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**International Court of Justice**

The peace palace

The Hague, the Netherlands



The 2025 Philip C. Jessup International Law

Moot Court Competition

**The CASE CONCERNING THE NAEGEA SEA**

**UNION OF AMBROSIA**

(applicant)

v.

**REPUBLIC OF ROVINIA**

(respondent)

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**Memorial for rESPONdENT**

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2025

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# STATEMENT OF JURISDICTION

Under Article XXI of the OCDP Charter, the Governments of the Union of Ambrosia and the Republic of Rovinia have recognized as compulsory ipso facto in relation to any other OCDP Member State, the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 1. Rovinia objects to the Court’s jurisdiction over Ambrosia’s submission (b). It observes that Article XXI(b) restricts this Court’s jurisdiction by placing two exceptions. Rovinia submits that Ambrosia’s submission (b) is excluded by virtue of falling within those exceptions. Accordingly, Rovinia requests that the Court decline jurisdiction over submission (b).

# STATEMENT OF FACTS

**Background**

The Paine Peninsula, colonized by the Kingdom of Fretzi in the late 17th century and divided into seven administrative units, saw the first unit gain independence in 1920, with all seven achieving independence and establishing democratic constitutions by 1946. The Union of Ambrosia, the northernmost state on the Paine Peninsula, spans 180,000 square kilometers with a population of four million and a 910-kilometer Naegea Sea coastline, including its capital, Arnhill. The Republic of Rovinia, the southernmost state, covers 900,000 square kilometers, has 10 million inhabitants, and a 455-kilometer Naegea Sea coastline. The Naegea Sea is abundant in tuna species such as bluefin, albacore, and yellowfin.

**Sea-Level Rise and Implementation of Fixed Baselines**

In 2014, the Intergovernmental Panel on Climate Change’s (‘IPCC’) Special Report on Global Warming and Sea-Level Rise highlighted the effects of climate change on the Paine Peninsula, noting an accelerating coastline recession averaging 1.5 meters annually since the 1980s. In response, Ambrosia’s National Assembly enacted the Baseline Freezing Law in 2015, fixing its maritime boundaries at the low-water lines as of 1 November 2015 to counter the impact of rising sea levels. By August 2016, all OCDP members, except Rovinia, had adopted similar legislation to stabilize their maritime boundaries.

**Triton Shoal**

Triton Shoal is a submerged seamount in the Naegea Sea with a flat summit rising 3,500 meters above the sea floor. In 2018, oceanographers from the Ambrosian Institute of Science (‘AIS’) highlighted that global warming-induced changes to water currents had concentrated tuna populations around the Shoal, increasing its ecological and economic significance. By then, Ambrosia’s receding coastlines had placed the Shoal beyond its exclusive economic zone (‘EEZ’) under actual low-water baselines. Subsequently, on 2 July 2018, Rovinia began issuing fishing permits for yellowfin tuna over the entire Shoal, treating it as part of the high seas.

**The Organization for Cooperation and Development in the Paine**

The Organization for Cooperation and Development in the Paine (‘OCDP’) is a regional body established to promote law enforcement collaboration, sustainable resource management, maritime rights, and disaster risk mitigation among the seven states of the Paine Peninsula. conceived in 2013 by President Derey to address escalating drug trafficking and transnational organized crime within the Paine Peninsula. Following extensive negotiations, the OCDP Charter was signed by the seven heads of state on 15 May 2015 and came into effect for all Member States on 17 March 2016. The Charter’s Article I establishes the organization’s purposes, which include protecting the rule of law and democratic institutions, fostering law enforcement collaboration, promoting sustainable and equitable management of natural resources, upholding maritime rights, and safeguarding the region’s inhabitants against natural catastrophes.

**President Derey**

President Prosper Derey, elected in February 2012 to a seven-year term as Ambrosia’s head of state and government, centered his campaign on law-and-order issues, pledging to combat the growing influx of illegal drugs and weapons into the country. In 2013, he launched the ILSA program to target illicit drug production, distribution, and use. Re-elected in February 2019, his tenure was interrupted by a hemorrhagic stroke in April 2022, which left him in a coma until his recovery in September 2023.

**Mary Zavala**

Elected Vice-President alongside President Derey in February 2019, Mary Zavala, a retired diplomat with no prior experience in domestic politics, assumed the role of Acting President in April 2022 after Derey’s incapacitation. Zavala’s tenure was marked by significant public and political criticism, particularly for her perceived inadequate response to Hurricane Luna and her frequent international travel. Amid the establishment of the Transitional Council, she asserted her legitimacy, declaring, ‘The constitutional government of Ambrosia remains fully functional, and I remain your Acting President.’ Following Derey’s return in December 2023, he announced that he had accepted Zavala’s resignation as Vice-President.

**Transitional Council**

The Transitional Council, established by Rooney Piretis on 13 March 2023, aimed to provide stable governance during President Derey’s absence, declaring its purpose as ensuring the nation was ‘governed peacefully and stably.’ Comprised of five former ministers, three military officers, ten parliamentarians, and Piretis as its head, the Council asserted its legitimacy by claiming to act ‘in the best interests of the citizens of Ambrosia’ and to address pressing issues, such as the recovery from Hurricane Luna. Upon Derey’s return in December 2023, the Council dissolved itself.

**Case Between O’Mander Corp. and Ambrosia**

The case stemmed from Ambrosia’s breach of contract with O’Mander Corp. for the supply of 5G technology for its Ministry of Telecommunications. In July 2017, a trial court ruled in favor of O’Mander Corp., awarding USD 85 million in damages. Over the next five years, the company attempted multiple times to attach Ambrosian assets in Rovinia to enforce the judgment. On 14 July 2023, the Permola court, relying on the Transitional Council’s waiver of immunity, ordered the seizure and sale of ‘The Falcon,’ which was auctioned to Badilla Airlines for USD 55 million in August 2023.

**The Falcon**

Commissioned in 2019 as Vice-President Zavala’s official airplane, The Falcon was a repurposed military aircraft, completed at a cost of USD 72 million and used exclusively for non-commercial government purposes. Following Ambrosia’s valid waiver of immunity Rovinian courts ordered its seizure and sale.

**Gertrude Cross and ILSA**

Gertrude Cross, Ambrosia’s Interior Minister, oversaw the Implementing the Law for a Safer Ambrosia (‘ILSA’) program launched in 2013 to combat drug trafficking. While initially effective, the program faced accusations of human rights violations, including the abduction of over 150 Ambrosian citizens suspected of drug-related activities. Cross resigned in 2022 and moved to Rovinia. In 2024, newly surfaced evidence implicated her in directly overseeing these abductions, prompting Rovinia to arrest her on charges of ‘enforced disappearance.’

**Rovinian Criminal Code**

Rovinia’s Criminal Code includes provisions for prosecuting serious crimes under universal jurisdiction, such as enforced disappearance, which allows for the prosecution of individuals for grave offenses regardless of where they occurred, provided the accused is present in Rovinia.

**Treaties in Force Between the Parties**

Ambrosia and Rovinia have been members of the United Nations and parties to the Statute of the International Court of Justice; signatories to the United Nations Convention on the Law of the Sea (‘UNCLOS’), and the Vienna Convention on the Law of Treaties (‘VCLT’). Additionally, both states have ratified the International Covenant on Civil and Political Rights (‘ICCPR’) and the International Covenant on Economic, Social, and Cultural Rights (‘ICESCR’). They are also contracting parties to the International Convention for the Protection of All Persons from Enforced Disappearance (‘ICPPED’) and the United Nations Convention on Jurisdictional Immunities of States and Their Property (‘UNCJISP’). Furthermore, Ambrosia and Rovinia have a bilateral extradition treaty, in force since 2002, obligating them to extradite individuals sought for investigation, trial, or punishment for specified offenses.

**Application to the Court**

On 11 July 2024, Ambrosia filed an application with the International Court of Justice, invoking Article XXI of the OCDP Charter to address its disputes with Rovinia.

# SUMMARY OF PLEADINGS

1. **THE COURT LACKS JURISDICTION TO ENTERTAIN AMBROSIA’S SUBMISSION (II) BECAUSE IT IS OUTSIDE THE SCOPE OF THE COMPROMISSORY CLAUSE OF THE OCDP CHARTER.**

The Court cannot entertain Ambrosia’s submission (B) as the dispute falls outside the temporal jurisdiction granted under Article XXI of the OCDP Charter. The ICJ and the PCIJ’s jurisprudence consistently distinguish between the ‘trigger’ and the ‘real cause’ of a dispute. Although the criminal proceedings against Gertrude Cross in 2024 triggered the dispute, they cannot be separated from the earlier facts and legal framework underlying her prosecution. The situation created by the ILSA abductions of 2017–2020, along with the pre-existing legal regime authorizing the prosecution of such offences, constitute the real causes of the dispute. Consequently, the dispute over the arrest and prosecution of Gertrude Cross falls outside the Court’s jurisdiction.

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

Ambrosia cannot invoke immunity *ratione materiae* on behalf of Ms. Cross because *jus cogens* violations, including crimes against humanity, are not considered official acts but rather constitute *ultra vires* actions. *Jus cogens* norms are hierarchically superior to immunity *ratione materiae* and thus establish an exception to its application. Even if the enforced disappearance were deemed an official act, international law cannot simultaneously condemn such acts while protecting them through immunity. Moreover, Ms. Cross bears personal responsibility for these crimes. Further, universal jurisdiction, as both *lex posterior* and *lex specialis*, overrides immunity *ratione materiae*. Rovinia acted in compliance with its obligations under the ICPPED. The convention explicitly allows for both extradition and prosecution, with the latter being an obligation, while the former an option. Rovinia had legitimate grounds to deny an extradition request. By prosecuting Ms. Cross, Rovinia fulfilled its legal obligations while adhering to international norms, ensuring accountability for serious international crimes.

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

Rovinia’s issuance of fishing licenses in the Triton Shoal is lawful under international law, as the Shoal lies beyond Ambrosia’s EEZ and within the high seas. Ambrosia’s 2015 Baseline Freezing Law, which attempts to fix baselines, conflicts with UNCLOS. Article 5 of UNCLOS defines baselines as following the natural low-water line along the coast, and international jurisprudence affirms that baselines are ambulatory, adjusting naturally with coastal changes. Consequently, Ambrosia’s claim to extend its EEZ to include the Triton Shoal is invalid. Moreover, there is no customary international rule supporting fixed baselines, as state practice and opinio juris remain inconsistent, and Rovinia, as a persistent objector, is not bound by any such emerging norm. Finally, under UNCLOS Article 64, Rovinia has the right to issue fishing licenses for highly migratory species in the high seas, provided it cooperates with other states and regional organizations for conservation and equitable resource use. Rovinia’s actions fully comply with international law and uphold its sovereign rights.

1. **ROVINIA’S JUDICIAL SEIZURE AND SALE OF “THE FALCON” ON THE BASIS OF THE TRANSITIONAL COUNCIL’S WAIVER OF IMMUNITY WERE IN ACCORDANCE WITH INTERNATIONAL LAW.**

Rovinia’s actions regarding ‘The Falcon’ are lawful, as Ambrosia cannot invoke sovereign immunity in a commercial dispute with O’Mander Corp., and the Transitional Council validly waived the immunity. The dispute, stemming from a contract for 5G technology, qualifies as a private law activity, excluding Ambrosia from immunity. Additionally, the Transitional Council, recognized as the effective government of Ambrosia based on the doctrine of effective control, lawfully waived ’The Falcon’s immunity. This recognition aligns with Rovinia’s discretion and international precedents prioritizing effective governance over constitutional adherence. The Transitional Council’s authority was demonstrated through territorial control, governance of essential functions, and domestic and international recognition, while Ms. Zavala’s government lacked effective control. The Transitional Council’s waiver met the formal requirements of international law, as authorized by the UNCJISP and VCLT. Consequently, Rovinia’s seizure and sale of ‘The Falcon’ complied with international law.

# PLEADINGS

## THE COURT LACKS JURISDICTION TO ENTERTAIN AMBROSIA’S SUBMISSION (II) BECAUSE IT IS OUTSIDE THE SCOPE OF THE COMPROMISSORY CLAUSE OF THE OCDP CHARTER.

Article XXI(a) of the OCDP Charter constitutes a broad and general recognition of the Court’s jurisdiction as between OCDP Member States, among which are Ambrosia and Rovinia.[[1]](#footnote-1) Article XXI(b) provides two exceptions to this grant of jurisdiction.[[2]](#footnote-2) The present dispute concerning the arrest and prosecution of Gertrude Cross falls within both of these exceptions. Therefore, Ambrosia cannot invoke Article XXI(a) as the basis for the Court’s jurisdiction over this dispute.

According to the temporal limitation in Article XXI(b)(i), the Court’s jurisdiction is excluded if even one of the facts or situations giving rise to the dispute occurred before 17 March 2021.[[3]](#footnote-3) Thus, the key issue for temporal jurisdiction is determining what the facts or situations giving rise to the dispute are and when they occurred.[[4]](#footnote-4)

### The Test of Finding The Source or Real Cause of the Dispute Applies.

The ICJ and the PCIJ have dealt in several cases with substantially similar temporal limitations.[[5]](#footnote-5) Although some of these cases concerned the interpretation of unilateral declarations,[[6]](#footnote-6) the Court stated that this jurisprudence is equally applicable when interpreting multilateral conventions.[[7]](#footnote-7) According to this consistent jurisprudence, the facts or situations giving rise to a dispute are ‘those which must be considered as being the source of the dispute, those which are its "real cause" rather than those which are the source of the claimed rights’.[[8]](#footnote-8)

In *Phosphates in Morocco*,the PCIJ underlined that subsequent facts or situations cannot establish its temporal jurisdiction if they are merely the confirmation or development of prior ones constituting the real source of the dispute.[[9]](#footnote-9) On this basis, it found that it lacked jurisdiction over the disputed monopoly regime which was still in operation after the exclusion date of 1931.[[10]](#footnote-10) According to the Court, this regime ‘[could not] be considered separately from the [1920] legislation of which it [was] the result’[[11]](#footnote-11) and therefore it fell outside the Court’s temporal jurisdiction.[[12]](#footnote-12)

The ICJ adopted the same approach in *Certain Property* while further clarifying that the source of a dispute is distinct from what ‘triggered the dispute’.[[13]](#footnote-13) The case concerned the decisions of the German courts in the 1990s dismissing the claim for the return of property confiscated under the Benes Decrees in 1945.[[14]](#footnote-14) The courts based their decisions on the 1955 Settlement Convention, which Germany argued required the dismissal of lawsuits challenging such confiscations.[[15]](#footnote-15) The Court found that while the German court decisions in the 1990s triggered the dispute, the source of the dispute was to be found in the legal regime established by 1955 Settlement Convention and the confiscations under the 1945 Benes Decrees.[[16]](#footnote-16)

### Applying The ‘Source’ Test, The Present Dispute Is Outside The Court’s Jurisdiction.

In the present case, the institution of criminal proceedings against Gertrude Cross may have triggered the dispute. However, these proceedings cannot be considered separately from the ILSA abductions of 2017-2020[[17]](#footnote-17) and the legal regime applicable to these offences. It is undeniable that Cross is being prosecuted because of conduct indicating her involvement in these abductions. In this connection, just like *Certain Property*, Ambrosia complains of a decision based on a provision existing since 2007 and authorizing the prosecution of persons for the offences Cross stands accused of committing in 2017–2020.[[18]](#footnote-18) Furthermore, Rovinia’s international obligations under the ICPPED in this respect were already in force prior to 17 March 2021.[[19]](#footnote-19) Therefore, the legal situation that constituted the source of the present dispute existed before the establishment of the Court’s temporal jurisdiction.

Crucially, the Parties had never addressed this prior legal situation existing between them. It is precisely in this respect that the present dispute differs from *Right of Passage over Indian Territory*[[20]](#footnote-20) and *Electricity Company of Sofia and Bulgaria*.[[21]](#footnote-21) In both cases, the parties have dealt with the prior legal situation in a mutually acceptable manner until certain controversial acts gave rise to the dispute. Thus, in *Electricity Company of Sofia and Bulgaria*, the PCIJ held that the arbitral awards did not give rise to the dispute because both parties had ‘agree[d] as to their binding character and that their application gave rise to no difficulty until the acts complained of.’[[22]](#footnote-22) Similarly, in *Right of Passage over Indian Territory*, the ICJ observed that the parties had managed the situation of the enclaves without controversy until India’s interruption of Portugal’s longstanding passage into those enclaves gave rise to the dispute.[[23]](#footnote-23)

By contrast, the present dispute arose when Rovinia, for the first time, acted on the legal position it had adopted regarding the legal implications of the prior situation created by the ILSA abductions and the legal regime applicable to these abductions. In other words, the present dispute arose when Rovinia instituted criminal proceedings against Getrude Cross in 2024,[[24]](#footnote-24) but it arose out of the situation prior to 2021. In this respect, the Court’s argument in *Jurisdictional Immunities of the State*[[25]](#footnote-25) can be transposed *mutatis mutandis*, by just changing the facts. The present dispute is ‘inextricably linked to an appreciation of the [legal implications of the prior situation] and the different views of the Parties as to the ability of [Rovinia] to rely upon that [situation to prosecute Gertrude Cross]’.[[26]](#footnote-26) Consequently, the Court cannot adjudicate the present dispute as it arose out of a situation prior to 17 March 2021.

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

### Ms. Cross Does Not Enjoy Immunity *Ratione Materiae*

#### Jus cogens violations are not official acts.

Ms. Cross has been involved in the commission of enforced disappearances. Under the ICPPED, systematic or widespread commission of enforced disappearances constitute a crime against humanity.[[27]](#footnote-27) The term systematic refers to the ‘organised nature of the acts of violence and improbability of their random occurrence’[[28]](#footnote-28) and the widespread conduct criterion is not limited to a specific number of victims.[[29]](#footnote-29) *In casu*, the systematic nature of the acts, carried out pursuant to State policy,[[30]](#footnote-30) and the substantial number of victims[[31]](#footnote-31) are sufficient to establish the crime against humanity.

As Lord Browne-Wilkinson explained in Pinochet, a former Head of State ‘enjoys immunity *ratione materiae* in relation to acts done by him as head of state as part of his official functions as head of State.’[[32]](#footnote-32) The Law Lord clarified that for immunity *ratione materiae* to apply, the act must not only be performed in an official capacity on behalf of the State but must also fall within the official functions of a Head of State.[[33]](#footnote-33) The House of Lords ultimately held that crimes against humanity, due to their *jus cogens* nature,[[34]](#footnote-34) cannot be considered as legitimate functions of public officials.[[35]](#footnote-35)

In the *Arrest Warrant*, the joint separate opinion underscored that international crimes are excluded from the scope of official acts, as they fall outside the functions of the State.[[36]](#footnote-36) Similarly, the International Military Tribunal held that when a State, in authorizing an action, acts beyond its competence under international law, immunity does not apply.[[37]](#footnote-37)

*In casu*, the systematic and widespread commission of enforced disappearances constitutes a crime against humanity and violates a *jus cogens* norm.[[38]](#footnote-38) As such, it cannot be considered an official act within the scope of the authorizing State’s competence under international law or functions of its officials[[39]](#footnote-39), therefore constituting *ultra vires* acts that are not attributable to the State.[[40]](#footnote-40) Consequently, acts falling outside an official’s functions do not attract immunity *ratione materiae*.[[41]](#footnote-41)

Ms. Cross’s authorization[[42]](#footnote-42) and involvement constitute *ultra vires* actions that exceed her official functions and fall outside the scope of immunity *ratione materiae.*

#### Jus cogens violations create an exception to the rule of immunity ratione materiae.

Ms. Cross cannot enjoy immunity *ratione materiae* with regard to the crime of enforced disappearance. Immunity *ratione materiae* functions as a substantive defence that diverts responsibility from the individual official to the state for official acts.[[43]](#footnote-43) *Jus cogens* violations are not official acts as commission of such crimes can never be considered a function of the state.[[44]](#footnote-44) Thereby *jus cogens* violations such as crimes against humanity[[45]](#footnote-45) fall outside the scope of immunity *ratione materiae* and are not protected by it.[[46]](#footnote-46)

This Court articulated in its *dicta* that substantive immunity does not apply to *jus cogens* crimes.[[47]](#footnote-47) The House of Lords’ final decision in *Pinochet* establishes that immunity*ratione* *materiae*does not extend to former Heads of State or other state officials accused of crimes under international law.[[48]](#footnote-48) Similarly, the International Military Tribunal held that ‘The principle of international law which, under certain circumstances, protects the representative of a state, cannot be applied to acts which are condemned as criminal by international law’.[[49]](#footnote-49)

*In casu*, commission of enforced disappearances constitutes a *jus cogens* violation,[[50]](#footnote-50) thereby piercing the immunity of Ms. Cross.

##### *Jus cogens* norms are hierarchically higher than immunity *ratione materiae.*

As both immunity *ratione materiae* and the *jus cogens* norm prohibiting crimes against humanity relate to substantive law,[[51]](#footnote-51) prohibition of crimes against humanity is superior to the rule of immunity *ratione materiae* as the latter does not hold the status of *jus cogens*.[[52]](#footnote-52)

The argument that the enforcement of *jus cogens* norms does not conflict with the peremptory norm prohibiting crimes against humanity as the obligation *aut dedere aut judicare* does not carry the same *jus cogens* character, undermines all implications of *jus cogens* norms.[[53]](#footnote-53) Once the conduct is deemed criminal under *jus cogens*, the corresponding rules governing its prosecution also attain *jus cogens* status.[[54]](#footnote-54)

##### Even if enforced disappearance were deemed an official act, the international legal system cannot simultaneously establish such crimes while granting immunity for their commission.

Torture Convention defines torture[[55]](#footnote-55) as an act that can be interpreted as confining torture to acts committed in an official capacity therefore constituting official acts.[[56]](#footnote-56) ICPPED formulates the crime of enforced disappearance similarly by saying that it can be committed ‘by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State’, which could be interpreted as defining enforced disappearance as an official act as well.

As Lord Browne-Wilkinson observed in *Pinochet*, acts carried out by an agent in an official capacity on behalf of the State would always attract immunity *ratione materiae*.[[57]](#footnote-57) He further argued that this would mean no prosecution for torture could succeed outside Chile unless Chile waived its officials’ immunity. Such an outcome, he noted, would undermine the system of universal jurisdiction established by the Torture Convention and frustrate one of its core objectives: ensuring there is no safe haven for torturers.[[58]](#footnote-58)

Such an outcome was prevented by highlighting the distinction that the crucial factor for immunity *ratione materiae* to apply is not merely that an act was performed in an official capacity on behalf of the State, but rather that the conduct must fall within the official functions of a Head of State.[[59]](#footnote-59) Acts that are exercised in an official capacity but falling beyond the scope of functions of the official are *ultra vires*, which places them outside the protection of immunity *ratione materiae.*

*In casu,* thecommission of enforced disappearances under the ILSA program falls outside the scope of Ms. Cross’s functions as Minister of Interior, although committed in an official capacity. Thus, these acts are not official and cannot attract immunity *ratione materiae.*

##### Ms. Cross is personally responsible.

Violations of *jus* *cogens* norms impose individual criminal responsibility, overriding the immunity *ratione materiae* of former high-ranking State officials.[[60]](#footnote-60) While immunity *ratione materiae* deflects responsibility for official acts to the State, breaches of *jus cogens* norms directly establish personal liability for the perpetrator.[[61]](#footnote-61)

ICTY asserted that ‘there is no privilege under international criminal law which would shield state representatives or agents from the reach of individual criminal responsibility’[[62]](#footnote-62) In a similar vein, the International Military Tribunal at Nuremberg stated that, ‘individuals have international duties which transcend the national obligations of obedience imposed by the individual State.’[[63]](#footnote-63)

*In casu*, Ms. Cross cannot be protected by immunity *ratione materiae* which functions to transfer any illegality from herself to the state. As the conduct in question constitutes an official act but cannot be attributed to the state or considered a part of her official functions, Ms. Cross is held personally responsible under the ICPPED, which aims to combat impunity for the crime of enforced disappearance.[[64]](#footnote-64)

#### Universal jurisdiction entails the lifting of immunity ratione materiae.

Rovinia exercised universal jurisdiction pursuant to the ICPPED. The ICPPED establishes a framework for universal jurisdiction in cases of enforced disappearance.[[65]](#footnote-65) Under the *lex posterior* maxim, universal jurisdiction supersedes immunity *ratione materiae* as it is a newer norm[[66]](#footnote-66)*.* While immunity *ratione materiae* shields any act attributable to the State, universal jurisdiction applies exclusively to serious international crimes.[[67]](#footnote-67) Under the principle of *lex specialis*, universal jurisdiction prevails over immunity *ratione materiae.[[68]](#footnote-68)*

*In casu,* universal jurisdiction granted by ICPPED entails the lifting of immunity *ratione materiae* enjoyed by Ms. Cross as the crime of enforced disappearance is at issue.

### Rovinia’s Exercise of Universal Jurisdiction Was In Accordance with International Law

#### Rovinia acted in accordance with its obligations under ICPPED .

##### Rovinia complied with its obligation to implement legal measures ensuring the suspect’s presence

ICPPED obligates State parties in whose territory the alleged perpetrator is to take him or her into custody or take other legal measures to ensure his or her presence upon an examination of information available to them.[[69]](#footnote-69) Following the newest report of Human Rights International (‘HRI’) concerning Ms. Cross’s involvement, Rovinia was obligated under ICPPED to take her into custody to ensure her presence.

##### Extradition is an option while prosecution is an international obligation.

This Court asserted in *Belgium v. Senegal* in relation to the Torture Convention that, ‘Extradition is an option offered to the State by the Convention, whereas prosecution is an international obligation’.[[70]](#footnote-70) As both Torture Convention and ICPPED contain the same *aut dedere aut judicare* principle,[[71]](#footnote-71) this duty extends to State parties of ICPPED as well. Thus, as a party to ICPPED, Rovinia took the necessary steps to fulfill its prosecutorial duty, thereby upholding its treaty obligations.

#### Rovinia had a legitimate ground to refuse the extradition request.

A State shall refuse a request for extradition based on universal jurisdiction if the person sought is likely to face sham proceedings that violate international due process norms, unless satisfactory assurances to the contrary are provided.[[72]](#footnote-72) Despite initial claims of insufficient evidence to support criminal charges against Ms. Cross,[[73]](#footnote-73) the subsequent discovery that evidence was in fact available,[[74]](#footnote-74) coupled with the generous pardons granted by the President of Ambrosia,[[75]](#footnote-75) makes it evident that any investigation by Ambrosia will result in a sham proceeding. Thus, Rovinia had a legitimate ground to refuse the extradition request of Ambrosia.

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

Rovinia’s issuance of fishing licenses for Triton Shoal is in conformity with international law. First, the Shoal lies beyond Ambrosia’s EEZ[[76]](#footnote-76) and is in the high seas.[[77]](#footnote-77) Ambrosia’s 2015 Baseline Freezing Law,[[78]](#footnote-78) which fixes its baselines to prevent coastline recession due to climate change[[79]](#footnote-79), conflicts with UNCLOS Article 5, which mandates baselines follow the natural low-water line [**A**]. Second, there is no customary rule for fixed baselines [**B**] and even if a customary rule were to exist, it would not bind Rovinia, as it is a persistent objector to such a custom [**C**]. Lastly, in any event, Rovinia retains the right to issue fishing licenses under UNCLOS Article 64 [**D**].

### Ambrosia’s EEZ Does Not Extend to the Triton Shoal

Ambrosia’s baselines are ambulatory[[80]](#footnote-80) and do not extend to the Triton Shoal since it now lies beyond Ambrosia’s EEZ due to coastal recession,[[81]](#footnote-81) placing it in the high seas.[[82]](#footnote-82)

#### UNCLOS does not allow fixed baselines hence Ambrosia’s baselines are ambulatory

Article 5 of UNCLOS defines the baseline as follows the low-water line along the coast.[[83]](#footnote-83) Baselines are not defined by the unilateral decisions of coastal states but by the prescriptive measures of UNCLOS.[[84]](#footnote-84) The fixation of baselines could unduly restrict the high seas.[[85]](#footnote-85) While the Convention allows for baselines to be fixed despite natural changes in limited situations, primarily under Articles 7[[86]](#footnote-86) and 76,[[87]](#footnote-87) it does not explicitly address the regression of the low-water line or freeze maritime boundaries, except possibly for the continental shelf. Except for Article 7(2), which addresses unstable coastlines caused by deltas and other natural conditions, the Convention does not cover changes in coastal geography.[[88]](#footnote-88) UNCLOS must be interpreted in good faith, with terms given their ordinary meanings within the context of the treaty.[[89]](#footnote-89) If UNCLOS had intended to allow for a fixed baseline, it would have explicitly provided for such a provision in Article 5, as it does in Articles 7 and 76.

The ambulatory theory of baselines,[[90]](#footnote-90) which holds that baselines shift with natural processes like erosion and deposition,[[91]](#footnote-91) reflects the broader international framework governing maritime delimitation. As affirmed by this Court in *Fisheries*,[[92]](#footnote-92) the determination of baselines and maritime zones is an international matter, not governed solely by the domestic laws of coastal States.[[93]](#footnote-93)

As with other courts,[[94]](#footnote-94) this Court also recognized that baselines are maritime entitlements depend on verifiable land features, which must adapt to natural geographical changes. The Court has emphasized the importance of considering the ‘physical reality’ at the time of delimitation in maritime boundary cases.[[95]](#footnote-95) For example, in *Tunisia/Libya*, the Court held that the physical circumstances of the present-day seabed and coasts must be taken into account, rejecting the influence of geological history or composition.[[96]](#footnote-96) Similarly, in *Black Sea*, the Court affirmed the use of base points based on the physical geography of the relevant coasts, including both natural and man-made features such as the Sulina dyke, all of which should be shown on existing charts.[[97]](#footnote-97) In *Bangladesh v. India*, the Tribunal focused on the ‘physical reality at the time of the delimitation,’ noting that base points should reflect the coast at the time of the delimitation, not past geographical circumstances.[[98]](#footnote-98) In *Nicaragua v. Honduras*,[[99]](#footnote-99) this Court highlighted the necessity for baselines to remain verifiable and reflective of current geographic realities.[[100]](#footnote-100) Similarly, in *Qatar v. Bahrain*,[[101]](#footnote-101) this Court emphasized that if the geographical features defining maritime entitlements disappear, the legal and practical basis for such zones ceases to exist.[[102]](#footnote-102) This Court in *Nicaragua v. Colombia* further emphasized that the legal status of the features should be determined based on contemporary evidence rather than outdated charts or surveys.[[103]](#footnote-103) When the Philippines argued that published charts were sufficient, the Tribunal stressed the importance of original survey data for accurate boundary determinations.[[104]](#footnote-104)

The normal baseline is defined as a line along the coast, taking from the coast its direction and shape, and is defined solely by reference to the low-water line along the coast, without incorporating other concepts.[[105]](#footnote-105) The ILA 2012 Baselines Committee[[106]](#footnote-106) clarified that baselines are dynamic, moving with the coastline’s natural changes,[[107]](#footnote-107) reflecting the principle that ‘the land dominates the sea.’[[108]](#footnote-108) The Committee determined that charts do not definitively set the naturally ambulatory normal baseline,[[109]](#footnote-109) which establishes that the baseline should be precisely where the water meets the land.[[110]](#footnote-110)  As the baseline ambulates, so does each of the maritime zones measured from it.[[111]](#footnote-111) Actual line is what should be considered, not the charted line.

#### There is not sufficient subsequent practice to modify UNCLOS

According to VCLT article 31(3)(b) ‘any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation’ is recognized as an authentic means of interpretation.[[112]](#footnote-112) Modifications to treaties under UNCLOS require the mutual consent or subsequent practice of all state parties to the Convention.[[113]](#footnote-113) However, opposing practices, such as those of Rovinia, prevent the formation of such consensus on these modifications. The traditional methods of interpretation become impractical under UNCLOS, as unanimous practice among all parties is required for any amendment—a condition that is particularly difficult given the large number of parties[[114]](#footnote-114) involved in UNCLOS.[[115]](#footnote-115)

Several states, including the Netherlands[[116]](#footnote-116) and Ireland[[117]](#footnote-117) have adopted the practice of ambulatory baselines, recognizing their dynamic nature and adapting them to natural changes, which aligns with the principles of UNCLOS. The Issues Paper[[118]](#footnote-118) also refers to practices from states such as the United Kingdom,[[119]](#footnote-119) United States[[120]](#footnote-120) and Romania,[[121]](#footnote-121) which can be understood as embodying ‘an ambulatory baselines system’, even if not explicitly described as such by these states.[[122]](#footnote-122)

While state practices are essential in the interpreting agreements according to general rules of interpretation,[[123]](#footnote-123) opposing practices can prevent the formation of consensus in this regard. Nevertheless, the ambulatory thesis remains valid in the interpretation of Article 5, especially considering the growing trend of state practice supporting this interpretation.

Since Ambrosia’s baselines are ambulatory, they shift with the coastline due to sea-level rise, consistent with the evolving practices of other states and the principles outlined in UNCLOS. Ambrosia’s maritime entitlements shift with the coastline. Due to sea-level rise,[[124]](#footnote-124) Ambrosia’s baselines recede, and so does its EEZ.[[125]](#footnote-125) As a result, the Triton Shoal now lies beyond Ambrosia’s EEZ,[[126]](#footnote-126) meaning it is no longer part of Ambrosia’s maritime boundaries and is situated in the high seas, where Rovinia has the sovereign right to issue fishing licenses.[[127]](#footnote-127)

### There Are No Customary International Rules To Support The Fixed Baselines

The practice of fixing baselines does not constitute customary international law, as there is a lack of consistent and widespread state practice and *opinio juris*. As a maritime state, Rovinia cannot be considered outside the category of ‘specially affected states’ in the context of sea-level rise, especially given that international law requires the practice of such states to be included in the general practice for the emergence of a new customary law rule.[[128]](#footnote-128) Moreover, a regional custom recognizing fixed baselines in the Naegea Sea cannot evolve without Rovinia’s acceptance.

#### State practice and opinio juris are insufficient.

While Pacific Island nations have adopted fixed baseline practices in response to sea-level rise,[[129]](#footnote-129) there is also significant contrary state practice, such as that of the United Kingdom,[[130]](#footnote-130) United States[[131]](#footnote-131) and Romania,[[132]](#footnote-132) which adhere to ambulatory baselines under UNCLOS Article 5, linking baselines to the shifting low-water line. When state practices are marked by substantial variation, inconsistency, and contradiction, it becomes infeasible to establish a cohesive and universally accepted rule recognized as legally binding under international law.[[133]](#footnote-133)

Israel[[134]](#footnote-134) and the USA[[135]](#footnote-135) argue that no customary international law has been established on sea level rise; Israel notes the limited state practice, while the USA stresses that coastal baselines are subject to change.[[136]](#footnote-136) The Sea Level Rise Committee identifies only *prima facie* evidence of regional practice,[[137]](#footnote-137) which is insufficient to form a rule without consistent global state practice. Moreover, *opinio juris* is lacking in this context, as fixed baseline policies appear to reflect domestic considerations rather than a shared belief in their legal obligation. As Sir Michael noted that it is hard to see how a ‘regional customary rule could help PIF members,’ since maritime zones need to be applicable ‘to all states’ to be effective.[[138]](#footnote-138) It is premature to definitively establish a regional or general customary rule on the preservation of baselines and maritime zones.[[139]](#footnote-139) Given the contrary state practices mentioned, it is clear that the two fundamental elements[[140]](#footnote-140) of custom are not present in our case. Although customary rules have historically shaped UNCLOS, the ILA[[141]](#footnote-141) acknowledges that a rule for fixed baselines remains in its embryonic stage, limiting the applicability of such a rule in the Naegea Sea.

#### Regional custom cannot evolve without Rovinia’s acceptance

Regional customary law can develop among a limited number of states,[[142]](#footnote-142) as affirmed in *Asylum*,[[143]](#footnote-143) but it must be accepted by all states within the region against which it is invoked.[[144]](#footnote-144)

In the Naegea Sea, Rovinia has not accepted fixed baselines and continues to assert its opposition.[[145]](#footnote-145) Without Rovinia’s consent, the required[[146]](#footnote-146) consistency in state practice and *opinio juris* for the formation of regional custom is lacking. For fixed baselines to become customary international law, they must be recognized not only in a regional context but also on a global scale, as the issue affects the international community as a whole.[[147]](#footnote-147)

As demonstrated in this dispute, without Rovinia’s acceptance, a regional custom in Paine Peninsula recognizing fixed baselines cannot evolve under international law.

### If The Court Finds That Custom Exists, It Is Not Applicable to Rovinia

Even if the Court finds that fixed baselines have become a customary rule, Rovinia remains a persistent objector. States are only bound by law that they have consented to be bound by[[148]](#footnote-148) and no state can impose a rule it has accepted on another state.[[149]](#footnote-149) A state that persistently objects to a norm during its emergence cannot be bound by that custom under international law.[[150]](#footnote-150)

There is no evidence of widespread or consistent state practice supporting the norm of fixed baselines when Rovinia’s objections began in 2016.[[151]](#footnote-151) Rovinia objected to the freezing of baselines at every stage,[[152]](#footnote-152) including issuing notes verbales[[153]](#footnote-153) before six other states had deposited their charts. Rovinia’s objection to Ambrosia’s fixed baseline also prevents the application of the ILA’s 2018 Report and Resolution 5/2018, which is applicable only to baselines that are uncontested by other States.[[154]](#footnote-154) While Rovinia abstained from voting on the 6 March resolution,[[155]](#footnote-155) this decision was driven by the urgent need to support Dovilinia, a region devastated by a natural catastrophe. Rovinia’s abstention allowed the resolution to pass and ensured humanitarian aid reached those in need, fulfilling its obligations under the OCDP Charter.[[156]](#footnote-156) As such, Rovinia’s objections during the emergence of the purported custom prevent it from being bound by the norm, even if such a custom exists.[[157]](#footnote-157)

### In Any Event, Rovinia Has The Right To Grant Fishing Licenses According To Article 64 of UNCLOS.

Even if the Court accepts all of Ambrosia’s arguments, Rovinia retains the right to issue fishing licenses for the entirety of Triton Shoal, in accordance with Article 64 of UNCLOS.

Under Article 64 of UNCLOS, states are obligated to cooperate, either directly or through international organizations, for the optimum utilization of highly migratory species,[[158]](#footnote-158) such as tuna.[[159]](#footnote-159) This obligation applies to both the high seas and the EEZ of coastal states.[[160]](#footnote-160) OCDP is the designated organization for this cooperation,[[161]](#footnote-161) as its charter incorporates principles of equitable resource use[[162]](#footnote-162) and respect for maritime rights.[[163]](#footnote-163)

Rovinia retains the right to issue fishing licenses for tuna, even in Ambrosia’s EEZ, as part of its sovereign rights under the high seas[[164]](#footnote-164) framework and obligations to cooperate. Ambrosia’s request to revoke these licenses cannot be justified under the ‘obligation to cooperate for optimum utilization’ provision of Article 64. Furthermore, such an action would violate the OCDP Charter by disregarding principles of equitable resource use and Rovinia’s maritime rights in the high seas.

Therefore, Rovinia has the right to issue fishing licenses across the entire Shoal, both within and outside of Ambrosia’s EEZ.

## ROVINIA’S JUDICIAL SEIZURE AND SALE OF “THE FALCON” ON THE BASIS OF THE TRANSITIONAL COUNCIL’S WAIVER OF IMMUNITY WERE IN ACCORDANCE WITH INTERNATIONAL LAW.

The O’Mander Corp. case, being commercial in nature, excludes Ambrosia from immunity under Rovinian courts’ jurisdiction [**A**], and the judicial seizure based on the Transitional Council’s valid waiver of ‘The Falcon’s immunity is lawful as it was the effective government at the time [**B**].

### Ambrosia Cannot Invoke Sovereign Immunity in Rovinian Courts Under International Law

Ambrosia cannot invoke sovereign immunity in Rovinian courts concerning its commercial dispute with O’Mander Corp.[[165]](#footnote-165) Sovereign immunity does not extend to commercial transactions involving private parties under international law,[[166]](#footnote-166) as codified in UNCJISP Article 10.[[167]](#footnote-167) Article 10 stipulates that a State cannot invoke immunity from the jurisdiction of a foreign court if it engages in a commercial transaction with a foreign person, and the dispute falls within the jurisdiction of that court.[[168]](#footnote-168) Although, this provision does not apply where the transaction occurs between states or where the parties have expressly agreed otherwise[[169]](#footnote-169) this condition is absent in the O’Mander Corp. case.

The transaction between O’Mander Corp and Ambrosia involves a commercial contract for the supply of 5G technology to Ambrosia’s Ministry of Telecommunications.[[170]](#footnote-170) This transaction, as defined under UNCJISP,[[171]](#footnote-171) falls within the scope of a ‘commercial transaction’[[172]](#footnote-172) as it pertains to the sale of goods or services.[[173]](#footnote-173)

Thus, Ambrosia cannot claim sovereign immunity as the dispute involves a private law activity arising from a commercial transaction.

### The Transitional Council Validly Waived the Immunity of ‘The Falcon’

The Transitional Council’s waiver of immunity[[174]](#footnote-174) is valid under international law,[[175]](#footnote-175) as it represented the effective government of Ambrosia through its territorial control,[[176]](#footnote-176) governance of essential state functions,[[177]](#footnote-177) and substantial domestic[[178]](#footnote-178) and international[[179]](#footnote-179) recognition.

#### Rovinia rightfully recognized Transitional Council since it has the discretion to recognize any government

Recognition is a unilateral and discretionary act,[[180]](#footnote-180) whereby States may decide to acknowledge another entity as a government without any binding legal obligation to do so.[[181]](#footnote-181) Each State has the sovereign right to determine and implement its domestic policies, including political, economic, and social systems, so long as such actions comply with its international obligations.[[182]](#footnote-182) In connection with this, States, as sovereigns, and by extension, their judiciary, may decide to may align their decisions with the executive branch, and recognize a particular government solely based on their domestic policies.[[183]](#footnote-183)

Rovinia rightfully exercised this discretion when its Foreign Minister and courts formally acknowledged the Transitional Council as the effective Ambrosian government expressing its intention to maintain diplomatic relations with this government.[[184]](#footnote-184)

##### Recognition of the Transitional Council aligns with the ‘effective control’ doctrine

The ‘effective control’ doctrine serves as the primary criterion for the recognition of governments.[[185]](#footnote-185) This doctrine is firmly supported by national case law[[186]](#footnote-186) and state practice[[187]](#footnote-187) demonstrates its predominance. Recognition grounded in ‘effective control’ considers practical factors, such as the entity’s ability to act on the international stage[[188]](#footnote-188) and exercise administrative control within its territory.[[189]](#footnote-189) Under the effective control doctrine a claimant to governmental authority must demonstrate stable governance over a significant portion of the state’s territory,[[190]](#footnote-190) perform essential state functions,[[191]](#footnote-191) and secure clear and expressed popular approval or acceptance.[[192]](#footnote-192) States may also consider which government demonstrates the capacity to improve the humanitarian situation with regards to recognition.[[193]](#footnote-193)

Rovinia’s recognition is based on the Transitional Council’s effective control over Ambrosian territory and its fulfillment of essential governmental functions [**a**]. Conversely, Ms. Zavala’s government had lost effective control [**b**].

##### International law does not mandate adherence to constitutional norms for recognition when a government demonstrates effective control.

A person or group can qualify for governmental status without a constitutional claim, provided they meet the criteria of effective governance and control over the State’s territory and population.[[194]](#footnote-194) This principle is reflected[[195]](#footnote-195) in *Tinoco Arbitration*,[[196]](#footnote-196) where the arbitrator held that the regime’s unconstitutional status was irrelevant to its recognition as the effective ruler.[[197]](#footnote-197)

Rovinia’s recognition of the Transitional Council aligns with the principle of effective control and does not require adherence to Ambrosia’s constitutional norms. Basing recognition on constitutionality would undermine state sovereignty and violate non-intervention principle.

###### Transitional Council retains the ‘effective control’ in Ambrosia

The Transitional Council was established with a composition of former ministers, military officers, and parliamentarians, asserting itself as the governing authority of Ambrosia.[[198]](#footnote-198) It swiftly enacted the Reconstruction Bill, addressing an urgent national crisis.[[199]](#footnote-199) The Transitional Council secured widespread support from the Ambrosian population, along with key institutions, including the legislature, police, intelligence services, and armed forces, solidifying its domestic control.[[200]](#footnote-200) It restored public order by addressing grievances and effectively managing Reconstruction Bill funds, despite limited opposition.[[201]](#footnote-201) Internationally, the Transitional Council’s authority was reinforced by recognition from 25 foreign states by June 2023, underscoring its recognition of legitimacy globally.[[202]](#footnote-202) Collectively, these factors establish the Transitional Council’s effective control over Ambrosia.

###### Ms. Zavala’s government had lost the ‘effective control’ in Ambrosia

Ms. Zavala demonstrated a clear inability to maintain effective control over Ambrosia’s governance and territory. She neglected domestic responsibilities during critical national crises, spending extensive time abroad and failing to address pressing issues at home.[[203]](#footnote-203) Her absence and inaction created a leadership gap, causing public unrest and ultimately leading to the establishment of the Transitional Council as an alternative governing body.[[204]](#footnote-204) Widespread criticism from both the media and the public further eroded her authority, as her inadequate response to the hurricane and other crises undermined public trust.[[205]](#footnote-205) Key national institutions, including the military and police, shifted their support to the Transitional Council, and three ministers have resigned seeking a new leader,[[206]](#footnote-206) leaving Ms. Zavala without the backing necessary to govern effectively.[[207]](#footnote-207) Therefore, it is evident that Ms. Zavala had lost effective control over Ambrosia.

#### The waiver was made in accordance with the formal requirements.

Transitional Council effectively waived the immunity of The Falcon. Under Articles 18 and 19 of the UNCJISP,[[208]](#footnote-208) state immunity from measures of constraint, such as attachment, arrest, or execution, is upheld unless the state expressly waives this immunity. Consent can be provided explicitly through declaration before a court, or written communication after a dispute arises.[[209]](#footnote-209) The UNCJISP does not include a provision specifying the state representative authorized to waive immunity,[[210]](#footnote-210) leaving this determination to the law of the forum or the state concerned.[[211]](#footnote-211) The Commentary of the UNCJISP suggests that the law of the forum state determines the manner and validity of consent to waive immunity, granting discretion to the trial court to devise its own rules.[[212]](#footnote-212)

Codified under the VCLT, heads of state, heads of government, and ministers of foreign affairs are presumed to represent their state by virtue of their official functions, granting them the authority to perform acts such as waiving immunity before foreign courts.[[213]](#footnote-213) This principle is further reinforced by Article 4 of the ILC Guiding Principles, which provides that a unilateral declaration can only bind a state internationally if made by an authority vested with the requisite power.[[214]](#footnote-214)

As the Transitional Council was the recognized and effective government of Ambrosia,[[215]](#footnote-215) it possessed the inherent competence to issue such unilateral declarations, including the valid waiver of immunity for Ambrosia’s property. The consent was given explicitly with respect to the seizure and sale of ‘The Falcon.’[[216]](#footnote-216)

Since the UNCJISP does not specify when consent to waive immunity must be given,[[217]](#footnote-217) if the Court finds that the pre-judgment measures of constraint were violated because the seizure of *‘*The Falcon’ occurred before the waiver of immunity, the subsequent consent[[218]](#footnote-218) can retroactively preclude the wrongfulness of the act. Under Article 20 of the Articles on State Responsibility, valid consent by a State to the commission of an act by another State precludes the act’s wrongfulness, provided it remains within the limits of that consent.[[219]](#footnote-219)

# PRAYERS FOR RELIEF

For the aforementioned reasons, the Republic of Rovinia, respectfully prays that this Court:

1. **DECLARE** that the Court lacks jurisdiction to entertain Ambrosia’s submission (b) because it is outside the scope of the compromissory clause of the OCDP Charter;
2. **DECLARE** that Rovinia’s assertion of criminal jurisdiction over Ms. Cross, and her arrest and prosecution, are fully consistent with international law;
3. **DECLARE** that Rovinia’s issuance of licenses to fish in the entirety of the Triton Shoal, which is located in the high seas, is in conformity with international law;
4. **DECLARE** that Rovinia’s judicial seizure and sale of “The Falcon” on the basis of the Transitional Council’s waiver of immunity were in accordance with international law.

Respectfully submitted,

 **Agents for Respondent**

1. Statement of Agreed Facts, para 12 (Facts)

 [↑](#footnote-ref-1)
2. ibid [↑](#footnote-ref-2)
3. ibid; Nick Gallus, The Temporal Jurisdiction of International Tribunals (Oxford University Press 2017) 29, para 3.34 [↑](#footnote-ref-3)
4. Robert Kolb, Reservations to Optional Declarations Granting Jurisdiction to the International Court of Justice (Edward Elgar Publishing 2024) 91; See also *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6 [48]; *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (Order of 6 July 2010) [2010] ICJ Rep 310 [18]

 [↑](#footnote-ref-4)
5. *Phosphates in Morocco* (*Italy v France*) (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74; *Electricity Company of Sofia and Bulgaria* (*Belgium v Bulgaria*) (Preliminary Objection) [1939] PCIJ Rep Series A/B No 77; *Right of Passage over Indian Territory* (*Portugal v India*) (Merits) [1960] ICJ Rep 6; *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6; *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (Order of 6 July 2010) [2010] ICJ Rep 310; *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (Judgment) [2012] ICJ Rep 99

 [↑](#footnote-ref-5)
6. *Phosphates in Morocco* (*Italy v France*) (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74; *Electricity Company of Sofia and Bulgaria* (*Belgium v Bulgaria*) (Preliminary Objection) [1939] PCIJ Rep Series A/B No 77; *Right of Passage over Indian Territory* (*Portugal v India*) (Merits) [1960] ICJ Rep 6

 [↑](#footnote-ref-6)
7. *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6 [43] [↑](#footnote-ref-7)
8. *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (Order of 6 July 2010) [2010] ICJ Rep 310 [23]; *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6 [44]; *Right of Passage over Indian Territory* (*Portugal v India*) (Merits) [1960] ICJ Rep 6, 35; *Electricity Company of Sofia and Bulgaria* (*Belgium v Bulgaria*) (Preliminary Objection) [1939] PCIJ Rep Series A/B No 77, 82; *Phosphates in Morocco* (*Italy v France*) (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74, 23 [↑](#footnote-ref-8)
9. *Phosphates in Morocco* (*Italy v France*) (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74, 24; See also Judge Higgins, Separate Opinion, *Legality of Use of Force* (*Yugoslavia v Belgium*) (Order of 2 June 1999) [1999] ICJ Rep 162; *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6 [51]; *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (Order of 6 July 2010) [2010] ICJ Rep 310 [28]; Robert Kolb, The International Court of Justice (Hart Publishing 2013) 402 [↑](#footnote-ref-9)
10. *Phosphates in Morocco* (*Italy v France*) (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74, 26; See also *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6 [40] [↑](#footnote-ref-10)
11. *Phosphates in Morocco* (*Italy v France*) (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74, 26

 [↑](#footnote-ref-11)
12. ibid [↑](#footnote-ref-12)
13. *Certain Property* (*Liechtenstein v Germany*) (Preliminary Objections) [2005] ICJ Rep 6 [48], [52]

 [↑](#footnote-ref-13)
14. ibid [26]

 [↑](#footnote-ref-14)
15. ibid [31]

 [↑](#footnote-ref-15)
16. ibid [52]

 [↑](#footnote-ref-16)
17. Statement of Agreed Facts, para 25, 50

 [↑](#footnote-ref-17)
18. ibid, para 61

 [↑](#footnote-ref-18)
19. International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (ICPPED); Statement of Agreed Facts, para 68

 [↑](#footnote-ref-19)
20. *Electricity Company of Sofia and Bulgaria* (*Belgium v Bulgaria*) (Preliminary Objection) [1939] PCIJ Rep Series A/B No 77

 [↑](#footnote-ref-20)
21. *Right of Passage over Indian Territory* (*Portugal v India*) (Merits) [1960] ICJ Rep 6 [↑](#footnote-ref-21)
22. *Electricity Company of Sofia and Bulgaria* (*Belgium v Bulgaria*) (Preliminary Objection) [1939] PCIJ Rep Series A/B No 77, 82 [↑](#footnote-ref-22)
23. *Right of Passage over Indian Territory* (*Portugal v India*) (Merits) [1960] ICJ Rep 6, 35

 [↑](#footnote-ref-23)
24. Statement of Agreed Facts, para 61

 [↑](#footnote-ref-24)
25. *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (Order of 6 July 2010) [2010] ICJ Rep 310

 [↑](#footnote-ref-25)
26. ibid [28] [↑](#footnote-ref-26)
27. ICPPED Art 5; International Law Commission, *Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries* (2019) UN Doc A/74/10, 31, para 10. [↑](#footnote-ref-27)
28. ibid 34 para 16 [↑](#footnote-ref-28)
29. ibid 33 para 12 [↑](#footnote-ref-29)
30. Facts, para 8 [↑](#footnote-ref-30)
31. *Prosecutor v Kordić and Čerkez* (Judgment) IT-95-14/2-A (ICTY, 17 December 2004); *Prosecutor v Blaškić* (Judgment) IT-95-14-T (ICTY, 3 March 2000) [↑](#footnote-ref-31)
32. R. v. Bow St. Metro. Stipendiary Magistrate ex parte Pinochet Ugarte (No. 3), [1999] UKHL 17, [2000] 1 A.C. 147 at 203. [↑](#footnote-ref-32)
33. Ramona Pedretti, *Immunity of Heads of State and State Officials for International Crimes* (Brill Nijhoff 2014) 136 [↑](#footnote-ref-33)
34. R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 1) [1999] 2 All ER 97 113–114 [↑](#footnote-ref-34)
35. Lord Nicholls in *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 1)* [1998] 4 All ER 897, 939–940; Lord Steyn in *ibid*, 945–946; Lord Hutton in *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3)* [1999] 2 All ER 97, 165–166; Lord Millett in *ibid*, 179 [↑](#footnote-ref-35)
36. Joint Separate Opinion of Judges Higgins, Koojmans, and Buergenthal, Arrest Warrant [2002] ICJ Rep 3, 63, para 85 [↑](#footnote-ref-36)
37. In re Goering and others, International Military Tribunal, Nuremberg, Case No 92 (1 October 1946) 13 ILR 203, 221, 222 [↑](#footnote-ref-37)
38. International Law Commission, *Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries* (2019) UN Doc A/74/10, 23 [↑](#footnote-ref-38)
39. R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 1) [2000] 1 AC 61, 115–116, per Lord Steyn; ibid 109, *per* Lord Nicholls of Birkenhead; R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3) [1999] UKHL 17, [2000] 1 AC 147, 205, *per* Lord Browne-Wilkinson; ibid 290, *per* Lord Phillips of Worth Matravers; ibid 278, per Lord Millett. [↑](#footnote-ref-39)
40. Tunks M, ‘Diplomats or Defendants?’ (2002) 53 Duke LJ 651, 659; Xuncax v Gramajo, 886 F Supp 162 (D Mass 1995), 176 [↑](#footnote-ref-40)
41. Re Pinochet, Court of First Instance of Brussels, 6 November 1998, 119 ILR 345, 349 [↑](#footnote-ref-41)
42. Problem 61 [↑](#footnote-ref-42)
43. Ramona Pedretti, *Immunity of Heads of State and State Officials for International Crimes* (Brill Nijhoff 2014) 23, 25 ; Rosanne van Alebeek, *The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law* (Oxford Monographs in International Law, 2008) 114,135; Cassese A, ‘When May Senior State Officials Be Tried for International Crimes? Some Comments on the Congo v. Belgium Case’ (2002) 13 EJIL 853, 863; C Flinterman and others, *The Princeton Principles on Universal Jurisdiction* (Princeton University Press 2001) 48 [↑](#footnote-ref-43)
44. Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* [2002] ICJ Rep 3, [85]; International Law Commission, ‘Immunity of State Officials from Foreign Criminal Jurisdiction’ (A/77/10) [2022] II(2) Yearbook of the International Law Commission 236, para 14; See R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 1) [2000] 1 AC 61, 115–116, per Lord Steyn; ibid 109, per Lord Nicholls of Birkenhead; R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3) [1999] UKHL 17, [2000] 1 AC 147, 205, per Lord Browne-Wilkinson; ibid 290, per Lord Phillips of Worth Matravers; ibid 278, per Lord Millett [↑](#footnote-ref-44)
45. International Law Commission, *Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries* (2019) UN Doc A/74/10, 23 [↑](#footnote-ref-45)
46. International Law Commission, ‘Immunity of State Officials from Foreign Criminal Jurisdiction’ (A/77/10) [2022] II(2) Yearbook of the International Law Commission Art 7; Enahoro v. Abubakar, 408 F. 3d 877 (7th Cir. 2005) 893; See Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), art 7(2), Statute of the International Criminal Tribunal for Rwanda (ICTR), art 6(2) [↑](#footnote-ref-46)
47. Cherif Bassiouni M, ‘Palestine’ (1998) 9 *Palestine Yearbook of International Law* 45; See also *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* [2002] International Court of Justice Reports 3, [60], [61] [↑](#footnote-ref-47)
48. Pedretti, 134,138 [↑](#footnote-ref-48)
49. In re Goering and Others, International Military Tribunal, Nuremberg, Case No 92 (1 October 1946) 13 ILR 203, 221–222. [↑](#footnote-ref-49)
50. n 38 [↑](#footnote-ref-50)
51. Pedretti, 401 [↑](#footnote-ref-51)
52. ibid [↑](#footnote-ref-52)
53. Orakhelashvili A, ‘Immunities of State Officials, International Crimes, and Foreign Domestic Courts: A Reply to Dapo Akande and Sangeeta Shah’ (2011) 22 EJIL 849, 851 [↑](#footnote-ref-53)
54. ibid 852 [↑](#footnote-ref-54)
55. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1 [↑](#footnote-ref-55)
56. Pedretti, 135, 355 [↑](#footnote-ref-56)
57. ibid 135 [↑](#footnote-ref-57)
58. R. v. Bow St. Metro. Stipendiary Magistrate ex parte Pinochet Ugarte (No. 3), [1999] UKHL 17, [2000] 1 A.C. 147, 205 [↑](#footnote-ref-58)
59. ibid 203 [↑](#footnote-ref-59)
60. Pedretti, 404 [↑](#footnote-ref-60)
61. ibid [↑](#footnote-ref-61)
62. Prosecutor v Kunarac, Kovač and Vuković, Case No IT-96-23-T and IT-96-23/1-T, Trial Chamber Judgment (22 February 2001) para 494; Prosecutor v Slobodan Milošević, Case No IT-02-54-T, Decision on Preliminary Motions of the Trial Chamber (8 November 2001) para 31; Prosecutor v Blaškić, Case No IT-95-14-AR108 bis, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (29 October 1997) para 41; In re Radovan Karadžić, Ratko Mladić and Stanišić Mićo, Case No IT-95-5-D, Decision of the Trial Chamber in the Matter of a Proposal for a Formal Request for Deferral to the Competence of the Tribunal Addressed to the Republic of Bosnia and Herzegovina (16 May 1995) para 24; Prosecutor v Furundžija, Case No IT-95-17/1-T, Trial Chamber Judgment (10 December 1998) [140] [↑](#footnote-ref-62)
63. In re Goering and Others, International Military Tribunal, Nuremberg, Case No 92 (1 October 1946) 13 ILR 203, 221 [↑](#footnote-ref-63)
64. International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3, Preamble [↑](#footnote-ref-64)
65. International Law Commission, ‘The Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare): Final Report’ [2014] II(2) YBILC 65, 8, para 18 [↑](#footnote-ref-65)
66. Pedretti, 365, 366 [↑](#footnote-ref-66)
67. ibid 365 [↑](#footnote-ref-67)
68. ibid 366 [↑](#footnote-ref-68)
69. ICPPED art 10(1) [↑](#footnote-ref-69)
70. Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) [2012] ICJ Rep 422, [95] [↑](#footnote-ref-70)
71. International Law Commission, ‘The Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare): Final Report’ [2014] II(2) YBILC 65, 5, para 10 [↑](#footnote-ref-71)
72. C Flinterman and others, *The Princeton Principles on Universal Jurisdiction* (Princeton University Press 2001) Principle 10, 34 [↑](#footnote-ref-72)
73. Facts, para 28 [↑](#footnote-ref-73)
74. ibid 50 [↑](#footnote-ref-74)
75. ibid 56,63 [↑](#footnote-ref-75)
76. United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, Part V [↑](#footnote-ref-76)
77. UNCLOS, Part VII [↑](#footnote-ref-77)
78. Facts, para 13 [↑](#footnote-ref-78)
79. ibid 9 [↑](#footnote-ref-79)
80. Clarifications #3 [↑](#footnote-ref-80)
81. Facts, para 22 [↑](#footnote-ref-81)
82. n 77 [↑](#footnote-ref-82)
83. UNCLOS, art 5 [↑](#footnote-ref-83)
84. Sean Murphy, ‘Ambulatory Versus Fixed Baselines Under the Law of the Sea’ (2023) 38 *American University Law Review* 728 [↑](#footnote-ref-84)
85. Ekrem Korkut and Lara B Fowler, *Implications of Sea-Level Rise for the Law of the Sea* (2018) 10 *KMI International Journal of Maritime Affairs and Fisheries,* 13 [↑](#footnote-ref-85)
86. Kate Purcell, Geographical Change and the Law of the Sea (Oxford University Press 2019) 45–47 [↑](#footnote-ref-86)
87. ibid [↑](#footnote-ref-87)
88. Obligations of States in Respect of Climate Change, PART VII: Law of the Sea - B - Oceans and the Law of the Sea - Report of the Secretary-General, para 54 [↑](#footnote-ref-88)
89. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(1) [↑](#footnote-ref-89)
90. T Stephens, ‘Warming Waters and Souring Seas: Climate Change and Ocean Acidification’ in DR Rothwell and others (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 789; R Rayfuse, ‘Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of ‘Disappearing’ States’ in MB Gerrard and GE Wannier (eds), *Threatened Island Nations* (CUP 2013); DD Caron, ‘When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level’ (1990) 17 *Ecology Law Quarterly* 621 [↑](#footnote-ref-90)
91. AHA Soons, ‘The Effects of a Rising Sea Level on Maritime Limits and Boundaries’ (1990) 37 *Netherlands International Law Review* 207, 210; Reed M W, *Shore and Sea Boundaries* (vol 3, US Government Printing Office 2000) 185 [↑](#footnote-ref-91)
92. *Fisheries Case* (*United Kingdom v Norway*) [1951] ICJ Rep 116 [↑](#footnote-ref-92)
93. ibid 20 [↑](#footnote-ref-93)
94. *United States v California* 382 US 448, 449 (1966); *United States v Alaska* 521 US 1, 22, 31 (1997); Korkut and Fowler, 8–9 [↑](#footnote-ref-94)
95. Purcell, 186–194 [↑](#footnote-ref-95)
96. *Continental Shelf* (*Tunisia/Libyan Arab Jamahiriya*) (Judgment) ICJ Rep 1982, 40; Purcell, 187 [↑](#footnote-ref-96)
97. *Maritime Delimitation in the Black Sea* (*Romania v Ukraine*) (Judgment) (2009) *ICJ Rep 61*, [137]; Purcell, 187 [↑](#footnote-ref-97)
98. *Bay of Bengal Maritime Boundary Arbitration* (*Bangladesh v India*) (Award) (LOSC Arbitral Tribunal, 7 July 2014) [214]; Korkut and Fowler*,* 8; Purcell, 188 [↑](#footnote-ref-98)
99. *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* (*Nicaragua v Honduras*)[2007] ICJ Rep 743 [↑](#footnote-ref-99)
100. Korkut and Fowler*,* 8 [↑](#footnote-ref-100)
101. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, [2001] ICJ Rep 97 [↑](#footnote-ref-101)
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