**544R**

**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**

THE UNION OF AMBROSIA

Applicant

v.

THE REPUBLIC OF ROVINIA

Respondent

**MEMORIAL FOR RESPONDENT**

# TABLE OF CONTENTS

[TABLE OF CONTENTS ii](#_Toc187757574)

[TABLE OF AUTHORITIES v](#_Toc187757575)

[STATEMENT OF JURISDICTION xiii](#_Toc187757576)

[STATEMENT OF FACTS xiv](#_Toc187757577)

[SUMMARY OF PLEADINGS xviii](#_Toc187757578)

[PLEADINGS 1](#_Toc187757579)

I. [The Court Lacks Jurisdiction to Entertain Ambrosia’s Submission (II) Because it is Outside the Scope of the Compromissory Clause of the OCDP Charter 1](#_Toc187757580)

A. [The Court lacks jurisdiction *ratione temporis* as the dispute arises out of facts or situations occurring prior to the entry into force of Article XXI 1](#_Toc187757581)

[1. In determining what “facts or situations” give rise to a dispute, the “real cause” must be ascertained 2](#_Toc187757582)

[2. The Court must determine whether the dispute can be adjudicated separately from facts or situations that occur before the acceptance of the Court’s jurisdiction 2](#_Toc187757583)

[3. In the present case, the Court lacks jurisdiction *ratione temporis* because it cannot adjudicate the dispute separately from such facts 3](#_Toc187757584)

[i. The scope of Rovinia’s criminal jurisdiction depends on facts before 17 March 2021. 3](#_Toc187757585)

[ii. The scope of immunities that Ms. Cross may enjoy depends on facts before 17 March 2021 4](#_Toc187757586)

[B. The Court lacks jurisdiction *ratione materiae* as the dispute relates to judicial proceedings on a “matter” essentially within a Member State’s domestic jurisdiction 5](#_Toc187757587)

[1. In drafting Article XXI, Member States specifically intended to exclude the prosecution of domestic crimes from the jurisdiction of the Court 5](#_Toc187757588)

[i. Applying the general rules of treaty interpretation, the States Parties intended that the prosecution of domestic crimes should not be subject to the Court’s jurisdiction 5](#_Toc187757589)

[ii. Applying supplementary means of interpretation, this conclusion is supported by the travaux préparatoires to Article XXI. 6](#_Toc187757590)

[2. The prosecution of domestic crimes is, objectively speaking, a “matter” essentially within a Member State’s domestic jurisdiction 7](#_Toc187757591)

[i. The “matter” within judicial proceedings must be essentially within Rovinia’s domestic jurisdiction 7](#_Toc187757592)

[ii. The prosecution of domestic crimes, objectively assessed, is a “matter” essentially within domestic jurisdiction 7](#_Toc187757593)

[iii. The determination of matters “essentially” within domestic jurisdiction possesses an inherently subjective element. 8](#_Toc187757594)

[II. Rovinia’s Assertion of Criminal Jurisdiction Over Ms. Cross, and Her Arrest and Prosecution, Are Consistent with International Law 8](#_Toc187757595)

[A. Rovinia validly asserted criminal jurisdiction over Ms. Cross 9](#_Toc187757596)

[1. The ICPPED obligates Rovinia to exercise jurisdiction over Ms. Cross 9](#_Toc187757597)

[i. Rovinia is obligated to prosecute or extradite individuals accused of enforced disappearance 9](#_Toc187757598)

[ii. Rovinia may elect between prosecution and extradition, as there is no rule of priority between the two 10](#_Toc187757599)

[iii. The fact that Ambrosia is unlikely to prosecute Ms. Cross is an additional reason not to extradite, being contrary to the “object and purpose” of the ICPPED 11](#_Toc187757600)

[iv. The fact that Rovinia and Ambrosia have signed an extradition treaty does not change the nature of the obligation aut dedere aut judicare 11](#_Toc187757601)

[2. Under customary international law, Rovinia is entitled to exercise universal jurisdiction over Ms. Cross in respect of her alleged crimes 12](#_Toc187757602)

[B. Ms. Cross is not immune from Rovinia’s exercise of criminal jurisdiction 13](#_Toc187757603)

[1. Ms. Cross is not entitled to immunity *ratione personae* 14](#_Toc187757604)

[2. Ms. Cross is not entitled to immunity *ratione materiae* 15](#_Toc187757605)

[i. The acts complained of were not conducted within an “official capacity” 15](#_Toc187757606)

[ii. Even if Ms. Cross were acting in an “official capacity,” immunity ratione materiae does not apply to the present offenses 16](#_Toc187757607)

[III. Rovinia’s Issuance of Licenses to Fish in the Entirety of the Triton Shoal, Which is Located on the High Seas, is In Conformity With International Law 17](#_Toc187757608)

[A. Rovinia is not bound by Ambrosia’s Freezing Law as it violates UNCLOS 18](#_Toc187757609)

[1. Ambrosia’s baselines and EEZ must shift landward with changes to its low-water line 18](#_Toc187757610)

[i. Under UNCLOS, the baseline is the actual, not the charted, low-water line 19](#_Toc187757611)

[ii. Coastal recession does not fall within the limited exceptions in UNCLOS to ambulatory baselines 19](#_Toc187757612)

[2. This Court should reject Ambrosia’s base lines as they do not accord with physical realities 20](#_Toc187757613)

[B. Customary international law supports an ambulatory baseline approach 21](#_Toc187757614)

[1. Baselines are ambulatory under customary international law 21](#_Toc187757615)

[2. No international or regional custom supports fixed baselines 22](#_Toc187757616)

[3. Even if the freezing laws are reflective of custom, Rovinia is a persistent objector and is not bound by the rule 23](#_Toc187757617)

[C. Rovinia lawfully exercised its high seas freedoms 24](#_Toc187757618)

[IV. Rovinia’s Judicial Seizure and Sale of The Falcon on the Basis of Ambrosia’s Waiver of Immunity Were in Accordance with International Law 25](#_Toc187757619)

[A. The Council was competent to make binding commitments on behalf of the State on account of its effective control of Ambrosia 25](#_Toc187757620)

[1. A government exercising effective control can make binding commitments on behalf of a State 26](#_Toc187757621)

[2. The Council exercised effective control over Ambrosia 27](#_Toc187757622)

[i. The Council controlled Ambrosian territory 27](#_Toc187757623)

[ii. The Council enjoyed the habitual obedience of the bulk of the population 28](#_Toc187757624)

[iii. The Council had a reasonable expectation of permanence 28](#_Toc187757625)

[3. The binding nature of the Council’s conduct is not dependent on its constitutionality 29](#_Toc187757626)

[4. The Transitional Council has not committed any acts sufficient to deny it a right of representation 29](#_Toc187757627)

[i. The Council did not seize power in violation of a peremptory norm of international law 30](#_Toc187757628)

[ii. The Council was willing and able to undertake international obligations 30](#_Toc187757629)

[B. The Council’s waiver is attributable to the State regardless of its governmental status 31](#_Toc187757630)

[PRAYER FOR RELIEF 33](#_Toc187757631)

# TABLE OF AUTHORITIES

Treaties

International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 23, 2010, 2716 U.N.T.S 3 4, 11, 12, 13, 16, 20

Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 16

Statute of the International Court of Justice, Oct. 24, 1945, 59 Stat. 1055. 33

U.N. Convention on the Law of the Sea, Nov. 16, 1994, 1833 U.N.T.S. 397 21, 22, 23, 24, 28

Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331 6, 8, 32

ICJ & PCIJ Cases

*Armed Activities on the Territory of the Congo* *(New Application: 2002)* (Dem. Rep. Congo v. Rwanda), Judgment, 2006 I.C.J. 39 (Feb. 3) 1

*Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3 (Feb. 14) 18

*Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 63 (Feb. 14) (separate opinion by Higgins, J. et al.) 15, 16, 20

*Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 95 (Feb. 14) (dissenting opinion by Al-Khasawneh, J.) 21

*Asylum* (Colom. v. Peru), Judgment, 1950 I.C.J. 194 (Nov. 20) 29

*Certain Property* (Liech. v. Ger.), Judgment, 2005 I.C.J. 6 (Feb. 10) 2, 3

*Certain Questions of Mutual Assistance in Criminal Matters* (Djib. v. Fr.), Judgment, 2008 I.C.J. 177 18

*Competence of Assembly regarding admission to the United Nations,* Advisory Opinion, 1950 I.C.J. 4 (Mar. 3) 7

*Continental Shelf* (Libyan Arab Jamahiriya v. Malta), Judgment, 1985 ICJ 13 (June 3) 23

Correspondence, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1970 I.C.J. Correspondence (Nov. 6), https://www.icj-cij.org/sites/default/files/case-related/53/11825.pdf 24

*Electricity Company of Sofia and Bulgaria* (Belg. v. Bulg.), Judgment, 1939 P.C.I.J. (ser. A/B) No. 77 (Apr. 4) 2, 4

*Fisheries* (U.K. v. Nor.), Judgment, 1951 I.C.J. 116 (Dec. 18) 22, 24, 26, 29

*Fisheries Jurisdiction* (U.K. v. Ice.), Judgment, 1974 I.C.J. 175 (July 25) 30

*Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99 (Feb. 3) 2, 5, 30

*Maritime Delimitation and Territorial Questions* (Qatar v. Bahr.), Judgment, 2001 I.C.J. 40 (Mar. 16) 23, 26

*Maritime Delimitation in the Black Sea* (Rom. v. Ukr.), Judgment, 2009 I.C.J. 61 (Feb. 3) 26

*Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4 (Feb. 7) 10

*North Sea Continental Shelf* (Ger. v. Den.), Judgment, 1969 I.C.J. 3 (Feb. 20) 22, 26, 28, 29

*Phosphates in Morocco* (It. v. Fr.), Judgment, 1938 P.C.I.J. (ser. A/B) No. 74 (June 14) 2, 3

*Questions relating to the Obligation to Prosecute or Extradite* (Belg. v. Sen.), Judgment, 2012 I.C.J. 422 (July 20) 12, 13

*Questions relating to the Obligation to Prosecute or Extradite* (Belg. v. Sen.), Judgment, 2012 I.C.J. 584 (July 20) (declaration by Donoghue, J.) 12

*Right of Passage over Indian Territory* (Port. v. India), Judgment, 1960 I.C.J. 6 (Apr. 12) 2, 3, 8, 28

Other International Courts & Tribunals

*Aguilar-Amory and Royal Bank of Can. Claims* (Gr. Brit. v. Costa Rica), 1 R.I.A.A. 369 (1923) 32, 33, 34

*ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Recommendation of Lord Phillips (2020) 34

*Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal* (Bangl. v. Myan.), Case No. 16, Judgment of Mar. 14, 2012, https://www.itlos.org/fileadmin/itlos/documents/cases/case\_no\_16/published/C16-J-14\_mar\_12.pdf 26

*Kenneth P. Yeager v. Islamic Republic of Iran*, Iran-U.S. Claims Tribunal Case No. 10199, Award No. 324-10199-1 (1987) 36

Press Release, Int’l Crim. Ct., The Determination of the Office of the Prosecutor on the communication received in relation to Egypt, Doc. ICC-OTP-20130508-PR1003 (May 8, 2014) 32

*Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision on Charges (June 15, 2009). 17

*Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment (ICTY Dec. 10, 1998) 15

*Prosecutor v. Tadić*, Case No. IT-94-1-I, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (ICTY Oct. 2, 1995) 15

*The Chagos Marine Protected Area Arbitration* (Mauritius v. U.K.), No. 2011-03, Award (Perm. Ct. of Arb*.* 2015) 30

*Toto Costruzioni Generali S.P.A. v. The Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction (Sep. 11, 2009) 36

*Valores Mundiales and Consorcio Andino v. Venez.*, ICSID Case No. ARB/13/11, Procedural Resolution No. 2 (Aug. 29, 2019) 31, 34

Treatises

Claudio Grossman Guiloff (Special Rapporteur), *First Rep. on immunity of State officials from foreign criminal jurisdiction*, U.N. Doc. A/CN.4/775 (May 3, 2024) 17, 18

Int’l Law Comm’n, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries, U.N. Doc. A/56/10 (2001) 28, 33, 34, 35

Int’l Law Comm’n, Rep. on the Work of Its Eighth Session, U.N. Doc. A/3159 (1956) 27

Int’l Law Comm’n, Rep. on the Work of Its Seventy-First Session, U.N. Doc. A/74/10 (2019) 20

Int’l Law Comm’n, Rep. on the Work of Its Seventy-Third Session, U.N. Doc. A/77/10 (2022) 16, 17, 18, 19, 20, 33

Int’l Law Comm’n, Rep. on the Work of Its Sixty-Sixth Session, U.N. Doc. A/69/10 (2014) 12, 13

Int’l Law Comm’n, Sea-level rise in relation to international law, U.N. Doc. A/CN.4/740 22, 25

Michael Wood (Special Rapporteur on the Formation and Evidence of Customary International Law), *Third report on identification of customary international law*, UN Doc. A/CN.4/682 (Mar. 27, 2015) 26

*Summary of Records of the 3148th Meeting*, [2012] 1 Y.B. Int’l Law Comm’n 135, U.N. Doc. A/CN.4/SR.3148 (ICJ President Tomka) 12

UN Resolutions & Documents

Bogdan Aurescu & Nilüfer Oral (Co-Chairs of Study Group on sea-level rise in relation to international law), *Sea-level rise in relation to international law*, U.N. Doc. A/CN.4/740 (Feb. 28, 2020) 27

Comm. Against Torture Dec. 181/2001, U.N. Doc. CAT/C/36/D/181/2001 (May, 19 2006) 12

G.A. Res. 59/38, annex, United Nations Convention on Jurisdictional Immunities of States and Their Property (Dec. 2, 2004) 31

U.N. Division for Ocean Affairs and the Law of the Sea, *Deposit of Charts*, https://www.un.org/depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm (last updated May 12, 2024) 27

U.N. Secretary-General, Letter dated Mar. 8, 1950 from the Secretary-General to the President of the Security Council, U.N. Doc. S/1466 (Mar. 9, 1950) 33

U.N. Secretary-General, *The Scope and Application of the Principle of Universal Jurisdiction*, U.N. Doc. A/79/269 (Aug. 1, 2024) 15, 16, 17

Articles, Digests, & Books

Andrea Bianchi, *Denying State Immunity to Violators of Human* *Rights*, 46 Austrian J. Pub. Int’l L. 195 (1994) 19

Anne Lagerwall & Marie-Laurence Hébert-Dolbec, *Universal* *Jurisdiction*, *in* Max Planck Encyclopedia of International Law (July 2022) 15

Christian Tomuschat, *Article 36*, *in* The Statute of the International Court of Justice: A Commentary 712 (Andreas Zimmermann et al. eds., 3d ed. 2019) 3

Coalter G. Lathrop, J. Ashley Roach & Donald R. Rothwell, *Baselines under the International Law of the Sea: Reports of the International Law Association Committee on Baselines Under the International Law of the Sea*, 2 Brill Rsch. Persps. L. Sea 1 (2019) 22

D.D. Ntanda Nsereko, *The International Criminal Court: Jurisdictional and Related Issues*, 10 Crim. L. F. 87 (1999) 7

David Caron, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level*, 17 Ecology L. Q. 621 (1990). 23

Dinah Shelton, *Jus Cogens in Recent Legal Scholarship*, in Jus Cogens 86 (2021) 20

Djamchid Momtaz, *Attribution of Conduct to the State: State Organs and Entities Empowered to Exercise Elements of Governmental Authority*, *in* The Law of International Responsibility 237 (James Crawford et al. eds., 2010) 35

Georg Nolte, *Article 2(7)*, *in* The Charter of the United Nations: A Commentary 241 (Bruno Simma et al. eds., 4th ed. 2024) 10

Goronwy Jones, The United Nations and the Domestic Jurisdiction of States: Interpretations and Applications of the Non-Intervention Principle (1979). 10

Guénaël Mettraux, *Chapeau or Contextual Elements*, *in* International Crimes: Law and Practice; Vol. II: Crimes Against Humanity 194 (2020) 15

Hans Martin Blix, *Contemporary Aspects of Recognition*, 642 Recueil Des Cours 586 (1970) 30

Hersch Lauterpacht, Recognition in International Law (1947) 29

Jack McNally, *Representation, Recognition, Resistance: Rival Governments Before the International Court of Justice*,61 Columbia J. Transnat’l L. 2 (2023) 32

James Crawford, *Jurisdictional Competence*, *in* Brownlie’s Principles of Public International Law 440 (9th ed. 2019) 9, 14

James Crawford, *Privileges and Immunities of Foreign States*, *in* Brownlie’s Principles of Public International Law 470 (9th ed. 2019) 16, 17

James Crawford, *Sovereignty and Equality of States*, *in* Brownlie’s Principles of Public International Law 431 (9th ed. 2019) 1

Joanne Foakes, The Position of Heads of State and Senior Officials in International Law 7 (2014) 16, 17

John Bassett Moore, 1 Dig. Int’l L. (1906) 30

K. Parlett, *Immunity in civil proceedings for torture: the emerging exception*, Eur. Hum. Rts. L. Rev. 49 (2006) 20

Katharine Fortin, *The Relevance of Article 9 of the Articles on State Responsibility for the Internationally Wrongful Acts of Armed Groups*, *in* Non-State Actors and International Obligations 371 (J. Summers and A. Gough eds., 2018) 34

Kriangsak Kittichaisaree, The Obligation to Extradite or Prosecute (2018) 12, 13, 14

Lawrence Preuss, *Article 2(7) of the Charter of the United Nations and Matters of Domestic Jurisdiction*, 74 Recueil Des Cours 547 (1949). 10

Malcolm Shaw, *The International Court of Justice*, *in* International Law 924 (9th ed. 2021) 1

Markus Benzing, *The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight Against Impunity*, *in* Max Planck Yearbook of United Nations Law 591 (7th ed. 2003) 7

Martin Dawidowicz, *The Obligation of Non-Recognition of an Unlawful Situation*, *in* The Law of International Responsibility 677 33

Máximo Langer & Mackenzie Eason, *The Quiet Expansion of Universal Jurisdiction*, 30 Eur. J. Int’l L. 779 (2019) 14

Michael Newton, *Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court*, 167 Mil. L. Rev. 20 (2001) 9

Niko Pavlopoulos, The Identity of Governments in International Law (2024) 32, 33

Olivier de Frouville, *Attribution of Conduct to the State: Private Individuals*, *in* The Law of International Responsibility 258 (James Crawford et al. eds., 2010) 35

Philip C. Jessup, *The Estrada Doctrine*,25Am. J. Int’l L., 719 (1931). 29

Poeliu Dai, *Recognition of States and Governments under International Law with Special Reference to Canadian Postwar Practice and the Legal Status of Taiwan (Formosa)*, 3 Can. Y.B. Int’l L. 290 (1965) 33

Renate Platzöder, 4 Third United Nations Conference on The Law of The Sea: Documents (1983). 23

Roger O’Keefe, *Universal Jurisdiction: Clarifying the Basic Concept*, 2 J. Int’l Crim. Just. 735 (2004) 14

Rosalind Higgins, *Time and the Law: International Perspectives on an Old Problem*, *in* Themes and Theories: Selected Essays, Speeches, and Writings in International Law 875 (2009) 3

Rosanne van Alebeek, The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law (2008) 16, 17

Stefan Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile (2010) 29

Stefan Talmon, *Who is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law*, *in* The Reality of International Law: Essays in Honour of Ian Brownlie 499 (Guy S. Goodwin-Gill & Stefan Talmon eds., 1999). 32

William Schabas, *Crimes against humanity/Crimes contre l‘humanité*, *in* The International Criminal Court: A Commentary on the Rome Statute 145 (2d ed. 2016) 15

William Schabas, *Preamble/Préambule*, *in* The International Criminal Court: A Commentary on the Rome Statute 31 (2d ed. 2016) 9

Domestic Cases, Legislations, & Materials

28 U.S.C. §1605A 20

*Chia Hsing v. Rankin*, 141 CLR 182 (1978) 28

Cour d’appel Paris, Section Seven, Second Investigating Chamber, June 13, 2013, *Teodoro Nguema Obiang Mangue et autres* 19

District Court of Livadeia, *Prefecture of Voiotia v. Federal Republic of Germany*, 137/1997 (Oct. 30, 1997) (Greece) 19

*In Re Hussein*, Oberlandesgericht [Higher Regional Court] Cologne, May 16, 2000, 2 Zs 1330/99 (Ger.) 20

Law No. 24488, May 31, 1995 (Arg.) 20

*Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.D.C. 1980) 19

Organic Law No. 16/2015 (2015) (Spain) 20

Permanent Mission of the U.K. to the U.N., Submission to the In’tl Law Comm’n (Jan. 10, 2020) https://legal.un.org/ilc/sessions/72/pdfs/english/slr\_uk.pdf. 28

*R v. Bow St. Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No. 3)* [1999] UKHL 17, [2000] 1 AC 147 20

*Re Pinochet*, Tribunal de Première Instance Brussels, Nov. 6, 1998, 119 I.L.R. 345 19, 20

*United States v. Alaska*, 521 U.S. 1 (1997) 28

Publications of International Organizations

Pac. Islands F., Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise (Aug. 6, 2021) 25

Other

Christine Bell, *Constitution Brief: Interim Governance Arrangements*, Int’l IDEA (October 2021), https://constitutionnet.org/sites/default/files/2021-11/interim-governance-arrangements-myanmar\_0.pdf. 30

Hisashi Owada, President, Int’l Ct. of Just., Introductory Remarks at the Seminar on the Contentious Jurisdiction of the International Court of Justice (Oct. 26, 2010) 3

Special Advisory Council for Myanmar, *SAC-M Briefing Paper: Recognition of Government* 4 (Aug. 23, 2021), https://specialadvisorycouncil.org/wp-content/uploads/2021/08/SAC-M-Briefing-Paper-Recognition-of-Governments-ENGLISH.pdf 29, 32

# STATEMENT OF JURISDICTION

The Union of Ambrosia (“Ambrosia”) and Republic of Rovinia (“Rovinia”) have consented to submit this dispute to the International Court of Justice (“ICJ”) pursuant to Article XXI of the Organization for Cooperation and Development in the Paine (“OCDP”) Charter, in accordance with Article 36(1) of the ICJ Statute. Both parties have agreed that all claims will be heard in one proceeding and that all issues of jurisdiction and admissibility will be determined alongside the merits.

Rovinia accepts the jurisdiction of this Court pursuant to Article 36(1) of the ICJ Statute. The parties have submitted to this Court a Statement of Agreed Facts. Rovinia undertakes to accept the judgment of this Court as final and binding and shall execute it in its entirety and in good faith.

# STATEMENT OF FACTS

**Background**

Ambrosia and Rovinia are located on the Paine Peninsula, which consists of seven States. Rovinia is the southernmost of the States and Ambrosia is the northernmost, with a coastline facing the Naegea Sea. The Naegea Sea is rich in tuna species, including yellowfin tuna. Rovinia’s fishing industry, predominantly made up of yellowfin tuna exports, comprises nearly 40% of its GDP. Ambrosia’s fishing industry accounts for 20% of its GDP.

**The OCDP**

In 2014, the Peninsula States commenced negotiations on the formation of the OCDP. The stated purposes of the OCDP include the protection of the rule of law and democratic institutions, as well as respect for maritime rights. The OCDP Charter entered into force on 17 March 2016. Pursuant to the Charter’s compromissory clause, Article XXI, the OCDP Member States agreed to refer disputes between them to the ICJ. Article XXI includes two exceptions to compulsory ICJ jurisdiction: a temporal exception, excluding disputes arising out of facts or situations prior to the Article’s entry into force; and a material exception, excluding disputes on judicial proceedings on matters essentially within a State’s domestic jurisdiction. The compromissory clause became effective on 17 March 2021.

**The ILSA Program**

In 2013, the President of Ambrosia, Prosper Derey, ordered his Minister of the Interior, Gertrude Cross, to take all necessary and lawful measures to apprehend persons engaged in illicit drug production, distribution, and use. To this end, Ms. Cross launched the “Implementing the Law for a Safer Ambrosia” (“ILSA”) program.

In August 2022, Human Rights International (“HRI”), a prominent non-governmental organization, released a report alleging that ILSA led to the abduction of more than 150 Ambrosian citizens between June 2017 and July 2020 by the National Police. These individuals were alleged to have been held in an undisclosed location without formal charges for up to a year. The last of them were released in December 2020. On 7 September 2022, Ambrosia’s Prosecutor General commenced a criminal investigation into the matter. In January 2023, five police officers were charged with kidnapping and ultimately convicted under the Ambrosian Criminal Code. Although Ms. Cross was in charge of the National Police, the Prosecutor General concluded that there was insufficient evidence to support charges against her.

In June 2023, a second report by HRI alleged the direct involvement of Ms. Cross in the abductions of Ambrosian nationals, citing evidence from police officers, images, and audio recordings. Copies of orders signed by Ms. Cross between June 2017 and December 2018 were adduced, purportedly showing that she had authorized warrantless arrests. Witness interviews and documents suggested that Ms. Cross had repeatedly visited the detention compound. The report alleged that the Prosecutor General closed the investigation despite possessing some of this evidence.

**Baselines and Fishing Licenses**

All Peninsula States proclaimed exclusive fishing rights in their exclusive economic zones (“EEZ”). Until 2015, all defined their maritime baselines as ambulatory in their domestic legislation.

In November 2015, the National Assembly of Ambrosia approved the Baseline Freezing Law of 2015, which fixed Ambrosia’s baselines at the low-water line existing on 1 November 2015, irrespective of future recession of the coastline. Rovinia did not comment on Ambrosia’s internal legislation. When other OCDP Member States began considering freezing legislation, Rovinia sent *notes verbales* objecting to each proposal as violative of international law. Rovinia voted against resolutions endorsing freezing legislation at the OCDP Assembly in March and December 2016 and has continued doing so at each annual meeting of the Assembly. After the March 2016 OCDP meeting, Rovinia delivered a *note verbale* notifying Ambrosia that it considered the freezing laws to be without effect. By August 2016, all OCDP members except Rovinia had adopted freezing legislation. Rovinia responded to each enactment with a diplomatic note protesting the measure.

By 2018, Ambrosia’s coastlines had receded such that the Triton Shoal would be outside Ambrosia’s EEZ if its baselines were established at the actual low-water line. On 2 July 2018, Rovinia began granting fishing permits for yellowfin tuna covering the entire Shoal.

In March 2023, Rovinia abstained from a resolution by the OCDP Assembly that pledged aid to Ambrosia and referred to the importance of fixed baselines. This abstention was motivated by the urgent need to address the suffering in Ambrosia.

**The Transitional Council**

In April 2022, President Derey suffered a stroke, entering a coma. Vice-President Zavala took office as Acting President of Ambrosia.

After Hurricane Luna struck the village of Dovilina in February 2023, the Ambrosian people reacted critically to Acting President Zavala’s response, decrying a lack of leadership. When Acting President Zavala refused to sign the National Assembly’s proposed Reconstruction Bill on 3 March 2023, protests and demonstrations erupted across Ambrosia. On 5 March, she left Ambrosia for a meeting. Protestors called for a new government headed by Rooney Piretis, a Member of the National Assembly representing Dovilina. By 10 March, seven members of Acting President Zavala’s cabinet had resigned. On 11 March, Ms. Piretis sought support for an interim government from the resigned ministers, senior members of the National Assembly, and officers of the armed forces.

With their support, on 13 March 2023, Ms. Piretis announced the establishment of a Transitional Council (“the Council”), with herself as the Head, that would exercise all executive functions of the government until President Derey returned to Ambrosia. Ms. Zavala declared on 14 March that she remained the Acting President, despite not returning to Ambrosia.

The Council controlled all parts of Ambrosia. It enjoyed substantial support among the general population and among key members of the legislature, police, intelligence community, and armed forces. It passed the Reconstruction Bill and disbursed aid to Dovilina. By June 2023, 25 States had recognized the Council. Some opposition emerged, expressing concern about the Council’s constitutional foundations. Pro-Zavala demonstrations resulted in clashes with the police and detentions of speakers.

**The Falcon**

In *O’Mander Corp. v. Union of Ambrosia*, a Rovinian court found a breach of contract by Ambrosia and awarded O’Mander Corp damages. On 14 March 2023, The Falcon was impounded to satisfy the damages judgment.

On 17 March 2023, President Piretis announced that she had signed a waiver of The Falcon’s immunity upon consulting with the Council. Ms. Zavala concurrently asserted that the Council did not have the authority to issue the waiver, so The Falcon retained its sovereign immunity. On 28 March, the Permola court heard submissions from the legal teams of both President Piretis and Ms. Zavala. Refusing to rule on the matter, it requested the advice of the Foreign Minister. On 14 July, Judge Timbre read out a statement by the Rovinian Foreign Minister opining that the Court should consider the Council to be the legal representative speaking for Ambrosia on account of its effective control over the Ambrosian territory and performance of government functions. Consequently, the court accepted the Council’s waiver and ordered the seizure and sale of The Falcon. The plane was auctioned off in August 2023 and the sale price paid to O’Mander Corp.

On 19 December 2023 President Derey returned to Ambrosia upon awakening from his coma. Ms. Piretis announced the dissolution of the Council. President Derey issued full pardons to Ms. Piretis, Ms. Zavala, and all members of the Council.

# SUMMARY OF PLEADINGS

**Pleading I**

This Court lacks jurisdiction to determine the legality of the arrest and prosecution of Ms. Cross, as the dispute is outside the scope of the compromissory clause of the OCDP Charter. The OCDP Charter expressly lists two grounds on which Ambrosia and Rovinia do not recognize the jurisdiction of the Court. The present dispute falls within both those grounds.

First, the dispute arises out of facts or situations occurring prior to the entry into force of Article XXI. In determining which facts or situations give rise to a dispute, the “real cause” of the dispute must be ascertained. The crucial question is whether the dispute can be adjudicated separately from facts or situations that occur before the entry into force of Article XXI. As the Court cannot do so, it lacks jurisdiction. In particular, determining the scope of the obligation *aut dedere aut judicare* under the International Convention for the Protection of All Persons from Enforced Disappearance (“ICPPED”) and the scope of Ms. Cross’s immunities require reliance on such facts.

Second, the dispute relates to judicial proceedings on the prosecution of domestic crime, a matter essentially within Rovinia's domestic jurisdiction. The exclusion of such disputes reflects both the specific intention of the States Parties to the OCDP Charter and the objective meaning of the text.

**Pleading II**

Notwithstanding, if the Court finds that it has jurisdiction, Rovinia’s assertion of criminal jurisdiction over Ms. Cross, as well as her arrest and prosecution, are consistent with international law.

First, Rovinia is entitled, and in fact obligated, to exercise jurisdiction over Ms. Cross pursuant to its obligations *aut dedere aut judicare* under the ICPPED. Furthermore, Rovinia is entitled to exercise universal criminal jurisdiction over Ms. Cross, who is alleged to have committed crimes against humanity and enforced disappearances.

Second, there is no rule of immunity which would exempt Ms. Cross from Rovinia’s exercise of jurisdiction. Ms. Cross is not entitled to either immunity *ratione personae* or immunity *ratione materiae*.

**Pleading III**

Rovinia’s issuance of fishing licenses in the Triton Shoal is in conformity with international law, as all States have the right to issue fishing licenses on the high seas.

Maritime entitlements are calculated from a State’s baseline, defined by the United Nations Convention on the Law of the Sea (“UNCLOS”) as the low-water line along the coast. Accordingly, under UNCLOS and the customary principle that the land dominates the sea, baselines and the maritime entitlements derived from them must ambulate per the physical reality of the coastline. Ambrosia’s Freezing Law contravenes this ambulatory principle and is therefore in violation of UNCLOS and customary international law. This Court should not accept Ambrosia’s fixed baselines as they do not accord with physical realities.

Due to coastal recession, Ambrosia’s baselines and maritime entitlements, including its EEZ, have retreated. The Triton Shoal is now located beyond 200 nautical miles from Ambrosia’s low-water line, placing it on the high seas. Thus, Rovinia’s issuance of fishing licenses in the Triton Shoal is a lawful exercise of its right to fish on the high seas.

**Pleading IV**

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. Post-judgment measures against State property are permitted where a State has expressly consented to such actions. President Piretis, on behalf of the Council, waived The Falcon’s immunity.

A government that exercises “effective control” over a State’s territory can fulfill international obligations on behalf of the State. The Council was competent to make representations on behalf of Ambrosia as it exercised “effective control” over the territory and performed all governmental functions. Rovinia had no obligation to refrain from recognizing the Council because it did not seize power in a manner that breached a peremptory norm of international law. Its constitutional status is not relevant to its power to make binding commitments on behalf of Ambrosia.

Even if the Council is not recognized as the government, the Council’s waiver is still attributable to the Ambrosian State under the Articles on State Responsibility for Internationally Wrongful Acts (“ARSIWA”), as the Council was exercising elements of governmental authority in the absence of Ms. Zavala’s government.

# 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

The jurisdiction of the Court is founded upon the “consent of the parties to the dispute”[[1]](#footnote-1) and is confined to the extent accepted by States.[[2]](#footnote-2) The Member States to the OCDP Charter expressly disclaimed the jurisdiction of the Court in two circumstances.[[3]](#footnote-3) The present dispute falls within both. First, this dispute arises out of facts or situations occurring prior to the entry into force of Article XXI **[A]**. Second, the dispute relates to judicial proceedings on a “matter” essentially within a Member State’s domestic jurisdiction **[B]**.

### The Court lacks jurisdiction *ratione temporis* as the dispute arises out of facts or situations occurring prior to the entry into force of Article XXI

The dispute between Ambrosia and Rovinia concerns the legality of Rovinia’s arrest and prosecution of Ms. Cross.[[4]](#footnote-4) In determining what “facts or situations” give rise to a dispute, the “real cause” of the dispute must be ascertained **[1]**.[[5]](#footnote-5) The crucial question is whether the dispute can be adjudicated separately from facts or situations that occur before the entry into force of the compromissory clause **[2]**. As the Court cannot do so, it lacks jurisdiction over the dispute **[3]**.

#### In determining what “facts or situations” give rise to a dispute, the “real cause” must be ascertained

Jurisprudence from this Court and its predecessor confirms that the “real cause” of the dispute must be identified.[[6]](#footnote-6) Although a dispute may “presuppose the existence of some prior situation or fact, it does not follow that the dispute arises [in relation to it].”[[7]](#footnote-7) Rather, as the “causal chain linking events of the present to the past never ends,”[[8]](#footnote-8) of importance are those facts which themselves are the “source of the dispute.”[[9]](#footnote-9)

#### The Court must determine whether the dispute can be adjudicated separately from facts or situations that occur before the acceptance of the Court’s jurisdiction

A unifying principle underpins the cases: the crucial question is whether the dispute can be adjudicated separately from facts or situations predating the acceptance of the Court’s jurisdiction.[[10]](#footnote-10) If the Court must make a “finding with regard to the past,”[[11]](#footnote-11) or where the dispute is “inextricably linked”[[12]](#footnote-12) to such facts, the Court has no jurisdiction *ratione temporis*.

Thus, in the *Phosphates* case, the Permanent Court of International Justice (“PCIJ”) found it had no jurisdiction because determining the legality of France’s monopolization of phosphate deposits required ascertaining the validity of enabling legislation enacted before the crucial date.[[13]](#footnote-13) By contrast, in the *Electricity Company* case, the dispute related to the application of an arbitral award; the validity of the award, which was rendered before acceptance of the Court’s jurisdiction, was not contested.[[14]](#footnote-14)

#### In the present case, the Court lacks jurisdiction *ratione temporis* because it cannot adjudicate the dispute separately from such facts

In the present case, the Court cannot adjudicate the dispute separately from facts which occur before the entry into force of the compromissory clause on 17 March 2021.[[15]](#footnote-15) In particular, this Court must consider the scope of Rovinia’s criminal jurisdiction **[i]** and the scope of the immunities which Ms. Cross may enjoy **[ii]**. Neither of these issues can be determined separately from facts before 17 March 2021.[[16]](#footnote-16)

##### The scope of Rovinia’s criminal jurisdiction depends on facts before 17 March 2021.

Whether Rovinia lawfully exercised criminal jurisdiction over Ms. Cross can only be determined by reference to facts that occurred before 17 March 2021. Rovinia’s exercise of jurisdiction stems from the substantive obligations contained within the ICPPED.[[17]](#footnote-17) This in turn depends on the fulfilment of conditions including the taking of necessary measures to “establish competence to exercise jurisdiction”[[18]](#footnote-18) and the conduct of a “preliminary inquiry” to establish the facts[[19]](#footnote-19) regarding Ms. Cross’s alleged crimes.[[20]](#footnote-20) In assessing these, the Court must consider the evidence against Ms. Cross in relation to acts allegedly committed between 2017 and 2020.[[21]](#footnote-21) These facts form the very basis of Rovinia’s claim to validly exercise jurisdiction[[22]](#footnote-22) and properly give rise to the dispute.

In this respect, the present dispute can be distinguished from the *Jurisdictional Immunities* case.[[23]](#footnote-23) In that case, the dispute concerned alleged violations of Germany’s immunities arising out of judicial decisions of Italian courts.[[24]](#footnote-24) The existence of the rule of jurisdictional immunity was not in dispute; the question was merely whether the decisions of the Italian courts, which occurred after the entry into force of the compromissory clause, violated this rule.[[25]](#footnote-25) Unlike the present case, the Court could determine the dispute separately from facts arising before the crucial date.

##### The scope of immunities that Ms. Cross may enjoy depends on facts before 17 March 2021

Similarly, the scope of any immunities which Ms. Cross might enjoy can only be determined by reference to facts before 17 March 2021. In determining whether Ms. Cross enjoyed immunity *ratione materiae*[[26]](#footnote-26) in respect of her alleged crimes, the Court must examine whether Ms. Cross acted in an official capacity,[[27]](#footnote-27) by reference to her actions[[28]](#footnote-28) and the mandate given to her by President Derey.[[29]](#footnote-29) These facts, occurring before the entry into force of the compromissory clause, are central to the legality of Rovinia’s arrest and prosecution of Ms. Cross, and their contested nature gives rise to the dispute.

### The Court lacks jurisdiction *ratione materiae* as the dispute relates to judicial proceedings on a “matter” essentially within a Member State’s domestic jurisdiction

In drafting the text of Article XXI,[[30]](#footnote-30) the Member States to the OCDP Charter specifically intended to exclude the prosecution of domestic crimes from the jurisdiction of the Court **[1]**. In any case, the prosecution of domestic crimes, objectively speaking, is a matter “essentially within a Member State’s domestic jurisdiction”[[31]](#footnote-31) **[2]**.

#### In drafting Article XXI, Member States specifically intended to exclude the prosecution of domestic crimes from the jurisdiction of the Court

Applying the ordinary rules of interpretation in the Vienna Convention on the Law of Treaties (“VCLT”)[[32]](#footnote-32) to the compromissory clause, it is clear that Ambrosia and Rovinia intended that the prosecution of domestic crimes should not be subject to the Court’s jurisdiction **[i]**. Furthermore, this conclusion is confirmed by the *travaux préparatoires*[[33]](#footnote-33) to Article XXI **[ii]**.

##### Applying the general rules of treaty interpretation, the States Parties intended that the prosecution of domestic crimes should not be subject to the Court’s jurisdiction

In determining the scope of the States Parties’ acceptance, the starting point is Article 31 of the VCLT,[[34]](#footnote-34) which emphasizes that the intention of the parties as expressed in the “ordinary meaning” of the text is the best guide to their common intention. If the relevant words in their natural and ordinary meaning make sense in their context, “that is [the] end of the matter.”[[35]](#footnote-35)

The relevant section of Article XXI reads: “[the] Member States do not recognize the jurisdiction of the Court in connection with disputes [...] relating to ‘*judicial proceedings on matters*’ which [...] are essentially within a Member State’s domestic jurisdiction.”[[36]](#footnote-36)

Certainly, Member States agreed that the conduct of at least *some* judicial proceedings were to be excluded from the jurisdiction of this Court. The relevant judicial proceedings are those involving “matters” essentially within domestic jurisdiction. The “matters” which States intended to exclude *must* include the determination of substantive guilt for a domestic criminal offense,[[37]](#footnote-37) for States have a right to exercise domestic criminal jurisdiction[[38]](#footnote-38) as a fundamental aspect of sovereignty.[[39]](#footnote-39)

##### Applying supplementary means of interpretation, this conclusion is supported by the travaux préparatoires to Article XXI.

Even if the meaning of the matters which States Parties intended to exclude from the Court’s jurisdiction is “ambiguous or obscure,”[[40]](#footnote-40) Article 32 of the VCLT allows for supplementary means of interpretation, including the preparatory work of the treaty, to be taken into account.[[41]](#footnote-41) The Ambrosian delegate had proposed to exclude disputes relating to the domestic prosecution of persons accused of illegal fishing, drug trafficking, or smuggling.”[[42]](#footnote-42) Although Ms. Cross is not being prosecuted for one of these offenses, the evidence shows that Member States perceived the idea of domestic prosecution of individuals as central to this restriction on the Court’s jurisdiction.

#### The prosecution of domestic crimes is, objectively speaking, a “matter” essentially within a Member State’s domestic jurisdiction

The fact that the “dispute” itself is international in nature is not crucial, as what is required is that the “matter” before judicial proceedings is essentially within Rovinia’s domestic jurisdiction **[i]**. The prosecution of domestic crimes is clearly a matter “essentially within domestic jurisdiction.” This is true both on an objective understanding of “domestic jurisdiction” **[ii]** and considering the inherent subjective element in determining what falls essentially within a State’s domestic jurisdiction **[iii]**.

##### The “matter” within judicial proceedings must be essentially within Rovinia’s domestic jurisdiction

Previous jurisprudence from this Court holds that the invocation of any rule or principle of international law is sufficient to “place oneself on the plane of international law.”[[43]](#footnote-43) Notwithstanding, the fact that the “dispute” falls outside domestic jurisdiction is not dispositive. Rather, what is crucial is that the “matter” to which the judicial proceedings relate falls essentially within domestic jurisdiction.[[44]](#footnote-44)

##### The prosecution of domestic crimes, objectively assessed, is a “matter” essentially within domestic jurisdiction

The exercise of criminal jurisdiction is a central aspect of sovereignty.[[45]](#footnote-45) The fact that the domestic crime in question, enforced disappearance, also exists as a crime at international law is not determinative of the essentially domestic nature of jurisdiction, since no recourse is needed to any rule of international law to prosecute Ms. Cross.[[46]](#footnote-46) Additionally, recognition that the prosecution of crimes that exist both in domestic and international law falls “essentially within domestic jurisdiction” is consistent with the framework of international criminal law,[[47]](#footnote-47) which allocates primary responsibility to domestic courts to prosecute various crimes.[[48]](#footnote-48)

##### The determination of matters “essentially” within domestic jurisdiction possesses an inherently subjective element.

Finally, the determination of what matters are “essentially” within a State’s domestic jurisdiction depends on the development of international relations.[[49]](#footnote-49) By use of the word “essentially,” as opposed to “exclusively,” the States Parties intended that a greater number of matters would be excluded from the jurisdiction of the Court,[[50]](#footnote-50) with no specific areas which are clearly defined or irreducible.[[51]](#footnote-51)

## Rovinia’s Assertion of Criminal Jurisdiction Over Ms. Cross, and Her Arrest and Prosecution, Are Consistent with International Law

Rovinia’s assertion of criminal jurisdiction over, and arrest and prosecution of Ms. Cross, are fully consistent with international law. Rovinia validly asserted criminal jurisdiction over Ms. Cross **[A]**. Furthermore, no rule of immunity exempts Ms. Cross from the exercise of Rovinia’s criminal jurisdiction **[B]**.

### Rovinia validly asserted criminal jurisdiction over Ms. Cross

Rovinia is entitled to exercise criminal jurisdiction over Ms. Cross. First, the substantive obligations within the ICPPED give rise to jurisdiction *aut dedere aut judicare* **[1]**. Second, Rovinia is entitled to invoke universal jurisdiction over Ms. Cross **[2]**.

#### The ICPPED obligates Rovinia to exercise jurisdiction over Ms. Cross

The ICPPED obligates Rovinia to prosecute or extradite individuals accused of enforced disappearances **[i]**. The custodial state, Rovinia, may elect between prosecution and extradition, with no rule of priority between the two **[ii]**. The fact that Ambrosia is unlikely to prosecute Ms. Cross is an additional reason against extradition; to hold otherwise would defeat the object and purpose of the ICPPED **[iii]**. Finally, the fact that Rovinia and Ambrosia have signed an independent extradition treaty does not change the nature of the obligation *aut dedere aut judicare* **[iv]**.

##### Rovinia is obligated to prosecute or extradite individuals accused of enforced disappearance

Under the ICPPED, States are obligated to prosecute or extradite alleged perpetrators of enforced disappearances.[[52]](#footnote-52) Both Ambrosia and Rovinia are parties to the ICPPED.[[53]](#footnote-53) Ms. Cross is alleged to have perpetrated enforced disappearances.[[54]](#footnote-54)

Pursuant to the ICPPED, Rovinia duly “established its competence to exercise jurisdiction”[[55]](#footnote-55) by incorporating enforced disappearance into the Rovinian Criminal Code.[[56]](#footnote-56) It was satisfied, on an “[examination] of the information available to it,”[[57]](#footnote-57) that the circumstances warranted arresting Ms. Cross, given evidence of her explicit approval of abductions and multiple visits to the detention compound.[[58]](#footnote-58) Accordingly, Rovinia “[submitted] the case to its competent authorities”[[59]](#footnote-59) who duly prosecuted her.[[60]](#footnote-60) Thus, all the preconditions for Rovinia’s exercise of jurisdiction under the ICPPED were fulfilled.

##### Rovinia may elect between prosecution and extradition, as there is no rule of priority between the two

Rovinia was entitled to prosecute Ms. Cross rather than extradite her to Ambrosia. As this Court recognized in *Obligation to Prosecute or Extradite,* regarding treaty provisions materially similar to those of the ICPPED,[[61]](#footnote-61) extradition is an *option* offered to the State by the Convention, whereas prosecution is an *obligation* under the Convention.[[62]](#footnote-62) The Committee against Torture[[63]](#footnote-63) and judges of this Court[[64]](#footnote-64) have endorsed this interpretation. The obligation to prosecute arises independently from any request for extradition,[[65]](#footnote-65) and the custodial State has the discretion to decide between the two.[[66]](#footnote-66)

##### The fact that Ambrosia is unlikely to prosecute Ms. Cross is an additional reason not to extradite, being contrary to the “object and purpose” of the ICPPED

The object and purpose of the ICPPED is to “prevent enforced disappearances and to combat impunity for the crime of enforced disappearance.”[[67]](#footnote-67) The obligations *aut dedere aut judicare* are to be interpreted as “a single process”[[68]](#footnote-68) directed towards rendering the fight against impunity more effective.[[69]](#footnote-69) There are reasonable grounds to conclude that Ambrosia is unlikely to prosecute Ms. Cross. Evidence suggests that the Ambrosian Prosecutor General closed the investigation into Ms. Cross despite being in possession of the evidence implicating her.[[70]](#footnote-70) President Derey, on whose order the ILSA program was created, describes Ms. Cross as a “loyal servant” who “saved many lives.”[[71]](#footnote-71) Thus, the ICPPED cannot be interpreted to prioritize extradition as that would defeat the object and purpose of the treaty.

##### The fact that Rovinia and Ambrosia have signed an extradition treaty does not change the nature of the obligation aut dedere aut judicare

The existence of an independent extradition treaty between Rovinia and Ambrosia[[72]](#footnote-72) does not alter Rovinia’s obligation to prosecute under the ICPPED. The obligation to prosecute is mandatory, whereas extradition is an “alternative option available, which if chosen, would relieve the State of its obligation to prosecute.”[[73]](#footnote-73)

#### Under customary international law, Rovinia is entitled to exercise universal jurisdiction over Ms. Cross in respect of her alleged crimes

A rule of universal jurisdiction applies to the most serious crimes.[[74]](#footnote-74) This purely residual form of jurisdiction[[75]](#footnote-75) exists under customary international law,[[76]](#footnote-76) and is premised on the grave nature of the crime, as opposed to any nexus to the prosecuting State.[[77]](#footnote-77)

This Court,[[78]](#footnote-78) various States,[[79]](#footnote-79) and publicists[[80]](#footnote-80) have each recognized that universal jurisdiction applies to crimes against humanity. There are reasonable grounds[[81]](#footnote-81) to conclude that the alleged crimes were directed “against a civilian population” and were “widespread or systematic.”[[82]](#footnote-82) The abductions were directed against Ambrosian civilians.[[83]](#footnote-83) The abduction of “more than 150 Ambrosian citizens”[[84]](#footnote-84) is sufficient to constitute a widespread attack. Since there is no specific requirement of numerosity,[[85]](#footnote-85) even the perpetuation of one or two offences has been thought sufficient.[[86]](#footnote-86) Separately, the conduct of the abductions via the state-run ILSA[[87]](#footnote-87) program makes the crimes “systematic,” given their organized and non-random occurrence.[[88]](#footnote-88)

The domestic laws of various States[[89]](#footnote-89) also recognize universal jurisdiction over enforced disappearance *simpliciter*. Thus, Rovinia acted lawfully in exercising universal jurisdiction over Ms. Cross in respect of the alleged crimes against humanity or enforced disappearance *simpliciter*.

### Ms. Cross is not immune from Rovinia’s exercise of criminal jurisdiction

Ms. Cross is not entitled to any form of immunity which would exempt her from arrest and prosecution. Specifically, she is not entitled to any immunity *ratione personae* **[1]** or immunity *ratione materiae* **[2]**.

#### Ms. Cross is not entitled to immunity *ratione personae*

Immunity *ratione personae* is defined as immunity for a limited class of persons, which arises by virtue of the office they hold.[[90]](#footnote-90) Ms. Cross is not entitled to any immunity *ratione personae* for two reasons.

First, immunity *ratione personae* only applies to Heads of State, Heads of Government, and Foreign Ministers,[[91]](#footnote-91) a position endorsed by this Court.[[92]](#footnote-92) Even assuming, *arguendo*, that immunity *ratione personae* extends beyond such officials, it does not apply to interior ministers, since such ministers are primarily in charge of domestic affairs. To hold otherwise would be inconsistent with the rationale behind immunity *ratione personae*, that some officials represent the State on the international plane.[[93]](#footnote-93)

Second, immunity *ratione personae* applies only during an individual’s term in office. This rule has been recognized by the ILC,[[94]](#footnote-94) States,[[95]](#footnote-95) and this Court.[[96]](#footnote-96) Even assuming immunity *ratione personae* applied to Ms. Cross, it has lapsed since she left her office. Ms. Cross “resigned as Interior Minister”[[97]](#footnote-97) and thus enjoys no such immunity.

#### Ms. Cross is not entitled to immunity *ratione materiae*

Immunity *ratione materiae* attaches not to particular persons, but to particular acts.[[98]](#footnote-98) Ms. Cross is not entitled to any immunity *ratione materiae* for two reasons. First, the enforced disappearances for which she is being prosecuted were not conducted within an “official capacity” **[i]**. Second, even if Ms. Cross were acting in an “official capacity,” immunity *ratione materiae* does not apply to the crimes for which she is being prosecuted **[ii]**.

##### The acts complained of were not conducted within an “official capacity”

State officials enjoy immunity *ratione materiae* only with respect to acts performed in an official capacity.[[99]](#footnote-99) Various courts have distinguished instances of assassination,[[100]](#footnote-100) corruption,[[101]](#footnote-101) and torture[[102]](#footnote-102) as inconsistent with the performance of State functions.[[103]](#footnote-103)

Here, the acts Ms. Cross is alleged to have committed were not conducted within an official capacity. Her mandate was to “take all necessary and *lawful* measures to apprehend persons” under the ILSA program.[[104]](#footnote-104) Having contravened her mandate, she cannot have been acting in an “official capacity” in committing the alleged crimes.

##### Even if Ms. Cross were acting in an “official capacity,” immunity ratione materiae does not apply to the present offenses

International law recognizes exceptions to immunity *ratione materiae*. The practice of domestic courts[[105]](#footnote-105) and legislation,[[106]](#footnote-106) the views of publicists,[[107]](#footnote-107) as well as judges of this Court,[[108]](#footnote-108) each support the existence of such exceptions. The exceptions include both enforced disappearance **[a]** and crimes against humanity **[b]**.[[109]](#footnote-109)

###### Immunity does not apply to enforced disappearance

Immunity *ratione materiae* does not apply to enforced disappearance.[[110]](#footnote-110) The crime of enforced disappearance is the subject of a specific international treaty, the ICPPED, which creates a legal regime with the object and purpose of combatting enforced disappearance.[[111]](#footnote-111) The ICPPED defines enforced disappearance as the “deprivation of liberty […] by agents of the State […] or with support or acquiescence of the State.”[[112]](#footnote-112) Since enforced disappearance can only be carried out by persons acting in a so-called “official capacity,” the effect of recognizing immunity here would be to frustrate the object and purpose of the ICPPED by granting immunity to State officials who perpetuate enforced disappearances.

###### Immunity does not apply to crimes against humanity

Immunity *ratione materiae* does not apply to crimes against humanity.[[113]](#footnote-113) Crimes against humanity[[114]](#footnote-114) (and enforced disappearances)[[115]](#footnote-115) are *jus cogens* norms. The effect of this hierarchically superior norm is to override lesser conflicting norms, including rules on immunity.[[116]](#footnote-116) Therefore, the *jus cogens* nature of the alleged crimes overrides any immunities Ms. Cross might otherwise be entitled to.

## Rovinia’s Issuance of Licenses to Fish in the Entirety of the Triton Shoal, Which is Located on the High Seas, is In Conformity With International Law

Rovinia acted in accordance with international maritime law, which grants all States the right to issue fishing licenses on the high seas.[[117]](#footnote-117) Due to coastal recession, the Triton Shoal is now located beyond 200 nautical miles from Ambrosia’s low-water line on the coast, placing it on the high seas.[[118]](#footnote-118)

Ambrosia’s Freezing Law fixes its maritime baseline as of 1 November 2015, irrespective of any subsequent coastal recession.[[119]](#footnote-119) Under UNCLOS and the customary principle *la terre domine la mer* (“the land dominates the sea”),[[120]](#footnote-120) a State’s baseline must ambulate with the natural, shifting geography of its low-water line. Thus, Ambrosia’s Freezing Law is inconsistent with UNCLOS **[A]** and customary international law **[B]**.

Rovinia is not bound by Ambrosia’s unlawful claims to maritime zones beyond its entitlement. Rovinia’s issuance of fishing licenses was a lawful exercise of its high seas freedoms **[C]**.

### Rovinia is not bound by Ambrosia’s Freezing Law as it violates UNCLOS

A State’s maritime entitlements are calculated from its baseline, defined by UNCLOS as the low-water line along the coast, as depicted on charts officially recognized by the coastal State.[[121]](#footnote-121) This low-water line is the “juridical link” between a State’s territorial sovereignty and its rights to the sea.[[122]](#footnote-122) Accordingly, baselines and the maritime entitlements derived from them must shift in response to the physical reality of the coastline **[1]**. As Ambrosia’s Freezing Law is inconsistent with this principle, this Court is not required to accept the baseline indicated by Ambrosia even absent updating of official charts **[2]**.

#### Ambrosia’s baselines and EEZ must shift landward with changes to its low-water line

Under UNCLOS, the baseline is the actual, not the charted, low-water line along the coast **[i]**. By 2018, Ambrosia’s coastlines, which do not fall within the limited exceptions within UNCLOS **[ii]**, had receded such that the Triton Shoal was beyond 200 nautical miles from its actual low-water line.[[123]](#footnote-123) As Ambrosia’s exclusive fishing rights in its EEZ cannot extend beyond 200 nautical miles from its baseline,[[124]](#footnote-124) the Triton Shoal is on the high seas.

##### Under UNCLOS, the baseline is the actual, not the charted, low-water line

In interpreting Article 5 of UNCLOS, this Court has held that the normal baseline “*is* the low-water line along the Coast.”[[125]](#footnote-125) This is interpreted to the effect that the baseline is the actualor “natural” low-water line, which is merely illustrated, not determined, by charts.[[126]](#footnote-126) UNCLOS codifies this ambulatory approach through several provisions,[[127]](#footnote-127) including Article 7(3), under which straight baselines “must not depart to any appreciable extent from the general direction of the coast.”[[128]](#footnote-128) Thus, baselines and their corresponding maritime zones must move seaward to reflect accretion and landward to reflect changes caused by erosion or sea level rise.[[129]](#footnote-129)

##### Coastal recession does not fall within the limited exceptions in UNCLOS to ambulatory baselines

UNCLOS permits only two exceptions to the rule that baselines and their corresponding maritime zones must move with physical changes to the low-water line.

First, in the case of unstable deltaic coastlines, baselines “shall remain effective until changed by the coastal State.”[[130]](#footnote-130) This implies, *expressio unius*,[[131]](#footnote-131) that for all other baselines, the baselines move following geographical realities even absent updating of official charts. Coastal recession impacting Ambrosia’s normal baselines does not fall within the circumstances envisioned under Article 7(2).[[132]](#footnote-132)

Second, Article 76(9) allows a State to deposit charts “permanently describing” the other limits of its continental shelf.[[133]](#footnote-133) Again, by negative implication, this exception does not extend to the EEZ, territorial sea, or contiguous zones.[[134]](#footnote-134)

The shifting of Ambrosia’s normal baseline due to climate-related coastal recession does not fall within these exceptions. The Permanent Court of Arbitration has expressly held in closely analogous delimitation cases that the issue of whether coastlines will be affected by climate change is not relevant to whether the base points reflect the general direction of the coast “in the present case and at the present time.”[[135]](#footnote-135)

Thus, the Triton Shoal is in the high seas.

#### This Court should reject Ambrosia’s base lines as they do not accord with physical realities

The establishment of maritime zones must be valid under international law; “it cannot be dependent merely upon the will of the Coastal State.”[[136]](#footnote-136) Irrespective of whether UNCLOS obliges States to update their baselines, courts have consistently held that they are not bound to accept charted baselines officially recognized by States if they do not reflect the “physical reality at the time of delimitation.”[[137]](#footnote-137)

Given the physical reality that the Triton Shoal is more than 200 nautical miles from Ambrosia’s low-water line, this Court should reject Ambrosia’s unlawful unilateral delimitation and consider the Triton Shoal to be on the high seas.

### Customary international law supports an ambulatory baseline approach

Ambrosia’s Freezing Law violates customary international law. To be considered customary international law, a rule must be supported by widespread and representative State practice,[[138]](#footnote-138) carried out in the belief that it is legally obligatory (*opinio juris*).[[139]](#footnote-139) While ambulatory baselines are an established international custom **[1],** no rule supporting fixed baselines exists at the international level, nor has a regional rule crystallized in the Paine Peninsula **[2]**. Even if a custom is considered to have crystallized, Rovinia is a persistent objector and is not bound by the rule **[3]**.

#### Baselines are ambulatory under customary international law

Coastal States have accepted the principle that baselines ambulate based on the recession or extension of the low-water line. States have continuously deposited new coordinates of the low-water line that supersede previously recognized baselines,[[140]](#footnote-140) and have sought to change their entitlements via land reclamation.[[141]](#footnote-141) The International Law Association’s Baselines Committee notes that since states have consistently updated their baselines with expansions seaward, legal baselines must also change with contractions of the actual low-water line landward.[[142]](#footnote-142)

The adoption of domestic legislation referencing obligations to update baselines is evidence of *opinio juris*. The domestic legislation of all OCDP Member States, including Ambrosia, defined their baselines as ambulatory until 2015.[[143]](#footnote-143) Submissions to the ILC Study Group revealed widespread domestic adoption of “ambulatory baselines in accordance with [UNCLOS]”[[144]](#footnote-144) by States Parties including the United Kingdom, Nigeria, Bangladesh, and the Netherlands, among others. The Australian High Court asserts that the low-water line “does not depend for its existence and significance upon any chart” but solely upon physical facts.[[145]](#footnote-145) This custom is observed even by non-signatories to UNCLOS.[[146]](#footnote-146)

Such widespread State practice confirms a customary rule that both baselines, and the maritime zones measured from them, are ambulatory.

#### No international or regional custom supports fixed baselines

The freezing of baselines fails to meet the requirements for a rule to be considered customary law. There is no evidence of widespread and virtually uniform State practice. Outside of the OCDP and Pacific Islands Forum States, no other Coastal States out of over 150 have frozen their baselines despite facing a similarly high threat of climate change. Nor is there evidence of *opinio juris*. The Pacific Islands Forum based its proposal for fixed baselines on an argument that UNCLOS “imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review,”[[147]](#footnote-147) which suggests it acted in the *absence* of legal obligation. Nor has any rule of regional custom crystallized. Regional custom requires long continued and uniform State practice within a specific region, accepted by States as regulating their relations.[[148]](#footnote-148) It has been merely eight years since Ambrosia’s Freezing Law was announced. A short time frame for the formation of regional custom requires virtual uniformity as an “indispensable requirement” within that period.[[149]](#footnote-149) No regional custom could be crystallized in the Paine Peninsula because Rovinia, one of only seven States in the peninsula, consistently denied the legitimacy of the practice.

Ambrosia’s own statements betray a lack of *opinio juris*. The Ambrosian delegate in May 2016 described the “trailblazing role”[[150]](#footnote-150) of Ambrosia in pursuing fixed baselines, suggesting that it was not standard practice. He pleaded that international law “must allow states” to address the changes wrought by climate change, confirming that the proposal was made *de lege ferenda*, and not *de lege lata*.[[151]](#footnote-151)

#### Even if the freezing laws are reflective of custom, Rovinia is a persistent objector and is not bound by the rule

If a State has persistently objected to an emerging rule of customary international law, and maintains its objections after the rule has crystallized, it is not bound by it.[[152]](#footnote-152) Since March 2016, Rovinia has consistently protested the freezing laws through *notes verbales*,[[153]](#footnote-153) objections,[[154]](#footnote-154) and votes against resolutions in the OCDP Assembly.[[155]](#footnote-155) Rovinia's abstention from the OCDP resolution in March 2023 does not detract from its persistent objection. Rovinia abstained due to the urgent need to address the crisis in Dovilina, not due to the absence of objection to the fixed baselines approach.[[156]](#footnote-156)

This Court has held that refusing to ratify a convention that would have crystallized a custom is sufficient to be a persistent objector.[[157]](#footnote-157) Rovinia, on account of its far more sustained, explicit objections has exempted itself from any such emerging custom.

### Rovinia lawfully exercised its high seas freedoms

Freedom of fishing in the high seas is qualified only by the obligation that it be exercised with due regard for the interests of other States.[[158]](#footnote-158) “Due regard” requires balancing competing interests, taking into account the nature and importance of the activities, potential harm to other States, and availability of alternative solutions.[[159]](#footnote-159) Rovinia’s issuance of fishing licenses complies fully with this duty, as it does not infringe on the rights of other States. Since there are no concerns about the conservation of yellowfin tuna, Rovinia is permitted to promote the “optimum utilization of such species throughout the region” and Ambrosia is obligated to cooperate with Rovinia in doing so.[[160]](#footnote-160)

In fact, it is Ambrosia’s assertion of exclusive fishing rights that constitutes an interference with Rovinia’s high seas freedoms. States must avoid actions that would adversely affect the legitimate use of the high seas by others.[[161]](#footnote-161) Fish in the high seas are universal resources. This Court has emphasized the need for States to consider the dependence of others on shared fishing grounds.[[162]](#footnote-162) Rovinia’s economy, whose fishing sector comprises nearly 40 percent of its GDP,[[163]](#footnote-163) would be crippled if States failed to respect the right to fish.

Therefore, Rovinia’s issuance of fishing licenses in the Triton Shoal, which is on the high seas, is in accordance with international law.

## Rovinia’s Judicial Seizure and Sale of The Falcon on the Basis of Ambrosia’s Waiver of Immunity Were in Accordance with International Law

Measures to enforce judicial decisions against State property are lawful when the State expressly consents to such actions.[[164]](#footnote-164) President Piretis, acting on behalf of the Transitional Council, validly waived The Falcon’s immunity.[[165]](#footnote-165) The Council was competent to bind Ambrosia due to its effective control of Ambrosia **[A]**. Regardless of its governmental status, the Council exercised elements of governmental authority in the absence of Ms. Zavala’s administration, making its waiver attributable to the Ambrosian State **[B]**.[[166]](#footnote-166)

### The Council was competent to make binding commitments on behalf of the State on account of its effective control of Ambrosia

A government exercising effective control is competent to bind the State through its acts **[1]**. The Council exercised effective control over Ambrosia **[2]**. Its constitutionality is irrelevant to its authority to make binding commitments on behalf of the State, **[3]** and it committed no acts sufficient to deny its right to represent Ambrosia **[4]**.

#### A government exercising effective control can make binding commitments on behalf of a State

International courts are not tasked with determining the legitimate representative of a State and lack the authority to do so with *erga omnes* effect.[[167]](#footnote-167) Rather, their role is to identify the entity capable of acting and speaking on behalf of the State in the specific context.[[168]](#footnote-168)

This principle, embodied in the Estrada Doctrine, emphasizes that the international system should refrain from evaluating the legal capacity of foreign regimes, as such assessments undermine sovereignty.[[169]](#footnote-169) State practice prioritizes recognizing States over governments,[[170]](#footnote-170) affirming the sovereign equality of all States and the principle that “governments *de facto* are necessarily *de jure*.”[[171]](#footnote-171)

When competing claims to authority arise, the government exercising effective control is competent to represent the State.[[172]](#footnote-172) Indeed, international obligations can only be fulfilled by governments with the power to enforce them.[[173]](#footnote-173)

Foreign States may deal with a *de facto* government where it is sufficiently established, has a reasonable expectation of permanence, has the acquiescence of its population, and can fulfill both its internal duties and international obligations.[[174]](#footnote-174)

#### The Council exercised effective control over Ambrosia

On 14 July 2023, the Permola court upheld the validity of the waiver issued by President Piretis,[[175]](#footnote-175) as the Transitional Council exercised effective control over Ambrosian territory **[i]**, commanded the habitual obedience of the majority of its population **[ii],** and demonstrated a reasonable expectation of permanence in its authority[[176]](#footnote-176) **[iii]** at the time of the court’s decision.

##### The Council controlled Ambrosian territory

Effective control is determined by, *inter alia*, factors such as control over territory, government ministries, and State administrative machinery, particularly security forces like the police and military.[[177]](#footnote-177) Even if control is not uniformly effective, a regime qualifies as exercising effective control if it is the primary authority performing governmental functions.[[178]](#footnote-178)

The Council exercised control over all parts of Ambrosian territory.[[179]](#footnote-179) It exercised legislative authority by enacting the Reconstruction Bill and executive power by disbursing reconstruction funds for Dovilina.[[180]](#footnote-180) The Council managed the day-to-day administration, with the police, armed forces, and intelligence agencies reporting directly to it.[[181]](#footnote-181)

By contrast, Ms. Zavala remained outside the territory of Ambrosia for the entirety of the Council’s governance and exercised no governmental functions.

##### The Council enjoyed the habitual obedience of the bulk of the population

The Council commanded substantial support from the Ambrosian population, having been formed in response to widespread protests against the lack of governance by Ms. Zavala and calls for a new administration led by President Piretis. While opposition to the Council arose after the waiver’s issuance in March 2023,[[182]](#footnote-182) pro-Zavala demonstrations posed no threat to the Council’s functioning or authority[[183]](#footnote-183) and did not constitute “disorder of a revolutionary character.”[[184]](#footnote-184)

##### The Council had a reasonable expectation of permanence

Heads of State, or interim leaders like President Piretis, are presumed to represent the State with full powers.[[185]](#footnote-185)The Council, acting as the interim government for President Derey, maintained control over the State apparatus and faced no significant challenges to its authority. Similar caretaker governments, composed of administrators from previous regimes committed to transitioning power, have been recognized as exercising effective control, such as in Egypt following the 2011 demonstrations against President Mubarak.[[186]](#footnote-186)

#### The binding nature of the Council’s conduct is not dependent on its constitutionality

International courts and foreign States lack competence to adjudicate matters of domestic constitutional law.[[187]](#footnote-187) Requiring constitutionality as a condition for legitimacy would undermine popular sovereignty by implying that opposition movements contrary to existing laws cannot establish a new government.[[188]](#footnote-188) Constitutionality is thus “significant but not indispensable” if a government exercises *de facto* control.[[189]](#footnote-189)

As the Council was competent to act and demonstrated control over Ambrosia to the diplomatic community, its obligations were binding regardless of its constitutionality or origin.[[190]](#footnote-190)

#### The Transitional Council has not committed any acts sufficient to deny it a right of representation

A government may only be denied the right of representation if it violates a peremptory norm of international law or refuses to undertake its international obligations.[[191]](#footnote-191) The Transitional Council has neither violated any peremptory norms **[i]**, nor failed to fulfill its international obligations **[ii]**.

##### The Council did not seize power in violation of a peremptory norm of international law

Under the effective control doctrine, the only exception requiring States to withhold recognition of a government is if its formation breaches a peremptory norm of international law,[[192]](#footnote-192) and even this exception is contested.[[193]](#footnote-193)

The Council’s formation did not breach any peremptory norms of international law. After President Derey’s stroke, key cabinet members, including the Ministers of Defense, Foreign Affairs, and Treasury, resigned to establish an interim government under Ms. Piretis.[[194]](#footnote-194) The Council governed peacefully, despite isolated violence during pro-Zavala demonstrations, and voluntarily relinquished power upon President Derey’s return.[[195]](#footnote-195) Thus, the Council retains the right to represent Ambrosia, and Rovinia was under no obligation to withhold recognition.

##### The Council was willing and able to undertake international obligations

The Council’s legitimacy is reinforced by its demonstrated willingness and capacity to fulfill international obligations, a criterion increasingly recognized as essential for governmental status.[[196]](#footnote-196) It agreed to Rovinia’s attachment of The Falcon as an act of comity to resolve a long-standing legal dispute, signaling its commitment to international cooperation.[[197]](#footnote-197) The Council also retained Ambrosia’s delegate at the General Assembly[[198]](#footnote-198) and established diplomatic relations with 25 States that granted it recognition.[[199]](#footnote-199)

### The Council’s waiver is attributable to the State regardless of its governmental status

The actions of a group not formally recognized as the government can still be attributed to the State under ARSIWA.[[200]](#footnote-200) Article 9 provides that a group’s actions are attributable to a State if the group exercises elements of governmental authority in the absence or default of official authorities, particularly in circumstances necessitating such authority.[[201]](#footnote-201)

First, the Transitional Council exercised elements of governmental authority, including enacting legislation, managing State administration, and controlling Ambrosian territory.[[202]](#footnote-202) Article 9 of ARSIWA applies even when a *de facto* government co-exists with a constitutional government, provided it controls territory in the absence of the latter.[[203]](#footnote-203)

Second, the Council exercised governmental authority in the absence and default of official authorities. Ms. Zavala remained outside Ambrosia throughout the Council’s governance, and neither she nor her associates performed any governmental functions related to the domestic administration of Ambrosia.[[204]](#footnote-204)

Third, the circumstances necessitated the exercise of governmental functions by the Council. Such situations arise when regular authorities “are for the time being inoperative.”[[205]](#footnote-205) The Council assumed public power in response to a governance vacuum created by Ms. Zavala’s abandonment of all governmental functions.[[206]](#footnote-206) Under Article 9, attribution arises from the absence of authorities and the necessity for non-governmental figures to “act immediately by using the prerogatives that flow from public power.”[[207]](#footnote-207) Following Hurricane Luna, the worst natural disaster in the northern Paine Peninsula in decades,[[208]](#footnote-208) the Council was compelled to perform critical coordinative and rebuilding functions.

Thus, The Falcon was validly seized pursuant to the Permola court’s lawful execution order and the Council’s waiver.

# PRAYER FOR RELIEF

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

1. **DECLARE THAT** the Court lacks jurisdiction to entertain Ambrosia’s submission (II) 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 does not violate international law;
3. **DECLARE THAT** the issuance of licenses in the entirety of the Triton Shoal, which is on the high seas, does not violate Rovinia’s international maritime obligations, and Rovinia is not obligated to cease issuing fishing licenses in the Triton Shoal; and
4. **DECLARE THAT** Rovinia’s judicial seizure and sale of The Falcon on the basis of the Transitional Council’s waiver of immunity did not violate international law.

Respectfully submitted,

14 January 2025

Agents for Rovinia

1. *Armed Activities on the Territory of the Congo* *(New Application: 2002)* (Dem. Rep. Congo v. Rwanda), Judgment, 2006 I.C.J. 39, ¶88 (Feb. 3). [↑](#footnote-ref-1)
2. Malcolm Shaw, *The International Court of Justice*, *in* International Law 924, 941 (9th ed. 2021); James Crawford, *Sovereignty and Equality of States*, *in* Brownlie’s Principles of Public International Law 431, 431 (9th ed. 2019). [↑](#footnote-ref-2)
3. Statement of Agreed Facts [“**Facts**”], ¶12. [↑](#footnote-ref-3)
4. Facts, ¶¶69–70. [↑](#footnote-ref-4)
5. *Right of Passage over Indian Territory* (Port. v. India), Judgment, 1960 I.C.J. 6, at 35 (Apr. 12) [“**Right of Passage**”]. [↑](#footnote-ref-5)
6. *Id*. See also *Phosphates in Morocco* (It. v. Fr.), Judgment, 1938 P.C.I.J. (ser. A/B) No. 74, at 24 (June 14) [“**Phosphates**”]; *Electricity Company of Sofia and Bulgaria* (Belg. v. Bulg.), Judgment, 1939 P.C.I.J. (ser. A/B) No. 77, at 82 (Apr. 4) [“**Electricity Company**”]; *Certain Property* (Liech. v. Ger.), Judgment, 2005 I.C.J. 6, ¶44 (Feb. 10) [“**Certain Property**”]; and *Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, ¶44 (Feb. 3) [“**Jurisdictional Immunities**”]. [↑](#footnote-ref-6)
7. *Electricity Company*, 1939 P.C.I.J., at 82. [↑](#footnote-ref-7)
8. Christian Tomuschat, *Article 36*, *in* The Statute of the International Court of Justice: A Commentary 712, ¶94 (Andreas Zimmermann et al. eds., 3d ed. 2019). *See also* Hisashi Owada, President, Int’l Ct. of Just., Introductory Remarks at the Seminar on the Contentious Jurisdiction of the International Court of Justice (Oct. 26, 2010). [↑](#footnote-ref-8)
9. *Phosphates*, 1938 P.C.I.J. at 23; *see generally* Rosalind Higgins, *Time and the Law: International Perspectives on an Old Problem*, *in* Themes and Theories: Selected Essays, Speeches, and Writings in International Law 875 (2009). [↑](#footnote-ref-9)
10. *Phosphates*, 1938 P.C.I.J. at 26. [↑](#footnote-ref-10)
11. *Right of Passage*, 1960 I.C.J. at 36. [↑](#footnote-ref-11)
12. *Certain Property*, 2005 I.C.J., ¶51. [↑](#footnote-ref-12)
13. *Phosphates*, 1938 P.C.I.J. at 25–27. [↑](#footnote-ref-13)
14. *Electricity Company*, 1939 P.C.I.J. at 82. [↑](#footnote-ref-14)
15. Facts, ¶12. [↑](#footnote-ref-15)
16. For the substantive issues of jurisdiction and immunity, *see infra* §II. [↑](#footnote-ref-16)
17. International Convention for the Protection of All Persons from Enforced Disappearance arts. 9–11, Dec. 23, 2010, 2716 U.N.T.S 3 [**“ICPPED”**]. [↑](#footnote-ref-17)
18. ICPPED art. 9(1). [↑](#footnote-ref-18)
19. ICPPED, art. 10(2). [↑](#footnote-ref-19)
20. ICPPED, arts. 2, 5, 6(1). [↑](#footnote-ref-20)
21. Facts, ¶¶8, 25–28, 50. [↑](#footnote-ref-21)
22. For treatment of jurisdiction, *see infra* §II.A. [↑](#footnote-ref-22)
23. *Jurisdictional Immunities*, 2012 I.C.J., ¶¶42–44. [↑](#footnote-ref-23)
24. *Id*. ¶44. [↑](#footnote-ref-24)
25. Although the subject matter related to reparations for German actions during WWII, the complaint did not involve the substantive treatment of that matter by the Italian courts. *Id*. [↑](#footnote-ref-25)
26. For treatment of immunity, *see infra* §II.B. [↑](#footnote-ref-26)
27. *See infra* §II.B.2. [↑](#footnote-ref-27)
28. Facts, ¶¶25–28, 50, 60. [↑](#footnote-ref-28)
29. Facts,¶8. [↑](#footnote-ref-29)
30. Facts, ¶12. [↑](#footnote-ref-30)
31. *Id*. [↑](#footnote-ref-31)
32. Vienna Convention on the Law of Treaties art. 31, Jan. 27, 1980, 1155 U.N.T.S. 331 [“**VCLT**”]. [↑](#footnote-ref-32)
33. *See* Facts, ¶11. [↑](#footnote-ref-33)
34. VCLT art. 31(1). [↑](#footnote-ref-34)
35. *Competence of Assembly regarding admission to the United Nations,* Advisory Opinion, 1950 I.C.J. 4, at 8 (Mar. 3). [↑](#footnote-ref-35)
36. Facts, ¶12. (emphasis added). [↑](#footnote-ref-36)
37. Enforced disappearance is incorporated into the Rovinian Criminal Code. Facts, ¶61. [↑](#footnote-ref-37)
38. *See* D.D. Ntanda Nsereko, *The International Criminal Court: Jurisdictional and Related Issues*, 10 Crim. L. F. 87, 114 (1999). [↑](#footnote-ref-38)
39. Markus Benzing, *The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight Against Impunity*, *in* Max Planck Yearbook of United Nations Law 591, 595 (7th ed. 2003). [↑](#footnote-ref-39)
40. VCLT art. 32(1)(a). [↑](#footnote-ref-40)
41. VCLT art. 32. [↑](#footnote-ref-41)
42. Facts, ¶11. [↑](#footnote-ref-42)
43. *Right of Passage*, 1960 I.C.J. at 33. [↑](#footnote-ref-43)
44. Facts, ¶11. [↑](#footnote-ref-44)
45. Crawford, *Jurisdictional Competence*, *supra* note 2, 440. [↑](#footnote-ref-45)
46. Facts, ¶61. [↑](#footnote-ref-46)
47. *See generally* Michael Newton, *Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court*, 167 Mil. L. Rev. 20 (2001). [↑](#footnote-ref-47)
48. William Schabas, *Preamble/Préambule*, *in* The International Criminal Court: A Commentary on the Rome Statute 31, 34–35, 48, 56 (2d ed. 2016). [↑](#footnote-ref-48)
49. *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4, at 24 (Feb. 7); Georg Nolte, *Article 2(7)*, *in* The Charter of the United Nations: A Commentary 241, 431–33 (Bruno Simma et al. eds., 4th ed. 2024). [↑](#footnote-ref-49)
50. Goronwy Jones, The United Nations and the Domestic Jurisdiction of States: Interpretations and Applications of the Non-Intervention Principle 1, 26 (1979). [↑](#footnote-ref-50)
51. Lawrence Preuss, *Article 2(7) of the Charter of the United Nations and Matters of Domestic Jurisdiction*, 74 Recueil Des Cours 547, 568 (1949). [↑](#footnote-ref-51)
52. ICPPED art. 11. [↑](#footnote-ref-52)
53. Facts, ¶68. [↑](#footnote-ref-53)
54. Facts, ¶¶50, 60–61; ICPPED arts. 1–2 (discussing elements of enforced disappearance). [↑](#footnote-ref-54)
55. ICPPED art. 9. [↑](#footnote-ref-55)
56. Facts, ¶61. [↑](#footnote-ref-56)
57. ICPPED art. 10. [↑](#footnote-ref-57)
58. Facts, ¶50. [↑](#footnote-ref-58)
59. ICPPED art. 11. [↑](#footnote-ref-59)
60. Facts, ¶61. [↑](#footnote-ref-60)
61. The provisions in both the Convention Against Torture and the ICPPED are based off the “Hague Formula.” Int’l Law Comm’n [“**ILC**”], Rep. on the Work of Its Sixty-Sixth Session, U.N. Doc. A/69/10, at ¶¶15–16 (2014) [“**ILC Final Report**”]. [↑](#footnote-ref-61)
62. *Questions relating to the Obligation to Prosecute or Extradite* (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶95 (July 20) [“**Obligation to Prosecute**”]; *see also* Kriangsak Kittichaisaree, The Obligation to Extradite or Prosecute 234 (2018); ILC Final Report, ¶¶41–42. [↑](#footnote-ref-62)
63. Comm. Against Torture Dec. 181/2001, U.N. Doc. CAT/C/36/D/181/2001, at §9.7 (May, 19 2006). [↑](#footnote-ref-63)
64. *Summary of Records of the 3148th Meeting*, [2012] 1 Y.B. ILC 135, ¶100, U.N. Doc. A/CN.4/SR.3148 (ICJ President Tomka); *Obligation to Prosecute*, Judgment, 2012 I.C.J. 584, ¶3 (July 20) (declaration by Donoghue, J.). [↑](#footnote-ref-64)
65. ILC Final Report, ¶43. [↑](#footnote-ref-65)
66. Kittichaisaree, The Obligation to Extradite or Prosecute, *supra* note 62, 14. [↑](#footnote-ref-66)
67. ICPPED pmbl. [↑](#footnote-ref-67)
68. Kittichaisaree, The Obligation to Extradite or Prosecute, *supra* note 62, 232. [↑](#footnote-ref-68)
69. ILC Final Report, ¶23; *Obligation to Prosecute*, 2012 I.C.J. at ¶86. [↑](#footnote-ref-69)
70. Facts, ¶50. [↑](#footnote-ref-70)
71. Facts, ¶¶8, 57. [↑](#footnote-ref-71)
72. Clarifications, ¶5. [↑](#footnote-ref-72)
73. Kittichaisaree, The Obligation to Extradite or Prosecute, *supra* note 62, 234. [↑](#footnote-ref-73)
74. U.N. Secretary-General, *The Scope and Application of the Principle of Universal Jurisdiction*, ¶10, U.N. Doc. A/79/269 (Aug. 1, 2024) [“**UNGA Report**”]; *see also* *Prosecutor v. Tadić*, Case No. IT-94-1-I, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶62 (ICTY Oct. 2, 1995); *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment, ¶156 (ICTY Dec. 10, 1998). [↑](#footnote-ref-74)
75. Roger O’Keefe, *Universal Jurisdiction: Clarifying the Basic Concept*, 2 J. Int’l Crim. Just. 735, 744–45 (2004); Crawford, *Jurisdictional Competence*, *supra* note 2, 451. [↑](#footnote-ref-75)
76. UNGA Report, ¶16; *see generally* Máximo Langer & Mackenzie Eason, *The Quiet Expansion of Universal Jurisdiction*, 30 Eur. J. Int’l L. 779 (2019).  [↑](#footnote-ref-76)
77. *Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 63, ¶¶46, 49 (Feb. 14) (separate opinion by Higgins, J. et al.) [“**Arrest Warrant**”]. [↑](#footnote-ref-77)
78. *Id.* ¶52. [↑](#footnote-ref-78)
79. UNGA Report, ¶10, annex (citing domestic codes in Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bulgaria, Burkina Faso, Canada, Chile, Costa Rica, Croatia, Cuba, Cyprus, Czechia, Denmark, Dominican Republic, El Salvador, Estonia, Finland, Georgia, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Morocco, Netherlands, New Zealand, Norway, Panama, Portugal, Republic of Korea, Moldova, Senegal, Spain, Sweden, Switzerland, Togo, Türkiye, Turkmenistan, and Ukraine). [↑](#footnote-ref-79)
80. Anne Lagerwall & Marie-Laurence Hébert-Dolbec, *Universal* *Jurisdiction*, *in* Max Planck Encyclopedia of International Law, ¶24 (July 2022). [↑](#footnote-ref-80)
81. Rome Statute of the International Criminal Court art. 58(1)(a), July 17, 1998, 2187 U.N.T.S. 90 [“**Rome Statute**”]. [↑](#footnote-ref-81)
82. ICPPED art. 5; *see also* William Schabas, *Crimes against humanity/Crimes contre l‘humanité*, *in* The International Criminal Court: A Commentary on the Rome Statute 145, 164 (2d ed. 2016); Guénaël Mettraux, *Chapeau or Contextual Elements*, *in* International Crimes: Law and Practice; Vol. II: Crimes Against Humanity 194, 270–77 (2020). [↑](#footnote-ref-82)
83. Facts, ¶25. [↑](#footnote-ref-83)
84. *Id.* [↑](#footnote-ref-84)
85. Mettraux, *supra* note 82, at 271–72, n. 331. [↑](#footnote-ref-85)
86. *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision on Charges, ¶151 (June 15, 2009). [↑](#footnote-ref-86)
87. Facts, ¶¶8, 25. [↑](#footnote-ref-87)
88. Mettraux, *supra* note 82, at 271. [↑](#footnote-ref-88)
89. UNGA Report, annex. (Argentina, Colombia, France, Kyrgyzstan, Morocco, Netherlands, Panama, Thailand, Ukraine, Greece, and Spain expressly provide for universal jurisdiction over enforced disappearances). [↑](#footnote-ref-89)
90. Crawford, *Privileges and Immunities of Foreign States*, *supra* note 2, 477–78; *see also* Joanne Foakes, The Position of Heads of State and Senior Officials in International Law 7 (2014); Rosanne van Alebeek, The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law 158–99 (2008). [↑](#footnote-ref-90)
91. ILC, Rep. on the Work of Its Seventy-Third Session, U.N. Doc. A/77/10, at 190 (2022) [“**ILC Draft Articles on Immunities**”]. [↑](#footnote-ref-91)
92. *Certain Questions of Mutual Assistance in Criminal Matters* (Djib. v. Fr.), Judgment, 2008 I.C.J. 177, ¶170 [“**Questions of Mutual Assistance**”]. [↑](#footnote-ref-92)
93. ILC Draft Articles on Immunities, at 215. [↑](#footnote-ref-93)
94. *Id*. at 190. [↑](#footnote-ref-94)
95. Claudio Grossman Guiloff (Special Rapporteur), *First Rep. on immunity of State officials from foreign criminal jurisdiction*, U.N. Doc. A/CN.4/775, ¶104 (May 3, 2024) [“**Special Rapporteur Report 2024**”]. [↑](#footnote-ref-95)
96. *Arrest Warrant*,2002 I.C.J., ¶61. [↑](#footnote-ref-96)
97. Facts, ¶27. [↑](#footnote-ref-97)
98. *See e.g.*, Crawford, *Privileges and Immunities of Foreign States*, *supra* note 2, at 477–78; van Alebeek, *supra* note 90, at 103–57; Foakes, *supra* note 90, 543–76. [↑](#footnote-ref-98)
99. ILC Draft Articles on Immunities, at 190; Special Rapporteur Report 2024, ¶140. [↑](#footnote-ref-99)
100. *Letelier v. Republic of Chile*, 488 F. Supp. 665, 673 (D.D.C. 1980). [↑](#footnote-ref-100)
101. Cour d’appel Paris, Section Seven, Second Investigating Chamber, June 13, 2013, *Teodoro Nguema Obiang Mangue et autres.*  [↑](#footnote-ref-101)
102. *Re Pinochet*, Tribunal de Première Instance Brussels, Nov. 6, 1998, 119 I.L.R. 345; District Court of Livadeia, *Prefecture of Voiotia v. Federal Republic of Germany*, 137/1997 (Oct. 30, 1997) (Greece). [↑](#footnote-ref-102)
103. ILC Draft Articles on Immunities, at 213. [↑](#footnote-ref-103)
104. Facts, ¶8 (emphasis added). [↑](#footnote-ref-104)
105. *R v. Bow St. Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No. 3)* [1999] UKHL 17, [2000] 1 AC 147; *Re Pinochet*, Tribunal de Première Instance Brussels, Nov. 6, 1998, 119 I.L.R. 345; *In Re Hussein*, Oberlandesgericht [Higher Regional Court] Cologne, May 16, 2000, 2 Zs 1330/99, ¶11 (Ger.). [↑](#footnote-ref-105)
106. *See, e.g.*, Organic Law No. 16/2015 (2015) (Spain) (on privileges and immunities of foreign States and international organizations with headquarters or offices in Spain and international conferences and meetings held in Spain); Law No. 24488 art. 3, May 31, 1995 (Arg.); 28 U.S.C. §1605A (creating a “[t]errorism exception to the jurisdictional immunity of a foreign state”). [↑](#footnote-ref-106)
107. Andrea Bianchi, *Denying State Immunity to Violators of Human* *Rights*, 46 Austrian J. Pub. Int’l L. 195, 195 (1994). [↑](#footnote-ref-107)
108. *Arrest Warrant,* Judgment, 2002 I.C.J. 63, ¶85 (separate opinion by Higgins, J. et al.). [↑](#footnote-ref-108)
109. ILC Draft Articles on Immunities, at 190–91. [↑](#footnote-ref-109)
110. *Id*. at 240. [↑](#footnote-ref-110)
111. ICPPED pmbl. [↑](#footnote-ref-111)
112. ICPPED art. 2. [↑](#footnote-ref-112)
113. ILC Draft Articles on Immunities, at 234. [↑](#footnote-ref-113)
114. ILC, Rep. on the Work of Its Seventy-First Session, U.N. Doc. A/74/10, at 146–47 (2019). [↑](#footnote-ref-114)
115. Dinah Shelton, *Jus Cogens in Recent Legal Scholarship*, in Jus Cogens 86, 86 (2021). [↑](#footnote-ref-115)
116. *Arrest Warrant*, 2002 I.C.J. 95, ¶7 (Feb. 14) (dissenting opinion by Al-Khasawneh, J.); K. Parlett, *Immunity in civil proceedings for torture: the emerging exception*, Eur. Hum. Rts. L. Rev. 49, 49–66 (2006). [↑](#footnote-ref-116)
117. U.N. Convention on the Law of the Sea arts. 87, 116, Nov. 16, 1994, 1833 U.N.T.S. 397. [“**UNCLOS**”]. [↑](#footnote-ref-117)
118. Facts, ¶22. [↑](#footnote-ref-118)
119. Facts, ¶13. [↑](#footnote-ref-119)
120. *See* *North Sea Continental Shelf* (Ger. v. Den.), Judgment, 1969 I.C.J. 3, ¶96 (Feb. 20). [“**North Sea**”]; *Fisheries* (U.K. v. Nor.), Judgment, 1951 I.C.J. 116, 133 (Dec. 18) (asserting the “close dependence” of the territorial sea upon the land) [“**Fisheries**”]. [↑](#footnote-ref-120)
121. UNCLOS art. 5. [↑](#footnote-ref-121)
122. *Continental Shelf* (Libyan Arab Jamahiriya v. Malta), Judgment, 1985 I.C.J. 13, ¶49 (June 3). [↑](#footnote-ref-122)
123. Facts, ¶22. [↑](#footnote-ref-123)
124. UNCLOS art. 57. [↑](#footnote-ref-124)
125. *Maritime Delimitation and Territorial Questions* (Qatar v. Bahr.), Judgment, 2001 I.C.J. 40, ¶184 (Mar. 16) (emphasis added) [“**Qatar v. Bahrain**”]. [↑](#footnote-ref-125)
126. Coalter G. Lathrop, J. Ashley Roach & Donald R. Rothwell, *Baselines under the International Law of the Sea: Reports of the International Law Association Committee on Baselines Under the International Law of the Sea*, 2 Brill Rsch. Persps. L. Sea 1, 41 (2019). [↑](#footnote-ref-126)
127. *See, e.g.*, UNCLOS arts. 6, 10, 13, 47 (defining the low-water line with reference to geographical features of the coast and land); ILC, Sea-level rise in relation to international law, U.N. Doc. A/CN.4/740, at 28, ¶78 [“**Issues Paper**”]. [↑](#footnote-ref-127)
128. UNCLOS art. 7(3); *see also Fisheries,* 1951 I.C.J. at 132 (asserting this principle). [↑](#footnote-ref-128)
129. Int’l L. Ass’n Sofia Conference, *Baselines Under the International Law of the Sea, Final Report,* 31 (2012). [↑](#footnote-ref-129)
130. UNCLOSart. 7(2). [↑](#footnote-ref-130)
131. The ICJ has previously invoked this canon of statutory interpretation. *See, e.g.*,Correspondence, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1970 I.C.J. Correspondence, 638–39 (Nov. 6), https://www.icj-cij.org/sites/default/files/case-related/53/11825.pdf. [↑](#footnote-ref-131)
132. Renate Platzöder, 4 Third United Nations Conference on The Law of The Sea: Documents 181 (1983). [↑](#footnote-ref-132)
133. UNCLOS art. 76(9). [↑](#footnote-ref-133)
134. *See* David Caron, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level*, 17 Ecology L. Q. 621, 635 (1990). [↑](#footnote-ref-134)
135. *Bay of Bengal Maritime Boundary Arbitration* (Bangl. v. India), No. 2010-16, Final Award, ¶¶214–15 (Perm. Ct. of Arb. 2014). [↑](#footnote-ref-135)
136. *Fisheries*, 1951 I.C.J. at 132. [↑](#footnote-ref-136)
137. *Maritime Delimitation in the Black Sea* (Rom. v. Ukr.), Judgment, 2009 I.C.J. 61, ¶¶131, 137 (Feb. 3); *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal* (Bangl. v. Myan.), Case No. 16, Judgment of Mar. 14, 2012, ¶264, https://www.itlos.org/fileadmin/itlos/documents/cases/case\_no\_16/published/C16-J-14\_mar\_12.pdf; s*ee, e.g.*, *Qatar v. Bahrain*, 2001 I.C.J., ¶195. [↑](#footnote-ref-137)
138. *North Sea*, 1969 I.C.J., ¶73. [↑](#footnote-ref-138)
139. *Id.* ¶77. [↑](#footnote-ref-139)
140. The following countries have deposited new coordinates that supersede geographical coordinates of points and charts that had been previously deposited: Australia, Belgium, Brazil, Chile, China, Cook Islands, Cyprus, Fiji, France, Iraq, Japan, Lebanon, Madagascar, Papua New Guinea, Norway, Samoa, Spain, Seychelles, Tuvalu, and United Arab Emirates. *See* U.N. Division for Ocean Affairs and the Law of the Sea, *Deposit of Charts*, https://www.un.org/depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm (last updated May 12, 2024). [↑](#footnote-ref-140)
141. *See* Bogdan Aurescu & Nilüfer Oral (Co-Chairs of Study Group on sea-level rise in relation to international law), *Sea-level rise in relation to international law*, U.N. Doc. A/CN.4/740, n. 178 (Feb. 28, 2020) (citing the submission of the Netherlands to the ILC, forwarded through note verbale No. DC2-0566 of 27 December 2019 to the United Nations). [↑](#footnote-ref-141)
142. Report of the BaselinesCommittee, at 31. [↑](#footnote-ref-142)
143. Facts, ¶5. [↑](#footnote-ref-143)
144. Permanent Mission of the U.K. to the U.N., Submission to the ILC, 2 (Jan. 10, 2020) https://legal.un.org/ilc/sessions/72/pdfs/english/slr\_uk.pdf. For similar submissions by other States declaring their adoption of ambulatory baselines, see Issues Paper, ¶78. [↑](#footnote-ref-144)
145. *Chia Hsing v. Rankin*, 141 CLR 182, 195 (1978). [↑](#footnote-ref-145)
146. The U.S. Supreme Court concluded that “the shifts in a low-water line” “lead to a shift in the baseline for measuring a maritime zone.” *United States v. Alaska*, 521 U.S. 1, 31 (1997). [↑](#footnote-ref-146)
147. Pac. Islands F., Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise, at 2 (Aug. 6, 2021). [↑](#footnote-ref-147)
148. *North Sea*, 1969 I.C.J., ¶71; *Right of Passage*, 1960 I.C.J. at 37. [↑](#footnote-ref-148)
149. *North Sea*, 1969 I.C.J., ¶74. [↑](#footnote-ref-149)
150. Facts, ¶15. [↑](#footnote-ref-150)
151. *North Sea*, 1969 I.C.J., ¶62. [↑](#footnote-ref-151)
152. Michael Wood (Special Rapporteur on the Formation and Evidence of Customary International Law), *Third report on identification of customary international law*, ¶85, U.N. Doc. A/CN.4/682 (Mar. 27, 2015); *Fisheries*, 1951 I.C.J. at 131. [↑](#footnote-ref-152)
153. Facts, ¶¶14, 18. [↑](#footnote-ref-153)
154. Facts, ¶14. [↑](#footnote-ref-154)
155. Facts, ¶20. [↑](#footnote-ref-155)
156. Facts, ¶33. [↑](#footnote-ref-156)
157. *Asylum* (Colom. v. Peru), Judgment, 1950 I.C.J. 194, at 277–78 (Nov. 20). [↑](#footnote-ref-157)
158. UNCLOS art. 87. [↑](#footnote-ref-158)
159. *The Chagos Marine Protected Area Arbitration* (Mauritius v. U.K.), No. 2011-03, Award, ¶519 (Perm. Ct. of Arb. 2015). [↑](#footnote-ref-159)
160. UNCLOS art. 64(1). [↑](#footnote-ref-160)
161. ILC, Rep. on the Work of Its Eighth Session, U.N. Doc. A/3159, at 24 (1956). [↑](#footnote-ref-161)
162. *Fisheries Jurisdiction* (U.K. v. Ice.), Judgment, 1974 I.C.J. 175, ¶62 (July 25). [↑](#footnote-ref-162)
163. Facts, ¶4. [↑](#footnote-ref-163)
164. G.A. Res. 59/38, annex, United Nations Convention on Jurisdictional Immunities of States and Their Property, art. 19 (Dec. 2, 2004) [“**UNCJISP**”]; *Jurisdictional Immunities*, 2012 I.C.J., ¶¶115–20. [↑](#footnote-ref-164)
165. Facts, ¶44. [↑](#footnote-ref-165)
166. ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries, U.N. Doc. A/56/10, art. 19 (2001) [“**ARSIWA**”]. [↑](#footnote-ref-166)
167. *Valores Mundiales and Consorcio Andino v. Venez.*, ICSID Case No. ARB/13/11, Procedural Resolution No. 2, ¶¶31–32 (Aug. 29, 2019) [“**Mundiales**”]. [↑](#footnote-ref-167)
168. *Id.* [↑](#footnote-ref-168)
169. Philip C. Jessup, *The Estrada Doctrine*,25Am. J. Int’l L., 719 (1931). [↑](#footnote-ref-169)
170. Stefan Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile 6 (2010). [↑](#footnote-ref-170)
171. Jessup, *The Estrada Doctrine*, *supra* note 169,721. [↑](#footnote-ref-171)
172. *Aguilar-Amory and Royal Bank of Can. Claims* (Gr. Brit. v. Costa Rica), 1 R.I.A.A. 369, 377 (1923) [“**Tinoco**”]; *See also*Press Release, Int’l Crim. Ct., The Determination of the Office of the Prosecutor on the communication received in relation to Egypt, Doc. ICC-OTP-20130508-PR1003 (May 8, 2014) [“**Prosecutor Determination Press Release**”]; Hersch Lauterpacht, Recognition in International Law 639 (1947). [↑](#footnote-ref-172)
173. U.N. Secretary-General, Letter dated Mar. 8, 1950 from the Secretary-General to the President of the Security Council, U.N. Doc. S/1466, 6 (Mar. 9, 1950). [↑](#footnote-ref-173)
174. *Tinoco*, 1 R.I.A.A. at 378; John Bassett Moore, 1 Dig. Int’l L. 249 (1906). [↑](#footnote-ref-174)
175. Facts, ¶54. [↑](#footnote-ref-175)
176. Prosecutor Determination Press Release. [↑](#footnote-ref-176)
177. Special Advisory Council for Myanmar, *SAC-M Briefing Paper: Recognition of Government* 4 (Aug. 23, 2021), https://specialadvisorycouncil.org/wp-content/uploads/2021/08/SAC-M-Briefing-Paper-Recognition-of-Governments-ENGLISH.pdf [“**Myanmar Briefing Paper**”]; Hans Martin Blix, *Contemporary Aspects of Recognition*, 130 Recueil Des Cours 586, 642 (1970). [↑](#footnote-ref-177)
178. *Id.* [↑](#footnote-ref-178)
179. Facts, ¶48. [↑](#footnote-ref-179)
180. Facts, ¶¶38, 48. [↑](#footnote-ref-180)
181. Facts, ¶47. [↑](#footnote-ref-181)
182. *Id.*  [↑](#footnote-ref-182)
183. Facts, ¶48. [↑](#footnote-ref-183)
184. *Tinoco*, 1 R.I.A.A. at 379. [↑](#footnote-ref-184)
185. VCLT art. 7. [↑](#footnote-ref-185)
186. Christine Bell, *Constitution Brief: Interim Governance Arrangements*, Int’l IDEA, 2 (Oct. 2021), https://constitutionnet.org/sites/default/files/2021-11/interim-governance-arrangements-myanmar\_0.pdf. [↑](#footnote-ref-186)
187. *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Recommendation of Lord Phillips (2020), ¶90; *Mundiales*, ¶¶31–32; Statute of the International Court of Justice art. 36, Oct. 24, 1945, 59 Stat. 1055. [↑](#footnote-ref-187)
188. *Tinoco*, 1 R.I.A.A. at 381. [↑](#footnote-ref-188)
189. Niko Pavlopoulos, The Identity of Governments in International Law 106 (2024). [↑](#footnote-ref-189)
190. Jack McNally, *Representation, Recognition, Resistance: Rival Governments Before the International Court of Justice*,61 Columbia J. Transnat’l L. 2, 267 (2023). [↑](#footnote-ref-190)
191. Stefan Talmon, *Who is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law*, *in* The Reality of International Law: Essays in Honour of Ian Brownlie 499, 523 (Guy S. Goodwin-Gill & Stefan Talmon eds., 1999). [↑](#footnote-ref-191)
192. *See* Myanmar Briefing Paper, at 4; ARSIWA art. 41(2); Martin Dawidowicz, *The Obligation of Non-Recognition of an Unlawful Situation*, *in* The Law of International Responsibility 677, 684; ILC, Rep. on the Work of Its Seventy-Third Session, U.N. Doc. A/77/10, at 70 (2022). [↑](#footnote-ref-192)
193. Pavlopoulos, *supra* note 189, 82–83. [↑](#footnote-ref-193)
194. Facts, ¶37. [↑](#footnote-ref-194)
195. *See supra* IV.A.1. [↑](#footnote-ref-195)
196. Pavlopoulous, *supra* note 189, 134; Poeliu Dai, *Recognition of States and Governments under International Law with Special Reference to Canadian Postwar Practice and the Legal Status of Taiwan (Formosa)*, 3 Can. Y.B. Int’l L. 290, 291 (1965). [↑](#footnote-ref-196)
197. Facts, ¶44. [↑](#footnote-ref-197)
198. Facts, ¶49. [↑](#footnote-ref-198)
199. *Id.* [↑](#footnote-ref-199)
200. ARSIWA has been used to attribute governmental responsibility even for non-wrongful acts. *See generally Toto Costruzioni Generali S.P.A. v. The Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, ¶¶51–53 (Sep. 11, 2009) (holding that a signature by a group exercising governmental authority was attributable to the State under ARSIWA). [↑](#footnote-ref-200)
201. ARSIWA art. 9. [↑](#footnote-ref-201)
202. *See* *supra* §IV.A.1; *Kenneth P. Yeager v. Islamic Republic of Iran*, Iran-U.S. Claims Tribunal Case No. 10199, Award No. 324-10199-1 (1987) (applying the draft formulation of Art. 9 and holding that armed revolutionary groups were exercising governmental authority when they arrested attackers, controlled small territories, and commanded a portion of the State budget). [↑](#footnote-ref-202)
203. Katharine Fortin, *The Relevance of Article 9 of the Articles on State Responsibility for the Internationally Wrongful Acts of Armed Groups*, *in* Non-State Actors and International Obligations 371, 378 (J. Summers and A. Gough eds., 2018). [↑](#footnote-ref-203)
204. Facts, ¶¶40–54. [↑](#footnote-ref-204)
205. ARSIWA, 49. [↑](#footnote-ref-205)
206. Djamchid Momtaz, *Attribution of Conduct to the State: State Organs and Entities Empowered to Exercise Elements of Governmental Authority*, *in* The Law of International Responsibility 237, 244 (James Crawford et al. eds., 2010). [↑](#footnote-ref-206)
207. Olivier de Frouville, *Attribution of Conduct to the State: Private Individuals*, *in* The Law of International Responsibility 258, 272 (James Crawford et al. eds., 2010). [↑](#footnote-ref-207)
208. Facts, ¶29. [↑](#footnote-ref-208)