

**THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS**

**THE 2025 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT
COMPETITION**



**CASE CONCERNING THE NAEGEA SEA
UNION OF AMBROSIA
(APPLICANT)
v.
REPUBLIC OF ROVINIA
(RESPONDENT)**

MEMORIAL FOR RESPONDENT

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STATEMENT OF JURISDICTION

The Union of Ambrosia ('Applicant') instituted proceedings against the Republic of Rovinia ('Respondent') before the International Court of Justice ('the Court') on 11 July 2024 pursuant to Article 40(1) of this Court's Statute with respect to a dispute concerning the Naegea Sea and certain other matters.

The Parties have agreed to accept the jurisdiction of the Court under Article XXI of the Organization for Cooperation and Development in the Paine ('OCDP') Charter. Article XXI(b) of the OCDP Charter includes two exceptions to this acceptance for disputes arising out of facts or situations occurring prior to the entry into force of the Article, and for disputes relating to judicial proceedings on matters which, in accordance with international law, are essentially within a Member State's domestic jurisdiction. On these bases, Respondent objects to the Court's jurisdiction to hear Applicant's claim B.

STATEMENT OF FACTS

Background

The Republic of Rovinia ('Rovinia') and the Union of Ambrosia ('Ambrosia') are two of the seven States located on the Paine Peninsula. Rovinia is the southernmost State in the Paine Peninsula and Ambrosia the northernmost.

The OCDP as a Regional Organization

In 2015, the Paine Peninsula States established the Organization for Cooperation and Development in the Paine ('OCDP') to address the increase in drug trafficking and transnational organized crime in the region. Additionally, the OCDP aims to ensure the equitable and sustainable use of natural resources. Article XXI of the OCDP Charter includes a compromissory clause which grants the International Court of Justice ('the Court') jurisdiction over all disputes of a juridical nature, excluding disputes arising out of facts or situations that occurred prior to the clause's entry into force, as well as disputes relating to judicial proceedings on matters essentially within a State's domestic jurisdiction. The clause entered into force on 17 March 2021.

Ms. Cross

In August 2022, Human Rights International ('HRI') published a report alleging that, between 2017 and 2020, the Ambrosian National Police abducted 150 Ambrosian citizens suspected of drug trafficking under the "Implementing the Law for a Safer Ambrosia" (ILSA) program. This program had been launched in 2013 by then-Minister of Interior Gertrude Cross upon instructions from President Derey to take "all necessary and lawful measures" to tackle the drug problem in Ambrosia. In November 2022, following an investigation into the abductions by the Ambrosian Prosecutor General, Ms. Cross resigned and moved to Rovinia. In January 2023, the Prosecutor General concluded his investigation, filing charges against five police officers for kidnapping, but stating that there was insufficient evidence to support criminal charges against Ms. Cross. In June 2023, HRI published an update suggesting Ms. Cross's direct involvement in the abductions, prompting the reopening of the Ambrosian investigation. The update alleged that the Ambrosian Prosecutor General had access to some of this evidence when he closed his investigation in January 2023.

In February 2019, Ambrosia’s President Derey and Vice President Zavala were democratically elected for a seven-year term. Following President’s Derey stroke in April 2022, Ms. Zavala assumed the role of Acting President during his coma. Upon his return to Ambrosia in December 2023, President Derey announced pardons for those implicated in the governmental crisis during his absence. He emphasized that Applicant’s legal system has all the necessary tools to carry out an independent investigation into Ms. Cross, whom he described as “a loyal servant of the people”. Moreover, he guaranteed that any prosecution in Ambrosia would protect the sensitivity and confidentiality of the information emerging during trial.

On 1 May 2024, Rovinia’s General Prosecutor filed a complaint against Ms. Cross for enforced disappearance, a crime incorporated into the Rovinian Criminal Code in 2007. The Code provides for the prosecution of persons found in Rovinia who are accused of enforced disappearance, wherever the act occurred. One day later, on 2 May 2024, the Permola Criminal Court found the complaint admissible and issued a warrant for Ms. Cross’s arrest.

Conflict on the Naegea sea

By 1980, all Paine Peninsula States had adopted legislation proclaiming their exclusive right to fish in their Exclusive Economic Zones (‘EEZ’), extending 200 nautical miles from their ambulatory baselines. Moreover, since the late 1990s, all Paine Peninsula States have been parties to the United Nations Convention on the Law of the Sea (‘UNCLOS’). Rovinia and Ambrosia, both facing the Naegea Sea, rely heavily on fishing for their economic stability. The Naegea Sea is particularly abundant in yellowfin tuna, which can typically be found beyond 200 nautical miles from the States’ baselines. Furthermore, Rovinia’s export-oriented fishing sector accounts for 40% of its USD 240 billion GDP.

Coastal erosion, caused by climate change, has led the Paine Peninsula coastlines to recede by, on average, 1.5 meters annually since the 1980s. This recession has been accelerating, as confirmed by a 2014 report of the Intergovernmental Panel on Climate Change. In November 2015, Ambrosia enacted the Baseline Freezing Law, fixing its baselines at the low-water lines as of 1 November 2015 regardless of future coastline recession. In March 2016, the other Paine Peninsula States started contemplating adopting similar legislation. Rovinia opposed their measures, stating that

they were in violation of the law of the sea and longstanding regional practice. In May 2016, Rovinia communicated to Ambrosia that it deemed the Freezing Law to be without effect and declared its intention to continue fishing in the high seas, to which Ambrosia offered no response.

By 2018, Ambrosia's coastline had receded to such an extent that, if the baselines were drawn at the current low-water mark, the entire Triton Shoal would fall outside its EEZ. On 2 July 2018, Rovinia began issuing fishing licenses for the entirety of the Shoal, treating it as part of the high seas.

Rovinia's Judicial Seizure and Sale of The Falcon

On 23 February 2023, Hurricane Luna devastated the Ambrosian village of Divilina. Acting President Zavala's hesitation to approve the Reconstruction Bill – which would provide financial aid to Divilina – ignited widespread distrust in her leadership. By 9 March 2023, twelve demonstrations had taken place across Ambrosia, calling for a new government led by Ms. Piretis. On that same day, three Ministers resigned, followed by four more on 10 March. Subsequently, Ms. Piretis established the Transitional Council on 13 March 2023, declaring her intent to lead until President Derey's return or until the next elections. The Council, comprising of several former government officials and military leaders, assumed executive authority, with Ms. Piretis at its head. Its first act was enacting the Reconstruction Bill. By the time the funds were distributed, the Transitional Council had gained control over all parts of Ambrosia, including its capital. The Council enjoyed substantial support from the general population of Ambrosia, members of the executive and legislative branches, the police, the intelligence community, and the armed forces. Additionally, twenty-five States recognized the Transitional Council as Ambrosia's legitimate government.

After the Transitional Council assumed power, Ms. Zavala – who had been out of State – traveled to Rovinia to devise a strategy to address the political crisis. Upon landing in Rovinia, The Falcon – a repurposed military aircraft previously owned by the Ambrosian Air Force – was impounded by Rovinian authorities. The seizure aimed to satisfy a USD 85 million judgment awarded to O'Mander Corp. by the Permola Court of First Instance, which had found Ambrosia in breach of its contractual obligations. Following the Council's consolidation of power, O'Mander Corp.

argued before the Permola Court that The Falcon no longer qualified for immunity, as Ms. Zavala was no longer a government official. The Permola Court acknowledged that the aircraft retained immunity unless waived by Ambrosia, which occurred on 17 March 2023, when Ms. Piretis authorized its seizure and sale, a decision presented to the court on 28 March 2023. In July 2023, the Permola Court held that Rovinia’s recognition of the Transitional Council – recognizing it exercised effective control – validated the waiver of immunity. Following this decision, Rovinia seized and sold the aircraft.

The different ongoing controversies between Ambrosia and Rovinia culminated in Ambrosia filing an Application with the Registry of the Court on 11 July 2024.

SUMMARY OF PLEADINGS

A.

The Court lacks jurisdiction to entertain the Union of Ambrosia's ('Applicant') submission regarding Ms. Cross's arrest and prosecution, as it falls outside the scope of the compromissory clause in the Charter of the Organization for Cooperation and Development in the Paine ('OCDP'). This clause excludes the Court's compulsory jurisdiction in two scenarios. Considering the second submission falls within the scope of both scenarios, the Court lacks jurisdiction. First, the dispute arose from a situation that precedes the compromissory clause's entry into force on 17 March 2021, namely the enforced disappearance of 150 Ambrosian nationals, which ceased when the last victims were released in December 2020. Alternatively, the dispute arose from the incorporation of universal jurisdiction for enforced disappearance into the Republic of Rovinia's ('Respondent') Criminal Code in 2007. Second, the dispute pertains to criminal proceedings in the Permola Criminal Court on a matter essentially within Respondent's domestic jurisdiction since Respondent asserted jurisdiction over Ms. Cross on the basis of its Criminal Code. Neither the international obligations underlying this provision, nor the existence of the bilateral extradition treaty deprive the criminal proceedings of their domestic character. Accordingly, the Court lacks jurisdiction over Applicant's second submission.

B.

Should the Court find that it does have jurisdiction to entertain Applicant's second submission, Respondent's assertion of criminal jurisdiction over Ms. Cross is fully consistent with international law. First, Ms. Cross does not enjoy immunity for her role in the enforced disappearances since, as a former Minister of Interior, she does not benefit from personal immunity. Additionally, Ms. Cross lacks functional immunity for the enforced disappearances since she exceeded her official mandate, and because enforced disappearance is an international crime which is exempt from immunity under customary international law. In any event, granting Ms. Cross immunity for the crime of enforced disappearance contradicts the objective of the International Convention for the Protection of All Persons from Enforced Disappearance ('ICPPED') to combat impunity. Second, Respondent's decision to prosecute, rather than extradite, aligns with its obligations under the ICPPED.

C.

Applicant violated international law when it adopted its Baseline Freezing Law ('the Freezing Law'). The Freezing Law goes against the United Nations Convention on the Law of the Sea, which prescribes permanent maritime limits in two specific instances only, neither applicable to the issue in the present case. Additionally, Respondent is not bound by the regional customary law that emerged on the Paine Peninsula regarding the permanency of baselines as it never positively accepted this rule. Moreover, Respondent did not acquiesce to Applicant's Freezing Law, since Respondent immediately protested the Freezing Law once Applicant had updated its charts. Therefore, the entire Triton Shoal is located in the high seas, and Respondent did not violate its due regard obligation by issuing fishing licenses in the high seas. Alternatively, in light of equity, Respondent is allowed to fish in those parts of the Triton Shoal located within Applicant's Exclusive Economic Zone. Under Article I(c) OCPD Charter, all Paine Peninsula States must ensure the equitable use of the Naegea Sea's natural resources. Thus, by preventing Respondent from issuing fishing licenses for yellowfin tuna – a resource critical to its economy – Applicant would create an inequitable situation.

D.

Respondent's acceptance of the Transitional Council's waiver of immunity is in conformity with international law. The recognition of governments falls within a State's discretionary authority, allowing Respondent to grant recognition based on its own judgment. Consequently, Respondent granted recognition to the Transitional Council because it concluded that the Council exercised effective control. Additionally, by recognizing the Transitional Council, Respondent complied with the principle of non-intervention. Moreover, the Transitional Council's waiver of immunity constitutes a unilateral act that is legally binding on Applicant, and Respondent is entitled to rely on the expectation that Applicant will uphold this act in good faith. Furthermore, Respondent's seizure and sale of the Falcon satisfies the requirements under customary international law, as codified in Article 19(a) of the United Nations Convention on Jurisdictional Immunities of States and their Property ('UNCJISP'). This compliance is evidenced by the legal representative of the Transitional Council appearing before the Permola Court and providing consent for the seizure and sale of the Falcon.

PLEADINGS

A. THE COURT LACKS JURISDICTION TO ENTERTAIN APPLICANT'S SUBMISSION (B) BECAUSE IT IS OUTSIDE THE SCOPE OF THE COMPROMISSORY CLAUSE OF THE OCDP CHARTER

The International Court of Justice ('the Court') lacks jurisdiction to entertain the Union of Ambrosia's ('Applicant') second submission concerning the arrest and prosecution of Ms. Cross, as it is outside the scope of the compromissory clause in the Charter of the Organization for Cooperation and Development in the Paine ('OCDP Charter') considering the dispute arose out of a situation that occurred prior to the clause's entry into force (1.). Moreover, the Court lacks jurisdiction since the dispute relates to judicial proceedings on a matter that is essentially within the Republic of Rovinia's ('Respondent') domestic jurisdiction (2.).

1. The Court lacks jurisdiction because the dispute arose from a situation that occurred before 17 March 2021

The dispute arose out of the enforced disappearance of 150 Ambrosian nationals, between June 2017 and July 2020, which ceased when the last victims were released in December 2020 (1.1.). Alternatively, the dispute arose out of the incorporation of the crime of enforced disappearance into Respondent's Criminal Code in 2007, whereby Respondent established universal jurisdiction for this crime (1.2.).

1.1. The dispute arose from the enforced disappearance of 150 Ambrosian nationals which ceased when the last victims were released in December 2020

A dispute cannot arise from a fact that is merely the development of an earlier situation which constitutes the real source of the dispute.¹ Enforced disappearance has been recognized as a continuing crime, lasting until the fate and whereabouts of the missing persons are established with

¹ Permanent Court of International Justice ('PCIJ'), *Phosphates in Morocco* (Preliminary Objections) (1938), Series A/B No. 74, 24 ('*Phosphates in Morocco*').

certainty.² Once the missing person's fate has been established, the State's failure to investigate further or to provide remedies does not constitute a continuation of the original act and cannot bring the act within the Court's jurisdiction.³ For instance, in *Gomes Lund v. Brazil*, the Inter-American Court of Human Rights ('IACtHR') held that it lacked jurisdiction to adjudicate the enforced disappearance of an individual whose remains had been identified in 1996, as these events occurred before Brazil recognized the jurisdiction of the IACtHR.⁴

In this case, the Court's jurisdiction is limited to disputes arising from facts or situations that occurred after the entry into force of the compromissory clause on 17 March 2021.⁵ The present dispute arose from the enforced disappearance of 150 Ambrosian nationals between June 2017 and July 2020, with the arrest warrant merely constituting a development of this earlier situation.⁶ Although Applicant continues to investigate Ms. Cross's involvement, the disappearances ceased when the last victims were released in December 2020, well before the compromissory clause entered into force.⁷

Therefore, the Court lacks jurisdiction to entertain Applicant's second submission concerning the arrest and prosecution of Ms. Cross.

² UN Human Rights Committee, *Maria del Carmen Almeida de Quinteros v. Uruguay* (1983), No. 107/1981, CCPR/C/OP/2, [2.2.B]; Inter-American Court of Human Rights ('IACtHR'), *Blake v. Guatemala* (Preliminary Objections) (1996), [39]; African Commission on Human and People's Rights ('ACHPR'), *Zitha & Zitha v. Mozambique* (2011), No. 361/08, [94]; European Court of Human Rights ('ECtHR'), *Cyprus v. Turkey* (2014), No. 25781/94, [145], [150].

³ *Phosphates in Morocco*, 28-29; ECtHR, *Blečić v. Croatia* (2006), No. 59532/00, [77], [79]; ECtHR, *Janowiec and Others v. Russia* (2013), Nos. 55508/07 and 29520/09, [129].

⁴ IACtHR, *Gomes Lund v. Brazil* (Judgment) (2010), [15].

⁵ Charter of the Organization for Cooperation and Development in the Paine (2016) ('OCDP Charter'), art. XXI(b)(i).

⁶ Statement of Agreed Facts, Case Concerning the Naega Sea ('Facts'), [25].

⁷ Facts, [25], [62].

1.2. Alternatively, the dispute arose from the insertion of universal jurisdiction for the crime of enforced disappearance into Respondent’s Criminal Code in 2007

Only facts or situations directly tied to the emergence of the dispute – the ‘source’ of the dispute – are relevant in interpreting temporal limitations to jurisdiction.⁸ Moreover, in *Certain Property*, the Court found that although the dispute was triggered by the decisions of the German domestic courts, the source of the dispute was the legislation on the basis of which the disputed measures were taken.⁹ Similarly, in *Phosphates in Morocco*, the Permanent Court of International Justice (‘PCIJ’) held that the legislative acts establishing a monopoly on Moroccan phosphates constituted the source of the dispute, rejecting Italy’s argument that the subsequent denial of justice created a new situation which could bring the case within the jurisdiction of the PCIJ.¹⁰

In this case, the dispute has its source in the incorporation of universal jurisdiction for enforced disappearance into Respondent’s Criminal Code, with the Permola Criminal Court’s issuance of an arrest warrant for Ms. Cross serving merely as its trigger.¹¹ The timing of the dispute’s trigger is irrelevant to the compromissory clause, which focuses on the date of the situation giving rise to the dispute.¹² The Permola Criminal Court merely confirmed that the Criminal Code applies to enforced disappearances wherever those acts occur.¹³ Thus, although the proceedings before the Court were instituted in response to the 2 May 2024 decision, these events have their source in the incorporation of universal jurisdiction into Respondent’s Criminal Code in 2007, well before the compromissory clause entered into force on 17 March 2021.¹⁴

⁸ *Phosphates in Morocco*, 24; *Case Concerning Right of Passage over Indian Territory* (Merits) (Judgment) (1960), ICJ Rep 6, 35 (‘*Right of Passage*’); *Case Concerning Certain Property (Liechtenstein v. Germany)* (Preliminary Objections) (Judgment) (2005), ICJ Rep 6, [44]-[46] (‘*Certain Property*’).

⁹ *Certain Property*, [47], [52].

¹⁰ *Phosphates in Morocco*, 25, 28.

¹¹ Facts, [61].

¹² Facts, [12].

¹³ Facts, [61].

¹⁴ *Ibid.*

Therefore, the Court lacks jurisdiction to entertain Applicant's second submission regarding Ms. Cross's arrest and prosecution.

2. Moreover, the Court lacks jurisdiction because the dispute relates to criminal proceedings in the Permola Criminal Court on a matter that falls essentially within Respondent's domestic jurisdiction

The term "essentially", as opposed to "exclusively", indicates that it is sufficient for the essence of a matter to belong to the State's domestic jurisdiction to exclude the Court's competence.¹⁵ Limitations on sovereignty must be interpreted restrictively, thus allowing for a broad interpretation of matters essentially within the domestic jurisdiction.¹⁶ Moreover, in *Norwegian Loans*, Judge Lauterpacht concluded that a dispute can be essentially within the domestic jurisdiction of a State even if it involves questions of international law.¹⁷ In that case, although the dispute involved the conformity of Norwegian law with international law, it was still essentially within Norway's domestic jurisdiction.¹⁸

In this case, Respondent asserted criminal jurisdiction over Ms. Cross on the basis of its own Criminal Code.¹⁹ The fact that these provisions derive from Respondent's international obligations under the International Convention for the Protection of All Persons from Enforced Disappearance ('ICPPED'), the existence of the bilateral extradition treaty and the question of conformity of these

¹⁵ United Nations General Assembly ('UNGA'), 1st Committee 265th Meeting, "Question of the Treatment of Indians in the Union of South Africa" (1949), 276; UNGA, 1st Committee 548th Meeting, "The Question of Morocco" (1952), [55]; J. Nisot, "Art. 2, Par. 7 of the UN Charter as Compared with Art. 15, Par. 8 of the League of Nations Covenant", *The American Journal of International Law* 1949, 779; M. Korowicz, *Introduction to International Law* (Martinus Nijhoff, 1959), 165.

¹⁶ PCIJ, *Free Zones of Upper Savoy and the District of Gex (France v. Switzerland)* (1932), Ser. A/B No. 46, 167.

¹⁷ *Certain Norwegian Loans (France v. Norway)* (Separate Opinion of Judge Sir Hersch Lauterpacht) (1957), ICJ Rep 9, 42.

¹⁸ *Ibid.*, 37.

¹⁹ Facts, [61].

provisions with international law before this Court, do not deprive the criminal proceedings in the Permola Criminal Court of their essentially domestic character.²⁰

Therefore, the dispute before the Court relates to criminal proceedings in the Permola Criminal Court on a matter that is essentially within Respondent's domestic jurisdiction.

In conclusion, the dispute presented to the Court regarding the arrest and prosecution of Ms. Cross arose out of a situation that occurred prior to the entry into force of the compromissory clause on 17 March 2021. Moreover, the dispute relates to judicial proceedings on a matter that falls essentially within Respondent's domestic jurisdiction. Therefore, Applicant's second submission falls outside the scope of the compromissory clause in the OCDP Charter and, as a result, the Court lacks jurisdiction to entertain the second submission.

²⁰ Facts, [67]; Clarifications to the Statement of Agreed Facts ('Clarifications'), [5].

B. ROVINIA’S ASSERTION OF CRIMINAL JURISDICTION OVER MS. CROSS, AND HER ARREST AND PROSECUTION, ARE FULLY CONSISTENT WITH INTERNATIONAL LAW

Ms. Cross does not enjoy immunity from Respondent’s criminal jurisdiction (1.). Furthermore, Respondent’s decision to prosecute Ms. Cross is consistent with its obligations under the ICPPED (2.).

1. Ms. Cross does not enjoy immunity for the crime of enforced disappearance

Ms. Cross does not enjoy personal immunity from Respondent’s criminal jurisdiction, as she is a former Minister of Interior (1.1.). Additionally, Ms. Cross lacks functional immunity for the crime of enforced disappearance (1.2.). Alternatively, Ms. Cross does not enjoy personal nor functional immunity because granting immunity for the crime of enforced disappearance is incompatible with the ICPPED (1.3.).

1.1. Ms. Cross does not enjoy personal immunity

Personal immunity does not persist after an official leaves office.²¹ Moreover, this immunity is granted exclusively to certain high-ranking State officials due to the international nature of their duties, preventing impediments to their functions.²² During an official’s time in office, this immunity covers all acts, both official and private.²³ However, once the official leaves office, they only enjoy functional immunity for acts carried out in an official capacity during their time in office.²⁴

²¹ *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* (Judgment) (2002), ICJ Rep 3, [61] (‘*Arrest Warrant*’).

²² *Arrest Warrant*, [53]-[54].

²³ *Ibid.*, [54]; International Law Commission (‘ILC’), “Second Report on Immunity of State Officials from Foreign Criminal Jurisdiction” (2013), A/CN.4/661, [72], [75].

²⁴ *Arrest Warrant*, [61].

In this case, Ms. Cross was Applicant’s Minister of Interior, a position she resigned from in November 2022.²⁵ As a former State official, she only enjoys functional immunity for official acts performed during her time in office.

Therefore, Ms. Cross does not enjoy personal immunity.

1.2. Additionally, Ms. Cross does not enjoy functional immunity for the crime of enforced disappearance

Ms. Cross did not act in an official capacity, and does therefore not enjoy functional immunity for the crime of enforced disappearance (1.2.1.). Alternatively, Ms. Cross lacks functional immunity because enforced disappearance constitutes an international crime for which no immunity exists (1.2.2.).

1.2.1. Ms. Cross did not act in an official capacity

An official remains personally responsible for *ultra vires* acts, even though such acts can be attributed to the State.²⁶ This distinction highlights a crucial limitation of functional immunity: it is granted to State officials solely for acts performed in their official capacity during their time in office.²⁷ An act only qualifies as performed in an official capacity if it falls within the scope of the official’s duties.²⁸ Consequently, the *ultra vires* nature of the official’s act is relevant in the context

²⁵ Facts, [27].

²⁶ ILC, Articles on the Responsibility of States for Internationally Wrongful Acts (2001), art. 7, art. 58; ILC, “Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries” (2001), A/56/10, art. 58, [3]; C. Keitner, “Categorizing Acts by State Officials: Attribution and Responsibility in the Law of Foreign Official Immunity”, *Duke Journal of Comparative and International Law* 2016, 453.

²⁷ International Criminal Tribunal for the Former Yugoslavia (‘ICTY’), *Prosecutor v. Blaškić* (Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II) (1997), T-95-14-AR108bis, [38] (‘*Prosecutor v. Blaškić*’); Permanent Court of Arbitration (‘PCA’), *The Enrica Lexie Incident (Italy v. India)* (2020), No. 2015-28, [843].

²⁸ *Case Concerning Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)* (Judgment) (2008), ICJ Rep 177, [191]; ILC, “Fourth Report on the Immunity of State Officials from Foreign Criminal Jurisdiction” (2015), A/CN.4/686, [95].

of immunity.²⁹ In this regard, national courts have denied immunity for conduct in excess of authority on several occasions.³⁰ For instance, in *Hilao v. Marcos*, a United States Court of Appeals held that acts of torture, execution and disappearance were clearly acts outside the President’s authority, for which no functional immunity could apply.³¹ Similarly, in *Xuncax v. Gramajo*, in an action brought against a former Guatemalan Minister of Defense for acts including enforced disappearance, a United States District Court did not recognize immunity because the alleged acts were beyond the scope of the official’s authority.³²

In this case, President Dery instructed Ms. Cross to take “all necessary and lawful measures to apprehend persons engaged in illicit drug production, distribution and use.”³³ However, under the guise of the “Implementing the Law for a Safer Ambrosia” (‘ILSA’) program, Ms. Cross directly authorized and supervised the warrantless arrest and detention of 150 Ambrosian nationals. These actions cannot be considered a lawful response to the national drug problem. Therefore, Ms. Cross exceeded the mandate given by President Dery.³⁴

Hence, Ms. Cross did not act in an official capacity and consequently does not enjoy functional immunity.

²⁹ ILC, “Fourth Report on the Immunity of State Officials from Foreign Criminal Jurisdiction” (2015), A/CN.4/686, [113].

³⁰ Court of First Instance of Brussels (Belgium), *Pinochet* (1998), *International Law Review*, Vol. 119, 349; House of Lords (United Kingdom), *Regina v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3)* (1999), 178-179 (‘*Pinochet*’); District Court Northern District of California (United States of America), *Doe v. Qi* (2004), C-02-0672 CW, C-02-0695 CW, 1287-1288; Lisbon Court of Appeal (Portugal), (2018), 33/14.9TELSB-U.L1-9.

³¹ Court of Appeals for the 9th Cir. (United States of America), *Hilao v. Marcos* (1994), 25 F 3d 1467, [28].

³² District Court for the District of Massachusetts (United States of America), *Xuncax v. Gramajo* (1995), 886 F.Supp.162, 175-176.

³³ Facts, [8].

³⁴ Facts, [50].

1.2.2. *Additionally, there is no immunity for enforced disappearance under customary international law*

Enforced disappearance constitutes a crime under international law, as determined in the Preamble of the ICPPED.³⁵ Former State officials are not entitled to functional immunity for international crimes under customary international law.³⁶ First, State practice is extensive and virtually uniform.³⁷ Numerous national courts have recognized this exception to immunity or have refused to grant immunity to foreign State officials in cases involving international crimes. Notable examples include Argentina,³⁸ Belgium,³⁹ Ethiopia,⁴⁰ France,⁴¹ Germany,⁴² India,⁴³ Israel,⁴⁴ Italy,⁴⁵ Lithuania,⁴⁶ the Netherlands,⁴⁷ Spain,⁴⁸ Switzerland,⁴⁹ and the United Kingdom.⁵⁰ For

³⁵ International Convention for the Protection of All Persons from Enforced Disappearance (2006), 2716 UNTS 3 ('ICPPED'), Preamble [5].

³⁶ *Prosecutor v. Blaškić*, [41].

³⁷ *North Sea Continental Shelf (Germany v. Denmark; Germany v. The Netherlands)* (Judgment) (1969), ICJ Rep 3, [74] ('*North Sea Continental Shelf*'); ILC, "Fifth report on immunity of State officials from foreign criminal jurisdiction" (2016), A/CN.4/701, [189].

³⁸ E. Buzo, C. Brown, K. Gibson and P. Conradsen, "Argentinian Arrest Warrants for Crimes against the Rohingya: The Power of Small States", *Opinio Juris* 16 July 2024.

³⁹ Court of First Instance of Brussels (Belgium), *Pinochet* (1998), *International Law Review*, Vol. 119, 349; Court of Cassation (Belgium), *Ariel Sharon and Amos Yaron* (2003), *International Law Review*, Vol.127, 121-123.

⁴⁰ Federal High Court (Ethiopia), *Special Prosecutor v. Hailemariam* (1995), No. 1/87.

⁴¹ International Federation for Human Rights, "La Cour d'appel de Paris rejette l'immunité fonctionnelle d'Adib Mayaleh, ancien gouverneur de la banque centrale syrienne" 6 June 2024.

⁴² Higher Regional Court of Cologne (Germany), *In re Hussein* (2000), 2 Zs 1330/99, [11]; Federal Court of Justice (Germany) (2021), 3 StR 564/19, [16]-[23]; Federal Court of Justice (Germany) (2024), AK4/24, [53].

⁴³ Kerala High Court (India), *Latorre v. Union of India* (2012), 252 KLR 794.

⁴⁴ Supreme Court (Israel), *Attorney General v. Eichmann* (1962), *International Law Review*, Vol. 36, 309-310.

⁴⁵ Court of Cassation (Italy), *Lozano v. Italy* (2008), No. 31171/2008, 6.

⁴⁶ Trial International, "Witnesses Testified against Belarusian Officials", *Universal Jurisdiction Annual Review* 2022, 70.

⁴⁷ Special Court of Cassation (Netherlands), *re Rauter* (1949), *International Law Review*, Vol. 16, 553; Court of Appeal of Amsterdam (Netherlands), *Bouterse* (2000), [4.2].

⁴⁸ Constitutional Court (Spain) (2005), No. 237/2005; Supreme Court (Spain) (2007), No. 798.

⁴⁹ Federal Criminal Court (Switzerland), *A. v. Office of the Attorney General of Switzerland* (2012), BB.2011.140, [5.4.3].

⁵⁰ *Pinochet*, 178-179.

instance, in Switzerland, the former Gambian Interior Minister was sentenced to 20 years in prison for multiple crimes against humanity – including false imprisonment – committed in the Gambia.⁵¹ Additionally, several States have codified this exception in their national legislation, including Austria,⁵² Burkina Faso,⁵³ Andorra,⁵⁴ Comoros,⁵⁵ Mauritius,⁵⁶ Niger,⁵⁷ South Africa,⁵⁸ and Spain.⁵⁹ Furthermore, the Member States to the Inter-American Convention on Forced Disappearance of Persons and to the Pact on Security, Stability and Development in the Great Lakes Region explicitly exclude the application of immunity.⁶⁰

Second, this exception is supported by sufficient *opinio juris*.⁶¹ Numerous States have affirmed that they are bound by this exception since it accurately reflects customary international law as it stands, including Chile,⁶² the Democratic Republic of the Congo,⁶³ Hungary,⁶⁴ Italy,⁶⁵ New

⁵¹ Federal Criminal Court (Switzerland), *Office of the Attorney General v. Ousman Sonko* (2024), SK.2023.23.

⁵² Austria, Decree of the Austrian Ministry of Justice regarding jurisdiction for war crimes and other international crimes and immunities of highest officials of foreign states in Austrian criminal proceedings (2022), Chapter 3.

⁵³ Burkina Faso, Law No. 052-2009/AN (2009), art. 7, art. 15.

⁵⁴ Andorra, New Penal Code (2005), art. 8(7).

⁵⁵ Comoros, Act No. 11-022 (2011), art. 7.2.

⁵⁶ Mauritius, International Criminal Court Act (2001), art. 4, art. 6.

⁵⁷ Niger, Law No. 2003-025 (2003), Art. 208.7.

⁵⁸ South Africa, Act No. 27 (2002), art. 4(2)(a)(i).

⁵⁹ Spain, Organic Act 16/2015 (2015), Art. 23(1).

⁶⁰ Inter-American Convention on the Forced Disappearance of Persons (1994), 2716 UNTS 3, art. IX(3); International Conference on the Great Lakes Region 29 November 2006, “Protocol for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and All Forms of Discrimination to the Pact on Security, Stability and Development in the Great Lakes Region”, art. 12.

⁶¹ *North Sea Continental Shelf*, [77].

⁶² Intervencion De Chile Informe de la Comision de Derecho Internacional 2 November 2022 (Chile), 4.

⁶³ *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* (Memorial of the Democratic Republic of the Congo) (2001), [60].

⁶⁴ UNGA Sixth Committee, Summary Record of the 19th Meeting, A/C.6/72/SR.19 (2017), [73].

⁶⁵ UNGA Sixth Committee, Summary Record of 22nd Meeting, A/C.6/67/SR.22 (2012), [83].

Zealand,⁶⁶ Spain,⁶⁷ Peru,⁶⁸ Vietnam,⁶⁹ Sierra Leone, the Netherlands, Austria, Estonia, Czech Republic, Germany, Ireland, Liechtenstein, Lithuania, Luxembourg, Denmark, Finland, Iceland, Norway, Sweden, Romania, Portugal, and Ukraine.⁷⁰ Furthermore, the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, which explicitly excludes immunity, was adopted by consensus.⁷¹

In the present case, Ms. Cross stands accused of committing the crime of enforced disappearance.⁷² This is an international crime for which there is no functional immunity under customary international law.

Therefore, Ms. Cross does not enjoy functional immunity for her role in the enforced disappearances.

1.3. In any event, immunity for the crime of enforced disappearance is incompatible with the ICPPED

Granting immunity for the crime of enforced disappearance is incompatible with the ICPPED's object and purpose of combatting impunity.⁷³ Enforced disappearance can only be committed by State agents or by persons or groups acting with the authorization, support or acquiescence of the

⁶⁶ UNGA Sixth Committee, Summary Record of the 24th Meeting, A/C.6/72/SR.24 (2017), [68].

⁶⁷ ILC, "Immunity of State officials from foreign criminal jurisdiction, Additional comments and observations received from Governments" (2024), A/CN.4/771/Add.1, 13.

⁶⁸ Observaciones del Gobierno de la República del Perú relativas a la cuestión de la "Inmunidad de jurisdicción penal extranjera de los funcionarios del Estado" (2015) (Peru), [9].

⁶⁹ UNGA Sixth Committee, Summary Record of 24th Meeting, A/C.6/72/SR.24 (2017), [123].

⁷⁰ ILC, "Immunity of State officials from foreign criminal jurisdiction, Comments and observations received from Governments" (2024), A/CN.4/771, 10 (Sierra Leone), 33 (the Netherlands), 54 (Austria, Estonia), 55 (Czech Republic), 57-58 (Germany), 59-60 (Ireland), 65 (Liechtenstein), 68 (Lithuania), 71 (Luxembourg), 75 (Denmark, Finland, Iceland, Norway, Sweden), 78 (Portugal), 79 (Romania), 87 (Ukraine).

⁷¹ UNGA, "Declaration on the Protection of all Persons from Enforced Disappearance" (1992) A/Res/47/133, art. 16(3); UNGA, Provisional Verbatim Record of the 92nd Meeting (1992), A/47/PV.91, 27; ILC, "Draft Conclusions on identification of customary international law, with Commentaries" (2018), A/73/10, Conclusion 12(2).

⁷² Facts, [61].

⁷³ ICPPED, Preamble [6].

State, as determined in Article 2 ICPPED.⁷⁴ Thus, perpetrators of this crime would typically enjoy functional immunity as State officials.⁷⁵ However, the ICPPED obliges States to either prosecute or extradite alleged perpetrators found within their jurisdiction, which would violate the official's functional immunity.⁷⁶ Interpreting the ICPPED in a way that allows alleged perpetrators – who necessarily benefit from functional immunity – to invoke immunity, goes against its object and purpose.⁷⁷

The United Kingdom's House of Lords reached the same conclusion in *ex parte Pinochet (No.3)* with regards to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Several Lords held that this convention necessarily excludes the application of immunity, since acts of torture, hereunder, can only be carried out by officials who benefit from immunity.⁷⁸ To conclude otherwise would deprive this convention of its purpose, namely combatting impunity for the crime of torture.⁷⁹

Up until November 2022, Ms. Cross held the position of Applicant's Minister of Interior.⁸⁰ On 2 May 2024, the Permola Criminal Court issued a warrant for her arrest, citing evidence for Ms. Cross's involvement in the enforced disappearance of 150 of Applicant's nationals during her time in office.⁸¹

Therefore, as immunity for the crime of enforced disappearance is incompatible with the ICPPED, Ms. Cross does not enjoy any immunity for her role in the enforced disappearances.

⁷⁴ ICPPED, art. 2.

⁷⁵ D. Akande and S. Shah, "Immunities of State Officials, International Crimes, and Foreign Domestic Courts", *European Journal of International Law* 2011, 842 ("Immunities of State Officials, International Crimes, and Foreign Domestic Courts"); ILC, "Fourth report on immunity of State officials from foreign criminal jurisdiction" (2015), A/CN.4/686, [69]-[70].

⁷⁶ ICPPED, art. 9(2), art. 11(1).

⁷⁷ Vienna Convention on the Law of Treaties (1969), 1155 UNTS 331 ('VCLT'), art. 31; "Immunities of State Officials, International Crimes, and Foreign Domestic Courts", 843.

⁷⁸ *Pinochet*, 18-19, 81, 90, 105; "Immunities of State Officials, International Crimes, and Foreign Domestic Courts", 842.

⁷⁹ "Immunities of State Officials, International Crimes, and Foreign Domestic Courts", 842.

⁸⁰ Facts, [27].

⁸¹ Facts, [61].

2. Furthermore, Respondent’s decision to prosecute Ms. Cross is consistent with its obligations under the ICPPED

States are obliged to either prosecute or extradite individuals suspected of enforced disappearance.⁸² In *Obligation to Prosecute or Extradite*, the Court specified that States have the option to extradite, whereas they are under an international obligation to prosecute.⁸³ This obligation to prosecute is absolute unless an extradition request is made, in which case the State retains the discretion to decide between extradition and prosecution.⁸⁴

At the time of Ms. Cross’s arrest on 2 May 2024, no extradition request had been made, as the request was only submitted on 10 May 2024.⁸⁵ Consequently, Respondent was under an absolute duty to prosecute Ms. Cross. Following the request, Respondent retained the discretion to decide between extraditing Ms. Cross or continuing with prosecution. Furthermore, Respondent’s decision to prosecute Ms. Cross aligns with the ICPPED’s objective of combatting impunity.⁸⁶ Several incidents have raised concerns about Applicant’s ability to conduct an impartial and thorough investigation into Ms. Cross’s involvement in the enforced disappearances.⁸⁷ First, enforced disappearance is a composite crime that demands a thorough investigation into all its constituent acts, including the deprivation of liberty, the refusal to acknowledge that deprivation,

⁸² ICPPED, art. 11(1).

⁸³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), 1465 UNTS 85, art. 7(1); *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment) (2012), ICJ Rep 422, [95], [120] (*‘Obligation to Prosecute or Extradite’*); ILC, “Final Report of the Working Group on the Obligation to Extradite or Prosecute” (2014), A/CN.4/L.844 (2014), [40]-[42].

⁸⁴ Committee Against Torture, *Guengueng et al. v. Senegal* (2006) (Merits), CAT/C/36/D/181/2001, [9.7]; ILC, “Draft Code of Crimes against the Peace and Security of Mankind, with Commentaries”, *Yearbook of the International Law Commission* 1996, Vol. II(2), 31-32; ILC, “Final Report of the Working Group on the Obligation to Extradite or Prosecute” (2014), A/CN.4/L.844, [25].

⁸⁵ Clarifications, [5]-[6].

⁸⁶ ICPPED, Preamble [6]; *Obligation to Prosecute or Extradite*, [95], [120]; ILC, “Final Report of the Working Group on the Obligation to Extradite or Prosecute” (2014), A/CN.4/L.844”, [23].

⁸⁷ ICPPED, art. 12(1).

and the concealment of the individual's fate.⁸⁸ By charging the police officers involved in the enforced disappearances with kidnapping – a lesser offense – Applicant's investigation risks overlooking essential aspects of the crime, raising concerns about its thoroughness.⁸⁹ Second, even though the Prosecutor General had access to incriminating evidence, it was omitted during Applicant's investigation into Ms. Cross's involvement.⁹⁰ Third, President Dery has described Ms. Cross as a "loyal servant of the people" and has pardoned those implicated in the governmental crisis.⁹¹ If Ms. Cross received such a pardon, this would undermine the ICPPED's purpose. Finally, President Dery has stated that the information revealed during the trial will be withheld from the public, depriving the victims of their right to access to the truth, in violation of Article 18 ICPPED.⁹²

Therefore, Respondent's decision to prosecute Ms. Cross is fully consistent with its obligations under the ICPPED.

In conclusion, Ms. Cross does not enjoy any immunity for the crime of enforced disappearance. Furthermore, Respondent's decision to prosecute Ms. Cross is consistent with its obligations under the ICPPED. Therefore, Respondent's assertion of criminal jurisdiction over Ms. Cross, and her arrest and prosecution, are fully consistent with international law.

⁸⁸ IACtHR, *Río Negro Massacres v. Guatemala* (2012) (Judgment), [114]; International Commission of Jurists, *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction, A Practitioner's Guide* (2015), 141.

⁸⁹ Facts, [28].

⁹⁰ Facts, [50].

⁹¹ Facts, [56]-[57]; ECtHR, *Makuchyan and Minasyan v. Azerbaijan and Hungary* (2020), No. 17247/13, [164], [172]; UN Human Rights Council, "Report of the Working Group on Enforced and Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances" (2020), A/HRC/45/13/Add.3, [98(b)(ii)]; R. Schmidt, "Aut Dedere Aut Judicare" in M. Nowak, M. Birk and G. Monina (eds), *The United Nations Convention Against Torture and its Optional Protocol: A Commentary*, (Oxford Academic, 2019), 282.

⁹² Facts, [62]-[63].

C. ROVINIA'S ISSUANCE OF LICENSES TO FISH IN THE ENTIRETY OF THE TRITON SHOAL, WHICH IS LOCATED IN THE HIGH SEAS, IS IN CONFORMITY WITH INTERNATIONAL LAW

The Triton Shoal is located entirely in the high seas, where Respondent is entitled to issue fishing licenses in accordance with the principle of freedom of the high seas (1.). Alternatively, in light of equity Respondent is allowed to fish in those parts of the Triton Shoal located within Applicant's Exclusive Economic Zone ('EEZ') (2.).

1. The Triton Shoal is located entirely in the high seas, where Respondent is entitled to issue fishing licenses in accordance with the principle of the freedom of the high seas

Applicant's Baseline Freezing Law ('the Freezing Law') violates international law (1.1). Moreover, Respondent did not violate its due regard obligation by issuing fishing licenses in the high seas (1.2).

1.1. By freezing its baselines Applicant violated international law

Applicant's Freezing Law violates the United Nations Convention on the Law of the Sea ('UNCLOS'), to which both Applicant and Respondent are parties (1.1.1).⁹³ Alternatively, Respondent is not bound by any rule of regional customary international law pertaining to the permanency of baselines in the Paine Peninsula (1.1.2). In any case, Respondent did not acquiesce to Applicant's fixed baselines (1.1.3).

1.1.1. Applicant's Freezing Law violates UNCLOS

UNCLOS prescribes the permanency of maritime limits in only two specific situations: for straight baselines, where the coastline is highly unstable due to the presence of a delta and other natural conditions; and for the outer limit of the continental shelf.⁹⁴ A strict textual interpretation of these

⁹³ Facts, [68].

⁹⁴ UN Convention on the Law of the Sea (1982), 1833 UNTS 3 ('UNCLOS'), art. 7(2), art. 76(9); ILC, "First Issues Paper on Sea level-rise in relation to international law" (2020), A/CN.4/740, [71], [78], [79].

other natural conditions referred to in Article 7(2) UNCLOS implies that they must relate to landforms, as a delta itself is categorized as a landform.⁹⁵ Therefore, since climate change is not a landform, it cannot be considered a natural condition under Article 7(2) UNCLOS. The ordinary meaning of a treaty's terms must be interpreted in good faith, without adding or inferring anything not explicitly included.⁹⁶ The limited and carefully regulated instances where permanency is allowed must be understood as a deliberate exclusion of fixed maritime limits in other contexts. The Court has adopted such an *a contrario*-reasoning in several cases,⁹⁷ emphasizing this reasoning can only be applied when appropriate, considering the language of all relevant provisions, their context, and the overall object and purpose.⁹⁸ Since the preamble of UNCLOS emphasizes that issues not covered by its provisions remain subject to the principles and rules of general international law,⁹⁹ it is appropriate to extend this reasoning to UNCLOS itself. For instance, in *The South China Sea Arbitration*, the explicit inclusion of a provision for traditional fishing rights in the regime of archipelagic States was interpreted to demonstrate the drafters' intent to exclude such rights from the regime of the EEZ, where no such provision is included.¹⁰⁰ Following this reasoning, the limited inclusion of permanency in UNCLOS must mean that normal baselines can only be interpreted as being ambulatory.

By 1980, all Paine Peninsula States had enacted legislation asserting their exclusive right to fish within their EEZ, which extends up to 200 nautical miles from their baselines. In each State, domestic laws defined their baselines as ambulatory.¹⁰¹ However, on 23 November 2015, Applicant took a different approach by adopting the Freezing Law. This law fixed its normal

⁹⁵ S. McDonald and V. Prescott, *Ocean Yearbook: Baselines along Unstable Coasts: An Interpretation of Article 7(2)*, (Brill Nijhof, 1989 Vol. 8), 76.

⁹⁶ VCLT, art. 31(1); *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean (Nicaragua v. Colombia)* (Preliminary Objections) (Judgment) (2016), ICJ Rep 3, [37] ('*Sovereign Rights and Maritime Spaces*').

⁹⁷ PCIJ, *SS Wimbledon (United Kingdom v. Germany)* (1923), Series A No. 1, 23-24; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* (Judgment) (1980), ICJ Rep 3, [40]; *Frontier Dispute (Burkina Faso v. Niger)* (Judgment) (2013), ICJ Rep 44, [88].

⁹⁸ *Sovereign Rights and Maritime Spaces*, [37].

⁹⁹ UNCLOS, Preamble [8].

¹⁰⁰ UNCLOS, art. 51; PCA, *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)* (Award) (2016), [804(b)].

¹⁰¹ UNCLOS, art. 5; Clarifications, [2].

baselines – from which the breadth of Applicant’s territorial sea and EEZ is measured – at the low-water line as of 1 November 2015, irrespective of any future coastal changes.¹⁰²

Hence, Applicant’s Freezing Law violates UNCLOS.

1.1.2. Additionally, Respondent is not bound by any rule of regional customary international law pertaining to the permanency of baselines

A State must positively accept a rule of regional customary international law to be bound by it.¹⁰³ Such regional custom requires extensive and virtually uniform State practice among the States within a specific region, along with *opinio juris*.¹⁰⁴ However, a State’s silence must be seen as an objection to that rule.¹⁰⁵ For instance, as held in *Asylum*, even if a customary rule on diplomatic asylum had crystalized in Latin America, it could not be invoked against Peru, which repudiated such a rule by not ratifying the Montevideo Conventions.¹⁰⁶

Respondent’s initial silence to the adoption of Applicant’s Freezing Law constitutes an objection to the regional custom.¹⁰⁷ Furthermore, Respondent’s subsequent explicit and repeated objections to the practice of freezing baselines unequivocally demonstrate its non-acceptance, and renders any such regional custom formed between the other Peninsula States inapplicable to it.¹⁰⁸

Therefore, Respondent is not bound by any rule of regional customary international law regarding permanent baselines.

¹⁰² Facts, [13].

¹⁰³ *Asylum Case (Colombia v. Peru)* (Judgment) (1950), ICJ Rep 266, 277-278 (*‘Asylum’*); *Rights of Nationals of the United States of America in Morocco (France v. United States of America)* (Judgment) (1952), ICJ Rep 176, 200 (*‘Rights of Nationals’*); ILC, “Draft Conclusions on Identification of Customary International Law, with Commentaries” (2018), A/73/10, Conclusion 16(7).

¹⁰⁴ *Asylum*, 276-277; *Rights of Nationals*, 199-200.

¹⁰⁵ *Asylum*, 277-278.

¹⁰⁶ *Ibid.*

¹⁰⁷ Facts, [14].

¹⁰⁸ Facts, [13]-[14], [17]-[18], [20], [33]; Clarifications, [3].

1.1.3. Moreover, Respondent did not acquiesce to Applicant's fixed baseline

In situations where a State's conduct calls for a response, another State's initial silence cannot amount to acquiescence, if that State responded within a reasonable timeframe.¹⁰⁹ First, a situation calls for a response when the State's conduct threatens or infringes upon another State's rights.¹¹⁰ This requires the State to have acquired actual knowledge of the conduct, which can be determined by considering the notoriety of the situation.¹¹¹ For maritime boundary delineation, although States must publish and deposit charts depicting the limits of their EEZ, there is no obligation to update these charts.¹¹² If States decide to update their charts, they must deposit them with the UN Secretary-General, who then notifies all States Parties to UNCLOS.¹¹³

Second, the duration of a State's silence must be assessed based on a situation's notoriety.¹¹⁴ In *Fisheries*, the Court interpreted the United Kingdom's 60-year silence as acquiescence to Norway's baseline-setting method, taking into consideration the notoriety of the facts, the United Kingdom's position in the North Sea, and its vested interest in the matter.¹¹⁵ In practice, States often object to EEZ or baseline claims months after the charts are deposited.¹¹⁶

¹⁰⁹ *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Merits) (Judgment) (1962), ICJ Rep 6, 23; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)* (Judgment) (2021), ICJ Rep 206, [51] (*'Maritime Delimitation in the Indian Ocean'*).

¹¹⁰ I. MacGibbon, "The Scope of Acquiescence in International Law", *British Yearbook of International Law* 1954, 143.

¹¹¹ *Ibid.*, 173; *Fisheries Case (United Kingdom v. Norway)* (Judgment) (1951), ICJ Rep 116, 138-139 (*'Fisheries'*).

¹¹² UNCLOS, art. 75(2); Division for Ocean Affairs and the Law of the Sea, "Guidelines on the Deposit with the Secretary General on Charts and Lists of Geographical Coordinates under the UN Convention on the Law of the Sea" (2021), [35].

¹¹³ *Ibid.*, [40], [44].

¹¹⁴ *Fisheries*, 138-139.

¹¹⁵ *Ibid.*

¹¹⁶ Bangladesh, "Note verbale dated 6 July 2009 concerning the baselines of Myanmar declared under The Law Amending the Territorial Sea and Maritime Zones Law 2008", *Law of the Sea Bulletin* No.70 (2009), 61; Pakistan, "Note verbale dated 6 December 2011 addressed to the Secretary-General of the UN in respect of India's Notifications specifying list of geographical coordinates of base points defining Baseline System of India to measure its maritime boundaries", *Law of the Sea Bulletin* No.78 (2012), 33.

Moreover, the Court requires a high threshold to prove maritime boundaries are established by acquiescence.¹¹⁷ Therefore, a State's tacit agreement cannot easily be presumed, and evidence of acquiescence must be compelling.¹¹⁸ The Court has recognized a tacit agreement establishing a maritime boundary only once, where the parties had acknowledged in a binding international agreement that a maritime boundary already existed.¹¹⁹

In the present dispute, Applicant enacted its Freezing Law on 23 November 2015 but only updated its charts in March 2016.¹²⁰ Shortly thereafter, Respondent's Permanent Representative to the UN objected to those charts.¹²¹ Respondent thus objected to the Freezing Law within a reasonable timeframe, and has consistently maintained this position since.¹²²

Therefore, Respondent did not acquiesce to Applicant's fixed baselines.

1.2. Moreover, Respondent has the right to issue fishing licenses in the entirety of the Triton Shoal

States are allowed to fish in the high seas with due regard for the rights, duties and interests of coastal States.¹²³ The freedom of the high seas, including the right to fish, is a well-established customary right.¹²⁴ In this regard, the Permanent Court of Arbitration ('PCA') explained in *Chagos Marine Protected Area Arbitration* that the scope of the due regard obligation depends on factors like the nature of the other State's rights, their importance, the expected impairment, and the nature of the activities.¹²⁵ In that case, the PCA established a high threshold, finding that the complete extinction of Mauritius' fishing rights by the United Kingdom violated its due regard obligation.¹²⁶

¹¹⁷ *Maritime Delimitation in the Indian Ocean*, [52].

¹¹⁸ *Ibid.*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (Judgment) (2007), ICJ Rep 659, [253].

¹¹⁹ *Maritime Dispute (Peru v. Chile)* (Judgment) (2014), ICJ Rep 3, [90]-[91].

¹²⁰ Facts, [13]; Clarifications, [3].

¹²¹ Clarifications, [3].

¹²² Facts, [14]-[18], [20].

¹²³ UNCLOS, art. 87(1)(e), art. 116.

¹²⁴ ILC, "Additional Paper to the First Issues Paper on Sea level-rise in relation to international law" (2023), A/CN.4/761, [208].

¹²⁵ PCA, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* (2015), [519].

¹²⁶ *Ibid.*, [521].

In the present case, Respondent merely continued its longstanding practice of issuing fishing licenses for yellowfin tuna in the high seas.¹²⁷ Both parties thus have an established right to fish in the high seas for all fish, including yellowfin tuna. Furthermore, Respondent has not infringed upon Applicant's right to fish in the high seas, which it can continue to exercise.

Therefore, Respondent issuing fishing licenses in the Triton Shoal does not violate its due regard obligation.

2. Alternatively, in light of equity, Respondent must be granted access to the entire Triton Shoal

All OCDP Member States have a duty to ensure the equitable and sustainable use of the shared natural resources, reaffirming the provisions of UNCLOS concerning equity in a State's EEZ.¹²⁸ In seeking equitable solutions, the Court considers various factors, including the potential risk of catastrophic consequences for the livelihoods and economic well-being of affected populations due to changes in their fishing activities.¹²⁹ For instance, in *Jan Mayen*, the Court sought to attain an equitable solution in light of the changing migratory patterns of the capelin stock caused by climatic conditions.¹³⁰ The Court also took into account Greenland's economic dependence on fishing, as well as the existing agreement between Greenland and Denmark that required cooperation in the conservation and management of the capelin stock.¹³¹ Moreover, the anticipated decline in fish catches and the overall revenue of fisheries for States that heavily depend on fishing is likely to have adverse effects on employment, economies, and food and nutritional security.¹³²

¹²⁷ Facts, [4].

¹²⁸ OCDP Charter, art. I(c); UNCLOS, art. 59.

¹²⁹ *Maritime Delimitation in the Indian Ocean*, [147]; *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)* (Judgment) (1985), ICJ Rep 246, [237].

¹³⁰ *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)* (Judgment) (1993), ICJ Rep 38, [73], [76].

¹³¹ *Ibid.*, [74].

¹³² Intergovernmental Panel on Climate Change, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), 516.

In the present case, the OCDP is dedicated to promoting coordination in the management of natural resources in the Naegea Sea – including yellowfin tuna – and ensuring their equitable and sustainable use.¹³³ Respondent’s economy is heavily reliant on the export of yellowfin tuna, which accounts for nearly 40% of its GDP.¹³⁴ Historically, yellowfin tuna was found beyond 200 nautical miles from the coast, placing it entirely outside Applicant’s EEZ.¹³⁵ However, a 2018 study found that global warming has altered yellowfin tuna migration patterns, causing them to concentrate in the Triton Shoal, which lies partially within Applicant’s EEZ.¹³⁶ The subsequent loss of access to yellowfin tuna would have a catastrophic impact on the livelihood and economic well-being of Respondent’s population.¹³⁷

Hence, Applicant must grant Respondent access to the yellowfin tuna present in those parts of the Triton Shoal located in Applicant’s EEZ.

In conclusion, Respondent’s issuance of fishing licenses in the entirety of the Triton Shoal complies with international law. The Triton Shoal is located entirely in the high seas, and Applicant’s Freezing Law, extending its EEZ over parts of this area, violates UNCLOS. Consequently, Respondent did not violate its due regard obligation in the high seas by issuing fishing licenses for the entire Triton Shoal. Alternatively, in light of equity, Respondent must be granted access to yellowfin tuna in the entire Triton Shoal, including those parts within Applicant’s EEZ.

¹³³ Clarifications, [4].

¹³⁴ Facts, [4].

¹³⁵ *Ibid.*

¹³⁶ Facts, [21]-[22].

¹³⁷ Facts, [4].

D. ROVINIA'S JUDICIAL SEIZURE AND SALE OF "THE FALCON" ON THE BASIS OF THE TRANSITIONAL COUNCIL'S WAIVER OF IMMUNITY WERE IN ACCORDANCE WITH INTERNATIONAL LAW

Respondent's acceptance of the Transitional Council's waiver of immunity complied with international law (1.). Additionally, Respondent's seizure and sale of the Falcon were in accordance with customary law on jurisdictional immunities of States and their property (2.).

1. Respondent's acceptance of the Transitional Council's waiver of immunity complied with international law

Respondent's recognition of the Council, in accordance with the effective control doctrine, is a discretionary act (1.1.). Additionally, by recognizing the Transitional Council, Respondent complied with the principle of non-intervention (1.2.). Furthermore, the Transitional Council's waiver of immunity constitutes a unilateral act that is legally binding on Applicant (1.3.).

1.1. Respondent's recognition of the Council, in accordance with the effective control doctrine, is a discretionary act

States have the liberty to adopt the stance they find most suitable, provided no explicit rule in international law prohibits their action, as stated by the PCIJ in *Lotus*.¹³⁸ The recognition of governments is not governed by any rule of international law, and is therefore a unilateral act based on each State's discretion.¹³⁹ For instance, the importance of respecting each Member State's policies regarding the recognition of governments has been stressed by the Organization of American States.¹⁴⁰ In determining the grounds on which States grant recognition, several States

¹³⁸ PCIJ, *The Case of the S.S. "Lotus" (France v. Turkey)* (1927), Series A No. 10, 19.

¹³⁹ ILC, "Sixth Report on Unilateral Acts by States" (2003), A/CN.4/534, [39]-[40].

¹⁴⁰ Organization of American States General Assembly, "Representative Democracy" (1991), AG/RES. 1080 (XXI-0/91), Preamble.

have adhered to the effective control doctrine,¹⁴¹ including Japan and Brazil,¹⁴² Italy,¹⁴³ the Netherlands and Switzerland,¹⁴⁴ the United Kingdom,¹⁴⁵ Argentina,¹⁴⁶ and the United States.¹⁴⁷ Moreover, this doctrine is commonly used to determine which government has the authority to represent the State at international tribunals and the UN.¹⁴⁸

The effective control doctrine requires three criteria to be cumulatively fulfilled.¹⁴⁹ First, the government must exercise control and authority over all or most of the territory, with control over the capital often being decisive.¹⁵⁰ For instance, in the Democratic Republic of the Congo in 1960, Yemen in 1962, and Cambodia in 1973, control over the capital was a determining factor in deciding which government to recognize.¹⁵¹ Control is exercised through security and

¹⁴¹ M. Shaw, *International Law* (CUP, 2008), 445.

¹⁴² International Law Association ('ILA'), "Fourth (Final) Report on Recognition/Non-Recognition in International Law" (2018), 17.

¹⁴³ ILA, "Second (Interim) Report on Recognition/Non-Recognition in International Law" (2014), 10.

¹⁴⁴ H.F. Van Panhuys et al., *International Law in the Netherlands* (Sijthoff and Noordhoff, 1978), 379.

¹⁴⁵ Supreme Court (United Kingdom), *Maduro Board v. Guaido Board* (2021), UKSC 57, [66].

¹⁴⁶ UN Security Council ('UNSC'), 899th Meeting (1960), S/PV.899, [38].

¹⁴⁷ United States State Department, "Press Briefing" (12 December 2012), <https://2009-2017.state.gov/r/pa/prs/dpb/2012/12/201930.htm>.

¹⁴⁸ UNSC, "Letter dated 8 March from the Secretary-General to the President of the Security Council Transmitting a Memorandum on the Legal Aspects of the Problem of Representation in the UN" (1950), S/1466, 6; International Centre for Settlement of Investment Disputes ('ICSID'), *Valores Mundiales and Consorcio Andino v. Venezuela* (Procedural Resolution No. 2 - Annulment Proceeding) (2019), No. ARB/13/11, [42]; ICSID, *Mobil and others v. Venezuela* (Decision on the Respondent's Representation in this Proceeding) (2021), No. ARB/07/27, [56].

¹⁴⁹ "The Determination of the Office of Prosecutor on the Communication received in Relation to Egypt" (2014), ICC-OTP-20140508-PR1003.

¹⁵⁰ Queen's Bench Division (United Kingdom), *Republic of Somalia v. Woodhouse Drake & Carey (Suisse) S.A. and Others* (1993), [58] ('*Somalia v. Woodhouse*'); Ministry of Foreign Affairs (Singapore), "Comments in Responses to Media Queries on the Situation in Libya" (2011), <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2011/09/MFA-Spokesmans-Comments-in-responses-to-media-queries-on-the-situation-in-Libya>; Special Advisory Council for Myanmar, "SAC-M Briefing Paper: Recognition of Government" (2021), 4.

¹⁵¹ A. Schuit, "Recognition of Governments in International Law and the Recent Conflict in Libya", *International Community Law Review* 2012, Vol.14(4), 390 ("Recognition of Governments in International Law").

administrative institutions, including government ministries and law enforcement agencies.¹⁵² While the government does not need effective control throughout the entire State, they should command the obedience of the population and be perceived as the primary authority.¹⁵³ For instance, in Mali, the new transitional government – established following the coup in August 2020 and supported by the military – received widespread public support.¹⁵⁴

Second, the government must have the acceptance and compliance of a significant portion of the population.¹⁵⁵ For instance, in Burkina Faso, former President Sankara, who came into power following a coup, enjoyed substantial support from the public.¹⁵⁶

Third, both the authority over the territory and the obedience of the population must be of a permanent nature.¹⁵⁷ In this regard, widespread resistance to the assertion of public authority casts doubts on the prospect of a government's permanence.¹⁵⁸ *A contrario*, widespread acceptance can indicate the permanent nature of the government. Furthermore, the threshold for permanence requires a reasonable prospect of enduring control.¹⁵⁹ However, even a period as short as 21 days can establish permanence.¹⁶⁰ Other examples of a swift establishment of permanence include Libya's National Transitional Council, which gained recognition within 4 months and 10 days.¹⁶¹

¹⁵² *Somalia v. Woodhouse*, [66]; Special Advisory Council for Myanmar, "SAC-M Briefing Paper: Recognition of Government" (2021), 4.

¹⁵³ *Ibid.*

¹⁵⁴ UN Democracy Fund, "Evaluation Report: Strengthening CSO Engagement with Defence Institutions to Reduce Corruption and Strengthen Accountability in Mali" (2021), UDF-16-696-MLI, 3-4.

¹⁵⁵ *Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica)* (1923), 1 RIAA 369, 379 ('*Tinoco Arbitration*').

¹⁵⁶ E. Harsch, "Thomas Sankara: How the Leader of a Small African Country Left Such a Large Footprint", *E-International Relations* 12 November 2023.

¹⁵⁷ H. Morrison, "Statement on Foreign Governments (Recognition)", 485 HC Deb., colc. 2410-11, 21 March 1951, [36].

¹⁵⁸ N. Pavlopoulos, *The Identity of a Government in International Law*, (OUP, 2024), 121.

¹⁵⁹ *Ibid.*; Court of Appeal (United Kingdom), *Deutsche Bank v. Venezuelan Central Bank (BCV)* (2020), EWCA 1249, [78]; H. Lauterpacht, *Recognition in International Law* (CUP, 1947), 141.

¹⁶⁰ Supreme Court (Pakistan), *The State v. Dosso* (1958), P.L.D. 1958 S.C. 533.

¹⁶¹ Interim National Transitional Council (Libya), "Founding Statement of the Interim Transitional National Council" (2011), <https://web.archive.org/web/20110310051658/http://ntclibya.org/english/founding-statement-of-the-interim-transitional-national-council/>; I. Black, "Libyan rebels win international recognition as country's leaders", *The Guardian*, 15 July 2011.

Similarly, after his seizure of the Central African Republic's capital, Mr. Djotodia was recognized by the Economic Community of Central African States as Head of the National Transitional Council within a month.¹⁶²

In the present case, Respondent recognized the Transitional Council ('the Council') on the basis of the effective control doctrine.¹⁶³ First, at the time of the recognition, the Council controlled all parts of Ambrosia, including its capital.¹⁶⁴ Moreover, Ms. Piretis, Head of the Council, approved the distribution of reconstruction funds to Dovelina, which constitutes a governmental act.¹⁶⁵ Additionally, the Council not only enjoyed support from the security institutions, such as the armed forces, the police and the intelligence community, but also from key members of the legislative and executive branches.¹⁶⁶ Second, the population's obedience and willingness to comply with the Council is demonstrated by the significant support it received after its establishment.¹⁶⁷ Third, the Council had a reasonable prospect of maintaining permanent control until the next elections, as it enjoyed substantial support among Applicant's population and had control over all parts of Applicant's territory.¹⁶⁸ Moreover, President Derey was in a coma at the time, and his recovery remained uncertain.¹⁶⁹ Furthermore, Respondent recognized the Council 4 months and 1 day after its establishment, mirroring the usual timeframe to establish permanence.¹⁷⁰ Finally, by 9 March 2023, even before the establishment of the Council, twelve major demonstrations were held, supporting a government led by Ms. Piretis.¹⁷¹

Thus, both Respondent's recognition of the Council, on the basis of the effective control doctrine, and its acceptance of the waiver comply with international law.

¹⁶² UNSC, "Report of the Secretary-General on the situation in the Central African Republic" (2013), S/2013/261, [6], [15].

¹⁶³ Facts, [53].

¹⁶⁴ Facts, [48].

¹⁶⁵ Facts, [38], [48].

¹⁶⁶ Facts, [47].

¹⁶⁷ *Ibid.*

¹⁶⁸ Facts, [47]-[48].

¹⁶⁹ Facts, [24].

¹⁷⁰ Facts, [38], [53].

¹⁷¹ Facts, [35].

1.2. Additionally, by recognizing the Transitional Council, Respondent complied with the principle of non-intervention

The principle of non-intervention obliges States to uphold and respect the sovereign decisions of other States on matters within their domestic affairs.¹⁷² Acting otherwise, namely by intruding upon matters reserved exclusively to another State's sovereign authority, constitutes an unlawful intervention.¹⁷³ The Court considered the choice of political system – and, by extension, the choice of government¹⁷⁴ – to fall within the domestic affairs of a State.¹⁷⁵ Therefore, the recognition of a government that enjoys factual or doctrinal support fully respects the sovereignty of the State.¹⁷⁶

Coercion, which is central to the principle of non-intervention, involves exercising compulsion to the extent that the coerced State loses control over the matter in question.¹⁷⁷ As a lack of recognition can prevent a government from exercising its international functions, not recognizing this *de facto* situation can amount to coercion.¹⁷⁸ Thus, a legal framework that enforces the non-recognition of governments holding effective control would constitute an interference in a State's internal affairs.¹⁷⁹ For instance, when discussing the recognition of the Cambodian government in

¹⁷² UN Charter (1945) 1 UNTS XVI, art. 2(7); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits) (Judgment) (1986), ICJ Rep 14, [205] ('*Nicaragua*').

¹⁷³ International Covenant on Civil and Political Rights (1966), 999 UNTS 171, art. 1; Charter of the Organization of American States (1948), 119 UNTS 3, art. 3(e); Charter of the Organization of African Unity (1963), 479 UNTS 3, art. 3(2); UNGA, Resolution 2625 (XXV) (1970), A/Res/2625(XXV); R. Jennings and A. Watts, *Oppenheim's International Law* (Longman, 1992), 430-431 ('*Oppenheim's International Law*').

¹⁷⁴ UNGA, 20th session, 6th Committee, 877th Meeting, A/C.6/SR.877 (1965), 214, [10]; "Recognition of Governments in International Law", 399.

¹⁷⁵ *Nicaragua*, [205].

¹⁷⁶ "Recognition of Governments in International Law", 399.

¹⁷⁷ *Nicaragua*, [205]; *Oppenheim's International Law*, 432.

¹⁷⁸ M. Roscini, *International law and the principle of non-intervention: history, theory, and interactions with other principles* (OUP, 2024), 185.

¹⁷⁹ J. Downer, "NOTE: Towards a Declaratory School of Government Recognition", *Vanderbilt Journal of Transnational Law* 2013, 594.

the UN General Assembly, Malaysia argued that not recognizing the government which holds effective control, would equal condoning armed intervention.¹⁸⁰

In the present case, Respondent recognized the Council based on both factual and doctrinal grounds, namely the effective control it exercised over Applicant's territory and population.¹⁸¹ Considering the choice of political system is part of Applicant's domestic affairs, and the widespread support and influence of the Council,¹⁸² Respondent recognized it as a *de facto* situation.

Therefore, by recognizing the Council and subsequently, accepting the waiver of immunity Respondent ensured it did not violate the principle of non-intervention.

1.3. Furthermore, the Council's waiver of immunity constitutes a unilateral act, which is legally binding on Applicant

A waiver is a declaration of intent through which a legal subject renounces a right without requiring consent from any third party, making it a unilateral act.¹⁸³ Such declarations are binding when made by an authority with the intent and appropriate power to do so, typically including Heads of State or Government.¹⁸⁴ The tribunal in *Tinoco Arbitration* confirmed that *de facto* regimes can bind the State, regardless of how they came into power.¹⁸⁵ This was reaffirmed by the United Kingdom's Court of Appeal, which provides that actions of *de jure* rulers must be considered void when the *de facto* government exercises effective control.¹⁸⁶ Similarly, the United Kingdom's Privy Council determined that the retroactive effect of recognition can validate the actions of a *de*

¹⁸⁰ UNGA, 34th Session, 3rd Plenary Meeting (1979), A/34/PV.3, [62]-[63].

¹⁸¹ Facts, [53].

¹⁸² Facts, [47]-[48].

¹⁸³ ILC, "Seventh Report on Unilateral Acts of States" (2004), A/CN.4/542, [80].

¹⁸⁴ *Case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)* (Judgment) (2006), ICJ Rep 6, [46]-[47]; *Nuclear Tests (Australia v. France)* (Judgment) (1974), ICJ Rep 253, [43] ('*Nuclear Tests*'); ILC, "Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations" (2006), A/61/10, 372 ("Guiding Principles on unilateral declarations").

¹⁸⁵ *Tinoco Arbitration*, 378.

¹⁸⁶ Court of Appeal (United Kingdom), *The 'Maduro Board' of the Central Bank of Venezuela v The 'Guaidó Board' of the Central Bank of Venezuela* (2020), EWCA Civ 1249, [125].

facto government once it has been recognized *de jure*.¹⁸⁷ Moreover, a declaration becomes a binding legal obligation if the State intends it to be.¹⁸⁸ The State's intent to be bound must be clear and evident from the language used.¹⁸⁹ Consequently, when a State declares its consent to seizure before a court, this declaration cannot be revoked, as it becomes a binding legal obligation.¹⁹⁰ Other States can reasonably expect it to be upheld in good faith.¹⁹¹ The tribunal in *Tinoco Arbitration* held that agreements made by the Tinoco regime remained binding on Costa Rica, even after the regime was declared illegitimate.¹⁹²

In the present case, Ms. Piretis waived the immunity of The Falcon, which constitutes a binding unilateral act. As Head of the Council she was authorized to waive immunity on behalf of Applicant.¹⁹³ Moreover, Ms. Piretis expressed clear intent to be bound, as evidenced by her signing of the waiver of The Falcon's immunity and her statement that she is "confident that allowing Respondent to sell the aircraft will resolve a long-standing dispute."¹⁹⁴

Therefore, the Council's waiver of immunity is legally binding on Applicant and may be relied upon by Respondent.

2. Additionally, Respondent's seizure of 'The Falcon' complied with customary international law on jurisdictional immunities of States and their property

To impose post-judgment measures of constraint on the property of another State, one of three conditions must be fulfilled.¹⁹⁵ These conditions are established under customary international law

¹⁸⁷ Privy Council (United Kingdom), *Civil Air Transport Inc. v. Central Air Transport Corp* (1953), A.C. 70 1952, 10.

¹⁸⁸ *Nuclear Tests*, [43].

¹⁸⁹ *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Preliminary Objections) (Judgment) (1961), ICJ Rep 17, 32; *Nuclear Tests*, [45]; "Guiding Principles on unilateral declarations", 377.

¹⁹⁰ ILC, "Draft Articles on Jurisdictional Immunities of States and Their Property with Commentaries" (1991), A/46/10, art. 18, [9] ("Draft Articles on Jurisdictional Immunities").

¹⁹¹ *Nuclear Tests*, [46].

¹⁹² *Tinoco Arbitration*, 399.

¹⁹³ Facts, [38], [48].

¹⁹⁴ Facts, [44].

¹⁹⁵ *Jurisdictional Immunities of the State (Germany v. Italy; Greece Intervening)* (Judgment) (2012), ICJ Rep 99, [118] ('*Jurisdictional Immunities*').

and codified in Article 19 of the UN Convention on Jurisdictional Immunities of States and Their Property (‘UNCJISP’), to which both Applicant and Respondent are contracting States.¹⁹⁶

First, post-judgment measures of constraint require the explicit consent of the State.¹⁹⁷ This consent can be inferred in multiple ways, including by a court declaration or written communication after the dispute arises.¹⁹⁸ In the case of diplomatic immunities, the waiver must be done by the government recognized by the receiving State, which can similarly be applied to State immunities.¹⁹⁹ While the State itself is bound by its express consent, the domestic court has the authority to establish its own rules under which consent can be granted.²⁰⁰ For instance, after an arbitrator awarded damages to a Chinese company for Nigeria’s breach of contractual obligations, three Nigerian presidential aircraft were seized.²⁰¹ Nigeria’s claim of sovereign immunity was dismissed because it had previously consented to arbitration.²⁰² However, simply appearing before the court of another State to assert immunity cannot be considered a waiver.²⁰³

Second, the State must have earmarked or allocated property for the satisfaction of that claim.²⁰⁴

Third, it must be established that the property is specifically used or intended for use by the State for other than government non-commercial purposes.²⁰⁵ For instance, the United Kingdom’s High

¹⁹⁶ *Jurisdictional Immunities*, [118]; UN Convention on Jurisdictional Immunities of States and Their Property (2004) (‘UNCJISP’), A/Res/59/38, art. 19; Facts, [68].

¹⁹⁷ UNCJISP, art. 19(a).

¹⁹⁸ *Ibid.*

¹⁹⁹ Vienna Convention on Diplomatic Relations (1961), 500 UNTS 95, art. 32(1); Court of Appeals (Fourth Circuit) (United States of America), *In Re Grand Jury Proceedings, Doe. No. 700* (1987), 817 F.2d 1108, 1111.

²⁰⁰ “Draft Articles on Jurisdictional Immunities”, art. 7, [11].

²⁰¹ *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria* (Final Award) (2021), [198]; W. Chibelushi, “France seizes three Nigerian jets for Chinese firm”, *BBC News*, 16 August 2024.

²⁰² Court of Appeals District of Columbia (United States of America), *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria* (2024) No. 23-7016, 2.

²⁰³ Inter-American Draft Convention on Jurisdictional Immunity of States (1986), art. 7(2); European Convention on State Immunity (1972), ETS No. 074, art. 3(2).

²⁰⁴ UNCJISP, art. 19(b); *Jurisdictional Immunities*, [118].

²⁰⁵ UNCJISP, art. 19(c); *Jurisdictional Immunities*, [118].

Court of Justice held that State-owned premises leased to a private company for consular activities were not considered to be intended for commercial purposes.²⁰⁶

In the present case, the Council's legal representative appeared before the Permola Court in Rovinia on 28 March 2023.²⁰⁷ In court, the representative waived the Falcon's immunity and consented to its seizure, in accordance with Ms. Piretis' statement of 17 March 2023.²⁰⁸ Respondent recognized the Council on 14 July 2023 as Applicant's lawful government and consequently, the Permola Court accepted the Council's waiver.²⁰⁹

Therefore, Respondent's seizure of The Falcon was in accordance with customary international law on jurisdictional immunities of States and their property.

In conclusion, Respondent's acceptance of the Transitional Council's waiver of immunity complies with international law. Additionally, Respondent's seizure of the Falcon was in accordance with customary international law on jurisdictional immunities of States and their property.

²⁰⁶ High Court of Justice (United Kingdom), *LR Avionics Technologies Ltd. v. Federal Republic of Nigeria* (2016), EWHC 1761, [44].

²⁰⁷ Facts, [46].

²⁰⁸ Facts, [44].

²⁰⁹ Facts, [53].

PRAYER FOR RELIEF

Respondent, respectfully requests the Court to adjudge and declare that:

- (a) The Court lacks jurisdiction to entertain Ambrosia's submission (b) because it is outside the scope of the compromissory clause of the OCDP Charter;
- (b) Rovinia's assertion of criminal jurisdiction over Ms. Cross, and her arrest and prosecution, are fully consistent with international law;
- (c) Rovinia's issuance of licenses to fish in the entirety of the Triton Shoal, which is located in the high seas, is in conformity with international law; and
- (d) Rovinia's judicial seizure and sale of "The Falcon" on the basis of the Transitional Council's waiver of immunity were in accordance with international law;

Respectfully submitted, AGENTS FOR RESPONDENT.