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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)

MEMORIAL FOR RESPONDENT

2025

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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 assertion of criminal jurisdiction over former Minister Gertrude Cross ("**Ms. Cross**"), Rovinia's issuance of fishing licenses over the Triton Shoal in the high seas, and Rovinia's judicial seizure and sale of "The Falcon" on the basis of the Transitional Council's waiver of immunity. Rovinia submits that this Court lacks jurisdiction over the dispute regarding Rovinia's assertion of criminal jurisdiction over 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.

The Republic of Rovinia is the southernmost of the seven States, with a land area of approximately 900,000 square kilometers and a population of some 10 million people. Its coastline facing the Naegea Sea is 455 kilometers long. The Union of Ambrosia, located at the northernmost end, has a land area of approximately 180,000 square kilometers and a population of 4 million. The Naegea Sea is a critical economic resource for the region. Rovinia's fishing sector, primarily focused on the export of yellowfin tuna, comprises nearly 40% of its USD 240 billion 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, enhance collaboration in law enforcement, sustainably manage resources, and respect maritime rights.

Article XXI of the OCDP Charter is a compromissory clause that grants the International Court of Justice ("**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 March 17, 2021, five years after the entry into force of the OCDP Charter.

THE ILSA PROGRAM AND ENFORCED DISAPPEARANCES

In 2013, Ambrosian President Prosper Derey ("**President Derey**") appointed Ms. Gertrude Cross ("**Cross**") as Minister of the Interior. Minister Cross, overseeing the National Police, launched the Implementing the Law for a Safer Ambrosia ("**ILSA**") program, which resulted in marked increase in arrests, confessions, and convictions for drug-related offenses.

In August 2022, Human Rights International ("**HRI**") published the results of a study that revealed that between June 2017 and July 2020, Ambrosia's National Police had abducted and

detained more than 150 Ambrosian citizens suspected of drug trafficking under the ILSA Program, some for as long as a year before they were released. On 7 September 2022, the Ambrosian Prosecutor General initiated an investigation into these alleged abuses. 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 12 June 2023, HRI published an update that provided new evidence suggesting the direct involvement of former Minister Cross in the abduction of Ambrosian nationals. According to the report, the Ambrosian Prosecutor General had access to undisclosed evidence when he closed the investigation on Ms. Cross.

Acting on this new evidence, on 2 May 2024, Rovinia arrested Ms. Cross pursuant to its Criminal Code, which allows it to prosecute persons accused of enforced disappearance "wherever those acts may have occurred." Ambrosia's Ambassador in Rovinia invoked her immunity as a former official in the Permola Court and requested for her extradition, but Rovinia's President asserted their right to prosecute Ms. Cross to ensure public accountability under their domestic laws.

BASELINE FREEZING LAW AND THE RIGHT TO FISH

By 1980, each of the seven States had adopted legislation proclaiming their exclusive right to fish in their Exclusive Economic Zones ("**EEZ**"), up to 200 nautical miles from their baselines. The domestic law of each State defined the baselines as "ambulatory," meaning that they would always reflect the low-water line along the coast at any given time.

On 23 November 2015, the Ambrosian National Assembly approved the Baseline Freezing Law ("**BFL**") which fixed its maritime baselines at low-water marks as of 1 November 2015 to protect its EEZ in light of sea-level rise.

In March 2016, when the five other OCDP Member States began considering similar legislations, Rovinia sent note verbales to each of them, contending that the proposed statutes, if enacted, "would violate the law of the sea and longstanding regional practice." Thereafter, by August 2016, all OCDP members except Rovinia had adopted laws similar to the BFL. At each instance, Rovinia protested through diplomatic notes. Since 2016, Ambrosia has submitted

resolutions in favor of fixing baselines at each annual meeting of the OCDP Assembly, and at each time Rovinia blocked its passage.

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, with significant concentrations of tuna on the Triton Shoal. Thus, on 2 July 2018, Rovinia began granting fishing permits for yellowfin tuna covering the entire Triton Shoal, since Ambrosia's coastlines have receded to such an extent that, if the baselines were established at the actual low-water line pursuant to UNCLOS and regional custom, all of Triton Shoal would be outside its EEZ.

THE AMBROSIAN UPRISING AND THE TRANSITIONAL COUNCIL

In February 2019, President Derey was re-elected with a new Vice-President, Mary Zavala ("**Zavala**"). The Air Force commissioned a vice-presidential aircraft for Ms. Zavala, dubbed "The Falcon." However, on 25 April 2022, President Derey suffered a hemorrhagic stroke, resulting in a coma. Ms. Zavala assumed the presidency in turn.

On 23 February 2023, Hurricane Luna struck Dovilina, an Ambrosian fishing village, while President Zavala attended a multilateral summit abroad. Zavala's non-response to the Dovilina crisis and her refusal to enact the Reconstruction Bill led to widespread criticism. At least 12 major demonstrations, with tens of thousands of people, erupted in various cities across Ambrosia, which called for a new government under Rooney Piretis ("**Piretis**"), a member of the National Assembly and opposition leader. In response, Piretis established the Transitional Council alongside former ministers, military officers, and parliamentarians. The Transitional Council enjoyed substantial support among the Ambrosian population, the executive and legislative branches, police, intelligence community, and the armed forces for its swift response to the Dovilina crisis.

THE WAIVER OF THE FALCON'S IMMUNITY

President Zavala addressed the media from Rovinia and asserted her status as Ambrosia's constitutional government. On 14 March 2023, Rovinia impounded The Falcon for the satisfaction of a judgment award, following Ambrosia's breach of contract with a private company. 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 Ambrosia's government and legal representative, based on the fact 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 PROCEEDINGS BEFORE THIS COURT

On 11 July 2024, Ambrosia filed an Application with the International Court of Justice instituting proceedings against Rovinia.

While Rovinia accepts this Court's jurisdiction "with respect to the fishing licenses and the seizure and sale of the aircraft," including its admissibility, Rovinia denies this Court's jurisdiction over "questions concerning the arrest and prosecution of Gertrude Cross" because it "occurred prior to the entry into force" of the compromissory clause and "relates to criminal proceedings in Rovinia."

SUMMARY OF PLEADINGS

[A]

Primarily, this Court lacks jurisdiction to entertain Ambrosia's Submission (B) because a "dispute of a juridical nature" does not exist between Ambrosia and Rovinia, thereby failing to comply with the compromissory clause of the OCDP Charter.

Moreover, this Court lacks jurisdiction *ratione temporis* because Ms. Gertrude Cross' ("**Ms. Cross**") participation in the ILSA Program between June 2017 and July 2020 is the "real cause" of the dispute. The arrest and prosecution of Ms. Cross in May 2024 neither formed part of "composite acts" nor introduced a "new situation" which gave rise to a dispute. Furthermore, the lasting consequences of Ms. Cross' alleged acts of enforced disappearance are mere effects or "progressive manifestations" that are remotely related to the source of the dispute.

Finally, using textual, teleological, and contemporaneous approaches of treaty interpretation, this Court lacks jurisdiction *ratione materiae* because Rovinia's arrest and prosecution is a matter "essentially" within its domestic jurisdiction.

[B]

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

Primarily, the arrest and prosecution of Ms. Cross are in accordance with Rovinia's sovereign prerogative to exercise territorial criminal jurisdiction pursuant to the Effects Doctrine.

Alternatively, Rovinia's arrest and prosecution of Ms. Cross finds bases in recognized rules on extraterritorial criminal jurisdiction, particularly under the universality and protective principles. Enforced disappearance is an international crime of exceptional gravity where universal jurisdiction is applicable. Customary international law and the International Convention for the Protection of All Persons from Enforced Disappearance support Rovinia's exercise of universal jurisdiction for enforced disappearance, especially in the absence of any guarantee of prosecution of Ms. Cross from Ambrosia. Ms. Cross' alleged acts of enforced disappearance may also qualify as crimes against humanity where universal jurisdiction is applicable.

Ms. Cross is not entitled to immunity *ratione materiae* before the Permola Court because the prohibition of enforced disappearance has become a *jus cogens* norm. The inclusion of enforced disappearance among the exceptions to immunity *ratione materiae* under the International Law Commission's Draft Article 7 is also supported by customary international law.

[C]

Rovinia's issuance of fishing licenses in the entirety of the Triton Shoal is in conformity with international law.

First, Rovinia's actions do not violate Ambrosia's sovereign rights over its Exclusive Economic Zone because the Triton Shoal lies in the high seas. Ambrosia's Baseline Freezing Law contradicts the text of UNCLOS and the principle of legal certainty and stability. There is also no subsequent practice to support modifying the interpretation of UNCLOS in favor of fixed baselines, nor does customary international law endorse the same. Instead, the ambulatory baselines approach aligns with the principles of appurtenance and equity. In addition, no regional custom in the Paine Peninsula obligates Rovinia to recognize fixed baselines, yet assuming otherwise, Rovinia remains a persistent objector to such practice.

Second, Rovinia's actions do not constitute an internationally wrongful act. Thus, it has no duty to revoke existing licenses or provide assurances of non-repetition.

Lastly, Ambrosia cannot terminate its UNCLOS obligations due to fundamental change of circumstances because UNCLOS is a treaty that establishes boundaries and the requirements for its invocation are absent.

[D]

Rovinia's judicial seizure and sale of The Falcon were consistent with international law. Preliminarily, recognition is a political matter that is irrelevant in resolving the legality of the seizure and sale.

In any case, Rovinia's recognition of the Transitional Council is consistent with the standard of effective control. There is no privilege granted in favor of constitutional and democratically representative governments. Conversely, there is no basis for Rovinia not to recognize the

Transitional Council based on either the regional custom of democratic governance or the alleged violation of the Ambrosians' right to self-determination.

Rovinia' seizure and sale of The Falcon is also consistent with Ambrosia's immunity from jurisdiction and enforcement. Ambrosia cannot invoke jurisdictional immunity because the case involved a commercial transaction. Furthermore, the Transitional Council expressly consented to the seizure and sale of The Falcon, which was no longer used for government non-commercial purposes.

Lastly, Rovinia's seizure and sale is consistent with the principle of non-intervention because Rovinia did not act in a coercive manner in recognizing the Transitional Council's waiver.

PLEADINGS

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

Although the International Court of Justice ("**this Court**") has jurisdiction over disputes submitted to it pursuant to a compromissory clause,[1] this jurisdiction is limited to the terms expressly provided in the clause.[2]

Accordingly, Rovinia submits that this Court lacks jurisdiction to entertain Ambrosia's Submission (B) pertaining to the arrest and prosecution of Gertrude Cross ("**Ms. Cross**") because there is no dispute of a juridical nature between the parties **[1]**. Assuming it exists, this Court does not have both jurisdiction *ratione temporis* **[2]** and *ratione materiae* **[3]**.

1. THERE IS NO DISPUTE OF A JURIDICAL NATURE BETWEEN AMBROSIA AND ROVINIA.

To establish this Court's jurisdiction under the compromissory clause of the OCDP Charter, Ambrosia must prove that there exists a dispute of a juridical nature between Member States, a "disagreement on a point of law or fact."[3] Moreover, to identify the existence of a dispute, this Court must determine whether the claim of one party is positively opposed by the other."[4]

Here, there exists no dispute of a juridical nature between the parties. After their exchanges between 03 and 06 May 2024, President Derey's concern for Ms. Cross was the "shameful mistreatment" she received from Rovinia, which may "jeopardize" the "historically cordial

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1 Statute of the International Court of Justice art. 36(2), June 26, 1945, 59 Stat. 1031, T.S. No. 993.

2 Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, 2003 I.C.J. 161, ¶43 (November 6).

3 Mavrommatis Palestine Concessions (Greece v. Britain), Judgment, 1924 P.C.I.J. ser. A 2, 11 (August 30) ["**Mavrommatis**"].

4 South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, 1962 I.C.J. 319, 328 (December 21).

relationship" between both States.[5] Meanwhile, Rovinia's foreign minister responded by asserting Rovinia's entitlement to enforce its laws without interference from foreign powers.[6] Both these statements do not present conflicting legal views. They are "formulated in hortatory terms" and cannot be understood as an allegation of any breach of legal obligations.[7]

The parties here are involved in a purely political dispute,[8] a misunderstanding between foreign policy and domestic law enforcement that is incapable of being settled by the application of principles and rules of international law.[9]

2. ASSUMING THERE IS A JURIDICAL DISPUTE, THIS COURT LACKS JURISDICTION *RATIONE TEMPORIS* OVER SUBMISSION (B).

The compromissory clause of the OCDP Charter expressly confines this Court's temporal jurisdiction to facts or situations occurring after its entry into force.[10] This is to prevent the revival of old disputes and claims that are based on facts or situations from a time when States could not have foreseen potential legal proceedings.[11]

Here, the real cause of the dispute is the participation of Ms. Cross in the ILSA Program which occurred prior to the entry into force of the compromissory clause **[a]**. Her arrest and prosecution neither formed part of composite acts nor introduced a new situation which gave rise

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5 Facts, ¶¶62-64.

6 Facts, ¶65.

7 Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Judgment, Preliminary Objections, 2016 I.C.J. 833, ¶49 (October 5).

8 Christian Tomuschat, 'Article 36', in ANDREAS ZIMMERMANN ET AL. (EDS.), THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY (3RD ED), ¶724 (2019) ["**Tomuschat**"].

9 Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, 1978 I.C.J. 3 (December 19), ¶31 ["**Aegean Sea**"].

10 Facts, ¶12.

11 Phosphates in Morocco (Italy v. France), Judgment, Preliminary Objections, 1938 P.C.I.J. series A/B 74, 23-24 (June 14).

to a dispute **[b]**. Lastly, the continuing consequences of Ms. Cross' acts of enforced disappearance are mere effects that are remotely related to the source of the dispute **[c]**.

a. The "real cause" of the dispute is Ms. Cross' participation in the ILSA Program between June 2017 and July 2020, a situation that occurred before the compromissory clause became effective.

In *Phosphates in Morocco*, this Court distinguished between the "dispute" and the "facts or situations which gave rise to the dispute."[12] Here, although Ambrosia claims that the dispute pertains to the immunity of Ms. Cross before Rovinian courts, this arose not from her arrest and prosecution[13] but from her participation in the ILSA Program.[14] This participation that spanned from June 2017 to July 2020 is the "fact or situation" expressly excluded by the temporal limitation in the compromissory clause of the OCDP Charter.[15]

In *Right of Passage*, this Court focused on the "facts or situations to which regard the dispute has arisen" or those which must be considered as being the "real cause" of the dispute.[16] Here, the arrest warrant and its execution in May 2024 are mere procedural extensions of Ms. Cross' participation in the ILSA Program that did not independently give rise to a dispute.[17] In bringing this claim, Ambrosia attempts to "separate the dispute from the situation of which it is the result."[18]

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12 *Id.* at 24.

13 Facts, ¶61.

14 Facts, ¶¶8, 27.

15 Facts, ¶12.

16 Case Concerning Right of Passage over Indian Territory (Portugal v. India), Judgment, 1960 I.C.J. 6, 35 (April 12) ["**Right of Passage**"]; The Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria), Judgment, 1939 P.C.I.J. ser. A/B No. 77, 82 (April 4).

17 Mavrommatis, *supra* note 3.

18 Right of Passage, *supra* note 16, Dissenting Opinion of Judges Winiarski and Badawi, 72.

b. The arrest and prosecution of Ms. Cross in May 2024 neither formed part of "composite acts" nor introduced a "new situation" which gave rise to a dispute.

Rovinia's incorporation of the crime of enforced disappearance in its Criminal Code and its application to Ms. Cross are not composite acts[19] that collectively breach an international obligation.[20] The former is a legislative measure while the latter is an enforcement measure that should be treated as distinct and separate from one another. Neither also forms part of composite acts with Ms. Cross' participation in the ILSA Program, which is outside of Rovinia's control.

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.[21] Here, prior to Ms. Cross' arrest and prosecution, there was no common understanding between Ambrosia and Rovinia that the Criminal Code would not apply to State officials accused of enforced disappearance. It should not be equated with the crime of kidnapping under Ambrosia's Criminal Code.[22] Rovinia's exercise of criminal jurisdiction based on its Criminal Code to penalize enforced disappearances, "wherever those acts may have occurred," merely implemented its understanding of the legal provisions that it already had since 2007.[23] Thus, it did not create an independently new situation as a source of a new dispute.

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19 ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts art. 42(1), U.N. Doc. A/56/10 (2001) ["**(D)ARSIWA**"]; Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment, Preliminary Objections, 2016 I.C.J. 3, ¶38 (March 17).

20 ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts Commentaries, A/56/10 (2001), ¶2.

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

22 Facts, ¶28.

23 Facts, ¶61.

c. The lasting consequences of Ms. Cross' alleged acts of enforced disappearance are mere effects or "progressive manifestations" that are remotely related to the source of the dispute.

Preliminarily, although the "doctrine of continuing violation" has been applied in several human rights tribunals,[24] this Court has yet to recognize that the continuing violation of enforced disappearance may be a basis of its jurisdiction *ratione temporis*.

The continued consequences of Ms. Cross enforced disappearances, though grim, are but "progressive manifestations of the dispute" and not the situation which gave rise to the dispute.[25] Although her failure to acknowledge the detention of victims persisted until the effectivity of the compromissory clause, this cannot be divorced from the actual situation which gave rise to the dispute, that is Ms. Cross' participation in the ILSA Program.

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

The compromissory clause of the OCDP Charter expressly excludes from this Court's subject matter jurisdiction those disputes relating to "judicial proceedings on matters which are essentially within a Member State's domestic jurisdiction,"[26] which fall beyond the scope of international law and adjudication.[27]

Following this Court's ruling in *Ukraine v. Russian Federation*, treaty interpretation may be used to "ascertain whether the actions or omissions of the Respondent complained of by the

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[24] J.E. Zitha & P.J.L. Zitha (represented by Prof. Dr. Liesbeth Zegveld) v. Mozambique, ACHPR Communication No. 361/08, ¶¶88-91 (2011) ["**Zitha v. Mozambique**"].

[25] Right of Passage, *supra* note 16, Dissenting Opinion of Judges Winiarski and Badawi, 72.

[26] Facts, ¶12.

[27] Henri Rolin, *The International Court of Justice and Domestic Jurisdiction: Notes on the Anglo-Iranian Case*, 8 INTERNATIONAL ORGANIZATION 36, 39-40 (1954).

Applicant fall within the scope of the treaty allegedly violated."[28] Textual **[a]**, teleological **[b]**, and contemporaneous approaches of treaty interpretation[29] **[c]** concur to support Rovinia's position.

a. Applying textual interpretation,[30] the arrest and prosecution of Ms. Cross is a matter essentially within Rovinia's domestic jurisdiction.

Parallel to the UN Charter, the conscious use of the word "essentially" rather than "solely" in the compromissory clause of the OCDP Charter was intended to grant broader protections to the *domaine réservé* of Member States.[31] A matter is essentially within a State's domestic jurisdiction if it is governed by domestic law in principle,[32] which is best determined by the declarant State.[33] Thus, although it may implicate international rules on immunity, the arrest and prosecution of Ms. Cross are still essentially within Rovinia's domestic jurisdiction because it involves sovereign law enforcement authority.

b. Applying teleological interpretation, the arrest and prosecution of Ms. Cross is a matter within Rovinia's domestic jurisdiction.

The domestic jurisdiction exception under the compromissory clause must be read in light of the OCDP Charter's object and purpose.[34] *Article 1 of the OCDP Charter* codifies the

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28 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).

29 RICHARD GARDINER, TREATY INTERPRETATION (2D ED.), 347 (2015).

30 Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331 ["**VCLT**"].

31 Georg Nolte, 'Charter I Purposes and Principles Article 2(7)' in BRUNO SIMMA, ET AL., THE CHARTER OF THE UNITED NATIONS - A COMMENTARY, ¶¶54-55 (2012).

32 Alfred Verdross, *The Plea of Domestic Jurisdiction before an International Tribunal and a Political Organ of the United Nations*, 28 Z. AUSL. ÖFFEN. RECHT U. VÖLKERRECHT 33, 34 (1968).

33 Certain Norwegian Loans (France v. Norway), Separate Opinion of Judge Sir Hersch Lauterpacht, 1957 I.C.J. 34, 57 (July 6).

34 VCLT, *supra* note 30, art. 31(1).

commitment of States in the Paine Peninsula to "protect the rule of law" and "enhance collaboration in law enforcement," among other purposes.

Rovinia's arrest and prosecution of Ms. Cross for enforced disappearance directly upholds these principles by ensuring accountability for grave human rights violations. At the time of the creation of the OCDP Charter, enforced disappearance was not yet a prevalent issue in the region. But in order to respond to this offense, Member States must be able to prosecute individuals regardless of nationality or position, as in the cases of illegal fishing, drug trafficking, and smuggling.[35] Furthermore, enhancing collaboration in law enforcement[36] does not override the sovereign right of Member States to prosecute persons under their domestic legal framework.[37]

c. Applying contemporaneous interpretation,[38] the arrest and prosecution of Ms. Cross is a matter within Rovinia's domestic jurisdiction.

The discussions during the negotiations of the OCDP Charter[39] reflected a shared understanding among Member States that the compromissory clause would not extend to matters that are essentially domestic in nature and that may be resolved directly among affected States, including the prosecution of persons under a State's criminal laws.[40] This shows that the OCDP Charter was created with the intention to promote international cooperation without expense to the sovereign right of States to exercise territorial criminal jurisdiction.

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35 Facts, ¶¶6,10.

36 Tim Legrand, *Christian Leuprecht, Securing cross-border collaboration: Transgovernmental Enforcement Networks, Organized Crime and Illicit International Political Economy*, 40(4) POLICY AND SOCIETY 565, 565 (2021).

37 Annelen Micus, 'The Duty of States to Investigate and Prosecute under International Law', in THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AS A SAFEGUARD FOR JUSTICE IN NATIONAL TRANSITIONS 7, 8 (2015).

38 VCLT, *supra* note 30, art. 32.

39 Facts, ¶11.

40 'Draft Convention on Jurisdiction with Respect to Crime', in AMERICAN JOURNAL OF INTERNATIONAL LAW, 439–442 (1935).

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

Assuming that this Court has jurisdiction over this submission, Rovinia is prepared to defend its position on the merits. The arrest and prosecution of Ms. Cross are in accordance with its sovereign right to exercise territorial **[1]** and extraterritorial criminal jurisdiction under recognized bases in international law **[2]**. Furthermore, Rovinia's denial of Ms. Cross' immunity is justified because immunity *ratione materiae* does not apply for persons accused of enforced disappearance **[3]**.

1. THE ARREST AND PROSECUTION OF MS. CROSS ARE IN ACCORDANCE WITH ROVINIA'S SOVEREIGN PREROGATIVE TO EXERCISE CRIMINAL JURISDICTION PURSUANT TO THE EFFECTS DOCTRINE.

States have the sovereign right to create and enforce laws within its own territory, consistent with their prescriptive and enforcement jurisdiction.[41] The incorporation and application of the crime of enforced disappearance in Rovinia's Criminal Code is a valid exercise of this jurisdiction.[42]

Under the Effects Doctrine, States may prescribe laws regarding foreign acts that have substantial effects within its territory.[43] Rovinia's exercise of criminal jurisdiction over Ms. Cross on the basis of its Criminal Code punishing enforced disappearance is consonant with this principle.[44] Her presence in Rovinia presents a threat to public order because it undermines Rovinia's responsibility to prosecute impunity and ensure public accountability where the

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41 Donald Rothwell, et al., 'Jurisdiction', in INTERNATIONAL LAW CASES AND MATERIALS WITH AUSTRALIAN PERSPECTIVE, 294 (2010).

42 Facts, ¶61

43 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) ["**Lotus**"].

44 Restatement (Third) of Foreign Relations Law of the United States, §403(2) (1988) ["**Third Restatement**"].

perpetrator is within its borders.[45] Ms. Cross' non-acknowledgement of the disappearances and non-disclosure of the fate or whereabouts of its victims are continuing effects[46] that attached to her person in Rovinia.

2. ROVINIA'S ARREST AND PROSECUTION OF MS. CROSS FINDS BASES IN RECOGNIZED RULES ON EXTRATERRITORIAL CRIMINAL JURISDICTION.

In *S.S. Lotus*, this Court's predecessor held that "territoriality of criminal law is not an absolute principle of international law."[47] States have already recognized extraterritorial criminal jurisdiction as a departure from the strict territoriality principle.[48] Anent this, Rovinia may exercise extraterritorial criminal jurisdiction under both the universality **[a]** and protective **[b]** principles.

a. Rovinia may exercise universal jurisdiction over Ms. Cross' crime of enforced disappearance committed in Ambrosia.

The crime of enforced disappearance under the Rovinian Criminal Code punishes persons found in Rovinia who are accused of enforced disappearance, "wherever those acts may have occurred."[49] This is an exercise of universal jurisdiction, which is the "competence of a State to prosecute and punish the alleged perpetrators of certain offences, regardless of their location or the nationality of the perpetrators or victims."[50]

Although Ms. Cross' acts during the ILSA Program all occurred in Ambrosia and affected Ambrosian nationals, her presence in Rovinia triggered its obligation to exercise jurisdiction over the crime of enforced disappearance because it is an international crime of exceptional gravity **[i]**, in accordance with international custom **[ii]** and the *International Convention for the Protection*

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45 Facts, ¶63.

46 Zitha v. Mozambique, *supra* note 24, ¶93.

47 Lotus, *supra* note 43, 20.

48 Third Restatement, *supra* note 45; Kamminga, 'Extraterritoriality' in R. WOLFRUM (ED.), THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, ¶3 (2020).

49 Facts ¶61.

50 Anne Lagerwall & Marie-Laurence Hébert-Dolbec, *Universal Jurisdiction,* in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW, 9 (2022).

of All Persons from Enforced Disappearance ("**ICPPED**") **[iii]**. Alternatively, Ms. Cross' acts of enforced disappearance qualify as crimes against humanity **[iv]**.

i. Enforced disappearance is an international crime of exceptional gravity where universal jurisdiction is applicable.

In *Belgium v. Senegal*, this Court emphasized that the object and purpose of universal jurisdiction is to prevent "alleged perpetrators of acts of torture from going unpunished, by ensuring that they cannot find refuge in any State party."[51] Universal jurisdiction is historically applied in crimes against the law of nations[52] and against *jus cogens*[53] and *erga omnes*[54] norms, which are of such magnitude that they demand universal prosecution and prevention.[55]

Similarly, enforced disappearance is of such character that it is cognate to torture and other grave crimes under international law. In *Zitha v. Mozambique*, the African Court on Human and Peoples' Rights ruled that enforced disappearance violates a range of human rights, including the "right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment."[56] This pronouncement is also adopted in the Human Rights Committee,[57] the

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51 Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 2012 I.C.J. 422, ¶120 (July 20) ["**Belgium v. Senegal**"].

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

53 THOMAS WEATHERALL, JUS COGENS: INTERNATIONAL LAW AND SOCIAL CONTRACT, 351 (2015).

54 Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, 1970 I.C.J. 3, ¶33 (February 5).

55 The Attorney General v. Adolf Eichmann, 1968 District Court of Jerusalem Criminal Case 40/61, ¶11-13.

56 Zitha v. Mozambique, *supra* note 24, ¶81; HRComm, General Comment No. 36, Article 6: Right to Life, ¶58 (2019).

57 Bleier v. Uruguay, HRComm Communication No. R.7/30 (1980); El Hassy v. Libyan Arab Jamahiriya, HRComm Communication No. 1422/2005, ¶8 (2007).

European Court of Human Rights,[58] and the Inter-American Court of Human Rights (**"IACtHR"**).[59]

ii. Customary international law recognizes universal jurisdiction in prosecuting persons accused of enforced disappearance.

The application of universal jurisdiction for enforced disappearance is supported by State practice and *opinio juris*.[60] This custom crystallized with the 1978[61] and 1993 *Declaration on the Protection of all Persons from Enforced Disappearance*[62] of the UN General Assembly ("**UNGA**"), where States moved away from the country-specific approach and embraced the notion of disappearances as a universal and distinct issue. In 1994, the Organization of American States ("**OAS**") adopted the *Inter-American Convention on Forced Disappearance of Persons* which recognized that enforced disappearance was subject to universal jurisdiction.[63] States like France,[64] Spain,[65] and Italy[66] have also implemented similar legislations.

Thus, the incorporation of universal jurisdiction in enforced disappearance under the Rovinian Criminal Code, and its application to Ms. Cross, are consistent with customary international law.

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58 Varnava and others v. Turkey, Judgment, ECtHR Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, ¶98 (2009).

59 Garcia Lucero et al. v. Chile, IACtHR series C No. 267, ¶182 (2013).

60 North Sea Continental Shelf (Federal Republic of Germany/Netherlands), Judgment, 1969 I.C.J. 3, ¶71 (February 20) ["**North Sea Continental Shelf**"].

61 Resolution 33/173 (1978).

62 Resolution 47/133 (1992).

63 Inter-American Convention on Forced Disappearance of Persons art. IV, 24th Regular Session of the General Assembly to the OAS (1994).

64 France, Code Pénal art. 212-1 (2013).

65 Spain, Organic Law 1/2015 (2015).

66 Italy, Codice Penale art. 605 (1930).

iii. Article 9(2) of the ICPPED mandates Rovinia to exercise universal jurisdiction despite Ambrosia's request for extradition, in the absence of any guarantee of prosecution over Ms. Cross.

Ms. Cross' physical presence in Rovinia[67] triggered its obligation under *Article 9(2) of the ICPPED* to "establish its competence to exercise jurisdiction over the offence of enforced disappearance."[68] The preparatory works of the ICPPED indicate that this provision was crafted to align with the principle of *aut dedere aut judicare*,[69] the obligation to either prosecute or extradite, for perpetrators of crimes of exceptional gravity.[70]

This obligation in the ICPPED is analogous with *Article 7(1) of the Convention Against Torture* which, as this Court held in *Belgium v. Senegal*, makes extradition a mere option to the primary obligation of prosecution, the "violation of which is a wrongful act engaging the responsibility of a State."[71]

Although universal jurisdiction has traditionally been treated as a last resort, it is applicable in this case because there is evidence that Ambrosia is unwilling prosecute Ms. Cross.[72] Rovinia cannot accede to the extradition request because Ambrosia cannot guarantee prosecution and punishment.[73] **First**, Ambrosia's extradition request for Ms. Cross was predicated on the reopening of its investigation rather than initiating prosecution.[74] **Second**, despite having access to relevant

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67 Facts, ¶63.

68 International Convention for the Protection of All Persons from Enforced Disappearance art. 9(2) December 20, 2006, 2716 U.N.T.S 3 ["**ICPPED**"].

69 Bernard Kessedjian, Civil and Political Rights, including the question of Enforced or Involuntary Disappearances, E/CN.4/2006/57, ¶14 (2006).

70 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, 50, 31-32 (2012).

71 Belgium v. Senegal, *supra* note 51, ¶95.

72 UNGA, Concluding Debate on Universal Jurisdiction Principle, GA/L/3642 (2021).

73 Resolution 45/116 art. 3(e) (1990).

74 Clarifications, ¶5.

evidence,[75] Ambrosia's Prosecutor General closed the investigation in January 2023, citing insufficient evidence to support criminal charges against Ms. Cross.[76] **Third**, President Derey has repeatedly asserted immunity for Ms. Cross[77] and made no mention of concrete plans to prosecute Ms. Cross, instead emphasizing confidentiality.[78] **Fourth**, President Derey has already shown how he may use his pardon powers to exculpate Ms. Cross from further liability.[79]

iv. Alternatively, the acts of enforced disappearance committed by Ms. Cross qualify as crimes against humanity, where universal jurisdiction is applicable.

Customary international law recognizes universal jurisdiction over crimes against humanity.[80] Here, the enforced disappearances ordered by Ms. Cross during the ILSA Program qualify as a crime against humanity, because it was a widespread or systematic attack directed against a civilian population.[81] **First**, the enforced disappearances were widespread because it was a large-scale[82] and nation-wide campaign against drug-related suspects that affected not only the direct victims but also their families.[83] **Second**, it was also systematic because it was carried out

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75 Facts, ¶50.

76 Facts, ¶28.

77 Facts, ¶57.

78 Facts, ¶62.

79 Facts, ¶56.

80 Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), Judgment, 2002 I.C.J. 3, Joint separate opinion of Judges Higgins, Kooijmans, and Buergenthal, ¶65 (February 14) ["**Arrest Warrant**"].

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

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

83 Facts, ¶¶27, 60.

in an organized manner[84] through the National Police under the ILSA Program.[85] Such drug war, though for domestic criminal enforcement purposes, may result in crimes against humanity.[86]

b. Rovinia may exercise extraterritorial criminal jurisdiction on the basis of the Protective Principle.

The protective principle allows States to exercise jurisdiction over offenses carried out overseas if they threaten the prosecuting State's central interests,[87] the determination of which remains subject to their discretion.[88] Here, Rovinia considers the public accountability of persons accused of grave human rights violations as "vital" to its interests,[89] justifying the exercise of extraterritorial criminal jurisdiction.

3. MS. CROSS' IMMUNITY *RATIONE MATERIAE* DOES NOT APPLY IN THE CRIME OF ENFORCED DISAPPEARANCE.

Since Rovinia's courts have jurisdiction over the acts of Ms. Cross, it may now address the denial of her immunity,[90] the purpose of which is not to preserve the privilege of State officials, but to "guarantee the proper performance of their functions."[91]

Ms. Cross is not entitled to immunity *ratione materiae* before the Permola Court because the prohibition of enforced disappearance has become a *jus cogens* norm **[a]**. Alternatively, the removal of her immunity is consistent with international custom **[b]**.

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84 Prosecutor v. Blaškić, Appeal Judgement, ICTY IT-95-14-A, ¶101 (2004).

85 Facts, ¶8.

86 Decision on the assignment of the situation in the Republic of the Philippines, International Criminal Court, ICC-01/21 (2021).

87 United States v. Romero-Galue, 757 F.2d 1147 (1985); United States v. Yousef, 927 F. Supp. 673, 26 (1996).

88 MARTIN WIGHT, FOREIGN POLICY AND SECURITY STRATEGY, 14 (2023).

89 Facts, ¶63.

90 Arrest Warrant, *supra* note 80, ¶46.

91 Pinochet Case, Spain Central Court of Instruction No. 5 (1998).

a. Enforced disappearance is a crime against *jus cogens* norms that cannot be performed "in an official capacity."

Preliminarily, the prohibition of enforced disappearance has become a *jus cogens* norm.[92] The IACtHR, Committee against Torture,[93] and Council of Europe[94] have emphasized that the prohibition of enforced disappearance is a "non-derogable provision of international law,"[95] signifying that it has already become a universally applicable and fundamental value for the international community.[96]

This is because of the nature and gravity of enforced disappearance, which brings a person outside the protection of law[97] and vulnerable to torture and other violations of a range of human rights.[98]

In the *Pinochet* case, the United Kingdom House of Lords ruled that international crimes of a *jus cogens* nature may be punished by any State because the offenders are "common enemies of all mankind and all nations have an equal interest in their apprehension and prosecution."[99] Thus, the commission of enforced disappearance can never be considered a function of the State and cannot be regarded as "acts performed in an official capacity."[100]

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[92] VCLT, *supra* note 30, art. 53.

[93] UN Committee against Torture, Concluding observations on the 6th periodic report of Spain, CAT/C/ESP/CO/6, 4-5 (2015).

[94] Commissioner for Human Rights, Missing persons and victims of enforced disappearance in Europe, 5 (2016).

[95] Goiburú et al. v. Paraguay, IACtHR series C No. 153, ¶93 (2006).

[96] ILC, Report on the Work of its 73rd Session, UN Document A/77/10, 2, ¶3(2022).

[97] ICPPED, *supra* note 68, art. 2.

[98] See Argument (B)(2)(a)(i).

[99] Regina v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet Ugarte (No. 3), UK House of Lords 1 A.C. 147, ¶57 (2000).

[100] ILC, Chapter VI. Immunity of State Officials from Foreign Criminal Jurisdiction art 2(b), A/77/10, 189 (2007) ["**Immunity of State Officials**"].

Consequently, although Ms. Cross ordered the enforced disappearances as part of the ILSA Program and as Ambrosia's Interior Minister, such act can never be protected by immunity *ratione materiae* because it is an international crime in violation of *jus cogens* norms.

b. Immunity *ratione materiae* does not apply to enforced disappearance under the ILC's Draft Article 7, which reflects customary international law.

The exemption of enforced disappearance from the application of immunity *ratione materiae* in *Draft Article 7* codifies[101] existing customary international law, a position held by Austria, Ireland, Lithuania, Poland, and South Korea.[102] This is also reflected in the domestic laws of Argentina, [103] Peru, [104] Venezuela, [105] Spain, [106] and Burkina Faso, [107] among others. The establishment of the ICPPED and the Rome Statute as special legal regimes for purposes of its prevention, suppression and punishment also indicates *opinio juris.*[108] Hence, the enactment and application of Rovinia's Criminal Code towards Ms. Cross' crime of enforced disappearance are consistent with international custom.

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

Rovinia's issuance of fishing licenses covering the entirety of the Triton Shoal does not violate Ambrosia's sovereign rights over its Exclusive Economic Zone ("**EEZ**") **[1]**. Consequently,

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101 Immunity of State Officials, *supra* note 100, ¶¶1-2.

102 Comments from Austria, Ireland, Lithuania, Poland, and Republic of Korea on the ILC's Draft Articles on Criminal Immunity of State Officials (73rd session of ILC, 2022).

103 Argentina, Código Penal de la República Argentina, art. 142 (1998).

104 Peru, Código Penal del Perú, art. 320 (2005).

105 Venezuela, Código Penal de Venezuela (2005).

106 Spain, Organic Act No. 16/2015.

107 Burkina Faso, Act No. 50 (2009).

108 Immunity of State Officials, *supra* note 100, ¶22.

Rovinia is not engaged in an internationally wrongful act **[2]**. Meanwhile, there is no fundamental change of circumstances that would justify Ambrosia in terminating its treaty obligations under UNCLOS **[3]**.

1. ROVINIA'S ISSUANCE OF FISHING LICENSES DOES NOT VIOLATE AMBROSIA'S SOVEREIGN RIGHTS OVER ITS EXCLUSIVE ECONOMIC ZONE ("EEZ").

Article 56(1)(a) of UNCLOS grants a coastal State sovereign rights for the purpose of "exploring and exploiting, conserving and managing" living natural resources within its 200-nautical mile EEZ, which is measured from the low-water line along the coast.[109]

By the time Rovinia issued the fishing licenses, the entire Triton Shoal was already in the high seas **[a]**. Ambrosia's Baseline Freezing Law ("**BFL**") did not operate to freeze its baselines given that it conflicts with both UNCLOS **[b]** and customary international law **[c]**. Furthermore, there is no regional custom among the States of the Paine Peninsula that binds Rovinia to recognize fixed baselines **[d]**.

a. The entire Triton Shoal is located in the high seas and beyond the exclusive jurisdiction of any State, including Ambrosia.

All parts of the sea that are not included in the EEZ, internal waters, territorial sea, or archipelagic waters are considered high seas,[110] and no State may acquire sovereignty over them.[111] This freedom of the high seas includes the freedom of fishing.[112] By 02 July 2018, when Rovinia began issuing fishing permits for yellowfin tuna across the entire Triton Shoal, Ambrosia's low-water line had receded to a point that places the entire Shoal within high seas.[113]

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[109] United Nations Convention on the Law of the Sea art. 5, December 10, 1982, 1833 U.N.T.S. 397 ["**UNCLOS**"].

[110] *Id.* art. 86.

[111] *Id.* art. 89.

[112] *Id.* arts. 87(1)(e) and 87(2).

[113] Facts, ¶22.

Ambrosia cannot unilaterally deprive Rovinia of access to the highly migratory tuna species, which is recognized under *Article 64 of UNCLOS* as a shared resource that requires cooperation among States. The May 2016 OCDP resolution underscores the need for regional collaboration, not unilateral action, in conserving and utilizing such species.[114]

b. Ambrosia's Baseline Freezing Law ("BFL") is inconsistent with UNCLOS.

Baselines are not set by the coastal States but by the rules of UNCLOS.[115] In the *Fisheries Case*, this Court held that "[t]he delimitation of the sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law."[116]

Hence, the validity of Ambrosia's BFL requires an interpretation of relevant UNCLOS provisions.[117] The BFL does not find basis under textual **[i]** and teleological approaches to treaty interpretation **[ii]**, and there is no sufficient subsequent practice of States Parties to UNCLOS that would justify the modification of its interpretation **[iii]**.

i. Applying textual interpretation, the freezing of baselines is inconsistent with Article 5 of UNCLOS, which suggests an ambulatory character to normal baselines.

Article 5 of UNCLOS defines a normal baseline as the "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State". Thus, the determination of the coastal State is subject to the provision that it must always reflect the low-water line, the

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114 Clarifications, ¶4.

115 Sean Murphy, *Ambulatory Versus Fixed Baselines Under the Law of the Sea*, 38(3) AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 721, 729 (2023) ["**Murphy**"].

116 Fisheries Case (United Kingdom v. Norway), Judgment, 1951 I.C.J. 116, 132 (December 18).

117 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**"].

point where the water meets the land, and not at some other location.[118] Consequently, if the low-water line shifts landward, the baseline[119] and maritime boundaries[120] must also move landward.

The same conclusion can be made through a negative reading of other UNCLOS provisions.[121] Unlike in cases of highly unstable coasts[122] and continental shelves,[123] permanent limits are not expressly required in normal baselines, therefore supporting its ambulatory character.[124]

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

UNCLOS aims to promote peace, security, cooperation, and friendly relations among all nations[125] by ensuring legal certainty, stability, and predictability.[126] The fixing of baselines does not serve these purposes because it could lead to instability. It would be unclear why fixing of baselines should apply only to coastline regression due to sea-level rise and not to other causes like erosion or storms.[127] This ambiguity may prompt disagreements and encourage States to interpret UNCLOS in ways that serve their interests.

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118 Murphy, *supra* note 115, 723.

119 First Issues Paper, *supra* note 117, ¶68.

120 *Id*, ¶71; MICHAEL REED, SHORE AND SEA BOUNDARIES, 185 (2000).

121 David D. Caron, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level,* 17 ECOLOGY LAW QUARTERLY 621, 634 (1990) ["**Caron**"].

122 UNCLOS, *supra* note 109, art. 7(2)

123 *Id*. art 76(9).

124 Caron, *supra* note 121, at 634-36.

125 UNCLOS, *supra* note 109, preamble.

126 International Law Association ("**ILA**"), International Law and Sea Level Rise: Minutes of the Open Session, interventions by Professors David Caron and Davor Vidas, 880-81 (76th Conference, Washington D.C., 2024).

127 Murphy, *supra* note 115, 730.

Additionally, fixed baselines could create large areas of internal waters[128] near receding coastlines, affecting the right of innocent passage[129] and disrupting established maritime zones.[130]

iii. <u>There is no subsequent practice of all States Parties to UNCLOS that would modify the interpretation of Article 5.</u>

Although the practice of fixing baselines has been recognized by a growing number of States,[131] there is insufficient evidence to conclude that it amounts to a "subsequent practice in the application" of UNCLOS.[132] A subsequent practice as an authentic means of interpretation[133] requires that the conduct in the application of a treaty is agreed by all States parties thereto.[134]

In any case, subsequent practice of States regarding the interpretation of a treaty are not immediately binding,[135] such that it overrides all other means of interpretation.[136] Without an explicit recognition of said interpretation at a global level, either in the form of a UNGA Resolution[137] or a Decision of States Parties to UNCLOS,[138] the same will not bind Rovinia.

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128 *See* UNCLOS, *supra* note 109, art. 8.

129 *Id.* arts. 17-32.

130 Murphy, *supra* note 115, 727.

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

132 ILA, Final Report of the Committee on International Law and Sea Level Rise 8 (81st Conference, Athens, June 25–28, 2024) ["**Final Report**"].

133 VCLT, *supra* note 30, art. 31(3)(b).

134 ILC, Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, with Commentary, 32, ¶12 (2018) ["**Subsequent Agreements and Subsequent Practice**"].

135 Hazel Fox, 'Article 31(3)(a)(b) of the Vienna Convention and the Kasikili/Sedudu Island case', in MALGOSIA FITZMAURICE ET. AL. (EDS.), TREATY INTERPRETATION AND THE VIENNA CONVENTION ON THE LAW OF TREATIES: 30 YEARS ON, 59, 61–63 (2010).

136 Subsequent Agreements and Subsequent Practice, *supra* note 134, 31, ¶4.

137 Final Report, *supra* note 132, at 44.

138 Statement by Ireland (78th session of ILC, 2023).

c. Ambrosia's BFL has no support under customary international law.

The practice of fixing baselines lack *opinio juris* **[i]** and, instead, customary international law espouses the ambulatory baseline approach **[ii]**. In any case, Ambrosia's fixing of baselines would be inequitable to Rovinia **[iii]**.

i. There is no evidence of *opinio juris* in favor of fixing baselines.

Growing State practice in favor of fixing baselines does not constitute a customary rule absent *opinio juris*.[139] For instance, the Pacific Islands Forum's 2021 *Declaration* merely reflects a regional initiative to address specific vulnerabilities and practical considerations, rather than an assertion of a customary international law obligation.[140]

ii. Instead, the ambulatory baselines approach is consistent with the principles of appurtenance and equity.

First, the ambulatory baselines approach is consistent with the principle of appurtenance,[141] which is exemplified by the maxim *"the land dominates the sea."*[142] This general principle of law[143] is the fundamental principle governing the law of the sea, which means that land boundaries constitute the starting point for the determination of maritime rights of coastal States.[144]

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139 ILC, Draft Conclusions on the Identification of Customary International Law, A/73/10, Conclusion 9(1) (2018) ["**Draft Conclusions on CIL**"]; First Issues Paper, *supra* note 117, ¶104.

140 Submission of the Pacific Islands Forum (72nd session of ILC, 2021), 2 ["**Pacific Islands Forum**"].

141 KATE PURCELL, GEOGRAPHICAL CHANGE AND THE LAW OF THE SEA 215 (2019).

142 North Sea Continental Shelf, *supra* note 60, ¶96.

143 Bing Bing Jia, *The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges*, 57 GERMAN YEARBOOK OF INTERNATIONAL LAW 1, 4 (2014).

144 MALCOM N. SHAW, INTERNATIONAL LAW (8TH ED.), 410 (2017).

Second, it is also consistent with the principle of equity,[145] which dictates that maritime delimitation "is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances."[146] UNCLOS itself includes many references to equity,[147] making it integral in the interpretation and application of the Convention.[148]

Here, Ambrosia's freezing of baselines would be economically inequitable to Rovinia. Rovinia's coastline facing the Naegea Sea is merely half as long as Ambrosia's,[149] despite its fishing industry contributing twice as much to its GDP.[150] Its population also exceeds Ambrosia's by more than double.[151]

d. There is no regional custom of fixing of baselines among the States in the Paine Peninsula that is binding upon Rovinia.

There is no regional custom that mandates fixing of baselines that is binding upon Rovinia **[i]**. Assuming otherwise, Rovinia exempts itself as a persistent objector **[ii]**.

i. There is no greater uniform practice of fixing of baselines in the Paine Peninsula.

In *Asylum*, this Court held that a State relying on a regional custom must prove that it is established in such a manner that it has become binding on another State, in accordance with a

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145 Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, 1982 I.C.J. 18, ¶70 (February 24); Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, 2012 ITLOS 4, ¶235.

146 North Sea Continental Shelf, *supra* note 60, ¶96.

147 UNCLOS, *supra* note 109, preamble, arts. 59, 69-70, 74(1), 83(1), 140, and 266(3).

148 ILC, Additional paper to the first issues paper (2020) 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.4/761, ¶183(b) (2023).

149 Facts, ¶¶2-3.

150 Facts, ¶4.

151 *Id.*

"constant and uniform usage practiced by the States in question."[152] Here, Rovinia never adhered to the practice of fixing baselines and, on the contrary, repudiated it. Thus, the practice never became binding against Rovinia.

ii. In any case, Rovinia is a persistent objector to such regional custom.

Assuming that the fixing of baselines has become a regional custom in the Paine Peninsula, Rovinia is exempt from its application because it consistently objected to the practice during and after its formation.[153]

This objection was clearly expressed, communicated, and persistently upheld.[154] **First**, since March 2016, Rovinia objected to the baseline freezing laws considered by other OCDP Member States.[155] **Second**, in May 2016, Rovinia voted against a resolution endorsing the fixed baselines approach during the first OCDP Assembly and delivered its opposition to Ambrosia's foreign minister.[156] **Third**, since August 2016 and despite the enactment of other States of baseline freezing laws, Rovinia continued to protest the practice and blocked annual OCDP resolutions endorsing it.[157]

2. ROVINIA'S ISSUANCE OF FISHING LICENSES DOES NOT CONSTITUTE AN INTERNATIONALLY WRONGFUL ACT AND, HENCE, ROVINIA IS NOT OBLIGATED TO CEASE SUCH ACT BY REVOKING EXISTING FISHING LICENSES.

An act is internationally wrongful if it constitutes a breach of an international obligation attributable to the State.[158] In this case, Rovinia's issuance of fishing licenses does not breach any

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152 Asylum (Colombia/Peru), Judgment, 1950 I.C.J. 266, 277; *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).

153 Draft Conclusions on CIL, *supra* note 139., Conclusion 15(1).

154 *Id.* Conclusion 15(2).

155 Facts, ¶14.

156 Facts, ¶¶15-17.

157 Facts, ¶20.

158 (D)ARSIWA, *supra* note 19, art. 2.

treaty obligation under UNCLOS since the Triton Shoal lies on the high seas following the natural recession of Ambrosia's coastline. *Article 87 of UNCLOS* explicitly grants all States the freedom of fishing on the high seas.

Hence, Rovinia's conduct cannot be characterized as an internationally wrongful act and Rovinia cannot be obligated to cease the same by revoking existing fishing licenses.[159]

3. AMBROSIA CANNOT TERMINATE ITS OBLIGATIONS UNDER UNCLOS ON THE GROUND OF FUNDAMENTAL CHANGE OF CIRCUMSTANCES.

Ambrosia cannot invoke fundamental change of circumstances because UNCLOS is a treaty establishing boundaries **[a]**. In any case, the conditions for its application are absent **[b]**.

a. UNCLOS is a treaty that establishes boundaries where fundamental change of circumstances cannot be invoked.

Article 62(2)(a) of the VCLT prohibits the application of *rebus sic stantibus* for treaties that establish boundaries, including maritime boundaries.[160]

In *Aegean Sea Continental Shelf*, this Court affirmed that both land and maritime boundaries require stability and permanence, precluding their alteration under fundamental change of circumstances.[161] Likewise, in *Bay of Bengal*, the Permanent Court of Arbitration ruled that "maritime delimitations, like land boundaries, must be stable and definitive to ensure a peaceful relationship between the States concerned" and that "neither the prospect of climate change nor its possible effects can jeopardize the large number of settled maritime boundaries throughout the

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159 *See* (D)ARSIWA, *supra* note 19, art. 30.

160 First Issues Paper, *supra* note 117, ¶141(c).

161 Aegean Sea, *supra* note 9, ¶85.

world."[162] Even directly affected States, including Maldives[163] and the member States of the Pacific Islands Forum,[164] recognize the necessity of maintaining stable maritime boundaries.

b. In any case, the conditions for terminating a treaty on the ground of fundamental change of circumstances are absent.

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.[165]

First, the recession of coastlines was not unforeseen because sea-level rise has been observed since the 1980s,[166] even prior to the conclusion of UNCLOS in 1992. **Second**, the stability of maritime boundaries did not constitute an essential basis of Ambrosia's consent because geographical changes have always been inherent in maritime delimitation.[167] Even jurisprudence deems future coastline instability irrelevant to delimitation processes.[168] **Third**, sea-level rise does not radically transform Ambrosia's obligations under UNCLOS because these relate primarily to observing boundaries[169] that remain locatable via charts and agreements, even if some basepoints vanish.[170]

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[162] Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award, 2014 PCA Case No. 2010-16 (July 7), ¶¶216–217 ["**Bay of Bengal**"].

[163] Submission of Maldives (72nd session of ILC, 2021), 9, 12.

[164] Pacific Islands Forum, *supra* note 140, 3.

[165] VCLT, *supra* note 30, art. 62(1).

[166] MICHAEL BARTH & JAMES TITUS, GREENHOUSE EFFECT AND SEA LEVEL RISE: A CHALLENGE FOR THIS GENERATION (1984).

[167] Sarra Sefrioui, *Adapting to sea-level rise: a Law of the Sea perspective*, in GEMMA ANDREONE (ED.), THE FUTURE OF THE LAW OF THE SEA 19 (2017).

[168] Bay of Bengal, *supra* note 162, ¶215.

[169] ROBIN CHURCHILL ET. AL., THE LAW OF THE SEA (4TH ED.) 368 (2022).

[170] Vasiliki Lampiri, *Could Maritime Delimitation Agreements be Terminated in the Face of Sea-Level Rise?*, J. TERRITORIAL & MARITIME STUDIES (2023).

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

Ambrosia's invocation of international rules applicable to recognition is untenable because recognition and non-recognition are political matters that are irrelevant in resolving the present dispute **[1]**. In any case, the Permola Court's seizure and sale of "The Falcon," based on the Transitional Council's waiver of immunity, did not violate international rules on recognition **[2]**, immunity from jurisdiction and enforcement **[3]**, and non-intervention **[4]**.

1. RECOGNITION AND NON-RECOGNITION ARE POLITICAL MATTERS THAT ARE IRRELEVANT IN RESOLVING THE LEGALITY OF THE SEIZURE AND SALE OF THE FALCON.

Since recognition is generally a political matter,[171] there is no binding legal obligation for States to recognize claimants to governmental status.[172] Domestic courts have consistently referred the issue of recognition to their executive branches.[173] Consequently, States have not perceived a general legal obligation of non-recognition,[174] except when there is collective non-recognition by virtue of a UN Security Council resolution[175] or a violation of a peremptory norm in international law.[176]

Since the Transitional Council's claim to governmental authority is not proscribed by either exception, this Court is called to assess not the legality of Rovinia's recognition, which remains

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171 Hersch Lauterpacht, *Recognition of States in International Law*, 53 YALE LAW JOURNAL 385, 386–87 (1944).

172 Submissions of Australia, U.K., and Japan (78th Conference of ILA, Sofia, 2012).

173 Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964); Republic of Somalia v. Woodhouse Drake & Carey (Suisse) SA, [1993] 1 Q.B. 54 (England).

174 ILA, Recognition/Non-Recognition in International Law: Second (Interim) Report, 4 (Washington Conference, 2014).

175 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).

176 (D)ARSIWA, *supra* note 19, art. 41(2).

substantially a non-legal issue,[177] but of the seizure and sale of The Falcon under the relevant customary rules on State immunities.

2. IN ANY CASE, ROVINIA'S RECOGNITION OF THE TRANSITIONAL COUNCIL WAS CONSISTENT WITH THE CUSTOMARY INTERNATIONAL LAW OF EFFECTIVENESS IN THE RECOGNITION OF GOVERNMENTS.

The reliance on effectiveness and social reality in the determination of governmental authority guarantees independence and stability.[178] Thus, only a government in effective control of a State's territory and its people may wield State power and represent it internationally.[179]

Assuming that this Court may pass on the legality of Rovinia's recognition of the Transitional Council over Mary Zavala ("**Zavala**"), this act was consistent with the standard of effective control **[a]**, since there is no customary privilege in favor of either constitutional **[b]** or democratically representative governments **[c]** and there are no other bases for non-recognition of the Transitional Council **[d]**.

a. The Transitional Council was Ambrosia's *de facto* government under the standard of effective control.

In determining which government may validly represent a State, the standard of effective control established in the *Tinoco* case[180] has been resorted to by almost all States,[181] the International Criminal Court in 2014,[182] and the International Center for Settlement of Investment

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177 Tomuschat, *supra* note 8, ¶726.

178 ILA Committee on Recognition/Non-Recognition in International Law, Third Report, Johannesburg Conference, 2016, at 4; HANS BLIX, CONTEMPORARY ASPECTS OF RECOGNITION, 643 (1970).

179 DAVID FELDEMANN, INTERNATIONAL PERSONALITY, 400 (1985).

180 Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica), 1 R.I.A.A. 369, 375 (1923) ["**Tinoco**"].

181 ILA, Fourth (Final) Report of the Committee on Recognition/Non-Recognition in International Law (Sydney Conference, 2018).

182 ICC, *The Determination of the Office of the Prosecutor on the Communication Received in Relation to Egypt* (Press release, May 8, 2014) ["**ICC Press Release**"].

Disputes[183] and the OAS Permanent Council in 2019.[184] Thus, it may also be applied in favor of the Transitional Council.

First, the Transitional Council had reasonable assurance of permanence because there was no assurance of either President Derey's medical recovery[185] or Ms. Zavala's reclaiming of effective control over Ambrosia.[186] **Second**, the Transitional Council had the acquiescence of the National Assembly and other States forces,[187] whereas Zavala's failure in the Dovilina response cost her the support of even her top ministers in vital sectors like Defense, Treasury, and Foreign Affairs.[188] **Third**, the Transitional Council enjoyed the habitual obedience of Ambrosia's population for its decisiveness in responding to the Dovilina crisis.[189] **Fourth**, the Transitional Council was able to discharge its internal obligations to govern Ambrosia peacefully and stably. It also fulfilled its international obligation by resolving its longstanding dispute with Rovinia regarding Ambrosia's breach of contract,[190] which has been pending in Permola courts since 2016.[191]

b. There is no privilege granted in favor of constitutional governments under customary international law.

Constitutionality has never been a representative and consistent requirement for governmental status under international law. To hold otherwise would in effect restrict the sovereign freedom of States to choose its own political system, since it is almost always through

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183 Valores Mundiales, SL and Consorcio Andino SL v. Bolivarian Republic of Venezuela (ICSID Case No ARB/13/11), 2019 Annulment Proceeding, Procedural Resolution No. 2, ¶42 (August 29).

184 Permanent Council of the OAS, *Acta de la Sesión Extraordinaria celebrada el 9 de abril de 2019*, OEA/Ser.G CP/ACTA 2217/19, 18 (April 9).

185 Facts, ¶24.

186 Facts, ¶49.

187 Facts, ¶47.

188 Facts, ¶¶36-38.

189 Facts, ¶¶34-35.

190 Facts, ¶44.

191 Facts, ¶¶42-43.

unconstitutional uprisings that States change their constitution.[192] This conclusion finds basis in the past governments of Peru, Myanmar, The Gambia, Niger, Congo, the National Transitional Council in Libya in 2011, Abdel Fattah el-Sisi in Egypt in 2013, and the Transitional Military Council of Sudan in 2019, among other unconstitutional claimants.[193]

c. There is no privilege granted in favor of democratically representative governments under customary international law.

The notion that there has been a shift in preferring democratic governments in the grant of recognition only arose from scholarly works that met inconsistent State practice.[194] In *Nicaragua*, this Court already held that a State's "adherence to any particular doctrine does not constitute a violation of customary international law," and to hold otherwise would contravene with the State's sovereign freedom to choose its political system and government.[195]

The demise of the *Tobar Doctrine* is an example. Although Latin American States have agreed in 1907 to not recognize governments pending free elections and constitutional reorganization,[196] these same parties had largely failed to support this practice come 1934.[197]

d. There was no basis for Rovinia to not recognize the Transitional Council.

There is no legal obligation for Rovinia not to recognize the Transitional Council on the basis of either the regional custom of democratic governance **[i]**, violation of the right to self-determination **[ii]**, or a UN organ resolution **[iii]**.

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192 NIKO PAVLOPOULOS, THE IDENTITY OF GOVERNMENTS IN INTERNATIONAL LAW, 107, 130 (2024) ["**PAVLOPOULOS**"]; Lotus, *supra* note 43, at 18.

193 PAVLOPOULOS, *supra* note 192, 107.

194 BRAD ROTH, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW, 417 (2000).

195 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, 1986 I.C.J. 14, ¶263 (June 27) ["**Nicaragua v. US**"].

196 Additional Convention to the General Treaty of Peace and Amity of 1907 art. 1 (1908).

197 Lester Woolsely, *The Recognition of the Government of El Salvador*, 28 AMERICAN JOURNAL OF INTERNATIONAL LAW 325 (1934); Charles Stansifer, *Application of the Tobar Doctrine to Central America*, 23 THE AMERICAS 251 (1967).

i. Legitimacy and democratic governance are irrelevant in the issue of recognition.

Ambrosia may argue that a regional custom of democratic governance exists among States in the Paine Peninsula.[198] However, there is no specific obligation to consider this element in the grant of recognition.

States do not have the right to question the legal origin or the legitimacy of other governments with respect to their domestic matters.[199] As best explained in *Tinoco*, "the origin and organization of government are questions generally of internal discussion and decision" that do not affect the international standing of States.[200]

ii. The Transitional Council was a popular uprising consistent with the Ambrosians' right to self-determination.

The Transitional Council could not have violated the Ambrosians' right to self-determination[201] because such right applies only in situations of colonial subjugation.[202] There is no indication of another State exercising control over the Transitional Council. On the contrary, it arose out of the public's demand for a decisive response to the Dovilina crisis.[203]

The Transitional Council was a popular uprising among the Ambrosian population that led to a change of government, following its counterparts in East Asia, Africa, Latin America, and Arab nations.[204] This is consistent with this Court's ruling in *Western Sahara* that there is no international norm that mandates that the right to self-determination be exercised by any particular

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198 Facts, ¶¶1, 10.

199 UNSC, 899th Meeting, Official Records, UN Doc S/PV.899, §37 (1960).

200 Tinoco, *supra* note 180; JOHN BASSETT MOORE, DIGEST OF INTERNATIONAL LAW, 24 (1906).

201 ICCPR art. 1(1), 999 U.N.T.S. 171 (16 December 1966).

202 UNGA Resolution 1514 (XV) (1960), ¶¶1-2; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, 177.

203 Facts, ¶¶34-35, 38.

204 FAWAZ GERGES (ED.), THE NEW MIDDLE EAST: PROTEST AND REVOLUTION IN THE ARAB WORLD (2014).

method, and that the requirement of consulting the inhabitants may be "totally unnecessary in view of special circumstances."[205]

iii. There was no collective obligation of non-recognition of the Transitional Council by virtue of a United Nations resolution or by a serious breach of peremptory norms.

The obligation of non-recognition is not self-executory. It requires a prior finding by a competent UN organ that an international crime has been committed,[206] or that there have been serious breaches of peremptory norms.[207] The UN Security Council has enacted several resolutions calling for the non-recognition of entities purporting to represent States.[208] Here, there is no such action against the Transitional Council, as it has even earned greater recognition and maintained Ambrosia's representation in the UNGA.[209]

3. ROVINIA'S SEIZURE AND SALE OF AMBROSIA'S AIRCRAFT WAS CONSISTENT WITH AMBROSIA'S IMMUNITY FROM JURISDICTION AND ENFORCEMENT UNDER CUSTOMARY INTERNATIONAL LAW.

The United Nations Convention on Jurisdictional Immunities of States and Their Property codifies relevant customary international rules on immunity.[210] Here, Rovinia's seizure and sale of The Falcon was consistent with Ambrosia's immunity from jurisdiction **[a]** and post-judgment measures of constraint **[b]**.

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205 Western Sahara, Advisory Opinion, 1975 I.C.J 12, ¶59 (October 16).

206 UN, Yearbook of the ILC, Volume II(1), ¶¶5, 14-14, 49 (1982).

207 D(ARSIWA), *supra* note 19, art. 41(2).

208 UNSC Resolution 276 (1970); UNSC Resolution 540 (1983); UNSC Resolution 551 (1984).

209 Facts, ¶49.

210 Wallishauser v. Austria, ECtHR Application No. 156/04, ¶30 (2012).

a. The subject matter of *O'Mander Corp. v. Union of Ambrosia* was a commercial transaction where Ambrosia cannot invoke jurisdictional immunity.

Generally, States shall refrain from exercising jurisdiction in a proceeding before its courts against another State.[211] However, the defendant State cannot invoke its jurisdiction immunity when a suit is brought against it arising out of a commercial transaction.[212]

To determine whether the subject matter of *O'Mander Corp. v. Union of Ambrosia* is a commercial transaction, reference should be made primarily to the nature of the contract.[213] Since the case concerned a supply contract for 5G technology between Ambrosia and a private company,[214] it qualified as a commercial transaction. Therefore, Ambrosia cannot claim immunity to avoid liability for breaching the contract.

b. Rovinia's seizure and sale of The Falcon was consistent with Ambrosia's immunity from post-judgment measures of constraint.

Generally, no post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State.[215] However, since Ambrosia expressly consented to the seizure and sale of The Falcon **[i]** and the latter was no longer used for government non-commercial purposes **[ii]**, Rovinia did not violate Ambrosia's immunity from measures of constraint.

i. The Transitional Council, acting as Ambrosia's official government, expressly consented to the seizure and sale of The Falcon.

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211 United Nations Convention on Jurisdictional Immunities of States and Their Property art. 6, UNGA Resolution 59/38 (December 2, 2004) ["**UNCJISP**"].

212 UCJISP art 10(1); Trendtex Trading Corp. v. Central Bank of Nigeria, 19770 Q.B. 529 (C.A.)

213 UNCJISP, *supra* note 211, art. 2(2); Foreign Sovereign Immunities Act, 28 U.S.C. §§1602–1611 (1976); State Immunity Act 1978, c.33 (UK); European Convention on State Immunity, (1972), Eur. T.S. No. 74.

214 Facts, ¶42.

215 UNCJISP, *supra* note 211, art. 19(a)(iii).

The Transitional Council, acting as the recognized government of Ambrosia, expressly consented[216] to the seizure and sale of The Falcon before the Permola Court.[217] As the entity exercising effective control, the Transitional Council had the requisite authority to issue such waiver. It would be incompatible to have one putative authority exercising effective control over a State, and another competing authority retaining international representative capacity.[218]

ii. The Falcon was no longer used for government non-commercial purposes and the Zavala government was not entitled to immunity.

Since The Falcon was commissioned for Ms. Zavala,[219] who was no longer a State official at the time of the Transitional Council's waiver, it was no longer entitled to immunity. This practice of not granting immunity to unrecognized entities follows the examples of Italy, Greece, Montenegro, Cyprus, and Australia.[220]

4. ROVINIA'S SEIZURE AND SALE OF THE FALCON WAS CONSISTENT WITH THE PRINCIPLE OF NON-INTERVENTION.

The seizure and sale of The Falcon did not violate the principle of non-intervention[221] because Rovinia did not act in a coercive manner in opting to recognize the Transitional Council.

First, Rovinia did not deprive Ambrosia its sovereign right of effective choice[222] because it only acted on the Transitional Council's decision to waive The Falcon's immunity.[223] **Second**,

216 *Id.*

217 Facts, ¶¶44-46.

218 ICC Press Release, *supra* note 182, ¶4.

219 Facts, ¶23.

220 Aristoteles Constantinides, Alison Pert, Monica Lugato, & Enrico Milano, *Views of Committee Members in Recognition/Non-Recognition in International Law: Second (Interim) Report*, *ILA Washington Conference*, 20-27 (2014).

221 UN Charter art. 2(7); UNGA Resolution 2625 (XXV), *Friendly Relations Declaration* (1970).

222 Nicaragua v. US, *supra* note 195, ¶208.

223 Facts, ¶44.

Rovinia did not direct or control[224] the Transitional Council at any time within its exercise of government or in its actions before Permola courts.

Lastly, since there has never been a definitive pronouncement from this Court or any international organ to the effect that mere recognition would rise to a breach of non-intervention, there is no necessity to deviate from this position as it relates to Rovinia.

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224 Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶160 (December 19).

PRAYER FOR RELIEF

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

A. This Court lacks jurisdiction to entertain Ambrosia's Submission (B) because it is outside the scope of the compromissory clause of the OCDP Charter;

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

C. Rovinia's issuance of licenses to fish in the entirety of the Triton Shoal, which is located in the high seas, is in conformity with international law; and,

D. Rovinia's judicial seizure and sale of "The Falcon" on the basis of the Transitional Council's waiver of immunity were in accordance with international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT