

**INTERNATIONAL COURT OF JUSTICE**



**THE PEACE PALACE,  
THE HAGUE, THE NETHERLANDS**

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

**THE CASE CONCERNING  
THE NAEGEA SEA**

**UNION OF AMBROSIA  
(*APPLICANT*)**

**v**

**REPUBLIC OF ROVINIA  
(*RESPONDENT*)**

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**MEMORIAL FOR APPLICANT**

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TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

INDEX OF AUTHORITIES..... vi

STATEMENT OF JURISDICTION..... xvii

STATEMENT OF FACTS..... xviii

SUMMARY OF PLEADINGS ..... xxii

PLEADINGS ..... 1

**A. THE COURT HAS JURISDICTION TO ENTERTAIN AMBROSIA’S SUBMISSION (B).** ..... 1

        1. THERE IS A “DISPUTE OF A JURIDICAL NATURE” BETWEEN AMBROSIA AND ROVINIA CONCERNING THE ARREST AND PROSECUTION OF MS. CROSS..... 1

        2. THIS COURT HAS JURISDICTION *RATIONE TEMPORIS* OVER SUBMISSION (B). ..... 3

            a. The “real cause” of the dispute is the arrest and prosecution of Ms. Cross in May 2024, a situation that occurred after the compromissory clause became effective..... 3

            b. Ms. Cross’ involvement in the ILSA Program from 2017 to 2020 forms part of “composite acts” that culminated in the application of Rovinia’s Criminal Code to Ms. Cross in 2024..... 4

            c. The arrest and prosecution of Ms. Cross pursuant to Rovinia’s reinterpretation of its Criminal Code is a “new situation” that gave rise to a dispute..... 4

            d. Assuming that the dispute arose out of Ms. Cross involvement in the ILSA Program, this Court may exercise jurisdiction based on the “doctrine of continuing violation.” ..... 5

        3. THIS COURT HAS JURISDICTION *RATIONE MATERIAE* OVER SUBMISSION (B). ..... 5

            a. Applying textual interpretation, Rovinia’s exercise of criminal jurisdiction over a former foreign official for enforced disappearance is a matter not “essentially” within its domestic jurisdiction..... 6

            b. Applying supplementary means of interpretation, Rovinia’s exercise of criminal jurisdiction over Ms. Cross falls within the scope of the jurisdiction established by the OCDP Charter. .... 7

        4. ALTERNATIVELY, THIS COURT MAY EXERCISE ITS JURISDICTION UNDER *LA COMPÉTENCE DE LA COMPÉTENCE*. ..... 7

<b>B. ROVINIA VIOLATED THE INTERNATIONAL LEGAL RULES ON JURISDICTION AND IMMUNITY BY ARRESTING AND PROSECUTING MS. GERTRUDE CROSS.....</b>	<b>7</b>
<b>1. THE ARREST AND PROSECUTION OF MS. CROSS VIOLATED AMBROSIA’S SOVEREIGNTY BECAUSE ROVINIA LACKS JURISDICTION <i>RATIONE MATERIAE</i> OVER HER ALLEGED CRIME OF ENFORCED DISAPPEARANCE. ....</b>	<b>8</b>
<b>a. Customary international law does not recognize universal jurisdiction in prosecuting persons accused of enforced disappearance.....</b>	<b>8</b>
<b>b. The ICPPED does not mandate States to absolutely exercise universal jurisdiction for enforced disappearance. ....</b>	<b>9</b>
i. Article 9(2) of the ICPPED allows States to exercise universal jurisdiction only “as may be necessary.” .....	10
ii. Ambrosia’s request for extradition triggers the exception in Article 9(2) of the ICPPED and limits Rovinia’s competence to exercise universal jurisdiction. ....	10
<b>c. Ms. Cross’ alleged crime of enforced disappearance was not committed in the context of crimes against humanity where universal jurisdiction may be applied.....</b>	<b>11</b>
<b>d. The Nationality Principle, Protective Principle, and Effects Doctrine cannot be invoked as basis for Rovinia’s exercise of extraterritorial criminal jurisdiction. ....</b>	<b>11</b>
<b>2. IN ANY CASE, ROVINIA VIOLATED THE CUSTOMARY INTERNATIONAL LAW ON STATE IMMUNITIES BECAUSE MS. CROSS IS IMMUNE FROM ITS CRIMINAL JURISDICTION. ....</b>	<b>12</b>
<b>a. Ms. Cross is immune <i>ratione materiae</i> because her acts in the ILSA Program were conducted in an official capacity.....</b>	<b>13</b>
i. The wrongfulness of enforced disappearance does not divest State officials of immunity <i>ratione materiae</i> .....	14
ii. The prohibition of enforced disappearance is not a jus cogens norm where immunity <i>ratione materiae</i> may not apply.....	14
<b>b. Immunity <i>ratione materiae</i> subsists for former State officials like Ms. Cross. ....</b>	<b>15</b>
<b>c. Ms. Cross’ immunity may only be disregarded before Ambrosian courts.....</b>	<b>15</b>
<b>d. The inclusion of enforced disappearance among the exceptions to immunity <i>ratione materiae</i> under the ILC’s Draft Article 7 is not supported by customary international law. ....</b>	<b>16</b>

<b>C. 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.....</b>	<b>16</b>
<b>1. AMBROSIA’S ENACTMENT OF ITS BASELINE FREEZING LAW (“BFL”) IS CONSISTENT WITH CONVENTIONAL AND CUSTOMARY INTERNATIONAL LAW.....</b>	<b>17</b>
<b>a. Ambrosia’s BFL is consistent with UNCLOS.....</b>	<b>17</b>
i. Applying textual interpretation, UNCLOS does not prohibit the fixing of baselines.....	17
ii. Applying teleological interpretation, the fixing of baselines is consistent with the principle of legal certainty and stability.....	18
iii. The subsequent practice of States Parties to UNCLOS supports the fixing of baselines.....	19
<b>b. Ambrosia’s BFL is consistent with the existing international custom of fixing baselines due to sea-level rise.....</b>	<b>19</b>
<b>c. The landward ambulatory baselines approach, as applied to sea-level rise, is not supported by international law.....</b>	<b>20</b>
<b>d. The landward ambulatory baselines approach, as applied to sea-level rise, is inequitable.....</b>	<b>20</b>
<b>2. ROVINIA’S ISSUANCE OF FISHING LICENSES OVER PARTS OF TRITON SHOAL THAT FALL WITHIN AMBROSIA’S EEZ VIOLATES UNCLOS.....</b>	<b>22</b>
<b>3. ROVINIA’S ISSUANCE OF FISHING LICENSES OVER PARTS OF TRITON SHOAL THAT FALL WITHIN AMBROSIA’S EEZ VIOLATES REGIONAL CUSTOM.....</b>	<b>22</b>
<b>a. There exists a regional custom of fixing baselines among the States in the Paine Peninsula, which satisfies the higher threshold of uniformity in State practice.....</b>	<b>23</b>
<b>b. Rovinia is not a persistent objector to this regional custom. ....</b>	<b>24</b>
<b>4. ROVINIA IS ENGAGED IN AN INTERNATIONALLY WRONGFUL ACT WHICH IT MUST CEASE BY REVOKING EXISTING FISHING LICENSES.....</b>	<b>24</b>
<b>5. IN ANY CASE, FUNDAMENTAL CHANGE OF CIRCUMSTANCES WARRANTS THE TERMINATION OF AMBROSIA’S TREATY OBLIGATIONS UNDER UNCLOS. ....</b>	<b>24</b>
<b>a. UNCLOS is not a treaty that establishes territorial boundaries.....</b>	<b>24</b>
<b>b. The conditions for terminating a treaty on the ground of fundamental change of circumstances are present.....</b>	<b>25</b>
<b>D. ROVINIA’S SEIZURE AND SALE OF AMBROSIA’S AIRCRAFT PURSUANT TO THE PERMOLA COURT’S DECISION ON 14 JULY 2023 ON THE BASIS</b>	

<b>OF THE TRANSITIONAL COUNCIL’S PURPORTED WAIVER OF IMMUNITY VIOLATED INTERNATIONAL LAW. ....</b>	<b>26</b>
<b>1. ROVINIA’S RECOGNITION OF THE TRANSITIONAL COUNCIL VIOLATED RULES ON RECOGNITION AND NON-RECOGNITION OF GOVERNMENTS. ....</b>	<b>26</b>
<b>a. Recognition and non-recognition are legal matters that are relevant in resolving the legality of the seizure and sale of The Falcon. ....</b>	<b>26</b>
<b>b. Rovinia violated its obligation to recognize the Zavala government as Ambrosia’s legitimate government under international custom. ....</b>	<b>27</b>
i. Customary international law privileges constitutional claimants like the Zavala government in the grant of recognition. ....	28
ii. Customary international law privileges democratically representative claimants like the Zavala government in the grant of recognition. ....	29
iii. In any case, the Zavala government retained its status because the Transitional Council failed to exercise effective control. ....	30
<b>c. Rovinia’s recognition violated its obligation not to recognize the Transitional Council. ....</b>	<b>31</b>
i. The Transitional Council seized power in violation of the regional custom of democratic governance in the Paine Peninsula. ....	31
ii. The Transitional Council seized power in violation of the Ambrosians’ right to political self-determination. ....	32
<b>2. ROVINIA’S SEIZURE AND SALE OF AMBROSIA’S AIRCRAFT VIOLATED AMBROSIA’S IMMUNITY FROM JURISDICTION AND ENFORCEMENT UNDER CUSTOMARY INTERNATIONAL LAW. ....</b>	<b>32</b>
<b>a. The Permola Court’s adjudication of <i>O’Mander Corp. v. Union of Ambrosia</i> violated Ambrosia’s jurisdictional immunity. ....</b>	<b>33</b>
i. Ambrosia’s contract with O’Mander Corp. for the Ministry of Telecommunications was not a commercial transaction under the purpose test. ....	33
ii. Ambrosia neither expressly nor impliedly consented to the Permola Court’s jurisdiction. ....	34
<b>b. Rovinia’s seizure and sale of The Falcon violated Ambrosia’s immunity from post-judgment measures of constraint. ....</b>	<b>34</b>

*PRELIMINARY PAGES*

i. The Transitional Council’s waiver of immunity was ineffectual because it did not have the authority to consent to the Judgment Award. ....	34
ii. The Falcon was immune from the Judgment Award because it was exclusively used for government non-commercial purposes. ....	35
<b>3. ROVINIA’S SEIZURE AND SALE OF AMBROSIA’S AIRCRAFT VIOLATED THE PRINCIPLE OF NON-INTERVENTION. ....</b>	<b>35</b>
<b>PRAYER FOR RELIEF.....</b>	<b>36</b>

INDEX OF AUTHORITIES

INTERNATIONAL AGREEMENTS

Additional Convention to the General Treaty of Peace and Amity of 1907 (1908)	27
African Charter on Democracy, Elections and Governance (2007)	27
African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217	30
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Charter of the United Nations, October 24, 1945, 1 UN Treaty Series XVI	8, 32
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Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, 1978 I.C.J. 3 (December 19)	2, 25
Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica), 1 R.I.A.A. 369, (1923)	27, 30
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Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, 1984 I.C.J. 246 (October 12)	21
Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, 2009 I.C.J. 213 (July 13)	22, 23
East Timor (Portugal v. Australia), Judgment, 1995 I.C.J. 90 (June 30)	32
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Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16 (June 21)	27
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9)	32
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Statement of New Zealand (78 <sup>th</sup> session of ILC, 2023)	19
Statement of the European Union (78 <sup>th</sup> session of ILC, 2023)	19
Submission of Antigua and Barbuda (72 <sup>nd</sup> session of ILC, 202)	21

*PRELIMINARY PAGES*

Submission of Federated States of Micronesia (72 <sup>nd</sup> session of ILC, 2021)	19, 21
Submission of Fiji (A/C.6/74/SR.27)	19
Submission of Jamaica (A/C.6/74/SR.27)	19
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PRELIMINARY PAGES

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SNJÓLAUG ÁRNADÓTTIR, <i>CLIMATE CHANGE AND MARITIME BOUNDARIES: LEGAL CONSEQUENCES OF SEA LEVEL RISE</i> , Cambridge University Press (2021)	25

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PRELIMINARY PAGES

Rebecca Barber, <i>The Role of the General Assembly in Determining the Legitimacy of Governments</i> , 71 INTERNATIONAL & COMPARATIVE LAW QUARTERLY 627 (2022)	28
Robert Gillet, <i>Fisheries in the Economies of the Pacific Island Countries and Territories</i> , ASIAN DEVELOPMENT BANK (2009)	21
Rosemary Rayfuse, 'Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of Disappearing States', in MICHAEL GERRARD & GREGORY WANNIER (EDS.), THREATENED ISLAND NATIONS, Cambridge University Press (2013)	25
Sean Murphy, <i>Ambulatory Versus Fixed Baselines Under the Law of the Sea</i> , 38(3) AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 721 (2023)	19
Stefan Talmon, 'Who Is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law', in GUY S. GOODWIN-GILL & STEFAN TALMON (EDS.), THE REALITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF IAN BROWNLIE, Oxford University Press (1999)	29
Thomas Franck, <i>The Emerging Right to Democratic Governance</i> , 86 AMERICAN JOURNAL OF INTERNATIONAL LAW 46 (1992)	29
<b>MISCELLANEOUS</b>	
Ministry of Foreign Affairs of Japan, Foreign Minister Hayashi's Meeting with the Delegation of the Pacific Islands Forum (2023)	19
United States, Resolution adopted by the 3 <sup>rd</sup> International Congress of Penal Law (1933)	9

## **STATEMENT OF JURISDICTION**

The Union of Ambrosia and the Republic of Rovinia (“**the Parties**”) have recognized the jurisdiction of the International Court of Justice (“**this Court**”) in conformity with Article XXI of the Charter of the Organization for Cooperation and Development in the Paine (“**OCDP Charter**”), the compromissory clause that recognizes this Court’s compulsory jurisdiction, without need of special agreement, pursuant to Article 36(1) of this Court’s Statute.

The OCDP Charter was signed by all Member States on 15 May 2015 and entered into force on 17 March 2016. The compromissory clause, by agreement of the Member States, entered into force on 17 March 2021.

By virtue of an Application filed with this Court on 11 July 2024, Ambrosia instituted proceedings against Rovinia with respect to a dispute concerning the Naegea Sea and certain other matters; namely, Rovinia’s arrest and prosecution of former Minister Gertrude Cross (“**Ms. Cross**”), Rovinia’s issuance of fishing licenses over the Triton Shoal in Ambrosia’s Exclusive Economic Zone, Rovinia’s recognition of the Transitional Council, and Rovinia’s seizure and sale of Ambrosia’s vice-presidential aircraft. Ambrosia submits that this Court has jurisdiction over the dispute regarding the arrest and prosecution of Ms. Cross.

On 30 August 2024, the Parties jointly communicated the Statement of Agreed Facts to this Court, indicating in their communication their agreement that Ambrosia would appear as “**Applicant**” and Rovinia as “**Respondent**,” without prejudice to any question of the burden of proof.

## **STATEMENT OF FACTS**

### **AMBROSIA, ROVINIA, AND THE OCDP CHARTER**

The Paine Peninsula is comprised of seven independent States, former colonies which have all gained independence by 1946. All seven States adopted constitutions providing for democratic political systems.

The Union of Ambrosia, located at the northernmost end, has a land area of approximately 180,000 square kilometers, population of 4 million, and a 910-kilometer coastline along the Naegea Sea. Much of Ambrosia lies below 10 meters above sea level, making it highly vulnerable to sea-level rise. The Republic of Rovinia, the southernmost State, is larger, spanning 900,000 square kilometers with 10 million people, and its high elevation provides greater resilience to sea-level rise. The Naegea Sea is a critical economic resource for the region, as the fishing of various tuna species accounts for 20 percent of Ambrosia's GDP.

In response to shared challenges regarding arms smuggling, drug trafficking, and other associated crimes, the seven States established the Organization for Cooperation and Development in the Paine ("**OCDP**"). Ratified in 2016, the OCDP Charter aims to protect the rule of law and democratic institutions, sustainably manage resources, respect maritime rights, and address natural disasters.

Article XXI of the OCDP Charter is a compromissory clause that recognizes the International Court of Justice's ("**this Court**") compulsory jurisdiction over disputes between Member States, excluding disputes "arising out of facts or situations occurring prior to the entry into force" of the article and those "relating to judicial proceedings on matters which ... are essentially within a Member State's domestic jurisdiction." This compromissory clause only took effect on 17 March 2021, five years after the entry into force of the OCDP Charter.

### **MINISTER CROSS AND THE ILSA PROGRAM**

In 2013, Ambrosian President Prosper Derey ("**President Derey**") appointed Ms. Gertrude Cross ("**Cross**") as Minister of the Interior to combat illicit drug production, distribution, and use. Acting in her official capacity, Minister Cross launched the Implementing

the Law for a Safer Ambrosia (“**ILSA**”) program, which pledged to address the dramatic increase in the flow of illegal drugs and weapons into Ambrosia and resulted in decrease in public concern.

On 7 September 2022, the Ambrosian Prosecutor General initiated an investigation into alleged abuses under the ILSA program. The inquiry led to the conviction of five police officers for kidnapping, with sentences of 10 to 15 years. However, the Prosecutor General concluded that there was insufficient evidence to charge Minister Cross. In November 2022, Ms. Cross resigned from office and moved to Rovinia.

On 2 May 2024, Rovinia arrested Ms. Cross and prosecuted her for enforced disappearance, a crime incorporated into Rovinia’s Criminal Code. Ambrosia’s Ambassador in Rovinia invoked before the Permola Court her immunity as a former official and requested for her extradition, but Rovinia’s President asserted their alleged right to prosecute Ms. Cross in accordance with their domestic laws.

#### **SEA-LEVEL RISE AND THE BASELINE FREEZING LAW**

In 2014, the Intergovernmental Panel on Climate Change issued a report describing the coastal recession on the Paine Peninsula. The report revealed that coastal recession due to sea-level rise was accelerating, with Ambrosia most affected among the seven States.

On 23 November 2015, the Ambrosian National Assembly approved the Baseline Freezing Law (“**BFL**”), fixing its maritime baselines at low-water marks as of 1 November 2015 to safeguard its Exclusive Economic Zone (“**EEZ**”) against coastal erosion. The law sought to protect Ambrosia’s sovereign and fishing rights in the Naegea Sea and to ensure that sea-level rise does not deprive the country of its national heritage and economic lifeline. By August 2016, all OCDP members except Rovinia had adopted laws similar to the BFL to ensure the stability of their maritime boundaries. Later, on 6 March 2023, the OCDP Assembly successfully adopted a resolution that referred to the importance of fixed baselines for fishing-dependent areas, because Rovinia abstained from the resolution.

In 2018, the Ambrosian Institute of Science reported that changes to water currents caused by global warming were altering the movements of fish in the Naegea Sea, concentrating on the

Triton Shoal. However, Ambrosia's coastlines had receded to a point that if baselines were established at the actual low-water line, all of Triton Shoal would be outside its EEZ.

On 2 July 2018, Rovinia began granting fishing permits for yellowfin tuna covering the entire Triton Shoal, in violation of Ambrosia's sovereign rights over its EEZ under international law. In protest, Ambrosia submitted four note verbales, but Rovinia did not reply to any of the communications.

### **THE CONSTITUTIONAL ZAVALA GOVERNMENT**

In February 2019, President Derey was re-elected with a new Vice-President, Mary Zavala ("**Zavala**"), who was assigned substantial responsibility for Ambrosia's foreign policy. The Air Force commissioned a vice-presidential aircraft for Vice-President Zavala, dubbed "The Falcon."

On 25 April 2022, President Derey suffered a hemorrhagic stroke, resulting in a coma. In accordance with Ambrosia's Constitution, presidential powers devolved upon Acting President Zavala.

On 23 February 2023, Hurricane Luna struck Dovelina, an Ambrosian fishing village, while President Zavala attended a multilateral summit abroad. Zavala's response to the Dovelina crisis and her refusal to enact the Reconstruction Bill due to concerns over its accountability mechanisms garnered significant public opposition. At the forefront of the protests against Zavala is Rooney Piretis ("**Piretis**"), a member of the National Assembly. Capitalizing the public discontent and Zavala's absence from Ambrosia, Piretis took over the government and established the Transitional Council alongside a few former ministers, military officers, and parliamentarians.

However, President Zavala addressed the media from Rovinia and asserted her legitimate status as Ambrosia's constitutional government. Opposition to the Transitional Council also emerged in Ambrosia, expressing concerns about its unconstitutionality and authoritarian tendencies. Police violence in these protests was condemned by human rights organizations.

### THE CAGING OF THE FALCON

On 14 March 2023, Rovinia impounded The Falcon for the satisfaction of a judgment award in *O'Mander Corp. v. Union of Ambrosia*. The subject matter of this case was a contract for the supply of 5G technology for Ambrosia's Ministry of Telecommunications. Prior to the impounding of The Falcon, Ambrosia repeatedly motioned to have the complaint dismissed based on sovereign immunity and opposed the attachment of its assets in Rovinia. While the Transitional Council waived immunity for The Falcon, the Zavala government asserted its immunity as a government airplane and sovereign asset.

In 14 July 2023, the Permola Court reconvened and ruled that The Falcon was no longer immune from seizure based on the Transitional Council's waiver. It relied on the Rovinian Foreign Minister's recognition of the Transitional Council as the "government of Ambrosia," based on the belief that it exercised effective control over Ambrosia's territory, government, and population. Thus, the Permola Court ordered the sale of The Falcon in a public auction.

### THE APPLICATION BEFORE THIS COURT

On 6 September 2023, President Derey woke up from his coma. The Transitional Council dissolved itself and welcomed President Derey, whereas Vice President Zavala resigned from office.

On 11 July 2024, Ambrosia filed an Application with the International Court of Justice instituting proceedings against Rovinia, citing disagreements "with respect to Rovinia's recognition of the Transitional Council, its seizure and sale of [the] vice-presidential aircraft, its prosecution of [the] former Minister, and its failure to respect [the] exclusive rights to resources in the Triton Shoal."

SUMMARY OF PLEADINGS

[A]

This Court has jurisdiction to entertain Ambrosia’s Submission (B) because there exists a “dispute of a juridical nature” between Ambrosia and Rovinia in accordance the compromissory clause of the OCDP Charter.

First, this Court has jurisdiction *ratione temporis* because the arrest and prosecution of Ms. Gertrude Cross (“**Ms. Cross**”) is the “real cause” of the dispute. The enactment of the Rovinian Criminal Code and Ms. Cross’ involvement in the ILSA Program are only “composite acts,” and her arrest and prosecution are a “new situation” that gave rise to a dispute. Assuming the dispute arose from Ms. Cross involvement in the ILSA Program, this Court may exercise jurisdiction because its alleged consequences continued until the compromissory clause became effective.

Second, using both textual and supplementary means of treaty interpretation, this Court has jurisdiction *ratione materiae* because Rovinia’s exercise of criminal jurisdiction over a former foreign official for enforced disappearance is a matter not “essentially” within its domestic jurisdiction.

Alternatively, this Court may still exercise its jurisdiction under *la compétence de la compétence*.

[B]

Rovinia’s arrest and prosecution of Ms. Cross violated international legal rules on jurisdiction and immunity.

First, the arrest and prosecution of Ms. Cross violated Ambrosia’s sovereignty because Rovinia lacks jurisdiction *ratione materiae*. Both customary international law and the International Convention for the Protection of All Persons from Enforced Disappearance (“**ICPPED**”) do not support universal jurisdiction for enforced disappearance. Ambrosia’s extradition request is a valid exception to Rovinia’s exercise of jurisdiction under the ICPPED.

Furthermore, Ms. Cross' alleged acts of enforced disappearance do not qualify as crimes against humanity where universal jurisdiction may be applied.

Second, Rovinia violated the customary international law on State immunities. Ms. Cross is entitled to immunity *ratione materiae* because her acts in the ILSA Program were conducted in an official capacity. The prohibition of enforced disappearance is not a *jus cogens* norm where immunity *ratione materiae* may not apply. Lastly, the inclusion of enforced disappearance among the exceptions to immunity *ratione materiae* under the International Law Commission's Draft Article 7 is not supported by customary international law.

[C]

Rovinia's issuance of fishing licenses in parts of the Triton Shoal that fall within Ambrosia's Exclusive Economic Zone violates conventional and customary international law.

First, Ambrosia's Baseline Freezing Law ("BFL") is consistent with UNCLOS because the Convention does not prohibit the fixing of baselines. Teleologically, the BFL aligns with the principle of legal certainty and stability, and the subsequent practice of UNCLOS States Parties supports the fixing of baselines. Furthermore, the BFL reflects an existing international custom, whereas the ambulatory baselines approach lacks international support and is inequitable.

Second, Rovinia's issuance of fishing licenses violates UNCLOS and the regional custom in the Paine Peninsula. A regional custom of fixing baselines exists, to which Rovinia is not a persistent objector.

Third, Rovinia's actions constitute an internationally wrongful act, which it must cease by revoking existing fishing licenses, with assurances of non-repetition.

Alternatively, fundamental change of circumstances warrants Ambrosia's termination of its obligations under UNCLOS. The Convention does not establish territorial boundaries and the conditions for the application of *rebus sic stantibus* are met.

[D]

The Permola Court's seizure and sale of Ambrosia's aircraft, based on its recognition of the Transitional Council's waiver, are composite acts that violate rules on recognition, immunity from jurisdiction and enforcement, and non-intervention.

First, recognition and non-recognition are legal matters that are governed by international law. Thus, Rovinia's recognition of the Transitional Council violated its obligation to recognize Acting President Zavala's government based on the customary privilege granted to constitutional and democratically representative governments. The Transitional Council also failed to exercise effective control. Furthermore, Rovinia also violated its obligation not to recognize the Transitional Council.

Second, the Permola Court's adjudication of *O'Mander Corp. v. Union of Ambrosia* violated Ambrosia's jurisdictional immunity. Its seizure and sale of The Falcon also violated Ambrosia's immunity from post-judgment measures of constraint because the Transitional Council did not have the authority to consent to the Judgment Award and The Falcon was exclusively used for government non-commercial purposes.

Lastly, Rovinia's seizure and sale of The Falcon violated its obligation of non-intervention because the premature recognition was an improper interference to Ambrosia's internal matters.

PLEADINGS

**A. THE COURT HAS JURISDICTION TO ENTERTAIN AMBROSIA’S SUBMISSION (B).**

The International Court of Justice (“**this Court**”) has jurisdiction over disputes submitted to it pursuant to a compromissory clause,<sup>1</sup> which reflects the consent of the parties to a treaty to this Court’s jurisdiction.<sup>2</sup> Here, *Article XXI of the OCDP Charter* is a compromissory clause that establishes the consent of OCDP Member States.

Ambrosia’s Submission (B) is that Rovinia violated international rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross (“**Ms. Cross**”). This Court has jurisdiction over this submission because there exists a dispute of a juridical nature pertaining to Rovinia’s acts [1], which is not barred by both the temporal exclusion [2] and domestic jurisdiction exception [3]. However, if this Court finds to the contrary, it may still elect to exercise jurisdiction under *la compétence de la compétence* [4].

**1. THERE IS A “DISPUTE OF A JURIDICAL NATURE” BETWEEN AMBROSIA AND ROVINIA CONCERNING THE ARREST AND PROSECUTION OF MS. CROSS.**

Prefatorily, Ambrosia brings this case as a directly injured State.<sup>3</sup> The arrest and prosecution of its former official violate Ambrosia’s sovereign rights and the international legal obligations owed to it by Rovinia.<sup>4</sup>

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<sup>1</sup> Statute of the International Court of Justice art. 36(2), June 26, 1945, 59 Stat. 1031, T.S. No. 993 [“**ICJ Statute**”].

<sup>2</sup> Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Judgment, Declaration of Judge Robinson, 2023 I.C.J. 455, ¶2 (October 3).

<sup>3</sup> ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts art. 42(1), U.N. Doc. A/56/10 (2001) [“**(D)ARSIWA**”].

<sup>4</sup> Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), Judgment, 2002 I.C.J. 3, ¶17 (February 14) [“**Arrest Warrant**”].

In *South West Africa*,<sup>5</sup> this Court ruled that the existence of a dispute is a necessary condition of this Court’s jurisdiction.<sup>6</sup> A dispute exists when there is “disagreement on a point of law or fact,”<sup>7</sup> and its existence requires an objective determination of this Court based on the facts of the case.<sup>8</sup> A legal or juridical dispute, which is also required by the OCDP Charter, is one that is capable of being settled by the application of principles and rules of international law,<sup>9</sup> as opposed to a political dispute which is outside this Court’s jurisdiction.<sup>10</sup>

Here, while Rovinia claims that it has jurisdiction over Ms. Cross’ alleged criminal conduct under its domestic laws, Ambrosia contests this and maintains that its former Minister of Interior is entitled to immunity from prosecution in foreign courts.<sup>11</sup> These opposing legal views present the juridical dispute for this Court’s resolution.

In *Marshall Islands*,<sup>12</sup> this Court also emphasized that the opposing views between the parties must be clearly articulated, and that the Respondent be aware of the Applicant’s claims.<sup>13</sup>

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<sup>5</sup> South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Judgment, Preliminary Objections, 1962 I.C.J. 319, 328 (December 21).

<sup>6</sup> ICJ Statute, *supra* note 1, art. 36.

<sup>7</sup> Mavrommatis Palestine Concessions (Greece v. Britain), Judgment, 1924 P.C.I.J. (series A No. 5), 11 (August 30).

<sup>8</sup> Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment, Preliminary Objections, 2016 I.C.J. 3, ¶50 (March 17) [**“Nicaragua v. Colombia”**].

<sup>9</sup> Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, 1978 I.C.J. 3, ¶31 (December 19) [**“Aegean Sea”**].

<sup>10</sup> Christian Tomuschat, ‘Article 36’, in ANDREAS ZIMMERMANN ET AL. (EDS.), THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY (3RD ED), ¶12 (2019).

<sup>11</sup> Facts, ¶62; Clarifications, ¶6.

<sup>12</sup> Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom; Marshall Islands v. India; Marshall Islands v. Pakistan), Judgment, Preliminary Objections, 2016 I.C.J. 833, ¶41 (October 5).

<sup>13</sup> Nicaragua v. Colombia, *supra* note 8, ¶73; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Judgment, Preliminary Objections, 2011 I.C.J. 70, ¶30 (April 1).

Here, the diplomatic exchanges between Ambrosia and Rovinia<sup>14</sup> indicate that both parties are fully aware of their conflicting views.

**2. THIS COURT HAS JURISDICTION *RATIONE TEMPORIS* OVER SUBMISSION (B).**

The OCDP Charter provides a temporal limitation to its Member States’ acceptance of this Court’s compulsory jurisdiction “in connection with disputes arising out of facts or situations” prior to the effectivity of the compromissory clause.<sup>15</sup> Thus, Rovinia claims that this Court lacks jurisdiction over Submission (B) because the dispute arose out of a situation before March 17, 2021,<sup>16</sup> when the compromissory clause became effective.

However, this Court may exercise jurisdiction because the real cause of the dispute is the arrest and prosecution of Ms. Cross [a]. Her involvement in the ILSA Program merely forms part of composite acts that culminated in her arrest and prosecution [b], which also constitutes a new situation that gave rise to a dispute [c]. In any case, this Court retained jurisdiction based on the doctrine of continuing violation [d].

**a. The “real cause” of the dispute is the arrest and prosecution of Ms. Cross in May 2024, a situation that occurred after the compromissory clause became effective.**

The dispute arose only out of the arrest of Ms. Cross and her subsequent prosecution in Rovinia.<sup>17</sup> In *Right of Passage*, this Court distinguished between “situations or facts that constitute the source of the rights claimed by one of the parties and the situations or facts which are the source of the dispute.”<sup>18</sup>

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<sup>14</sup> Facts, ¶¶62-63.

<sup>15</sup> Facts, ¶12.

<sup>16</sup> Facts, ¶67; Corrections ¶4.

<sup>17</sup> Facts, ¶61.

<sup>18</sup> Case Concerning Right of Passage over Indian Territory (Portugal v. India), Judgment, 1960 I.C.J. 6, 35 (April 12); The Electricity Company of Sofia and Bulgaria, (Belgium v. Bulgaria), Judgment, 1939 P.C.I.J. series A/B No. 77, 82 (April 4).

Here, Ms. Cross' involvement in the ILSA Program was a situation that merely constitutes the "historical context" and basis of Rovinia's alleged right to exercise its criminal jurisdiction. It is only the arrest and prosecution of Ms. Cross that must be considered for the purpose of determining the source or the "real cause" of the dispute. This is consistent with this Court's ruling in *Phosphates in Morocco*, that a situation after the entry into force of the compromissory clause "could serve to found the Court's compulsory jurisdiction only if it was with regard to them that the dispute arose."<sup>19</sup>

**b. Ms. Cross' involvement in the ILSA Program from 2017 to 2020 forms part of "composite acts" that culminated in the application of Rovinia's Criminal Code to Ms. Cross in 2024.**

Ms. Cross' alleged involvement in the ILSA Program between June 2017 to July 2020 and Rovinia's enactment and application of enforced disappearance in its Criminal Code form part of composite acts that culminated in Ms. Cross' arrest and prosecution. Composite acts are a series of actions or omissions which, taken collectively, is sufficient to constitute the wrongful act.<sup>20</sup> These composite acts cannot be divorced from her arrest and prosecution in May 2024, when the compromissory clause was already effective.

**c. The arrest and prosecution of Ms. Cross pursuant to Rovinia's reinterpretation of its Criminal Code is a "new situation" that gave rise to a dispute.**

In *Certain Property*, this Court held that a dispute could only relate to later events if these introduced a "new situation" or departed from a prior "common understanding" between the parties.<sup>21</sup>

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<sup>19</sup> *Phosphates in Morocco (Italy v. France)*, Judgment, Preliminary Objections, 1938 P.C.I.J. series A/B 74, 24 (June 14).

<sup>20</sup> (D)ARSIWA, *supra* note 3, art. 15; *Nicaragua v. Colombia*, *supra* note 8, ¶38.

<sup>21</sup> *Certain Property (Liechtenstein v. Germany)*, Judgment, Preliminary Objections, 2005 I.C.J. 6, ¶49 (February 10).

The new application of Rovinia’s Criminal Code in the arrest and prosecution of Ms. Cross constituted a “new situation.” Until this present case, the crime of enforced disappearance in Rovinia’s Criminal Code was understood to be akin to the crime of kidnapping under Ambrosia’s Criminal Code, in that it does not apply to agents acting on behalf of a foreign State with respect to their immunities under international law.<sup>22</sup>

**d. Assuming that the dispute arose out of Ms. Cross involvement in the ILSA Program, this Court may exercise jurisdiction based on the “doctrine of continuing violation.”**

In *Zitha v. Mozambique*, the African Court on Human and Peoples’ Rights ruled that for the purposes of acquiring jurisdiction, enforced disappearance may be recognized as a continuing violation since its consequences, the “non-acknowledgement of the detention and non-disclosure of the fate or whereabouts of detained persons are key elements in the offence.”<sup>23</sup>

Even if the dispute arose out of Ms. Cross’ acts in the ILSA Program,<sup>24</sup> this Court may still exercise jurisdiction because its alleged consequences constituted a “continuing situation” until Ms. Cross’ resignation,<sup>25</sup> when the compromissory clause was already effective. This is in accordance with the doctrine of continuing violation.<sup>26</sup>

**3. THIS COURT HAS JURISDICTION *RATIONE MATERIAE* OVER SUBMISSION (B).**

The OCDP Charter provides that its Member States do not recognize this Court’s jurisdiction “in connection with disputes relating to judicial proceedings on matters which, in accordance with international law, are essentially within a Member State’s domestic

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<sup>22</sup> Facts, ¶¶28, 61.

<sup>23</sup> J.E. Zitha & P.J.L. Zitha (represented by Prof. Dr. Liesbeth Zegveld) v. Mozambique, 2011 ACHPR Communication No. 361/08, ¶93 (April 1).

<sup>24</sup> Facts, ¶25.

<sup>25</sup> Facts, ¶27.

<sup>26</sup> ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, U.N. Doc. A/56/10, 60, ¶4 (2001).

jurisdiction.”<sup>27</sup> Rovinia claims that the dispute concerns criminal proceedings on matters within its *domaine réservé*.<sup>28</sup> Ambrosia does not concur.

This Court’s jurisdiction depends on whether the acts in question fall within the provisions of the treaty containing the compromissory clause.<sup>29</sup> In *Ukraine v. Russian Federation*, this Court used treaty interpretation to “ascertain whether the actions or omissions of the Respondent complained of by the Applicant fall within the scope of the treaty allegedly violated.”<sup>30</sup> Both textual **[a]** and supplementary means of treaty interpretation **[b]** support Ambrosia’s position.

**a. Applying textual interpretation, Rovinia’s exercise of criminal jurisdiction over a former foreign official for enforced disappearance is a matter not “essentially” within its domestic jurisdiction.**

To textually interpret<sup>31</sup> the word “essentially,” recourse may be taken to *Tunis and Morocco*, where this Court’s predecessor held that although jurisdiction belongs solely to the State, it may still be limited by rules of international law.<sup>32</sup> The application of domestic law is merely a preliminary issue that does not divest this Court of jurisdiction.<sup>33</sup> Here, Rovinia’s arrest and prosecution of Ms. Cross is still limited by its international obligations because it concerns the exercise of jurisdiction over a foreign official entitled to immunity under international law.

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<sup>27</sup> Facts, ¶12.

<sup>28</sup> Facts, ¶67.

<sup>29</sup> Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Judgment, Preliminary Objections, 2021 I.C.J. 9, ¶75 (February 3).

<sup>30</sup> Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Judgment, Preliminary Objections 2024 I.C.J. 182, ¶136 (February 2) [**“Ukraine v. Russian Federation”**].

<sup>31</sup> Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331 [**“VCLT”**].

<sup>32</sup> Nationality Decrees Issued in Tunis and Morocco (French Zone), Advisory Opinion, 1923 P.C.I.J. series B No. 4, 24 (February 7).

<sup>33</sup> Nottebohm (Liechtenstein v. Guatemala), Judgment, 1955 I.C.J. 4, 13 (April 6) [**“Nottebohm”**]; Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, 1970 I.C.J. 3, ¶¶37-38 [**“Barcelona Traction”**].

**b. Applying supplementary means of interpretation, Rovinia’s exercise of criminal jurisdiction over Ms. Cross falls within the scope of the jurisdiction established by the OCDP Charter.**

Under supplementary means of interpretation, the circumstances surrounding the conclusion of a treaty may be considered when its terms are ambiguous.<sup>34</sup> During the negotiations that led to the OCDP Charter, the delegations specifically intended to exclude certain matters from the compromissory clause. These exclusions were narrowly limited to the domestic prosecution of individuals accused of illegal fishing, drug trafficking, or smuggling, as well as disputes that could be resolved directly between the affected States.<sup>35</sup> Thus, the prosecution of foreign State officials for enforced disappearance was never intended to be essentially within a Member State’s domestic jurisdiction.

**4. ALTERNATIVELY, THIS COURT MAY EXERCISE ITS JURISDICTION UNDER LA COMPÉTENCE DE LA COMPÉTENCE.**

If this Court finds that Ms. Cross’ involvement in the ILSA Program gave rise to the dispute, this Court remains competent to determine its jurisdiction.<sup>36</sup> This Court may rely on intertemporality,<sup>37</sup> since the applicable international rules on jurisdiction and immunity in Submission (B) were already established at that time the relevant acts occurred.

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

Rovinia’s courts must first establish that they have jurisdiction over the alleged acts of Ms. Cross before they may address the question of her immunity,<sup>38</sup> by showing sufficient basis

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<sup>34</sup> VCLT, *supra* note 31, art. 31(1).

<sup>35</sup> Facts, ¶11.

<sup>36</sup> ICJ Statute, *supra* note 1, art. 36(6).

<sup>37</sup> *Island of Palmas (United States of America v. Netherlands)*, 1928 PCA 2, 845 (April 4).

<sup>38</sup> Arrest Warrant, *supra* note 4, ¶46.

for the exercise of its extraterritorial criminal jurisdiction. Here, Rovinia lacks jurisdiction *ratione materiae* over the alleged acts of Ms. Cross [1]. In any case, she is immune from foreign criminal jurisdiction [2].

**1. THE ARREST AND PROSECUTION OF MS. CROSS VIOLATED AMBROSIA’S SOVEREIGNTY BECAUSE ROVINIA LACKS JURISDICTION *RATIONE MATERIAE* OVER HER ALLEGED CRIME OF ENFORCED DISAPPEARANCE.**

The immunity *ratione materiae* of State officials under customary international law stems from State immunities<sup>39</sup> as a consequence of the sovereign equality of States.<sup>40</sup> By arresting and prosecuting Ms. Cross, Rovinia exceeded its jurisdiction and violated Ambrosia’s sovereignty as its co-equal State.

Universal jurisdiction does not apply in prosecuting persons accused of enforced disappearance under customary international law [a] and the International Convention for the Protection of All Persons from Enforced Disappearance (“ICPPED”) [b]. Ms. Cross’ alleged acts of enforced disappearance in the ILSA Program do not qualify as crimes against humanity where universal jurisdiction is applied [c]. Lastly, Rovinia cannot exercise extraterritorial criminal jurisdiction under the other grounds recognized in international law [d].

**a. Customary international law does not recognize universal jurisdiction in prosecuting persons accused of enforced disappearance.**

Rovinia’s Criminal Code of 2007 allows it to prosecute persons found in its territory who are accused of enforced disappearance, “wherever those acts may have occurred.”<sup>41</sup> In effect, this is an exercise of universal jurisdiction, which is the “competence of a State to prosecute and

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<sup>39</sup> Case Concerning Certain Question of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment 2008 I.C.J. 177, ¶174 (June 4).

<sup>40</sup> UN Charter art. 2(1).

<sup>41</sup> Facts ¶61.

punish the alleged perpetrators of certain offences, regardless of their location or the nationality of the perpetrators or victims.”<sup>42</sup>

However, universal jurisdiction is historically applied in crimes against the law of nations<sup>43</sup> and against *jus cogens*<sup>44</sup> and *erga omnes* norms,<sup>45</sup> which are of such magnitude that they demand universal prosecution and prevention.<sup>46</sup> In contrast, enforced disappearance has not attained universal recognition as a crime against a non-derogable principle of international law.

Although UNGA Resolutions like the *1993 Declaration*<sup>47</sup> contributed to the progressive development of norms addressing enforced disappearance,<sup>48</sup> these instruments are non-binding. The slow pace of ratification of the ICPPED,<sup>49</sup> now at only 77 States Parties, compared with the other core human rights treaties, shows the reluctance of States to accept universal jurisdiction for enforced disappearance.

**b. The ICPPED does not mandate States to absolutely exercise universal jurisdiction for enforced disappearance.**

The ICPPED imposes a mere discretionary obligation to exercise universal jurisdiction [i], especially when the territorial State has already made a request for extradition [ii].

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<sup>42</sup> Anne Lagerwall & Marie-Laurence Hébert-Dolbec, *Universal Jurisdiction*, 9 (2022) [“Lagerwall”].

<sup>43</sup> Resolution adopted by the Third International Congress of Penal Law, preamble (1933); US Alien Tort Statute, 28 U.S.C. §1350 (1948).

<sup>44</sup> VCLT, *supra* note 31, art. 53.

<sup>45</sup> Barcelona Traction, *supra* note 33, ¶33.

<sup>46</sup> The Attorney General v. Adolf Eichmann, District Court of Jerusalem, Criminal Case 40/61, ¶¶11-13 (1968).

<sup>47</sup> UNGA Resolution 33/173 (1978); UNGA Resolution 47/133 (1992).

<sup>48</sup> Nikolas Kyriakou, *The International Convention for the Protection of All Persons from Enforced Disappearance and Its Contributions to International Human Rights Law, with Specific Reference to Extraordinary Rendition, Enforced Disappearance and International Human Rights Law*, 15 INTERNATIONAL HUMAN RIGHTS LAW REVIEW 11, 6 (2012).

<sup>49</sup> *Id.* at 31.

- i. Article 9(2) of the ICPPED allows States to exercise universal jurisdiction only “as may be necessary.”

*Article 9(2) of the ICPPED* binds States to take measures “as may be necessary” to establish its competence to exercise jurisdiction over enforced disappearance.<sup>50</sup> The use of this phrase reflects a mere discretionary obligation. Earlier drafts of the ICPPED proposed a stronger obligation for universal jurisdiction,<sup>51</sup> but the final text deliberately softened these provisions to avoid a blanket obligation that may conflict with State sovereignty.

- ii. Ambrosia’s request for extradition triggers the exception in Article 9(2) of the ICPPED and limits Rovinia’s competence to exercise universal jurisdiction.

*Article 9(2) of the ICPPED* binds States to take measures to establish its competence to exercise jurisdiction “unless it extradites or surrenders him or her to another State in accordance with its international obligations.” One such international obligation of Rovinia is its extradition treaty with Ambrosia. This exception considers the “exercise of universal jurisdiction as a last resort,” a “complementary mechanism” only when the appropriate national courts are unwilling or unable to prosecute.<sup>52</sup>

Here, Rovinia should have conceded to Ambrosia’s extradition request for Ms. Cross based on the ICPPED and its extradition treaty. Rovinia’s non-response to the request violates its good faith obligation<sup>53</sup> and frustrates Ambrosia’s efforts to reopen the investigation on Ms. Cross’ acts committed within its territory.<sup>54</sup>

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<sup>50</sup> ICPPED art. 9(2), December 20, 2006, 2716 U.N.T.S 3.

<sup>51</sup> Report of the Sessional Working Group on the Administration of Justice, ECOSOC Official Records, UN Doc E/CN.4/Sub.2/1998/19 (1998).

<sup>52</sup> UNGA, Concluding Debate on Universal Jurisdiction Principle, GA/L/3642 (2021).

<sup>53</sup> VCLT, *supra* note 31, art. 26.

<sup>54</sup> Facts, ¶62; Clarifications, ¶5.

- c. **Ms. Cross' alleged crime of enforced disappearance was not committed in the context of crimes against humanity where universal jurisdiction may be applied.**

Customary international law recognizes universal jurisdiction for enforced disappearance when it constitutes crimes against humanity, such as widespread or systematic attacks against a civilian population.<sup>55</sup>

Here, Ms. Cross' alleged acts under the ILSA program do not qualify as crimes against humanity. **First**, it is not widespread because the acts were not carried out in a large-scale, involving significant number of victims.<sup>56</sup> The disappearances imputed to her involve only specific and isolated incidents among detainees within Ambrosia.<sup>57</sup> **Second**, it is not systematic because the acts were not organized and carried out according to a deliberate policy.<sup>58</sup> The disappearance of Ambrosians was not the ILSA Program's purpose and Ambrosia even prosecuted police officers for kidnapping.<sup>59</sup>

- d. **The Nationality Principle, Protective Principle, and Effects Doctrine cannot be invoked as basis for Rovinia's exercise of extraterritorial criminal jurisdiction.**

Rovinia's exercise of criminal jurisdiction is also without basis under the other grounds recognized in international law. **First**, the nationality principle<sup>60</sup> does not apply because neither

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<sup>55</sup> Rome Statute of the International Criminal Court art. 7(1)(i), July 17, 1998, 2187 U.N.T.S. 3.

<sup>56</sup> Prosecutor v. Kordić and Čerkez, Appeal Judgement, ICTY IT-95-14/2-A, ¶94 (2004).

<sup>57</sup> Facts, ¶¶27,60.

<sup>58</sup> Prosecutor v. Blaškić, Appeal Judgement, ICTY IT-95-14-A, ¶101 (2004).

<sup>59</sup> Facts, ¶28.

<sup>60</sup> Nottebohm, *supra* note 33, 20.

the accused<sup>61</sup> nor the victims<sup>62</sup> of enforced disappearance were Rovinian nationals.<sup>63</sup> **Second**, the protective principle does not apply because the enforced disappearances allegedly committed abroad do not directly threaten Rovinia’s sovereignty or national interests.<sup>64</sup> **Third**, the effects doctrine<sup>65</sup> also does not apply because Ms. Cross’ alleged acts were neither aimed at Rovinia nor did it produce any detrimental effect in its jurisdiction.

**2. IN ANY CASE, ROVINIA VIOLATED THE CUSTOMARY INTERNATIONAL LAW ON STATE IMMUNITIES BECAUSE MS. CROSS IS IMMUNE FROM ITS CRIMINAL JURISDICTION.**

Even if this Court recognizes Rovinia’s jurisdiction over Ms. Cross acts, Ms. Cross remains protected by immunity *ratione materiae*, which shields State officials from the exercise of foreign criminal jurisdiction for acts performed in their official capacity.<sup>66</sup> In *Jurisdictional Immunities*, this Court held that the valid exercise of jurisdiction, even on the basis of *jus cogens* norms, does not deprive the defendant State of “the entitlement which it possessed as a matter of customary international law to demand immunity.”<sup>67</sup>

Immunity from foreign jurisdiction for States and their agents is established by State practice and *opinio juris*,<sup>68</sup> an international custom codified in the UN Convention on

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<sup>61</sup> Blackmer v. United States, 284 U.S. 421 (1932).

<sup>62</sup> United States v. Osama Bin Laden, 126 F.Supp.2d 290 (2000).

<sup>63</sup> Clarifications, ¶7.

<sup>64</sup> United States v. Romero-Galue, 757 F.2d 1147 (1985).

<sup>65</sup> The Case of the S.S. “Lotus” (France v Turkey), Judgment 1927 P.C.I.J series A No. 10, 16-17, 23 (September 7); Restatement (Third) of Foreign Relations Law of the United States, §402(1) (1988) [**“Third Restatement”**].

<sup>66</sup> ILC, Draft Articles on Jurisdictional Immunities of States and Their Property with Commentaries, U.N. Doc. A/46/10, 18 (1991) [**“Draft Articles on Jurisdictional Immunities”**].

<sup>67</sup> Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, 2012 I.C.J. 99, ¶95 (February 14) [**“Jurisdictional Immunities Case”**].

<sup>68</sup> North Sea Continental Shelf (Federal Republic of Germany/Netherlands), Judgment, 1969 I.C.J. 3, ¶77 [**“North Sea Continental Shelf”**].

Jurisdictional Immunities of States and Their Property (“UNCJISP”).<sup>69</sup> Many States like the United States,<sup>70</sup> United Kingdom,<sup>71</sup> Australia,<sup>72</sup> Canada,<sup>73</sup> and South Africa<sup>74</sup> have enacted sovereign immunity laws, while domestic courts have consistently upheld State immunity for *acta juri imperii*.<sup>75</sup>

Rovina’s arrest and prosecution of Ms. Cross violated her immunity *ratione personae* because Ms. Cross’ acts in the ILSA Program were conducted in an official capacity [a] and her immunity subsisted even after her resignation [b]. Thus, Ms. Cross’ immunity may only be disregarded before Ambrosian courts [c]. Lastly, the exemption of enforced disappearance from the application of immunity *ratione materiae* is not supported by international custom [d].

**a. Ms. Cross is immune *ratione materiae* because her acts in the ILSA Program were conducted in an official capacity.**

In *Arrest Warrant*, this Court held that State officials enjoy immunities from jurisdiction in other States, both civil and criminal, that are “not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States.”<sup>76</sup> This undisputed immunity is reserved for acts of State officials performed in the exercise of State authority, which ensures sovereign equality and comity among States.<sup>77</sup>

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<sup>69</sup> Wallishauser v. Austria, ECtHR 156/04, ¶30 (2012) [“**Wallishauser v. Austria**”].

<sup>70</sup> United States, Foreign Sovereign Immunities Act, 28 U.S.C. §§1330, 1602–1611 (1976).

<sup>71</sup> United Kingdom, State Immunity Act 1978, 17 ILM 1123 (1978).

<sup>72</sup> Canada, State Immunity Act 1982, 21 ILM 798 (1982).

<sup>73</sup> Australia, Foreign States Immunity Act 1985, 25 ILM 715 (1986).

<sup>74</sup> South Africa, Foreign States Immunities Act 87 (1981).

<sup>75</sup> *Littrell v. United States of America* (No. 2), Court of Appeal, 438 (1995); *McElhinney v. Williams*, WJSC-SC 4966, 691 (1995).

<sup>76</sup> *Arrest Warrant*, *supra* note 4, ¶53; *Al-Adsani v. United Kingdom*, ECtHR Application No. 35763/97 (2001); *McElhinney v. Ireland*, ECtHR Application 31253/96 (2001).

<sup>77</sup> Draft Articles on Jurisdictional Immunities, *supra* note 66, at 23.

Acts performed in an official capacity are those that are “performed on the discharge of State functions or State authority.”<sup>78</sup> As Ambrosia’s former Minister of the Interior, Ms. Cross acted in an official capacity in the ILSA Program. She was specifically mandated to oversee the National Police and take “all necessary and lawful measures to apprehend persons engaged in illicit drug production, distribution, and use.”<sup>79</sup>

Ms. Cross’ acts are entitled to immunity *ratione materiae* before the Permola Court because the nature of the crime is irrelevant to the question of her immunity [i]. Assuming otherwise, the prohibition of enforced disappearance is not a *jus cogens* norm [ii].

- i. The wrongfulness of enforced disappearance does not divest State officials of immunity *ratione materiae*.

In *Arrest Warrant*, this Court held that “while jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law.”<sup>80</sup> Thus, the question of whether a court may exercise jurisdiction over enforced disappearance is distinct from the substantive law which determines its lawfulness.<sup>81</sup>

- ii. The prohibition of enforced disappearance is not a *jus cogens* norm where immunity *ratione materiae* may not apply.

*Jus cogens* norms are norms accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.<sup>82</sup> There is yet no definitive pronouncement from this Court or from other bodies that the prohibition of enforced disappearance has become a *jus cogens* norm in itself, except when it is a precursor to torture or crimes against humanity. The slow ratification of the ICPPED indicates that the prohibition against enforced disappearance has not yet become a universally applicable value for the

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<sup>78</sup> ILC, Chapter VI. Immunity of State Officials from Foreign Criminal Jurisdiction art 2(b), A/77/10, 189 (2007) [“**Immunity of State Officials**”].

<sup>79</sup> Facts, ¶8.

<sup>80</sup> *Arrest Warrant*, *supra* note 4, ¶60.

<sup>81</sup> *Jurisdictional Immunities Case*, *supra* note 67, ¶58.

<sup>82</sup> VCLT, *supra* note 31.

international community.<sup>83</sup> At most, the isolated instances where it has been treated as *jus cogens* only reflect a regional norm among Latin American States.<sup>84</sup>

**b. Immunity *ratione materiae* subsists for former State officials like Ms. Cross.**

State immunity survives even after the termination of the representative's office, because this immunity stems from the sovereign nature and official character of the representative's actions.<sup>85</sup> Ms. Cross' role in the ILSA Program was in the performance of legitimate State interests of addressing "the dramatic flow of illegal drugs and weapons into Ambrosia."<sup>86</sup> Thus, despite her resignation<sup>87</sup> at the time of her arrest, Ms. Cross enjoyed immunity pertaining to acts that were carried out *jure imperii*.<sup>88</sup>

**c. Ms. Cross' immunity may only be disregarded before Ambrosian courts.**

State officials enjoy no criminal immunity under international law when they are tried in their own countries under their domestic law or when their immunity is waived by the State which they represent, among other grounds.<sup>89</sup> Since there is no waiver of Ms. Cross' immunity, she may only be prosecuted in Ambrosia upon granting the extradition request.

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<sup>83</sup> ILC, Report of the ILC on the Work of Its 73<sup>rd</sup> Session, U.N. Doc. A/77/10, 2, ¶3(2022).

<sup>84</sup> Ignacio Alvarez-Rio & Diana Contreras-Garduno, 'A Barren Effort? The Jurisprudence of the Inter-American Court of Human Rights on Jus Cogens', in YVES HAECK ET. AL. (EDS.), THE REALISATION OF HUMAN RIGHTS: WHEN THEORY MEETS PRACTICE (2014).

<sup>85</sup> Draft Articles on Jurisdictional Immunities, *supra* note 65, at 18.

<sup>86</sup> Facts, ¶7.

<sup>87</sup> Facts, ¶27.

<sup>88</sup> Jurisdictional Immunities Case, *supra* note 67, ¶61.

<sup>89</sup> Arrest Warrant, *supra* note 4, ¶61.

- d. The inclusion of enforced disappearance among the exceptions to immunity *ratione materiae* under the ILC’s Draft Article 7 is not supported by customary international law.**

Although the International Law Commission (“ILC”) exempted enforced disappearance from the application of immunity *ratione materiae* in *Draft Article 7*, this is not supported by State practice and *opinio juris*, a position adopted by United States, United Kingdom, and France.<sup>90</sup> At best, States have only considered the document as a progressive development in opposition to *lex lata*.

**C. 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.**

Despite the enactment of Ambrosia’s Baseline Freezing Law (“BFL”) in 2015,<sup>91</sup> Rovinia granted fishing licenses for yellowfin tuna covering the entire Triton Shoal, parts of which fall within Ambrosia’s Exclusive Economic Zone (“EEZ”), beginning July 2018.<sup>92</sup>

Ambrosia’s BFL is consistent with international law [1], which makes Rovinia’s act of issuing fishing licenses a violation of the United Nations Convention on the Law of the Sea (“UNCLOS”) [2] and regional custom [3]. Therefore, Rovinia must cease this wrongful act by revoking existing licenses [4]. In any case, fundamental change of circumstances justifies Ambrosia’s termination of its treaty obligations under UNCLOS [5].

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<sup>90</sup> Comments from the United States, United Kingdom, and France on the ILC’s Draft Articles on Criminal Immunity of State Officials (73<sup>rd</sup> session of ILC, 2022).

<sup>91</sup> Facts, ¶13.

<sup>92</sup> Facts, ¶22.

**1. AMBROSIA’S ENACTMENT OF ITS BASELINE FREEZING LAW (“BFL”) IS CONSISTENT WITH CONVENTIONAL AND CUSTOMARY INTERNATIONAL LAW.**

Ambrosia’s BFL is consistent with UNCLOS [a] and the existing international custom on fixing of baselines [b]. Conversely, landward ambulatory baselines approach on account of sea-level rise is neither supported by international law [c] nor equitable [d].

**a. Ambrosia’s BFL is consistent with UNCLOS.**

The validity of Ambrosia’s BFL requires an interpretation of relevant UNCLOS provisions.<sup>93</sup> Its validity finds basis under textual [i] and teleological approaches to treaty interpretation [ii], as well as the subsequent practice of States Parties to UNCLOS [iii].

i. Applying textual interpretation, UNCLOS does not prohibit the fixing of baselines.

*Articles 5 and 7 of UNCLOS*, which define normal and straight baselines, are silent on whether baselines should be ambulatory or fixed.<sup>94</sup> Thus, UNCLOS does not exclude the possibility of States resorting to either approach.

Under the principle of subsidiarity, UNCLOS recognizes the discretion of coastal States to establish maritime limits in accordance with the Convention.<sup>95</sup> Even in light of sea-level rise,<sup>96</sup> coastal States are not required to draw new baselines when coastal conditions change.<sup>97</sup> *Article 16 of UNCLOS* only requires coastal States to give due publicity to its charts or lists of

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<sup>93</sup> ILC, First Issues Paper by Bogdan Aurescu & Nilüfer Oral, Co-Chairs of the Study Group on Sea-Level Rise in Relation to International Law, U.N. Doc. A/CN.4/740, ¶78 (2020) [“**First Issues Paper**”].

<sup>94</sup> Giorgio Starita, *The Impact of Sea Level Rise on Baselines: A Question of Interpretation of the UNCLOS or Evolution of Customary Law*, 91 QIL ZOOM-OUT 5, 12 (2022).

<sup>95</sup> KATE PURCELL, GEOGRAPHICAL CHANGE AND THE LAW OF THE SEA, 215 (2019) [“**PURCELL**”].

<sup>96</sup> International Law Association (“**ILA**”), Final Report of the Committee on International Law and Sea Level Rise 8 (81st Conference, Athens, 2024) [“**Final Report**”].

<sup>97</sup> First Issues Paper, *supra* note 93, ¶78.

geographical coordinates, and to deposit said copies with the UN Secretary-General.<sup>98</sup> Here, Ambrosia deposited with the UN Secretary-General new coordinates reflecting its BFL in March 2016 and decided not to update it further.<sup>99</sup>

- ii. Applying teleological interpretation, the fixing of baselines is consistent with the principle of legal certainty and stability.

The *UNCLOS Preamble* shows that among the motivations behind its creation is to contribute to the “strengthening of peace, security, cooperation, and friendly relations.”<sup>100</sup> This connotes the objective of facilitating legal certainty, stability, and predictability,<sup>101</sup> which has received overwhelming international support.<sup>102</sup>

Therefore, coastal States should not be required to recalculate their baselines even if changes in sea level affect its coastline.<sup>103</sup> This would reduce legal uncertainty regarding maritime boundaries at a time when many coastal States are facing the challenges of sea-level rise.<sup>104</sup>

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<sup>98</sup> United Nations Convention on the Law of the Sea art. 16, December 10, 1982, 1833 U.N.T.S. 397 [“UNCLOS”].

<sup>99</sup> Clarifications, ¶3.

<sup>100</sup> UNCLOS, *supra* note 98, preamble.

<sup>101</sup> ILA, International Law and Sea Level Rise: Minutes of the Open Session, interventions by Professors David Caron and Davor Vidas, 880-81 (76<sup>th</sup> Conference, Washington D.C., 2024).

<sup>102</sup> Final Report, *supra* note 96, at 8.

<sup>103</sup> ILA, Resolution 5/2018 (2018); ILA, Resolution 01/2024 (2024).

<sup>104</sup> ILA, Report of the Committee on International Law and Sea Level Rise, 13 (78<sup>th</sup> Conference, Sydney, 2018).

- iii. The subsequent practice of States Parties to UNCLOS supports the fixing of baselines.

Subsequent practice of States Parties in the application of UNCLOS may also be considered in its interpretation.<sup>105</sup> Because it is difficult to amend UNCLOS, the problem of rising sea levels may be addressed by interpreting the Convention through State practice.<sup>106</sup>

States across different regions support the fixing of baselines to foster legal certainty, stability, and predictability.<sup>107</sup> Maritime powers that historically adopted the ambulatory baselines approach have already shifted policies, including the United States,<sup>108</sup> Japan,<sup>109</sup> and the European Union.<sup>110</sup>

- b. Ambrosia’s BFL is consistent with the existing international custom of fixing baselines due to sea-level rise.**

There is an existing international custom of fixing baselines that is supported by both State practice and *opinio juris*. **First**, there is sufficient State practice because the fixing of baselines has been practiced, recognized, and endorsed by over 100 States,<sup>111</sup> not only by Small Island Developing States<sup>112</sup> but also major maritime powers.<sup>113</sup> **Second**, the general reliance of

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<sup>105</sup> VCLT, *supra* note 31, art. 31(3).

<sup>106</sup> Sean Murphy, *Ambulatory Versus Fixed Baselines Under the Law of the Sea*, 38(3) AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 721, 723 (2023).

<sup>107</sup> ILA, Report of the Committee on International Law and Sea Level Rise, 526-530 (80<sup>th</sup> Conference, Lisbon, (2022).

<sup>108</sup> Statement by the United States of America (77<sup>th</sup> session of ILC, 2022), 2.

<sup>109</sup> Ministry of Foreign Affairs of Japan, Foreign Minister Hayashi’s Meeting with the Delegation of the Pacific Islands Forum (2023).

<sup>110</sup> Statement of the EU (78<sup>th</sup> session of ILC, 2023), ¶9.

<sup>111</sup> New Zealand (*id.*), 1.

<sup>112</sup> Submissions of Maldives and Micronesia (72<sup>nd</sup> session of ILC, 2021); Submissions of Fiji, Tuvalu, and Jamaica (A/C.6/74/SR.27).

<sup>113</sup> Statement by the United States of America in the UNSC, UN Doc. S/PV.9260, 15 (2023); Statement of the EU (78<sup>th</sup> session of ILC, 2023).

States on legal certainty and stability in their endorsement of fixed baselines indicates *opinio juris*.<sup>114</sup>

**c. The landward ambulatory baselines approach, as applied to sea-level rise, is not supported by international law.**

While fixed baselines are supported by UNCLOS and international custom, the ambulatory baselines approach has merely emerged from scholarship.<sup>115</sup> The ILC's *First Issues Paper* only points to scholarly works<sup>116</sup> and conclusions of the International Law Association's Baselines Committee to support ambulatory baselines,<sup>117</sup> but State practice does not clearly reflect a belief that it is legally required.<sup>118</sup>

**d. The landward ambulatory baselines approach, as applied to sea-level rise, is inequitable.**

This Court and other tribunals have consistently applied equity as a general principle of international law. In *North Sea Continental Shelf* and other cases, this Court ruled that “delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all relevant circumstances.”<sup>119</sup> In *Bay of Bengal*, the International Tribunal on the Law of the Sea held that “[t]he goal of achieving an equitable result must be the paramount consideration” in maritime delimitation.<sup>120</sup>

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<sup>114</sup> First Issues Paper, *supra* note 93, ¶104.

<sup>115</sup> Frances Anggadi, *Reconceptualising the ‘Ambulatory Character’ of Baselines: The International Law Commission’s Work on Sea-Level Rise and International Law*, 22 MELBOURNE JOURNAL OF INTERNATIONAL LAW 1, 4 (2021).

<sup>116</sup> See e.g. David Caron, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level*, 17(4) ECOLOGY LAW QUARTERLY 621 (1990).

<sup>117</sup> First Issues Paper, *supra* note 93, ¶81.

<sup>118</sup> PURCELL, *supra* note 95, 215.

<sup>119</sup> *North Sea Continental Shelf*, *supra* note 67, at ¶101; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, ¶70 (February 24).

<sup>120</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 2012 ITLOS 4, ¶235 (March 14).

The UNCLOS itself includes many references to equity.<sup>121</sup> Many States directly affected by sea-level rise like Maldives,<sup>122</sup> Antigua and Barbuda,<sup>123</sup> and the Federated States of Micronesia<sup>124</sup> referred to equity in determining maritime rights and boundaries. Unlike seaward baseline changes due to man-made installations that benefit coastal States,<sup>125</sup> landward baseline changes due to sea-level rise harm coastal States significantly.

Sea-level rise poses catastrophic repercussions for the livelihood and economic well-being<sup>126</sup> of Ambrosia's population. **First**, Ambrosia's fishing industry accounts for approximately 20% of its GDP.<sup>127</sup> This is significantly higher than those of Pacific Island countries, whose fishing industries account for only 0-14% of their respective GDPs.<sup>128</sup> **Second**, most of Ambrosia is less than 10 meters above sea level,<sup>129</sup> closely resembling the terrain of low-lying Small Island Developing States.<sup>130</sup> Thus, strict adherence to the ambulatory approach will work injustice to Ambrosia's national heritage and economic lifeline,<sup>131</sup> which is also inconsistent with the principle of *permanent sovereignty over natural resources*.<sup>132</sup>

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<sup>121</sup> UNCLOS, *supra* note 98, preamble, arts. 59, 69-70, 74(1), 83(1), 140, and 266(3).

<sup>122</sup> Submission of Maldives (72<sup>nd</sup> session of ILC, 2021).

<sup>123</sup> Antigua and Barbuda (*id.*).

<sup>124</sup> Micronesia (*id.*).

<sup>125</sup> UNCLOS, *supra* note 98, arts. 7(4) and 47(4).

<sup>126</sup> Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, 1984 I.C.J. 246, ¶237 (October 12).

<sup>127</sup> Facts, ¶4.

<sup>128</sup> Robert Gillet, *Fisheries in the Economies of the Pacific Island Countries and Territories*, ASIAN DEVELOPMENT BANK, 463 (2009).

<sup>129</sup> Facts, ¶2.

<sup>130</sup> Alexandre Magnan et. al., *Sea level rise and societal adaptation benefits in low-lying coastal areas*, 12 SCIENTIFIC REPORTS 1, 1 (2022).

<sup>131</sup> Facts, ¶¶9, 13.

<sup>132</sup> UNGA Resolution 2692 (XXV) (1970); UNGA Resolution 3016 (XXVII) (1972); UNGA Resolution 3171 (XXVIII) (1973).

**2. ROVINIA’S ISSUANCE OF FISHING LICENSES OVER PARTS OF TRITON SHOAL THAT FALL WITHIN AMBROSIA’S EEZ VIOLATES UNCLOS.**

*Article 56(1)(a) of UNCLOS* grants coastal States sovereign rights for the purpose of “exploring and exploiting, conserving and managing” living natural resources within its 200-nautical mile EEZ.<sup>133</sup> Third States must ensure that their nationals and vessels are not engaged in illegal fishing within another State’s EEZ.<sup>134</sup> Thus, the very act of issuing fishing licenses covering the entire Triton Shoal violates Ambrosia’s rights under UNCLOS, notwithstanding the absence of actual fishing activities.

Although Ambrosia’s sovereign right to exploit the highly migratory tuna species is not absolute,<sup>135</sup> Rovinia should have first addressed the issue of shared utilization of the tuna species through the OCDP, the appropriate organization for such matters.<sup>136</sup> The fact that Rovinia’s fishing will likely be commercial,<sup>137</sup> rather than subsistence,<sup>138</sup> further highlights its responsibility to engage in cooperative management.

**3. ROVINIA’S ISSUANCE OF FISHING LICENSES OVER PARTS OF TRITON SHOAL THAT FALL WITHIN AMBROSIA’S EEZ VIOLATES REGIONAL CUSTOM.**

There exists a regional custom of fixing of baselines in the Paine Peninsula which satisfies the higher threshold of uniformity [a]. In any case, Rovinia is not a persistent objector to this custom [b].

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<sup>133</sup> UNCLOS, *supra* note 98, art. 57(1)(a).

<sup>134</sup> Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Award, 2015 PCA 359, ¶¶106, 110, 124 (March 18).

<sup>135</sup> UNCLOS, *supra* note 98, art. 64.

<sup>136</sup> Clarifications, ¶4.

<sup>137</sup> Facts, ¶17.

<sup>138</sup> Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, 2009 I.C.J. 213 (July 13).

- a. **There exists a regional custom of fixing baselines among the States in the Paine Peninsula, which satisfies the higher threshold of uniformity in State practice.**

Particular customary international law is one that applies only among a limited number of States.<sup>139</sup> Here, a new regional custom already exists among the States in the Paine Peninsula that supports the fixing of baselines, replacing the prior regional practice reflecting the ambulatory approach.

After Ambrosia’s enactment of the BFL,<sup>140</sup> five other States in the region adopted similar legislations.<sup>141</sup> All six States believe that said measure is “consistent with international law, including UNCLOS”<sup>142</sup> and “enshrines a regional rule applicable to all States of the Paine Peninsula.”<sup>143</sup>

In *Asylum*, this Court declared that a regional custom must have “constant and uniform usage practiced by the States in question.”<sup>144</sup> Rovinia’s abstention from the OCDP Resolution dated 06 March 2023, which referred to the importance of fixed baselines for fishing-dependent areas, coupled with its failure to expressly maintain its objection in its explanation of vote,<sup>145</sup> amounts to acquiescence.<sup>146</sup> This satisfies State practice and *opinio juris*.

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<sup>139</sup> ILC, Draft Conclusions on the Identification of Customary International Law, A/73/10, Conclusion 16(1) (2018) [**“Identification of CIL”**].

<sup>140</sup> Facts, ¶13.

<sup>141</sup> Facts, ¶18.

<sup>142</sup> Facts, ¶16.

<sup>143</sup> Facts, ¶19.

<sup>144</sup> *Asylum (Colombia/Peru)*, Judgment, 1950 I.C.J. 266, (November 20); *See also* Dispute regarding Navigational and Related Rights (*Costa Rica v. Nicaragua*), Judgment, Separate Opinion of Judge Sepúlveda-Amor, 2009 I.C.J. 213, ¶24 (July 13).

<sup>145</sup> Facts, ¶33.

<sup>146</sup> *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, 2008 I.C.J. 12, ¶121 (May 23).

**b. Rovinia is not a persistent objector to this regional custom.**

For a State to exempt itself from the application of a rule of customary international law, it must clearly and persistently object to said rule during and after its formation.<sup>147</sup> Here, Rovinia failed to object to the fixing of baselines at the earliest opportunity, or at the time Ambrosia promulgated the BFL in November 2015. It only began doing so when other States in the region already considered similar legislations.<sup>148</sup>

**4. ROVINIA IS ENGAGED IN AN INTERNATIONALLY WRONGFUL ACT WHICH IT MUST CEASE BY REVOKING EXISTING FISHING LICENSES.**

Rovinia's issuance of fishing licenses for yellowfin tuna over parts of the Triton Shoal within Ambrosia's EEZ is an internationally wrongful act<sup>149</sup> that violates its conventional obligations under the UNCLOS. Consequently, since it is continuing in character, Rovinia must cease such wrongful act by revoking the existing fishing licenses, with assurances and guarantees of non-repetition.<sup>150</sup>

**5. IN ANY CASE, FUNDAMENTAL CHANGE OF CIRCUMSTANCES WARRANTS THE TERMINATION OF AMBROSIA'S TREATY OBLIGATIONS UNDER UNCLOS.**

If this Court finds that the BFL is inconsistent with its obligations under UNCLOS, Ambrosia invokes fundamental change of circumstances because UNCLOS is not a treaty establishing boundaries [a] and the conditions for its application are met [b].

**a. UNCLOS is not a treaty that establishes territorial boundaries.**

Maritime boundaries under UNCLOS are not "territorial boundaries" within the definition of *Article 62(2)(a) of VCLT*,<sup>151</sup> which does not permit the application of fundamental change of

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<sup>147</sup> Identification of CIL, *supra* note 139, Conclusion 15, ¶¶1-2.

<sup>148</sup> Facts, ¶14.

<sup>149</sup> (D)ARSIWA, *supra* note 3, art. 1.

<sup>150</sup> *Id.* art. 30.

<sup>151</sup> ILC, Report of the Commission to the General Assembly on the Work of the 34<sup>th</sup> Session, U.N. Doc. A/CN.4/SER.A/1982/Add.1 (Part 2), 60–61 (1982).

circumstances. This Court’s pronouncement in *Aegean Sea* that considered a continental shelf as a “boundary”<sup>152</sup> within the meaning of this VCLT provision is an *obiter dictum* that did not definitively settle whether the provision covers all maritime boundaries.<sup>153</sup>

In *Indonesia/Malaysia*,<sup>154</sup> this Court held that boundary agreements are those that involve the transfer of territorial sovereignty. In contrast, maritime boundaries like that under the EEZ regime are intended for administrative purposes and, thus, should not be classified as boundary agreements.<sup>155</sup>

**b. The conditions for terminating a treaty on the ground of fundamental change of circumstances are present.**

For a State to invoke fundamental change of circumstances, the change must be unforeseen, essential to the Party’s consent, and must radically alter obligations under the treaty.<sup>156</sup>

**First**, Ambrosia could not have foreseen the rapid coastline recession reported by the IPCC in 2014,<sup>157</sup> as sea-level rise was not considered during UNCLOS’ conclusion in 1982.<sup>158</sup> **Second**, Ambrosia’s heavy reliance on its fishing sector means that it would not have consented to the treaty if it anticipated threats to maritime boundaries.<sup>159</sup> **Third**, the obligation of changing

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<sup>152</sup> *Aegean Sea*, *supra* note 9, ¶85.

<sup>153</sup> SNJÓLAUG ÁRNADÓTTIR, CLIMATE CHANGE AND MARITIME BOUNDARIES: LEGAL CONSEQUENCES OF SEA LEVEL RISE, 200 (2021).

<sup>154</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, 2002 I.C.J. 625, ¶118 (December 17).

<sup>155</sup> Alberto Alvarez-Jimenez, *Boundary Agreements in the International Court of Justice’s Case Law, 2000–2010*, 23(2) EUROPEAN JOURNAL OF INTERNATIONAL LAW 495, 500–501 (2012).

<sup>156</sup> VCLT, *supra* note 31, art. 62(1).

<sup>157</sup> Facts, ¶9.

<sup>158</sup> Rosemary Rayfuse, *Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of “Disappearing” States* in THREATENED ISLAND NATIONS 180 (2013).

<sup>159</sup> See **Argument C(1)(d)**.

baselines would alter jurisdictional limits and require costly re-evaluations and new enforcement measures, effectively transforming its obligations under UNCLOS.<sup>160</sup>

**D. 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.**

The Permola Court’s seizure and sale of Ambrosia’s aircraft, based on its recognition of the Transitional Council’s waiver, are composite acts that violate rules on recognition [1], immunity from jurisdiction and enforcement [2], and non-intervention [3].

**1. ROVINIA’S RECOGNITION OF THE TRANSITIONAL COUNCIL VIOLATED RULES ON RECOGNITION AND NON-RECOGNITION OF GOVERNMENTS.**

Recognition and non-recognition are legal matters that are governed by international law [a]. Thus, Rovinia’s recognition of the Transitional Council violates its obligation to recognize Acting President Mary Zavala’s (“**Zavala**”) government [b] and, conversely, to not recognize the Transitional Council [c].

**a. Recognition and non-recognition are legal matters that are relevant in resolving the legality of the seizure and sale of The Falcon.**

Recognition of governments is the acceptance of certain institutions as the lawful representative of a State.<sup>161</sup> Although States have traditionally treated it as political,<sup>162</sup>

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<sup>160</sup> UNCLOS, *supra* note 98, art. 76(8).

<sup>161</sup> Hans Kelsen, *Recognition in International Law: Theoretical Observations*, 35 AMERICAN JOURNAL OF INTERNATIONAL LAW 605, 614-615 (1941).

<sup>162</sup> ILA, First Report on Recognition/Non-recognition in International Law, 18 (78<sup>th</sup> Conference, Sofia, 2012); HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW, 420 (1978).

recognition is a unilateral act with legal effects.<sup>163</sup> In *Ukraine v. Russian Federation*, this Court accepted the existence of relevant rules of international law applicable to recognition.<sup>164</sup>

Conversely, in *Namibia*, this Court introduced non-recognition as a secondary obligation that mandates States to not recognize situations arising from acts in violation of international law, since unlawful acts cannot create legal rights for the wrongdoer.<sup>165</sup>

**b. Rovinia violated its obligation to recognize the Zavala government as Ambrosia’s legitimate government under international custom.**

Historically, to determine which government may represent a State, States have looked into which entity has effective control, following the *Tinoco* case.<sup>166</sup> However, customary international law has increasingly adopted legitimacy, not effectiveness, as the primary standard for determining governmental status. This began with the *Tobar* Doctrine, where States refused to recognize governments pending free elections and constitutional reorganization.<sup>167</sup>

In support of legitimacy, the Organization of American States and the African Union have permitted suspension<sup>168</sup> and sanctions<sup>169</sup> against perpetrators of unconstitutional changes of

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<sup>163</sup> Nuclear Tests (Australia v. France; New Zealand v. France), Judgment, 1974 I.C.J. 253, ¶¶43-44 (December 20).

<sup>164</sup> Ukraine v. Russian Federation, *supra* note 30, ¶146.

<sup>165</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, ¶119 (June 21).

<sup>166</sup> Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica), 1 R.I.A.A. 369, 375 (1923) [“**Tinoco**”].

<sup>167</sup> Additional Convention to the General Treaty of Peace and Amity of 1907 art. 1 (1908).

<sup>168</sup> Protocol of Amendments to the Charter of the Organization of American States, December 14, 1992, 33 I.L.M. 1005 (1994).

<sup>169</sup> African Charter on Democracy, Elections and Governance chapter 8 (2007).

government. The UNGA also refuses credentials of post-coup delegations,<sup>170</sup> as in the cases of Myanmar's military junta<sup>171</sup> and Afghanistan's Taliban government since 2021.<sup>172</sup>

Here, Rovinia should have recognized the Zavala government as the legitimate Ambrosian government based on its constitutionality [i], democratic representativity [ii], and effective control [iii].

- i. Customary international law privileges constitutional claimants like the Zavala government in the grant of recognition.

Customary international law prefers the claim of a State's constitutional government over all unconstitutional claimants, even if exercising effective control.<sup>173</sup> In contested transitions, courts have resorted to the foreign State's constitution to determine its legitimate representative.<sup>174</sup>

This conclusion finds State practice and *opinio juris* in the attitude of States towards the governments of Alassane Ouattara in Côte d'Ivoire in 2010,<sup>175</sup> Adama Barrow in The Gambia in

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<sup>170</sup> Rebecca Barber, *The Role of the General Assembly in Determining the Legitimacy of Governments*, 71 INTERNATIONAL & COMPARATIVE LAW QUARTERLY 627, 628 (2022).

<sup>171</sup> UNSC Resolution 2669 (2022).

<sup>172</sup> Report of the Credentials Committee, U.N. Doc. A/78/605 (2023).

<sup>173</sup> Niko Pavlopoulos, 'The International Legal Criteria for Governmental Status', in THE IDENTITY OF GOVERNMENTS IN INTERNATIONAL LAW, 108 (2024).

<sup>174</sup> Republic of Somalia v. Woodhouse Drake S.A, Queen's Bench Division, 54 (1992); Sierra Leone Telecommunications Co Ltd v. Barclays Bank Plc. (1998).

<sup>175</sup> UNGA, Report of the Credentials Committee, UN Doc A/65/583/Rev.1 (2010).

2016,<sup>176</sup> and Manuel Zelaya in Honduras in 2009.<sup>177</sup> This may likewise be observed in past governments in Cambodia,<sup>178</sup> Haiti,<sup>179</sup> Sierra Leone,<sup>180</sup> and Madagascar,<sup>181</sup> among other States.

Here, for the entire duration of President Derey's incapacity, presidential powers under Ambrosia's Constitution<sup>182</sup> solely resided upon then-Vice President Zavala. Thus, Rovinia was bound to recognize the Zavala government as Ambrosia's legitimate government-in-exile.<sup>183</sup>

- ii. Customary international law privileges democratically representative claimants like the Zavala government in the grant of recognition.

Since the end of the Cold War, customary international law has held that claimants may enjoy governmental status based on democratic representativity,<sup>184</sup> otherwise known as the rights to "political participation" and "democratic governance."<sup>185</sup> This is also guaranteed by the right

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<sup>176</sup> UNSC Resolution 2337 (2017).

<sup>177</sup> UNGA Resolution 63/301 (2009).

<sup>178</sup> UNGA, First Report of the Credentials Committee, 34<sup>th</sup> Session, U.N. Doc. A/34/500 (1979).

<sup>179</sup> UNGA Resolution 48/27 (1993).

<sup>180</sup> UNSC Resolution 1132 (1997).

<sup>181</sup> UNGA, Official Records, 64<sup>th</sup> session, UN Doc. A/64/PV.8, 21 (2009).

<sup>182</sup> Facts, ¶24.

<sup>183</sup> Stefan Talmon, 'Who Is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law', in *THE REALITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF IAN BROWNLIE*, 499 (1999).

<sup>184</sup> Jean D'Aspremont, *Legitimacy of Governments in the Age of Democracy*, 38 *NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS* 877, 910 (2006) [**"D'Aspremont"**].

<sup>185</sup> Gregory Fox, *The Right to Political Participation in International Law*, 17 *YALE JOURNAL OF INTERNATIONAL LAW* 539, 590 (1992); Thomas Franck, *The Emerging Right to Democratic Governance*, 86 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 46, 46 (1992).

to take part in public affairs and genuine elections, as enshrined in *Article 25 of the ICCPR*<sup>186</sup> and regional human rights instruments.<sup>187</sup>

Oftentimes, constitutional governments-in-exile are also democratically representative.<sup>188</sup> When electoral processes were disregarded, like in Angola,<sup>189</sup> Cambodia,<sup>190</sup> and Myanmar,<sup>191</sup> States refused to recognize the resultant government. Likewise, the Transitional Council was not democratically representative because it seized power without due elections, unlike Zavala who was rightfully elected as Vice President in 2019.<sup>192</sup>

iii. In any case, the Zavala government retained its status because the Transitional Council failed to exercise effective control.

The Zavala government still retained its authority as the last claimant that truly exercised effective control<sup>193</sup> over Ambrosia, because the Transitional Council was unable to gain such authority.

**First**, the Transitional Council did not have reasonable assurance of permanence. Rooney Piretis herself acknowledged that they “will stand down the very moment that a healthy President Derey returns to Ambrosia.”<sup>194</sup> **Second**, Ambrosia’s State organs did not acquiesce to the authority of the Transitional Council. Only five of Zavala’s 15-person cabinet, three military officers, and 10 parliamentarians from the National Assembly supported the Transitional

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<sup>186</sup> ICCPR art. 25(a-b), December 16, 1966, 999 U.N.T.S. 171.

<sup>187</sup> Protocol No. 1 to the ECHR art. 3, March 20, 1952, E.T.S. No. 9; American Convention on Human Rights art. 23, November 22, 1969, 1144 U.N.T.S. 123; African Charter on Human and Peoples' Rights art. 13, June 27, 1981, 1520 U.N.T.S. 217.

<sup>188</sup> See State Practice in **Argument D(1)(b)(i)**.

<sup>189</sup> UNSC Resolution 851 (1993).

<sup>190</sup> UNGA, Report of the Credentials Committee, U.N. Doc. A/52/719 (1997).

<sup>191</sup> UNGA Resolution 49/197 (1994).

<sup>192</sup> Facts, ¶23.

<sup>193</sup> Tinoco, *supra* note 166.

<sup>194</sup> Facts, ¶38.

Council.<sup>195</sup> **Third**, the Transitional Council did not enjoy the habitual obedience of the Ambrosian population, as there was continued opposition to its unconstitutionality and authoritarian tendencies.<sup>196</sup> **Fourth**, the Transitional Council failed to discharge its internal and external obligations, such as its failure to bring relief to the suffering people of Divilina<sup>197</sup> and its use of violence against public demonstrations in favor of Zavala.<sup>198</sup>

**c. Rovinia’s recognition violated its obligation not to recognize the Transitional Council.**

Besides Ambrosia’s Constitution, the Transitional Council also seized power in violation of the regional custom of democratic governance [i] and the right to self-determination [ii], both of which prompt Rovinia’s obligation of non-recognition.

**i. The Transitional Council seized power in violation of the regional custom of democratic governance in the Paine Peninsula.**

A regional custom<sup>199</sup> of democratic governance exists among the seven States in the Paine Peninsula. They all adopted constitutions providing for democratic political systems.<sup>200</sup> They also concluded the OCDP Charter, *Article 1(a)* of which embodies their commitment “to protect the rule of law and our democratic institutions.”<sup>201</sup>

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<sup>195</sup> Facts, ¶¶36-38.

<sup>196</sup> Facts, ¶47.

<sup>197</sup> Facts, ¶38.

<sup>198</sup> Facts, ¶48.

<sup>199</sup> Identification of CIL, *supra* note 139.

<sup>200</sup> Facts, ¶1.

<sup>201</sup> Facts, ¶10.

- ii. The Transitional Council seized power in violation of the Ambrosians' right to political self-determination.

The Common *Article 1 of the ICCPR and ICESCR* guarantees all peoples' right of self-determination<sup>202</sup> to "freely determine their political status."<sup>203</sup> Self-determination requires a free and genuine expression of the will of the peoples concerned.<sup>204</sup>

Here, the Transitional Council's coup was made in gross violation of the Ambrosian people's right to determine their internal political status, as best established by its Constitution and their electoral processes. Thus, following the *Wall Advisory Opinion*,<sup>205</sup> Rovinia should not have recognized as lawful any impediment to the Ambrosians' right to self-determination.

**2. ROVINIA'S SEIZURE AND SALE OF AMBROSIA'S AIRCRAFT VIOLATED AMBROSIA'S IMMUNITY FROM JURISDICTION AND ENFORCEMENT UNDER CUSTOMARY INTERNATIONAL LAW.**

The jurisdictional immunity of States and their property is established in international custom,<sup>206</sup> as pronounced by this Court in *Jurisdictional Immunities*.<sup>207</sup> Although it has not yet entered into force, the UNCJISP codifies customary international rules on immunity.<sup>208</sup>

Here, Rovinia's seizure and sale of Ambrosia's aircraft, "The Falcon,"<sup>209</sup> violated Ambrosia's immunity from jurisdiction [a] and post-judgment measures of constraint [b].

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<sup>202</sup> UN Charter art. 1(2); East Timor (Portugal v. Australia), Judgment, 1995 I.C.J. 90, ¶29 (June 30).

<sup>203</sup> HRCComm, CCPR General Comment No. 12, Article 1: Right to Self-determination (1984).

<sup>204</sup> Western Sahara, Advisory Opinion, 1975 I.C.J. 12, ¶55 (October 16).

<sup>205</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶159 (July 9).

<sup>206</sup> U.N., ILC Yearbook, Vol. II A/CN.4/SER.A/1980/Add.1 (Part 2), 147 (1980).

<sup>207</sup> Jurisdictional Immunities Case, *supra* note 67, ¶¶56, 113.

<sup>208</sup> Wallishauser v. Austria, *supra* note 69.

<sup>209</sup> Facts ¶¶41, 54.

a. **The Permola Court’s adjudication of *O’Mander Corp. v. Union of Ambrosia* violated Ambrosia’s jurisdictional immunity.**

A State shall give effect to State immunity by refraining from exercising jurisdiction in a proceeding before its courts against another State,<sup>210</sup> except in proceedings involving commercial transactions [i] or when the foreign State expressly or impliedly consents to the exercise of jurisdiction [ii].

i. Ambrosia’s contract with O’Mander Corp. for the Ministry of Telecommunications was not a commercial transaction under the purpose test.

Using the nature test, Ambrosia’s contract with O’Mander Corp. for the supply of 5G technology may classify as “commercial transactions.”<sup>211</sup> However, its use for the Ministry of Telecommunications puts it within the ambit of *acta juri imperii* under the purpose test.

The preparatory works of the UNCJISP states that “the purpose test should not be disregarded totally,” especially for developing countries who have entered into the contract for a clearly public purpose.<sup>212</sup> This is supported by subsequent practice in domestic courts in France,<sup>213</sup> US,<sup>214</sup> and Italy.<sup>215</sup>

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<sup>210</sup> United Nations Convention on Jurisdictional Immunities of States and Their Property art. 6(1), December 2, 2004, U.N. Doc. A/RES/59/38 [“UNCJISP”].

<sup>211</sup> *Id.* art. 2(1)(c).

<sup>212</sup> ILC, Draft Articles on Jurisdictional Immunities of States and Their Property, with Commentaries, U.N. Doc. A/CN.4/SER.A/1991/Add.1 (1991).

<sup>213</sup> *Enterprise Pengon v. Government des États-Unis*, 45 I.L.R. 82 (France, 1973).

<sup>214</sup> *Rush-Presbyterian v. Hellenic*, US, 877 F.2d 574, 577 (7th Circuit 1989); *Walter v. Philippines*, US, 965 F.2d 1375, 1384 (5th Circuit 1992).

<sup>215</sup> *Association of Italian Knights of the Order of Malta v. Piccoli*, 65 I.L.R. 308 (Italy, 1974).

ii. Ambrosia neither expressly nor impliedly consented to the Permola Court's jurisdiction.<sup>216</sup>

**b. Rovinia's seizure and sale of The Falcon violated Ambrosia's immunity from post-judgment measures of constraint.**

No post-judgment measures of constraint against the property of a State may be taken in connection with a proceeding before foreign courts,<sup>217</sup> except if the foreign State has expressly or impliedly consented to it by allocating property for its satisfaction [i] or if the property is in use for other than government non-commercial purposes [ii].

i. The Transitional Council's waiver of immunity was ineffectual because it did not have the authority to consent to the Judgment Award.

A foreign State may be held to have expressly consented to a measure of constraint if it has declared such consent before the court of the forum.<sup>218</sup>

Ambrosia never consented to the Judgment Award because the Transitional Council neither had full powers<sup>219</sup> nor actual requisite authority and qualifications<sup>220</sup> to waive, expressly or impliedly, the immunity of The Falcon as State property. As an illegitimate government, it cannot bind Ambrosia under international law.<sup>221</sup> In contrast, the Ambrosian government has consistently opposed the seizure of its property in Rovinia.<sup>222</sup>

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<sup>216</sup> Facts, ¶42.

<sup>217</sup> UNCJISP, *supra* note 210, art. 19.

<sup>218</sup> *Id.* art. 19(a)(iii).

<sup>219</sup> VCLT, *supra* note 31, art. 7(1)(b).

<sup>220</sup> ILC, Draft Articles on the Law of Treaties with Commentaries, A/CN.4/191, 193, ¶3 (1966).

<sup>221</sup> D'Aspremont, *supra* note 184, at 878.

<sup>222</sup> Facts, ¶43.

- ii. The Falcon was immune from the Judgment Award because it was exclusively used for government non-commercial purposes.

Measures of constraint may also be taken against the property of a foreign State if it is specifically or intended for use for other than government non-commercial purposes.<sup>223</sup> Here, The Falcon has always been exclusively used<sup>224</sup> for diplomatic missions.<sup>225</sup> Thus, it was always entitled to immunity.

**3. ROVINIA’S SEIZURE AND SALE OF AMBROSIA’S AIRCRAFT VIOLATED THE PRINCIPLE OF NON-INTERVENTION.**

Under the principle of non-intervention, States are prohibited from intervening in matters that are essentially within another State’s domestic jurisdiction.<sup>226</sup>

Rovinia’s seizure and sale of The Falcon based on its recognition of the Transitional Council violates the principle of non-intervention for two reasons. **First**, it was a premature recognition of an unqualified entity that constitutes “improper interference” to Ambrosia’s internal matters,<sup>227</sup> especially considering the Transitional Council’s lack of effective control. **Second**, by allowing the seizure and sale of The Falcon, despite knowledge that such waiver was crafted to deprive the Zavala government of means to govern Ambrosia,<sup>228</sup> Rovinia adopted such act of coercion.<sup>229</sup> In conclusion, Ambrosia is entitled to due compensation from Rovinia.<sup>230</sup>

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<sup>223</sup> UNCJISP, *supra* note 210, art. 19(c).

<sup>224</sup> Clarifications, ¶8.

<sup>225</sup> Facts, ¶23.

<sup>226</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.), Merits, Judgment, 1986 I.C.J. 14, ¶202-205 (June 27); UNGA Resolution 2625 (XXV), *Friendly Relations Declaration* (1970).

<sup>227</sup> Third Restatement, *supra* note 65, §202(f).

<sup>228</sup> Facts, ¶44.

<sup>229</sup> D(ARSIWA), *supra* note 3, art. 11.

<sup>230</sup> *Id.* art. 36.

**PRAYER FOR RELIEF**

For the foregoing reasons, the Union of Ambrosia respectfully prays that this Court **ADJUDGE** and **DECLARE** that:

- A. This Court has jurisdiction to entertain Ambrosia’s Submission (B);
- B. Rovinia violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross, and is obliged to extradite her to Ambrosia for the purposes of Ambrosia’s criminal investigation, trial, or punishment;
- C. 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 that Rovinia is obliged to immediately cease its wrongful act by revoking existing fishing licenses and giving appropriate assurances and guarantees of non-repetition; and,
- D. 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, and that Rovinia is obliged to compensate Ambrosia for the loss of its vice-presidential aircraft in an amount to be determined in a separate phase of these proceedings.

Respectfully submitted,  
**AGENTS FOR THE APPLICANT**