agricultural lands within Rubria, Rubria's pipeline construction would still not violate the Elysians' rights under Art.27.

2.2. Rubria would not violate the Elysians' economic rights under the ICESCR.

Acastus might argue that Rubria would violate the Elysians' economic rights, such as the right to food protected under the ICESCR. However, pursuant to Art.2(3) of the ICESCR, developing states, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the ICESCR to non-nationals.[66] Also, Art.25 of the ICESCR stipulates that "[n]othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources". In this case, the Elysians are only migrants in Rubria, rather than its nationals. Thus Rubria is entitled to decide to what extent the Elysians, its non-nationals, would enjoy any economic rights protected in the ICESCR. Since Rubria's pipeline construction would only have a limited impact on the Elysians' lives as proven above, and Rubria urgently needs to promote its national economy by exploiting oil resources, it would not violate its obligations under the ICESCR.

2.3. Rubria would not violate customary international law.

2.3.1. There is no established customary international law demonstrating indigenous peoples' rights to lands owned by states.

Acastus argue that there is emerging customary international law concerning indigenous

---

[66] ICESCR, in force 3 Jan. 1976, Art.2(3).

peoples' lands rights, referring to the inclusion of such rights in the Draft UNDRI and the ILO Convention No.169.[67] However, these evidences do not suffice as *opinio juris* under customary international law, since UNDRI is only a draft declaration, and the ILO Convention No.169 has only been ratified by 17 states to date.[68]

2.3.2. Should this Court recognize that indigenous peoples have land use rights under customary international law, Rubria's pipeline construction would still be justified.

It is a general principle that an interference with property will not constitute taking requiring government compensation, so long as the government's regulation under its police power is reasonably necessary to effectuate a substantial "public purpose".[69] Thus, a property regulation which ultimately works for the enrichment of all, is justifiable, though it imposes specific limitations on the use of certain property.[70]

---

[67] Joshua &Allen, Title to territory in International law, Ashgate publisher, 2002, 215; MacKay, Indigenous peoples' rights to lands, territories and resources: selected international and domestic legal considerations, http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/y5407t/y5407t0g.htm (visited on 15 Jan, 2006).

[68] A Guide to the ILO Convention No.169, Annex 1, http://www.ilo.org/public/english/standards/norm/egalite/itpp/convention/32.pdf (visited on 15 Jan, 2006).

[69] Parisi, Comment: Moving toward Transparency? An Examination of Regulatory Takings in International Law, 19 Emory Int'l L. Rev. 383, 2005, 391; "Indirect Expropriation" and the "Right to Regulation" in International Investment Law, http://www.oecd.org/dataoecd/22/54/33776546.pdf (visited on 15 Jan, 2006).

[70] *Pennsylvania Coal Co. v. Mahon et al.*, 260 U.S. 393, 160 (11 Dec. 1922); Epstein, Takings: Private Property and the Power of Eminent Domain, Harvard University Press, 1985, 195-215.

Applying this rule to the present case, Rubria's permit of the pipeline construction justifies as a bona fide regulation, promoting the economic development of both the entire Rubrian nation and the Elysians as proven above. Indeed, the term "public purpose" is given broad interpretation, leaving to extensive discretion of states by international law.[71] The Supreme Court of the USA interprets "public purpose" as embracing "economic development",[72] and the threshold at which a regulation effectuates a compensable taking is much higher in international law, than in the American legal system.[73] Thus, should this Court recognize that indigenous people have land use right under customary international law, Rubria's pipeline construction would still be justified.

III□The actions of PROF are not imputable to Rubria under international law, or in the alternative, did not violate any international legal obligation owed by Rubria to Acastus.

The actions of PROF are still under the investigation of the Rubrian Prosecutor-General. However, even if PROF's actions are violations of the Elysians' human rights, they are not attributable to Rubria (1.); and Rubria did not fail to fulfill its obligations under conventional and customary international law (2.).

---

[71] *Amoco Int'l Fin. Corp. v. Islamic Republic of Iran,* 15 Iran-U.S. Claims Tribunal Rep. 189, 234 (1987-II); Salgado, Protection of Nationals' Rights to Property Under the European Convention on Human Rights: Lithgow v. U.K., 27 Va. J. Int'l L., 1986, 898; Stanley□ Keeping Big Brother out of Our Backyard: Regulatory Takings as Defined International Law and Compared to American Fifth Amendment Jurisprudence, 15 Emory Int'l L. Rev. 349, 2001, 374& 376& 377.

[72] *Kelo v. New London*, 74 U.S.L.W. 3201(3 Oct. 2005).

[73] Stanley, *supra* note 71, 387.

1. The actions of PROF are not imputable to Rubria under international law.

It is firmly established that the activities of private entities could not be attributable to the state in Draft Articles and Commentary,[74] jurisprudence[75] and various cases[76]. The exceptions to this general rule are: (i) Any conduct of the individual under the color of public authority should be attributable to the state;[77] (ii) Any conduct of an entity shall be considered an act of a state if the entity is in fact acting on the instruction, or under the direction and control of the state;[78] (iii) Any conduct which is not attributable to the state shall be considered as an act of the state if the state acknowledges and adopts the conduct as its own. However, these exceptions do not apply in this case.

1.1. PROF did not exercise elements of Rubrian public authority.

To identify whether an entity is acting under the color of governmental authority, the following criteria should be examined: (i) whether the conduct has been traditionally

---

[74] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, UNGAR 56/83, (12 Dec. 2001), Art. 2; Commentary to the Draft Articles on Responsibility of States For Internationally Wrongful Acts, adopted by the ILC at its 53 session, 2001, (A/56/10), 81.

[75] Townsend, State Responsibility For Acts of De facto Agents, 14 Ariz. J. Int'l & Comp. L, 1997, p.639; Borchard, The Law of Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners, 23 AJIL, 1929, 219; Marjorie M. Whiteman, Damages in International Law Vol. 3, Washington, United States Government Printing Office, 1943, 1570-71.

[76] *The Tellini Case*, League of Nations, Official Journal, 4th Year, No. 11 (November 1923), 1349; *Tehran Hostages Case*, (U.S. v. Iran), ICJ Rep., 1980, 3.

[77] Draft Articles, *supra* note74, Art. 5.

[78] *Id.* Art. 8.

exercised by state organs;[79] (ii) whether the conduct has been authorized by the law of the state;[80] (iii) the purpose of the conduct.[81]

In this case, the actions of PROF in the Elysium include the protection of COG's personnel and the seizure of the Elysians. Those actions cannot be considered to be under the public authority since: First, PROF's protecting were not authorized by Rubria. There was no need for authorization, since security guard services could be offered by private security corporations.[82] Second, the purpose of PROF's protecting activities is to ensure the interests of a private company (COG) rather than public interests. Third, no evidence indicates that Rubria authorized PROF to seize the Elysians and force them to work.

1.2. The actions of PROF were not on the instruction, or under the direction and control of Rubria.

1.2.1. The actions of PROF were not on the instruction of Rubria.

The act of an individual which is on the specific instruction of the state would be attributable

---

[79] Villalpando, Attribution of Conduct to the State: How the Rules of State Responsibility May be Applied Within the WTO Dispute Settlement System, 5 J. Int'l Econ.L., 2002, 403.

[80] Dolzer, The Settlement of War-related claims does International Law Recognize a victims's Private Right of Action? Lessons after 1945, 20 Berkeley J. Int'l L, 2002, 296.

[81] Commentary, *supra* note 74, 94.

[82] Chaloka Beyani and Damian Lilly, regulating private military companies, www.fco.gov.uk/Files/kfile/pmcbeyanililly.pdf(visited on 14 Jan 2006).

to the state.[83] However, in this case, no evidence indicates that Rubria instructed PROF to seize the Elysians and force them to work,thus the actions of PROF were not on the instruction of Rubria.

1.2.2. The actions of PROF were not under the direction and control of Rubria.

When a private person is under the direction and control of a state, his conduct can be attributed to that state.[84] However, it would be unjust for a government to bear responsibility for ANY acts of private individuals which it does not directly control. Therefore, a certain degree of control is a prerequisite for attribution.[85]

In the *Nicaragua* Case, a high degree of control was established by this court. It was held that the USA's participation, even if preponderant or decisive, in the financing, organizing, training, supplying, and equipping of the contras, was still insufficient for the purpose of attribution. Rather, the USA would have been responsible for the acts of the Contras only if it had effective control of the specific operation.[86]

---

[83] *The Zafiro case*, 4 RIAA, 1925, 160; *Stephens Case*, 4 RIAA, 1927, 267; *Lehigh Valley Railroad Company, and others (USA) v. Germany (Sabotage Cases): "Black Tom" and "Kingsland" incidents*, 8RIAA, 84 (1930); and 8RIAA, 225 (1939), 458; Commentary, *supra* note 74, 104.

[84] Draft Articles, *supra* note74, Art. 8.

[85] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), ICJ Rep., (1986), 14; *Tehran Hostages Case, supra* note 76, 3; Draft Articles, *supra* note 74, Art.6.

[86] *The Nicaragua Case*, *Id.*

In the *Tadic* Case,[87] although the Appeals Chamber held that the overall control by the state over the military organization was enough for attribution, and specific instruction was not required, the showing of overall control, nevertheless, required state's coordinating or helping in the general planning of the individual's activity, as well as equipping and financing of the group.

However, in this case, the evidence is insufficient to prove that Rubria had overall control of PROF. Although PROF was financed by COG, only TNC could control PROF through the joint venture, since all decisions are made by simple majority vote, according to the corporate charter of COG. Further, as all of the employees of COG were hired by the full-time chief executive officer, there is no direct connection between PROF and Rubria. Actually, Rubria was not aware of PROF's conduct at its occurrence. Now the Rubrian government is currently aware of PROF's activities, the Rubrian Prosecutor-General is investigating these activities and considering whether criminal charges may be appropriate.

1.3. Rubria did not acknowledge and adopt PROF's actions as its own.

Conduct that was not originally attributable to the state, could subsequently be acknowledged and adopted by the state as its own, if the acknowledgment and adoption were clear and unequivocal.[88] In the *Tehran Hostages* case, this court held that the seizure of the

---

[87] *Prosecutor v. Dusko Tadic* a/k/a "Dule" ,(sentencing judgment), Case No. IT-94-1, http://www.un.org/icty/cases-e/index-e.htm (visited on 14 Jan. 2006).

[88] Commentary, *supra* note74, 120.

embassy was not attributable to Iran, until the Iranian authority created a decree which expressly approved and maintained the situation.[89]

However, in this case, it is evident that Rubria did not acknowledge and adopt the actions as its own by its conduct or announcement. Thus, the actions of PROF are not attributable to Rubria.

2. Rubria did not violate any international legal obligation owed by Rubria to Acastus for the actions of PROF.

2.1. Rubria did not violate any obligation owed to Acastus under conventional international law.

Art.2 of the ICCPR imposes a general obligation on state parties to respect the Covenant rights, and to ensure those rights to all individuals in their territory and subject to their jurisdiction.[90] Concerning forced labor, states are required to take legislative, administrative or judicial measures to suppress it and provide accessible, effective and enforceable remedies (arts.2&8 of the ICCPR). Conducting a criminal investigation of a violation and prosecuting those responsible, could also be expressly as an example of an effective remedy.[91]

---

[89] *Tehran Hostages Case*, *supra* note85, 3.

[90] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, HRC General Comment No. 31, U.N.Doc.CCPR/2/21/Rev.1/Add.13(2004).

[91] Nowak, UN Covenant on Civil and Political Rights CCPR Commentary, NP Engel Publisher, 1993, 63.

It was implied in the HRC's communication that to claim a state's violation of its obligations above, one must show that the state committed the forced labor by itself or the domestic remedy is ineffective.[92] However, in this case, as proved above, Rubria did not commit the forced labor. In fact, the Rubrian government did not know the action at the time it occurred. As to the domestic remedies, the Rubrian Prosecutor-General is investigating these activities and considering whether criminal charges may be appropriate. It could also be deduced from this fact that there exists legislation in Rubria to suppress such a conduct.

2.2 Rubria did not breach its obligations under customary international law.

States are required to protect aliens from harm within their territory.[93] However, States are not required to prevent absolutely all the harmful activities within their territories.[94] States need only to exert reasonable efforts and to take all appropriate measures to prevent harmful activities in their territories and react to them.[95] In the *Wipperman* case, it was stated that

---

[92] *Bernadette Faure v. Australia,* Communication No.1036/2001, UN Doc.CCPR/C/85/D/1036/2001.

[93] Hessbruegge, The Historical Development of The Doctrines of Attribution and Due Diligence in Due diligence In international law, 36 N.Y.U. J. Int'l L. & Pol. 265; Brownlie, State Responsibility (Part I), Clarendon Press, 1983, 161; State Responsibility in International Law, Edited by René Provost, Dartmouth Publishing Company, 2001, 110.

[94] Pisillo-Mazzeschi, The Due Diligence Rule and the Nature of the International Responsibility of States, In: René Provost (ed.), State Responsibility in International Law, Dartmouth Publishing Company, 2001,114; Home Missionary Society Case, 6 RIAA 42, 1920; Eagleton, The Responsibility of States in International Law, New York University Press, 1928, 213.

[95] Rapporteur in the Spanish Zone of Morocco Claim, Report III, 1923, 2 RIAA 615, 1924, 645; Commentary, *supra* note74, Art. 12, para.10; Brownlie, *supra* note93, 172.

there is no state responsibility for acts of individuals "as long as reasonable diligence is used in attempting to prevent the occurrence or recurrence of such wrong".[96]

Considerations, such as the resources available to a state, and the nature of specific activities, may be taken into account to justify differing degrees of diligence.[97] Moreover, sufficient and explicit evidence is needed to prove negligence when the Court holds that the state fails to fulfill its obligation.[98] The *Corfu Channel* case is particularly instructive. Knowledge of the presence of mines in its territorial waters, and failure to warn others, conferred responsibility on Albania for the damage they caused.[99] In the *Tehran Hostages* case, Iran failed to control private actors in its territory and stated its approval of the wrongful conduct.[100] Such omissions may, as easily as affirmative acts, give rise to international

---

[96] The *Wipperman Case*, Moore J.B, 3History and Digest of The International Arbitrations to Which the United States Has Been A Party3041(1898).

[97] *Alabama Case*, Alabama Claims Arbitration, 1872, In: Moore 1 International Arbitrations, 485; *Tehran Hostages Case*, *supra* note85, 29-33; *Corfu Channel Case*, (U.K. v. Alb.), ICJ Rep., 1949, 89; Mansour Jabbari-Gharabagh, Type of State Responsibility of Environmental matters in International Law, http://www.themis.umontreal.ca/revue/rjtvol33num1/jabbari.pdf (visited on 14 Jan. 2006).

[98] Christenson, Attributing Acts of Omission to the State, 12 Mich. J. Int'l L., 1991, 322.

[99] *Corfu Channel Case*, *supra* note97, 22-23.

[100] *Tehran Hostages*, *supra* note85, 31-32.

responsibility.[101]

In this case, sufficient evidence is lacking to prove that the actions of PROF violated Rubria's obligation in international law to protect the aliens from harm.

First, the Rubrian government did not know what happened at the time the action occurred. Although Rubria is a shareholder of COG, and appointed four out of nine of COG's board of directors, the daily operation was under control of the chief executive officer. It was not feasible for the Rubrian representatives on the board of COG to know that, on several occasions, scores of Elysians were forced to work among 400 engineers and technicians. Further, the actions occurred in a wild area. Thus, it was hard for the state agents to know what exactly happened.

Second, the Rubrian Prosecutor-General is investigating these activities and considering whether criminal charges may be appropriate. The attitude of the government of Rubria to combat with the illegal action including forced labor is clear.

IV. Acastus is in breach of Art.52 of the RABBIT by virtue of the Acastian civil court's decision.

Art.52 of the RABBIT imposes on Acastus an international obligation to enforce the MCRA and the AIRES. However, Acastus is in breach of this article by its civil court's decision in the *Borius* litigation, which dismissed TNC as a defendant while holding COG liable for

[101] Draft Articles, *supra* note 74, Art. 2.

PROF's actions in connection with the Elysian laborers. Should COG be held responsible for PROF's actions, TNC would also bear responsibility under the MCRA for the unlawful activities of its subsidiary-COG, and be a proper defendant under the AIRES.

1. Acastus failed to enforce the MCRA by holding TNC free from liability for the unlawful activities of COG.

1.1. The MCRA obliges TNC to bear responsibility for the activities of its subsidiary - COG.

1.1.1. The MCRA requires TNC to bear responsibility for its conduct abroad violating international human rights law, including conducts of its foreign subsidiary – COG.

Section Four of the MCRA reads: "[a] domestic corporation shall, in its conduct abroad, comply with all governing norms of conventional and customary international law." Since the MCRA is incorporated into the RABBIT, we submit that, pursuant to the rules of treaty interpretation under Arts.31&32 of the VCLT, "conduct abroad" herein be construed as embracing activities abroad by TNC's foreign subsidiaries.

First, the ordinary meaning of "conduct abroad" includes conducts by foreign subsidiaries. "Conduct abroad" evidently includes foreign investment. Investment may take the form as "an enterprise" including a corporation, joint venture, and a branch of an enterprise.[102] Thus the activities of such an enterprise constitute part of foreign investment and fall within

[102] US draft model BIT(2004) , Art.1□Section A http://www.bilaterals.org/article.php3?id_article=137&var_recherche=model+BIT(visited on 14 Jan2006); Agreement Between Canada- For the Promotion and Protection of Investments, Art.1, Section A , http://www.dfait-maeci.gc.ca/tna-nac/documents/2004-FIPA-model-en.pdf (visited on 14Jan 2006).

"conduct abroad". Alternatively, if "conduct abroad" excludes conducts by a subsidiary company, it will lead to double standards among companies adopting different forms of foreign investment, and thus make it easy for companies to dodge their obligations under the MCRA. This is unacceptable since the ordinary meaning must not lead to an absurd or unreasonable result.[103]

Second, it would be consistent with the purpose and object[104] of the MCRA to interpret "conduct abroad" as embracing conducts of subsidiaries. The MCRA was enacted to make "trading partners around the globe to trust corporate citizens of Acastus". To achieve such an object, "conduct abroad" should be interpreted as embracing conducts of subsidiaries, since it is the subsidiaries that actually operate in, and have direct impact on foreign states.

Third, circumstances of the RABBIT's conclusion indicate that "conduct abroad" embraces activities of subsidiaries.[105] When concluding the RABBIT, the MCRA was incorporated thereinto at Rubria's insistence. Rubria's President concluded then that such incorporation constituted assurance for all Rubrians against possible exploitation, abuse, or other kinds of illegal or unethical conduct. Since these potential behaviors cited above may be conducted via any forms of subsidiaries, "conduct abroad" should be construed as embracing activities

---

[103] The Vienna Convention on the Law of Treaties, Art.32(b); Alinakaczorowska, Public International Law, Old Bailey Press, 2002, 244.

[104] Art.31(1), *supra* note103.

[105] Art.32, *supra* note103.

of any forms of subsidiaries.

Further, if there is any ambiguity, the principle of *contra proferentem* is to be applied. Under this principle, if it is possible to interpret a provision in two ways, the meaning which is less favorable to the party which proposed it should be adopted.[106] This rule is common to the Roman, Civil and Common law,[107] and also applies to treaties.[108] Since the MCRA was entirely drafted by Acastus, it should be interpreted less favorable to Acastus.

1.1.2. TNC, a company in extractive industry, is obligated to ensure that COG's activities comply with international law, as to fully implement the MCRA.

Excluding TNC from responsibility for COG, may in effect, substantially alleviate TNC's obligations under the MCRA, due to the character of extractive industry. Extractive industry is a special sector that literally, it often takes something from countries that are not where corporate headquarters located and are not where senior management resides.[109] Further, the management of security forces is among the most serious issues of corporate responsibility,

---

[106] Contra proferentem, http://insource.nils.com/gloss/GlossaryTerm.asp?tid=1498(visited on 14 Jan. 2006)

[107] Lauterpacht, Restrictive Interpration and the Principle of Effectiveness in the Interpration of Treaties, 26 BYIL, 1949, 56.

[108] e.g.Rousseau, 1 Droit international public, 1970, 297-8,304-5;Oertman, Interests and Concepts, in Schoch(ed.), The Jurisprudence of Interests,1948,63.

[109] Changing the Dynamics of Corporate Social Responsibility for Effective Community Engagement, 2002 SPE International Conference on Health, Safety and Environment in Oil and Gas Exploration and Production, http://www.spe.org/spe/jsp/basic/0,,1104_1573_1058064,00.html(visited on 14Jan. 2006).

particularly in extractive industry.[110] As a parent company in the extractive industry, to fully implement the MCRA (as required by Section Five therein), it is most important for TNC to ensure that COG, which actually carries out the extractive operations, complies with international law in its management of security forces.

1.1.3. The MCRA requires TNC to assure the activities of its subsidiary – COG, by reference to the General Policies set out in the OECD Guidelines and the UDHR.

The General Policies of the OECD Guidelines and the UDHR provide the context[111] for interpreting and implementing the MCRA and TNC's obligation under the MCRA, according to Section Three of the MCRA.

The UDHR requires every organ of society to strive to promote respect for rights and freedoms therein, and to secure their universal and effective recognition and observance.[112]

Also, the General Policies of the OECD Guidelines stipulate that enterprises should respect the human rights of those affected by their activities consistent with the host government's

---

[110] Directorate For Financial, Fiscal And Enterprise Affairs Working Papers On International Investment: Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses, http://www.oecd.org/dataoecd/46/31/2757771.pdf(visited on 14Jan. 2006).

[111] VCLT, *supra* note103, Art.31(2)(b).

[112] The Universal Declaration of Human rights , Preamble, (1948), U.N.Doc.GA Res. 217A(□), (10 Dec.1948).

international obligations and commitments.[113] TNC, as a parent company of a MNE, is obliged to assure the observance of the obligations set forth in the General Policies by its subsidiaries, since:

First, according to the OECD Guidelines, parent companies have a responsibility for observance of the Guidelines by those subsidiaries to the extent that they actually exercise control over the activities of their subsidiaries.[114] In this case, by owning 51% of the shares of COG and appointing 5 of the 9 directors of COG's Board, TNC has control over all the activities of COG, since all shareholder decisions are made by simple majority vote (corporate charter of COG). Thus, TNC bears the obligation to ensure that COG respects international human rights law.

Further, the OECD Guidelines even require MNEs to encourage business partners, including suppliers and sub–contractors, to apply principles of corporate conduct compatible with the Guidelines.[115] Comparing to the relationship between a MNE and its supply chain, a parent company, which has significant influence and control over its subsidiary, should undoubtedly ensure its subsidiaries' activities.

---

[113] The OECD Guidelines for Multinational Enterprises, General Policy(2), www.ausncp.gov.au/content/docs/170_189_20020901_annual.pdf(visited on 15 Jan. 2006).

[114] The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications, 11. www.ausncp.gov.au/content/docs/170_189_20020901_annual.pdf(visited on 15 Jan. 2006)

[115] *Id.*, 12.

1.1.4. That parent companies should assure the observance of international human rights norms by their subsidiaries has been widely acknowledged by states.

Many international instruments require MNEs to ensure human rights standards within the corporation.[116] For example, both the UN Norms and the first principle of the UN Global Compact require a transnational corporation to respect, to ensure respect of and to protect human rights within their respective spheres of influence.[117] The UN Norms is deemed as a restatement of existing international treaties, conventions and declarations.[118] The ten principles of the UN Global Compact drew on international standards enjoying widespread consensus,[119] and the first two of which are even derived from the UDHR.[120]

---

[116] Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights; the Global Compact; the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

[117] UN Norms, General Obligation , U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

[118] "The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" Comments from the Danish Institute for Human Rights, http://www.ohchr.org/english/issues/globalization/business/docs/danishinstitute.doc(visited on 14Jan2006); David Weissbrodt& Muria Kruger, Norms on the Responsibilities of Transnational Corporations and Other Business enterprises with regard to Human Rights, 97 AM.J.INT'L L.,901,912.

[119] The OECD Guidelines for Multinational Enterprises: Annual Report 2005, 71□ http://www.oecd.org/document/60/0,2340,en_2649_201185_1933116_1_1_1_1,00.html(visited on 14Jan.2006).

[120] Consultation Draft of New "Guide for integrating Human Rights into Business Management", http://www.unglobalcompact.org/NewsAndEvents/news_archives/2005_12_08.html(visited on 14Jan.2006)

In the case of MNEs, different components function collectively to conduct a common business under common control by a parent company.[121] As proven above, TNC has significant influence on all the decision-makings and operations of COG. Thus, TNC bears the obligation to ensure that COG respects human rights.

1.1.5. The Acastian civil court can not invoke the principle of limited liability against TNC's corporate responsibility under the MCRA.

Art.27 of the VCLT stipulates that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. It is a treaty obligation of Acastus to oblige TNC to bear responsibility for its subsidiary, which prevails over the principle of limited liability under Acastian internal law.

1.2. Alternatively, TNC should still be held liable since the corporate veil herein should be lifted.

Courts are allowed to "pierce the corporate veil" in some circumstances in order to hold a parent company accountable for the acts of its subsidiaries.[122] The "instrumentality" test is adopted in these circumstances.[123] That means where a parent corporation has controlled the subsidiary to such a degree as to make it a mere instrumentality, courts have held the parent

---

[121] Blumberg, The Corporate Entity in an Era Of Multinational Corporations, 15 Del. J. Corp. L. 283, 1990, 288.

[122] *Barcelona Traction, Light and Power Company, Limited,* (Second Phase), ICJ Rep.1970, 3, at 39. paras.56-58.

[123] *Lowendahl v. Baltimore & O.R. Co.,*287 N.Y.S. 62 (N.Y. App. Div. 1), *aff'd*, 6 N.E.2d 56 (1936).

corporation liable for the subsidiary's tort.[124] It is justified to "pierce the veil" even though "corporate formalities have been observed and corporate and individual property have been kept separately", in case that a corporation is organized and operated as a mere tool or business conduit for another corporation.[125]

The relationship between TNC and COG justifies the above test, where the corporate veil should be lifted:

First, COG is a mere instrumentality of TNC. The oil resource was discovered by TNC geologists and COG was incorporated solely for the purpose of exploiting this resource. In fact, the incorporation of COG was only a way to implement the proposal of TNC. Indeed, COG lacks its own autonomy since TNC has control over all its decision-makings and operations as mentioned above. The policies of COG are not directed to its own interest primarily, but rather, to those of TNC. Thus, COG is a mere instrumentality of TNC, where the civil court should pierce the corporate veil.[126]

Second, failure to "pierce the corporate veil" would result in injustice. The corporate separateness is respected unless doing so would work an injustice upon innocent third

---

[124] R.A.Horton, Liability of Corporation For Torts of Subsidiary, 7 A.L.R.3d 1343,(1966).

[125] *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1987)

[126] *New York v. Exxon Corp.* (1990, SD NY) 112 BR 540, 31 Envt Rep. Cas 1412; Horton, Liability of Corperation For Torts of Subsidiary, T.A.L.R, 3d, 1343.

parties.[127] Injustices arise where a party has overextended his privilege in the use of a corporate entity to evade tort responsibility.[128] In this case, COG is a mere instrumentality of TNC. Thus, TNC may evade its responsibility to *Borius* and other plaintiffs if the civil court failed to pierce the corporate veil.

2. The dismissal of TNC as a defendant breached the AIRES, whereas COG was deemed as a proper defendant under the same statute.

2.1. TNC is a proper defendant under the AIRES.

According to the AIRES, a proper defendant should demonstrate: (i) a violation of international law, including international law of human rights; (ii) that the violation took place outside the national territory; (iii) that the defendant is present or may be found in Acastus. No evidence indicates that a proper defendant under the AIRES should be a "subject" of international law. In this case, as proven above, TNC violated its obligation to comply with all governing norms of conventional and customary international law, by the unlawful activities of COG in Rubria. Thus, TNC is a proper defendant under both the MCRA and the AIRES.

2.2. Alternatively, TNC and COG should both be dismissed due to their same nature as private companies.

As purely private companies, TNC and COG have the same legal status and thus should

---

[127] *Larry Bowoto.et al v. Chevron Texaco Corp.et al. and Moes 1-50*, 312 F. Supp. 2d 1229, 2004.

[128] *Acree et. al. v. Mcmahan.*, 258 Ga. App. 433(2002).

simultaneously be or not be a proper defendant under the AIRES. However, the civil court adopted double standards between TNC and COG by its self-contradictive decision. On the one hand, the civil court's decision held COG liable, which means COG was deemed to be a proper defendant under the AIRES. On the other hand, the civil court deemed TNC not a proper defendant under the AIRES, on the basis that TNC is not a "subject" of international law.

V. Prayer for relief.

Rubria respectfully requests that the Court Declare:

(i) the Court lacks jurisdiction over all claims other than those under the RABBIT, since Acastus is not the continuation of Nessus and has not accepted the compulsory jurisdiction of the Court in its own right;

(ii) by permitting the construction of the pipeline as proposed, Rubria would exercise rights attendant to its sovereignty over territory and natural resources, and would not violate international law;

(iii) the actions of PROF are not imputable to Rubria under international law, or in the alternative, did not violate any international legal obligation owed by Rubria to Acastus; and

(iv) Acastus is in breach of Article 52 of the RABBIT by virtue of the Acastian civil court's decision.