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COUR INTERNATIONALE DE JUSTICE

INTERNATIONAL COURT OF JUSTICE

THE CASE CONCERNING THE SISTERS OF THE SUN

(THE FEDERATION OF THE CLANS OF THE ATAN/THE KINGDOM OF RAHAD)

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L'AFFAIRE CONCERNANT LES SOEURS DU SOLEIL

(LA FÉDÉRATION DES TRIBUS DE L'ATAN/LE ROYAUME DE RAHAD)

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MEMORIAL FOR THE APPLICANT

MÉMORIAL POUR LE DEMANDEUR

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STATEMENT OF JURISDICTION

The Federation of the Clans of the Atan ("Atania") and the Kingdom of Rahad ("Rahad") have submitted by Special Agreement this present dispute concerning the differences between the parties concerning the Sisters of the Sun and other matters to the International Court of Justice ("I.C.J."), and have transmitted a copy thereof to the Registrar of the Court in accordance with Article 40(1) of the Statute of the I.C.J. ("Statute"). Therefore, both parties have accepted the jurisdiction of the Court pursuant to Article 36(1) of the Statute.

Atania undertakes to accept the judgment of the Court as final and binding and shall execute it in utmost good faith.

QUESTIONS PRESENTED

I.

Whether extraction of water from the Aquifer violates international obligations undertaken by Rahad and constitutes an inequitable use of a shared resource;

II.

Whether the Savali Pipeline operations violate Rahad's international obligations with respect to the Kin Canyon Complex and therefore must cease;

III.

Whether Rahad must immediately return the Ruby Sipar to Atania, its lawful owner; and

IV.

Whether Atania owes compenstation to Rahad for any costs incurred related to the Kin migrants.

STATEMENT OF FACTS

Descent from the Atan

Atania and Rahad are neighboring States that occupy the arid Nomad Coast. The people of both States descend from the Atan, the original inhabitants of the Kin Canyon Complex ("Complex"), a group of canyons cut by long-extinct rivers straddling the border between the States. When the rivers dried up thousands of years ago, the Atan inhabitants migrated to coastal regions and separated into 17 clans. Eventually, 16 of the clans elected to enter into the republican federation of Atania, while members of clan Rahad remained independent and established the Kingdom of Rahad.

The Greater Inata Aquifer

The Greater Inata Aquifer ("Aquifer") is the largest underground source of fresh water in the Nomad Coast. For generations, people of the Nomad Coast have relied upon the discharge from the Aquifer. On the first UN World Water Day, the Rahadi Minister of Water and Agriculture, speaking on behalf of Rahad, declared to the Atanian people that Rahad would ensure the equitable use of the Aquifer, and make every reasonable effort to preserve and protect it.

The Kin Canyon Complex

The Complex has been recognized as a continuing source of fascinating insights into early human civilizations. Within the Complex is a walled fortress known as "the Stronghold"

and the Sunrise Mesa, a freestanding sandstone butte. While two of the three canyons are within the borders of Atania, the third canyon and the Sunrise Mesa are within the territory of Rahad. In 1990, both States jointly proposed that the Complex be included in UNESCO's World Heritage List. The World Heritage listed it as a mixed heritage site on 2 May 1994. The Complex and the Cultural Center draw on average 350,000 visitors each year.

Droughts in the Nomad Coast

Due to record low rainfall, the Nomad Coast experienced sustained drought from 1983 to 1988. Both States were forced to import water from other countries at great expense. Unfortunately, drought conditions returned to the region in 1999 and continue to the present day.

Construction of the Savali Pipeline

Queen Teresa of Rahad announced to the Rahadi people her plan to extract water from the Aquifer. President Vhen of Atania noted his concern about the equitable division of the waters, and the potential dangers of this unilateral action. The Queen did not reply to his objection. Instead, Rahad proceeded to plan a network of 30 pump wells to be connected by a subterranean pipeline system to provide for Rahad's industries. In light of the domestic environmental assessment undertaken by Rahad, the World Heritage Committee noted potential issues regarding subsidence of lands superjacent to the Aquifer, which may harm the Complex.

Impact of the Extraction on Atania's Agriculture

The rate of Rahad's extraction was fixed to achieve its targeted growth and development. As of the date of the Special Agreement, Rahad has exhausted roughly one-third of all the water

in the Aquifer, 22% of which has been used to develop its natural gas industry. As a result, discharge from the Aquifer could no longer provide a sufficient natural source of water for Atanian agriculture. According to studies of Atania, 20% of Atanian farmlands could no longer be farmed, and that within 10 years an additional 30% would be lost if extraction continued at the same rate.

Impact of the Extraction on the Complex

In 2010, foreign tourists noted the environmental degradation in the Complex. Geologists reported structural degradations to the Complex and attributed the problem to the depletion of the Aquifer. Moreover, tourists were endangered by a massive sinkhole that appeared when a busy pathway in the Complex collapsed. These incidents forced Atania to close off sections of the Complex to the public. Due to the impact of the Savali Pipeline, the World Heritage Committee granted Atania's application to place the Complex in the List of World Heritage in Danger. President Vhen proposed to Queen Teresa to suspend the Savali Pipeline until the situation may be better understood, but she rejected the invitation to negotiate.

The WRAP Act

Atania enacted the Water Resource Allocation Program Act ("WRAP Act") due to the absence of water seepage from the Aquifer. The WRAP Act set a quota on water supplied to households, farms, and businesses and required farming operations to purchase licenses to utilize public water. To encourage efficiency, the WRAP Act offered license exemptions for farms that sold more than US$75,000 worth of crops per year.

Prosecution of the Kin

While many of the Kin refused to apply for a license, and used water in excess of their quotas, only two farmers were prosecuted under the WRAP Act. The Department of Justice distributed flyers across lands to warn the Kin, but they refused to obey the law. In response, the Atanian Parliament amended the WRAP Act to allow for the termination of the water supply to farms that continuously violate the terms of the WRAP Act.

Protests in Atanagrad

The Sisters of the Sun, an order of women dedicated to protect and preserve the culture of the Kin, participated in a series of protests in Atanagrad. Carla Dugo, one of the elders, chained herself to a flagpole and engaged in a hunger strike. Numerous buildings and structures, including the seat of the Parliament were vandalized. Human chains across major roads into the city blocked traffic and prevented employees from entering municipal offices. Because the protests were chaotic and dangerous, President Vhen dispersed the rallies and ordered for the confiscation of Sipar Pendants, which had become a symbol for sedition. The Ruby Sipar was placed in storage, away from public display.

The Ruby Sipar

The Ruby Sipar is a ceremonial shield that was raised by Teppa, the legendary warrior of the Clan Kin, upon the defeat of the invaders of the Nomad Coast in 500 CE. The Ruby Sipar is a symbol of respect and represents the unity of the clans within the Nomad Coast. In 1903, Dr. Gena Logres, an archaeologist from the University of Atanagrad, discovered it within the territory of Atania.

The Kin Migrate to Rahad

A large number of Sisters of the Sun and Kin protesters were arrested and charged with disturbing the peace. Subsequently, members of the Clan Kin migrated to Rahad reportedly to avoid prosecution. As of the date of the Special Agreement, approximately 800,000 Kin have crossed the border into Rahad.

The Theft of the Ruby Sipar

Carla Dugo was discovered at one of the camps in Rahad. Before entering Rahad, she clandestinely entered the Kin Canyon Complex Cultural Center in Atania and took the Ruby Sipar. She turned over the Sipar to Rahad, which claimed it as its lawful property. Rahad refused to return the Ruby Sipar to Atania despite requests made by the Atanian Minister of Culture.

Rahad Detains the Kin

Only the Sisters of the Sun and their family members were granted the rights and privileges of refugees. All other Kin were permitted to apply for refugee status, but had to wait at least 24 months before Rahad would begin a review of those applications. Since 2014, over 600,000 Kin have been detained in camps in Rahad. Rahad now demands US$945,000,000 from Atania for housing the Kin.

SUMMARY OF PLEADINGS

Rahad's extraction of water from the Aquifer violates international obligations undertaken by Rahad and constitutes an inequitable use of a shared resource.

The Greater Inata Aquifer is a shared resource between Rahad and Atania, and is governed by the principle of equitable use under customary international law. The drought in the Nomad Coast does not amount to an emergency situation, which would dispense with Rahad's obligation to equitably use the resource. Although every State exercises permanent sovereignty over its natural resources, its actions are limited by the rules of international law.

Moreover, Rahad has undertaken a unilateral obligation to equitably use the Aquifer through the declaration of the Rahadi Minister of Water and Agriculture, who possessed the authority to bind Rahad. The obligation subsists as Queen Teresa did not validly revoke the declaration.

Rahad failed to equitably use the aquifer by not considering the interests of Atania. Moreover, Rahad has not extracted an equitable share of the water, and has used the water without considering the need to maximize its long term benefits for both Atania and Rahad.

The Savali Pipeline operations violate Rahad's international obligations with respect to the Kin Canyon Complex and therefore must cease.

As a State Party to the World Heritage Convention, Rahad has an obligation to protect and to not deliberately cause damage to the Kin Canyon Complex. This obligation includes the duty to cooperate with Atania to protect the Complex, and to observe due diligence in order to prevent harm to the heritage.

Rahad violated its international obligations when it failed to notify Atania of its plans to construct the Savali Pipeline, to conduct an environmental impact assessment consistent with international law, and to negotiate with Atania in good faith. Rahad did not undertake active and effective measures to protect the heritage and failed to observe the precautionary principle. As a result, Rahad caused serious or significant damage to the Complex.

Rahad's continued extraction of water from the aquifer amounts to a continuing breach which is substantive in character. Consequently, the operations must cease.

Rahad must immediately return the Ruby Sipar to Atania, its lawful owner.

Atania enjoys the right of ownership over the Ruby Sipar. While cultural property is significant to all States, the principle of Common Heritage of Mankind does not divest Atania of ownership over the Ruby Sipar. Atania's act of safekeeping the Sipar was consistent with its rights and duties under international law. In this light, Rahad must return stolen property to its lawful owner.

As a signatory to the 1970 UNESCO Convention, Rahad has an obligation to not defeat the object and purpose of the treaty which is to protect declared cultural property from illicit theft, import, export and transfer of ownership. Rahad defeated this object and purpose by adopting the acts of Carla Dugo in clandestinely taking the Ruby Sipar from Atania to Rahad. Rahad breached an obligation and as a means of reparation, Rahad must return the Sipar.

Rahad is under a customary obligation to return cultural property acquired illicitly. Thus, the Sipar must be returned.

Atania owes no compensation to Rahad for any costs incurred related to the Kin

migrants.

Atania does not owe Rahad compensation as a means of reparation. In the first place, Rahad has no standing to espouse the human rights claims of the Kin. Rahad is also barred by the Clean Hands Doctrine because the Savali Pipeline operations caused the migration of the Kin. In any case, Atania has not violated the human rights of the Kin. The WRAP Act was not discriminatory legislation, and was enacted to maximize water within Atania. Moreover, the purpose of the WRAP Act was to protect the future use of water, as well as the cultural traditions of the Kin.

Rahad has no basis to claim that Atania owes compensation under a quasi-contractual obligation. Rahad has the obligation to care for migrants within its territory, whether refugees or not. Moreover, Rahad has discriminated the Kin, and has arbitrarily detained them.

Finally, Atania has not violated the principle of *sic utere tuo ut alienum non laedas*. The mass migration of the Kin was caused by Rahad's Savali Pipeline operations.

PLEADINGS AND AUTHORITIES

I. RAHAD'S EXTRACTION OF WATER FROM THE AQUIFER VIOLATES INTERNATIONAL OBLIGATIONS UNDERTAKEN BY RAHAD AND CONSTITUTES AN INEQUITABLE USE OF A SHARED RESOURCE.

A. RAHAD HAS A CUSTOMARY OBLIGATION TO EQUITABLY USE THE GREATER INATA AQUIFER.

1. The Greater Inata Aquifer is governed by the customary obligation to equitably use shared water resources.

Shared water resources are governed by the principle of equitable use in customary international law. [1] States share a "community of interest" in these resources.[2] Since Rahad and Atania share the Greater Inata Aquifer, this vital resource is governed by the principle of equitable use.

2. Moreover, there is a customary obligation to equitably use unconfined fossil aquifers.

To establish a development in custom, there must be settled state practice and *opinio juris sive necessitates*.[3] The practice surrounding documented utilized transboundary fossil aquifers establish the existence of custom as regards equitable use of unconfined fossil aquifers.[4]

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[1] Pulp Mills on the River Uruguay (Arg. v. Uruguay), Judgment, 2010 I.C.J. 14 (Apr. 20) ["Pulp Mills"], ¶266; Gabčikovo-Nagymaros Project (Hun. v. Slovk.), 1997 I.C.J. 7 ["Gabčikovo-Nagymaros"], ¶85.

[2] Territorial Jurisdiction of the International Commission of the River Oder, Judgment No. 16, 1929, P.C.I.J., Series A, No. 23, at 27.

[3] Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.A.), Merits, Judgment, 1986 I.C.J. 14 ["Nicaragua"] ¶207; North Sea Continental Shelf (Ger./Den.; Ger./Ned.), Judgment, 1969 I.C.J. 3 ["North Sea"] ¶77; Michael P. Scharf, *Accelerated Formation of Custom in International Law*, 20 ILSA J. INT'L & C.L. 306 (2014).

[4] Renee Martin-Nagle, *Fossil Aquifers: A Common Heritage of Mankind*, 2 J. ENERGY & ENVT'L L. 39, 50 (2011).

a) There is settled state practice of equitable use of unconfined fossil aquifers.

State practice of a sufficient number of states whose interests are specially affected by the rule must be extensive and virtually uniform.[5] With respect to transboundary unconfined fossil aquifers, state practice exhibits the need to consider the interests of neighboring states.[6] For instance, since the 1970s, Egypt, Libya, Chad and Sudan have been in negotiations concerning their common usage of the largest aquifer in the world, the Nubian Aquifer System.[7] Joint management systems have also been proposed for the Intercalaire Aquifer shared by Libya, Algeria, and Tunisia.[8]

State practice to the contrary is properly characterized as a breach of the customary rule.[9] Saudi Arabia's unilateral overextraction of the Qa-Disi Aquifer was objected to by a co-aquifer state, Jordan.[10] It treated the extraction as a breach, confirming the existence of a customary rule.

b) The equitable use of unconfined fossil aquifers arises from *opinio juris.*

Opinio juris may be deduced from the attitude of parties towards General Assembly resolutions.[11] The United Nations General Assembly Resolution adopted the Law of Transboundary Aquifers (hereinafter "Law of Transboundary Aquifers"), which codifies the rule

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[5] *North Sea*, ¶74.

[6] Permanent Sovereignty over Natural Resources, GA Res. 1803(XVII), pmbl., art. 1(1)-(2),(6)-(7), U.N./A/5217 (Dec. 14, 1962) ["PSNR"].

[7] Martin-Nagle, *supra* note 4, at 50.

[8] *Id.* at 51.

[9] *Nicaragua*, ¶187.

[10] Martin-Nagle, *supra* note 4, at 51.

[11] *Nicaragua*, ¶188, 202-203.

on the equitable use of transboundary aquifers.[12] As this Court has affirmed in *North Sea*, the International Law Commission ("ILC") is a body of experts, mandated to codify customary international law.[13] Article 4 of the Law of Transboundary Aquifers expressly provides that Aquifer States shall utilize transboundary aquifers according to the principle of equitable and reasonable utilization.[14]

3. **Rahad is not experiencing any emergency situation which precludes the application of the customary rule.**

The Law of Transboundary Aquifers acknowledges that the obligation to equitably use a transboundary aquifer would not apply in case of an emergency situation.[15] However, for an emergency to exist, an event must cause, or pose an imminent threat of causing, "serious harm", which must be more than mere "significant harm."[16]

In lieu of this, the situation must pose a threat to vital human needs, like the need for drinking water.[17] This is not the case, as the vast majority of water extracted from the Aquifer

[12] General Assembly (UNGA) Resolution 63/124, *The law of transboundary aquifers*, (2009), *available at* http://www.un.org/en/ga/sixth/66/TransAquifer.html ["Law of Transboundary Aquifers"]. *See* Joseph Dellapenna, *The customary international law of transboundary fresh waters*, 1 INT. J. GLOBAL ENVT'L ISSUES 264, 265 (2001).

[13] *North Sea*, ¶¶50-51.

[14] *Law of Transboundary Aquifers*, art. 4.

[15] *Law of Transboundary Aquifers*, art. 17.

[16] International Law Commission (ILC), *Draft Articles on the Law of Transboundary Aquifers, with commentaries*, II.2 YILC 27, 74 (2008).

[17] ILC, *supra* note 16, at 76.

went to industrial or agricultural uses,[18] and in any case, Rahad has shown that it can satisfy the needs of its people by simply importing water.[19]

B. THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IS INAPPLICABLE TO RAHAD'S EXTRACTION OF WATER FROM THE AQUIFER.

The right to permanent sovereignty over natural wealth and resources[20] is a rule of customary international law[21] that requires its exercise through the mutual respect of states based on their sovereign equality.[22] Since flowing water respects no national borders, transboundary freshwater systems, which largely concern aquifers, fall into the realm of international water law and not within the purview of a single state's sovereign rights.[23] Since 35% of the Aquifer is located within Atania's territory, Rahad has the obligation to respect the former's interest in the resource.[24]

State exploitation of unconfined fossil aquifers cannot be conducted in conformity to well-established regimes for oil and gas deposits. Unlike non-renewable resources that can be

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[18] *Compromis*, ¶26.

[19] *Clarifications*, ¶9.

[20] PSNR, pmbl., arts. 1(1)-(2),(6)-(7); General Assembly Resolution 2158, *Permanent sovereignty over natural resources*, (XXI) (Nov. 25, 1966); General Assembly Resolution 3171, *Permanent sovereignty over natural resources*, (XXVIII) (Dec. 17, 1973); *see* UN General Assembly, *United Nations Conference on the Human Environment*, A/RES/2994 (1972) ["Stockholm Declaration"] principle 21; UN General Assembly, *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 Vol. I (1992) ["Rio Declaration"] principle 2.

[21] Armed Activities on the Territory of the Congo (D.R.C. v. Uganda.), 2005 I.C.J. 168, ¶244.

[22] PSNR, art. 5.

[23] Martin-Nagle, *supra* note 4, at 40.

[24] *Compromis*, ¶15.

extracted with little impact on surface life, aquifer stores diminishes the arability of land. In fact, the rapid depletion of the Ogallala aquifer in the United States has reduced crop yields in half of what they were in the 1970s.[25]

C. MOREOVER, RAHAD HAS UNDERTAKEN A UNILATERAL OBLIGATION TO EQUITABLY USE THE AQUIFER.

Unilateral declarations by states may have the effect of creating legal obligations.[26] The statement of the Rahadi Minister of Water and Agriculture ("Rahadi Minister") in 1993 bound Rahad to equitably use the Greater Inata Aquifer ("Aquifer") because (1) the Rahadi Minister possesses the authority to bind the State, (2) the declaration was clear and precise, and (3) the circumstances support the creation of a legal obligation.

1. The Rahadi Minister possesses the authority to undertake an obligation on behalf of Rahad.

Persons representing a state in specific fields may be authorized by the latter to make legally binding statements.[27] As held in the *Armed Activities* case, "holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials," can bind states with their declarations.[28] In this regard, international courts have looked into the statements of Ministers of Defense[29] and Ministers of

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[25] Martin-Nagle, *supra* note 4, at 40.

[26] Nuclear Tests (Austl. v. Fr.), Judgment, 1974 I.C.J. 253 ["Nuclear Tests"] ¶46; Land, Island and Maritime Frontier Dispute (El Sal. v. Hond., Nicar. intervening), 1990 I.C.J. 146 ["Frontier Dispute"], ¶351; International Law Commission, *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations,* (2006) principle 1.

[27] Unilateral Declarations Guidelines, principle 4.

[28] Armed Activities on the Territory of the Congo (New Application) (D.R.C. v. Rwanda), 2006 I.C.J. 6 ["Armed Activities"], ¶47.

[29] *Nuclear Tests*, ¶43.

Justice.[30] The Rahadi Minister was appointed by the Queen[31] and manages and studies the use of the Aquifer.[32] Despite the Queen's presence, it was the Rahadi Minister of Water and Agriculture who spoke on behalf of "[t]he people of Rahad" in a televised event during an international event regarding matters falling squarely within his competence.[33]

2. **The Rahadi Minister made a clear and precise declaration.**

a) The declaration defines the nature of the obligation.

In *Nuclear Tests*, the Court stated that a unilateral declaration may have the effect of creating legal obligations if it is stated in clear and specific terms.[34] In *Eastern Greenland*, the Ihlen declaration, which contained the language "the Norwegian Government would not make any difficulties in the settlement of this question," was sufficiently clear to recognize the sovereignty Denmark.[35] The statement of the Rahadi Minister was even clearer as it employed commonly used legal terms such as "ensure" and "equitable use."[36]

b) The statement contains no reservations.

When a State provides multiple exceptions to a unilateral declaration, it tends to prove that there was no intent to be bound by a legal obligation; it was made for political

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[30] *Armed Activities*, ¶48.

[31] *Compromis*, ¶3.

[32] *Id.*, ¶15.

[33] *Id.*, ¶16.

[34] *Nuclear Tests*, ¶43, 51, & 53; *Unilateral Principles Guidelines*, principle 7.

[35] Legal Status of Eastern Greenland (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 53, 95 ["Eastern Greenland"], at 52.

[36] *Compromis*, ¶16.

accommodation.[37] However, in this case, there was no exception. In fact, the Rahadi Minister's statement that makes reference to "future generations" exposes the unmistakable intent to preserve the Aquifer.[38]

3. **The circumstances support the creation of a binding obligation.**

The legal effect of a statement depends on the circumstances in which it was made.[39] Even though other States need not accept the obligation,[40] particular importance should be given to the reaction of other States in determining a statement's legal effect.[41] Unilateral declarations are not made *in vacuo,* and the declarant is bound to assume that other States might rely on them.[42] The statement was made in honor of World Water Day, in the capital of Atania, in a nationally televised address.[43] The Atanian Minister's counterpart thanked the Rahadi Minister for the statement.[44] UN Secretary-General Kofi Annan even urged other States to abide by the

[37] ILC, *Eighth report on unilateral acts of States*, A/CN.4/557 (May 26, 2005), ¶15.

[38] *Compromis*, ¶16.

[39] *Armed Activities*, ¶49; *Nuclear Tests*, ¶51; *Frontier Dispute*, ¶39-40.

[40] *Nuclear Tests*, ¶46.

[41] Unilateral Declarations Guidelines, principle 3. For examples, *see* ILC, *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto,* II.2 YILC 369, 372 notes 937-40 (2006).

[42] *Nuclear Tests*, ¶53.

[43] *Compromis*, ¶16.

[44] *Id*.

model of cooperation.[45] President Vhen later reminded Rahad of the binding nature of their declaration.[46]

4. **Rahad has not validly revoked its unilateral obligation.**

According to the ILC, once a State has undertaken a unilateral obligation, it may revoke it so long as revocation is not done arbitrarily.[47] However, none of the grounds for a valid revocation exists in this case.

a) Atania has relied on Rahad's undertaking.

According to the ILC, a revocation may be arbitrary depending on the extent to which those to whom the obligations are owed have relied on such obligations.[48] This is known as the principle of estoppel, whereby one party has detrimentally relied on the statement of another.[49]

Atania has relied on the declaration. Firstly, Atania acknowledged the declaration and thanked Rahad for making it.[50] Secondly, President Vhen would frequently refer to the same in calling on Rahad to cease its extraction operations both when Queen Teresa revealed her intent to build the pipeline[51] as well as when the pipeline's effects on Atanian agriculture became apparent.[52] Moreover, Atania has suffered damage due to its reliance. In the belief that Rahad

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[45] *Compromis*, ¶17.

[46] *Id.*, ¶29.

[47] Unilateral Declarations Guidelines, principle 10.

[48] Unilateral Declarations Guidelines, principle 10.

[49] *North Sea*, at 26; Elettronica Sicula (U.S. v. Ita.), Judgment, 1989 I.C.J. 15 ["Elettronica"], ¶54.

[50] *Compromis*, ¶16.

[51] *Id.*, ¶23.

[52] *Id.*, ¶29.

would not exhaust the aquifer, Atania has refrained from extracting water and continued to import water[53] and even imposed a water quota.[54] Atania did not unilaterally extract water from the Aquifer even if they already lost arable land.[55]

b) There was no fundamental change of circumstances that would justify revocation.

A revocation may be valid if it was done pursuant to a fundamental change in circumstances.[56] The elements of a fundamental change in circumstance[57] are not present in this case.

i. Rahad's access to water was not an essential basis for establishing the unilateral obligation.

A circumstance forms an essential basis of consent if its change or absence would have led States Parties to draft a treaty differently, or not enter into it at all.[58] Its essential basis was "the importance of water to all who live on the Nomad Coast."[59] The declaration was made without qualification.

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[53] *Clarifications,* ¶9.

[54] *Compromis,* ¶34.

[55] *Id.,* ¶28.

[56] Unilateral Declarations Guidelines, principle 10; *See Gabčikovo-Nagymaros*, ¶104; I UN CONFERENCE ON THE LAW OF TREATIES ["UNCLOT"], OFFICIAL RECORDS 365, U.N. Doc. A/CONF.39/11 (1968) ¶22; II UNCLOT 116. ILC, *Draft articles on the law of treaties with commentaries,* (1966) 2 YILC 187, 257.

[57] ILC, *supra* note 41 at 381, note 984. *See* Vienna Convention on the Law of Treaties, May 23, 1969, 115 UNTS 331 ["VCLT"], art. 62; Fisheries Jurisdiction (U.K. v. Ice.), Judgment, 1973 I.C.J. 3 ["Fisheries Jurisdiction, U.K. v. Ice"], ¶36; *Gabčikovo-Nagymaros,* ¶104.

[58] Gerald Fitzmaurice, *Second Report on the Law of Treaties*, 2 YILC 16 (1957) ¶171, U.N./A/CN.4/107.

[59] *Compromis,* ¶16.

ii. The droughts were foreseen.

A fundamental change in circumstances must be "not foreseen by the parties."[60] The entire Nomad Coast had experienced a drought in the past[61] and the temperature had been on a steady rise since 1970.[62] Moreover, the Great Garnet Desert borders the Nomad Coast and arid and semi-arid lands characterize the region.[63] Rahad must have foreseen the later droughts.

iii. The droughts did not radically transform the extent of Rahad's obligations.

Obligations radically transform when they are "something essentially different from that originally undertaken."[64] While obligations need necessarily not become impossible, their continued performance must somehow be much more onerous or unreasonable.[65] Although the drought in 1999 could have made it more difficult to preserve the Aquifer,[66] Rahad's previous importation of water[67] means it would not be unreasonable for them to do so again.

D. RAHAD HAS NOT EQUITABLY USED THE GREATER INATA AQUIFER.

Rahad has not equitably[68] used the Greater Inata Aquifer because (1) Rahad has not considered the interests of Atania, (2) Rahad has deprived Atania of a reasonable share of the

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[60] VCLT, art. 62(1); *Gabčikovo-Nagymaros*, ¶104.

[61] *Compromis*, ¶14.

[62] *Id.*, ¶19.

[63] *Id.*, ¶1.

[64] *Nicaragua*, ¶207; *North Sea*, ¶77; Scharf, *supra* note 3.

[65] A. Racke GmbH & Co. v. Hauptzollamt Mainz, 1998 ECR I-3655, ¶¶54-55, 57; Fitzmaurice, *supra* note 58, at 60.

[66] *Compromis*, ¶19.

[67] *Id.*, ¶14.

[68] Law of Transboundary Aquifers, art. 4(c).

Aquifer, and (3) Rahad has not aimed at maximizing the long-term benefits derived from the use of the water.

1. **Rahad has not considered the interests of Atania in the Aquifer.**

In *Pulp Mills,* the Court ruled that utilization is not equitable if the interests of the other State and the environmental protection of the resource were not taken into account.[69] Rahad's extraction of water was made without contemplating the benefits derived by both aquifer states. Rather, Rahad only considered its own projected consumption, growth and development.[70]

2. **Rahad has not extracted an equitable share from the Aquifer.**

In *Gabčikovo-Nagymaros,* Czechoslovakia's act of "unilaterally assuming control of a shared resource" was deemed inconsistent with Hungary's right to an equitable share of the River Danube.[71] Czechoslovakia appropriated for its benefit a majority of the waters of the Danube notwithstanding the fact that it was a shared international watercourse.[72] Rahad has extracted about a third of all the water from the Aquifer,[73] without regard to factors relevant to equitable extraction, such as population size, existing usage, and its role in the ecosystem.[74] This extraction likewise ignores the greater cost of extracting water from the deeper recesses of the Aquifer, which is what Rahad forces Atania to do should the latter ever choose to extract water itself.

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[69] *Pulp Mills*, ¶177.

[70] *Compromis*, ¶21.

[71] *Gabčikovo-Nagymaros*, ¶85.

[72] *Id.*, ¶78.

[73] *Compromis*, ¶26.

[74] Law of Transboundary Aquifers, art. 5(a), (e) & (i).

3. **Rahad has not aimed at maximizing the long-term benefits derived from the use of the water from the Aquifer.**

Aquifer States must take into consideration present and future needs in assessing and establishing a comprehensive utilization plan in order to maximize the long-term benefits derived from the limited water contained in unconfined fossil aquifers.[75] The duty to maximize a non-renewable resource requires lengthening its availability for future use.[76] Instead of implementing such a plan, Queen Teresa merely acknowledged that the extraction was merely a "short-term solution."[77] Rahad proceeded to extract water at a continuous rate notwithstanding warnings of complete exhaustion in 30 years.[78]

II. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD'S INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE KIN CANYON COMPLEX AND THEREFORE MUST CEASE.

A. RAHAD VIOLATED ITS DUTY TO COOPERATE IN PROTECTING THE KIN CANYON COMPLEX.

As States Parties to the World Heritage Convention ("WHC"),[79] Rahad and Atania identified and delineated the Complex as important cultural and natural heritage property, rightfully belonging in the UNESCO World Heritage List.[80] The WHC imposes obligations on all States parties to cooperate in the protection and conservation of the cultural and natural

[75] ILC, *supra* note 16, at 42.

[76] Stockholm Declaration, principle 5.

[77] *Compromis*, ¶22.

[78] *Id.*, ¶21.

[79] World Heritage Convention, Nov. 16, 1972, 1037 UNTS 151 ["WHC"]. *See* VCLT, art. 26.

[80] *Id.*, art. 3. *See* William Lipe, *Value and Meaning in Cultural Resources,* APPROACHES TO THE ARCHAEOLOGICAL HERITAGE 1 (Henry Cleere ed., 1984); Irini Stamatoudi, *The National Treasures Exception in Article 36 of the EC Treaty: How Many of Them Fit the Bill?,* 3 ART ANTIQUITY AND L. 39, 47 (1998); *See also Compromis*, ¶6.

heritage found in the territory of other States.[81] In light of the customary rules of treaty interpretation,[82] Rahad has failed to cooperate in protecting the Complex.

1. **Rahad failed to notify Atania of its plans to construct the Savali Pipeline.**

The obligation to notify other States of plans that may have transboundary impact is intended to create the conditions for successful cooperation between the parties.[83] It enables parties to assess the risks of the plan and negotiate possible changes.[84] Notification must be made through diplomatic channels and other formal declarations.[85] Information coming through the press is not sufficient to discharge the obligation.[86] Queen Teresa of Rahad only made a televised appearance addressed to the people of Rahad regarding the plan to extract from the Aquifer.[87] Atania was not directly notified through channels recognized in international law.[88]

2. **Rahad conducted an environmental impact assessment inconsistent with international law.**

States are obliged to undertake an environmental impact assessment ("EIA") when there is a risk that a proposed industrial activity may have adverse impact on a shared resource.[89] The

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[81] WHC art. 4, 6(1) & (3).

[82] VCLT, art. 31(c).

[83] *Pulp Mills*, ¶113.

[84] *Id.*, ¶115.

[85] Certain Questions of Mutual Assistance in Criminal Matters (Djib. V. Fr.), Judgment, 2008 I.C.J. 177 ["Mutual Assistance"], ¶150; *Pulp Mills*, ¶109-110.

[86] *Id.*, ¶150.

[87] *Compromis*, ¶22.

[88] *Id.*, ¶23.

[89] *Pulp Mills*, ¶204.

assessment must address the substantive obligations of the parties, taking into account the possibility of alternatives, the populations likely affected, and the consultation with affected parties in the context of the environmental impact assessment.[90]

Rahad, through ILSA, studied the feasibility and long-term effects of directly tapping the Aquifer to meet Rahad's domestic need for water.[91] However, Queen Teresa declined President Vhen's invitation for a meeting to better understand the potential hazards of the operations,[92] and did not address the Atania's "serious concerns regarding the potential dangers that the unilateral action may provoke."[93]

3. **Rahad failed to negotiate with Atania in good faith.**

The duty to cooperate, in light of the principles of treaty interpretation,[94] implies a duty to negotiate in good faith,[95] such that negotiations are meaningful.[96] While there is no obligation to

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[90] *Pulp Mills*, ¶¶205-06; *See* XUE HANQIN, TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW 4 (2003); *See also* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 UNTS 3 ["UNCLOS"], art. 206; MOX Plant Case (Ire. V. U.K.) Order, Request for Provisional Measures, ITLOS Case No. 10 (2001); Rio Declaration, principle 17; Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter art. 11, Aug. 30, 1975, 1046 UNTS 138; United Nations Environment Programme (UNEP) Res. GC14/25 (1987); Convention on Environmental Impact Assessment in a Transboundary Context, Sept. 10, 1997, 1989 UNTS 309.

[91] *Compromis*, ¶20.

[92] *Id.*, ¶33.

[93] *Id.*, ¶23.

[94] VCLT, art. 31.

[95] Application of the Interim Accord of 13 September 1995 (Macedonia v. Greece), Judgment, 2011 I.C.J. 644, ¶¶131-132, *citing* VCLT, art. 26; Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.A.), Judgment, 1984 ICJ 292, ¶87; *Fisheries Jurisdiction, U.K. v. Ice.*, ¶33; *Nuclear Tests*, ¶46; *North Sea*, ¶46.

[96] *Interim Accord*, ¶¶131-132; *North Sea*, ¶85.

come to an agreement,[97] negotiations must be genuine, and not mere formalities.[98] As held in *Lake Lanoux,* bad faith includes interrupting communications or causing unjustified delays.[99]

In this case, Rahad failed to negotiate with Atania despite persistent objections from President Vhen.[100] Rahad even declined an invitation to meet regarding the Savali Pipeline operations ("Savali Pipeline").[101] On the other hand, Atania did not show an unconditional and arbitrary opposition to Rahad's plans.[102] Taken together, these facts establish that Rahad did not negotiate in good faith.

B. RAHAD DELIBERATELY CAUSED DAMAGE TO THE KIN CANYON COMPLEX.

Each State Party to the WHC undertakes not to take any deliberate measures that might damage directly or indirectly the cultural and natural heritage identified and designated as such under the treaty.[103] This obligation should be interpreted in light of the *sic utere tuo ut alienum non laedas* ("*sic utere*") principle,[104] which provides that a State must not knowingly allow

[97] Railway Traffic between Lithuiania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42, at 116.

[98] Lake Lanoux Arbitration (Spa. v. Fra.), 24 ILR 101 (1957) ["Lake Lanoux"], at 15-16.

[99] *Id.*, at 23.

[100] *Compromis*, ¶23 & 29.

[101] *Id.*, ¶33,

[102] *Lake Lanoux*, at 23.

[103] WHC, art. 6(3).

[104] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶29; *Pulp Mills*, ¶101.

activities within its control and jurisdiction to cause injury to the rights of another State.[105] This is otherwise known as the principle of prevention, which has its origins in the due diligence required of a State in its territory.[106]

1. **The Kin Canyon Complex suffered transboundary damage.**

a) The damage to the Complex was serious or significant.

The transboundary damage suffered by a State must be proven by clear and convincing evidence, and must be "serious"[107] or "significant."[108] Damage must be greater than mere nuisance or insignificant harm.[109] Deliberately damaging heritage is unlawful especially if it is not necessary to meet basic survival or subsistence needs.[110] In *Temple of Preah Vihear,* this Court emphasized that States should not deliberately cause damage to World Heritage sites so as to deny the public access to these properties.[111] Because of the damage, the Complex was closed to ensure visitors to ensure their safety.[112]

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[105] Corfu Channel (U.K. v. Alb.), Judgment, 1949 I.C.J. 4 ["Corfu"], a t 22; Trail Smelter Arbitration (U.S. A . v. Can.) 3 R.I.A.A. 1905 (1941) ["Trail Smelter"], 1965; Stockholm Declaration, principle 21.

[106] *Pulp Mills*, ¶101. *See also Gabčikovo-Nagymaros*, ¶115; XUE, *supra* note 90, at 163.

[107] *Trail Smelter*, at 1965.

[108] In the Arbitration Regarding the Iron Rhine Railway (Belg. v. Neth), 23 R.I.A.A. 35 (Perm. Ct. Arb. 2005), ¶59.

[109] J. Barboza, *Sixth Report on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law*, March 15, 1990, UN Doc. A/CN.4/428, arts. 2(b) & (e).

[110] WHC, art. 4 & 6; *see* Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 YALE J. OF INT'L L. 1, 268 (2003).

[111] Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cam. v. Thai.), Judgment, 2013 ICJ Reports 281, ¶106.

[112] *Compromis*, ¶30.

The Savali Pipeline was implemented in light of Rahad's projected consumption, growth and development, and desire to completely end reliance on imported water and re-establishing self-sufficiency;[113] it was not due to a need for survival. The damage to the structural integrity of the Complex was significant as to include the Complex in the List of World Heritage in Danger.[114] A panel of geologists unanimously agreed that there had been clear structural degradation of the Canyons and the Stronghold within Atania, and attributed the problem to subsidence due to depletion of the Aquifer.[115]

b) The damage is proven by clear and convincing evidence.

To prove damage, the independence of experts is not determinative of the probative value of expert evidence.[116] Resort to news reports or photographs may be had if the same is corroborative of other pieces of evidence.[117] In practice, the World Heritage Committee would place property in the List of World Heritage in Danger if it has been threatened by serious and specific dangers.[118]

The photographs of foreign tourists and the reports of local newspapers contribute to corroborating the existence of a fact, as illustrative material additional to other sources of

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[113] *Compromis*, ¶21.

[114] *Id.*, ¶30.

[115] *Id*.

[116] *Pulp Mills*, ¶¶166-168.

[117] United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3 ["*Tehran*"], ¶¶12-13; *see Nicaragua*, ¶63.

[118] World Heritage Committee ("WHComm."), Dresden Elbe Valley (Germany), 33 COM 7A.26; WHComm., Arabian Oryx Sanctuary, 31 COM 7B.11 ["Arabian Oryx Sanctuary"].

evidence.[119] The inclusion of the Complex in the List of World Heritage in Danger "due to the impact of the Savali Pipeline" further proves the damage.[120]

2. **Rahad failed to observe due diligence to prevent damage to the Complex.**

This principle of due diligence has been described in *Pulp Mills* as the duty of each State to possess a certain level of vigilance in the enforcement of rules and measures, including the monitoring of activities undertaken, to safeguard the rights of the other party.[121] The measures should be effective and active,[122] and appropriate and proportional to the degree of risk of transboundary harm.[123] Further, states have a duty to consider any alternatives that are less damaging.[124]

Rahad's report did not reflect an assessment of harm or evaluation of measures with a view towards the prevention, reduction, and control of the harm.[125] The Complex was included in the List of World Heritage in Danger,[126] but Rahad continued its operations knowing the risks. The extraction of water in areas more than 15 kilometers outside of the buffer zone[127] does not satisfy due diligence as water seeks its own level leading to damage to areas remote from the

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[119] *Tehran*, ¶¶12-13. *See Nicaragua*, ¶63.

[120] *Compromis*, ¶¶31-32.

[121] *Pulp Mills*, ¶197.

[122] WHC, art. 6(1). *See Arabian Oryx Sanctuary*.

[123] ILC, Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities ["Draft Articles on Prevention of Transboundary Harm"] art. 3, ¶11.

[124] *See* Wangkeo, *supra* note 110, at 270, *in relation to* WHC, arts. 4 & 6.

[125] *Pulp Mills*, ¶204.

[126] *Compromis*, ¶32.

[127] *Id.*, ¶26.

pumping zone. The importation of water from third-party nations remains to be a viable option.[128]

C. RAHAD FAILED TO OBSERVE THE PRECAUTIONARY PRINCIPLE.

The inclusion of the Complex in the List of World Heritage in Danger indicates that it is threatened by serious and specific dangers.[129] Whenever action may cause significant harm, even if the possibility or extent of the exact harm is unproven, precautionary measures, including cessation, must be applied.[130] While the findings of geologists regarding further damage due to continued extraction were inconclusive,[131] the evidence established the possibility of harm to the structural integrity of the Complex, as noted in the Decision of the World Heritage Committee.[132] Rahad was obliged to observe precautionary measures necessary to prevent environmental degradation, including cessation until a program of corrective measures regarding the Savali Pipeline was implemented.[133]

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[128] *See Clarifications*, ¶9.

[129] WHC, art. 11(4); Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, *Operational Guidelines for the Implementation of the World Heritage Convention* (2013) ["WHC Operational Guidelines"], ¶177(b).

[130] Rio Declaration, principle 15.

[131] *Compromis*, ¶30.

[132] *Id.*, ¶21, 24-25.

[133] *Clarifications*, ¶6.

D. RAHAD HAS AN OBLIGATION TO CEASE THE SAVALI PIPELINE OPERATIONS.

The commission of an internationally wrongful act gives rise to an obligation to cease that act, if the act is a continuing breach.[134] Rahad's breaches of its continuing obligations justify an order for cessation.

1. Rahad's breach is continuing.

A continuing breach is one that has been commenced but has not been completed at the relevant time.[135] Since 2003, Rahad has extracted water from the Aquifer without cooperating with Atania and performing due diligence to prevent damage to the Complex. The Savali Pipeline continues to pump water from the Aquifer as of the date of this Special Agreement.[136]

2. Rahad breached substantive obligations.

The duty to cooperate is integral to the discharge of the due diligence standards.[137] In *Pulp Mills*, the Court held the view that procedural obligations may have a functional link with substantive ones.[138] Since the project violates substantive obligations, ordering cessation would be an appropriate remedy.[139]

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[134] Responsibility of States for Internationally Wrongful Acts, Nov. 2001, Supplement No. 10 (A/56/10) ["Articles on State Responsibility"], art. 30(a); Jurisdictional Immunities of the State (Ger. v. Ital., Gre. intervening), 2012 I.C.J. 99, ¶137.

[135] ILC, *Draft articles on Articles on State Responsibility, with commentaries*, II.2 YILC 31 (2001), at 60, art. 14, ¶5.

[136] *Compromis*, ¶26.

[137] Owen McIntyre, *The Role of Customary Rules and Principles of International Environmental Law in the Protection of Shared International Freshwater Resources*, 46 NAT. RESOURCES J. 157, 180-86 (2006). *See also Gabčikovo-Nagymaros*, ¶109.

[138] *Pulp Mills*, ¶79.

[139] *Id.*, ¶275.

III. RAHAD MUST IMMEDIATELY RETURN THE RUBY SIPAR TO ATANIA, ITS LAWFUL OWNER.

Cultural property constitutes one of the basic elements of civilization and *national* culture.[140] Every State has an obligation to respect the cultural heritage of all nations.[141] In the *Temple of Preah Vihear*, this Court stated that cultural restitution is "implicit in, and consequential on, the claim of sovereignty itself."[142]

A. RAHAD MUST RETURN THE RUBY SIPAR PURSUANT TO ATANIA'S RIGHT OF OWNERSHIP.

1. Atania is the owner of the Ruby Sipar.

A State is presumed to have sovereign authority over property found within its territory.[143] There is a presumption of state ownership of cultural property.[144] Furthermore, the principle that a state has a right to acquire discovered property found to be of interest to science, history or art is a general principle of law.[145] In this case, an archaeologist from the University of

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[140] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Apr. 24, 1972, 823 UNTS 231 ["1970 UNESCO Convention"], prmb.

[141] 1970 UNESCO Convention, prmb.

[142] Temple of Preah Vihear (Cam. v. Thai.), Merits, Judgment, 1962 I.C.J. 6, ¶36.

[143] Rosalyn Higgins, *The Taking of Property by the State: Recent Developments in International Law,* 176 RECUEIL DES COURS 259, 280 (1982); Koen De Jager, *Claims to Cultural Property Under International Law,* 1 LEIDEN J. INT'L L. 183, 190 (1988).

[144] *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.* United States Court of Appeals, 917 F.2d 278 (1990); Expert Committee on State Ownership of Cultural Heritage, Model Provisions on State Ownership of Undiscovered Cultural Objects, provision 3.

[145] Armory v. Delamirie, *cited in* JESSE DUKEMINIER AND JAMES E. KRIER, PROPERTY (5th Ed.), (2002) 120. *See, e.g.,* Treasure Act 1996, c.24, §4 (U.K.); The Antiquities and Art Treasures Act 1972 (Ind.).

Atanagrad, a public university of Atania,[146] discovered the Ruby Sipar within the territory of Atania.[147] Thus, the Ruby Sipar is Atania's property.

2. **The principle of Common Heritage of Mankind does not defeat Atania's ownership over the Ruby Sipar.**

The principle of Common Heritage of Mankind is not a rule of customary international law, but is merely a philosophical framework of protecting cultural property.[148] In any case, the principle of Common Heritage of Mankind merely emphasizes the importance of international cooperation in protecting cultural property.[149] It facilitates the best possible preservation and protection of cultural property by obligating other states to assist the owner state in preserving and protecting the same. [150] This does not extend to depriving the owner state of the property. In fact, the principle prohibits the illicit trade of cultural property.[151]

3. **Atania's treatment of the Ruby Sipar is not inconsistent with its right of ownership.**

The *abuse of rights* doctrine prohibits the exercise of a right for a purpose different from that for which the right had been created and as a result injury is caused.[152] The relationship

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[146] *Clarifications,* ¶4.

[147] *Compromis*, ¶12.

[148] Craig Forrest, *Cultural Heritage as the Common Heritage of Humankind: A Critical Re-evaluation*, 40 THE COMP. & INT'L L.J. OF S. AFR. 124, 127 (2007).

[149] Economic and Social Council (UNESCO), Declaration concerning the Intentional Destruction of Cultural Heritage (Oct. 17, 2003); Alan Marchisotto, *The Protection of Art in Transnational Law*, 7 VAND. J. TRANSNAT'L L. 689, 717 (1974).

[150] *Id*.

[151] John Henry Merryman, Two Ways of Thinking About Cultural Property, 80 THE AM. J. OF INT'L L. 831, 843 (1986).

[152] HERSCH LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE PCIJ (1934) 164; LASSA OPPENHEIM, INTERNATIONAL LAW: A TREATISE (8th Ed., 1955) 345; MARION

between the measure taken and the legitimate policy must be evaluated.[153] Atania's act of safekeeping the Ruby Sipar within the Complex was a legitimate measure to ensure its protection.[154]

B. RAHAD MUST RETURN THE RUBY SIPAR FOR VIOLATING THE OBJECT AND PURPOSE OF THE 1970 UNESCO CONVENTION.

Although the Ruby Sipar was taken at a time when the 1970 UNESCO Convention was not yet in force,[155] Rahad, as a signatory, was still obliged to refrain from acts, which would defeat the object and purpose of the treaty.[156] In *Government of the Islamic Republic of Iran v. The Barakat Gallery Limited*, the court affirmed the significance of abiding by the principles of the 1970 UNESCO Convention even if the treaty was not in force when the acts were committed.[157]

PANIZZON, GOOD FAITH IN THE JURISPRUDENCE OF THE WTO 27 (2006); Alexandre Kiss, *Abuse of Rights, in* 1 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 4 (Rudolf Bernhardted, 1992); Beyeler v. Italy, European Court of Human Rights (ECtHR), Application No. 33202/96, Judgment (Jan. 5, 2000) ["Beyeler"]. *See also* Nottebohm Case (Liech. v. Gua.), Second Phase, Judgment, 1955 ICJ Reports 4 (Apr. 6), ¶¶20-26.

[153] Appellate Body Report, *US–Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (Nov. 6, 1998) DSR 1998:VII, 2755; *Corfu* (Alvarez, *J., separate*), at 4.

[154] *Compromis*, ¶¶43-44.

[155] UNESCO, *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* ["Operational Guidelines Cultural Property"] ¶21. *See Corrections, ¶3; Compromis, ¶50.*

[156] VLCT, art. 18(b).

[157] Government of the Islamic Republic of Iran v. The Barakat Galleries Ltd., Supreme Court of Judicature (U.K.), [2007] EWCA Civ 1374.

1. **The object and purpose of the 1970 UNESCO Convention is to protect declared cultural property from illicit theft, import, export, and transfer of ownership.**

The *interim obligation,* which requires States to refrain from violating the essential provisions of a treaty constituting its *raison d'être*[158] can be determined in reference to the text and nature of the treaty.[159] Recourse may be had to the preamble of a treaty in determining said object and purpose.[160] The preamble of the 1970 UNESCO Convention provides that it is incumbent on every State to protect the cultural property existing *within its territory* against the dangers of theft, clandestine excavation, and illicit export.[161] In *Beyeler v. Italy*, the ECtHR recognized that the UNESCO Convention "accords priority" to the ties between cultural property and their country of origin.[162] Moreover, according to the Operational Guidelines of the 1970 UNESCO Convention,[163] the purpose includes the recovery and return of stolen cultural property.[164]

[158] Alain Pellet, *Note by the Special Rapporteur on draft guideline 3.1.5 (Definition of the object and purpose of the treaty)* ¶1, Jun. 21, 2006, A/CN.4/572.

[159] *Id*., ¶5.

[160] Rights of United States Nationals in Morocco (Fra. v. U.S.A.), Judgment, 1952 I.C.J. 176 (Aug. 27),¶196; Territorial Dispute (Libyan Arab Jamahiriya v. Chad), Judgment, 1994 I.C.J. 6 (Feb. 3), ¶52.

[161] 1970 UNESCO Convention, prmb.

[162] *Beyeler*, ¶113.

[163] UNGA Resolution 70/76.

[164] Operational Guidelines Cultural Property, ¶9; VCLT, art. 31(2)(b).

2. **Rahad has defeated the object and purpose of the 1970 UNESCO Convention.**

a) The Ruby Sipar is Atania's declared cultural property under the 1970 UNESCO Convention.

Under the 1970 UNESCO Convention, cultural property includes property, which, on religious or secular grounds, is designated by each State as being of importance for archaeology, prehistory, history, literature, art or science.[165] The Convention reflects the theory of cultural nationalism by which a nation's cultural property belongs within that nation's territory.[166]

i. Atania has declared the Ruby Sipar as Atania's cultural property.

Cultural property must be specifically designated as such by a State.[167] States have the indefeasible right to classify and declare which property is cultural property. [168] The Ruby Sipar was designated by operation of the interpretative declaration [169] made by Atania upon its ratification of the 1970 UNESCO Convention.[170]

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[165] 1970 UNESCO Convention, art. 1.

[166] Carol Roehrenbeck, *Repatriation of Cultural Property- Who Owns the Past? An Introduction to Approaches and to Selected Statutory Instruments*, 38 INT. J. LEG. INF. 185, 190 (2010). *See* Merryman, *supra* note 151, at 846.

[167] 1970 UNESCO Convention, art. 1. *See id.*, at 842-43.

[168] Operational Guidelines Cultural Property, ¶35.

[169] Alain Pellet, *Thirteenth report of the Special Rapporteur on reservations to treaties, Alain Pellet*, 20 May 2008, A/CN.4/600. An interpretative declaration was defined as, "a unilateral statement, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provision" *in* II.2 YILC 178 2001.

[170] *Compromis,* ¶60.

ii. The Ruby Sipar is covered by Article 1 of the 1970 UNESCO Convention.

Article 1 of the 1970 UNESCO Convention covers property, which relates to history,[171] is a product of archaeological excavations or of archaeological discoveries[172] or an antiquity more than a century old.[173] The Sipar, dating back to 500 CE,[174] plays an important role in Atania's history and was thought to have been lost prior to its discovery in 1903.[175]

b) Rahad has defeated the object and purpose through the acts of Carla Dugo.

i. Carla Dugo's acts violate the object and purpose of the Convention.

The 1970 UNESCO Convention seeks to avert clandestine theft of cultural property[176] because the illicit transfer of cultural property is one of the main causes of the impoverishment of the cultural heritage of countries of origin.[177] Carla Dugo admitted that she entered the Kin Canyon Complex Cultural Center at night and took the Ruby Sipar from its vault a few days before 3 October 2014.[178]

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[171] 1970 UNESCO Convention, art. 1(b).

[172] 1970 UNESCO Convention, art. 1(c).

[173] 1970 UNESCO Convention, art. 1(e).

[174] *Compromis*, ¶8.

[175] *Id.*, ¶¶ 8-9, 12.

[176] 1970 UNESCO Convention, prmb. & art. 3.

[177] 1970 UNESCO Convention, art. 2(1).

[178] *Compromis*, ¶50.

ii. The acts of Carla Dugo are attributable to Rahad.

The conduct of non-state actors may be attributable to the state to the extent that it acknowledges and adopts the act as its own.[179] States may be held liable for private acts committed by those who are not State officials if it fails to penalize persons who have committed such private acts.[180] Further, States are encouraged to take sanctions against persons involved in the theft of cultural property.[181] The refusal of Rahadi authorities to take appropriate steps to return the Ruby Sipar, its subsequent claim of ownership, and failure to prosecute Carla Dugo renders Carla Dugo's acts attributable to Rahad. [182]

3. **As reparation, Rahad must return the Ruby Sipar to Atania**

Every breach of an international obligation creates a concomitant obligation to provide reparations.[183] The state must "wipe out all the consequences of the illegal act[.]"[184]

a) Returning the Ruby Sipar is the proper means of reparation.

A State responsible for an internationally wrongful act is under an obligation to make restitution, or re-establish the situation, which existed before the wrongful act was committed.[185] Restitution is possible through the return of the Ruby Sipar to Atania.

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[179] Articles on State Responsibility, art 11.

[180] *Tehran*, ¶74. *See also* Security Council (UNSC) Res. 138 (Jun. 23, 1960).

[181] Operational Guidelines Cultural Property, ¶46.

[182] *Compromis*, ¶¶50-52.

[183] Articles on State Responsibility, arts. 1 & 31.

[184] Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9 ["Chorzów Jurisdiction"], 47. *See* ILC, *supra* note 135, at 91, art. 31, ¶3.

[185] Articles on State Responsibility, art. 35. *See id.*

b) Return of the Ruby Sipar will not violate the rights of the Kin.

While restitution should not involve a burden out of proportion to the benefit deriving from restitution,[186] the interests of the Kin must be balanced with the interest of Atania, which has acquired the Sipar in good faith.[187] Atania has possessed and displayed the Ruby Sipar for over a hundred years without protest from the Kin after discovering it in 1903.[188]

C. RAHAD MUST RETURN THE RUBY SIPAR PURSUANT TO A CUSTOMARY OBLIGATION TO RETURN CULTURAL PROPERTY ACQUIRED ILLICITLY.

States have returned cultural property to the State of origin when acquired illicitly, consistent with the principle of *nemo dat quod non habet.*[189] This is evident through national legislation, [190] UN General Assembly Resolutions, [191] and accession to international conventions.[192]

Pursuant to this, Germany returned an inscribed Babylonian tablet to Iraq after

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[186] Articles on State Responsibility, art. 35. *See* Forests of Central Rhodope (Gre. v. Bulg.), 3 R.I.A.A. 1405, *cited* in Conor McCarthy, REPARATIONS AND VICTIM SUPPORT IN THE INTERNATIONAL CRIMINAL COURT (2012) 161.

[187] Principles and Guidelines for the Protection of the Heritage of Indigenous People, principle 9.

[188] *Compromis*, ¶12.

[189] *See* Island of Palmas (Neth. v. U.S.A.) 2 R.I.A.A. 829 (1928), at 842.

[190] For examples, *see* UNESCO Database of National Cultural Heritage Laws, *at* http://www.unesco.org/culture/natlaws (*last accessed* Jan. 12, 2017).

[191] UNSC Res. 1483, S/RES/1483 (May 22, 2003); UNGA Res. 70/76 (Dec. 9, 2015); UNGA Res. 61/52 (Feb. 16, 2007); UNGA Res. 50/56 (Dec. 11, 1995); UNGA Res. 34/64 (Nov. 29, 1979).

[192] List of States-parties to the 1970 UNESCO Convention, *at* http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E (*last visited* Oct. 29, 2016).

discovering the same having been illegally removed and donated to the Prussian Cultural Heritage Foundation [193]. Similarly, Italy returned over 12,000 pre-Columbian artifacts to Ecuador.[194]

IV. ATANIA OWES NO COMPENSATION TO RAHAD FOR ANY COSTS INCURRED RELATED TO THE KIN MIGRANTS.

A. ATANIA DOES NOT OWE RAHAD COMPENSATION AS A MEANS OF REPARATION FOR VIOLATING THE HUMAN RIGHTS OF THE KIN.

Reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation, which would, in all probability, have existed if that act had not been committed.[195] The obligation to compensate is based on a wrongful act that is, the expulsion by the state of origin of its nationals.[196] Acceptance by a state of migrants is voluntary. By accepting these migrants, a state is fulfilling its obligation to cooperate.[197]

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[193] Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, 20th Sess., Sept. 29-30, 2016, ¶27.

[194] ALPER TASDELEN, THE RETURN OF CULTURAL ARTEFACTS: HARD AND SOFT LAW Approaches 148 (2016). *See, e.g.,* US v. An Antique Platter of Gold, 184 F. 3d 131 (2d Cir. 1999), aff'g 991 F. Supp. 222 (S.D.N.Y. 1997). For more examples, *see, generally*, Marilyn Phelan, *Cultural Property*, 32 INT'L L. 448, 450 (1998).

[195] Factory at Chorzów (Claim for Indemnity) (Ger. v. Pol.), Merits, 1928 P.C.I.J. (ser. A), No. 17 ["Chorzów Merits"], 47.

[196] Hannah R. Garry, *The Right to Compensation and Refugee Flows: A 'Preventative Mechanism in International Law*, 10 INT'L J. OF REFUGEE L. 97, (1998).

[197] UN, Charter of the United Nations, Oct. 24, 1945, 1 U.N.T.S. XVI, arts. 55-56; International Covenant on Civil and Political Rights, Mar. 23, 1976, 993 U.N.T.S. 171 ["ICCPR"], prmb.

1. **Rahad has no standing to espouse the human rights claims of the Kin.**

a) The Kin are Atanian nationals.

Generally, only the state of nationality is entitled to exercise diplomatic protection.[198] While a State may exercise diplomatic protection on behalf of refugees it recognizes,[199] claims may not be made against the state of nationality of those refugees.[200] Nationality being the basis for diplomatic protection, the same should not be allowed.[201] To allow diplomatic protection in such cases would open the floodgates for international litigation.[202]

Since the Kin are Atanian nationals, Rahad cannot espouse their human rights claims. Although Rahad has declared that many of the migrants are refugees under the KHAA, claims may not be made against Atania, the State of nationality.

b) The Kin have not exhausted local remedies.

The rule of exhaustion of local remedies before international proceedings may be instituted is a rule of customary international law.[203] A state must be given the opportunity to provide redress for violations by its own means within the framework of its own domestic legal

[198] ILC, Draft Articles on Diplomatic Protection, art. 3.

[199] ILC, Draft Articles on Diplomatic Protection, art. 8(2).

[200] ILC, Draft Articles on Diplomatic Protection, art. 8(3).

[201] ILC, Draft Articles on Diplomatic Protection, with commentaries, II.2 YILC 51.

[202] *Id*.

[203] *Elettronica*, ¶46; Interhandel Case, (Switz. v. U.S.A), Judgment, 1959 I.C.J. 6, p. 27.

system before resort may be had to an international court.[204] This rule must be observed when domestic proceedings are pending.[205] Atanian domestic processes are still ongoing.[206]

c) The principle of *erga omnes* or *erga omnes partes* does not apply.

While all States have a legal interest in the protection of basic rights,[207] this Court has never upheld a claim based on the principle of *erga omnes*. The ruling in *Belgium v. Senegal* applied the principle of *erga omnes partes* with respect only to the Convention Against Torture, which is not applicable in this case.[208]

d) Rahad is barred by the Doctrine of Clean Hands.

The principle of *ex delicto non oritur actio* or the Clean Hands Doctrine is a general principle of law[209] by which a State does not have *locus standi* necessary to bring its claim before the Court if it was itself guilty of illegal conduct.[210] A party engaged in a continuing breach is not permitted to take advantage of the other party's similarly illegal conduct.[211] The

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[204] *Id*.

[205] *Id.*, at 27-28.

[206] *Clarifications*, ¶7.

[207] Barcelona Traction, Light and Power, Limited (Belg. v. Spa.) 1970 I.C.J. 3, ¶34.

[208] Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶70.

[209] *Nicaragua* (Schwebel, *J., dissenting*), at 272; *Eastern Greenland* (Anzilotti, *J., dissenting*), at 95; Diversion of Water from the Meuse (Neth. V. Belg.), 1937 P.C.I.J. (ser. A/B) No. 70 (Jun. 28) ["River Meuse"], (Hudson, *J., separate*), at 78.

[210] *Nicaragua* (Schwebel, *J., dissenting*), at 272

[211] *River Meuse*, (Hudson, *J., separate*), at 78.

extraction of water from the Aquifer exacerbated the already precarious situation in Atania with regard to the availability of water. Rahad effectively caused the migration of the Kin.[212]

2. **Atania did not discriminate against the Kin.**

All persons are entitled without any discrimination to equal protection before the law.[213] Domestic legislation must not include provisions involving discrimination in law or in fact in any field regulated by public authorities.[214] However, substantial distinctions may be the basis of differentiated treatment.[215] No violation occurs if a restriction has a reasonable and objective justification.[216]

The WRAP Act was not directly discriminatory because it applies to all people within Atania, and aims to limit water usage for the good of everyone, including the Kin.[217] Neither was the WRAP Act indirectly discriminatory because the availability of exemptions is based on productivity.[218] In any case, the WRAP Act was enacted to conserve water for all Atanians.

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[212] *Compromis,* ¶¶ 26-28.

[213] ICCPR, art. 26

[214] Centre for Civil and Political Rights (CCPR), General Comment No. 18: Non-discrimination (Nov. 10, 1989) ["General Comment 18"], ¶12.

[215] European Union Burden of Proof Directive, Dir. 97/80/EC, OJ L14/6 (1998); Belgian Linguistics Case, ECtHR, Appl. No. 1474/62, ¶10 (1968).

[216] UN Human Rights Committee (UNHCR), Lovelace v. Canada, Comm. No. R.6/24, ¶16; UNHRC, Kitok v. Sweden, Comm. No. 197/1985, ¶9.5.

[217] Centre for Civil and Political Rights (CCPR), General Comment 18: Non-discrimination, ¶7.

[218] *Compromis,* ¶35.

3. **Atania has not deprived them of their right to an adequate standard of living.**

Under the ICESCR, States undertake to take steps, to the maximum of their available resources, with a view towards progressively achieving the full realization of rights.[219] Pursuant to the right to an adequate standard of living, people are also entitled to the right to water.[220] In determining any violation of the right to water or food, a distinction is made between the inability and the unwillingness of a state to provide.[221] A State that exerted every effort to use all resources at its disposal to satisfy minimum obligations will not be held liable.[222]

The WRAP Act was enacted in response to the loss of arable land and the longstanding drought.[223] The continued importation of water[224] has not alleviated public suffering.

4. **Atania has not deprived them of their right to cultural life.**

Persons belonging to ethnic minorities should not be denied the right to enjoy their own culture.[225] An ethnic minority's right to enjoy its own culture is violated when state action is "so substantial" so as to "effectively deny" them the right.[226] Assuming the Kin are an ethnic

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[219] International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3 ["ICESCR"], art. 2.

[220] ICESCR, art. 11; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Jan. 20, 2003) ["General Comment 15"], ¶3.

[221] General Comment 15, ¶41.

[222] CESCR, General Comment No. 12: The Right to Adequate Food (May 12, 1999), ¶17.

[223] *Compromis*, ¶34.

[224] *Clarifications*, ¶9.

[225] ICCPR, art. 27.

[226] UNHRC, Länsman v. Finland, Comm. No. 511/1992, ¶9.5.

minority, the WRAP Act did not prohibit the Kin from farming. Cultural traditions do not prevent the Kin from applying for a license[227] as at least 5% have done so.[228]

5. **In any case, Rahad has no basis to seek compensation for violations of the human rights of the Kin.**

Compensation is the proper form of reparation if restitution is impossible or impractical.[229] The ICCPR provides that "any person" whose rights or freedoms are violated shall be entitled to an effective remedy.[230] In the practice of the Human Rights Committee[231] and this Court,[232] the State party was required to furnish the *victim* with an effective remedy, including compensation. Rahad cannot rely on Article 48(2) of the ASR as a basis of compensation for breaches of *erga omnes* rights since it is described as a mere progressive codification of international law.[233]

B. ATANIA DOES NOT OWE RAHAD COMPENSATION BY VIRTUE OF A QUASI-CONTRACT.

A quasi-contract is an obligation in law created absent an agreement, due to a situation of unjust enrichment.[234] Though this may be a general principle of law, it does not apply in this case.

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[227] *Compromis*, ¶37.

[228] *Id.*, ¶36.

[229] Articles on State Responsibility, art. 36(1); *Chorzów Merits*, at 47.

[230] ICCPR, art. 2(3)(a).

[231] UNHRC, Huaman v. Peru, Comm. No. 1153/2003, ¶8.

[232] Ahmadou Sadou Diallo (Guinea v. D.R.C.), Judgment, 2010 I.C.J. 639 (Nov. 30), ¶50.

[233] ILC, *supra* note 135, at 127.

[234] Arthur Corbin, *Quasi-Contractual Obligation*, 21 YALE L.J. 533 (1912). *See* WILLIAM CLARK, HANDBOOK ON THE LAW OF CONTRACTS (4th Ed., 1939).

1. **Rahad has consented to providing protection to the Kin migrants under international law.**

By ratifying the 1951 Refugee Convention and its 1967 Protocol, Rahad has undertaken obligations to house and care for refugees.[235] Thus, even if the Kin are found to be refugees, Rahad has consented to undertaking the obligation to protect the rights of refugees.[236] Moreover, the customary obligation to provide complementary protection gives rise to the duty to provide protection for migrants based on their human rights.[237] Migrants must be treated in the same manner a State does its nationals.[238] In this case, Rahad acted pursuant to its own obligations under international law.

2. **In any case, Rahad has failed to comply with its duty to provide protection for the Kin migrants.**

States have obligations to uphold the human rights of all people within its jurisdiction.[239] These rights include the right against discrimination [240] and the right against arbitrary detention.[241] The Kin have not received genuine protection in Rahad. [242]

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[235] Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 ["Refugee Convention"], arts. 20-23.

[236] Refugee Convention & the Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 257; JENNIFER PEAVEY-JOANIS, A PYRRHIC VICTORY: APPLYING THE *TRAIL SMELTER* PRINCIPLE TO STATE CREATION OF REFUGEES, *in* TRANSBOUNDARY HARM IN INTERNATIONAL LAW 263 (2006); Executive Committee of the High Commissioner's Programme, A/AC.96/904, Sept. 7, 1998, ¶14.

[237] KATIE SYKES, HUNGER WITHOUT FRONTIERS: THE RIGHT TO FOOD & STATE OBLIGATIONS TO MIGRANTS, *in* INTERNATIONAL LAW OF DISASTER RELIEF (David D. Caron, Michael J. Kelly, Anastasia Telesetsky, Eds.) 191.

[238] *See, generally,* Refugee Convention; PEAVEY-JOANIS, *supra* note 236, at 263.

[239] ICCPR, art. 2; ICESCR, art. 2.

[240] ICCPR, art. 26; ICESCR art. 2(2).

[241] ICCPR, art. 9.

a) Rahad has discriminated against the Kin under the KHAA.

International law prohibits discrimination on the ground of race, religion, political or other opinion, national or social origin or status.[243] The KHAA was directly discriminatory because it claims that all Kin were "forced to escape hardship and persecution", yet only the Sisters of the Sun were immediately granted refugee status.[244] All other Kin had to be processed because they had to be assessed on a case-to-case basis. [245]

b) Rahad has arbitrarily detained the Kin.

A State's exercise of sovereignty through immigration detention is limited by ensuring the protection of fundamental human rights. [246] Detention should never be arbitrary.[247] Detention is permissible if there exists a valid cause and reasonable period[248] and is necessary for purposes of admission and deportation proceedings.[249] The UNHRC,[250] as supported by state practice,[251]

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[242] *Compromis*, ¶54.

[243] ICCPR, art. 26. *See* General Comment 18, ¶12.

[244] *Compromis*, ¶48.

[245] *Id.*

[246] UNGA Res. 40/114 (Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live) (1985) ["Declaration on HR of Non-Nationals"], art. 5; James A.R. Nafziger, *The General Admission of Aliens under International Law*, 77 AM. J. OF INT'L L. 804 (1983).

[247] Universal Declaration of Human Rights (UDHR), UNGA Res. 217 A(III) Dec. 10, 1948, art. 9; ICCPR, arts. 9(1) & 12(3); UNHRC, General Comment No. 8: Right to Liberty and Security of Persons (Jun. 30, 1982), ¶4; Declaration on HR of Non-Nationals, art. 5.1(a); UN High Commissioner on Refugees (UNHCR), The Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (2012), guideline 4.

[248] UNHRC, A v. Australia, Comm. No.560/1993 (1997), ¶9.2; UNHRC, van Alphen v. Netherlands, Comm. No.305/1988 (1990), ¶5.8.

[249] UNHRC, Torres v. Finland, CCPR/C/38/D/291/1988 (1990), ¶7.3.

considers detention for six months to two years to be unduly prolonged.[252] Thus, a 24-month period of detention is arbitrary.[253]

C. ATANIA HAS NOT VIOLATED THE *SIC UTERE* PRINCIPLE IN RELATION TO THE KIN MIGRANTS.

Under the principle of *sic utere tuo ut alienum non laedas,* states have an obligation not to knowingly allow their territory to be used in a manner injurious to the rights of another.[254] States must use all means at its disposal to avoid activities within its territory that cause damage to another state.[255] A reasonable imputation of damage is sufficient to establish causation. [256]

Assuming this principle is applicable outside of environmental issues, Atania cannot be considered to have violated it as the cause for the mass migration is Rahad's extraction of water from the Aquifer. The Savali Pipeline was the catalyst for the eventual migration of the Kin.[257]

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[250] UNHRC, Comments on Peru, CCPR/C/79/Add.67 (July 25, 1996).

[251] Directive 2008/115/EC, European Parliament and Council, art.15.5 (2008).

[252] *See* Amuur vs. France, ECtHR, Judgment, Appl. No. 19776/92 (1996); Chahal v. United Kingdom, ECtHR, Judgment, Appl. No. 70/1995/576/662 (1996).

[253] *Compromis*, ¶47, 59.

[254] *Corfu*, at 22; *Trail Smelter*, at 1965; Rio Declaration, principle 2; Stockholm Declaration, principle 21.

[255] *Pulp Mills*, ¶101. *See also Gabčikovo-Nagymaros*, ¶115.

[256] ILC, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries*, II.2 YILC 157, on principle 4, ¶16; *see* Olivier De Schutter, Asbjorn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon & Ian Seiderman, *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 HUM. RTS. Q. 1084, 1114(2012).

[257] *Compromis*, ¶¶27-28.

Moreover, Atania made compliance easier by making licenses available for purchase online or at local WRAP offices,[258] and providing that the Act take effect four months after enactment.[259] The violators of the WRAP Act were accorded due process.[260]

[258] *Compromis*, ¶35.

[259] *Id.*, ¶34.

[260] *Id.*, ¶¶36-37; *Clarifications*, ¶7.

PRAYER FOR RELIEF

For the foregoing reasons, Atania requests the Court to declare that:

Rahad's extraction of water from the Aquifer violates international obligations undertaken by Rahad and constitutes an inequitable use of a shared resource;

The Savali Pipeline operations violate Rahad's international obligations with respect to the Kin Canyon Complex and therefore must cease;

Rahad must immediately return the Ruby Sipar to Atania, its lawful owner; and

Atania owes no compensation to Rahad for any costs incurred related to the Kin migrants.

Respectfully submitted,

Agents of Atania