

IN THE
INTERNATIONAL COURT OF JUSTICE
THE PEACE PALACE
THE HAGUE
THE NETHERLANDS



2025 Philip C. Jessup International Law Moot Court Competition

THE CASE CONCERNING THE NAEGEA SEA

UNION OF AMBROSIA

APPLICANT

v.

REPUBLIC OF ROVINIA

RESPONDENT

MEMORIAL *for the* APPLICANT

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STATEMENT OF JURISDICTION

On 11 July 2024, the Union of Ambrosia (“**Ambrosia**”), by an application pursuant to Article 40(1) of the Statue of the International Court of Justice (“**ICJ**”), instituted proceedings against the Republic of Rovinia (“**Rovinia**”) with regard to disputes concerning alleged violations of international law by the Rovinia and invoked the compromissory clause, i.e., Article XXI, of the Charter of the Organization for Cooperation and Development in the Paine (“**OCDP**”).

On 30 August 2024, the Parties jointly notified to the Court a Statement of Agreed Facts. Ambrosia undertakes to accept the judgement of this Court as final and binding, and shall execute it in its entirety and in good faith.

STATEMENT OF FACTS

BACKGROUND

The Paine Peninsula originally consisted of seven colonized administrative units. By 1946, these units formed independent states with constitutions establishing democratic political systems. The Ambrosia, with its capital in Arnhill, and the Rovinia, with its capital in Permola, are both located on the Paine Peninsula, bordering the Naegea Sea. Ambrosia is a developing state with its fishing industry contributing approximately 20% of its GDP. Rovinia, which is comparatively more developed, derives nearly 40% of its GDP from its fishing sector. President Prosper Derey is the head of state and government of Ambrosia, while Ms. Natasha Slimm is the president of Rovinia.

THE OCDP CHARTER AND THE COMPROMISSORY CLAUSE

In 2015, Ambrosia proposed the creation of the OCDP, and its Charter was signed by all Paine Peninsula states and entered into force on 17 March 2016. The OCDP Charter Article I, outlined its purposes, including the protection of the rule of law and democratic institutions, enhanced law enforcement collaboration, sustainable resource management, respect for maritime rights, and protection from natural disasters. Whereas, Article XXI includes a compromissory clause that grants the ICJ compulsory jurisdiction over disputes among member states, subject to two exceptions (i) disputes arising before the article's entry into force, and (ii) disputes primarily within domestic jurisdiction. Article XXI became effective on 17 March 2021.

FREEZING OF BASELINES AND THE DISPUTE RELATING TO FISHING LICENSES

In response to accelerated coastal erosion affecting Ambrosia, the Ambrosian government enacted the Baseline Freezing Law on 23 November,] 2015. This law fixed the baselines used to measure Ambrosia's maritime boundaries at their positions as of 1 November 2015. By 2016, all OCDP members except Rovinia had passed laws to freeze their maritime boundaries. Whereas, Rovinia has consistently protested against these actions through diplomatic notes addressed to the foreign ministries of the respective states.

From May 2016 onwards, the OCDP Assembly convened annual meetings where resolutions endorsing fixed baselines were introduced. On every occasion, Rovinia vetoed the resolutions and prevented their adoption, despite majority support from other member states. However, one resolution, which in addition to pledging humanitarian aid for Hurricane Luna Crisis in Ambrosia, referred to the importance of fixed baselines for fishing-dependent areas was passed in the OCDP. In this instance, Rovinia abstained from voting, with the Rovinian delegate explaining that the move was motivated by “*the urgent need to address the suffering of Dovelina and the desire to continue the positive relations between Ambrosia and Rovinia.*”

In 2018, findings indicated that the Triton Shoal, a submerged area partly within Ambrosia’s fixed EEZ, had become an important yellowfin tuna habitat. On 2 July 2018, Rovinia began granting fishing permits for the entire Shoal, while asserting it lay in high seas. Thereafter, Ambrosia protested through a series of four notes verbales, claiming that the Shoal was located within Ambrosia’s EEZ post the Freezing Law. However, Rovinia did not respond to the same and continues to issue licenses till date.

EVENTS SURROUNDING GERTRUDE CROSS AND THE DISPUTE RELATING TO UNIVERSAL JURISDICTION & IMMUNITIES

In 2013, the then-Ambrosian Minister of the Interior, Ms. Gertude Cross, launched the “Implementing the Law for a Safer Ambrosia” (“**ILSA**”) program in an effort to combat drug trafficking. On 25 August 2022, Human Rights International (“**HRI**”) published a report alleging that between June 2017 and December 2020, Ambrosian authorities abducted over 150 individuals suspected of drug-related activities without formal charges. The detainees were held in undisclosed facility and reportedly endured harsh conditions. Ms. Cross resigned in November 2022 and shortly thereafter relocated to Rovinia. The Ambrosian Prosecutor General launched an investigation on 7 September 2022, which concluded in January 2023. The investigation resulted in the conviction of five police officers, but the Prosecutor General found insufficient evidence to prosecute Ms. Cross.

On 12 June 2023, HRI updated its report, linking Ms. Cross directly to crimes of ILSA and noting that Ambrosia’s Prosecutor General was aware of the evidence against her in January 2023.

On 1 May 2024, Rovinia’s General Prosecutor filed a complaint against Ms. Cross for the crime of “enforced disappearance,” as defined under the 2007 Rovinian Criminal Code, which allowed for the prosecution of individuals accused of the crime regardless of where it was committed. The next day, the Permola Criminal Court accepted the complaint and issued an arrest warrant. Ms. Cross was arrested at her in-laws' home in Rovinia, where she remains detained.

On 3 May 2024, President Derey demanded the release of Ms. Cross citing that Rovinia’s exercise of jurisdiction was unwarranted and that she was entitled to immunity. On 6 May 2024, President Slimm rejected President Derey’s call for release. Subsequently, on 10 May 2024, the Ambrosian Prosecutor General submitted a request for Ms. Cross’s extradition, as the investigation against her had been re-opened on 20 June 2023. However, Rovinia did not respond to this request.

TRANSITIONAL COUNCIL AND THE DISPUTE RELATED SEIZURE AND SALE OF *THE FALCON*

In April 2022, following President Prosper Derey’s stroke and subsequent coma, Vice-President Zavala assumed the role of Acting President. When Hurricane Luna struck Ambrosia on 23 February 2023, Ms. Zavala’s perceived inaction sparked political unrest, culminating in the formation of a Transitional Council led by Rooney Piretis. While the Council declared itself the legitimate governing authority on 13 March 2023, Ms. Zavala continued to assert her role as Acting President from abroad. By mid-2023, 25 states had explicitly announced recognition of the Council as Ambrosia’s de facto government, while 15 others maintained their recognition of Ms. Zavala as the Acting President.

On 14 March 2023, Ms. Zavala’s official aircraft, *The Falcon*, was impounded in Rovinia, as part of an enforcement action by *O’Mander Corp.* for breach of contract. On 17 March 2023, the Transitional Council issued a waiver of immunity over the aircraft. In contrast, Zavala’s representatives contested the waiver on 18 March 2023, arguing that it lacked legal authority. On 14 July 2023, Rovinia's foreign ministry responded to the Permola Court, stating that it recognised the Council’s legal representative as authorized to speak on behalf of Ambrosia. Resultantly, the Permola Court enforced the judgment against *The Falcon* and auctioned the aircraft.

On 6 September 2023, Ambrosia’s former President, Prosper Derey, awakened from his coma. Upon his return and resumption of office, he declared the Council unconstitutional and its

waiver of immunity as wrongful, thus terming Rovinia’s search and seizure of *The Falcon* as illegal.

DISPUTE BEFORE THE ICJ AND THE RELEVANT CONVENTIONS

On 11 July 2024, Ambrosia instituted proceedings in the ICJ against Rovinia over disputes relating to prosecution of Ms. Cross, fishing licenses, and the sale and seizure of *The Falcon*, invoking Article XXI of the OCDP Charter. Additionally, Rovinia challenged the jurisdiction of the ICJ with respect to the issue of prosecution.

Both Ambrosia and Rovinia are members of the United Nations (“UN”) and are parties/contracting states to the following: Statute of the ICJ, United Nations Convention on the Law of the Sea (“UNCLOS”), Vienna Convention on Law of Treaties (“VCLT”), International Covenant on Civil and Political Rights (“ICCPR”), International Covenant on Economic, Social and Cultural Rights (“ICESCR”), United Nations Convention on Jurisdictional Immunities of States and Their Property (“UNCJISP”), International Convention for the Protection of All Persons from Enforced Disappearance (“ICPPED”).

SUMMARY OF PLEADINGS

Pleading I

The Court has jurisdiction to hear the dispute regarding Rovinia's violation of international law concerning the prosecution of Ms. Cross as the same falls within the scope of OCDP Charter Article XXI.

Firstly, the sources of the respective disputes regarding immunity and universal jurisdiction are (i) Rovinia's denial of immunity and (ii) Rovinia's departure from a prior common understanding that universal jurisdiction applied only when Ambrosia was unwilling or unable to prosecute. Since both disputes arose for the first time in the 2024 decision of the Permola Criminal Court, i.e., after Article XXI became effective, the disputes fall within the ICJ's jurisdiction.

Secondly, an area governed by international law, only in certain aspects, is no longer a dispute under domestic jurisdiction. Since the determination of immunity, the exercise of criminal jurisdiction, and the prosecution of human rights violations are regulated by international law, the proceedings related to Ms. Cross are not essentially within Rovinia's domestic jurisdiction. This grants the Court jurisdiction to adjudicate the dispute.

Pleading II

Rovinia violated international legal rules on jurisdiction by arresting and prosecuting Ms. Cross as universal jurisdiction can only be exercised when the state with primary ties to the crime consents, or is unwilling or unable to prosecute. Herein, Ambrosia, the state with primary links to Ms. Cross and the alleged crimes, demonstrated its willingness to prosecute by reopening its investigation following the update to HRI report and requesting for extradition. Thus, Rovinia's exercise of jurisdiction, despite Ambrosia's readiness to act, constitutes excessive interference in Ambrosia's domestic affairs.

Rovinia also violated international law related to immunity by not respecting the immunity *ratione materiae* of Ms. Cross. This is because the alleged acts she committed were performed in an official capacity as the former Interior Minister. Neither the obligation of *aut dedere aut judicare* nor universal jurisdiction can override this protection. Furthermore, customary

international law does not recognize any exceptions to immunity *ratione materiae* for serious crimes, including enforced disappearance. Furthermore, even if an exception applicable, Rovinia failed to meet the required evidentiary standard of “*substantial grounds*” for it.

Pleading III

Under UNCLOS, a coastal state has exclusive rights to issue fishing licenses within its EEZ. Rovinia’s issuance of fishing licenses in parts of Triton Shoal within 200 nautical miles of Ambrosia’s fixed baseline violates international law, as the area lies within Ambrosia’s EEZ.

In this regard, the ordinary meaning of UNCLOS Article 5, Article 7, and UNCLOS as a whole permits baseline fixation. Thus, Ambrosia’s fixed baseline, established in 2015, should be respected regardless of subsequent coastal changes. Since fixing of baselines is not expressly prohibited under UNCLOS, the same must be permitted. Additionally, fixing baselines also aligns with UNLCOS’s object, purpose, and context, including that of promoting legal stability and equity. Furthermore, subsequent practice with respect to UNCLOS establishes the agreement of parties regarding baseline fixation, and thus the same is allowed.

Furthermore, customary international law permits also supports baseline fixation baselines, as there is widespread state practice and *opinio juris*, with over 100 states endorsing fixed baselines and no state explicitly opposing the same. Alternatively, a regional custom permitting fixed baselines exists in the Paine Peninsula, as is evident from state legislations of regional states. Lastly, Rovinia lacks persistent objector status due to its inconsistent objections, particularly its abstention in the 2023 OCDP resolution supporting fixed baselines

Pleading IV

Rovinia’s judicial seizure and sale of ‘*The Falcon*’ based on the Transitional Council’s waiver of immunity breaches international law. This is because premature recognition of the Council constitutes unlawful interference in the internal affairs of Ambrosia.

Rovinia recognized the Council prematurely as it lacked effective control over Ambrosia, due to the absence of habitual public obedience and prospects of permanence. Furthermore, the Council cannot attain governmental status due to its undemocratic nature, which is against

Ambrosia's international obligations. Additionally, the Council has also failed to uphold Ambrosia's international obligations of human rights and thus cannot attain governmental status.

In any event, as per customary law, Zavala's constitutional claim overrides the Council's unconstitutional claim to governmental status. Lastly, Rovinia also violated its treaty obligations under Article 1 of the OCDP Charter by recognizing the non-democratic Transitional Council.

PLEADINGS

I. THE COURT HAS JURISDICTION TO ENTERTAIN AMBROSIA'S SUBMISSION REGARDING ROVINIA'S VIOLATION OF INTERNATIONAL LAW CAUSED BY ARRESTING AND PROSECUTING MS. CROSS

Jurisdiction of the Court only exists within the limits to which states have consented to.¹ When that consent is expressed in a compromissory clause, any conditions to which such consent is subject must be regarded as constituting the limits thereon.² At present, the dispute relating to Rovinia's violation of international law caused by arresting and prosecuting Ms. Cross falls within the limits of OCDP Charter Article XXI³ since **(A)** the said dispute arises out of a situation occurring post the entry into force of Article XXI; and **(B)** the dispute relates to such proceedings whose subject matter is not essentially within Rovinia's domestic jurisdiction.

A. THE DISPUTE ARISES OUT OF A SITUATION OCCURRING POST THE ENTRY INTO FORCE OF ARTICLE XXI

OCDP Charter Article XXI excludes "*disputes arising out of facts or situations occurring prior to the entry into force of the said Article*" from the ICJ's jurisdiction.⁴ Whether a situation or fact occurred before or after a particular date, and the determination of which situation or facts actually gave rise to the dispute, are assessed on a case-by-case basis.⁵ In determining the facts with regard to which a dispute has arisen, only those facts are relevant that are the source of the dispute, i.e., its real cause.⁶

¹ Phosphates in Morocco (Italy v. France) Judgement, 1938 P.C.I.J. (ser. A/B) No. 74, p.23 [**Phosphates in Morocco**]; Armed Activities on the Territory of the Congo (New Application: 2002) (Dem. Rep. Congo v. Rwanda), Judgment, 2006 I.C.J. 6, ¶88 [**Armed Activities**].

² Armed Activities, ¶88.

³ Problem, ¶12.

⁴ Problem, ¶12.

⁵ Phosphates in Morocco, p.25.

⁶ Electricity Company of Sofia and Bulgaria (Belg. v. Bulg.), Judgement, 1939 P.C.I.J. (ser. A/B) No. 77, p.82 [**Electricity Company**]; Certain Property (Liechtenstein v. Germany) Judgment,

Furthermore, there are two aspects to the dispute submitted to the ICJ by Ambrosia in Issue II, i.e., the aspect of exercise of universal jurisdiction by Permola Court and the aspect of immunity.⁷ The essential characteristics of these aspects are fundamentally distinct,⁸ as jurisdiction does not imply absence of immunity and absence of immunity does not imply jurisdiction.⁹ Therefore, the ICJ's jurisdiction, including the real cause of dispute, has to be examined separately with respect to each aspect of the dispute.¹⁰ In this regard, the ICJ has jurisdiction over Issue II since **(1)** the dispute relating to the immunity of Ms. Cross and **(2)** the dispute over the exercise of universal jurisdiction arises from Permola Criminal Court's decision of 2024.

1. The dispute relating to the immunity of Ms. Cross arises from the Permola Criminal Court's decision of 2024

In the present case, although the alleged acts of enforced disappearance committed by Ms. Cross took place between 2017 and 2020,¹¹ the real cause of the dispute relating to the immunity is the decision of Permola Criminal Court of 2024¹² by which immunity was denied to Ms. Cross.¹³ This is because while a dispute may presuppose the existence of some prior situation or fact, it does not follow that the dispute arises in regard to that particular situation or fact.¹⁴

The above reasoning was upheld in the similar case of *Immunities*,¹⁵ wherein although the

2005 I.C.J. 6 ¶¶41-42 [**'Certain Property'**]; Right of Passage over Indian Territory (Port. v. India) Judgment, 1960 I.C.J. 6, p.35 [**'Right of Passage'**].

⁷ Problem, ¶¶62-63, ¶69.

⁸ Allegations Of Genocide Under The Convention On The Prevention And Punishment Of The Crime Of Genocide (Ukraine V. Russian Federation: 32 States Intervening), Preliminary Objections, 2024 I.C.J. 182 ¶53, ¶56. [**'Allegations of Genocide'**].

⁹ The Arrest Warrant Of 11 April 2000 (Dem. Rep. Congo v. Belgium) Judgement, 2002 I.C.J. 121 ¶59 [**'Arrest Warrant'**].

¹⁰ Allegations Of Genocide, ¶53, ¶57.

¹¹ Problem, ¶25, ¶27, ¶50.

¹² Problem, ¶61.

¹³ Problem, ¶¶61-62.

¹⁴ Electricity Company, p.82.

¹⁵ Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, 2012 I.C.J. No. 143, ¶44 [**'Jurisdictional Immunities'**].

underlying facts in the relevant Italian proceedings related to events of the war of 1943-1945, the ICJ considered the real cause of the dispute to be Italian judicial decisions of 2004 and 2011 that denied jurisdictional immunity to Germany.¹⁶ This was because Germany's complaint therein was not about the treatment of the subject matter of the Italian judgments but was solely that its immunities from jurisdiction had been violated by these judgments.¹⁷

As Ambrosia's complaint relates to the denial of immunity to Ms. Cross¹⁸ and not the underlying merits of her prosecution, the ratio of *Immunities* must apply in the present case. Resultantly, the real cause is Permola Criminal Court's decision of 2024 and since that was rendered after the entry of force of Article XXI on 17 May 2021,¹⁹ the dispute falls within the jurisdiction of ICJ.

2. The dispute over the exercise of universal jurisdiction arises from Permola Criminal Court's decision of 2024

Subsequent events that merely confirm or develop from earlier situations, like judicial decisions or acts giving effect to prior legislation/convention,²⁰ cannot be constituted as the real causes of a dispute.²¹ However, a dispute could relate to a subsequent event if the same represents a departure from a prior common understanding of the working of the impugned legislation.²²

In this regard, although the Rovinian Criminal Code of 2007 forms the basis for universal jurisdiction over the crime of enforced disappearance,²³ there was an implicit common understanding that Rovinia would not prosecute Ms. Cross. This is because universal jurisdiction

¹⁶ Jurisdictional Immunities, ¶44; ROBERT KOLB, RESERVATIONS TO OPTIONAL DECLARATIONS GRANTING JURISDICTION TO THE INTERNATIONAL COURT OF JUSTICE 116 (Edward Elgar, 2024) [**'KOLB'**].

¹⁷ Jurisdictional Immunities, ¶44.

¹⁸ Problem, ¶62.

¹⁹ Problem, ¶67, Correction, ¶4.

²⁰ Certain Property, ¶52; Phosphates in Morocco, pp.25-26.

²¹ Phosphates in Morocco, p.24.

²² Certain Property, ¶49.

²³ Problem, ¶61.

could only be exercised when Ambrosia, the primary state, was “*unwilling or unable*” to investigate the alleged offender.²⁴ This common understanding was also demonstrated when Rovinia did not immediately initiate proceedings against Ms. Cross upon the update to the HRI report in 2023,²⁵ and instead, waited until allegations of political bias and shielding of Ms. Cross surfaced against President Derry,²⁶ so that the “*unwilling*” criteria could have at least been contestable.

Hence, the real cause of the dispute is the Permola Criminal Court’s decision of 2024,²⁷ wherein Rovinia, for the first time, departed from this common understanding and exercised universal jurisdiction upon Ms. Cross despite the ongoing Ambrosian investigations.²⁸ Consequently, this aspect of the dispute falls within the scope of Article XXI as it arose out of a situation that occurred after the entry of force of the said article.

B. THE DISPUTE RELATES TO SUCH PROCEEDINGS WHOSE SUBJECT MATTER IS NOT ESSENTIALLY WITHIN ROVINIA’S DOMESTIC JURISDICTION.

The OCDP Charter Article XXI excludes “[*disputes*] relating to judicial proceedings on matters [...] that are essentially within [...] domestic jurisdiction” from the ICJ’s jurisdiction.²⁹ Domestic jurisdiction means that an area is not even *prima facie* affected by rules of international law.³⁰ Conversely, in order to remove an area from the sphere of domestic jurisdiction, it is sufficient that this area be regulated by international law only in certain respects.³¹ Upon recourse to a rule of international law for the settlement of a dispute, that dispute ceases to be one under

²⁴ *See infra*, Pleading §II(A).

²⁵ Problem, ¶50.

²⁶ Problem, ¶60.

²⁷ Problem, ¶61.

²⁸ Problem, ¶62; Clarification, ¶5.

²⁹ Problem, ¶12.

³⁰ BRUNO SIMMA ET AL., *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, 292 (3rd ed., 2012) [‘SIMMA’]; JAMES CRAWFORD, *BROWNLIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 454 (8th ed., 2013) [‘CRAWFORD’].

³¹ CRAWFORD, 454.

domestic law.³²

At present, the subject matter of Permola Criminal Court's proceedings³³ is not essentially within Rovinia's domestic jurisdiction as it relates to **(1)** determination of immunity, **(2)** exercise of criminal jurisdiction; and **(3)** prosecution for the crime of enforced disappearance; all of which are areas regulated by international law.

1. Determination of immunity of Ms. Cross is not a matter essentially within the domestic jurisdiction of Rovinia

At present, Ms. Cross' attorneys asserted her immunity before the Permola Criminal Court, but the court rejected these arguments.³⁴ In this regard, the question of entitlement to immunity from foreign criminal jurisdiction for state officials is governed by customary international law.³⁵ Since the determination of a right under customary law does not fall within the domestic jurisdiction of a State,³⁶ the issue of immunity within the Permola Criminal Court's proceedings is not within Rovinia's domestic jurisdiction.

2. Exercise of criminal jurisdiction over Ms. Cross is not a matter essentially within the domestic jurisdiction of Rovinia

As per customary international law, states are not authorized to exercise their jurisdiction unless they can rely on a permissive principle.³⁷ Even as per *Lotus*, a State cannot overstep the limits that international law places upon its jurisdiction,³⁸ implying that international law regulates the exercise of jurisdiction by States. Thus, as the exercise of jurisdiction is regulated by

³² ANDREAS ZIMMERMANN ET. AL., THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY, 772 (3rd ed., 2019).

³³ Problem, ¶61.

³⁴ Clarification, ¶6.

³⁵ Roman Kolodkin (Special Rapporteur on Immunity of State officials from Foreign Criminal Jurisdiction), Preliminary Rep. on immunity of State officials from foreign criminal jurisdiction, ¶31, U.N. Doc. A/CN.4/601(2008) [**'Preliminary Immunity Report'**].

³⁶ Right of Passage, ¶33; KOLB, 67.

³⁷ CEDRIC RYAENGART, JURISDICTION IN INTERNATIONAL LAW, 29 (2nd ed., 2015).

³⁸ S.S Lotus (France v. Turkey), Judgment, 1927 P.C.I.J. (ser. A) No. 10, p.19 [**'Lotus'**].

international law, it is not essentially within Rovinia's domestic jurisdiction.

3. Prosecution for the crime of enforced disappearance is not a matter essentially within the domestic jurisdiction of Rovinia

Human rights no longer belong to the domestic jurisdiction of States,³⁹ as they concern all actors globally.⁴⁰ Furthermore, to overcome the bar of domestic jurisdiction, a plausible prima facie case of human rights violation is sufficient.⁴¹ In this regard, the crime of enforced disappearance is a grave violation of human rights⁴² and is regulated by international instruments,⁴³ and thus does not fall within the domestic jurisdiction of States.

At present, since the subject matter of the Permola Criminal Court's proceedings relates to the crime of enforced disappearance,⁴⁴ the proceedings are on matters that are not essentially within the domestic jurisdiction of Rovinia.

II. ROVINIA VIOLATED THE INTERNATIONAL LEGAL RULES ON JURISDICTION AND IMMUNITY BY ARRESTING AND PROSECUTING MS. GERTRUDE CROSS

Rovinia violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Cross since **(A)** Rovinia's exercise of universal jurisdiction was wrongful under international law; and **(B)** Ms. Cross is entitled to *immunity ratione materiae* before Rovinian courts.

A. ROVINIA'S EXERCISE OF UNIVERSAL JURISDICTION WAS WRONGFUL UNDER

³⁹ SIMMA, 296; INGER OESTERDAHL, THREAT TO THE PEACE 33 (Almqvist & Wiksell International 1998).

⁴⁰ SIMMA, 296; U.N. GAOR, 51st Sess. 1st plen. mtg. at 3, U.N. Doc. A/51/PV.78 (Dec. 10 1996).

⁴¹ SIMMA, 297.

⁴² OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (2017) ¶11; G.A. Res. 47/133, Declaration on the Protection of All Persons from Enforced Disappearances, at 3 (Feb. 12, 1993).

⁴³ International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3 [**'ICPPED'**].

⁴⁴ Problem, ¶61.

INTERNATIONAL LAW.

Universal jurisdiction must be applied in accordance with the principles of sovereign equality of states and non-interference in the internal affairs of states.⁴⁵ Consequently, the exercise of universal jurisdiction is conditional upon the consent of the state in which the crime was perpetrated or the state of which the accused is a national.⁴⁶ The only exception to the same is when the state with primary links to the crime is “*unwilling or unable*” to investigate or prosecute the alleged offender.⁴⁷

In this regard, Ambrosia, i.e., the state with primary links to Ms. Cross, the victims, and the alleged crimes,⁴⁸ has clearly demonstrated its willingness to prosecute Ms. Cross by re-opening its investigation soon after the HRI Report update.⁴⁹ Resultantly, Rovinia’s exercise of universal jurisdiction is wrongful under international law and constitutes excessive interference in the internal affairs of Ambrosia.

Furthermore, as per the bilateral extradition treaty, Rovinia was obligated to extradite persons requested by Ambrosia for certain specified offenses.⁵⁰ These offenses include the the crimes for which Ms. Cross is being investigated in Ambrosia⁵¹ and they are also deemed include

⁴⁵ U.N. Secretary General, *The scope and application of the principle of universal jurisdiction: Rep. of the Secretary-General*, ¶25, n.101-102, U.N. Doc. A/79/269 (2024). [**‘Universal Jurisdiction Report’**].

⁴⁶ Universal Jurisdiction Report, p.18 n.116; Council of the European Union, The AU-EU Expert Report on the Principle of Universal Jurisdiction, ST 8672/1/09 REV 1, ¶¶39, R10 (Apr. 20, 2009) [**‘AU-EU Expert Report’**].

⁴⁷ U.N. ESCOR, *Rep. of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of all Persons from Enforced Disappearance*, ¶59 E/CN.4/2003/71 (2003); Institute of International Law, Resolution on universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes, art. 3(c), 2005 [**‘Universal Jurisdiction Resolution’**]; Universal Jurisdiction Report, p.18 n.124 [See supporting practice of over 100 unique states (both as part of regional groups, like African Union, Group of Arab States, etc., and individually) within this footnote] AU-EU Expert Report, ¶39 (R10).

⁴⁸ Clarification, ¶7; Problem, ¶8.

⁴⁹ Problem, ¶50, Clarification, ¶5.

⁵⁰ Clarification, ¶5.

⁵¹ *Id.*

the offense of enforced disappearance due to operation of ICPPED Art. 13(2).⁵² In this regard, a state cannot continue exercise universal jurisdiction without considering the extradition request of the primary state in question.⁵³ Resultantly, as Rovinia did not even consider the Ambrosia's extradition request,⁵⁴ its exercise of jurisdiction on Ms. Cross was wrongful.

B. MS. CROSS IS ENTITLED TO *IMMUNITY RATIONE MATERIAE* BEFORE ROVINIAN COURTS

Under international law, it is widely recognized that all officials of a state are entitled to immunity *ratione materiae* from the exercise of foreign criminal jurisdiction by domestic courts of other states.⁵⁵ This immunity is enjoyed with respect to acts performed in an official capacity and continues to subsist after the individuals concerned have ceased to be state officials.⁵⁶

At present, Rovinia violated international law by prosecuting Ms. Cross⁵⁷ as she is entitled to immunity *ratione materiae* before Rovinian courts. This is because **(1)** she is a state official and the acts she is alleged to have committed have been performed in an official capacity. Furthermore, no exception to *immunity ratione materiae* has been made out as **(2)** the obligation of *aut dedere aut judicare* and the exercise of universal jurisdiction does not override immunity *ratione materiae*; **(3)** immunity *ratione materiae* is not displaced by international crimes of a serious nature; and **(4)** even if certain exceptions to *immunity ratione materiae* exist, there is no such exception in the case of enforced disappearances. Lastly, **(5)** even assuming that an exception applies, the evidentiary standard required for the same has not been met.

1. Ms. Cross is a state official and the acts she is alleged to have committed have been performed in an official capacity.

⁵² ICPPED, art. 13(2).

⁵³ Universal Jurisdiction Resolution, art. 3(d); Institute of International Law, Resolution on conflict of criminal laws regarding jurisdiction, art. 5 (1931).

⁵⁴ Clarification, ¶5.

⁵⁵ ILC, Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction adopted by the Commission on first reading *in* the Report of the ILC on the Work of its Seventy-Third session, art. 5, U.N. Doc. A/77/10 (2022) [**'Immunity Articles'**]; ILC, Report of the ILC on the Work of Its Sixtieth Session, U.N. Doc. A/63/10 (2008), ¶275.

⁵⁶ Immunity Articles, art. 6.

⁵⁷ Problem, ¶61; Clarification, ¶6.

State official refers to any individual who represents the state or who exercises state functions,⁵⁸ and includes *inter alia*, a Minister of the Interior, a Head of National Security, and various members of security forces like police director, deputy director of a prison, etc.⁵⁹ Furthermore, an “*act performed in an official capacity*” refers to acts performed by state officials in the exercise of their functions and in the interests of the state.⁶⁰ In this regard, acts related to the exercise of police power fall within acts performed in an official capacity.⁶¹

In the present case, Ms. Cross was the former head of the Ministry of the Interior and oversaw the National Police.⁶² Even if it is assumed that the acts alleged in the HRI report⁶³ were done under her orders, the same was done as a part of the ILSA program⁶⁴ wherein she exercised police power, utilized state machinery, and acted in the public interest as “*a loyal servant of the people*.”⁶⁵ Hence, as also notified by the Ambrosian ambassador,⁶⁶ Ms. Cross enjoyed immunity in respect of these official acts, and Rovinia was obligated to respect the same.⁶⁷

2. Neither the obligation of aut dedere aut judicare nor the exercise of universal jurisdiction overrides immunity *ratione materiae*.

The rules governing immunities are distinct from both the rules governing the jurisdiction

⁵⁸ Immunity Articles, art. 2(a); ILC, Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction adopted by the Commission on first reading, with commentaries thereto *in* the Report of the ILC on the Work of its Seventy-Third session, ¶2 to art. 5, U.N. Doc. A/77/10 (2022) [**‘Immunity Articles Commentary’**].

⁵⁹ Immunity Articles Commentary, ¶9 to art. 2.

⁶⁰ Immunity Articles, art. 2(b); Immunity Articles Commentary, ¶26 to art. 2.

⁶¹ Immunity Articles Commentary, ¶31& n.940 to art. 2.

⁶² Problem, ¶8.

⁶³ Problem, ¶50.

⁶⁴ Problem, ¶8.

⁶⁵ Problem, ¶57.

⁶⁶ Clarification, ¶6

⁶⁷ Roman Kolodkin (Special Rapporteur on Immunity of State officials from Foreign Criminal Jurisdiction), Second Rep. on Immunity of State officials from foreign criminal jurisdiction, ¶21 U.N. Doc. A/CN.4/631 (2010) [**‘Second Report’**].

of national courts⁶⁸ and the rules governing the obligation to prosecute or extradite (i.e., *aut dedere aut judicare*).⁶⁹ Hence, although the ICPPED⁷⁰ obligates states to either prosecute or extradite persons accused of committing enforced disappearances and even permits the exercise of universal jurisdiction over such persons, these obligations do not affect the immunities granted under customary law.⁷¹ Indeed, there is no widespread state practice that supports exceptions to immunity in case of obligations of *aut dedere aut judicare*⁷² or due to the exercise of universal jurisdiction.⁷³ Therefore, Rovinia cannot rely on either of these grounds to override the immunity enjoyed by Ms. Cross under international law.

3. Immunity *ratione materiae* is not displaced by international crimes of serious nature

Immunity is a procedural question⁷⁴ and its purpose is to prevent one from being subjected to the trial process.⁷⁵ Therefore the issue of immunity is necessarily preliminary in nature and must be considered before the merits phase of a case.⁷⁶ Since the determination of an act's gravity would necessarily entail an enquiry into the merits of a case, the dependency of immunity on the gravity of such alleged acts would present a "*logical problem*"⁷⁷ and would be contrary to the basic premise of immunity. Resultantly, the immunity of Ms. Cross cannot be dependent on the gravity of the alleged acts of enforced disappearance.

Furthermore, for an exception to any customary rule of immunity to exist, the same must

⁶⁸ Arrest Warrant, ¶59.

⁶⁹ Second Report, ¶79.

⁷⁰ ICPPED, art. 2, 4, 6 and 9.

⁷¹ Arrest Warrant, ¶59; Second Report, ¶¶77-9.

⁷² Second Report, ¶79; ILC, Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-second session *in* Report of the ILC on the work of its fifty-ninth session, ¶16, U.N. Doc. A/CN.4/588 (2008).

⁷³ Second Report, ¶74-76; AU-EU Expert Report, ¶¶46, R8.

⁷⁴ Arrest Warrant, ¶60.

⁷⁵ Jurisdictional Immunities, ¶82.

⁷⁶ *Id.*, ¶82.

⁷⁷ *Id.*, ¶84.

be established as a part of customary international law.⁷⁸ For a rule to become a part of customary international law, there has to be a general practice among states that is accepted as law (*opinio juris*)⁷⁹ with respect to such a rule. Additionally, such general practice must be sufficiently widespread, representative, and consistent.⁸⁰

General practice (which can be demonstrated decisions of national courts, legislative acts of states, and state conduct in relation to treaties⁸¹) makes it clear that there are no exceptions to immunity *ratione materiae* in cases of serious international crimes like genocide, crimes against humanity, etc.⁸² Indeed, this Court in *Arrest Warrant* has implicitly confirmed that the subsisting immunity of a former minister for foreign affairs, i.e., immunity *ratione materiae*, is not uplifted even in cases of international crimes.⁸³

Even Article 7 of the ILC's Draft Articles on Immunity of State Officials, which proposes similar exceptions to immunity *ratione materiae* for such crimes⁸⁴ is considered to not reflect existing customary international law or *lex lata*.⁸⁵ This position is further reinforced by government comments before the UNGA and the ILC, wherein only 11 states explicitly asserted

⁷⁸ Jurisdictional Immunities, ¶83; *Arrest Warrant*, ¶58.

⁷⁹ ILC, Draft Conclusions on Identification of Customary International Law *in*, the Report of the ILC on the Work of its Seventieth session, Conclusion 2, U.N. Doc. A/73/10 (2018) [**CIL Conclusions**].

⁸⁰ CIL Conclusions, Conclusion 8.

⁸¹ *Id.*, Conclusion 6; ILC, Draft Conclusions on Identification of Customary International Law with commentaries thereto *in*, the Report of the ILC on the Work of its Seventieth session, ¶¶2-6 to Conclusion 2, U.N. Doc. A/73/10 (2018) [**CIL Conclusions Commentary**].

⁸² Immunity Articles Commentary, ¶12 & n.1015-1017 to art. 7; Second Report, ¶80.

⁸³ *Arrest Warrant*, ¶61; *See also*, Sean D. Murphy, *Immunity Ratione Materiae of State Officials from Foreign Criminal Jurisdiction: Where Is the State Practice in Support of Exceptions?* 112 AM. J. INT'L. L. UNBOUND 4 (2018) [**Murphy**].

⁸⁴ Immunity Articles, art. 7.

⁸⁵ Murphy, 4; Immunity Articles Commentary, ¶12 to art. 7; C. Ryngaert et al., *Advice on the Draft Articles of the International Law Commission on Immunity of State Officials from Foreign Criminal Jurisdiction: Advice 43*, Advisory Committee on Issues of International Law (CAVV), p.14 (2023).

that Draft Article 7 reflects existing customary international law,⁸⁶ whereas 22 states explicitly rejected this assertion.⁸⁷ Since these statements by states also evidence *opinio*,⁸⁸ it is clear that the standard of “*broad and representative acceptance, together with no or little objection*”⁸⁹ has not been met with respect to *opinio juris*.

Hence, there are no exceptions to immunity *ratione materiae* for serious international crimes.

4. Alternatively, enforced disappearance does not displace immunity *ratione materiae*

Without prejudice to the above arguments, even if immunity *ratione materiae* does not apply to serious crimes of genocide, crimes against humanity, etc.; there is no such customary exception for the crime of enforced disappearance.⁹⁰ This is because except for one domestic legislation,⁹¹ not a single national or international judicial decision supports such an exception in cases of enforced disappearance.⁹² Furthermore, the same exception was expressly considered and

⁸⁶ ILC, Immunity of State officials from foreign criminal jurisdiction: Comments and observations received from Governments *in* Report of the ILC on the Work of its Seventy-fifth session, U.N. Doc. A/CN.4/771 (2024), [‘A/CN.4/771’] [see statements of Austria, Czech Republic, Ireland, Estonia, Liechtenstein, Lithuania, Luxembourg, Poland, Romania, Spain, and Ukraine on Draft Article 7].

⁸⁷ A/CN.4/771 [see statements of Australia, Brazil, France, Iran, Israel, Japan, Singapore, Russia, UAE, and USA on Draft Article 7]; U.N. GAOR, 73rd Sess., Summary record of the 28th mtg. at ¶117, U.N. Doc. A/C.6/73/SR.28 [statement of Sudan]; U.N. GAOR, 73rd Sess., Summary record of the 25th mtg. at ¶38, U.N. Doc. A/C.6/73/SR.25 (Nov. 19, 2018) [statement of Cyprus]; U.N. GAOR 74th Sess., Summary record of the 28th mtg. at ¶69, U.N. Doc. A/C.6/74/SR.28 (2019) [statement of Uzbekistan]; U.N. GAOR, 77rd Sess., Summary record of the 28th mtg. at ¶¶12, 30, 98, U.N. Doc. A/C.6/77/SR.28 (2022) [statements of Antigua & Barbuda, Cameroon, and Egypt]; U.N. GAOR, 77rd Sess., Summary record of the 29th mtg. at ¶5, ¶69, U.N. Doc. A/C.6/77/SR.29 (2022) [statements of Algeria and Holy See]; U.N. GAOR, 77rd Sess., Summary record of the 26th mtg. at ¶71, ¶90, ¶120, U.N. Doc. A/C.6/77/SR.26 (2022) [statements of India, China, and Belarus]; U.N. GAOR, 74th Sess., Summary record of the 30th mtg. at ¶129, U.N. Doc. A/C.6/74/SR.30 (2019) [statement of Nicaragua].

⁸⁸ CIL Conclusions, Conclusion 10.

⁸⁹ CIL Conclusions Commentary, ¶5 to Conclusion 9.

⁹⁰ U.N. GAOR, 72nd Sess., Summary record of the 19th mtg. at ¶73, U.N. Doc. A/C.6/72/SR.19 (2017) [See Statement of Hungary]; A/CN.4/771, p.94.

⁹¹ See Spanish Organic Act, art. 23(1), No. 16/2015 (Oct. 27).

⁹² Murphy, 4, 7; A/CN.4/771, p.94.

rejected during the negotiations of the ICPPED,⁹³ and the said Convention is the largest treaty on this subject matter with 76 parties⁹⁴ and is also binding on both Ambrosia and Rovinia.⁹⁵

Resultantly, there is no customary exception to immunity *ratione materiae* for enforced disappearance, and as Ms. Cross has been charged solely for this crime in Rovinia,⁹⁶ her immunity remains intact.

5. Even assuming that an exception applies, the evidentiary standard required for the same has not been met

Even the ILC and states who support possible exceptions to immunity *ratione materiae* maintain that such exceptions must be accompanied by procedural safeguards to ensure that there is no abuse or politically motivated prosecution.⁹⁷ Specifically, for an exception to apply, the forum state's courts must ensure that there are "*substantial grounds to believe*" that the state official has committed the alleged serious international crimes.⁹⁸

The standard of "*substantial grounds*" requires that the specific allegations be supported by concrete and tangible proof,⁹⁹ and is intended to ensure that the determination of immunity is not based solely on news reports, complaints, or other types of unsubstantiated information.¹⁰⁰ In this regard, it is well settled that indirect evidence, such as reports of NGOs, have low probative

⁹³ Murphy, 7.

⁹⁴ *International Convention for the Protection of All Persons from Enforced Disappearance*, United Nations Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-16&chapter=4&clang=_en (last visited Jan. 7, 2025).

⁹⁵ Problem, ¶68.

⁹⁶ Problem, ¶61.

⁹⁷ Immunity Articles Commentary, ¶3 to Part Four; Murphy, 4, 7.

⁹⁸ Immunity Articles, Article 14(3)(b)(i).

⁹⁹ Prosecutor v. Muthaura et al., ICC-01/09-02/11-382-Red (P.T.C.), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶52 (2012) [**'Muthaura'**]; Prosecutor v. Ruto et al., ICC-m01/09-01/11-373 (P.T.C.), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶69 (2012) [**'Ruto'**].

¹⁰⁰ Immunity Articles Commentary, ¶19 to art. 14.

value,¹⁰¹ and that a single piece of such indirect evidence cannot satisfy the threshold of “*substantial grounds*.”¹⁰²

At present, the HRI is an NGO¹⁰³ and its report dated 12 June 2023 is the sole piece of indirect evidence that allegedly implicates Ms. Cross.¹⁰⁴ Consequently, there are no substantial grounds to believe that Ms. Cross committed acts of enforced disappearance, and her entitlement to immunity remains unaffected.

III. ROVINIA’S ISSUANCE OF LICENSES TO FISH IN THOSE PARTS OF TRITON SHOAL WITHIN 200 NAUTICAL MILES OF AMBROSIA’S FIXED BASELINE VIOLATES INTERNATIONAL LAW AND MUST CEASE, WITH EXISTING LICENCES REVOKED.

An EEZ can extend up to 200 nautical miles from the baselines of a coastal state.¹⁰⁵ In an EEZ the coastal state has the exclusive authority to issue fishing licenses.¹⁰⁶ In this regard, Rovinia’s grant of fishing licenses in the Triton Shoal violates international law as the said area is within Ambrosia’s EEZ. This is because the Triton Shoal lies within 200 nautical miles¹⁰⁷ of Ambrosia’s normal baseline, which was fixed as the low-water line on 1 November 2015, irrespective of any future coastal recession.¹⁰⁸

Although Rovinia challenges Ambrosia’s extent of EEZ based on the Freezing Law,¹⁰⁹ the same is valid under international law because **(A)** UNCLOS permits the same. In the alternative, **(B)** customary international law and **(C)** regional custom of Paine Peninsula permits baselines

¹⁰¹ Ruto, ¶69; Muthaura, ¶82.

¹⁰² Ruto, ¶74; Muthaura, ¶86.

¹⁰³ Problem, ¶25.

¹⁰⁴ Problem, ¶50, ¶61.

¹⁰⁵ United Nations Convention on the Law of the Sea, art. 57, Dec. 10, 1982, 1833 U.N.T.S. 3 [‘UNCLOS’].

¹⁰⁶ UNLCOS, art. 62(4)(a), 62(4)(c).

¹⁰⁷ Problem, ¶22.

¹⁰⁸ Problem, ¶13.

¹⁰⁹ *Id.*

fixation. Lastly, **(D)** Rovinia is not a persistent objector to these customs. Consequently, Rovinia acts amount to internationally wrongful acts and it must cease granting licenses in Ambrosia's fixed EEZ, with existing licenses revoked.¹¹⁰

A. UNCLOS PERMITS THE FIXING OF BASELINES

UNCLOS allows fixing of baselines as is evidenced by **(1)** ordinary meaning of UNCLOS; **(2)** object and purpose of UNCLOS; **(3)** subsequent practice in the application of UNCLOS; and **(4)** other relevant rules of international law that assist in the interpretation of UNCLOS.

1. Ordinary meaning of UNCLOS permits fixed baselines

A treaty has to be interpreted in accordance with the ordinary meaning of its terms.¹¹¹ Furthermore, ordinary meaning has to be interpreted in the context of the treaty,¹¹² and the context is not merely the article or section of the treaty in which a term occurs, but the treaty as a whole.¹¹³

At present, Ambrosia has normal baselines,¹¹⁴ and UNCLOS Article 5 defines normal baselines as “*the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.*”¹¹⁵ Essentially, Article 5 in its ordinary meaning indicates that normal baseline refers to the markings in official large-scale charts and not the actual low-water line along the coast at any given moment.¹¹⁶

The fact that baselines refer to the charted line, combined with the absence of any

¹¹⁰ ILC, Draft Articles on Responsibility of States for Internationally Wrongful Act with Commentaries, adopted by the ILC at its fifty-third session, art. 2, 30, 35, U.N. Doc. A/56/10 (2001).

¹¹¹ Vienna Convention on the Law of Treaties, art. 31, May 23, 1969, 115 U.N.T.S 331 [**VCLT**].

¹¹² VCLT, art. 31.

¹¹³ ILC, Draft Articles on the Law of Treaties with commentaries *in* the Report of the ILC on the Work of its eighteenth session, ¶12 to art. 27, U.N. Doc. A/CN.4/191 (1966).

¹¹⁴ Clarification, ¶2.

¹¹⁵ UNCLOS, art. 5.

¹¹⁶ Bogdan Aurescu & Nilüfer Oral (Co-Chairs of the Study Group on sea-level rise in relation to international law), *First issues paper*, U.N. Doc. A/CN.4/740 (2020) p. 28 n.151 [**Baseline First Issues**]; D.C. KAPOOR & ADAM J. KERR, A GUIDE TO MARITIME BOUNDARY DELIMITATION 31 (Carswell 1986).

obligation under UNCLOS for states to update their recognized charts even when coastal conditions change,¹¹⁷ implies that states retain the discretion to maintain fixed baselines by not updating the charts.¹¹⁸ Consequently, the practice of fixing baselines by passing legislations, as done by Ambrosia,¹¹⁹ is allowed under UNCLOS as in practice it achieves the same outcome as not updating baselines.

Additionally, Article 7(2) by explicitly allowing fixing of ‘straight baselines’ in certain conditions does not imply that normal baselines under Article 5 are mandatorily ambulatory.¹²⁰ This is because Article 7(2) “*is a specification for [‘straight’ baselines] rather than a limitation.*”¹²¹ Indeed, the said article establishing a general rule for baselines being ambulatory finds no support either in its ordinary meaning or its drafting history.¹²²

Resultantly, as restrictions upon the independence of States cannot be presumed,¹²³ fixing of baselines must be permitted as the same is not explicitly prohibited under the UNCLOS.¹²⁴ Hence, in accordance with the ordinary meaning of the terms in Article 5, Article 7, and UNCLOS as a whole, fixing of baselines is allowed.

2. Object and purpose of UNCLOS permits fixed baselines

¹¹⁷ Baseline First Issues, ¶¶78,104; *Launch Of The Alliance Of Small Island States Leaders’ Declaration*, Alliance of Small Island States (Sept. 22, 2021) <https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/> [‘**AOSIS Declaration**’]; *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise*, Pacific Islands Forum (Aug. 12, 2021), <https://forumsec.org/publications/declaration-preserving-maritime-zones-face-climate-change-related-sea-level-rise> [‘**PIF Declaration**’].

¹¹⁸ Baseline First Issue, ¶104(f).

¹¹⁹ Problem, ¶13.

¹²⁰ KATE PURCELL, *GEOGRAPHICAL CHANGE AND THE LAW OF THE SEA 73-74* (Oxford University Press 2019).

¹²¹ *Id.*, 61.

¹²² *Id.*, 73-74.

¹²³ Lotus, 18; Brad R. Roth, *The Enduring Significance of State Sovereignty*, 56 FLA. L. REV. 1017, 1029 (2004).

¹²⁴ ILC, Chapter VIII: Sea-level rise in relation to International Law *in* Report of the ILC on the work of its Seventy-fourth session, ¶145, A/78/10 (2023) [‘**ILC Baseline 2023**’].

A treaty has to be interpreted in light of its object and purpose.¹²⁵ In this regard, as derived from its preamble,¹²⁶ the ultimate object and purpose of UNCLOS is to promote legal stability and certainty.¹²⁷ Similarly, by allowing fixation of ‘*straight*’ baselines in case of unstable coasts, Article 7(2) shows that UNCLOS was not rigid where natural changes affecting legal stability were foreseeable.¹²⁸

The only reason why similar fixation was not explicitly provided for normal baselines under Article 5 was because climate-related changes to the coastlines were not anticipated when UNCLOS was negotiated.¹²⁹ However, if the normal baseline is to be construed as mandatorily ambulatory, the legal stability of such baselines would be negatively impacted by sea-level rise.¹³⁰ Indeed, the principle of legal stability is linked to the preservation of maritime zones as they were before sea level rise.¹³¹

Furthermore, equity is at the “*heart of the object and purpose*” of the UNCLOS.¹³² Even in maritime disputes, courts have given paramount importance to equity.¹³³ In this regard, due to

¹²⁵ VCLT, art. 31(1).

¹²⁶ Baseline First Issues ¶27, 111, 220; Frances Anggadi, *What States Say and Do About Legal Stability and Maritime Zones, and Why It Matters*, 71(4) INT’L & COMP. L.Q. 767, 779-80 (2022). [**‘Anggadi’**].

¹²⁷ Davor Vidas & David Freestone, *The Impacts of Sea Level Rise and the Law of the Sea Convention: Facilitating Legal Certainty and Stability of Maritime Zones and Boundaries* 99 INT’L L. STUD. 944, 962 (2022) [**‘Vidas & Freestone’**]; Baseline First Issues, ¶27, 111, 220; PIF Declaration.

¹²⁸ Baseline First Issues ¶104; JOHAN HOLST, IMAGINARY COASTLINES: ANALYSING BASELINE FIXATION UNDER THE LAW OF THE SEA, 27 (2024).

¹²⁹ David Caron, *Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict* in MARITIME BOUNDARY DISPUTES, SETTLEMENT PROCESSES AND THE LAW OF THE SEA 1, 5, 10 (Seoung-Yong Hong & Jon Van Dyke eds., 2008).

¹³⁰ Baseline First Issues, ¶¶76,77; Jenny Grote Stoutenburg, *Implementing a New Regime of Stable Maritime Zones to Ensure the (Economic) Survival of Small Island States Threatened by Sea-Level Rise*, 26(2) INT’L J. MARINE & COASTAL L. 263 (2011).

¹³¹ Bogdan Aurescu & Nilüfer Oral (Co-Chairs of the Study Group on Sea-level Rise in Relation to International law), *Additional paper to the First Issues Paper* (2020), ¶84, U.N. Doc. A/CN.4/761 (2023) [**‘Baseline Additional Paper’**].

¹³² ILC Baseline 2023, ¶196; UNCLOS, Preamble, art. 59, 69(1)-(3), 70(1)-(4), 74(1).

¹³³ North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, 44, ¶101.

sea level rise, third states receive additional benefits (navigation, fishing, etc.) at the expense of the coastal state.¹³⁴ Moreover, sea-level rise affects states differentially, and ones that are most affected by it are usually the least responsible for it.¹³⁵ Resultantly, the preservation of existing maritime entitlements would prevent “*potentially catastrophic consequences*” and provide for an equitable outcome that does result in any loss to either party.¹³⁶

Therefore, in light of object and purpose of UNCLOS, Ambrosia must be allowed to fix baselines.

3. Subsequent practice in application of UNCLOS permits baseline fixation

As per VCLT Article 31(3)(b), for the purpose of interpretation, recourse can be made to any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.¹³⁷ Subsequent practice consists of any kind of conduct attributable to a state.¹³⁸ However, it is not required that all the parties must engage in a particular subsequent practice.¹³⁹ Such agreement can even result from the silence of parties when circumstances call for some action.¹⁴⁰

In this regard, since 2021, “*over one hundred states have endorsed the approach*” of non-

¹³⁴ Baseline Additional Paper, ¶214; Roberto Virzo, *Sea-Level Rise and State of Necessity: Maintaining Current Baselines and Outer Limits of National Maritime Zones*, 2 *The Italian Review of International and Comparative Law* 21, 31-38 (2022) [**‘Virzo’**].

¹³⁵ See generally, Clive Schofield, *A New Frontier in the Law of the Sea? Responding to the Implications of Sea Level Rise for Baselines, Limits and Boundaries* in FRONTIERS IN INTERNATIONAL ENVIRONMENTAL LAW: OCEANS AND CLIMATE CHALLENGES (Richard Barnes & Ronán Long eds., 2021).

¹³⁶ Baseline Additional Paper, ¶183, ¶204(b); Virzo, 31-38.

¹³⁷ VCLT, art. 31(3)(b)

¹³⁸ ILC, Draft Conclusions on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties with commentaries *in* the Report of the ILC on the Work of its Seventieth session, ¶¶17-18 to Conclusion 4, A/73/10 (2018). [**‘Subsequent Practice Conclusions Commentary’**]

¹³⁹ Subsequent Practice Conclusions Commentary, ¶12 to Conclusion 10.

¹⁴⁰ *Id.*

update or fixing of baselines.¹⁴¹ Till date, no other state, except Romania,¹⁴² has objected to the option of fixing baselines by states.¹⁴³ Furthermore, even Romania's objection stands nullified owing to its abstention in the ODP Resolution of 6 March 2023, which supported fixing of baselines.¹⁴⁴ This is because these circumstances clearly called for a reaction from Romania but it chose to stay silent. Resultantly, there is an agreement between the parties of UNCLOS regarding its interpretation allowing baseline fixation.

Even assuming that no agreement exists, the subsequent state practice can still be used as a supplementary means under VCLT Article 32¹⁴⁵ to support that UNCLOS permits baseline fixation.

4. Other relevant rules of international law support baseline fixation

As per Article 31(3)(c), any relevant rules of international law as applicable between the parties are also considered for treaty interpretation.¹⁴⁶ In this regard, the relevant customary rules of permanent sovereignty over natural resources, immutability of boundaries, *uti posseditis juris*, and intangibility of boundaries, have been cited by the ILC to support preservation of maritime entitlements and baseline fixation in response to sea-level rise.¹⁴⁷ Indeed, these principles that mandate certainty and stability of a state's existing land resources and land boundaries would be equally applicable to a state's marine resources and baselines.¹⁴⁸ Resultantly, in light of these principles, UNCLOS interpretation should permit baseline fixation.

B. CUSTOMARY INTERNATIONAL LAW PERMITS BASELINE FIXATION

¹⁴¹ INTERNATIONAL LAW ASSOCIATION, INTERNATIONAL LAW AND SEA LEVEL RISE: FINAL REPORT 43 (2024); PIF Declaration; AOSIS Declaration.

¹⁴² Problem, ¶14.

¹⁴³ Baseline Additional Paper, ¶198; Vidas & Freestone, 959.

¹⁴⁴ See *infra* Pleading §III(C)-(D).

¹⁴⁵ Subsequent Practice Conclusions Commentary, ¶9 to Conclusion 2; Kasikili/Sedudu Island (Bots. v. Namib.), Judgment, 1999 I.C.J. 1045, ¶80.

¹⁴⁶ Article 31(3)(c), VCLT.

¹⁴⁷ Baseline Additional Paper, ¶111 and ¶194.

¹⁴⁸ *Id.*

Although a custom requires general practice and *opinio juris*,¹⁴⁹ universal participation is not a requirement.¹⁵⁰ It is enough that the majority of specially affected states¹⁵¹ and the states that had an opportunity or possibility of applying the alleged rule have participated in the practice.¹⁵²

National legislations, public statements, and conduct of states in connection with international resolutions can be used to ascertain both state practice and *opinio*.¹⁵³ In this regard, as evident from national legislations of specially affected island states,¹⁵⁴ international resolutions,¹⁵⁵ and submissions of states to ILC, state practice generally supports the fixing of baselines.¹⁵⁶

Although in 2020, due to *opinio* not being evident enough, it was too early to conclude that there existed a customary rule permitting baseline fixation,¹⁵⁷ the same is not the case now. This is because, as noted above,¹⁵⁸ “*over one hundred states have endorsed the approach*” of fixing baselines since 2021, thus amounting to sufficient *opinio* at present.

Furthermore, despite numerous ILC reports,¹⁵⁹ international resolutions,¹⁶⁰ and UNGA debates¹⁶¹ on the topic of baseline fixation since 2020, till date no other state, except Romania, has

¹⁴⁹ CIL Conclusions, Conclusion 2.

¹⁵⁰ CIL Conclusions Commentary, ¶3 to Conclusion 8.

¹⁵¹ Kevin Jon Heller, *Specially-Affected States and the Formation of Custom*, 112(2) AM. J. INT’L L. 191, 236 (2018).

¹⁵² CIL Conclusions Commentary, ¶¶3-4 to Conclusion 8.

¹⁵³ *Id.*, ¶8 to Conclusion 3, ¶2 to Conclusion 10; CIL Conclusions, Conclusion 6(2), 10(2).

¹⁵⁴ Anggadi, 789-98, n.125-167.

¹⁵⁵ *See*, PIF Declaration; *See*, AOSIS Declaration.

¹⁵⁶ Baseline First Issues, ¶104, 141.

¹⁵⁷ First issues paper, ¶104, 141.

¹⁵⁸ *See supra*, Pleading §III(A)(3).

¹⁵⁹ *See*, Baseline First Issues; *See* Baseline Additional Paper.

¹⁶⁰ *See*, PIF Declaration; *See*, AOSIS Declaration.

¹⁶¹ United Nations, Press Release GA/3701, *Sixth Committee Speakers, Concluding Cluster 1 of International Law Commission Report, Stress Need for Legal Framework Protecting States from Sea-Level Rise*, (Dec. 14, 2022), <https://press.un.org/en/2022/gal3701.doc.htm>.

objected to the practice of fixing baselines.¹⁶² Indeed, this silence on the part of all states despite circumstances (such as resolutions, UN debates, etc.) calling for their reaction, amounts to widespread *opinio*.¹⁶³

Hence, in light of the above, it can be said that customary international law permits fixation of baselines.

C. ALTERNATIVELY, A REGIONAL CUSTOM OF FIXED BASELINES EXISTS IN THE PAINE PENINSULA

A rule of particular customary international law is an international custom that applies only among a limited number of states¹⁶⁴ or a region.¹⁶⁵ In regional custom, like normal custom, there must be a general practice among the concerned states, backed by *opinio*.¹⁶⁶ However, acceptance by all the regional states is not required.¹⁶⁷

At present, a regional custom of permitting fixed baselines exists in the Paine Peninsula. State practice and *opinio* for the same can be found in the baseline fixing legislations of six OCDP states¹⁶⁸ and various positive votes in OCDP resolution discussions.¹⁶⁹ Further, the inaction of Rovinia in not voting against an OCDP resolution on fixed baselines approach¹⁷⁰ constitutes *opinio*, as it was in a position to react but chose to abstain.¹⁷¹ Indeed, the abstention is indicative of *opinio juris*, even if motivated partly by non-legal considerations.¹⁷² Resultantly, there is a

¹⁶² Additional paper to First Issues Paper, ¶198; Vidas & Freestone, 959.

¹⁶³ CIL Conclusions, Conclusion 10(3).

¹⁶⁴ CIL Conclusions Commentary, ¶1 to Conclusion 16.

¹⁶⁵ *Id.*, ¶1, ¶4 to Conclusion 16.

¹⁶⁶ *Id.*, ¶2 to Conclusion 16.

¹⁶⁷ Asylum Case (Colom. v. Peru), Judgment, 1950 I.C.J. 266, 290 (dissenting opinion by Alvarez, J.).

¹⁶⁸ Problem, ¶18.

¹⁶⁹ Problem, ¶20.

¹⁷⁰ Problem, ¶33.

¹⁷¹ CIL Conclusions Commentary, ¶8 of Conclusion 10.

¹⁷² Question Of The Delimitation Of The Continental Shelf Between Nicaragua And Colombia

regional custom permitting fixed baselines in the Paine Peninsula.

D. ROVINIA IS NOT A PERSISTENT OBJECTOR

As per the persistent objector rule, when a state has objected to a customary rule or a regional custom¹⁷³ while it was in the process of formation, it is not opposable to such state.¹⁷⁴ However, this rule is considered practically irrelevant¹⁷⁵ as it is subject to stringent requirements that are deemed almost impossible to meet.¹⁷⁶

For a state to attain persistent objector status, its objection must be clearly expressed and persistent.¹⁷⁷ Persistency requires that objection must be restated whenever circumstances require, even after the rule has emerged.¹⁷⁸ Such circumstances refer to a situation when silence can reasonably lead to the conclusion that the said objection has been given up.¹⁷⁹ Furthermore, wherein a particular norm has quickly gained the support of majority of states and the objecting state is the sole objector,¹⁸⁰ it needs to be all the more vigilant in objecting whenever the situation arises.¹⁸¹

Presently, as noted above, Rovinia is the sole objector to the international customary rule and the regional rule of Paine Peninsula that permits baseline fixation. Therefore, the threshold is extremely high for Rovinia to gain and maintain the persistent objector status. Even if Rovinia had

Beyond 200 Nautical Miles From The Nicaraguan Coast (Nicaragua v. Colombia), Judgment, 2023, I.C.J. 154, ¶77.

¹⁷³ CIL Conclusions Commentary, ¶2 to Conclusion 16.

¹⁷⁴ *Id.*, ¶1 to Conclusion 15.

¹⁷⁵ J.H.H. Weiler, *Editorial*, 24 EUR. J. INT'L L. 1, 3 (2013).

¹⁷⁶ Shelly Aviv Yeini, *The Persistent Objector Doctrine: Identifying Contradictions*, 22(2) CHI. J. INT'L L. 581, 618 (2022).

¹⁷⁷ CIL Conclusions, Conclusion 15(2).

¹⁷⁸ CIL Conclusions Commentary, ¶9 to Conclusion 15.

¹⁷⁹ *Id.*; E. Kontorovich, *Inefficient Customs in International Law*, 48 WM. & MARY L. REV. 859, 875 (2006-07).

¹⁸⁰ JAMES A GREEN, *THE PERSISTENT OBJECTOR RULE IN INTERNATIONAL LAW* 103 (1st ed., 2016).

¹⁸¹ D.A. Colson, *How Persistent Must the Persistent Objector Be?* 61 WASH. L. REV. 957, 966-67 (1986).

attained this status, this same was lost on 6 March 2023 when it failed to cast a negative vote against an OCDP Resolution on fixed baselines,¹⁸² unlike its previous vetoes.¹⁸³ This is because the said resolution, which explicitly supported fixed baselines, undoubtedly required Romania to cast a negative vote to preserve its status as a persistent objector. Resultantly, Romania has no persistent objector status at present.

IV. ROMANIA'S SEIZURE AND SALE OF THE 'FALCON' UNDER THE TRANSITIONAL COUNCIL'S PURPORTED WAIVER OF IMMUNITY VIOLATED INTERNATIONAL LAW.

As general rule of customary international, a state's property enjoys immunity from execution by means of arrest, sale and other measures before the courts of other states.¹⁸⁴ However, a state can waive its immunity from execution.¹⁸⁵ Furthermore, state actions like waivers, expressing consent, etc. can only be undertaken by entities possessing the requisite authority or "*full powers*" to bind the state.¹⁸⁶ A mere claim to represent a state is insufficient, and the entity must have the legal capacity to do so.¹⁸⁷ In this regard, governments are agents that possess the right to represent their state internationally¹⁸⁸ and there can only be one government capable of representing the state.¹⁸⁹ Furthermore, where there are competing entities for governmental status,

¹⁸² Problem, ¶33.

¹⁸³ Problem, ¶16, ¶20.

¹⁸⁴ FOX, H. & WEBB, P., *THE LAW OF STATE IMMUNITY*, 482 (Oxford University Press 2013); United Nations Convention on Jurisdictional Immunities of States and Their Property, art. 18, 19, Dec. 2, 2004, U.N. Doc. A/RES/59/38, U.N.T.S. [**'UNCJISP'**].

¹⁸⁵ UNCJISP, art 18, 19.

¹⁸⁶ Press Release, Office of the Prosecutor, The determination of the Office of the Prosecutor on the communication received in relation to Egypt, ICC Press Release ICC-OTP-20140508-PR1003 (May 8, 2014); VCLT, art. 2(c), 7; United Nations, Full Powers Guidelines, U.N. Doc. LA41TR/221 (2010).

¹⁸⁷ *Id.*

¹⁸⁸ STEPHAN TALMON, *RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW: WITH PARTICULAR REFERENCE TO GOVERNMENTS IN EXILE* 115 (Oxford University Press 1997) [**'TALMON 1997'**].

¹⁸⁹ *Jansen v. Mexico (U.S. v. Mex.)* 29 R.I.A.A. 159, 184-85 (Mixed Comm'n 1869); TALMON 1997, 154.

only the entity recognised by the forum state as the government will be able to invoke state immunity.¹⁹⁰

However, a forum state's recognition is merely declarative, i.e., an authority attains governmental status by meeting the definition of a government, and such recognition is not a prerequisite for enjoying that status.¹⁹¹ On the contrary, if a state prematurely recognizes an entity as the government of another state without that entity meeting the criteria for governmental status, then such recognition constitutes unlawful interference in the internal affairs of the latter state.¹⁹² In this regard, the prohibition to intervene in domestic affairs, i.e., the principle of non-intervention, is a paramount element of the principle of sovereignty and a cornerstone of international law.¹⁹³

At present, Rovinia's seizure and sale of *The Falcon* following a waiver of immunity issued by the Transitional Council¹⁹⁴ constitutes premature recognition of the Council, amounts to unlawful interference, and violates Ambrosia's immunity from execution. This is because the Council did not meet criteria for governmental status,¹⁹⁵ as **(A)** it did not possess effective control of Ambrosia; **(B)** it is undemocratic, thus contrary Ambrosia's international obligations; **(C)** its actions do not comply with Ambrosia's international obligations and; **(D)** in any event, Zavala's constitutional claim overrides Council's claim to governmental status. Additionally, **(E)** Rovinia violated its treaty obligations by recognizing the non-democratic Transitional Council.

A. THE TRANSITIONAL COUNCIL DOES NOT ENJOY EFFECTIVE CONTROL OVER AMBROSIA

¹⁹⁰ Victor Cedeño (Special Rapporteur on Unilateral Acts of States), Sixth Rep. on Unilateral Acts of States, ¶92 U.N. Doc. A/CN.4/534 (2003); LISELOTTE KASSE B'NICCO, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW A CASE STUDY OF THE VENEZUELAN PRESIDENTIAL CRISIS, 18 (2021) [**'LISELOTTE'**]. *British Arab Commercial Bank Plc v. The National Transitional Council* (2011) EWHC 2274 (Comm), ¶6.

¹⁹¹ Anne Schuit, *Recognition of Governments in International Law and the Recent Conflict in Libya*, 14 INT'L COMM. L. REV. 381, 388 (2012) [**'SCHUIT'**]; LISELOTTE, 7.

¹⁹² SCHUIT, 399; LISELOTTE, 29-30; INTERNATIONAL LAW ASSOCIATION, RECOGNITION/NON-RECOGNITION IN INTERNATIONAL LAW: FINAL REPORT 11 (2018) [**'ILA RECOGNITION'**].

¹⁹³ U.N Charter, art. 2(4); art. 2(7); G.A Res. 2625 (XXV) (Oct. 24, 1970).

¹⁹⁴ Problem, ¶44.

¹⁹⁵ NIKO PAVLOPOULOS, THE IDENTITY OF GOVERNMENTS IN INTERNATIONAL LAW, 140 (Oxford University Press 2024) [**'PAVLOPOULOS'**].

The exercise of effective control is an important factor for governmental status under customary international law.¹⁹⁶ However, incumbent governments (i.e., Ms. Zavala's government in the instant case) are afforded a strong presumption of governmental status under international law,¹⁹⁷ and such presumption persists even if they do not exercise control or maintain a physical presence within the state's territory.¹⁹⁸ Indeed, as per this presumption, so long as the lawful government offers resistance which is not purely nominal, the recognition of a revolutionary party as a government constitutes premature recognition.¹⁹⁹

In the instant case, the Transitional Council did not enjoy effective control in Ambrosia as **(1)** it did not possess habitual obedience of Ambrosia's population; and **(2)** it lacked reasonable prospect of permanence.

1. The Transitional Council did not possess habitual obedience of Ambrosia's population

For effective control, popular support or habitual obedience of the population is needed.²⁰⁰ As evidenced by decisions of this Court²⁰¹ and other adjudicating bodies,²⁰² this factor has been repeatedly considered when determining the effectiveness of an entity. In this regard, habitual obedience to a political entity's rule is evident by the "*absence of significant resistance to the*

¹⁹⁶ Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v Costa Rica) (1923) I UNRIAA 375, pp.379-381 [**'Tinoco'**]; PETER MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 82 (7th edn 1997); Hesperides Hotels v. Aegean Holidays Limited case [1978] QB 205.

¹⁹⁷ PAVLOPOULOS, 109, 115; LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW, 93-97 (CUP 2013) [**'LAUTERPACHT'**].

¹⁹⁸ PAVLOPOULOS, 115.

¹⁹⁹ BRAD ROTH, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW, 151 (Oxford University Press 1999) [**'ROTH'**].

²⁰⁰ SCHUIT, 390; LISELOTTE, 12; M.J. PETERSON, RECOGNITION OF GOVERNMENTS: LEGAL DOCTRINE AND STATE PRACTICE, 1815-1995, 52 (Macmillan Press 1997) [**'PETERSON'**]; ROTH, 118, 138.

²⁰¹ Western Sahara, Advisory Opinion, (1975) I.C.J. Rep. 12, ¶95.

²⁰² Tinoco, 379; Asma Jilani v. The Government of Punjab and another, 1972 PLD Supreme Court 139 [1972] 179-180.

regime and its policies.”²⁰³ Indeed, resistance by the public is one of the reasons why, since 2021, neither the Taliban in Afghanistan nor the State Administration Council in Myanmar have succeeded in acquiring governmental status.²⁰⁴

In this case, the Transitional Council has witnessed significant protests from diverse groups supporting Ms. Zavala such as former governmental officials, legal scholars and activists.²⁰⁵ Furthermore, demonstrations by these groups escalated into violent clashes with the police, leading to injuries, arrests, and the detention of several speakers.²⁰⁶ Resultantly, the Transitional Council did not enjoy effective control as it lacked habitual obedience of the people.

2. The Transitional Council Lacked a reasonable prospect of permanence

Effective control requires sustainability of power,²⁰⁷ i.e., an ostensible government must have a “*reasonable prospect of permanence.*”²⁰⁸ Effective control cannot be ephemeral or short-lived.²⁰⁹ In this regard, the Transitional Council was instituted to serve only until President Dery’s return from coma,²¹⁰ underscoring the Council’s inherently unstable and ephemeral nature. Since the Council lacked any prospect of permanence, it failed to meet the necessary standard of effective control.

B. THE TRANSITIONAL COUNCIL IS UNDEMOCRATIC, THUS CONTRARY AMBROSIA’S INTERNATIONAL OBLIGATIONS

Although every state possesses a fundamental right to choose and implement its own political systems and form of government, a state may wilfully accept limitation of its sovereignty

²⁰³ PETERSON, 68-69, 207; SCHUIT, 826; ROTH, 423.

²⁰⁴ PAVLOPOULOS, 121 n.167.

²⁰⁵ Problem, ¶47.

²⁰⁶ Problem, ¶48.

²⁰⁷ SCHUIT, 389.

²⁰⁸ 1 OPPENHEIM’S INTERNATIONAL LAW 150 (Robert Jennings & Arthur Watts eds., 1992) [‘OPPENHEIM’]; Tinoco, 378–80; LAUTERPACHT, 99.

²⁰⁹ Blix, *Contemporary Aspects of Recognition* (1970) 130 HAGUE RECUEIL 587, 642; PAVLOPOULOS, 120 n.162.

²¹⁰ Problem, ¶38.

in this field by the virtue of an international agreement or membership in an international organization.²¹¹ Indeed, an undemocratic government is presumed not enjoy governmental status if the state has chosen representative democracy as its system.²¹²

Ambrosia had adopted democratic political system after its independence and OCDP Charter Article 1 obligates it protect rule of law and democratic systems.²¹³ Furthermore, it is party to the ICCPR²¹⁴ and Article 25 of the same grants citizens a right to partake in public affairs and free elections,²¹⁵ which has been interpreted by international bodies to support democratic governance.²¹⁶

In this regard, President Derey and Ms. Zavala were elected into legislature through the latest elections in February 2019.²¹⁷ Resultantly, the undemocratic Council cannot enjoy governmental status as it would be in violation of Ambrosia's international obligations and own choice of government.

C. THE TRANSITIONAL COUNCIL'S ACTIONS DO NOT COMPLY WITH AMBROSIA'S INTERNATIONAL OBLIGATIONS

As seen in state practice,²¹⁸ an entity which is unwilling to comply with its international

²¹¹ Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.A), I.C.J. Rep. 14, ¶258-259 (1986); TALMON, 13 n.50.

²¹² PAVLOPOULOS, 130; Weller, *Myanmar: Testing the Democratic Norm in International Law* (Mar. 30, 2021), <http://ejiltalk.org/myanmar-testing-the-democraticnorm-in-international-law>.

²¹³ Problem, ¶10.

²¹⁴ Problem, ¶68.

²¹⁵ International Covenant on Civil and Political Rights, art. 25, Dec. 16, 1966, 999 U.N.T.S 171 [‘ICCPR’].

²¹⁶ ROTH, 336.

²¹⁷ Problem, ¶23.

²¹⁸ Wolfrum & Philipp, *The Status of the Taliban: Their Obligations and Rights under International Law*, (2002) 6 MPUNYB 559, 573, 575, 577 [‘Wolfrum & Philipp’]; The ‘Maduro Board’ of the Central Bank of Venezuela v The ‘Guaidó Board’ of the Central Bank of Venezuela [2021] UKSC 57, §18; ILA RECOGNITION, 17; Press Release, *G7 Leaders Statement on Afghanistan* (Aug. 24, 2021), <http://gov.uk/government/news/g7-leaders-statement-on-afghanistan-24-august-2021>; ‘Libya/National Transitional Council—Statement by Alain Juppé,

obligations may be declined governmental status.²¹⁹ These obligations encompass both the duties established by general and regional international law, as well as multinational and bilateral treaties.²²⁰

In the instant case, Ambrosia is bound by various customary and treaty obligations to respect human rights such as the right to freedom of expression,²²¹ right to liberty, and right against arbitrary arrest/detention.²²² Resultantly, the Transitional Council's actions in arresting and detaining several speakers solely for protesting in support of Ms. Zavala constitute a violation of these rights.²²³ These actions also drew widespread condemnation from human rights organizations,²²⁴ underscoring the severity of the Council's disregard for its international obligations. On the other hand, Ms. Zavala despite facing 12 major demonstrations ensured that there was no violence or detentions,²²⁵ demonstrating her willingness to comply with human rights.

Consequently, on the basis of willingness to comply with international law, it the Ms. Zavala's government, and not the Council, that possesses governmental status.

D. IN ANY EVENT, ZAVALA'S CONSTITUTIONAL CLAIM OVERRIDES COUNCIL'S CLAIM TO GOVERNMENTAL STATUS.

As per customary international law, an autonomous 'constitutional' ostensible government will enjoy governmental status as long as it maintains its claim to governmental status²²⁶ even where there exists a rival unconstitutional claimant in effective control over the state's territory

Ministre d'Etat, Minister of Foreign and European Affairs' (Jun. 7, 2011) <http://in.ambafrance.org/Libya-NationalTransitional>.

²¹⁹ Wolfrum and Philipp, 559, 573, 575, 577; Vidmar, *International Community and Abuses of Sovereign Power* (2014) 35 LLR 193, 196.

²²⁰ PETERSON, 68-69.

²²¹ ICCPR, art 19; G.A. Res. 217 (I) A, art. 19 Universal Declaration of Human Rights at 71 (Dec. 10, 1948).

²²² ICCPR, art 9; UDHR, art. 3, 9.

²²³ Problem, ¶48.

²²⁴ *Id.*

²²⁵ Problem, ¶35.

²²⁶ PAVLOPOULOS, 95.

and population.²²⁷ This is because the constitution is the most direct way by which a state can be taken to express its choice of government.²²⁸ Indeed, state practice heavily supports this principle, as seen in situations of Gambia,²²⁹ Honduras,²³⁰ Haiti,²³¹ Sierra Leone,²³² with “*no clear example to the contrary since the mid-1990s.*”²³³ Furthermore, a person that is designated by a state’s municipal law as the occupant of a governmental office can maintain a claim to governmental status simply by not resigning from the office in question.²³⁴

In the present case, Ms. Zavala was the rightful constitutional head of Ambrosia following the absence of President Derry,²³⁵ whereas the usurpation of power by the Transitional Council was unconstitutional.²³⁶ Furthermore, Ms. Zavala explicitly refused to resign from her position by stating that “[t]he constitutional government of Ambrosia remains fully functional” and that she remains the Acting President,²³⁷ thereby maintaining an explicit claim to governmental status. Resultantly, in accordance with customary international law, her claim to governmental status overrides claim of the Council, even if it is presumed that the Council possessed effective control.

E. ROVINIA’S RECOGNITION OF TRANSITION COUNCIL BY ROVINIA IS A BREACH OF ITS TREATY OBLIGATIONS

Although recognition remains largely unconstrained by legal criteria, a decision to recognise is still governed and constrained by the rules and principles of international law.²³⁸ In

²²⁷ PAVLOPOULOS 107, 119-120.

²²⁸ PAVLOPOULOS, 95.

²²⁹ S.C. Res. 2337 ¶2 (Jan. 19, 2017).

²³⁰ G.A. Res 63/ 301, §§1– 3 (Jun. 30, 2009).

²³¹ G.A Res 46/ 7, ¶¶1- 2 (Oct. 11 1991); *See also*, S.C. Res 841, ¶8. (Jun. 16, 1993).

²³² ROTH, 406; S.C. Res. 1132, U.N. Doc. S/RES/1132 (1997).

²³³ PAVLOPOULOS, 109.

²³⁴ PAVLOPOULOS, 99.

²³⁵ Problem, ¶24, ¶40, ¶47.

²³⁶ Problem, ¶56.

²³⁷ Problem, ¶40.

²³⁸ LISELOTTE, 6, 26; Brad R. Roth, *Whither Democratic Legitimism? Contextualizing Recent*

this regard, apart from UNSC Resolutions and the general obligation to not recognize *jus cogen* violations,²³⁹ even regional treaties may impose obligations to not recognize certain governments.²⁴⁰ Indeed, state practice demonstrates such obligation of non-recognition of undemocratic regimes is found within regional treaties²⁴¹ as seen in situations within the AU²⁴² and the OAS.²⁴³

At present, Article 1 of the OCDP Charter imposes a duty to protect rule of law and democratic systems of the member states.²⁴⁴ In this regard, it should be noted that this legal commitment is similar²⁴⁵ to those found in the regional treaties of AU, OAS, and EU.²⁴⁶ Resultantly, as the Council was clearly unrepresentative and undemocratic, the recognition granted by Rovinia was against its obligations under the OCDP Charter.

Developments in the Recognition and Non-recognition of Governments, 108 AJIL Unbound 213, 214 (2017).

²³⁹ ILA Recognition, 12-15.

²⁴⁰ Constitutive Act of the African Union art. 4(m), 4(p), July 11, 2000, 2158 U.N.T.S. 3; Charter of the Organization of American States, art. 2, 3, 9, Dec. 13, 1951, 119 UNTS 3 [**"OAS Charter"**]; Treaty on European Union, art. 2, 7 Feb. 7, 1992, 1993 O.J. (C 326).

²⁴¹ LISELOTTE, 32-33.

²⁴² ERIKA DE WET, *MILITARY ASSISTANCE ON REQUEST AND THE USE OF FORCE* 49 (Oxford University Press 2020) [see sanctioning and condemnation of unconstitutional changes in Togo, Comoros, Guinea, and Madagascar].

²⁴³ Press Release, *OAS Permanent Council Agrees "to not recognize the legitimacy of Nicolas Maduro's new term"*, (Jan. 10, 2019), https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-001/19; Press Release, *OAS Suspends Membership of Honduras*, (Jul. 5, 2009) https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-219/09.

²⁴⁴ Problem, ¶10.

²⁴⁵ TALMON, 13-14.

²⁴⁶ OAS Charter, art. 9.

PRAYER FOR RELIEF

For the aforementioned reasons, the Union of Ambrosia, the Applicant, respectfully prays that this Honourable Court adjudge and declare that:

- I. The Court has jurisdiction to entertain Ambrosia's submission (b);
- II. Rovinia violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross;
- III. Rovinia's issuance of licenses to fish in those parts of the Triton Shoal within 200 nautical miles of Ambrosia's fixed baseline violates international law and must cease, with existing licenses revoked; and
- IV. Rovinia's seizure and sale of Ambrosia's aircraft pursuant to the Permola court's decision on 14 July 2023 on the basis of the Transitional Council's purported waiver of immunity violated international law

Ambrosia reserves the right to revise, supplement or amend the terms of its submission, as well as the grounds invoked in this Memorial.

*Respectfully submitted,
Agents for the State of Ambrosia*

