**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**

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**UNION OF AMBROSIA**

APPLICANT

v.

**REPUBLIC OF ROVINIA**

RESPONDENT

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# MEMORIAL *for the* RESPONDENT

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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. Rovinia 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 Dovilina 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

### I

The Court does not have jurisdiction over the dispute regarding Rovinia's alleged violation of international law concerning the arrest and prosecution of Ms. Cross. This is because the matter does not fall within the scope of OCDP Charter Article XXI, which excludes the Court's jurisdiction over (i) disputes arising from events before the article's enforcement in 2021, and (ii) over proceedings whose subject matter lies essentially within Rovinia's domestic jurisdiction.

Firstly, the dispute of universal jurisdiction arises from the Rovinian Criminal Code 2007 and hence is within the temporal scope of Article XXI. Secondly, the dispute relating to the immunity of Ms. Cross cannot be adjudicated without fully relying on the facts pertaining to the period of 2017-2020, and thus its real cause also lies before 2021 and within the Court's jurisdiction.

Additionally, the national prosecution for enforced disappearance through the exercise of universal jurisdiction under ICPPED is entirely left to the state parties and the subject-matter of the Permola proceedings does not involve any question of international law related to the exercise of universal jurisdiction. Resultantly the question of the merits of Ms. Cross's prosecution and the exercise of universal jurisdiction is within Rovinia's domestic jurisdiction and is thus excluded from this Court's jurisdiction.

### II

Rovinia's assertion of criminal jurisdiction over Ms. Cross is consistent with international law. The ICPPED obligates states to take all necessary measures against individuals accused of enforced disappearance who are present within their territory and to exercise universal jurisdiction. The alleged acts committed by Ms. Cross fulfill the essential elements of enforced disappearance thus enabling universal jurisdiction of Rovinia. Moreover, Rovinia's exercise of universal jurisdiction is not subsidiary to Ambrosia's territorial jurisdiction, as the Convention itself establishes no hierarchy of jurisdictions. Consequently, Ambrosia's domestic investigation and request for Ms. Cross's extradition do not obligate Rovinia to cease its jurisdiction or render it unlawful.

Furthermore, the rejection of Ms. Cross's claim of *immunity ratione materiae* and the measures of arrest and prosecution taken against her by the Permola Criminal Court is justified. At present, state practice and *opinio juris* no longer uniformly support a rule of customary international law providing for immunity *ratione materiae* in cases involving international crimes, including enforced disappearances and crimes against humanity. In any event, denying immunity *ratione materiae* to Ms. Cross is imperative to preserve the integrity of international law.

## III

Rovinia's issuance of fishing licenses in the Triton Shoal complies with international law, as UNCLOS does not permit baseline fixation within its ordinary meaning. Furthermore, any subsequent state practice interpreting UNCLOS to permit fixed baselines cannot be established due to constant opposition from Rovinia.

Additionally, a regional custom for fixing baselines cannot be established either, as UNCLOS provisions must be applied uniformly worldwide. In any event, state practice and *opinio juris* do not support the formation of a regional custom as Rovinia has consistently voted against all OCDP resolutions on this matter. Moreover, even if such a custom were formed, it could not be invoked against a state that has persistently objected to its formation, as Rovinia has done through its objection at the UN and *note verbales*.

Finally, baseline fixation contradicts the principle of equity as it enables Ambrosia to evade the adverse effects of sea-level rise while simultaneously taking advantage of the positive impacts of global warming. Furthermore, baseline fixation would have catastrophic consequences for Rovinia.

## 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.

## I. THE COURT DOES NOT HAVE JURISDICTION TO ENTERTAIN AMBROSIA'S SUBMISSION REGARDING ROVINIA'S ALLEGED VIOLATION OF INTERNATIONAL LAW IN RELATION TO THE ARREST OF MS. CROSS

Jurisdiction of the Court only exists within the limits within which it has been 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] In the present case, these limits have been specified within the OCDP Charter Article XXI.[3]

In this regard, the disputes relating to Rovinia's alleged violation of international law in relation to the arrest and prosecution of Ms. Cross do not fall within the scope of OCDP Charter Article XXI since **(A)** they arise out of a situation occurring prior to the entry into force of Article XXI; and **(B)** they relate to proceedings whose subject matter is essentially within a Rovinia's domestic jurisdiction.

### A. THE DISPUTES ARISE OUT OF A SITUATION OCCURRING PRIOR TO THE ENTRY INTO FORCE OF ARTICLE XXI

The 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] The question of 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

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[1] Phosphates in Morocco (Italy v. France) 1938 P.C.I.J (ser. A/B) No. 74, Judgement, 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] *Id.*

[5] Phosphates in Morocco, 25.

determining the facts or situations with regard to which a dispute has arisen, only those facts or situations are relevant that are the source of the dispute, i.e., its real cause.[6]

Furthermore, there are two aspects to the dispute submitted to the Court by Ambrosia in Issue II, i.e., the aspect of exercise of 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, ICJ's jurisdiction, including the real cause of dispute, has to be examined separately with respect to each aspect.[10] In this regard the ICJ cannot exercise jurisdiction over Issue II since **(1)** the dispute over the exercise of universal jurisdiction arises from the Rovinian Criminal Code of 2007; and **(2)** the dispute relating to the immunity of Ms. Cross arises from facts relating to the period of 2017-2020.

## 1. The dispute over the exercise of universal jurisdiction arises from Rovinian Criminal Code of 2007

Ambrosia disputes the exercise of "*universal jurisdiction*" over Ms. Cross by Rovinia.[11] Although the Permola Criminal Court decision was rendered in 2024,[12] the real cause of the said

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[6] Electricity Company of Sofia and Bulgaria (Belg. v. Bulg.), 1939 P.C.I.J (ser. A/B) No. 77, Judgment, p.82; Certain Property (Liechtenstein v. Germany) Judgment, 2005 I.C.J. 6 ¶¶41-42 **['Certain Property']**; Right of Passage over Indian Territory (Port. v. India) Judgment, 1960 I.C.J. 6 at 35.

[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. ¶¶53, 56. **['Allegations Of Genocide']**.

[9] 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, ¶62.

[12] Problem, ¶61.

dispute is the Rovinian Criminal Code of 2007 that provides for prosecution of the crime of enforced disappearance in Rovinia irrespective of where those acts may have occurred.[13] This is because subsequent events that are merely the confirmation or development of earlier situations or facts, like judicial decisions or acts giving effect to a prior legislation/convention,[14] cannot be constituted to be the real causes of a dispute.[15]

Similar reasoning was also upheld by the PCIJ in *Phosphates in Morocco*, wherein the Italian legislation of 1920 was considered to be the real cause of the dispute and not the subsequent actions from 1931-1934 that merely gave effect to the said legislation.[16] Resultantly, by applying the ratio of *Phosphates in Morocco*, the real cause of the present dispute is the situation created by Rovininan Criminal Code of 2007. Since the enactment of the said legislation falls prior to the entry of force of Article XXI on 15 May 2021,[17] the Court lacks the jurisdiction to entertain the dispute relating to the exercise of universal jurisdiction.

**2. The dispute relating to the immunity of Ms. Cross arises from facts relating to the period of 2017-2020.**

Ambrosia also disputes the denial of immunity to Ms. Cross by the Permola Criminal Court in 2024.[18] However, the legal situation regarding the immunity of Ms. Cross is *"inextricably linked"*[19] to and *"cannot be separated"*[20] from the nature of crimes committed between 2017-

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[13] *Id.*

[14] Certain Property, ¶52; Phosphates in Morocco, 25-26.

[15] Phosphates in Morocco, 24.

[16] Phosphates in Morocco, 25-27.

[17] Problem, ¶67.

[18] Problem, ¶62.

[19] Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Order, 2010 I.C.J. 143, ¶28.

[20] Phosphates in Morocco, 28-29.

2020.[21] Indeed, the ICJ cannot *"reach [a] conclusion"*[22] on the issue of immunity without calling into question the underlying facts of the prosecution of Ms. Cross, as immunity is dependent upon the nature of acts committed.[23] Hence, the real cause or the source of the dispute must be deemed to be the acts occurring between 2017-2020, which is prior to the entry of force of Article XXI. Resultantly, the court lacks jurisdiction over the dispute relating to Ms. Cross' immunity.

### B. THE DISPUTE RELATES TO JUDICIAL PROCEEDINGS ON MATTERS THAT ARE ESSENTIALLY WITHIN ROVINIA'S DOMESTIC JURISDICTION

OCDP Charter Article XXI excludes "*[disputes] relating to judicial proceedings on matters [...] that are essentially within [...] domestic jurisdiction*" from the ICJ's jurisdiction.[24] As the word *'proceedings'* implies the collection of singular proceedings or steps,[25] this clause can be construed in two ways. Firstly, the clause can be construed to extend the ICJ's jurisdiction to only those specific proceedings that concern matters outside Rovinia's domestic jurisdiction, leaving the other domestic proceedings in a case removed from the ICJ's jurisdiction. Alternatively, it can be interpreted to extend the ICJ's jurisdiction to the entire proceeding if even one proceeding involves a matter beyond domestic jurisdiction, regardless of other proceedings being on domestic aspects. Additionally, the OCDP Charter negotiations are silent[26] on which interpretation should be adopted.

In this regard, if the intention of the state parties remains doubtful even after recourse to

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[21] Problem, ¶25, ¶27, ¶50.

[22] Phosphates in Morocco, 29.

[23] See infra Issue II(B).

[24] Problem, ¶12.

[25] Legal Information Institute, proceeding (Aug. 2021), https://www.law.cornell.edu/. ["Proceeding" may refer to a step in a larger action]; Gerald Hill, The People's Law Dictionary, proceeding (last visited Jan 10, 2025), https://dictionary.law.com/Default.aspx?typed=case&type=1/, [proceeding n. any legal filing, hearing, trial and/or judgment in the ongoing conduct of a lawsuit. Collectively they are called "proceedings"].

[26] Problem, ¶10, ¶12.

the textual interpretation and the preparatory work, then as per the principle of *dubio mitius*, the interpretation that is most favourable to the freedom of states should be adopted.[27] Furthermore, since "*domestic jurisdiction*" is synonymous with freedom of states,[28] the application of *dubio mitius* is even more justified in the present case. Resultantly, the interpretation limiting the ICJ's jurisdiction to specific proceedings outside domestic jurisdiction, rather than the entirety of judicial proceedings, should be adopted as it better preserves the domestic jurisdiction and freedom of states.

In this respect, although the disputes submitted by Ambrosia relate to the exercise of universal jurisdiction and that of immunity of Ms. Cross,[29] certain proceedings of the Permola Criminal Court are on matters that are essentially within the domestic jurisdiction of Rovinia and are thus excluded from the ICJ's jurisdiction. Specifically, proceedings on immunity fall outside Rovinia's domestic jurisdiction,[30] but the prior proceedings leading to Ms. Cross's arrest on 2 May 2024 remain exclusively within it.[31] This is because **(1)** the national prosecution of enforced disappearance falls within Rovinia's domestic jurisdiction; and **(2)** the subject-matter of the criminal proceedings against Ms. Cross did not include any question of international law relating to the exercise of universal jurisdiction.

### 1. National prosecution of enforced disappearance falls within Rovinia's domestic jurisdiction

The conduct of judicial proceedings before national criminal courts is, in principle, a matter of domestic jurisdiction.[32] Additionally, as per VCLT Art. 32, the preparatory work of a treaty,

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[27] S.S. Wimbledon (U.K. v. Japan), Judgment 1923 P.C.I.J. (ser. A) No. 1 pp.24-25; Appellate Body Report, European Communities-Measures Concerning Meat and Meat Products, ¶166, n.154, WTO Doc. WT/DS26/AB/R (adopted Jan. 16, 1998).

[28] G. SHINKARETSKAYA, INTERNATIONAL LAW AND MUNICIPAL LAW 124 (Duncker & Humbolt 1988).

[29] Problem, ¶62, ¶63, ¶69.

[30] Clarification, ¶6.

[31] Problem, ¶61.

[32] U.N. GAOR, 18th session, 1238th plen. mtg. ¶112, U.N. Doc. (Oct. 11, 1963); U.N. SCOR, 19th

including its negotiations,[33] and the circumstances of its conclusion can be used to confirm the meaning of a treaty.[34] In this regard, the negotiations of the OCDP Charter confirm that the "domestic jurisdiction" clause was intended to exclude disputes relating to the national prosecution of crimes.[35]

Matters not regulated by international law fall within states' domestic jurisdiction.[36] Furthermore, although an area limited by rules of international law is *ipso facto* not a matter of domestic jurisdiction,[37] this does not mean that all matters arising in this area are fully withdrawn from the domestic jurisdiction of a state.[38] Only those matters that are the object of an international treaty or custom (i.e., where states have to co-ordinate law-making with international law[39]) lie outside the domestic jurisdiction of a state.[40] In this regard, except for the issues of fair trial or due process,[41] the ICPPED does not regulate other aspects of national prosecutions like defenses,

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year, 1128th meeting, ¶38, ¶44, ¶46, ¶52 (June 9, 1964); Zimmermann, 25.

[33] MARK E. VILLIGER, COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES 445 (Martinus Nijhoff Publishers 2009).

[34] Vienna Convention on the Law of Treaties, art. 32. May 23, 1969, 1155 U.N.T.S. 331.

[35] Problem, ¶11.

[36] Nationality Decrees Issued in Tunis and Morocco (Great Britain v. France), Advisory Opinion, 1923 P.C.I.J. (ser. B) No.4, p.23-24 (Feb. 7) **['Nationality Decrees']**.

[37] Nationality Decrees, 24; Louis Henkin, *Human Rights and Domestic Jurisdiction,* in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 22 (T. Buergenthal, 1979).

[38] R. Müllerson, *The International Protection of Human Rights and the Domestic Jurisdiction of States*, in PERESTROIKA AND INTERNATIONAL LAW 66 (A. Carty & G. Danilenko eds. 1990) **['Müllerson']**.

[39] *Id.*, 65-66.

[40] *Id.*, 66

[41] International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3 **['ICPPED']** art. 11(2), art. 11(3); ROBERT CRYER ET. AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE, 75 (4th ed., 2019) **['Cryer']**.

burden of proof, evidentiary and procedural rules, and applicable penalties.[42] These issues are left entirely to the state parties[43] and they can choose how to conduct their investigations.[44]

In the present case, since no issue of fair trial or due process has been alleged, and the conditions of Ms. Cross' detention are consistent with all due process guarantees,[45] the proceedings of the Permola Criminal Court are within the domestic jurisdiction of Rovinia. Resultantly, in Issue II, the ICJ lacks jurisdiction to assess issues such as defenses, burden of proof, evidentiary and procedural rules, and penalties in relation to the prosecution of Ms. Cross.

**2. Subject-matter of the criminal proceedings against Ms. Cross did not include any question of international law relating to the exercise of universal jurisdiction.**

To determine the subject-matter of a legal case, a court must isolate the real issue in the case and identify the object of the complaint.[46] In doing so, a court examines the positions of both parties, the wording of the complaint, and the parties' pleadings; while giving particular attention to the formulation of the dispute chosen by the complainant.[47]

Since the complaint against Ms. Cross was filed under the Rovinian Criminal Code of 2007,[48] the jurisdiction of the Permola Criminal Court was based on national law rather than international law. Furthermore, unlike the issue of immunity, the issue of universal jurisdiction has not been explicitly pleaded before the Permola Criminal Court.[49] Hence, considering the positions

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[42] Brent Wible, *De-Jeopardizing Justice: Domestic Prosecutions for International Crimes and the Need for Transnational Convergence*, 31(2) DENVER J. INT'L L. & POL'Y., 267 n.6.

[43] *Id.*

[44] CRYER, 75-76.

[45] Clarification, ¶6.

[46] Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Preliminary Objection, Judgment, 2015 I.C.J. No. 153 ¶26.

[47] *Id.*

[48] Problem, ¶61.

[49] *Id.*; Clarification, ¶6.

of the prosecution and the defence, the subject-matter of Ms. Cross' proceedings did not include any question of international law relating to the exercise of universal jurisdiction. Resultantly, all questions relating to the jurisdiction of Permola Criminal Court are within Rovinia's domestic jurisdiction and the ICJ cannot rule upon them in Issue II.

## II. ROVINIA'S ASSERTION OF CRIMINAL JURISDICTION OVER MS. CROSS, AND HER ARREST AND PROSECUTION, ARE CONSISTENT WITH INTERNATIONAL LAW

Rovinia's assertion of criminal jurisdiction over Ms. Cross, and her arrest and prosecution, are consistent with international law; since **(A)** Rovinia's exercise of jurisdiction over Ms. Cross is permitted as per the ICPPED; and **(B)** the rules on immunity do not prohibit Rovinia from arresting and prosecuting Ms.Cross for the alleged acts of enforced disappearance.

### A. ROVINIA'S EXERCISE OF JURISDICTION OVER MS. CROSS IS PERMITTED AS PER THE ICPPED

Article 6 of ICPPED obligates states to take necessary measures to hold criminally responsible any person who commits or orders the crime of enforced disappearances.[50] This includes superiors who knew or consciously disregarded information about enforced disappearances, had effective authority and control over those committing the crime, and failed to take necessary and reasonable measures to prevent, repress, or report the crimes.[51]

Furthermore, the ICPPED Article 9(2) also obligates each state party to take the necessary measures to establish its jurisdiction over the offense of enforced disappearance when the alleged offender (i.e., Ms. Cross in this context) is present within any territory under its jurisdiction.[52] Indeed, the "*obligation to establish the universal jurisdiction [is] a necessary condition for*

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[50] International Convention for the Protection of All Persons from Enforced Disappearance, art. 6 Dec. 20, 2006, 2716 U.N.T.S. 3 **['ICPPED']**.

[51] ICPPED, art. 6(2).

[52] ICPPED, art. 9(2).

*enabling a preliminary inquiry [and] prosecution*"[53] which is also required to comply with Articles 10(2) and 11(1) of the Convention.[54] All of these obligations together "*achieve the object and purpose*"[55] of the ICPPED, i.e., to combat impunity for the crime of enforced disappearance.[56]

In this regard, Rovinia's exercise of jurisdiction over Ms. Cross is permitted and obligated under the ICPPED as **(1)** Ms. Cross has committed the crime of enforced disappearance; and **(2)** Rovinia's exercise of universal jurisdiction is not subsidiary or residual in nature.

### 1. Ms. Cross has committed the crime of enforced disappearance

As per ICPPED Article 2, enforced disappearance refers to any form of deprivation of liberty by state agents or persons acting with the support of the state, followed by a refusal to acknowledge such deprivation or the concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.[57]

In this context, as per the updated HRI Report, Ms. Cross oversaw the abductions under the ILSA program[58] using her effective authority and control as the Interior Minister and head of the National Police.[59] Evidence in the form of police statements, images, audio recordings, copies of personally signed orders of warrantless arrests, and logs documenting her visits to detention facilities[60] confirm her direct involvement and fulfill the threshold of effective responsibility under the ICPPED. Furthermore, the Prosecutor General's interim report reveals that the involved

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[53] Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶74 **['Belgium/Senegal'].**

[54] ICPPED, art. 10(2), art. 11.

[55] Belgium/Senegal, ¶74.

[56] ICPPED, Preamble.

[57] ICPPED, art. 2.

[58] Problem, ¶50.

[59] Problem, ¶8.

[60] Problem, ¶50.

persons did not disclose the status or whereabouts of these individuals,[61] thus leaving them outside legal protection and fulfilling all elements of enforced disappearance as defined by the Convention. Resultantly, Rovinia's exercise of jurisdiction over Ms. Cross is allowed as per the ICPPED since she was suspected of the crime of enforced disappearance.

### 2. Rovinia's exercise of universal jurisdiction is not subsidiary or residual in nature

The wording ICPPED Article 9(2)[62] is almost identical to Article 5(2) of the Convention Against Torture,[63] and the preparatory work of ICPPED confirms that Article 9 "*drew on [A]rticle 5 of the Convention [A]gainst Torture.*"[64] In this regard, Article 5(2) of the Convention Against Torture is widely interpreted as not establishing any hierarchy between territorial jurisdiction and universal jurisdiction, i.e., universal jurisdiction is not considered subsidiary to other forms of jurisdiction.[65] It follows that even universal jurisdiction by Rovinia under the ICPPED is not subsidiary to Ambrosia's territorial jurisdiction. Hence, Ambrosia's domestic investigation and request of extradition for Ms. Cross[66] do not obligate Rovinia to cease the exercise of its jurisdiction as it is finally up to Rovinia "*to decide whether to exercise jurisdiction and to prosecute the suspected [offender] or to extradite him or her.*"[67]

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[61] Problem, ¶27.

[62] ICPPED, art. 9(2).

[63] G.A. Res. 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 5(2) (Dec. 10, 1984) **['Torture Convention']**.

[64] 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*, ¶82 E/CN.4/2004/59 (Feb. 23, 2004).

[65] THE UNITED NATIONS CONVENTION AGAINST TORTURE AND ITS OPTIONAL PROTOCOL: A COMMENTARY 239 (Manfred Nowak et al. eds., 2020) **[Torture Commentary']**.

[66] Clarification, ¶6.

[67] Torture Commentary, 266.

## B. RULES ON IMMUNITY DO NOT PROHIBIT ROVINIA FROM ARRESTING AND PROSECUTING MS. CROSS FOR THE ALLEGED ACTS OF ENFORCED DISAPPEARANCE

Under international law, it is widely recognized that all officials of a state are entitled to immunity *ratione materiae* or functional immunity from the exercise of foreign criminal jurisdiction by domestic courts of other states.[68] 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.[69]

However, a rule of customary international law may evolve or stand modified if a sufficient number of states claim a novel right or an exception to the customary principle in question.[70] In this regard, the number of non-confirmatory acts that are required to modify a custom depends on the extent of previous practice.[71] Similarly, a customary rule may be terminated with no new rule taking its place[72] if the old rule is no longer supported by one of its constitutive elements, i.e., general practice and sense of legal obligation (*opinio juris*).[73] Furthermore, states remain free to adopt any practice which it regards as best in absence of a prohibitive rule or when state practice is in flux.[74]

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[68] 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']**.

[69] Immunity Articles, art. 6.

[70] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits, Judgment, 1986 I.C.J. 14, ¶207.

[71] Anthea Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AM. J. INT'L L. 757, 785 (2001).

[72] Anglo-Norwegian Fisheries (U.K. v. Nor.), 1951 I.C.J. 116, 148 (separate opinion by Alvarez, J.) **['Fisheries']**; David J. Bederman, *Acquiescence, Objections, and the Death of Customary International Law*, 21 DUKE J. COMP. & INT'L L. 31, 37–38 (2010) **['Bederman']**.

[73] MARK E. VILLIGER, CUSTOMARY INTERNATIONAL LAW AND TREATIES: A STUDY OF THEIR INTERACTIONS AND INTERRELATIONS WITH SPECIAL CONSIDERATION OF THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES 32–33 (Brill Nijhoff 1987); Bederman, 37-38.

[74] S.S Lotus (France v. Turkey) Judgment, 1927 P.C.I.J. (ser. A) No. 10, p.19; Jurisdictional

In this regard, there is a "*discernible trend towards limiting the applicability of immunity from jurisdiction ratione materiae in respect of certain [international crimes],*"[75] and it has been asserted in recent times that state practice and *opinio* do not support the existence of a rule of customary international law providing for immunity in each case for international crimes.[76] At present, Ms. Cross is not entitled to immunity before Rovinian courts as customary international law does not provide immunity in cases of **(1)** enforced disappearances and **(2)** crimes against humanity. Additionally, **(3)** non-application of functional immunity for the crimes in question preserves the systemic nature and unity of the international legal order.

### 1. Customary international law does not provide immunity for enforced disappearances

The 1992 Declaration on the Protection of All Persons from Enforced Disappearances, which is considered to represent customary international law,[77] specifically states that no immunity applies in trials relating to enforced disappearance,[78] even those commenced on the basis of

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Immunities of the State (Germany v. Italy: Greece intervening), Judgment, 2012 I.C.J. 143, ¶47-49 (dissenting opinion of Yusuf, J).

[75] 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, ¶9 to art. 7, U.N. Doc. A/77/10 (2022) **['Immunity Articles Commentary']**.

[76] ILC, 75th session, Summary record of the 3675th mtg. p.13, U.N. Doc. A/CN.4/SR.3675 (2019); Beatrice Bonafe & Herve Eric, *L'absence d'immunity des agents de l'Etat en cas de crime international: pourquoi en débattre encore?* 821 REVUE GÉN. DROIT INT'L PUBLIC (2018), 827-828; Micaela Frulli, *On the Existence of a Customary Rule Granting Functional Immunity to State Officials and Its Exceptions: Back to Square One*, 26 DUKE J. COMP. & INT'L L. 479, 493, 496 (2016).

[77] Press Release, OHCHR, 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance, U.N. Press Release (Dec. 18, 2022) **['OHCHR Press Release']**; ULLIO SCOVAZZI & GABRIELLA CITRONI, THE STRUGGLE AGAINST ENFORCED DISAPPEARANCE AND THE 2007 UNITED NATIONS CONVENTION 249 (Brill/Nijhoff 2007).

[78] G.A. Res. 47/133, Declaration on the Protection of all Persons from Enforced Disappearance, art. 16 (Dec.18, 1992).

universal jurisdiction.[79] In addition to this, state practice and *opinio* for non-applicability of immunity can also be found in Article IX of the 1994 Inter-American Convention on Forced Disappearance of Persons,[80] which has 15 state parties,[81] and Spain's national legislation.[82] Even the ILC has opined that no functional immunity should apply to the crime of enforced disappearance in its Draft Article 7 of Articles on Immunity of State Officials,[83] and the same has been supported by over 35 states in their statements before the ILC and UNGA.[84] On the contrary, only 20 states[85] have expressed a negative opinion on Draft Article 7 and have maintained that

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[79] *Id.*, art. 14.

[80] Inter-American Convention on Forced Disappearance of Persons, art. 9 Dec. 9, 1994, 33 I.L.M. 1529.

[81] *Id., see generally.*

[82] Spanish Organic Act, art. 23(1), No. 16/2015 (Oct. 27).

[83] Immunity Articles, art. 7.

[84] 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, A/CN.4/771 (2024), **['A/CN.4/771']** [see statements of Austria, Czech Republic, Estonia, Ireland Latvia, Liechtenstein, Lithuania, Luxembourg, Nordic countries, Netherlands, Portugal, Panama, Mexico, Poland, Romania, Sierra Leone, Spain, Switzerland, and Ukraine on Draft Article 7]; U.N. GAOR, 77rd Sess., Summary record of the 28th mtg. at ¶56, ¶60 ¶81, U.N. Doc. A/C.6/77/SR.28 (2022) ["**A/C.6/77/SR.28**"] [statements of Chile, South Africa, and Vietnam]; U.N. GAOR, 77rd Sess., Summary record of the 29th mtg. at ¶36, ¶58, U.N. Doc. A/C.6/77/SR.29 (2022) ["**A/C.6/77/SR.29**"] [statements of Peru and Argentina]; U.N. GAOR, 77rd Sess., Summary record of the 26th mtg. at ¶74, ¶100, ¶110, U.N. Doc. A/C.6/77/SR.26 (2022) ["**A/C.6/77/SR.26**"] [statement of Slovenia, Italy, and El Salvador]; U.N. GAOR, 77rd Sess., Summary record of the 27th mtg. at ¶56, ¶67, U.N. Doc. A/C.6/77/SR.27 (2022) [statements of Slovakia and Armenia].

[85] A/CN.4/771 [see statements of Brazil, France, Iran, Israel, Japan, Singapore, Russia, UAE, and the 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 (2018) [statement of Sudan]; 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]; A/C.6/77/SR.28 at ¶12, ¶30, ¶98 [statements of Antigua & Barbuda, Cameroon, and Egypt]; A/C.6/77/SR.29 at ¶5, ¶69 [statements of Algeria and Holy See]; A/C.6/77/SR.26 at ¶71, ¶90, ¶20, 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].

functional immunity would still apply in case of such crimes.

In light of the above, it cannot be concluded that the requirement of sufficiently widespread and consistent practice, accompanied by *opinio juris*,[86] has been met to establish a customary rule granting immunity to state officials for the crime of enforced disappearance. Consequently, as Ms. Cross has been charged with the crime of enforced disappearance,[87] she is not entitled to immunity before Rovinian Courts.

### 2. Customary international law does not provide immunity for crimes against humanity

The ICTY in the *Blaskic* case has held that functional immunity does not apply to crimes against humanity before national or international jurisdiction.[88] Even certain national legislations[89] and cases[90] have not applied immunity *ratione materiae* in the case of crimes against humanity. Furthermore, since crimes of torture and enforced disappearance, "*when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack,*" amount to crimes against humanity,[91] any state practice not applying immunity in those crimes would also be relevant in the case of crimes against humanity. In this regard, apart from

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[86] Colombian-Peruvian Asylum Case (Colom. v. Peru), Judgment, 1950 I.C.J. 266, 277; ILC, Draft Conclusions on Identification of Customary International Law *in,* the Report of the International Law Commission on the Work of its Seventieth session, Conclusion 8, A/73/10 (2018) **['CIL Conclusions']**.

[87] Problem, ¶61.

[88] Prosecutor v. Blaškić, Case No. IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, (ICTY) ¶41.

[89] Immunity Articles Commentary, ¶9 & n.1013 to Article 7. [See legislations of Spain, Mauritus, South Africa, Kenya, Liechtenstein, Uganda, Samoa, and New Zealand cited within this footnote].

[90] Immunity Articles Commentary, ¶32 & n.947 to Article 2 [See cases of *Sharon and Yaron* (Belgium), *A. c. Ministère public de la Confédération* (Switzerland), *Hissene Habre* (Senegal), etc. cited within this case.]

[91] Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90 ["**ICC Statute**"].

the practice demonstrated above for enforced disappearances,[92] there are also a number of national cases[93] that have not applied immunity in the case of torture. Apart from this, ILC's Draft Article 7, which has received more state support than resistance,[94] also provides that no functional immunity applies to crimes against humanity.

Consequently, due to the lack of uniform state practice or *opinio*, there is no customary entitlement to functional immunity for crimes against humanity. At present, since Ms. Cross knowingly ordered widespread and systematic operation by ILSA,[95] which resulted in the enforced disappearance of more than 150 Ambrosian nationals, her acts amount to crimes against humanity. Thus, she is not entitled to immunity.

### 3. Non-application of functional immunity for the crimes in question preserves the systemic nature and unity of the international legal order.

Norms of international law act with and should be interpreted against the background of other rules and norms.[96] In this regard, the functional immunity of state officials compromises various other norms of *jus cogen* norms, international criminal law, and universal jurisdiction, and should thus not apply to such international crimes.[97]

Firstly, the prohibition of crimes against humanity, war crimes, enforced disappearance,

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[92] See supra Issue II(B)(1).

[93] Immunity Articles Commentary, ¶9 & n.1012 to Article 7. [See cases of *Re Pinochet* (Belgium), *H v. Public Prosecutor* (Netherlands), etc. cited within this footnote].

[94] See supra Issue II(B)(1).

[95] See supra Issue II(B)(1).

[96] ILC, Conclusions of the work of the Study Group on Fragmentation of International *in* the Report of the International Law Commission on the Work of its Fifty-eighth session, Conclusion 1, U.N. Doc. A/61/10 (2006) **['Fragmentation Conclusions']**.

[97] Concepción Hernández (Special Rapporteur on Immunity of State officials from Foreign Criminal Jurisdiction), Fifth Rep. on Immunity of State officials from foreign criminal jurisdiction, ¶¶190-217, U.N. Doc. A/CN.4/701 (June 14, 2016). **['Fifth Report']**

etc. are *jus cogen* norms,[98] i.e., they override any contrary norms.[99] Although there might not be a conflict between the substantive nature of *jus cogens* and the procedural nature of immunity, when immunity bars all possible recourses to prosecution and creates impunity, then it comes in direct conflict with *jus cogens* norms as it "*loses its exclusively procedural nature and acquires a substantive component.*"[100] Consequently, as seen in national cases,[101] immunity must be negated when they come in substantive conflict with *jus cogens*.

Secondly, treaties such as the ICPPED and the Convention Against Torture provide for the exercise of universal jurisdiction[102] and may be interpreted as waiving immunity[103] since the "*subsequent jurisdictional rule is practically co-extensive with a prior rule [of] immunity.*"[104] Specifically, as crimes of torture and enforced disappearance can only be committed by or with the acquiescence of state officials,[105] the grant of universal jurisdiction to foreign domestic courts in these crimes must necessarily imply the waiver of functional immunity as otherwise "*the application of [...] immunity would deprive the subsequent jurisdictional rule of practically all*

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[98] ILC, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus* cogens) *in* Report of the International Law Commission on the Work of its Seventy-third session, Annex, A/77/10 **['*Jus Cogens* Conclusion']**; OHCHR Press Release.

[99] Vienna Convention on the Law of Treaties, art. 53, 64 May 23, 1969, 115 U.N.T.S 331 **['VCLT']**; *Jus Cogens* Conclusion, Conclusion 3.

[100] Fifth Report, ¶205.

[101] Immunity Articles Commentary, ¶14 & n.1021 to Article 7 [See various cases like *Eichmann* (Israel), *Ferrini* (Italy), etc. cited within this footnote].

[102] ICCPED, art. 9(2); Torture Convention art. 5(2).

[103] THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION 31 (Princeton University Program in Law and Public Affairs 2001).

[104] Dapo Akande & Sangeeta Shah, *Immunities of State Officials, International Crimes, and Foreign Domestic Courts*, 21 EUR. J. INT'L L. 815, 840 (2010) **['Akande'].**

[105] ICCPED, art. 2, Torture Convention art. 1.

*meaning.*"[106] This approach was also applied in the *Pinochet* case.[107]

Resultantly, in light of these various considerations, to preserve the systemic nature and unity of the international legal order,[108] the principle of functional immunity must not apply to international crimes so as to not compromise various important subsequent developments of international law.

## III. ROVINIA'S ISSUANCE OF LICENSES TO FISH IN THE ENTIRETY OF THE TRITON SHOAL IS IN CONFORMITY WITH INTERNATIONAL LAW

High seas are open to all the states in the world, and therein freedom for fishing is granted to all of them.[109] No state can claim sovereignty over any parts of the high seas.[110] In this regard, grant of fishing licences by Rovinia in Triton Shoal does not violate international law because it forms a part of the High Seas. Although Ambrosia claims portions of Triton Shoal to be part of its EEZ pursuant to its Freezing Law, such a claim is unfounded because the Freezing Law is not in conformity with international law as **(A)** UNCLOS does not permit baseline fixation, and **(B)** no regional custom of fixed baselines has developed in Paine Peninsula. Furthermore, absent a permissive rules, Ambrosia's baseline fixation cannot be sustained as **(C)** it results in inequity.

### A. UNCLOS DOES NOT PERMIT BASELINE FIXATION

UNCLOS does not permit baseline fixation as the same is evidenced by **(I)** ordinary meaning of UNCLOS. Furthermore, **(II)** subsequent practice of state parties to UNCLOS regarding its interpretation has not yet established an agreement on UNCLOS allowing baseline fixation.

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[106] Akande, 840.

[107] Ex parte Pinochet, (No.3) 2 All ER 97, at 114, 169–170, 178–179, 190 (1999).

[108] Immunity Articles Commentary, ¶¶10-11 to art. 7.

[109] United Nations Convention on the Law of the Sea, art. 87, Dec. 10, 1982, 1833 U.N.T.S. 3 **['UNCLOS']**.

[110] UNCLOS, art. 89

### 1. Ordinary Meaning of UNCLOS does not permit fixing of baselines

A treaty has to be interpreted in good faith, in accordance with ordinary meaning to be given to its terms.[111] Ordinary meaning has to be construed, not in abstract, but in the context of the treaty.[112] The context of the treaty is not merely the respective article or the section, 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] The ordinary meaning of Article 5 implies that the baseline is to be found at that place where the water meets the land and not anywhere else,[116] i.e., the baseline is ambulatory and must move with the subsequent movement of the coast or the actual low water line.g[117] This is also supported by the principle of "*land dominates the sea*" as per which a state's maritime entitlements are established through the projection of coastal fronts.[118]

Furthermore, the phrase, "*as marked on large-scale charts officially recognized by the coastal State"* does not imply that the low-water line as depicted on such charts is the legal normal baseline irrespective of where the actual coast lies. This is because, the only reasoning for reference to charts was to provide a systematic and uniform representation of the actual low-water line so as

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[111] VCLT, art. 31.

[112] *Id.*

[113] Competence of the ILO to Regulate Agricultural P.C.I.J. (1922), Series B, No. 2 & 3, p.23.

[114] Clarification, ¶2.

[115] UNCLOS, art. 5.

[116] Sean Murphy, *Ambulatory Versus Fixed Baselines Under the Law of the Sea*, 38 AM. U. L. REV. 721, 723–24 (2023).

[117] VICTOR PRESCOTT & CLIVE SCHOFIELD, THE MARITIME POLITICAL BOUNDARIES OF THE WORLD 101 (2nd ed., 2005) **['Prescott & Schofield']**; INTERNATIONAL LAW ASSOCIATION, BASELINES UNDER THE INTERNATIONAL LAW OF THE SEA 28, 31 (2012) **['ILA BASELINES']**.

[118] Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. 68 1985, ¶49.

to address the challenges posed by different countries using different measurements of the nominal low-water line.[119]

Indeed, as noted by the UN Office of Ocean Affairs and the Law of Sea, the normal baseline exists independent of its representation on the charts.[120] The only reason why an explicit safeguard in UNCLOS against abuse[121] and bad faith[122] by states in exaggerating their baselines[123] was not added because it was presumed that states would act in good faith[124] and the omission of the safeguard was '*hardly likely to induce Governments to shift the low-water lines on their charts unreasonably.*'[125]

Lastly, Article 7 explicitly mentions that in the case of deltas and other natural conditions, straight baselines (a special case of normal baselines) remain effective despite subsequent regression of the low-water line, unless changed by the coastal state.[126] This implies that, outside these scenarios, changes in the coast and the low-water line must be reflected in the normal baseline under Article 5.[127] This is supported by the principle, *expressio unius est exclusio alterius*,

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[119] ILA BASELINES, 12.

[120] U.N. Office for Ocean Aff. & L. Sea, Baselines: an examination of the relevant provisions of the United Nations Convention on the Law of the Sea, UN Sales No. E.88.V.5 (1989).

[121] J.P.A. Fancois (Special Rapporteur on the Regime of the Territorial Sea), Rep. on the Regime of the Territorial Sea, p. 22, U.N. Doc. A/CN.4/53 (Apr. 4, 1952).

[122] ILC, Y.B., Vol. I, U.N. Doc. A/CN.4/78/1954.

[123] ILC, Yearbook of the International Law Commission, Vol. II, p.77, U.N. Doc. A/CN.4/61/Add.l/1953.

[124] VCLT, art. 27, 31.

[125] ILC, Y.B., vol. II, p. 267, U.N. Doc. A/CN.4/SER.A/1956.

[126] UNCLOS, art. 7.

[127] ILA BASELINES, 8; Prescott & Schofield, 101; David D. Caron, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level*, 17 ECOLOGY L.Q. 621, (1990) **['Caron'].**

i.e., the expression of one thing means exclusion of all others.[128]

Hence, as per the ordinary meaning of UNCLOS Article 5 and 7, normal baselines are decidedly ambulatory in nature.[129]

### 2. Subsequent Practice of State Parties does not establish Agreement among parties regarding UNCLOS' interpretation

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.[130] However, for subsequent practice to establish an agreement among treaty parties regarding its interpretation, such agreement must include all parties,[131] thereby, the objection of even one party negates the existence of such an agreement.

In *Whaling in the Antarctic*, while interpreting the International Convention for the Regulation of Whaling, the ICJ refused to consider certain resolutions as subsequent practice establishing the agreement of the parties.[132] This was because the resolutions were adopted without the "*support of all States parties to the Convention and, in particular, without the concurrence of Japan*,"[133] against whom the Applicant sought to apply a specific interpretation based on these resolutions.[134]

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[128] *See generally,* A.A. Yusuf & D. Peat, *A Contrario Interpretation in the Jurisprudence of the International Court of Justice*, 3(1) CAN. J. COMP. & CONTEMP. L. 1 (2017).

[129] ILA BASELINES, 25; Caron, 634 (1990).

[130] VCLT, art. 31(3)(b)

[131] Draft Conclusions on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties and commentaries thereto *in* the Report of the ILC on the Work of its Seventieth session, ¶16 to Conclusion 4, A/73/10 (2018) **['Subsequent Practice Conclusions Commentary']**.

[132] Whaling in the Antarctic (Austl. v. Japan: N.Z. intervening), Judgment, 2014 I.C.J. 226, ¶83.

[133] *Id.*

[134] *Id., see generally.*

Similarly, with regards to baseline fixation under UNCLOS, Rovinia has consistently opposed such practice through its statements[135] and negative votes on OCDP Resolutions,[136] and several other states have also expressed their apprehension regarding the practice in their statements to the Sixth UNGA Committee.[137] Resultantly, the subsequent practice of state parties to the UNCLOS has not culminated in an agreement that permits baseline fixation.

## B. NO REGIONAL CUSTOM EXISTS IN THE PAINE PENINSULA OF FIXED BASELINES.

A rule of particular customary international law is a customary rule applying only among a limited number of states.[138] Such a rule can be a regional rule, applying among the states of a given geographical area.[139] However, no regional rule can be established in this case, as the universally applicable provisions and principles of UNCLOS must be uniformly applied worldwide.[140] Further, sea delimitation, being inherently international, cannot be dictated solely by a coastal State's municipal law.[141]

In any event, **(I)** state practice and *opinio juris* do not support the formation of a regional custom in the Paine Peninsula. Further, even if the regional custom has developed, **(II)** Rovinia is a persistent objector to it.

### 1. State Practice and *Opinio Juris* do not support the formation of Regional Custom

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[135] Problem, ¶17, ¶65.

[136] Problem, ¶17, ¶20.

[137] U.N. GAOR 78th Sess., Summary record of the 23rd meeting Sixth Committee, ¶75, ¶122, U.N. Doc. A/C.6/78/SR.23, (2023) [statements by Nordic countries and the U.K] **['Sea-Level Rise Debate']**.

[138] 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, ¶3 of Commentary to Conclusion 16, A/73/10 (2018) **['CIL Conclusions Commentary']**.

[139] CIL Conclusions Commentary, ¶4 to Conclusion 16,

[140] Sea-Level Rise Debate, 52 [Statement of EU].

[141] Fisheries, 132.

In order for a practice to be recognized as a regional custom, the threshold is much higher as compared to a general custom.[142] The application of two-element approach of state practice and *opinio juris* is stricter in rules of regional custom as compared to a general custom.[143] Indeed the alleged regional custom must have been practiced and accepted as law by *"all"* the concerned states.[144]

Presently, far from undertaking the practice of fixed baselines, Rovinia has constantly voted against any OCDP resolution endorsing the fixed baselines approach stating that such practice violates the law of the sea and longstanding regional practice.[145] Therefore, there exists no state practice and *opinio* from Rovinia's side thereby prohibiting the formation of any regional custom in the Paine Peninsula.

### 2. Even if a Regional Custom has Developed, Rovinia is a persistent objector to it

Moreover, as held by the ICJ in *Asylum*, even if a custom exists it cannot be invoked against a party which has persistently objected to the same.[146] As per the persistent objector rule, when a state has objected to a customary rule or a regional custom[147] while it was in the process of formation, it is not opposable to such state.[148] Additionally, its objection must be clearly expressed and persistent.[149]

The clarity requirement implies that the objection must demonstrate non acceptance of the

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[142] 2 SHAW, INTERNATIONAL LAW, 92-93 (6th ed. 2008).

[143] CIL Conclusions Commentary, ¶7 to Conclusion 16.

[144] *Id.*

[145] Problem, ¶16, ¶20.

[146] Asylum Case (Colom. v. Peru), Judgment, 1950 I.C.J. 266, pp.277-78.

[147] CIL Conclusions Commentary, ¶2 to Conclusion 16.

[148] *Id.*, ¶1 to Conclusion 15.

[149] CIL Conclusions, Conclusion 15(2).

emerging norm[150] and that the state must openly dissent from the alleged rule.[151] This must be done when the said customary norm is still evolving and has not yet crystallized into a binding custom.[152] On the other hand, persistency requires that objection must be restated whenever circumstances require, even after the rule has emerged.[153] However, states are not supposed to object at every occasion, when their position is already well known.[154]

In this regard, Rovinia has openly dissented and conveyed its non-acceptance of the rule of fixed baselines. This is clear from its objection at the UN and note verbales which state that such practice, "*would violate the law of the sea and longstanding regional practice*"[155] and that "*so-called freezing laws are without effect, and Rovinia retains, as do all states, the right to grant licenses to fish in the high seas.*"[156] Thus, Rovinia has satisfied the requirement of clarity.

Furthermore, Rovinia's aforementioned objections at the UN and in the note verbales were made in March 2016 when the other OCDP member states were only '*considering*' fixed baselines legislations.[157] Resultantly, even before the state practice and *opinio juris* had solidified, i.e., when the alleged regional custom was evolving, Rovinia had objected to the same.

Thereafter, ever since the very first OCDP Meeting, Rovinia has persistently objected and has voted against every resolution that considered fixed baselines practice as a regional rule

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[150] CIL Conclusions Commentary, ¶7 to conclusion 15.

[151] International Law Association, Final Report: Statement of Principles Applicable to the Formation of General Customary International Law 28 (2000) **['ILA 2000']**.

[152] JAMES A GREEN, THE PERSISTENT OBJECTOR RULE IN INTERNATIONAL LAW 136-37 (1st ed., 2016); ILA 2000, 28.

[153] CIL Conclusions Commentary, ¶9 to Conclusion 15.

[154] *Id.*

[155] Problem, ¶14; Clarification ¶3.

[156] Problem, ¶17.

[157] Problem, ¶14; Clarification ¶3.

applicable to the states of Paine Peninsula.[158] Indeed, since 2018, Rovinia has continued issuing fishing licenses in the Triton Shoal, in defiance of Ambrosia's purported fixed baseline and EEZ,[159] and shown the persistency of it objection through its state practice.

Furthermore, Rovinia's abstention from the OCDP Resolution of 6 March 2023, does not imply its objection is no longer persistent. This is because, firstly, Rovinia's position was already well-known by that time as evidenced by its previous objections up to that point. Secondly, Rovinia's abstention cannot be reasonably read to indicate support for the resolution, as its underlying rationale was in order to express solidarity following the Dovilina catastrophe.[160] Lastly, and more importantly, Rovinia continued to issuing fishing licenses in the Triton Shoal during this time as well,[161] hence disproving any claim of the objection not being persistent.

Consequently, Rovinia is persistent objector and is thus not bound the regional custom even if it has emerged.

### C. BASELINE FIXATION BY AMBROSIA CANNOT BE ALLOWED AS IT CAUSES INEQUITY

Equity is at the "*heart of the object and purpose*" of the UNCLOS.[162] Even in maritime disputes, courts have given paramount importance to equity.[163] However, Ambrosia's fixation of baselines promotes inequity in the present case, and thus must not be permitted.

Firstly, global warming has altered fish movements in the Naegea Sea, causing significant concentrations of yellowfin tuna (which are otherwise found 200 nautical miles off the coasts)[164]

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[158] Problem, ¶16, ¶20.

[159] Problem, ¶22.

[160] *Id.*

[161] Problem, ¶58.

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

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

[164] Problem, ¶4.

to shift from the High Seas to the Triton Shoal.[165] In this regard, it is clearly inequitable that Ambrosia attempts to avoid negative impacts of sea-level rise and retain its maritime advantages by fixing its baselines,[166] while simultaneously exploiting the positive effects of global warming, i.e., migration of fish stocks to Triton Shoal.

Secondly, Rovinia's fishing industry constitutes nearly 40% of its GDP and is primarily dependent on yellowfin tuna,[167] whereas Ambrosia's fishing industry constitutes only 20% of its GDP and is not primarily reliant on tuna. Resultantly, fixing of baselines by Ambrosia and consequent exclusion of Rovinia's access to yellowfin tuna would be "*radically inquitable*" as it is *"likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of"*[168] Rovinia.

Resultantly, Ambrosia cannot be allowed to fix baselines as it permits inequity in the present case.

## IV. ROVINIA'S JUDICIAL SEIZURE AND SALE OF 'THE FALCON' ON THE BASIS OF THE TRANSITIONAL COUNCIL'S WAIVER OF IMMUNITY IS IN ACCORDANCE WITH 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.[169] However, a state can waive its immunity from execution.[170] Under international law, state actions like waivers, expressing consent, etc. can only be undertaken by entities possessing the requisite

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[165] Problem, ¶22.

[166] Problem, ¶13.

[167] Problem, ¶4.

[168] Delimitation of the Maritime Boundary in the Gulf of Maine Area, (Canada/U.S.), Judgment 1984 I.C.J. 67, ¶237.

[169] 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, **['UNCJISP']**.

[170] UNCJISP, art. 18(a), 19(a).

authority or "*full powers*" to bind the state.[171] A mere claim to represent a state is insufficient, and the entity must have the legal capacity to do so.[172] In this regard, governments are agents that possess the right to represent the State internationally[173] and there can only be one government capable of representing the State.[174] Where there are competing entities for governmental status, only the entity recognised as the government will be able to invoke state immunity.[175]

At present, the Head of the Ambrosia's Transitional Council, i.e., Ms. Piretis, signed a waiver of the plane's immunity, demonstrating the consent for the seizure and sale of *The Falcon*.[176] In this regard, the Permola Court's decision to order the seizure and sale of *The Falcon* following a waiver of immunity issued by the Transitional Council is in accordance with international law as **(A)** the Transitional Council has the right to represent Ambrosia internationally as it meets the criteria for governmental status under customary international law; and **(B)** in any event, Rovinia retains the discretion to determine which government to recognize when both competing entities satisfy certain criteria for governmental status.

### A. THE TRANSITIONAL COUNCIL HAS THE RIGHT TO REPRESENT AMBROSIA INTERNATIONALLY AS IT MEETS THE CRITERIA FOR GOVERNMENTAL STATUS UNDER CUSTOMARY INTERNATIONAL LAW

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[171] 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), art. 7; United Nations, Full Powers Guidelines, U.N. Doc. LA41TR/221 (2010).

[172] *Id.*

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

[174] Jansen v. Mexico (U.S v. Mex.) 29 R.I.A.A. 159, 184-85 (Mixed Comm'n 1869).

[175] Victor Cedeño (Special Rapporteur on Unilateral Acts of States), Sixth Rep. on Unilateral Acts of States, ¶92 U.N. Doc. A/CN.4/534 (May 30, 2003) **['Sixth Report']**; LISELOTTE KASSE B'NICCO, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW A CASE STUDY OF THE VENEZUELAN PRESIDENTIAL CRISIS 18 (2021) **['LISELOTTE']**.

[176] Problem, ¶44.

The Transitional Council has the right to represent Ambrosia internationally as it meets objective customary international law criteria for governmental status[177] because **(1)** it has a claim to governmental status; **(2)** it is independent and autonomous; **(3)** it possesses effective control over Ambrosia**.**

## 1. The Transitional Council has an express claim to governmental status

To qualify for governmental status, the most fundamental pre-requisite is that an entity must explicitly assert itself as the government of the state.[178] This can be achieved through a public declaration or the issuance of an instrument with the force of municipal law.[179] Since the Transitional Council had publicly declared in a televised address that the Council "*will exercise the executive functions*" and "*ensure that [Ambrosia] is governed peacefully and stably,*"[180] the criteria of an express claim to governmental status is satisfied.

## 2. The Transitional Council is independent and autonomous

Under international law, a government's independence from any foreign entity's control (direct or indirect) is also critical,[181] as otherwise it would be merely a puppet government.[182] This

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[177] NIKO PAVLOPOULOS, THE IDENTITY OF GOVERNMENTS IN INTERNATIONAL LAW 140, §4.2 (Oxford University Press 2024) **['PAVLOPOULOS']**

[178] Brownlie, *Recognition in Theory and Practice*. 53 BYIL 197, 202 (1982); PAVLOPOULOS, 98.

[179] PAVLOPOULOS, 98.

[180] Problem, ¶38.

[181] HANS BLIX, CONTEMPORARY ASPECTS OF RECOGNITION, 130 Hague *Recueil* (1970) 587, 642 **['Blix']**; Stefan Talmon, *"Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law"*, in G. Goodwin-Gill and S. Talmon (eds.), The Reality of International Law, n.124 (1999) **['TALMON']**; Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v Costa Rica) (1923) I R.I.A.A 375 **['TINOCO'].**

[182] SCOR, 1974th Meeting' (Nov. 22, 1976) UN Doc. S/ PV.1974, ¶205. M.J. PETERSON, RECOGNITION OF GOVERNMENTS: LEGAL DOCTRINE AND STATE PRACTICE, 1815-1995, 77-80 (Macmillan Press, 1997) ['**PETERSON**'].

can be proven when the government can maintain authority over the state's territory and population without foreign assistance.[183] At present, the Transitional Council assumed power and established control over Ambrosia without any foreign support,[184] thereby satisfying the criteria of autonomy and independence.

### 3. The Transitional Council possesses effective control over Ambrosia

As evident from state practice,[185] arbitral decisions,[186] and scholarly opinion,[187] the authority to represent a state internationally under customary international law is derived from the exercise of effective control.[188] In this regard, Transitional Council has effective control **(a)** as exercises substantial control over Ambrosia's territory and population. Additionally, **(b)** governments without effective control cannot represent states based solely on their constitutional origin.

#### *a. The Transitional Council controls the Ambrosia's territory and population*

The main criterion in international law for government status is that the entity claiming to be the government of a State exercise effective control over the State's territory and population.[189]

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[183] PAVLOPOULOS, 105; PETERSON, 77–80.

[184] Problem, ¶38, ¶48.

[185] Hesperides Hotels v. Aegean Holidays Limited case [1978] QB 205, p.218 **['Hesperides Hotels']**.

[186] TINOCO, 376-386.

[187] TALMON, 10.

[188] AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 82 (7th edn 1997).

[189] LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW, 95 (Cambridge University Press 2013) ['**LAUTERPACHT**']; INTERNATIONAL LAW ASSOCIATION, RECOGNITION/NON-RECOGNITION IN INTERNATIONAL LAW 11 (2018) **['ILA RECOGNITION']**; Anne Schuit, *Recognition of Governments in International Law and the Recent Conflict in Libya,* 14 INT'L COMM. L. REV. 381 (2012), 389 ['**SCHUIT**'].

Such control must be demonstrable, including the ability to enforce laws, manage state functions across most or all of the state's territory[190] and the ability to discharge its external obligations.[191] Indeed, the effective functioning of other common central organs of state can also demonstrate the acceptance of the government of executive authority.[192]

However, effective control is not contingent upon the voluntary consent of its population,[193] but rather upon the population's acquiescence to its authority, adherence to its laws, minimal internal resistance and government's ability to command the obedience of the majority.[194]

In the instant case, Transitional Council formed a structured body capable of governing Ambrosia's affairs[195] and enjoyed substantial support among the executive, legislative, police, intelligence, and military sectors.[196] Furthermore, the Council was able to pass laws like the Reconstruction Bill, disburse government funds, and managed the disaster response in Dovilina.[197] Additionally, Ms. Piretis and the Council had come into power by widespread public support as showcased by twelve major demonstrations across Ambrosia.[198] Although there were some protests in favour of Ms. Zavala,[199] the Council continued to enjoy widespread backing from the

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[190] Stefan Talmon, *Recognition of Opposition Groups as the Legitimate Representative of a People*, CHINESE J. INT'L L. 12, 232 (2013).

[191] TINOCO, 378-379.

[192] *Id.*

[193] PETERSON, 53.

[194] Blix, 641-642; Asma Jilani v. The Government of Punjab and another, 1972 PLD Supreme Court 139 [1972].

[195] Problem, ¶38.

[196] Problem, ¶47.

[197] Problem, ¶38, ¶48.

[198] Problem, ¶35.

[199] Problem, ¶48.

general population of Ambrosia.[200]

Indeed, "*the Council controlled all parts of Ambrosia*"[201] thereby satisfying the primary criterion[202] for de facto governance which is effective territorial authority.

*b. Governments without effective control cannot represent states based solely on their constitutional origin*

Under customary international law, constitutional validity is not a requirement for the enjoyment of governmental status.[203] Indeed, as can be seen from the lack of success of the Tobar doctrine,[204] the reliance on constitutional origin for governmental status has diminished in contemporary state practice.[205] Furthermore, arbitral tribunals[206] and national courts[207] have repeated rejected this criterion and have instead favoured the effective control doctrine. Resultantly, even though the Zavala administration had a constitutional origin,[208] it cannot be regarded as the government of Ambrosia since the Transition Council enjoyed effective control.

## B. ROVINIA RETAINS THE DISCRETION TO DETERMINE WHICH GOVERNMENT TO RECOGNIZE

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[200] Problem, ¶47.

[201] Problem, ¶48.

[202] LISELOTTE, 8.

[203] PAVLOPOULOS, 107; Marston (ed), *UKMIL* (1999) 70 BYIL 517, 584.

[204] LISELOTTE, 9-10; SCHUIT, 392-393.

[205] Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AJIL 46 (1992); Gregory H. Fox, *The Right to Political Participation in International Law* 17 YALE J. INT'L L. 539 (1992).

[206] TINOCO, 381; LAUTERPACHT, 102-103 [see France v. Chile, Franco Chilean Arbitration, 5 R.I.A.A 324 Lausanne].

[207] Hesperides Hotels, 216-218.

[208] Problem, ¶47, ¶56.

**WHEN BOTH COMPETING ENTITIES SATISFY CERTAIN CRITERIA FOR GOVERNMENTAL STATUS**

Recognition of government is a unilateral act, and resultantly the decision whether or not to recognise an authority as the government is at the discretion of each individual state.[209] This also implies that there no duty to recognise exists[210] and that states do not have to recognise a government, even if this government complies with all necessary criteria.[211]

Furthermore, although the act of recognition of states is mainly declarative, it has also has certain important legal effects.[212] Specifically, in cases where there are competing entities for governmental status, only the recognised entity will be able to invoke state immunity.[213]

Although the applicants may argue that recognition may be limited by the principle of non-intervention and that the premature recognition of the Transition Council may violate this principle,[214] it should be noted that the principle of non-intervention must be harmonized with largely discretionary and unilateral nature of recognition.[215] In this regard, state practice in the similar situation of Venezuela shows how the principle of non-intervention, the discretionary nature of recognition, and the factors of governmental status can be adequately harmonized.

During the period of 2019-20 in Venezuela, when both the Guaidó and Maduro governments satisfied certain criteria of governmental status,[216] the international community was

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[209] SCHUIT, 384; Report of the ILC on the work of its fifty-fifth session, ¶288, U.N. Doc. A/58/10 (2003).

[210] Sixth Report, ¶39.

[211] SCHUIT, 384

[212] LISELOTTE, 18; Sixth Report, 92; ILA RECOGNITION, 22, n.130, 131, 132.

[213] Sixth Report, ¶92;

[214] LISELOTTE, 14, 37-38; ILA Recognition, 11.

[215] Fragmentation Conclusions, Conclusion 4.

[216] LISELOTTE, 62-63 [Stating that the Maduro government satisfied effective control]; *See contra*, Government of Canada, *Lima Group Declaration* (Apr. 1, 2019) https://www.international.gc.ca/world-monde/international_relations-relations_internationales/latin_america-amerique_latine/2019-01-04-lima_group-

split on matter of recognition, with nearly 60 states recognizing the Guaidó government[217] and around 50 states recognizing the Maduro government.[218] Even the arbitral tribunals and national courts were split on this matter, with the ICSID tribunals usually recognizing the Maduro government,[219] while the national courts of the United Kingdom[220] and the USA[221] had recognized the Guaidó government. From this, it can be concluded that when both the competing entities meet some of the criteria of governmental status, a third state retains the discretion to choose which government to recognize without violating the principle of non-intervention.

Since at present the Transitional Council controlled all parts of Ambrosia[222] while the Zavala government was purportedly the constitutional government,[223] and the international community was divided, with 25 states recognizing the Council and 15 states recognizing Ms. Zavala,[224] the rationale of the Venezuela situation squarely applies herein. Resultantly, Rovinia by recognizing the Transition Council and its waiver of immunity has not contravened any rule of international law.

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[217] NATO Association, *The Venezuela Crisis: Juan Guido v. Nicolás Madur*o, (Mar. 12, 2019), https://natoassociation.ca/the-venezuela-crisis-juan-guido-vs-nicolas-maduro/.

[218] *Id.*

[219] Mobil Cerro Negro Holding, Ltd., Mobil Cerro Negro, Ltd., Mobil Corporation and others v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/07/27, Decision on the Respondent's Representation in this Proceeding, ¶63 (2021).

[220] "Maduro Board" of the Central Bank of Venezuela (Respondent/Cross-Appellant) v "Guaidó Board" of the Central Bank of Venezuela (Appellant/Cross Respondent), [2021] UKSC 57, ¶181.

[221] Rusoro Mining Limited, v Bolivarian Republic of Venezuela, 3d Cir. 23-1650 (ABJ), at 12.

[222] Problem, ¶48.

[223] Problem, ¶56.

[224] Problem, ¶49.

## PRAYER FOR RELIEF

For the aforementioned reasons, the Republic of Rovinia, the Respondent, respectfully prays that this Honourable Court adjudge and declare that:

**I.** The Court lacks jurisdiction to entertain Ambrosia's submission (b) because it is outside the scope of the compromissory clause of the OCDP Charter;

**II.** Rovinia's assertion of criminal jurisdiction over Ms. Cross, and her arrest and prosecution, are fully consistent with international law

**III.** 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

**IV.** 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.

Rovinia 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 Rovinia*