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IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE, THE NETHERLANDS

THE 2017 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

THE CASE CONCERNING THE SISTERS OF THE SUN

FEDERATION OF THE CLANS OF THE ATAN

APPLICANT

V.

KINGDOM OF RAHAD

RESPONDENT

MEMORIAL FOR THE RESPONDENT

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INDEX OF AUTHORITIES

International Cases and Arbitral Decisions

Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of Congo) (Preliminary Objections) [2007] ICJ Rep 582 [44] 30

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Merits) [2007] ICJ Rep 43, [228] . 15, 20

Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal) (Judgment) [1991] ICJ Rep 53 12

Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal) (Judgment) [1991] ICJ Rep 53, ... 3

Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v Rwanda) (Jurisdiction and Admissibility) [2006] ICJ Rep 6 1

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)/Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) (Merits) ICJ, General List Nos 150 and 152, 16 December 2015 .... 8, 9

Chorzów Factory (Merits)[1928] PCIJ (ser A) no 17 34

Cyprus v Turkey (1978) 2 Eur Comm HR 85 30

Cyprus v Turkey (ECtHR, Grand Chamber, Application No 25781/94, 12 May 2014) 35

Diversion of Water from the Meuse (Netherlands v Belgium) [1937] PCIJ (ser A/B) No 17, 77 (Separate Opinion of Judge Hudson), 49 34

Fisheries Jurisdiction Case (Spain v Canada) (Jurisdiction) [1998] ICJ Rep 432 .... 2, 3

Fisheries Jurisdiction Case (United Kingdom/Iceland) (Jurisdiction) [1973] ICJ Rep 3 3

Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment) [1997] ICJ Rep 7 ... 2, 4, 10, 11

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion [2004] ICJ Rep 136 33

Legality of the Threat or Use of Weapons (Advisory Opinion) [1996] ICJ Rep 226.................... 15

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Jurisdiction and Admissibility) [1984] ICJ Rep 391 3

North Sea Continental Shelf (Federal Republic of Germany v Denmark/Federal Republic of Germany v Netherlands) [1969] ICJ Rep 4 24

Nuclear Tests (Australia v France) (Judgment) [1974] ICJ Rep 253.. 1

Phosphates in Morocco (Italy v France) (Preliminary Objections) (1938) PCIJ, (ser A/B) No 74 23

Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgment) [2012] ICJ Rep 422.. 4

Report and Recommendations made by the Panel of Commissioners concerning the Egyptian Workers' Claims (Jurisdiction) (1995) 117 ILR 195 35

Société Commerciale de Belgique (Belgium v Greece) [1939] PCIJ (ser A/B) No 78................ 18

Treaties and Covenants

Agreement between the Republic of Paraguay and the Republic of Bolivia on the recovery of stolen cultural property and other property, stolen or illegally imported or exported, Paraguay—Bolivia, signed 16 April 2004, 2429 UNTS 143 (entered into force 21 November 2005) 25

Agreement between the State of Israel and the Federal Republic of Germany, signed 10 September 1952, 162 UNTS 2137 (entered into force on 27 March 1953)............................. 34

Agreement between the Swiss Federal Council and the Government of the Republic of Colombia on the import and repatriation of cultural property, Switzerland—Colombia, signed 01 February 2010, 2801 UNTS (entered into force 4 August 2011) 25

Convention for the protection of the world cultural and natural heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘*WHC*’)........ 12, 13

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, opened for signature 14 November 1970, 823 UNTS 231 (entered into force 24 April 1972) 22, 23

European Convention on Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953)... 30

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 1 ('ICCPR')............... 18, 19, 30, 32, 33

Vienna Convention on the Law of Treaties, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) 2, 3

Other Authorities

Adam Markham et al, *World Heritage and Tourism in a Changing Climate* (UNEP and UNESCO, Paris, 2016) 26 16

IUCN, ‘Draft International Covenant on Environment and Development’ (3rd ed, 2004, Environmental Policy and Law Paper No. 31 Rev. 2) 81 14

Decisions of National Courts

Agudas Chasidei Chabad of U.S. v Russian Federation, 528 F.3d 934 (2008) (2d Cir (US))..... 19

Commonwealth v Tasmania (1983) 156 CLR 1 14

Books

Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights, Commentary, Cases and Materials* (Oxford University Press, 2014) 42 19

Ben Saul, David Kinley and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights* (OUP, 2014) 30, 31

Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons, 1953)........ 10, 17

Christian Tomuschat, 'State Responsibility and the Country of Origin' in Gowlland-Debbas (ed), *The Problem of Refugees in the Light of Contemporary International Law Issues* (Martinus Nijhoff, 1994) vol 12 29

D.P. O'Connell, *International Law* (Stevens & Sons, 1965) vol 2 18

Dante Caponera, *National and International Water Law and Administration* (Kluwer, 2003) 5

Dinah Shelton, *Remedies in International Human Rights Law* (OUP, 3rd ed, 2015) 34, 35

Ernst Rabel, *The Conflict of Laws: A Comparative Study* (University of Michigan Law School, 1958) vol 4 18

Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals* (Stevens & Sons, 1957) vol 1 18

Guido Carducci, 'Articles 4-7 National and International Protection of the Culture Heritage' in Francioni (ed), *The 1972 World Heritage Convention: A Commentary* (OUP, 2008)............ 13

Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford University Press, 3rd ed, 2007)........ 27, 29

Janet Blake, *International Cultural Heritage Law* (OUP, 2015) 21, 22

Jeanette Greenfield, *The Return of Cultural Treasures* (CUP, 3rd ed, 2007) 63........ 25

John Merryman (ed), *Imperialism, Art and Restitution* (CUP, 2006) 6-7, 98-113........ 23

Joseph Dellapenna, 'International Law Applicable to Water Resources Generally' in Kelly (ed) *Waters and Water Rights* (LexisNexis, 3rd ed, 2016) vol 3 4

Julio Barboza, *The Environment, Risk and Liability in International Law* (Martinus Nijhoff, 2011) 10

Laurence Boisson de Chazournes et al., 'Article 18 Convention of 1969' in Corten and Klein (eds), *The Vienna Convention on the Law of Treaties: A Commentary* (OUP, 2011), vol 1 369 24

Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff, 2009) 2, 23

Mile Jackson, *State Complicity in the Internationally Wrongful Acts of Another State* (OUP, 2015) 20

Nico Schrijver, *Sovereignty over Natural Resources* (CUP, 1997) 7

Patrick O'Keefe, *Commentary on the 1970 UNESCO Convention* (Institute of Art and Law, 2nd ed, 2007) 9 23

Reneé Martin-Nagle, *Transboundary Offshore Aquifers* (Koninklijke Brill NV, 2016) 5

Rüdiger Wolfrum, 'International Law of Cooperation' in Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (OUP, 2010) 9

Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (OUP, 2013) 26, 31, 32

Sharon Williams, *The International and National Protection of Moveable Cultural Property. A Comparative study* (Oceana Publications, 1978) 155 22

Sir Robert Jennings and Sir Arthur Watts (eds), *Oppenheim's International Law: Peace* (Longman, 9th ed, 2008) vol 1 .... 21, 22, 26

Stephen McCaffrey, *The Law of International Watercourses* (OUP, 2nd ed, 2007) 6, 7

Journal Articles

Bruno Simma, ‘From Bilateralism to Community Interest in International Law’ (1994) 250 *Recueil des Cours* 221 29

Bruno Simma, ‘From Bilateralism to Community Interest in International Law’ (1994) *Recueil des Cours* 29

Cf Roger O’Keefe ‘World Cultural Heritage: Obligations to the International Community as a Whole?’ (2004) 53 *International Comparative Law Quarterly* 189, 205 16

Chaloka Beyani, 'Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law' (1995) 7 *International Journal of Refugee Law* 130,132 (‘Beyani (1995)’) 25, 27, 29

Christopher Staker, ‘Public International Law and the *Lex Situs* Rule in Property Conflicts and Foreign Expropriations’ (1988) 58 *BYIL* 151 18

Chunsei Yamada, ‘Codification of the Law of Transboundary Aquifers (Groundwaters) by the United Nations’ (2011) 36(5) *Water International* 557 5

Duncan French, ‘Developing States and International Environmental Law: The Importance of Differentiated Responsibilities’ (2000) 49 *International and Comparative Law Quarterly* 35 . 4

Eyal Benvinisti, ‘International Law and the Mountain Aquifer’ (1992) in Isaac and Shuval (eds), *Water and Peace in the Middle East* (Elsevier, 1992) 7

Francesco Francioni and Frederico Lenzerini, ‘The Destruction of the Buddhas of Bamiyan and International Law’ (2003) 14 *European Journal of International Law* 619, 634-6 16

Hannah Garry, ‘The Right to Compensation and Refugee Flows: A ‘Preventative Mechanism’ in International Law?’ (1998) 10 (1/2) International Journal of Refugee Law 97 (‘Garry (1998)’) 28

Jack Garvey, 'Toward a Reformulation of International Refugee Law' (1985) 26(2) *Harvard International Law Journal* 483 27

John Merryman, 'Cultural Property Internationalism' (2005) 12 *International Journal of Cultural Property* 11, 11 22

Julio Barberis, 'The Development of International Law of Transboundary Groundwater' (1991) 1 *Natural Resources Journal* 167, 177-8 6

Kanchana Wangkeo, 'Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime' (2003) 28 Yale Journal of International Law 183, 264 .... 16, 17

Kurt Siehr, 'Legal Aspects of the Mystification and Demystification of Cultural Property' (2011) XVI(3) *Art, Antiquity and the Law* 173 23

Luke T Lee, 'The Right to Compensation: Refugees and Countries of Asylum' (1986) 80 *American Journal of International Law* 532, 553-4 ('Lee (1986)') 27

Lyndel Prott and Patrick O'Keefe, 'Cultural Heritage or Cultural Property' (1992) 1(2) *International Journal of Cultural Property* 307, 309 22

Pierre-Marie Dupuy, 'Reviewing the difficulties of codification' (1999) 10 *European Journal of International Law* 371 14

Rainer Hoffman, 'Refugee-generating policies and the law of state responsibility' (1985) 45(4) *Heidelberg Journal of International Law* 694 35

Robert Meyer, 'Travaux Préparatoires for the UNESCO World Heritage Convention' (1976) 2 *Earth Law Journal* 45 14

Robert Yewdall Jennings, 'Some International Law Aspects of the Refugee Question' (1939) 20 *BYIL* 98 26

United Nations Documents

, UN Doc S/RES/2253 (17 December 2015) 22

'Permanent Sovereignty over Natural Resources' GA Res 1803 (XVII), UN Doc A/5217 (14 December 1962) 10, 17

'Working Document prepared by the Working Group' (7 April 1972) UNESCO Doc SHC.72/CONF.37/5; 'Article 6 (Text Presented by the Drafting Committee)' (4-22 April 1972) UNESCO Doc SHC.72/CONF.37/10 RED 14

CESCR, *General Comment No 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, UN Doc E/C.12/2002/11 (20 January 2003) 30, 31

CESCR, *General Comment No 21, Right of Everyone to take part in cultural life (Article 15)*, UN Doc E/C.12/GC/21 (21 December 2009) 21, 32

CESCR, *General Comment No. 12, Right to Adequate Food* (Art 11 of the Covenant on Economic, Social and Cultural Rights) UN E/C.12/1999/5 (12 May 1999) 30

Decision 27 COM7B.70, adopted at the 27th Session (Paris, 2003) WHC-03/27.COM/24, 74 ... 13

Decision 29 COM7A.4, adopted at the 29th Session (Durban, 2005) WHC-05/29.COM/22 13

***General Comment 12, Article 1*, UN Doc HRI/GEN/1/Rev.9 (13 March 1984)** 18

HRC General Comment No 34: Freedom of Opinion and Expression, UN Doc CCPR/C/GC/34 (12 September 2011) 32

HRC, *General Comment No 31: The nature of the general legal obligation imported on States Parties* (CPPR/C/21/Rev.1/Add.13) (26 May 2004) 29

HRC, *General Comment No 32: Article 14 Right to equality before courts and tribunals and to fair trial*, UN Doc CCPR/C/GC/32 (23 August 2007) 33

HRC, *Report of the Independent Expert in the Field of Cultural Rights*, A/HRC/17/38 (21 March 2011) 20

HRC, *Teesdale v Trinidad and Tobago,* UN Doc CCPR/C/74/D/677/1996 (1 April 2002) 33

HRC, *Views: Ángela Poma Poma v Peru Communication No. 1457/2006,* UN Doc CCPR/C/95/D/1457/2006 (9 April 2009) 32

ILC, 'Second Report on the Law of Treaties: Revised articles on the draft convention' [1951] II *Yearbook of the International Law Commission* 24

ILC, *Addendum to Eighth Report on State Responsibility by Mr Robert Ago, Special Rapporteur*, UN Doc A/CN.4/318/Add.5-7 (19 June 1980) 10, 33

ILC, *First report on Unilateral Acts of States by Víctor Rodríguez Cendeño,* UN Doc A/CN.4/486 (5 March 1998) 1

ILC, *Report of the ILC on the work of the first part of its seventeenth session*, UN Doc A/CN.4/181 (3 May – 9 July 1965) 24

ILC, *Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN Doc A/RES/56/83 (28 January 2002) annex 10, 11, 17, 21, 23, 29, 34, 35

ILC, *Seventh report on State Responsibility by Mr Roberto Ago, Special Rapporteur*, UN Doc A/CN.4/307 and Add.1 & 2 and Corr.1 & 2 (29 March, 17 April and 4 July 1978) 21

ILC, *Topical Summary of the Discussion Held in the Sixth Committee of the General Assembly during its Sixtieth Session*, prepared by the Secretariat, UN Doc A/CN.4/560 (13 January 2006) 5

ILC, *Unilateral Acts of States – Report of the Working Group – Conclusions of the International Law Commission Relating to Unilateral Acts of States*, UN Doc A/CN.4/L.703 2

International Co-operation to Avert New Flows of Refugees: Note by the Secretary-General, UN Doc A/41/324, (13 May 1986) [66](c)(d) 28

International Covenant on Cultural, Economic and Social Rights, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976) 18

Jose R. Martinez Cobbo, Special Rapporteur of Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Study on the Problem of Discrimination against Indigenous Populations', E/CN.4/SUB.2/1986/7ADD.4 (1986), [34] [379-82] 19

Mass Exoduses, GA Res 35/196, UN Doc A/RES/35/196 (15 December 1980) 28

Report of the ILC, UN Doc A/56/10 (23 April-1 June and 2 July-10 August 2001) 11

Report of the ILC, UN Doc A/56/10 (23 April-1 June and 2 July-10 August 2001) ('*ASR Commentary*') 11, 17, 20, 21, 29, 34

Report of the ILC, UN Doc A/56/10 (23 April-1 June and 2 July-10 August 2001) ('*Draft Articles on Prevention of Transboundary Harm Commentary*') 9

Report of the ILC, UN Doc A/61/10 (1 May-9 June and 3 July-11 August 2006) ('*Commentary to the Guiding Principles*') 2

Report of the ILC, UN Doc A/61/10 (1 May-9 June and 3 July-11 August 2006) ('*Diplomatic Protection Articles*') 30, 35

Report of the ILC, UN Doc A/63/10 (5 May-6 June and 7 July-8 August 2008) ('*Draft Articles Commentary*') 7

Report of the ILC, UN Doc A/63/10 (5 May-6 June and 7 July-8 August 2008) ('*Draft Articles*') 5, 6, 10

SC Res 2199, UN SCOR, 7379th mtg, UN Doc S/RES/2199 (12 February 2015) 22

SC Res 687, UN Doc S/RES/687 (3 April 1991) [16] 34

Summary Record of the 16th meeting, UN Doc A/C.6/68/SR.16 (1 November 2013) 5

Theo van Boven, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,* UN Doc EICN/41-Sub.2/1990/10 28

UNESCO, 'Final Report' (27 February 1970) UNESCO Doc SHC/MD/5 Annex II, 4. 23

UNESCO, 'Operational Guidelines for the Implementation of the World Heritage Convention' (8 July 2015) Doc No WHC.15/01.. 14

United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) annex 19

Soft Law Instruments

ILA, *Cairo Declaration of Principles of International Law on Compensation to Refugees* (65th Conference, Cairo, 1992) 35

Memorandum of Understanding Relating to Setting up of a Consultative Mechanism for the management of the Iullemeden Aquifer System (Bamako, 20 June 2009) 5

STATEMENT OF JURISDICTION

The Federation of the Clans of Atan ("Atania") and the Kingdom of Rahad ("Rahad") have consented to submit this dispute to the International Court of Justice ("this Court"), in accordance with Article 36(1) of the Statute of the International Court of Justice ("the Statute"). Pursuant to Article 40(1) of the Statute, this dispute was transmitted to the Registrar on 12 September 2016. Atania and Rahad have undertaken to accept the Court's decision as final and binding on them and also commit to comply with it in its entirety and in good faith.

QUESTIONS PRESENTED

I. Whether extraction of water from the Aquifer violates Rahad's international legal obligations governing the proper use of a shared resource.

II. Whether the Savali Pipeline operations violate Rahad's international obligations with respect to the Kin Canyon Complex.

III. Whether Rahad is entitled to retain possession of the Ruby Sipar.

IV. Whether Atania owes compensation to Rahad for any costs incurred for accepting the Kin migrants.

STATEMENT OF FACTS

BACKGROUND

Rahad and Atania are neighbouring States on the Nomad Coast. As at January 2016, Rahad is a developing State with a GDP of US$11 billion, while Atania's GDP is US$80 billion. The Nomad Coast region is characterised by arid and semi-arid lands. The entire Nomad Coast experienced drought between 1983 and 1989. Drought returned in 1999 with record-low rainfall. Atanian meteorologists confirmed meteorological and climatological changes would result in long-term water shortage for both States.

THE GREATER INATA AQUIFER

The Greater Inata Aquifer ('the Aquifer'), an unconfined fossil aquifer, is the largest source of fresh water in the Nomad Coast. In 1988, a team of hydrologists, commissioned by Rahad, conducted the first in-depth study of the Aquifer, finding that 65% of the Aquifer was located in Rahad and 35% was located in Atania.

WORLD WATER DAY 1993

On 22 March 1993, the first UN World Water Day, Rahad's Queen Teresa and Atania's President Vhen appeared at a ceremony in Atania's capital. The Rahadi Minister of Water and Agriculture spoke of making reasonable efforts to preserve, protect and equitably use the shared freshwater resources of the Nomad Coast, and their importance for future generations.

THE SAVALI PIPELINE

On 16 June 2002, Queen Teresa stated her desire to ensure that the needs of the Rahadi people could be met through improved access to the Aquifer. She directed the Inata Logistic and Scientific Association ('ILSA') to study the feasibility and long-term effects of tapping the Aquifer. ILSA's Report of 17 January 2003 concluded that to end its reliance on imported water, Rahad would require an alternative supply of approximately 1.2km^3 per year. The report included an EIA. On 2 February 2003, in response to the increasingly serious water crisis, Queen Teresa ordered implementation of the Savali Pipeline operations, a comprehensive program to extract water from the Aquifer.

A 2010 study, commissioned by Atania, concluded that operation of the Savali Pipeline had caused a permanent lowering of the water table in the region. The study found that 20% of Atanian farmland could no longer be farmed, and that within 10 years an additional 30% would be lost if extraction continued at the same rate.

THE KIN CANYON COMPLEX

The Kin Canyon Complex ('the Complex') is a group of Canyons of archaeological significance. Two Canyons are located in Atania and one is located within Rahad territory. After a joint proposal, the Complex was listed as a mixed heritage site on 2 May 1994. The proposal included a two-kilometre 'buffer zone' extending from the edge of the Complex.

The ILSA Study noted that in conducting the Pipeline operations, care would need to be taken to avoid harm to the Complex's structural integrity. The ILSA Report and EIA were submitted to

the World Heritage Committee. The Committee urged Rahad to ensure the proposed Savali Pipeline developed and implemented targets for improved conservation of the Complex.

Rahad limited drilling to more than 15 kilometres outside the Complex's buffer zone. Extraction of water from the Aquifer began on 20 February 2006 at a rate of $1.2km^3$ per year. Since 2006, 70% of the water extracted has been used for agriculture and 22% by the natural gas industry, Rahad's largest export.

By late 2010, images emerged showing environmental degradation to remote sections of the Canyon. The Atanian government closed sections of the complex to visitors to ensure their safety. In June 2012, the Complex was added to the List of World Heritage in Danger. Queen Teresa issued a press release undertaking to conduct regular studies of the long-term impact of the Savali Pipeline project on the region and the Complex.

THE WRAP ACT

On 28 September 2012, the Atanian Parliament enacted the 2012 Water Resource Allocation Program Act ('WRAP Act'), which set a water quota for every household, farm and business in Atania. It also required farming operations to purchase licences but offered an exemption to profit generating farms. 86% of farming operations qualified for this exemption. In the first two quarters of 2013, more than 80% of Kin household used water in excess of their quotas. Less than 5% of Kin farmers had applied for licences.

In August 2013, Atania sentenced two Kin farmers to five years imprisonment for failing to comply with the WRAP Act. In October 2013, the Atanian Parliament amended the WRAP Act to provide that farms using water in violation of the Act would have their State-controlled water supply terminated. By the end of 2013, Atania had completely cut of all water to the majority of farms in Kin lands.

THE RUBY SIPAR

The Ruby Sipar ('the Sipar) is a ceremonial shield that, according to legend, was used by Teppa, a warrior of the Clan Kin, to unite the 17 Atan clans to defeat Ifan the Desert Fox. The Kin honoured Teppa by establishing the Sisters of the Sun, an order of women dedicated to the preservation of the Kin culture and traditions. The Sisters of the Sun remain social and cultural leaders within Kin society and wear miniature Sipar replicas as a symbol of loyalty to Teppa.

In 1903, Dr. Gena Logres, from the University of Atanagrad, discovered the original Sipar during an excavation in the Complex within Atania's territory. In 1996, the Sipar, identified as 'on loan from the University of Atanagrad' was moved to the Cultural Centre in Atania's portion of the Complex.

THE PROTESTS

In 2014, the Kin and their supporters protested against the 'theft' of their food, water, and way of life. The Sipar became a symbol for the protests; Carla Dugo and other speakers wore or carried replicas of the Sipar. President Vhen deployed armed police, who used tear gas and rubber bullets to disperse the protests. President Vhen also ordered all Sipar pendants to be confiscated

and destroyed. The Sipar was removed from display. In October 2014, Carla Dugo took the Sipar from storage and delivered it to Rahadi border patrol agents.

THE KIN MIGRANTS

The United Nations Food and Agriculture Organisation ('FAO') condemned the effects of the WRAP Act in a speech to the General Assembly on 2 February 2014. It was reported that farmers whose water supply had been terminated had to abandon farming and had no other means of securing sufficient food. The International Federation of the Red Cross confirmed that more than 500,000 Kin were undernourished.

In early September 2014, Rahadi Immigration agents reported that approximately 100,000 Kin, citing fear of arrest and starvation, had crossed into Rahad in two weeks. Sisters of the Sun and their family members were granted refugee status. The applications of all other Kin remain pending. The Rahadi Parliament enacted the Kin Humanitarian Assistance Act (KHAA), establishing three temporary camps in order to process the Kin. By 2015, the number of Kin exceeded the capacity of Rahad's facilities. Rahad suffered sporadic power outages and reduced access to clean water. As at the date of the special agreement 800,000 Kin had fled to Rahad. On 18 January 2016, Rahad submitted a memorandum to Atania itemising expenditures associated with caring for the Kin. The total costs incurred and accruing as at the date of the Special Agreement were US$945,000,000.

SUMMARY OF PLEADINGS

PLEADING I

The statement made by the Rahadi Minister on 22 March 1993 did not create legally binding obligations in relation to the utilisation of the Aquifer. Even if the Court was to find that it did, Queen Teresa's statement on 16 June 2002 constituted a valid revocation of any binding obligations that may have been assumed. There is no rule in customary international law requiring the equitable and reasonable utilisation of transboundary Aquifers.

In the event that this Court finds that either Rahad did bind itself unilaterally, or that it is under a customary obligation to utilise the Aquifer equitably and reasonably, Rahad has complied with its obligations in both respects. Rahad has not caused transboundary harm in utilising the Aquifer. Rahad discharged its due diligence obligations by conducting an EIA, notifying and co-operating with Atania throughout the construction of the Savali Pipeline. Irrespective of the Court's findings *vis-à-vis* the aforementioned contentions, a state of necessity precludes the wrongfulness of any of Rahad's acts.

PLEADING II

Rahad has not violated its obligations under the *WHC*, or under customary international law, with respect to the Kin Canyon Complex. Rahad exercised due diligence, and so complied with its obligation under Article 6.3 of the *WHC* and customary obligation not to cause transboundary harm. In any event, Rahad has not caused significant harm to Atania as the degradation of the Complex was neither significant, foreseeable nor causally related to Rahad's Savali Pipeline operations. Rahad fulfilled its obligations to prevent transboundary harm by exercising due

diligence. Rahad complied with any developing prohibition on the intentional destruction of cultural heritage in peacetime as Rahad did not intentionally destroy the Complex. The non-arbitrary nature of Rahad's conduct is such that it cannot have abused its rights. As in Pleading I, the wrongfulness of any act committed by Rahad is precluded on the basis of necessity.

PLEADING III

Rahad is entitled to retain possession of the Sipar. On the evidence before this Court, Atania cannot establish that it is the lawful owner of the Sipar. Independent of this, Rahad is entitled to retain possession of the Sipar in order to ensure the Kin's right to use, control, maintain and protect the Sipar. In the alternative, Rahad is entitled to retain possession of the Sipar as to return it would render Rahad complicit in Atania's violations of *ICCPR* and *ICESCR*. Atania's abuse of its rights also renders return of the Sipar inappropriate.

There is no other basis upon which Atania may compel the Sipar's return. Rahad's retention of the Sipar is not an internationally wrongful act. The *1970 Convention* had not entered into force upon Rahad at the time the Sipar entered its territory, or at the time that Rahad refused to return it to Atania. At customary international law, Rahad did not defeat the object and purpose of the *1970 Convention* between signing it and its entry into force upon Rahad. Moreover, there is no custom for the return of unlawfully obtained cultural property to its country of origin.

PLEADING IV

Atania's internationally wrongful acts have caused 800,000 Kin to leave Atania and enter Rahad, causing US$945,000,000 in costs to Rahad. Atania has arbitrarily deprived the Kin of water,

food and, consequently, their means of subsistence. Atania has also violated the civil and political rights of the Kin for protesting against this deprivation. Through this conduct, Atania has abused its sovereign right to enact and enforce domestic legislation. Atania has also caused transboundary harm to Rahad, failing to exercise due diligence in its prevention. Further, Atania has violated the Kin's human rights under *ICCPR* and *ICESCR*. Irrespective of this Court's findings *vis-à-vis* Pleadings I and II, the clean hands doctrine does not bar Rahad's claim.

Rahad, as a State specially affected by a breach of an *erga omnes partes* obligation, is entitled to invoke Atania's responsibility for these violations. Atania's internationally wrongful acts caused the mass migration of Kin from Atania. The subsequent costs to Rahad were a 'natural consequence' of this violation. Therefore, Atania has an obligation to make reparation, in the form of compensation to Rahad.

PLEADINGS

I. RAHAD'S EXTRACTION OF WATER FROM THE AQUIFER DOES NOT VIOLATE RAHAD'S INTERNATIONAL LEGAL OBLIGATIONS GOVERNING THE PROPER USE OF A SHARED RESOURCE

A. RAHAD DID NOT VIOLATE ANY OBLIGATIONS UNDERTAKEN BY UNILATERAL DECLARATION

1. The declaration by the Rahadi Minister was not legally binding

On the first UN World Water Day, on 22 March 1993, the Rahadi Minister for Water and Agriculture ('the Minister') stated that Rahad would make 'every reasonable effort' to preserve, protect and equitably use its shared fresh water resources.[1] Even if the Minister was vested with authority to bind Rahad,[2] Atania cannot enforce the statement as a source of legal obligation as it was equivocal and did not express an intention to be legally bound.[3] Rather, it was a non-legal statement 'residing in morality and politics'.[4] This is confirmed by the circumstances surrounding the statement[5] including: the generality of the statement;[6] the setting of World Water

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[1] *Compromis*, [16].
[2] *Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v Rwanda) (Jurisdiction and Admissibility)* [2006] ICJ Rep 6, 27-28 [47], [48] ('*Armed Activities*').
[3] *Nuclear Tests (Australia v France) (Judgment)* [1974] ICJ Rep 253, [43] *('Nuclear Tests').*
[4] International Law Commission ('ILC'), *First report on Unilateral Acts of States by Víctor Rodríguez Cendeño,* UN Doc A/CN.4/486 (5 March 1998), 325.
[5] *Armed Activities*, [53].
[6] *Nuclear Tests*, [52].

Day; the absence of any equivalent statement by Queen Teresa; and Atania's reception of the statement as a 'neighbourly gesture of cooperation and brotherhood'.[7]

2. In the alternative, there has been a valid revocation

If the Court finds that the Minister's statement did create legal obligations, Rahad, on 16 June 2002, validly revoked those by declaring its right and intention to use the Aquifer.[8] This revocation was not arbitrary[9] because: *first*, it was made following a fundamental change in circumstances; and *second*, Atania did not rely on the declaration.

a. There was a fundamental change in circumstances

The customary rules permitting treaties to be terminated on the ground of fundamental change[10] apply *mutatis mutandis* to unilateral declarations.[11] Since the declaration was made, Rahad suffered from unprecedented drought and climatological changes that deprived Rahad of sufficient water.[12] This is more than a 'mere change' in circumstance.[13] Despite previous drought,[14] it was not foreseeable that Rahad would suffer such severe drought.[15] The availability

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[7] *Compromis*, [16].
[8] *Compromis*, [22].
[9] ILC, *Unilateral Acts of States – Report of the Working Group – Conclusions of the International Law Commission Relating to Unilateral Acts of States*, UN Doc A/CN.4/L.703, Principle 10 (20 July 2006) ('*Guiding Principles*').
[10] *Vienna Convention on the Law of Treaties*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 62 ('*VCLT*'); *Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment)* [1997] ICJ Rep 7, [104] ('*Gabčíkovo-Nagymaros*').
[11] *Report of the ILC*, UN Doc A/61/10 (1 May-9 June and 3 July-11 August 2006), 381 ('*Commentary to the Guiding Principles*'); *Fisheries Jurisdiction Case (Spain v Canada) (Jurisdiction)* [1998] ICJ Rep 432, [46] ('*Fisheries Jurisdiction (Spain v Canada)*').
[12] *Compromis*, [19]-[20].
[13] Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff, 2009) 771 ('Villiger (2009)').
[14] *Compromis*, [14].
[15] *Compromis*, [19], [22].

of water for both present and future generations constituted the essential basis[16] of Rahad's undertaking. The change to that availability rendered Rahad's obligations 'essentially different.'[17] To prioritise the preservation of water for future generations would effectively require denying water to present generations, an untenable proposition.

b. There was no reliance by Atania

Prior to the declaration's revocation in 2002, there is no evidence that Atania took action, or suffered prejudice, in reliance on the Minister's declaration.[18] In light of this, Rahad validly revoked any unilaterally assumed obligations.

3. Further in the alternative, Rahad complied with any obligation unilaterally assumed

Even if the declaration created binding obligations and was not validly revoked, Rahad complied with its terms. The declaration must be interpreted according to its ordinary meaning, in its context and with regard to its object and purpose.[19] The customary rules of treaty interpretation[20] apply to unilateral declarations.[21]

The Minister's promise to 'preserve and protect' and ensure 'equitable use' is qualified by the words 'reasonable effort'.[22] 'Reasonable', as a 'contextual norm', necessitates consideration of

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[16] *VCLT* art 62(1)(a).
[17] *Fisheries Jurisdiction Case (United Kingdom/Iceland) (Jurisdiction)* [1973] ICJ Rep 3, [43].
[18] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Jurisdiction and Admissibility)* [1984] ICJ Rep 391, [51] ('*Nicaragua (Jurisdiction)*').
[19] *VCLT* art 31.
[20] *Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal) (Judgment)* [1991] ICJ Rep 53, [48].
[21] *Fisheries Jurisdiction (Spain v Canada)*, [46].
[22] *Compromis*, [16].

both the factual circumstances and Rahad's socio-economic capacities.[23] Considering the water scarcity,[24] expecting Rahad to refrain from using the Aquifer was not reasonable. The reasonableness of Rahad's utilisation of the Aquifer is evidenced by its efforts in commissioning a report to 'study the feasibility and long-term effects' of utilisation, including an environmental impact assessment ('EIA') and undertaking to continuously monitor the long-term impact.[25] Further, Rahad limited its utilisation to a finite rate and only for as 'long as drought conditions continue[d]'.[26] Accordingly, Rahad complied with any obligations undertaken by way of unilateral declaration.

B. RAHAD'S UTILISATION OF THE AQUIFER IS CONSISTENT WITH CUSTOMARY INTERNATIONAL LAW REGARDING SHARED RESOURCES

1. Rahad is not bound by a customary obligation of reasonable and equitable use specific to aquifers

The establishment of a rule of customary international law requires the existence of 'widespread international practice' and the '*opinio juris* of States'.[27] While a customary rule of reasonable and equitable utilisation exists regarding surface water,[28] no such rule exists for transboundary aquifers. The 'well-established rules' applicable to surface water are ill-adapted to govern aquifers because of the differing hydrogeological features of each aquifer.[29]

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[23] Duncan French, 'Developing States and International Environmental Law: The Importance of Differentiated Responsibilities' (2000) 49 *International and Comparative Law Quarterly* 35, 39.
[24] *Compromis*, [22].
[25] *Compromis*, [20], [33]; *Clarifications*, [3].
[26] *Compromis*, [21]-[22], [26].
[27] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgment)* [2012] ICJ Rep 422 [99] ('*Belgium v Senegal*').
[28] *Gabčíkovo-Nagymaros*, [85].
[29] Joseph Dellapenna, 'International Law Applicable to Water Resources Generally' in Kelly (ed) *Waters and Water Rights* (LexisNexis, 3rd ed, 2016) vol 3 49.06, 147 ('Dellapenna (2016)').

Caponera observed in 2003 that treaty provisions dealing with groundwater are 'too limited in scope to propose them in terms of customary law'.[30] Indeed, of the nearly 600 identified transboundary aquifers in the world, only four are the subject of utilisation agreements.[31] The prevalence of soft law instruments in this area reflects the absence of *opinio juris*.[32] Notwithstanding the opinion of the Special Rapporteur that the International Law Commission's ('ILC') *Draft Articles on Transboundary Aquifers*[33] codified custom,[34] the response of States evidences a lack of *opinio juris*.[35] In the absence of custom regarding transboundary aquifers, Rahad is permitted to do that which is not specifically prohibited under international law, namely extraction of water from the Aquifer.[36]

2. In the alternative, Rahad's utilisation of the Aquifer is equitable and reasonable

If Rahad has an obligation to utilise the Aquifer equitably and reasonably, Articles 4 and 5 of the *Draft Articles on Transboundary Aquifers* present a potential articulation of the obligation's content. Article 4 requires 'equitable and reasonable' utilisation.[37] Article 5 specifies factors to

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[30] Dante Caponera, *National and International Water Law and Administration* (Kluwer, 2003) 421.
[31] Reneé Martin-Nagle, *Transboundary Offshore Aquifers* (Koninklijke Brill NV, 2016) 45.
[32] Eg, Memorandum of Understanding Relating to Setting up of a Consultative Mechanism for the management of the Iullemeden Aquifer System (Bamako, 20 June 2009).
[33] *Report of the ILC*, UN Doc A/63/10 (5 May-6 June and 7 July-8 August 2008) ('*Draft Articles*').
[34] Chunsei Yamada, 'Codification of the Law of Transboundary Aquifers (Groundwaters) by the United Nations' (2011) 36(5) *Water International* 557, 561.
[35] See ILC, *Topical Summary of the Discussion Held in the Sixth Committee of the General Assembly during its Sixtieth Session*, prepared by the Secretariat, UN Doc A/CN.4/560 (13 January 2006) [43]; *Summary Record of the 16th meeting*, UN Doc A/C.6/68/SR.16 (1 November 2013) [37], [40].
[36] *S.S. Lotus (France v Turkey)* [1927] PCIJ (ser A) No 10, 21.
[37] *Draft Articles* art 4.

consider in this determination.[38] Applying those factors, Rahad's utilisation: *first*, is consistent with an equitable and reasonable accrual of benefits; and *second*, maximised the long-term benefits derived from the Aquifer.

a. Rahad's utilisation is consistent with an equitable and reasonable accrual of benefits

As 65% of the Aquifer is located within Rahad,[39] Rahad is entitled to utilise no less than 65% of its volume,[40] provided that it does so in accordance with the principle of equitable and reasonable utilisation.[41] As at the date of the Special Agreement, Rahad has used approximately half its share.[42] A determination of whether utilisation is equitable necessitates a balancing of 'countervailing equities'.[43] The extreme drought and climate changes deprived Rahad of water to sustain a supply of food for its people. The continued importation of water was not an 'economically viable and practicably possible' solution for Rahad.[44] Therefore, Rahad's utilisation of the Aquifer was necessary to meet the 'vital human needs' of its population.[45] Rahad's use of 22% of the extracted water for its natural gas industry[46] is a justified secondary

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[38] *Draft Articles* art 5.
[39] *Compromis*, [15].
[40] Julio Barberis, 'The Development of International Law of Transboundary Groundwater' (1991) 1 *Natural Resources Journal* 167, 177-8.
[41] *Draft Articles* art 3.
[42] *Compromis*, [21], [26].
[43] *Draft Articles* art 5; Stephen McCaffrey, *The Law of International Watercourses* (OUP, 2nd ed, 2007) 394 ('McCaffrey (2007)').
[44] *Compromis*, [22].
[45] *Draft Articles* art 5(2); *Compromis*, [22].
[46] *Compromis*, [26].

usage[47] of Rahad's sovereign resources,[48] particularly considering Rahad's reliance on natural gas exportation.[49]

Any harm indirectly caused to Atania from Rahad's utilisation of the Aquifer is justified by the fundamental benefits derived from utilisation. While both States experienced drought, Atania, the wealthier of the two, has been able to import water for over a quarter of a century.[50] Atania's decision to refrain from utilising the Aquifer does not render Rahad's use inequitable. In these circumstances, Rahad's use of the Aquifer to preserve the vital needs of its population should take precedence over Atania's commercial interests in agriculture.[51]

b. Rahad's extraction sought to maximise the long-term benefits derived from the Aquifer

To maximise the long term benefits of the Aquifer, all that was required of Rahad was an 'utilisation plan'.[52] As a fossil Aquifer, with negligible recharge, it is unreasonable to limit utilisation to the recharge rate.[53] Rahad's utilisation at a rate of 1.2km^3 per year complies with the recommendation of the Inata Logistic and Scientific Association's report ('ILSA') which evaluated the 'long-term effects of directly tapping the Aquifer'.[54] At the current rate of extraction, the benefits from the Aquifer will be enjoyed for decades.

[47] *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14 [175] ('*Pulp Mills*'); Eyal Benvinisti, 'International Law and the Mountain Aquifer' (1992) in Isaac and Shuval (eds), *Water and Peace in the Middle East* (Elsevier, 1992) 41.
[48] Nico Schrijver, *Sovereignty over Natural Resources* (CUP, 1997) 265.
[49] *Compromis*, [2], [26].
[50] *Compromis*, [14]; *Clarifications*, [9].
[51] McCaffrey (2007) 396.
[52] *Report of the ILC*, UN Doc A/63/10 (5 May-6 June and 7 July-8 August 2008) 42, ('*Draft Articles Commentary*').
[53] *Draft Articles Commentary*, 42.
[54] *Compromis*, [20].

3. Rahad's utilisation of the Aquifer complied with its obligation not to cause transboundary harm

a. Rahad exercised due diligence

Rahad had a customary obligation to ensure that any activity within its jurisdiction or control did not cause harm to Atania's territory.[55] Importantly, this principle only required Rahad to exercise due diligence; Rahad was not required to prevent the occurrence of all harm.[56]

i. Rahad conducted an EIA and undertook continuous monitoring

Queen Teresa directed ILSA to study the 'long term effects of directly tapping the Aquifer' in its report, which contained an EIA.[57] There is no indication that ILSA did not fulfil this direction and there is evidence ILSA did in fact consider potential transboundary impacts.[58] That no risk of harm was identified by the EIA in relation to Atania's agricultural industry indicates that harm was either not reasonably foreseeable or not significant. Therefore, Rahad was not required to exercise further due diligence. In any event, Rahad committed to 'undertake regular studies of the long-term impact' of the project, in compliance with its continuous monitoring obligation.[59]

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[55] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)/Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) (Merits)* ICJ, General List Nos 150 and 152, 16 December 2015, [104] ('*Costa Rica v Nicaragua*').
[56] *Pulp Mills*, [187].
[57] *Compromis*, [20]; *Clarifications* [3]; *Pulp Mills*, [205].
[58] *Compromis*, [21].
[59] *Compromis*, [33]; *Pulp Mills*, [205], [215]-[216].

ii. Rahad notified and cooperated with Atania

In any case, Atania was sufficiently notified by Queen Teresa's televised speech in 2003 that water was to be extracted from the Aquifer.[60] Indeed, President Vhen responded that same day.[61] Cooperation only required Rahad 'to enter into contact' with Atania regarding the proposed Pipeline project.[62] That Rahad did so is evidenced through the exchange of a number of statements between Queen Teresa and President Vhen.[63]

b. Rahad did not cause significant harm

If this Court finds that Rahad did not sufficiently exercise due diligence, Rahad nonetheless did not cause significant harm to Atania. Atania's loss of farmland and associated revenue is not 'significant harm'. The financial loss only constituted 0.38% of its GDP,[64] which does not meet the threshold of severity for actionable transboundary harm.[65]

Even if the harm was significant, causation cannot be established between Rahad's conduct and Atania's loss. *First*, the activity and the impact on Atania are temporally separated; the initial reports of environmental impact were three years after the project's commencement.[66] *Second*, as in *Costa Rica v Nicaragua*, there are 'other factors'[67] causally linked to Atania's lack of water;

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[60] *Compromis*, [22].
[61] *Compromis*, [23].
[62] Rüdiger Wolfrum, 'International Law of Cooperation' in Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (OUP, 2010) [5].
[63] *Compromis*, [22]-[23], [33].
[64] *Compromis*, [2], [29].
[65] *Report of the ILC*, UN Doc A/56/10 (23 April-1 June and 2 July-10 August 2001), 388 ('*Draft Articles on Prevention of Transboundary Harm Commentary*').
[66] *Compromis*, [30].
[67] *Costa Rica v Nicaragua*, [119].

the return of extreme drought conditions and the 'record-low rainfall.'[68] These facts create sufficient uncertainty to sever the causal chain between Rahad's extraction from the Aquifer and Atania's harm.[69]

C. RAHAD HAS NOT ABUSED ITS RIGHTS

By virtue of Rahad's permanent sovereignty over its natural resources, Rahad has a right to extract groundwater from the Aquifer.[70] As a general principle of international law,[71] there will be no abuse of rights where the right is exercised in a 'reasonable and bona fide' manner which is 'genuinely in pursuit' of its 'legitimate interests'.[72] As established, Rahad's utilisation of the Aquifer was reasonable and intended to secure Rahad's legitimate interest in sustaining its population and attaining self-sufficiency.[73]

D. IN THE ALTERNATIVE, ANY WRONGFULNESS IS PRECLUDED BY THE DEFENCE OF NECESSITY

The 'increasingly serious water crisis in Rahad' created a state of necessity precluding any wrongfulness.[74] The extraction from the Aquifer was necessary to safeguard Rahad's essential interest in food and water security for its population.[75] This essential interest was in 'grave' and

[68] Julio Barboza, *The Environment, Risk and Liability in International Law* (Martinus Nijhoff, 2011), 11 ('Barboza (2011)').
[69] Barboza (2011) 11.
[70] *Draft Articles* art 3; 'Permanent Sovereignty over Natural Resources' GA Res 1803 (XVII), UN Doc A/5217 (14 December 1962) 15-6 ('Resolution on Permanent Sovereignty').
[71] *Gabčíkovo-Nagymaros*, 95 (Separate Opinion, Vice President Weeramantry).
[72] Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons, 1953) 131-2 ('Cheng (1953)').
[73] *Compromis*, [21].
[74] *Compromis*, [22]; ILC, *Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN Doc A/RES/56/83 (28 January 2002) annex, art 25 ('*ASR*').
[75] ILC, *Addendum to Eighth Report on State Responsibility by Mr Robert Ago, Special Rapporteur*, UN Doc A/CN.4/318/Add.5-7 (19 June 1980) 50 ('Ago, *Eighth Report*'); *Gabčíkovo-Nagymaros* [40]-[41], [51]-[52].

‘imminent’ peril as, at the time of decision-making, long-term water shortage had already manifested itself and was projected to continue indefinitely.[76] In these circumstances, for Rahad to refrain from utilising the Aquifer would have been ‘self-destructive’.[77] Queen Teresa specifically stated that there was ‘no other way’ to safeguard Rahad’s essential interest.[78]

Rahad’s water and food security outweighs Atania’s interest in water for commercial agriculture,[79] particularly considering Rahad’s comparative economic inability to address the drought. Atania could have utilised the Aquifer, and it continued to be economically viable for Atania to import water.[80]

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[76] *Compromis*, [19]-[22]; *Gabčíkovo-Nagymaros*, [40]-[41], [51]-[52].
[77] *Report of the ILC*, UN Doc A/56/10 (23 April-1 June and 2 July-10 August 2001), 198 (‘*ASR Commentary*’).
[78] *ASR* art 25(1)(a); *Compromis*, [22].
[79] *ASR* art 25(1)(b); *ASR Commentary*, 184; *Gabčíkovo-Nagymaros*, [58].
[80] *Compromis*, [14]; *Clarifications*, [9].

II. RAHAD'S SAVALI PIPELINE OPERATIONS DO NOT VIOLATE ANY LEGAL OBLIGATIONS RELATING TO THE KIN CANYON COMPLEX

A. RAHAD COMPLIED WITH ITS OBLIGATIONS UNDER THE *1972 UNESCO WORLD HERITAGE CONVENTION*

███Article 6.3 required Rahad to do all that it could to prevent damage to the Complex

Rahad and Atania are both parties to the *1972 World Heritage Convention* ('*WHC*')[81] and are jointly responsible for conserving the Kin Canyon Complex.[82] Article 6.3 requires States 'not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage… situated on the territory of other States Parties to [the] Convention.'

The Court should reject any submission by Atania that Article 6.3 imposes strict liability for any deliberate action which might cause damage to a world heritage site. The proper interpretation, in accordance with the customary rules of treaty interpretation,[83] is that the obligation involves a fault-based standard. Therefore, Rahad complied with Article 6.3 as it exercised due diligence *vis-à-vis* the Complex, even if actual damage nonetheless occurred.

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[81] *Convention for the protection of the world cultural and natural heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) ('*WHC*'); *Compromis*, [59].
[82] *Compromis*, [13].
[83] *Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal) (Judgment)* [1991] ICJ Rep 53, [48].

The meaning of Article 6.3 must be interpreted in light of the context of the provision within the *WHC*.[84] Importantly, Article 6 'complements' Articles 4 and 5.[85] These Articles require a State to 'do all it can to the utmost of its resources'[86] and 'in so far as possible' to protect the world heritage *within* its territory.[87] Article 6, dealing with heritage located *outside* a State's territory, must be interpreted consistently with Articles 4 and 5 by similarly imposing fault-based liability. It would be unreasonable to interpret the Convention as imposing a higher standard of liability over world heritage *outside* a State's territory, over which a State has no sovereign control, than world heritage located *within* the State's own territory, over which it has such control. An interpretation of Article 6 as entailing fault-based liability is also consistent with the object and purpose of the *WHC*,[88] to ensure international cooperation by all States where individual States are unable to secure the protection of world heritage.[89]

Rahad's interpretation is consistent with the approach of the World Heritage Committee ('the Committee').[90] For example, in a decision regarding world heritage in the Democratic Republic of the Congo, the Committee requested that Sudan, 'in accordance with Art. 6.3… does its best to prevent transborder poaching activities'.[91] In this way, Article 6.3 reflects the customary obligation for a State to 'use all the means at its disposal'[92] to avoid doing harm to another

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[84] *VCLT* art 31.
[85] Guido Carducci, 'Articles 4-7 National and International Protection of the Culture Heritage' in Francioni (ed), *The 1972 World Heritage Convention: A Commentary* (OUP, 2008) 118.
[86] *WHC* art 4.
[87] *WHC* art 5.
[88] *VCLT* art 31.
[89] *WHC* Preamble paras 6-8.
[90] Eg, Decision 27 COM7B.70, adopted at the 27th Session (Paris, 2003) WHC-03/27.COM/24, 74.
[91] Decision 29 COM7A.4, adopted at the 29th Session (Durban, 2005) WHC-05/29.COM/22, 11.
[92] *Pulp Mills*, [101].

State's territory.[93] Recourse to the *travaux préparatoires* confirms this interpretation.[94] While Article 6.3 went through various iterations during drafting,[95] 'the Committee of Experts did not wish this paragraph construed to impose strict liability for unintentional damage caused'.[96]

█ Rahad has complied with Article 6.3 because it exercised due diligence

While the Canyon has suffered some 'environmental degradation in remote sections' and been placed on the Danger List,[97] this does not mean that Rahad has violated Article 6.3. Rather, as an obligation of conduct, 'what counts is the violation of the best effort obligation, not the end result generally achieved.'[98]

Rahad completed a full EIA[99] consistent with Rahadi domestic law, which considered potential harm to the Complex and was submitted to the Committee[100] in accordance with Committee Guidelines.[101] In working to comply with the Committee's recommendations, Rahad 'limited drilling for the extraction of water to areas more than 15 kilometers outside the Complex's buffer zone.'[102] Responding to the site's inscription on the Danger List, Rahad voluntarily committed to

[93] International Council of Environmental Law, *Draft International Covenant on Environment and Development* (4th ed, 2010, Environmental Policy and Law Paper) 91; *Commonwealth v Tasmania* (1983) 156 CLR 1, 196.
[94] *VCLT* art 32.
[95] 'Working Document prepared by the Working Group' (7 April 1972) UNESCO Doc SHC.72/CONF.37/5; 'Article 6 (Text Presented by the Drafting Committee)' (4-22 April 1972) UNESCO Doc SHC.72/CONF.37/10 RED 2.
[96] Robert Meyer, 'Travaux Préparatoires for the UNESCO World Heritage Convention' (1976) 2 *Earth Law Journal* 45, 52.
[97] *Compromis*, [30]-[31].
[98] Pierre-Marie Dupuy, 'Reviewing the difficulties of codification' (1999) 10 *European Journal of International Law* 371, 379.
[99] *Compromis*, [20]-[21]; *Pulp Mills*, [205].
[100] *Compromis*, [24]; *Clarification*, 3.
[101] UNESCO, 'Operational Guidelines for the Implementation of the World Heritage Convention' (8 July 2015) Doc No WHC.15/01, [118] ('2015 Operational Guidelines').
[102] *Compromis*, [26]; 2015 Operational Guidelines, [103].

'undertake regular studies'[103] and engaged in discussions with the Committee regarding the Pipeline.[104] Collectively, these factors indicate Rahad did all it could to prevent damage to the Complex.

B. RAHAD HAS NOT VIOLATED ITS CUSTOMARY OBLIGATIONS

Rahad has not caused transboundary harm

Rahad is under a parallel customary obligation to that in Article 6.3 *WHC*.[105] For the same reasons outlined in Section II.A, Rahad has not violated this obligation as it exercised due diligence *vis-à-vis* the Pipeline operations.[106]

In any event, causation cannot be established between Rahad's Pipeline operations and any damage to the Complex. *First*, Atania has not demonstrated the expertise and independence of the panel of geologists that examined the degradation to the Complex, and thus the panel's report is of minimal probative value.[107] *Second*, there are multiple potential overlapping causes that sever the causal chain: the meteorological and climatological changes to the Nomad Coast and the impact of tourism (i.e. an average of 350,000 visitors each year),[108] a recognised threat to

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[103] *Compromis*, [33].
[104] *Clarifications*, 6.
[105] *Legality of the Threat or Use of Weapons (Advisory Opinion)* [1996] ICJ Rep 226, [29]; *Trail Smelter case (United States, Canada)* (1938-41) RIAA 1905, 1965 ('*Trail Smelter*').
[106] *Pulp Mills*, [187].
[107] *Compromis*, [30]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Merits)* [2007] ICJ Rep 43, [227].
[108] *Compromis*, [13], [19], [30].

'site vulnerability'.[109] *Third*, the damage lacks temporal immediacy to the commencement of the Pipeline, occurring four years later.[110]

Rahad has not violated any customary prohibition against intentional destruction of cultural heritage in peacetime

Following the destruction of the Bamiyan Buddhas, commentators suggest there is a developing customary prohibition against intentional destruction of cultural heritage in peacetime.[111] Rahad's conduct is not comparable to the destruction of the Buddhas which was 'motivated by invidious and discriminatory intent' and undertaken 'in blatant defiance of appeals' from institutions and States.[112] To the contrary, Rahad recognises its 'obligations as stewards' of the Complex and took steps to ensure the Pipeline operations would not cause damage to the Complex.[113]

Further, not all impacts on world heritage will contravene any developing customary rule.[114] Egypt's construction of the Aswan Dam, resulting in the relocation of the Abu Simbel temples and loss of cultural artefacts, was recognised as justified by economic considerations.[115]

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[109] Adam Markham et al, *World Heritage and Tourism in a Changing Climate* (UNEP and UNESCO, Paris, 2016) 26.
[110] *Compromis*, [26], [30].
[111] Francesco Francioni and Frederico Lenzerini, 'The Destruction of the Buddhas of Bamiyan and International Law' (2003) 14 *European Journal of International Law* 619, 634-6 ('Francioni and Lenzerini (2003)'); cf Roger O'Keefe 'World Cultural Heritage: Obligations to the International Community as a Whole?' (2004) 53 *International Comparative Law Quarterly* 189, 205.
[112] Francioni and Lenzerini (2003) 635.
[113] *Compromis*, [33].
[114] Kanchana Wangkeo, 'Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime' (2003) 28 *Yale Journal of International Law* 183, 264 ('Wangkeo (2003)').
[115] Wangkeo (2003) 209, 268.

Similarly, any impact on the Complex by the Pipeline was minimal, and justified by Rahad's essential needs.

C. RAHAD HAS NOT ABUSED ITS RIGHTS

Rahad has not abused its right to use its natural resources.[116] The Pipeline operations were 'genuinely in pursuit' of its legitimate interest in sustaining its population and attaining self-sufficiency.[117] Rahad demonstrated the 'highest possible standards of care'[118] towards the Complex throughout the duration of its Pipeline operations and therefore did not exercise its rights in a way 'calculated to cause any unfair prejudice'[119] to world heritage interests.

D. ANY WRONGFULNESS IS PRECLUDED BY THE DEFENCE OF NECESSITY

As established in Section I.D., Rahad's construction of the Pipeline to extract water from the Aquifer was the only way to safeguard its essential interest in food and water security for its population.[120] These interests also outweigh the remote and minor damage to the Complex.[121] Rahad cannot be expected to deny its population food and water to avoid limited impacts to a world heritage site.

E. CESSATION IS NOT AVAILABLE

Cessation is not available as Rahad has complied with its obligations relating to the Complex, or alternatively, any wrongfulness is precluded by necessity.[122]

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[116] Resolution on Permanent Sovereignty, 15-6. *Compromis*, [21].
[117] *Compromis*, [21].
[118] *Compromis*, [33].
[119] Cheng (1953) 131-2.
[120] *ASR* art 25(1)(a).
[121] Wangkeo (2003) 268.
[122] *ASR* art 30; *ASR Commentary*, 216-7.

III. RAHAD IS ENTITLED TO RETAIN POSSESSION OF THE RUBY SIPAR

A. ATANIA CANNOT ESTABLISH OWNERSHIP OF THE RUBY SIPAR

International law contains no substantive rules regarding ownership of moveable property, which falls to be determined by municipal law.[123] Pursuant to the 'universal principle' of *lex situs*,[124] ownership of the Sipar is governed by Rahad's municipal law as the Sipar is in Rahad. Even if the Court was persuaded to instead apply Atanian municipal law, Atania bears the onus of proving its ownership under its municipal law. It has furnished no evidence of any municipal law relating to ownership.[125] Accordingly, the Court is 'free to deny the relief sought'.[126]

B. IRRESPECTIVE OF OWNERSHIP, THE KIN HAVE THE RIGHT TO USE AND CONTROL OF THE RUBY SIPAR

Rahad has a positive obligation to retain possession of the Sipar to ensure respect for the Kin's cultural rights under *ICESCR* and *ICCPR*. Common Article 1 provides that 'all peoples' have a human right to self-determination.[127] The Kin constitute a 'people' as they fulfil the definition of

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[123] Christopher Staker, 'Public International Law and the *Lex Situs* Rule in Property Conflicts and Foreign Expropriations' (1988) 58 *BYIL* 151, 154 ('Staker (1988)'.

[124] Ernst Rabel, *The Conflict of Laws: A Comparative Study* (University of Michigan Law School, 1958) vol 4, 66-9; Staker (1988) 163.

[125] *Nicaragua (Jurisdiction)*, [101]; Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals* (Stevens & Sons, 1957) vol 1, 73.

[126] *Société Commerciale de Belgique (Belgium v Greece)* [1939] PCIJ (ser A/B) No 78, 184 (Separate Opinion, Judge Hudson); D.P. O'Connell, *International Law* (Stevens & Sons, 1965) vol 2, 1187.

[127] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1 ('*ICCPR*'); see also *International Covenant on Cultural, Economic and Social Rights,* opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('*ICESCR*') art 1**;** Human Rights Committee ('HRC') *General Comment 12, Article 1*, UN Doc HRI/GEN/1/Rev.9 (13 March 1984) [2].

an 'indigenous group'[128] on the basis of their long-standing relationship to their 'ancestral' lands as well as their distinct cultural isolation from the rest of Atanian society.[129] The Kin, as an 'ethnic minority', also have a right under Article 27 of *ICCPR* to enjoy their own culture.[130] In addition, under Article 15 of *ICESCR*, the Kin have a right to take part in cultural life.[131]

The practice of parties to the Covenants is relevant to the interpretation of the rights contained therein.[132] The General Assembly Declaration on the Rights of Indigenous Peoples ('*UNDRIP*') reflects the practice of the parties to the Covenants.[133] *UNDRIP* provides a right to 'use and control' of ceremonial objects[134] and the right to 'maintain, protect and develop' manifestations of culture.[135] Carla Dugo, a Clan Kin member and Sisters of the Sun elder, by taking the Sipar into Rahad,[136] exercised her right to 'use' and 'control' of the Sipar.[137] The Sipar 'belongs with the Kin wherever [they] are'.[138] The majority of Clan Kin are now located in Rahad.[139] As recognised in *Chabad*,[140] cultural property can belong to a group or 'communal … movement'.

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[128] Jose Cobo, Special Rapporteur of Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Study on the Problem of Discrimination against Indigenous Populations', E/CN.4/SUB.2/1986/7ADD.4 (1986) [34], [379]-[82].
[129] *Compromis*, [11].
[130] *ICCPR* art 27.
[131] *ICESCR* art 15.
[132] *VCLT* art 31(3)(b).
[133] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) annex ('*UNDRIP*').
[134] *UNDRIP* art 12(1).
[135] *UNDRIP* art 11(1).
[136] *Compromis*, [50].
[137] *UNDRIP* art 11(1).
[138] *Compromis*, [50].
[139] *Compromis*, [40], [49].
[140] *Agudas Chasidei Chabad of U.S. v Russian Federation*, 528 F.3d 934 (2008) (2d Cir (US)), 943.

Therefore, to comply with the Covenants, Rahad must retain the Sipar so that it is available to the Kin and to 'all who wish to see it'.[141]

C. IRRESPECTIVE OF OWNERSHIP, RETURNING THE RUBY SIPAR WOULD RENDER RAHAD COMPLICIT IN ATANIA'S INTERNATIONALLY WRONGFUL ACTS

Under customary international law,[142] as codified in Article 16 of the *ASR*, Rahad's complicity would arise as: *first,* returning the Sipar would constitute aid or assistance in the commission of wrongful acts; *second*, Rahad has knowledge of the circumstances of the wrongful acts committed by Atania; and *third*, if Rahad had acted as Atania did, Rahad's actions would have been wrongful.

This Court has interpreted 'aid or assistance' in Article 16 of the *ASR* as the 'provision of means to enable or facilitate the commission' of the wrong.[143] The 'aid or assistance' must have 'contributed significantly' to the commission of the wrongful act.[144] Atania's banning of the Sipar from display and placing it in storage[145] amounts to a violation of Article 15 of *ICESCR* and Article 27 of *ICCPR*. The Sipar is an item of cultural heritage of significant spiritual importance to the Kin.[146] Article 15(1)(a) of *ICESCR* includes an obligation to ensure physical access to and the availability of cultural heritage.[147] Article 27 of *ICCPR* provides that States

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[141] *Compromis*, [52].
[142] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Merits)* [2007] ICJ Rep 43, [420].
[143] *Bosnian Genocide*, [419]; Mile Jackson, *State Complicity in the Internationally Wrongful Acts of Another State* (OUP, 2015) 153.
[144] *ASR Commentary*, 156.
[145] *Compromis*, [44].
[146] *Compromis*, [43].
[147] HRC, *Report of the Independent Expert in the Field of Cultural Rights*, A/HRC/17/38 (21 March 2011) [58]-[60]; CESCR, *General Comment No 21, Right of Everyone to take part in*

shall not deny the rights of ethnic minorities to enjoy their own culture, including 'access to cultural heritage'.[148] By banning the Sipar, Atania has prevented physical access to it and has therefore violated both articles.[149] There is no indication that if Rahad returns the Sipar, Atania will cease its unlawful conduct. Therefore, to return the Sipar to Atania would aid or assist further violations.

The ILC's commentary to Article 16(a) restricts complicity to cases where a State 'intended… to facilitate the occurrence of the wrongful conduct'.[150] Special Rapporteur Ago has recognised that intent can be inferred from knowledge of 'the specific purpose for which the State receiving certain supplies intends to use them'.[151] Any intent requirement is satisfied by Rahad's knowledge of Atania's 'campaign to eradicate all vestiges of the Sipar'.[152] Accordingly, Rahad would be complicit in Atania's wrongful acts were it to return the Sipar to Atania. Further, if Rahad acted as Atania did, Rahad would also have violated the Covenants.[153]

D. EVEN IF ATANIA IS THE LAWFUL OWNER, IT ABUSED ITS OWNERSHIP RIGHTS RENDERING RETURN OF THE RUBY SIPAR INAPPROPRIATE

A State will abuse its rights where it 'avails itself of its right in an arbitrary manner in such a way as to inflict upon another State'[154] or the international community 'an injury which cannot be

cultural life (Article 15), UN Doc E/C.12/GC/21 (21 December 2009), [15]-[16] ('CESCR General Comment 21').
[148] Janet Blake, *International Cultural Heritage Law* (OUP, 2015) 292 ('Blake (2015)').
[149] *ICESCR* art 15(1)(a).
[150] *ASR Commentary*, 156.
[151] ILC, *Seventh report on State Responsibility by Mr Roberto Ago, Special Rapporteur*, UN Doc A/CN.4/307 and Add.1 & 2 and Corr.1 & 2 (29 March, 17 April and 4 July 1978) 58.
[152] *Compromis*, [52].
[153] *ASR* art 16(b).
[154] Sir Robert Jennings and Sir Arthur Watts (eds), *Oppenheim's International Law: Peace* (Longman, 9th ed, 2008) vol 1, 407 ('Oppenheim (2008)').

justified by a legitimate consideration of its own advantage.'[155] Ownership rights relating to cultural property must be 'seen in relative not absolute terms'[156] because otherwise, a State by virtue of its 'sovereign rights' would be entitled to damage or destroy cultural property forming part of the 'civilisation and heritage of mankind.'[157] Here, by banning the Sipar, Atania exercised its rights in an arbitrary manner, injuring the interests of Rahad and the international community in cultural property and the common heritage of humanity.[158] Given the inextricable link between the Sipar and the history and culture of the peoples of the Nomad Coast, the Sipar is an invaluable cultural artefact that must be protected and enjoyed by all.[159] Considering Atania's abuse of rights, Rahad cannot be required to return the Sipar.

E. RAHAD'S RETENTION OF THE RUBY SIPAR IS NOT AN INTERNATIONALLY WRONGFUL ACT

██ Rahad did not violate the *1970 UNESCO Convention*

a. The *1970 Convention* does not apply retroactively

Rahad cannot have violated any obligations contained in the *1970 Convention.*[160] This is because Rahad gained possession of the Sipar and formally rejected Atania's request for

[155] Oppenheim (2008) 407.
[156] Blake (2015) 317; Lyndel Prott and Patrick O'Keefe, 'Cultural Heritage or Cultural Property' (1992) 1(2) *International Journal of Cultural Property* 307, 309.
[157] Sharon Williams, *The International and National Protection of Moveable Cultural Property. A Comparative study* (Oceana, 1978) 64.
[158] John Merryman, 'Cultural Property Internationalism' (2005) 12 *International Journal of Cultural Property* 11, 11.
[159] Cf SC Res 2199, UN Doc S/RES/2199 (12 February 2015); SC Res 2253, UN Doc S/RES/2253 (17 December 2015).
[160] *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, opened for signature 14 November 1970, 823 UNTS 231 (entered into force 24 April 1972) ('*1970 Convention*').

repatriation,[161] prior to the entry into force of the *1970 Convention* for Rahad on 30 December 2014.[162] The *1970 Convention* does not have retroactive effect.[163]

Jurisdiction *ratione temporis* under the *1970 Convention* cannot be extended here by reference to any continuing acts.[164] The import of the Sipar was a completed, not continuing act[165] and to find otherwise would have untenable ramifications for the broader application of the *1970 Convention*.[166] For example, the United Kingdom would be required to return the Parthenon Marbles to Greece; Germany, the Bust of Nefertiti to Egypt; and various States, the Benin Bronzes to Nigeria.[167] The parties to the *1970 Convention* never intended such consequences to flow.[168]

b. Rahad has not defeated the object and purpose of the *1970 Convention*

Article 18 of the *VCLT* requires a State, in the period between signature and entry into force of the treaty for that State, to 'refrain from acts which would defeat the object and purpose of [the] treaty.'[169] The *VCLT* came into force after the *UNESCO Convention* and does not operate retroactively.[170] If Atania seeks to rely on the rule set out in Article 18, it is for Atania to

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161 *Compromis*, [50]-[52].
162 *1970 Convention* art 21, *Corrections* [3].
163 Patrick O'Keefe, *Commentary on the 1970 UNESCO Convention* (Institute of Art and Law, 2nd ed, 2007) 9.
164 *Phosphates in Morocco (Italy v France) (Preliminary Objections)* (1938) PCIJ, (ser A/B) No 74, 23; Villiger (2009) 383.
165 *ASR* art 14.
166 Kurt Siehr, 'Legal Aspects of the Mystification and Demystification of Cultural Property' (2011) XVI(3) *Art, Antiquity and the Law* 173, 180-1.
167 See John Merryman (ed), *Imperialism, Art and Restitution* (CUP, 2006) 6-7, 98-113, 114-134.
168 UNESCO, 'Final Report' (27 February 1970) UNESCO Doc SHC/MD/5 Annex II, 4.
169 *VCLT* art 18.
170 *VCLT* art 4.

establish its customary status. Publicists regard the customary status of Article 18 as being 'ambiguous' and this Court has never ruled on the issue.[171]

In any event, Rahad has not defeated the object and purpose of the *1970 UNESCO Convention.*[172] The object and purpose of a treaty is only defeated when a State's act 'renders meaningless subsequent performance of the treaty, and its rules.'[173] An illustration of this would be if a State destroyed artwork that it was treaty-bound to return to another State just prior to the treaty's entry into force.[174] By contrast, Rahad's receipt and retention of the Sipar prior to entry into force of the *1970 Convention* for Rahad has not rendered 'meaningless' Rahad's subsequent performance of its treaty obligations under the *1970 Convention.*

There is no custom requiring return of unlawfully obtained cultural property during peacetime

It is for Atania to establish the existence of a customary rule requiring return of unlawfully obtained cultural property during times of peace. Rahad submits that no such custom exists. This Court has stressed that the practice of States that are parties to a treaty cannot provide evidence of *opinio juris* to establish custom as it is the treaty which is the source of any sense of legal obligation.[175] As the preponderance of instances of return of illicitly obtained cultural property

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[171] Laurence Boisson de Chazournes et al., 'Article 18 Convention of 1969' in Corten and Klein (eds), *The Vienna Convention on the Law of Treaties: A Commentary* (OUP, 2011), vol 1 369, 371-2; ILC, 'Second Report on the Law of Treaties: Revised articles on the draft convention' [1951] II *Yearbook of the International Law Commission*.
[172] *VCLT* art 18.
[173] Villiger (2009) 249.
[174] ILC, *Report of the ILC on the work of the first part of its seventeenth session*, UN Doc A/CN.4/181 (3 May – 9 July 1965) 92.
[175] *North Sea Continental Shelf (Federal Republic of Germany v Denmark/Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 4, [77]; Richard Baxter, *Treaties and Custom* (1970) 129 *Recueil des Cours* 25, 64.

during peacetime has been by States bound by the *1970 Convention*,[176] no *opinio juris* can be derived from this State practice. The widespread retention of cultural artefacts and antiquities by museums[177] is further evidence of the lack of any customary rule obliging States to return unlawfully obtained cultural property.

IV. ATANIA MUST COMPENSATE RAHAD FOR ALL DIRECT AND INDIRECT EXPENSES INCURRED AND ACCRUING AS A RESULT OF ACCEPTING MEMBERS OF CLAN KIN FLEEING FROM ATANIA

As at the date of the Special Agreement, Rahad is providing refuge to approximately 800,000 Kin. Rahad is entitled to compensation as reparation for the internationally wrongful acts Atania committed by: *first*, abusing its rights to enact and enforce domestic legislation; *second*, violating Rahad's territorial sovereignty by causing transboundary harm; and *third*, violating its human rights obligations. Although Rahad has thus far determined that approximately 155,000 of the 800,000 Kin are refugees,[178] Rahad's entitlement to compensation in relation to each of these internationally wrongful acts is not legally dependent on a determination of refugee status for all.[179]

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[176] See, eg, *Agreement between the Republic of Paraguay and the Republic of Bolivia on the recovery of stolen cultural property and other property, stolen or illegally imported or exported*, Paraguay—Bolivia, signed 16 April 2004, 2429 UNTS 143 (entered into force 21 November 2005); *Agreement between the Swiss Federal Council and the Government of the Republic of Colombia on the import and repatriation of cultural property*, Switzerland—Colombia, signed 01 February 2010, 2801 UNTS (entered into force 4 August 2011).
[177] Jeanette Greenfield, *The Return of Cultural Treasures* (CUP, 3rd ed, 2007) 63.
[178] *Compromis*, [48]-[49].
[179] Chaloka Beyani, 'Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law' (1995) 7 *International Journal of Refugee Law* 130, 142-143 ('Beyani (1995)').

A. ATANIA HAS ABUSED ITS RIGHTS

In 1939, Sir Robert Jennings observed that 'if a doctrinal ground be required for regarding as illegal the conduct of a State of origin of destitute refugees, it will be found in the generally accepted doctrine of abuse of rights.'[180] As set out in Section I.C, a State abuses its rights where it 'avails itself of its right in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage.'[181] A State must exercise its legislative discretion reasonably and 'with due regard to the interest of others.'[182]

Atania's enactment and enforcement of the Water Resource Allocation Program Act ('WRAP Act') required farmers to purchase licences, but exempted profit-generating farms.[183] This was arbitrary as it indirectly discriminated[184] against the Kin. The Kin constituted 98% of subsistence farmers. Those that were subsistence farmers were, by definition, not entitled to the exemption[185] and were also less likely to be able to afford the licences.[186] Atania's disconnection of the Kin's water supply compounded the arbitrariness of Atania's conduct.[187]

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[180] Robert Yewdall Jennings, 'Some International Law Aspects of the Refugee Question' (1939) 20 *BYIL* 98, 112.
[181] Oppenheim (2008) 407.
[182] Cheng (1953) 133-4.
[183] *Compromis*, [35].
[184] Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (OUP, 2013) 777 ('*ICCPR Commentary*').
[185] *Compromis*, [11], [35].
[186] *Compromis*, [36]-[37].
[187] *Compromis*, [38].

The disproportionate measures taken to suppress the peaceful WRAP Act protests were also an arbitrary exercise of enforcement rights.[188] The cumulative effect of Atania's conduct was to render the Kin's continued presence in Atania untenable, offering no alternative for 800,000 Kin (given desert to the North and an ocean to the South) but to seek refuge in Rahad.[189]

B. ATANIA HAS VIOLATED RAHAD'S TERRITORIAL SOVEREIGNTY

In *Trail Smelter* it was recognised that 'no State has the right to use … its territory in such a manner as to cause injury … to the territory of another'.[190] Eminent publicists recognise the applicability of this doctrine to transboundary mass-movements of people contrary to the territorial sovereignty of receiving States.[191] Although equating the movement of humans to cross-border pollution may seem unpalatable on a superficial level, there is no principled reason for the 'no-harm' rule not to apply and, importantly, its application ensures that expelling-States are held accountable for refugee-generating policies.[192]

Atania's use of its territory in a manner that led to the influx of 800,000 Kin into Rahad constitutes a violation of Rahad's territorial sovereignty. It was foreseeable that depriving the Kin of food and water (in conjunction with repressive measures), would cause them to seek food and water elsewhere, and that it would be 'immensely burdensome' to receiving States where

[188] *Compromis*, [45]-[46]; *Clarifications*, [7].
[189] *Compromis*, [1], [49].
[190] *Trail Smelter*, 1965.
[191] Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (OUP, 3rd ed, 2007) 3 ('Goodwin-Gill and McAdam (2007)'); Beyani (1995) 132; Luke T Lee, 'The Right to Compensation: Refugees and Countries of Asylum' (1986) 80 *American Journal of International Law* 532, 553-4 ('Lee (1986)').
[192] Jack Garvey, 'Toward a Reformulation of International Refugee Law' (1985) 26(2) *Harvard International Law Journal* 483, 495.

they did.[193] Notwithstanding this risk of significant harm, Atania failed to exercise due diligence in relation to the food and water needs of the Kin, even after pleas from the FAO.[194]

Atania's conduct in causing mass human movement resulted in significant harm to Rahad. The FAO and the Red Cross confirmed that Atania's termination of water resulted in undernourishment and mass starvation.[195] International correspondents confirmed that starvation and fear of arrest were the primary reasons for the border crossing.[196] Rahad's damage is significant; the influx of a number of Kin equal to approximately one quarter of Rahad's original population[197] has stretched Rahad's national infrastructure 'beyond the breaking point.'[198] This damage has been quantified at US$945,000,000.[199]

This court should not countenance any submission by Atania that Rahad's acceptance of the migrants constituted consent to the harm. Rahad should not be disadvantaged by its fulfilment of

[193] *Mass Exoduses*, GA Res 35/196, UN Doc A/RES/35/196 (15 December 1980).
[194] *Compromis*, [39]; *International Co-operation to Avert New Flows of Refugees: Note by the Secretary-General*, UN Doc A/41/324, (13 May 1986) [66](c)(d); Theo van Boven, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,* UN Doc EICN/41-Sub.2/1990/10, 298.
[195] *Compromis*, [39]-[40].
[196] *Compromis*, [47].
[197] *Compromis*, [3], [49].
[198] *Compromis*, [53]; Hannah Garry, 'The Right to Compensation and Refugee Flows: A 'Preventative Mechanism' in International Law?' (1998) 10(1/2) *International Journal of Refugee Law* 97 ('Garry (1998)').
[199] *Compromis*, [57].

its *non-refoulement* obligations.[200] Atania, as creator of its refugee-generating policies, 'must be deemed to be estopped from claiming that to receive its citizens was an independent decision'.[201]

C. ATANIA HAS VIOLATED ITS HUMAN RIGHTS OBLIGATIONS

Rahad can invoke Atania's responsibility for its human rights violations and its claims are admissible

A State that is 'injured' is entitled to invoke the responsibility of another State and seek compensation[202] for its own losses where, *inter alia*, the obligation breached is owed to 'a group of States including that State' and the breach 'specially affects that State'.[203] By being required to accommodate 800,000 Kin, Rahad has been 'specially affected' by Atania's human rights violations in a way that 'distinguishes it from the generality of other States to which the obligation is owed'.[204] Human rights treaties create obligations not only for the benefit of natural persons[205] but also 'create rights and obligations between their parties'.[206] Additionally, Rahad is entitled to invoke Atania's responsibility for its human rights violations in the 'interest of' the Kin, the beneficiaries of Atania's human rights obligations.[207]

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[200] Goodwin-Gill and McAdam (2007) 201-84.

[201] Christian Tomuschat, 'State Responsibility and the Country of Origin' in Gowlland-Debbas (ed), *The Problem of Refugees in the Light of Contemporary International Law Issues* (Martinus Nijhoff, 1994) vol 12, 78, 74; Beyani (1995) 136, 137.

[202] *ASR Commentary*, 295; *ASR* art 36.

[203] *ASR* art 42(b)(i).

[204] *ASR* art 42(b)(i); *ASR Commentary*, 119.

[205] HRC, *General Comment No 31: The nature of the general legal obligation imported on States Parties* (CPPR/C/21/Rev.1/Add.13) (26 May 2004) [9].

[206] Bruno Simma, 'From Bilateralism to Community Interest in International Law' (1994) 250 *Recueil des Cours* 221, 370.

[207] *ASR* art 48.

Rahad's claim for direct injury is not constrained by any requirement to exhaust local remedies.[208] In relation to Rahad's indirect claim in the 'interest of' the Kin, the local remedies rule[209] is not applicable because remedies are not 'effective' in cases of large-scale human rights violations.[210] In any event, it would be for Atania to prove that available and effective local remedies existed.[211]

██ Atania violated the *ICESCR* and *ICCPR*

a. Article 11 of *ICESCR*

Atania has an obligation to provide its nationals with an adequate standard of living, including, *inter alia*, a right to adequate food, which extends to water.[212] The CESCR has stressed the importance of ensuring access to water insofar as is required to realise the right to adequate food,[213] 'even where' a State faces 'severe resource constraints'.[214] Arbitrary disconnections of water are prohibited.[215]

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[208] *Report of the ILC*, UN Doc A/61/10 (1 May-9 June and 3 July-11 August 2006), 74 ('*Diplomatic Protection Articles*').
[209] *ICCPR* art 41(c); cf *European Convention on Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953) arts 33, 35(1).
[210] *Cyprus v Turkey* (1978) 2 Eur Comm HR 85, [29]-[31].
[211] *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of Congo) (Preliminary Objections)* [2007] ICJ Rep 582, [44].
[212] *ICESCR* art 11(1); CESCR, *General Comment No 15: The Right to Water (Arts. 11 and 12 of the Covenant*), UN Doc E/C.12/2002/11 (20 January 2003) [31] ('CESCR General Comment 15') [3].
[213] CESCR General Comment 15 [7].
[214] CESCR, *General Comment No. 12, Right to Adequate Food* (Art 11 of the Covenant on Economic, Social and Cultural Rights) UN E/C.12/1999/5 (12 May 1999) [28]; Ben Saul, David Kinley and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights* (OUP, 2014) 871 ('*ICESCR Commentary*').
[215] CESCR General Comment 15 [10], [43(a)].

As established in Section IV.A, the licence scheme mandated by the WRAP Act was indirectly discriminatory and deprived the Kin of the enjoyment of their rights to adequate water and food.[216] Therefore, the 'arbitrary disconnection' of the water supply in October 2013, as a penalty for noncompliance with the licence scheme, necessarily constituted a 'retrogressive measure' and a violation of Article 11.[217]

Additionally, the disconnection of water led the Kin to suffer severe deprivation and malnutrition. Even when the Director General of the FAO implored Atania to stop denying the Kin access to water,[218] Atania failed to take 'immediate and urgent steps' to ensure 'the fundamental right to freedom from hunger and malnutrition'.[219]

b. Article 1(2) of *ICESCR* and *ICCPR*

As the Kin are 'a people' to which the right to self-determination extends,[220] Atania has an 'unqualified' obligation not to deprive the Kin of its means of subsistence.[221] As the Kin are entirely dependent on subsistence farming, Atania must ensure adequate access to water to secure their livelihood. The WRAP Act and consequent termination of water supply rendered it impossible for the Kin to continue subsistence farming,[222] in violation of Common Article 1.

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[216] CESCR General Comment 15 [13]-[16]; *ICCPR Commentary*, 777 [23.40]; *ICESCR Commentary*, 901.
[217] CESCR General Comment 15 [15], [19].
[218] *Compromis*, [39].
[219] *ICESCR* art 11(2). This conduct is also a discrete violation of the right to health in *ICESCR* art 12.
[220] As established in Section III.B.
[221] *ICESCR Commentary*, 121.
[222] *Compromis*, [38], [39], [40].

c. Article 27 of *ICCPR* and Article 15 of *ICESCR*

As established in Section III.C, Atania has an obligation not to interfere with the right of the Kin to enjoy their own culture,[223] which includes 'traditional farming'.[224] The Red Cross and the FAO concluded that the termination of the Kin's water supply deprived them of 'their primary source of sustenance' (i.e. traditional farming).[225] At no point did Atania consult with the Kin or seek their 'informed consent'[226] about the WRAP Act's effects on subsistence farming. The restriction to the Kin's ability to take part in their culture also violates Article 15 of *ICESCR*.[227]

d. Article 19 of *ICCPR*

Atania has an obligation to uphold the Kin's 'right to freedom of expression',[228] which extends to political and human rights discourse and commentary on public affairs.[229] The Sipar is an expression of identity for the Sisters of the Sun,[230] and a medium to protest against the 'persecution of the Kin'.[231] Atania has violated the right to freedom of expression of the Kin by ordering the confiscation and destruction of all Sipar pendants.[232]

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[223] *ICCPR* art 27; *ICCPR Commentary*, 25.
[224] *Compromis*, [40]; HRC, *Views: Ángela Poma Poma v Peru Communication No. 1457/2006,* UN Doc CCPR/C/95/D/1457/2006 (9 April 2009) [7.3] ('*Poma Poma v Peru*').
[225] *Compromis*, [40].
[226] *Poma Poma v Peru* [7.7]; *HRC General Comment No 34: Freedom of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011) [18] ('HRC General Comment 34').
[227] CESCR General Comment 21 [6], [48].
[228] *ICCPR* art 19(2).
[229] HRC General Comment 34 [11].
[230] *Compromis*, [9], [41].
[231] *Compromis*, [41].
[232] *Compromis*, [43].

e. Article 21 of *ICCPR*

Atania has an obligation to respect the right to peaceful assembly.[233] The protests and human-chains were nonviolent[234] and therefore an exercise of the right to peaceful assembly. Atania's use of tear gas and rubber bullets to supress the peaceful protests infringed upon this right.[235]

f. Article 9 of *ICCPR*

Atania must ensure that 'anyone arrested or detained on a criminal charge...shall be entitled to trial within a reasonable time or to release'.[236] The Kin protesters charged with inciting a riot have remained in pretrial detention for over two years.[237] Such pretrial detention is excessive, 'arbitrary' and inconsistent with an expeditious trial.[238]

██ Atania cannot rely on Covenant limitation or derogation provisions or a plea of necessity

Both Covenants include specific provisions allowing States to limit the enjoyment of rights[239] or to derogate from obligations.[240] Atania cannot rely on these provisions as their requirements have not been satisfied. These provisions operate to exclude the general defence of necessity as they are *lex specialis*.[241]

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[233] *ICCPR* art 21.
[234] *Compromis*, [41]-[42].
[235] *Compromis*, [45].
[236] *ICCPR* art 9(3).
[237] *Clarifications*, 7; *Compromis*, [46]; HRC, *Teesdale v Trinidad and Tobago,* UN Doc CCPR/C/74/D/677/1996 (1 April 2002) [9.3].
[238] HRC, *General Comment No 32: Article 14 Right to equality before courts and tribunals and to fair trial*, UN Doc CCPR/C/GC/32 (23 August 2007) [35].
[239] *ICESCR* art 4.
[240] *ICCPR* art 4.
[241] Ago, *Eighth Report*, [66]-[69]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* [2004] ICJ Rep 136, [136]-[142].

D. THE 'CLEAN HANDS' DOCTRINE DOES NOT BAR RAHAD FROM BRINGING THIS CLAIM

Even if the Court finds against Rahad in Pleadings I or II, Atania cannot invoke the 'clean hands' doctrine to avoid responsibility for its own actions. The doctrine only applies where the 'two parties have assumed an identical or a reciprocal obligation'.[242] The violations asserted by Atania in Pleadings I or II in relation to the Pipeline are not identical or reciprocal to any obligations that Atania has violated in relation to the flight of the Kin.

E. ATANIA MUST COMPENSATE RAHAD BY WAY OF REPARATION

In relation to its wrongful acts, Atania must make full reparation to, 'as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'.[243] The wrongful conduct must be the 'proximate cause' of any damage.[244] Rahad is entitled to compensation to restore the US$945,000,000 loss suffered as a result of providing refuge to the Kin.[245] Rahad would not be the first State to receive compensation in relation to refugee outflows.[246]

Rahad is entitled to compensation for its own losses

Rahad is entitled to compensation for all direct and indirect costs incurred and accruing as a result of accepting the Kin, as Atania's internationally wrongful acts were the 'proximate

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[242] *Diversion of Water from the Meuse (Netherlands v Belgium)* [1937] PCIJ (ser A/B) No 17, 77 (Separate Opinion, Judge Hudson), 49.
[243] *Chorzów Factory (Merits)*[1928] PCIJ (ser A) no 17, 47; *ASR* arts 1, 31.
[244] Dinah Shelton, *Remedies in International Human Rights Law* (OUP, 3rd ed, 2015) 355 ('Shelton (2015)'); *ASR* art 31; *ASR Commentary*, 207.
[245] *ASR* art 36.
[246] *Agreement between the State of Israel and the Federal Republic of Germany*, signed 10 September 1952, 162 UNTS 2137 (entered into force on 27 March 1953); SC Res 687, UN Doc S/RES/687 (3 April 1991) [16].

cause'[247] of that harm. The causal link between Atania's conduct and the Kin's flight is evidenced by: *first*, statements by the FAO and the Red Cross that Atania's actions resulted in mass starvation and undernourishment;[248] and *second*, reports by international correspondents confirming that 'starvation' and 'fear of arrest' were the primary reasons for the Kin fleeing.[249] The cumulative effects of Atania's wrongful acts were of such gravity[250] as to cause 800,000 Kin to flee Atania.[251] The infliction of significant costs on Rahad was the natural consequence of Atania's wrongful acts.[252]

Rahad is also entitled to compensation in the interest of the Kin

Rahad is entitled to seek compensation on behalf of each Kin in order to restore them to the position they would have been in had they not been victims of Atania's human rights violations.[253] Compensation is payable to Rahad and can be allocated by it for the benefit of the Kin.[254]

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[247] Shelton (2015) 355.
[248] *Compromis*, [39]-[40].
[249] *Compromis*, [47].
[250] Shelton (2015) 14.
[251] *Compromis*, [49]; ILA, *Cairo Declaration of Principles of International Law on Compensation to Refugees* (65th Conference, Cairo, 1992) Principle 4.
[252] *Report and Recommendations made by the Panel of Commissioners concerning the Egyptian Workers' Claims (Jurisdiction)* (1995) 117 ILR 195, 248-9; Rainer Hoffman, 'Refugee-generating policies and the law of state responsibility' (1985) 45(4) *Heidelberg Journal of International Law* 694, 709.
[253] *ASR* art 48(2)(b).
[254] See by analogy *Diplomatic Protection Articles*, art 19; *Cyprus v Turkey* (ECtHR, Grand Chamber, Application No 25781/94, 12 May 2014) [46]-[47].

PRAYER FOR RELIEF

The Kingdom of Rahad respectfully requests that this Court DECLARE that:

1. The extraction of water from the Aquifer does not violate international obligations undertaken by Rahad and constitutes an inequitable use of a shared resource;

2. The Savali Pipeline operations do not violate Rahad's international obligations with respect to the Kin Canyon Complex;

3. Rahad is entitled to retain possession of the Ruby Sipar;

4. Atania must compensate Rahad for all direct and indirect expenses incurred and accruing as a result of accepting members of Clan Kin fleeing from Atania.