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IN THE

**INTERNATIONAL COURT OF JUSTICE**

AT THE

PEACE PALACE, THE HAGUE

THE NETHERLANDS

2025

**CASE CONCERNING THE NAEGEA SEA**

**THE UNION OF AMBROSIA**

**V.**

**THE REPUBLIC OF ROVINIA**

**MEMORIAL FOR THE APPLICANT**

The Union of Ambrosia

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II. The dispute does not relate to judicial proceedings on matters essentially within Rovinia’s domestic jurisdiction. 3

B. Rovinia violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross. 6

I. Rovinia violated the international legal rules on jurisdiction. 6

1. Rovinia needs a jurisdictional link to prosecute Minister Cross. 6

2. Rovinia does not have a jurisdictional link to the alleged crime committed by Minister Cross. 6

3. Rovinia does not have universal jurisdiction over Minister Cross. 7

a. Rovinia cannot assert universal jurisdiction over Minister Cross under customary international law. 7

b. The ICPPED does not provide universal jurisdiction. 8

c. Even if Rovinia had universal jurisdiction over Minister Cross, it would be subsidiary to Ambrosia’s jurisdiction. 9

II. Further, Rovinia violated the international legal rules on immunity. 9

1. Minister Cross is entitled to functional immunity as she acted in official capacity. 9

2. There are no applicable limitations or exceptions to functional immunity. 10

a. Minister Cross’ immunity is not limited by the superior nature of jus cogens norms. 10

i. Functional immunity is not limited by the superior nature of jus cogens norms. 10

ii. In any case, the prohibition of enforced disappearance is not a jus cogens norm. 11

b. No applicable exception to functional immunity exists in customary international law. 12

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C. Rovinia’s issuance of licenses to fish in those parts of the Triton Shoal within 200 nautical miles of Ambrosia’s fixed baseline violates international law and must cease, with existing licenses revoked. 14

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a. The ordinary meaning of the terms of Article 5 UNCLOS, its context, the object and purpose of the Convention and the travaux préparatoires confirm that Ambrosia’s fixed baselines are consistent with the Convention. 15

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Statement of Jurisdiction

The Union of Ambrosia (‘**Ambrosia**’) instituted proceedings against the Republic of Rovinia (‘**Rovinia**’) before the International Court of Justice (‘**the Court**’) regarding a dispute concerning the Naegea Sea and other matters, pursuant to an application filed with the Registry of the Court by Ambrosia under Article 40(1) of the Statute of the Court on 11 July 2024.

In accordance with Article 36(1) of the Statute of the Court, the Court has jurisdiction based on Article XXI of the Charter of the Organisation for Cooperation and Development in the Paine (‘**OCDP Charter**’), to which both States are Party and which entered into force on 17 March 2021. Rovinia acknowledged the Court’s jurisdiction for Ambrosia’s submissions (c) and (d), but noted its intention to contest the Court’s jurisdiction over Ambrosia’s submission (b) regarding the violation of the international rules on jurisdiction and immunity. Conversely, Ambrosia maintains in submission (a) that the Court has jurisdiction to entertain the submission regarding the international rules on jurisdiction and immunity. In accordance with Article 36(6) of the Statute of the Court, the Court has jurisdiction regarding Ambrosia’s submission (a).

Statement of Facts

**The Parties**

The Union of Ambrosia (‘**Ambrosia**’) is a constitutional democracy located in the north of the Paine Peninsula. With a 910-kilometre coastline facing the Naegea Sea, Ambrosia’s economy relies heavily on fishing. Yet, since the vast majority of the State lies less than 10 meters above sea level, Ambrosia is the State most affected by climate-change induced coastline recession on the Peninsula. In recent years, Ambrosia was also confronted with a dramatic increase in drug-related crimes.

The Republic of Rovinia (‘**Rovinia**’) is a constitutional democracy located in the south of the Paine Peninsula. Its Naegea Sea coastline is 455 kilometres long and most of its territory is several hundred meters above sea level. As such, it is the State least affected by coastal recession on the Peninsula.

**Organisation for Cooperation and Development in the Paine**

On 15 May 2015, the States of the Paine Peninsula established the Organisation for Cooperation and Development in the Paine (‘**OCDP**’) to address various topics of mutual interest. Article XXI of the OCDP Charter contains a compromissory clause referring disputes between Member States to this Court. The clause precludes the jurisdiction of this Court for disputes arising out of facts or situations occurring prior to the Article’s entry into force and for disputes relating to judicial proceedings on matters which are essentially within a Member State’s domestic jurisdiction. The compromissory clause became effective on 17 March 2021, five years after the Charter entered into force.

**The practice of fixed baselines on the Paine Pensinsula**

The Peninsula’s coastline has been receding an average of 1.5 meters annually since the 1980s, with recession accelerating. To preserve its maritime entitlements in the face of climate change, Ambrosia enacted the Baseline Freezing Law of 2015. Under this law, the baselines from which Ambrosia’s exclusive economic zone (‘**EEZ**’) is measured, were fixed at the existing low-water lines. The coordinates of the new baselines were submitted to the United Nations (‘**UN**’) Secretary-General.

By 2016, all States of the Paine Peninsula, except Rovinia, had enacted legislation fixing their baselines. Since then, all OCDP Member States but Rovinia have annually voted in favour of OCDP resolutions endorsing fixed baselines. Rovinia opposed such legislation and voted against the adoption of these resolutions. However, on 6 March 2023, Rovinia contributed to such a resolution’s adoption by abstaining from the vote.

In 2018, Rovinia began issuing fishing licenses for yellowfin tuna covering the entire Triton Shoal, a fully immersed seamount in the Naegea Sea. Measured from Ambrosia’s fixed baselines, parts of the Triton Shoal are located within its EEZ. Despite Ambrosia’s numerous protests, Rovinia continues to issue fishing licences in those parts of the Triton Shoal.

**Assumption of power by the Transitional Council**

On 25 April 2022, the Ambrosian President Prosper Derey fell into a coma, which prompted Vice-President Mary Zavala to assume the presidency, as mandated by the Ambrosian Constitution. Shortly after, Hurricane Luna struck the Ambrosian fishing village of Dovilina and in response, the National Assembly passed a Reconstruction Bill to aid the affected region. Acting President Zavala expressed solidarity with the people of Dovilina. However, as the Bill granted local authorities full discretion over the allocation of a considerable amount of public funds, she declared that she would withhold her signature until it was amended to ensure proper oversight. In the meantime, she resumed her presidential duties and travelled to Doha to attend a UN Conference.

The management of the Dovilina catastrophe by Acting President Zavala provoked significant public criticism and resulted in the resignation of seven members of her cabinet. On 13 March 2023, amid the turbulent political climate, Ms. Rooney Piretis, a Member of the National Assembly, established the Transitional Council and appointed herself as its head, claiming it now constituted the government of Ambrosia. Acting President Zavala was informed of the incident during her return flight from Doha and diverted to Rovinia to meet with her advisors. In an address to the media two days later, she denounced the Transitional Council, asserting that her government remained fully functional. To mitigate the risk of further disruption, she chose to temporarily operate from another Paine Peninsula State.

The Transitional Council soon exercised control over Ambrosia and received recognition from 25 States. Nevertheless, people took to the streets in support of Acting President Zavala’s government. These demonstrations were violently repressed by the police, drawing widespread condemnation from human rights organisations. The Ambrosian Permanent Representative at the UN remained seated at the General Assembly and Acting President Zavala’s government received recognition from 15 States.

When President Derey awoke from his coma, he reclaimed leadership. The Transitional Council was dissolved and Acting President Zavala resigned.

**Seizure and sale of The Falcon by Rovinia**

In February 2019, Ms. Zavala commissioned the Air Force to repurpose a military aircraft as her vice-presidential airplane, named The Falcon, with which she arrived in Rovinia after the Transitional Council’s establishment. There, The Falcon was impounded, pending further proceedings in a lawsuit before a Rovinian Court, captioned *O’Mander Corp. v. Union of Ambrosia*. On 17 March, Ms. Piretis issued a waiver of immunity for The Falcon, which partly aimed at complicating Acting President Zavala’s return. The next day, Acting President Zavala denied the waiver’s validity and asserted that The Falcon’s immunity must be respected. Still, after consulting with the Rovinian Foreign Minister, who recognised the Transitional Council as the government of Ambrosia, the Rovinian Court ordered The Falcon’s seizure and sale.

**Enforcement of the “Implementing the Law for a Safer Ambrosia” program**

In 2013, President Derey ordered Interior Minister Gertrude Cross to apprehend persons engaged in illicit drug production, distribution and use in order to reduce the flow of illegal drugs. To this end, Minister Cross launched the “Implementing the Law for a Safer Ambrosia” (‘**ILSA**’) program, which increased confessions and convictions for drug-related crimes.

In August 2022, the non-governmental organisation Human Rights International (‘**HRI**’) published a report alleging that under the ILSA program about 150 people suspected of drug trafficking had been abducted and detained in undisclosed locations between 2017 and 2020. According to the report, all detainees were released by December 2020. Following the report, the Ambrosian Prosecutor General launched a criminal investigation, resulting in the convictions of five police officers. Due to insufficient evidence, Minister Cross did not face criminal charges. By the time the investigation concluded, she had resigned as Minister and taken up residence in Rovinia.

**Arrest of Ms. Cross by Rovinia**

On 12 June 2023, HRI published an update to its 2022 report on ILSA, suggesting the involvement of Minister Cross in abductions of Ambrosian nationals under the ILSA program. Allegedly, the Ambrosian Prosecutor General had access to some of this information. Immediately afterwards, the investigation for Minister Cross was re-opened in Ambrosia. On 1 May 2024, the Office of Rovinia’s General Prosecutor filed a complaint against Minister Cross for the crime of “enforced disappearance” under the Rovinian Criminal Code, starting a criminal prosecution which included her arrest. She has been held captive in Rovinia ever since. Based on the 2002 bilateral extradition treaty between Ambrosia and Rovinia, the Ambrosian Prosecutor General requested Minister Cross’s extradition in connection with his office’s ongoing investigation of her, which Rovinia has ignored so far.

Summary of Pleadings

**A.** The Court has jurisdiction to entertain Ambrosia’s submission (b).

Under Article XXI(a) Organisation for Cooperation and Development in the Paine (‘**OCDP**’) Charter, the Member States recognise this Court’s jurisdiction for disputes arising among them, except as provided in Article XXI(b) OCDP Charter. Article XXI(b) OCDP Charter excludes disputes arising out of facts or situations occurring prior to the entry into force of Article XXI OCDP Charter on 17 March 2021 and disputes relating to judicial proceedings on matters which, in accordance with international law, are essentially within a Member State’s domestic jurisdiction.

The dispute did not arise out of facts or situations occurring prior to 17 March 2021 as the dispute arose out of the fact that Rovinia arrested and prosecuted Minister Cross in May 2024.

Further, the dispute does not relate to judicial proceedings on matters essentially within Rovinia’s domestic jurisdiction. The prosecution of perpetrators of enforced disappearance, exceptions to immunity and the exercise of extraterritorial criminal jurisdiction are matters outside a State’s domestic jurisdiction.

**B.** Rovinia violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross.

Rovinia needs a jurisdictional link to prosecute Minister Cross, which it does not have.

Further, Rovinia cannot assert universal jurisdiction over Minister Cross under customary international law as the alleged crime is not a crime against humanity. Moreover, the International Convention for the Protection of all Persons from Enforced Disappearance (‘**ICPPED**’) does not provide for universal jurisdiction. Even if Rovinia had universal jurisdiction over Minister Cross, it would be subsidiary to Ambrosia’s jurisdiction.

Further, Minister Cross enjoys functional immunity under customary international law as she acted in official capacity. There are no applicable limitations or exceptions to functional immunity.

The superior nature of *jus cogens* norms does not limit functional immunity, and, in any case, the prohibition of enforced disappearance is not a *jus cogens* norm.

Finally, no applicable exception to functional immunity exists in customary international law or international treaty law, including the ICPPED.

**C.** Rovinia’s issuance of licenses to fish in those parts of the Triton Shoal within 200 nautical miles of Ambrosia’s fixed baseline violates international law and must cease, with existing fishing licenses revoked.

Rovinia’s issuance of fishing licenses in Ambrosia’s exclusive economic zone (‘**EEZ**’) violates Article 56(1)(a) of the United Nations Convention on the Law of the Sea (‘**UNCLOS**’) since Ambrosia enjoys sovereign rights for the purpose of exploiting the natural resources within it. Ambrosia’s EEZ extends to portions of the Triton Shoal within 200 nautical miles from its fixed baseline. Its fixed baseline is consistent with UNCLOS as confirmed by the ordinary meaning of the terms of Article 5 UNCLOS, its context, the object and purpose of UNCLOS and the *travaux* *préparatoires*. Subsequent State practice further supports this interpretation.

Rovinia further violates general customary international law, under which Ambrosia’s EEZ extends to parts of the Triton Shoal.

In any case, Rovinia violates regional customary international law on the Paine Peninsula, under which Ambrosia’s EEZ extends to parts of the Triton Shoal and which Rovinia is not a persistent objector to.

Finally, Rovinia is obligated to cease issuing fishing licenses in Ambrosia’s EEZ and to revoke existing fishing licenses.

**D.** Rovinia’s seizure and sale of Ambrosia’s aircraft pursuant to the Permola Court’s decision on 14 July 2023 on the basis of the Transitional Council’s purported waiver of immunity violated international law.

Rovinia violated The Falcon’s immunity from enforcement as it was not effectively waived by Ms. Piretis, who was neither Head of State nor Head of Government of Ambrosia and, therefore, lacked the authority to do so. At the time, those positions were held by Acting President Zavala, whose government, being constitutionally legitimate, was the government of Ambrosia under customary international law. Even if the Transitional Council was Ambrosia’s government, Rovinia was obligated under Article I(a) OCDP Charter to withhold recognition from it.

Additionally, Rovinia violated Article 18(b) of the Vienna Convention on the Law of Treaties since it defeated the object and purpose of the United Nations Convention on Jurisdictional Immunities of States and Their Property.

Pleadings

# The Court has jurisdiction to entertain Ambrosia’s submission (b).

Under Article 36(1) of the Statute of this Court,[[1]](#footnote-1) the jurisdiction of this Court compromises all matters provided for in treaties in force. Article XXI of the Organisation for Cooperation and Development in the Paine Charter (‘**OCDP Charter**’) stipulates that this Court generally has jurisdiction over disputes between the Member States except for disputes specified in Article XXI(b) OCDP Charter.[[2]](#footnote-2) The Union of Ambrosia (‘**Ambrosia**’) and the Republic of Rovinia (‘**Rovinia**’) are Parties to the OCDP Charter.[[3]](#footnote-3)

According to this Court, a dispute is a conflict of legal views between two States.[[4]](#footnote-4) As evidenced by claim (b) being submitted to this Court,[[5]](#footnote-5) the dispute at hand is whether the arrest and prosecution of Minister Cross by Rovinia violates the rules on jurisdiction and immunity.

This Court has jurisdiction as the exceptions specified in Article XXI(b) OCDP Charter do not apply: The dispute did not arise out of facts or situations occurring prior to 17 March 2021 (**I.**) and does not relate to judicial proceedings on matters which are essentially within Rovinia’s domestic jurisdiction (**II.**).

## The dispute did not arise out of facts or situations occurring prior to 17 March 2021.

Article XXI(b)(i) OCDP Charter stipulates that this Court lacks jurisdiction over disputes arising out of facts or situations that occurred prior to the entry into force of Article XXI OCDP Charter on 17 March 2021.[[6]](#footnote-6) According to Article 31(1) Vienna Convention on the Law of Treaties (‘**VCLT**’),[[7]](#footnote-7) treaty provisions must be interpreted based on the ordinary meaning of the terms in their context and in light of the treaty’s object and purpose. The Permanent Court of International Justice (‘**PCIJ**’) determined that, when its jurisdiction depends on the timing of the facts the dispute arose out of, the “facts constituting the real cause of the dispute” are decisive.[[8]](#footnote-8)

The PCIJ further confirmed that not every fact which is a necessary condition for the dispute is its real cause.[[9]](#footnote-9) Moreover, not every fact which is relevant for the legal assessment of the case is the real cause of the dispute.[[10]](#footnote-10) Rather, as consistently affirmed by this Court, the facts which prompt one Party to adopt a legal view opposite the other are the real cause of the dispute.[[11]](#footnote-11)

Applying this rule in *Certain* *Property*, this Court held that where the interpretation of an international treaty by a national court is concerned, the treaty prompted the adoption of opposing legal views.[[12]](#footnote-12) Consequently, this Court confirmed that the treaty itself is the real cause of the dispute, rather than its continuous application by the State’s judiciary.[[13]](#footnote-13) Subsequently, in *Jurisdictional* *Immunities*, it determined that, when a violation of immunity as a rule of customary international law is claimed, the national judicial proceeding denying immunity is the real cause of the dispute and not the subject-matter of the national judicial proceeding.[[14]](#footnote-14)

Additionally, as indicated by its title,[[15]](#footnote-15) the object and purpose of the OCDP Charter is to enhance cooperation between Member States.[[16]](#footnote-16) In this vein, the exception in Article XXI(b)(i) OCDP Charter was incorporated to exclude matters already pending in 2015 from this Court’s jurisdiction, giving Member States five years to resolve those matters bilaterally.[[17]](#footnote-17)

Article XXI OCDP Charter entered into force on 17 March 2021.[[18]](#footnote-18) More than three years later, on 2 May 2024, the Permola Criminal Court issued an arrest warrant denying Minister Cross’ immunity,[[19]](#footnote-19) prompting the conflict of views regarding the legality of her arrest and prosecution under international law.[[20]](#footnote-20) Conversely, no such conflict existed at the time Minister Cross oversaw the Implementing the Law for a Safer Ambrosia (‘**ILSA**’) program.[[21]](#footnote-21) Between 2015 and the entry into force of Article XXI OCDP Charter, there was no matter pending that Ambrosia and Rovinia could have resolved bilaterally.

Therefore, the dispute did not arise out of facts or situations occurring prior to 17 March 2021.

## The dispute does not relate to judicial proceedings on matters essentially within Rovinia’s domestic jurisdiction.

Article XXI(b)(ii) OCDP Charter stipulates that this Court lacks jurisdiction over disputes relating to judicial proceedings on matters essentially within a Member State’s domestic jurisdiction.[[22]](#footnote-22) The dispute at hand is whether the arrest and prosecution of Minister Cross by Rovinia violates the rules on jurisdiction and immunity.[[23]](#footnote-23) Consequently, the relevant judicial proceeding is the Rovinian Court prosecuting Minister Cross for allegedly committing enforced disappearance in Ambrosia[[24]](#footnote-24).

In international law, the term “matters in the domestic jurisdiction of a State” ordinarily means matters which a State is “permitted […] to decide freely” upon.[[25]](#footnote-25) Whether a State may decide freely depends on the development of international law.[[26]](#footnote-26) Accordingly, if a State accepts a new international obligation that governs a matter, the matter is no longer essentially within a State’s domestic jurisdiction.[[27]](#footnote-27) In accordance with Article 31(3)(c) VCLT, other relevant rules of international law applicable in the relation between the Parties shall also be considered when interpreting a treaty. Article 2(7) United Nations (‘**UN**’) Charter prohibits interventions by the UN in “matters essentially within the domestic jurisdiction of any state”, which is the same wording as used in Article XXI(b)(ii) OCDP Charter.[[28]](#footnote-28) Regarding Article 2(7) UN Charter, the practice of the UN General Assembly (‘**UNGA**’) confirms that a matter is not essentially within a State’s domestic jurisdiction once said matter is governed by an agreement the State is a Party to.[[29]](#footnote-29)

Rovinia and Ambrosia are Parties to the International Convention for the Protection of all Persons from Enforced Disappearance[[30]](#footnote-30) (‘**ICPPED**’).[[31]](#footnote-31) Article 11(1) ICPPED obligates States to prosecute or extradite perpetrators of the crime of enforced disappearance. Further, how this prosecution should be conducted is governed by several provisions in the ICPPED:[[32]](#footnote-32) For instance, the transnational supply of evidence or accommodations foreign perpetrators are entitled to are governed in Article 14(1) and Article 10(3) ICPPED respectively.

Therefore, the prosecution of persons accused of enforced disappearance is governed by international law. Consequently, a State may not decide freely upon that matter.

Additionally, in *Right of Passage*, this Court held that when a State decides upon a question of international law, the decision does not fall into the domestic jurisdiction of the State.[[33]](#footnote-33) The matter of immunity before a domestic court is a question of customary international law.[[34]](#footnote-34) Likewise, whether a national court may exercise extraterritorial criminal jurisdiction over crimes committed abroad by foreign nationals is also a question of international law.[[35]](#footnote-35)

By issuing the arrest warrant for Minister Cross, the Permola Criminal Court necessarily decided upon its criminal jurisdiction and the immunity of Minister Cross.[[36]](#footnote-36)

Therefore, the dispute does not relate to judicial proceedings on matters essentially within Rovinia’s domestic jurisdiction.

# Rovinia violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross.

Rovinia violated the international legal rules on jurisdiction (**I.**) and the international legal rules on immunity (**II.**).

## Rovinia violated the international legal rules on jurisdiction.

In order to comply with the international legal rules on jurisdiction, Rovina needs a jurisdictional link to prosecute Minister Cross (**1.**). However, Rovinia does not have such a jurisdictional link to the alleged crime committed by Minister Cross (**2.**). Further, Rovinia does not have universal jurisdiction over Minister Cross (**3.**).

1. Rovinia needs a jurisdictional link to prosecute Minister Cross.

While in 1927 the PCIJ held in *Lotus* that a State may assert criminal jurisdiction absent a rule to the contrary,[[37]](#footnote-37) customary international law since then has evolved differently.[[38]](#footnote-38) Customary international law requires extensive and consistent State practice and corresponding *opinio juris.*[[39]](#footnote-39)States generally positively define the conditions for their national courts to assert jurisdiction regarding crimes committed abroad by foreign nationals.[[40]](#footnote-40)

Therefore, under customary international law, States may only assert criminal jurisdiction over crimes committed abroad by foreign nationals based on a permissive rule.[[41]](#footnote-41)

Thus, Rovinia needs a jurisdictional link to prosecute Minister Cross.

1. Rovinia does not have a jurisdictional link to the alleged crime committed by Minister Cross.

Under customary international law, States have a jurisdictional link to the alleged crime when the crime was committed on the territory of the State, or when the victim or perpetrator is a national of that State.[[42]](#footnote-42) Further, some States base criminal jurisdiction on the permanent residence of the perpetrator, but only when the perpetrator was already a resident in that State at the time of the crime.[[43]](#footnote-43)

Both Minister Cross and the alleged victims were Ambrosian nationals, and the alleged crimes occurred in Ambrosia.[[44]](#footnote-44) Minister Cross moved to Rovinia after the alleged crimes occurred.[[45]](#footnote-45) Therefore, Rovinia does not have a jurisdictional link to the alleged crime committed by Minister Cross.

1. Rovinia does not have universal jurisdiction over Minister Cross.

First, Rovinia cannot assert universal jurisdiction over Minister Cross under customary international law (**a.**). Second, the ICPPED does not provide universal jurisdiction (**b.**). Even if Rovinia had universal jurisdiction over Minister Cross, it would be subsidiary to Ambrosia’s jurisdiction (**c.**).

#### Rovinia cannot assert universal jurisdiction over Minister Cross under customary international law.

Universal jurisdiction permits any State to prosecute a crime, regardless of where it occurred.[[46]](#footnote-46) Under customary international law, universal jurisdiction only exists for very few crimes, including crimes against humanity.[[47]](#footnote-47) According to the ICPPED, enforced disappearances amount to a crime against humanity when practiced in a widespread or systematic manner.[[48]](#footnote-48) This necessitates that the crime had a large number of victims or occurred in a methodical pattern.[[49]](#footnote-49) For enforced disappearances, non-governmental organisations (‘**NGO**’) recognised this where thousands of victims were affected.[[50]](#footnote-50)

The allegations by the NGO Human Rights International (‘**HRI**’) only concerned about 150 detainees.[[51]](#footnote-51) Therefore, the alleged crime cannot be deemed a crime against humanity. Thus, Rovinia cannot assert universal jurisdiction over Minister Cross under customary international law.

#### The ICPPED does not provide universal jurisdiction.

In *Prosecute or Extradite,* this Court held that Article 5(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[[52]](#footnote-52) provides for universal jurisdiction.[[53]](#footnote-53)

However, this provision stipulates that each State Party shall take measures necessary to “establish its jurisdiction”, whereas Article 9(2) ICPPED stipulates that each State Party shall take measures necessary to “establish its competence to exercisejurisdiction”.

To establish jurisdiction ordinarily means to bring jurisdiction into existence.[[54]](#footnote-54) In contrast, to exercise jurisdiction ordinarily means to utilise existing jurisdiction.[[55]](#footnote-55) Thus, while the former Convention establishes jurisdiction, the ICPPED only draws on existing jurisdiction. This is supported by the *travaux préparatoires* of the ICPPED, which according to Article 32 VCLT may be used to confirm an interpretation: While in early drafts the exact wording of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was to be copied,[[56]](#footnote-56) it did not appear in the ICPPED.

Therefore, the ICPPED does not provide universal jurisdiction.

#### Even if Rovinia had universal jurisdiction over Minister Cross, it would be subsidiary to Ambrosia’s jurisdiction.

Under customary international law, as evidenced by State practice[[57]](#footnote-57) and *opinio juris*,[[58]](#footnote-58) universal jurisdiction may only be exercised if no State is willing or able to exercise jurisdiction on the basis of the nationality or territoriality principle.[[59]](#footnote-59) An investigation of Minister Cross is ongoing in Ambrosia.[[60]](#footnote-60) Her extradition was requested from Rovinia because of the ongoing investigation.[[61]](#footnote-61) It was reopened immediately after new evidence was published by HRI, considerably before the Rovinian arrest warrant was issued.[[62]](#footnote-62)

Thus, even if Rovinia had universal jurisdiction over Minister Cross, it would be subsidiary to Ambrosia’s jurisdiction.

## Further, Rovinia violated the international legal rules on immunity.

Minister Cross is entitled to functional immunity as she acted in official capacity (**1.**). Further, there are no applicable limitations or exceptions to functional immunity (**2.**).

1. Minister Cross is entitled to functional immunity as she acted in official capacity.

In *Arrest Warrant*, this Court affirmed that State officials acting in official capacity enjoy immunity from foreign criminal jurisdiction, even beyond their time in office.[[63]](#footnote-63) This functional immunity is not granted for the official’s personal benefit, but rather ensures the effective functioning of the State by preventing *inter alia* arbitrary arrests.[[64]](#footnote-64) Under customary international law, acts performed in official capacity include any act performed by a State official in the exercise of State authority.[[65]](#footnote-65) Such acts are performed in official capacity even if they are contrary to national[[66]](#footnote-66) or international[[67]](#footnote-67) law.

Minister Cross oversaw the ILSA Program in her position as Minister.[[68]](#footnote-68) Therefore, Minister Cross is entitled to functional immunity as she acted in official capacity.

1. There are no applicable limitations or exceptions to functional immunity.

Any deviation from the established rule of functional immunity requires the emergence of an international law rule providing for a limitation or exception.[[69]](#footnote-69)

Minister Cross’ immunity is not limited by the superior nature of *jus cogens* norms (***a*.**). Further, no applicable exception to functional immunity exists in customary international law (***b*.**) or international treaty law (***c*.**).

#### Minister Cross’ immunity is not limited by the superior nature of jus cogens norms.

Functional immunity is not limited by the superior nature of *jus cogens* norms (i). Even if such a limitation existed, the prohibition of enforced disappearance is not a *jus cogens* norm (ii).

##### Functional immunity is not limited by the superior nature of jus cogens norms.

*Jus cogens* norms are hierarchically superior to other rules of international law, including customary international law.[[70]](#footnote-70) However, a rule of customary international law only ceases to exist if it conflicts with a *jus cogens* norm.[[71]](#footnote-71) In *Jurisdictional Immunities,* this Court determined that there is no conflict between the customary rules on State immunity and *jus cogens* norms since the former are procedural in character and the latter are substantive.[[72]](#footnote-72) While functional immunity in criminal proceedings was not at issue in *Jurisdictional Immunities*,[[73]](#footnote-73) the reasoning is applicable to criminal proceedings: Functional immunity is derived from State immunity, as State officials act on behalf of the State and are thus entitled to the same protection.[[74]](#footnote-74) Further, the procedural character of immunities of State officials was specifically affirmed by this Court in *Arrest Warrant*.[[75]](#footnote-75) Moreover, this Court noted in *Jurisdictional Immunities* that it had taken the same approach in *Arrest Warrant*, although concerning personal immunity.[[76]](#footnote-76) There, the accusation of criminal violations of *jus cogens* norms did not lead to an exception from immunity in national criminal proceedings.[[77]](#footnote-77)

Thus, the *jus cogens* status of a norm has no effect on functional immunity, as confirmed by numerous rulings of national courts.[[78]](#footnote-78)

Therefore, functional immunity is not limited by the superior nature of *jus cogens* norms.

##### In any case, the prohibition of enforced disappearance is not a jus cogens norm.

To attain *jus cogens* status, a norm must be recognised by the international community as a whole as a norm from which no derogation is permitted.[[79]](#footnote-79) This Court deemed such recognition to be indicated by widespread international practice and *opinio juris* and the appearance of the norm in numerous international instruments.[[80]](#footnote-80) Only norms which reflect and protect the fundamental values of the international community may attain *jus cogens* status.[[81]](#footnote-81)

The ICPPED only has 75 State Parties.[[82]](#footnote-82) Similarly, the International Law Commission (‘**ILC**’) did not include enforced disappearance in its list of *jus cogens* norms.[[83]](#footnote-83)

Therefore, the prohibition of enforced disappearance is not a *jus cogens* norm.

#### No applicable exception to functional immunity exists in customary international law.

In Article 7(1) of its Draft Articles on the immunity of State officials from foreign criminal jurisdiction, the ILC proposed that exceptions to functional immunity might exist under customary international law when a crime against humanity[[84]](#footnote-84) or enforced disappearance[[85]](#footnote-85) was committed.

However, the Chairperson of the ILC expressed doubt that Draft Article 7 reflected customary international law.[[86]](#footnote-86) Most importantly, roughly half the States commenting on the Draft Article rejected it as a whole[[87]](#footnote-87) or deemed it to be a progressive development of international law[[88]](#footnote-88).

Additionally, the State practice the ILC relied on is inconsistent: it includes judicial decisions where an exception was merely found for low-ranking officials,[[89]](#footnote-89) where the functional immunity of the accused was effectively not invoked[[90]](#footnote-90) and where the perpetrator was prosecuted by his home State[[91]](#footnote-91). The State practice does not contain a single case concerning enforced disappearance.[[92]](#footnote-92) Further, since nearly all cited judicial decisions that denied functional immunity are from Western Europe, the report also fails to confirm extensive State practice.[[93]](#footnote-93)

In fact, numerous judicial decisions consistently upheld the functional immunity of the accused where crimes against humanity were concerned.[[94]](#footnote-94)

Thus, no applicable exception to functional immunity exists in customary international law.

#### No applicable exception to functional immunity exists in international treaty law.

According to Article 2 ICPPED, enforced disappearance necessitates the involvement of State officials, who must be prosecuted.[[95]](#footnote-95) However, an interpretation of the ICPPED in accordance with the VCLT shows that this obligation does not amount to an implied exclusion of immunity *inter partes*:

The ICPPED contains many provisions that explicitly do not require the State Parties to prosecute foreign officials and instead opt for extradition or mutual legal assistance.[[96]](#footnote-96) Accordingly, the ICPPED’s object and purpose of combatting impunity can be achieved while respecting the State official’s functional immunity. Additionally, in early drafts of the ICPPED, functional immunity before national courts in cases of enforced disappearance was expressly excluded.[[97]](#footnote-97) Conversely, such a provision was not included in the Convention. Thus, the ICPPED does not contain an implied exclusion of immunity.

This conclusion was supported by this Court in *Arrest Warrant*, where it held that, when an international convention on the prevention and punishment of certain crimes obligates States to prosecute the crime, this obligation in no way affects immunities under customary international law.[[98]](#footnote-98)

Thus, no applicable exception to functional immunity exists in international treaty law.

# Rovinia’s issuance of licenses to fish in those parts of the Triton Shoal within 200 nautical miles of Ambrosia’s fixed baseline violates international law and must cease, with existing licenses revoked.

Rovinia’s issuance of licenses to fish in Ambrosia’s exclusive economic zone (**‘EEZ’**) violates Article 56(1)(a) of the United Nations Convention on the Law of the Sea[[99]](#footnote-99) (**‘UNCLOS’**) (**I.**), general customary international law (**II.**) andregional customary international law (**III.**). Thus, Rovinia is obligated to cease issuing fishing licenses in those parts of the Triton Shoal in Ambrosia’s EEZ and to revoke existing licenses (**IV.**).

## Rovinia’s issuance of licenses to fish in Ambrosia’s EEZ violates Article 56(1)(a) UNCLOS.

Ambrosia’s EEZ extends to those parts of the Triton Shoal within 200 nautical miles from its fixed baseline (**1.**). Rovinia’s issuance of fishing licenses is prohibited under Article 56(1)(a) UNCLOS (**2.**).

1. Ambrosia’s EEZ extends to those parts of the Triton Shoal within 200 nautical miles from its fixed baseline.

The EEZ extends up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.[[100]](#footnote-100) Under Article 5 UNCLOS, the normal baseline is the low-water line along the coast “as marked on large-scale charts officially recognized by the coastal State”. Ambrosia and Rovinia are Parties to UNCLOS.[[101]](#footnote-101) Ambrosia’s EEZ extends 200 nautical miles from its normal baselines,[[102]](#footnote-102) which Ambrosia fixed with the Baseline Freezing Law of 2015.[[103]](#footnote-103)

The ordinary meaning of the terms of Article 5 UNCLOS, its context, the object and purpose of the Convention, and the *travaux préparatoires* confirm that Ambrosia’s fixed baselines are consistent with the Convention (**a.**). This is further supported by subsequent State practice (**b.**).

#### The ordinary meaning of the terms of Article 5 UNCLOS, its context, the object and purpose of the Convention and the travaux préparatoires confirm that Ambrosia’s fixed baselines are consistent with the Convention.

First, per its ordinary meaning, Article 5 UNCLOS does not explicitly dictate that the normal baseline is ambulatory, i.e. that it always reflects the low-water line along the coast at any given time, nor does it impose a legal obligation on States to update their baselines when coastal conditions change.[[104]](#footnote-104) Therefore, once a baseline has been established in accordance with the Convention, it remains effective, regardless of any subsequent shift in the low-water line.[[105]](#footnote-105)

Second, the object and purpose of UNCLOS, as stated in its Preamble,[[106]](#footnote-106) is *inter alia* to promote the peaceful use of the sea.[[107]](#footnote-107) If baselines were ambulatory, States vulnerable to the effects of sea-level rise would have to constantly keep them under review.[[108]](#footnote-108) This would lead to legal uncertainty regarding maritime entitlements, creating breeding ground for conflicts.[[109]](#footnote-109) In contrast, fixing baselines ensures legal certainty and fosters the purpose of UNCLOS to strengthen peace.[[110]](#footnote-110) Further, the object and purpose of UNCLOS also encompasses the equitable utilisation of the resources of the sea.[[111]](#footnote-111) In pursuing this endeavor, the special interests of developing countries must be accounted for.[[112]](#footnote-112) This Court determined in *Gulf of Maine* that any result in the determination of maritime entitlements which is “likely to entail catastrophic repercussions for the livelihood and economic wellbeing of the population of the countries concerned” is inequitable.[[113]](#footnote-113) Many low-lying coastal developing States are financially incapable of artificially reinforcing their coastlines to preserve their maritime entitlements.[[114]](#footnote-114) Even a minor loss of maritime entitlements would result in detrimental consequences for many of those States by depriving them of valuable offshore revenue.[[115]](#footnote-115) This inequitable result can be prevented by preserving existing maritime entitlements through fixed baselines.[[116]](#footnote-116)

Third, regarding the context, Articles 7(2) and 76(9) UNCLOS demonstrate that, where the drafters of the Convention foresaw conditions that could undermine legal certainty, they embraced the permanence of baselines and of the outer limits of maritime zones.[[117]](#footnote-117) As confirmed by the *travaux préparatoires*, the absence of an explicit provision to this effect in Article 5 UNCLOS is attributed to the fact that, during the Convention’s negotiation, the issue of climate change was not considered.[[118]](#footnote-118)

Consequently, the ordinary meaning of the terms of Article 5 UNCLOS, its context, the object and purpose of the Convention, and the *travaux préparatoires* confirm that Ambrosia’s fixed baselines are consistent with the Convention.

#### Subsequent State practice further supports that Ambrosia’s fixed baselines are consistent with UNCLOS.

According to Article 31(3)(b) VCLT, any subsequent practice in the application of the treaty which establishes the agreement of the Parties regarding its interpretation shall be taken into account.[[119]](#footnote-119) To establish such an agreement, the practice need not be actively engaged in by all the Parties to the treaty.[[120]](#footnote-120) Instead, acceptance by the great majority, which practically denotes the universal agreement amongst the Parties, suffices.[[121]](#footnote-121) As this Court found in the *Temple of Preah Vihear*,[[122]](#footnote-122) such acceptance can be established through acquiescence, i.e. silence or inaction when the circumstances call for a reaction.[[123]](#footnote-123) Circumstances calling for reaction are practices with implications for the interpretation of the treaty which the other Parties are aware of.[[124]](#footnote-124)

Dozens of UNCLOS State Parties have either already fixed their baselines in the belief that such conduct is consistent with UNCLOS or expressed their endorsement of such an interpretation of the Convention.[[125]](#footnote-125) Additionally, considering, the examination of the legal effects of sea-level rise on baselines by the ILC,[[126]](#footnote-126) Member States to UNCLOS had ample opportunities to voice concerns.

Therefore, the silence of the rest amounts to their acceptance of that practice. Apart from Rovinia,[[127]](#footnote-127) no other Party to UNCLOS has protested.[[128]](#footnote-128) Since UNCLOS is a global multilateral treaty, the opposition of a single State cannot preclude an agreement of the Parties under Article 31(3)(b) VCLT. Hence, subsequent State practice further supports that Ambrosia’s fixed baselines are consistent with UNCLOS.

1. Rovinia’s issuance of licenses to fish in Ambrosia’s EEZ is prohibited under Article 56(1)(a) UNCLOS.

Under Article 56(1)(a) UNCLOS, the coastal State enjoys sovereign rights for the purpose of exploiting the natural resources within its EEZ, including the right to issue fishing licenses.[[129]](#footnote-129) Rovinia issues fishing licenses for yellowfin tuna covering the entirety of the Triton Shoal,[[130]](#footnote-130) parts of which are located within Ambrosia’s EEZ.[[131]](#footnote-131) Therefore, Rovinia’s issuance of licenses to fish in those parts of Triton Shoal within Ambrosia’s EEZ is prohibited under Article 56(1)(a) UNCLOS.

## Further, Rovinia violates general customary international law.

The coastal State’s sovereign right to exploit the natural resources within its EEZ reflects general customary international law.[[132]](#footnote-132) Measuring the EEZ from fixed baselines also forms part of general customary international law: In evaluating State practice, the practice of specially affected States carries particular weight.[[133]](#footnote-133) Specially affected States are States that are most impacted by the issue which gives rise to the forming customary rule.[[134]](#footnote-134)

Being acutely vulnerable to sea-level rise and, accordingly, specially affected, the great majority of low-lying coastal States have already fixed their baselines.[[135]](#footnote-135) Moreover, a multitude of States, including States not Party to UNCLOS, have endorsed fixing baselines independently from the Convention.[[136]](#footnote-136) Hence, fixed baselines form part of general customary international law.

By issuing licenses to fish in those parts of the Triton Shoal within Ambrosia’s EEZ, as measured from its fixed baselines,[[137]](#footnote-137) Rovinia violates general customary international law.

## In any case, Rovinia violates regional customary international law on the Paine Peninsula.

Under regional customary international law on the Paine Peninsula, maritime zones may be measured from fixed baselines (**1.**). Rovinia is not a persistent objector (**2.**).

1. Under regional customary international law on the Paine Peninsula, maritime zones may be measured from fixed baselines.

As this Court held in the *Asylum Case,* customary international law can emerge regionally and, consequently, only apply to a limited number of States.[[138]](#footnote-138) Its emergence requires extensive and consistent practice as well as *opinio juris* among the States concerned.[[139]](#footnote-139)

By 2016, all States on the Paine Peninsula except for Rovinia had enacted national legislation fixing their baselines.[[140]](#footnote-140) Since then, all OCDP Member States but Rovinia have annually voted in favour of resolutions endorsing the practice of measuring maritime zones from fixed baselines.[[141]](#footnote-141) The first resolution described this practice as a regional rule applicable to all States of the Paine Peninsula.[[142]](#footnote-142)

Thus, under regional customary international law on the Paine Peninsula, maritime zones may be measured from fixed baselines.

1. Rovinia is not a persistent objector.

Where a State has objected to a rule of customary international law from its inception, the rule does not apply to that State for as long as it maintains its objection.[[143]](#footnote-143) The objection must be maintained persistently, meaning repeatedly beyond isolated objections, and consistently, meaning without contradictions.[[144]](#footnote-144) Contradictions lie in accepting a norm on a minority of occasions in the midst of the State’s general policy of objecting.[[145]](#footnote-145)

On 6 March 2023, Rovinia abstained from voting on an OCDP resolution emphasising the importance of fixed baselines, thereby contributing to its adoption by the Organisation.[[146]](#footnote-146) In doing so, Rovinia exposed its broader objection as inconsistent. Hence, Rovinia is not a persistent objector.

By issuing licenses to fish in those parts of the Triton Shoal within Ambrosia’s EEZ as measured from its fixed baseline,[[147]](#footnote-147) Rovinia violates regional customary international law of the Paine Peninsula.

## Rovinia is obligated to cease issuing fishing licenses for those parts of the Triton Shoal in Ambrosia’s EEZ and to revoke existing licenses.

Under customary international law, a State responsible for a continuing violation of international law is obligated to cease that act[[148]](#footnote-148) and to make restitution, i.e. to re-establish the situation which existed prior to the wrongful act.[[149]](#footnote-149) If the State has repeatedly breached an obligation, implying the possibility of further breaches, the violation is continuing.[[150]](#footnote-150)

Rovinia has been issuing licenses to fish in those parts of the Triton Shoal in Ambrosia’s EEZ for the past six years.[[151]](#footnote-151) This constitutes a violation of Article 56(1)(a) UNCLOS, general, and regional customary international law.[[152]](#footnote-152) All requests for cessation of that conduct were ignored.[[153]](#footnote-153)

Hence, Rovinia is obligated to cease issuing fishing licenses in those parts of the Triton Shoal in Ambrosia’s EEZ and to revoke existing licenses.

# Rovinia’s seizure and sale of Ambrosia’s aircraft pursuant to the Permola court’s decision on 14 July 2023 on the basis of the Transitional Council’s purported waiver of immunity violated international law.

Rovinia’s seizure and sale of Ambrosia’s aircraft The Falcon violated its immunity from enforcement under customary international law (**I.**) and Article 18(b) VCLT (**II.**).

## Rovinia’s seizure and sale of Ambrosia’s aircraft The Falcon violated its immunity from enforcement under customary international law.

The seizure and sale of The Falcon was a measure of constraint against property entitled to immunity from enforcement (**1.**). The immunity of the The Falcon was not effectively waived (**2.**).

1. The seizure and sale of The Falcon was a measure of constraint against property entitled to immunity from enforcement.

This Court confirmed that under customary international law, as codified in Article 19 of the United Nations Convention on Jurisdictional Immunities of States and their Property (‘**UNCJISP**’),[[154]](#footnote-154) no State may take measures of constraint in connection with a court proceeding against property of another State which is intended for use or in use for government non-commercial purposes.[[155]](#footnote-155) The seizure and sale of an object are measures of constraint.[[156]](#footnote-156)

The Falcon, being an aircraft owned by the Ambrosian Airforce,[[157]](#footnote-157) qualified as State property. It was further intended for use and in fact used for non-commercial governmental purposes.[[158]](#footnote-158) Rovinia seized and sold The Falcon in connection with the *O’Mander Corp. v. Union of Ambrosia* lawsuit before the Permola Court. This constituted a measure of constraint against property entitled to immunity from enforcement.

1. The immunity of The Falcon was not effectively waived.

Measures of constraint against foreign State property may be taken to the extent that the affected State has expressly consented to them, thereby waiving the property’s immunity from enforcement.[[159]](#footnote-159) A waiver of immunity may take the form of a unilateral declaration,[[160]](#footnote-160) which only binds a State internationally if it is issued by an authority vested with the power to do so.[[161]](#footnote-161) By virtue of their functions, only Heads of State, Heads of Government and Ministers of Foreign Affairs have this capacity.[[162]](#footnote-162)

Ms. Piretis issued a purported waiver of immunity for The Falcon.[[163]](#footnote-163) However, she was neither Head of State nor Head of Government of Ambrosia at the time the waiver was issued, as those positions were held by Acting President Zavala: Acting President Zavala’s government was the government of Ambrosia under customary international law (**a.**). Even if the Transitional Council was Ambrosia’s government under international law, Rovinia was obligated under Article I(a) OCDP Charter to withhold recognition from it (**b**).

#### Acting President Zavala’s government was the government of Ambrosia under customary international law.

There can only be one government capable of representing a State internationally.[[164]](#footnote-164) Under customary international law, a constitutionally legitimate government enjoys governmental status, even in the presence of a rival entity exercising effective control over the territory of the State: Since the 1990s, State practice has favoured constitutionally legitimate governments over entities exercising effective control, as demonstrated in both State practice on the recognition of governments[[165]](#footnote-165) and in unanimously adopted UN Security Council and UNGA resolutions on Haiti in 1993,[[166]](#footnote-166) Sierra Leone in 1997,[[167]](#footnote-167) Honduras in 2009,[[168]](#footnote-168) Côte d’Ivoire in 2011[[169]](#footnote-169) and The Gambia in 2017[[170]](#footnote-170). In further resolutions, the UNGA consistently accepted the credentials of the representatives of forcibly ousted constitutionally legitimate governments despite the presence of other entities in effective control.[[171]](#footnote-171) Moreover, the justifications of States when recognising governments[[172]](#footnote-172) and the voting behaviour of States regarding the above-mentioned resolutions express the necessary *opinio juris*. Constitutional legitimacy is established when a government has come into power in accordance with the constitutional order of the State.[[173]](#footnote-173)

The Ambrosian Constitution provides for a democratic political system.[[174]](#footnote-174) In the event of the temporary incapacity of the President, who is both Head of State and Head of Government,[[175]](#footnote-175) the powers of the office devolve upon the Vice-President.[[176]](#footnote-176) Ms. Zavala’s election as Vice-President and her assumption of presidential duties following President Derey’s stroke were in accordance with the Ambrosian Constitution.[[177]](#footnote-177) In direct contrast, the Transitional Council seized power through a *coup d’état*,[[178]](#footnote-178) demonstrating a blatant disregard for Ambrosia’s constitutional order.

Therefore, Acting President Zavala’s government was the government of Ambrosia under customary international law.

#### Even if the Transitional Council was Ambrosia’s government under international law, Rovinia was obligated under Article I(a) OCDP Charter to withhold recognition from it.

By recognising an entity as the government of another State, the recognising State accepts the legal consequences of such status, including the entity’s authority to claim and waive immunities respectively.[[179]](#footnote-179) While recognition or refusal thereof is in principle discretionary,[[180]](#footnote-180) a State may undertake a legal obligation to withhold recognition from governments of other States.[[181]](#footnote-181) For instance, the African Union Member States have agreed not to recognise governments of other Member States that have risen to power unconstitutionally.[[182]](#footnote-182)

In Article I(a) OCDP Charter, the Member States agreed to “protect […] [their] democratic institutions”.[[183]](#footnote-183) The exercise of governmental authority by elected officials constitutes a democratic institution,[[184]](#footnote-184) and to “protect” democratic institutions ordinarily means to maintain their integrity.[[185]](#footnote-185) Recognising an undemocratic government, i.e. a government which has not risen to power through elections,[[186]](#footnote-186) is inherently incompatible with the protection of the democratic institution of governmental authority being exercised by elected officials. Moreover, since the obligations set forth in Article I OCDP Charter also embody the purposes of the Organisation,[[187]](#footnote-187) recognising an undemocratic government would be in contradiction with the spirit of the OCDP. Consequently, Article I(a) OCDP Charter imposes a legal obligation on Member States to withhold recognition from undemocratic governments of other Member States.

The Transitional Council rose to power by ousting the democratically elected government and establishing itself absent any electoral process.[[188]](#footnote-188) It was, therefore, undemocratic.

Thus, Rovinia was obligated under Article I(a) OCDP Charter to withhold recognition from the Transitional Council.

## Rovinia’s seizure and sale of The Falcon violated Article 18(b) VCLT.

Under Article 18(b) VCLT, a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has expressed its consent to be bound by the treaty, pending the treaty’s entry into force. Defeating the object and purpose of a treaty involves conduct contrary to a provision essential to the treaty’s accomplishment.[[189]](#footnote-189) An “essential” provision is one that lies at the heart of a treaty, without which future performance of the treaty would be mostly without interest to the Parties.[[190]](#footnote-190)

The UNCJISP has not entered into force yet.[[191]](#footnote-191) As stated in its Preamble, the Convention’s object and purpose is to promote legal certainty regarding the international law of State immunity,[[192]](#footnote-192) which comprises immunity from jurisdiction and immunity from enforcement.[[193]](#footnote-193) Alongside Article 18 UNCJISP, Article 19 UNCJISP codifies the State’s immunity from enforcement.[[194]](#footnote-194) Being, therefore, at the heart of the Convention, it constitutes an essential provision for the accomplishment of the treaty’s object and purpose.

Rovinia is Party to the UNCJISP.[[195]](#footnote-195) Through the judicial seizure and sale of The Falcon, Rovinia acted contrary to Article 19 UNCJISP[[196]](#footnote-196) and thereby defeated the object and purpose of the treaty.

Thus, Rovinia’s seizure and sale of The Falcon violated Article 18(b) VCLT.

Prayer for Relief

The Union of Ambrosia respectfully requests this Honourable Court to adjudge and declare that:

1. The Court has jurisdiction to entertain Ambrosia’s submission (b);
2. Rovinia violated the international legal rules on jurisdiction and immunity by asserting and prosecuting Ms. Gertrude Cross;
3. Rovinia’s issuance of licenses to fish in those parts of the Triton Shoal within 200 nautical miles of Ambrosia’s fixed baseline violates international law and must cease, with existing licenses revoked; and
4. Rovinia’s seizure and sale of Ambrosia’s aircraft pursuant to the Permola court’s decision on 14 July 2023 on the basis of the Transitional Council’s purported waiver of immunity violated international law.

Respectfully submitted,

**Agents for the Union of Ambrosia**

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2. Statement of Agreed Facts [12]. [↑](#footnote-ref-2)
3. Ibid [10]. [↑](#footnote-ref-3)
4. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (*Ukraine v Russia: 32 States intervening*) (Preliminary Objections) [2024] ICJ General List No 182 [44]. [↑](#footnote-ref-4)
5. Statement of Agreed Facts [69]-[70]. [↑](#footnote-ref-5)
6. Ibid [12]. [↑](#footnote-ref-6)
7. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UN Treaty Series 331 (‘VCLT’). [↑](#footnote-ref-7)
8. *Phosphates in Morocco* (*Italy v France*)(Preliminary Objections) [1938] Permanent Court of International Justice (‘PCIJ’) Rep Series A/B No 74, 23-24. [↑](#footnote-ref-8)
9. *The Electricity Company of Sofia and Bulgaria* (*Belgium v Bulgaria*)(Preliminary Objection) [1939] PCIJ Rep Series A/B No 77, 82. [↑](#footnote-ref-9)
10. *Case Concerning Right of Passage over Indian Territory* (*Portugal v India*)(Merits) [1960] ICJ Rep 6 (‘*Right of Passage*’), 34. [↑](#footnote-ref-10)
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17. Ibid [11]. [↑](#footnote-ref-17)
18. Ibid [67]. [↑](#footnote-ref-18)
19. Ibid [61], [63]. [↑](#footnote-ref-19)
20. Ibid [61]-[66], [69]-[70]. [↑](#footnote-ref-20)
21. Ibid [25], [50]. [↑](#footnote-ref-21)
22. Ibid [12]. [↑](#footnote-ref-22)
23. See A.I. [↑](#footnote-ref-23)
24. Statement of Agreed Facts [61]. [↑](#footnote-ref-24)
25. *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States*)(Merits) [1986] ICJ Rep 14 [205]. [↑](#footnote-ref-25)
26. *Nationality Decrees Issued in Tunis and Morocco* (Advisory Opinion) [1923] PCIJ Rep Series B No 4, 24. [↑](#footnote-ref-26)
27. Georg Nolte, ‘Article 2(7)’ in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (4th edn, Oxford University Press 2024) 421, 435. [↑](#footnote-ref-27)
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31. Statement of Agreed Facts [68]. [↑](#footnote-ref-31)
32. Articles 14(1), 12(3)(a), 10(1), 10(3) ICPPED. [↑](#footnote-ref-32)
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