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**THE 2025 PHILIP C. JESSUP INTERNATIONAL LAW   
MOOT COURT COMPETITION**

**CASE CONCERNING THE NAEGEA SEA**



**THE UNION OF AMBROSIA**

**(APPLICANT)**

**v.**

**THE REPUBLIC OF ROVINIA**

**(RESPONDENT)**

**IN THE INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**

**MEMORIAL FOR THE APPLICANT**

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**STATEMENT OF JURISDICTION**

The Union of Ambrosia (“**Ambrosia**”) filed an Application with the Registry of the International Court of Justice, pursuant to Article 40(1) of the Statute of the International Court of Justice, instituting proceedings against the Republic of Rovinia (“**Rovinia**”) with regard to the dispute concerning the Naegea Sea and invoked the compromissory clause of Article XXI of the Organization for Cooperation and Development in the Paine Charter. The parties jointly notified this Court of their Statement of Agreed Facts on 30 August 2024.

**STATEMENT OF FACTS**

**BACKGROUND**

There are seven States in the Paine Peninsula facing the Naegea Sea, with the Union of Ambrosia (“**Ambrosia**”) located at the northernmost and the Republic of Rovinia (“**Rovinia**”) at the southernmost. Most of Ambrosia’s territory is under 10 meters above sea-level, while most of Rovinia’s territory is several hundred meters higher. Both States use normal baselines, asserting the exclusive right to fish up to 200 nautical miles from their baselines.

The Naegea Sea is rich in various tuna species, including yellowfin, typically found over 200 nautical miles off the coast. The economies of the seven States are reliant on fishing.

**THE “IMPLEMENTING THE LAW FOR A SAFER AMBROSIA” PROGRAM**

In 2013, President Derey, Ambrosia’s head of State and government, ordered Ms. Gertrude Cross, head of the Ministry of the Interior, to address the rise in illegal drugs and weapons in Ambrosia. The “Implementing the Law for a Safer Ambrosia” (“**ILSA**”) program soon launched, resulting in increased arrests, confessions, convictions, and reduced public concern.

In August 2022, Human Rights International(“**HRI**”**)** reported that the National Police had detained Ambrosian citizens under ILSA without being charged between 2017 and 2020, with all detentions occurring on Ambrosian soil. On 7 September 2022, the Ambrosian Prosecutor General conducted an investigation and published an interim report six weeks later. As a result, five police officers were held accountable and are now serving prison sentences. No charges were brought against Ms. Cross due to insufficient evidence. The investigation revealed the location where the detainees had been held.

In June 2023, HRI updated its report, suggesting Ms. Cross’s direct involvement in the abductions. The Ambrosian Prosecutor General soon reopened the investigation targeting Ms. Cross in June 2023, which remained ongoing when Rovinia asserted jurisdiction.

**THE ESTABLISHMENT OF THE REGIONAL ORGANIZATION IN THE PENINSULA**

In 2014, under the proposal of President Derey, the Peninsula States agreed to establish the “Organization for Cooperation and Development in the Paine” (“**OCDP**”) to address issues in the Naegea Sea such as drug trafficking, sustainable use of resources, and climate change. All member States signed the OCDP Charter in 2015 and ratified it by March 2016. The States agreed to incorporate a compromissory clause in the Charter, effective on 17 March 2021.

**ROVINIA’S ARREST AND PROSECUTION OF MS. GERTRUDE CROSS**

In November 2022, Cross resigned as Minister and moved to Rovinia. On 1 May 2024, the Rovinian General Prosecutor filed charges against her for enforced disappearance, citing evidence from the updated HRI report. One day later, the Permola Criminal Court issued an arrest warrant, and Ms. Cross was detained at her in-laws’ residence and remains in detention to date.

**ROVINIA’S OBJECTION TO AMBROSIA’S REQUESTS FOR THE RELEASE OF MS. GERTRUDE CROSS**

On 3 May 2024, President Derey demanded her release, asserting her immunity from prosecution outside Ambrosia. Rovinia, however, denied the request. On 10 May 2024, the Ambrosian Prosecutor General requested her extradition based on a 2002 bilateral extradition treaty between Ambrosia and Rovinia, but Rovinia did not respond. Upon Ms. Cross’s arrest, Ambrosia’s Ambassador in Rovinia informed the authorities of Cross’s immunity as an Ambrosian State official, but the Permola Criminal Court rejected this claim.

**PRACTICE OF FIXING BASELINES ON THE PENINSULA**

Paine Peninsula’s coastline has receded an average of 1.5 meters annually since the 1980s. The recessions have been accelerating, with Ambrosia being the most affected and Rovinia being the least affected.

On November 23, 2015, Ambrosia released the Baseline Freezing Law of 2015 (**the** **“Freezing Law”**), providing that the baselines from which the breadth of Ambrosia’s territorial sea and the exclusive economic zone(“**EEZ**”) are measured shall be fixed at the low-water lines existing onNovember 1, 2015.

Rovinia did not comment when Ambrosia adopted the “Freezing Law” but sent notes verbales to each OCDP Member State when they were about to adopt similar legislations.

By August 2016, all OCDP members except Rovinia had adopted such legislation. Since then, Ambrosia has submitted a resolution endorsing fixed baselines at each annual meeting of the OCDP Assembly, which was agreed upon by all members except Rovinia. Only until 6 March 2023 did the OCDP Assembly adopt a relevant resolution because of Rovinia’s abstention.

**ROVINIA’S ISSUANCE OF LICENSES TO FISH IN THE TRITON SHOAL**

In 2018, it was noted that significant concentrations of tuna appeared in the area of Triton Shoal. By 2018, Ambrosia’s coastlines had receded to such an extent that all of the Triton Shoal would be outside its 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. Ambrosia sent a series of notes verbales, protesting the licenses and claiming that this area was in Ambrosia’s EEZ pursuant to the “Freezing Law”, to which Rovinia did not reply.

**THE ACTING PRESIDENT AND TRANSITIONAL COUNCIL OF AMBROSIA**

On 25 April 2022, Vice-President Zavala became the Acting President following the Ambrosian constitution.

On 23 February 2023, Hurricane Luna struck the village of Dovilina. While Ms. Zavala was completing a mission in Geneva, her office expressed condolences. The National Assembly passed and sent Ms. Zavala a Reconstruction Bill granting approximately United States Dollar 60 million to the local government of Dovilina to rebuild the affected areas.

Ms. Zavala withheld her signature upon return, explaining that the Reconstruction Bill lacked appropriate control. She left for Doha two days later for an international conference.

Protests then erupted in Dovilina. Ms. Rooney Piretis, a leading protester, established a Transitional Council supported by recently resigned ministers and flag officers of the armed forces on 13 March 2023. In response, Ms. Zavala condemned the coup and declared the constitutional government of Ambrosia fully functional and will be operating from Caron.

Though the Transitional Council enjoyed substantial support among the general population, groups supporting Ms. Zavala held demonstrations in Ambrosia, which escalated into violent clashes and resulted in injuries and arrests. Nonetheless, the Transitional Council soon controlled all parts of Ambrosia. By June 15, 2023, 15 States still recognized Ms. Zavala as acting president of Ambrosia, while 25 recognized the Transitional Council.

On 6 September 2023, President Derey had awakened. The Transitional Council dissolved immediately upon his return on 19 December.

**ROVINIA’S SEIZURE AND SALE OF THE FALCON**

The Falcon has been intended for Ambrosian exclusive government use since 1 November 2019. On 15 March 2023, Rovinia impounded it due to the *O’Mander Corp. v.* *Union of Ambrosia* Case.

On 28 March, two legal teams claiming to represent Ambrosia appeared in the Permola court of Rovinia. The one representing the Transitional Council waived The Falcon’s immunity, while the other representing Ms. Zavala did not did not. On 14 July 2023, pursuant to the Foreign Minister’s response, the court declared that the immunity of The Falcon was waived.

**SUMMARY OF PLEADINGS**

**First Pleading**

The Court has jurisdiction to entertain the Union of Ambrosia (“**Ambrosia**”)’s submission (II).

The Court has jurisdiction according to Article XXI(a) of the Organization for Cooperation and Development in the Paine (“**OCDP**”) Charter because a dispute of a juridical nature exists between Ambrosia and Rovinia. Furthermore, the Court’s jurisdiction is not excluded under Article XXI(b) of the OCDP Charter.

Firstly, the facts or situations that gave rise to the present dispute refer to Rovinia’s prosecution and arrest against Ms. Cross in May 2024, which occurred after the entry into force of Article XXI of the OCDP Charter. Thus, the Court’s jurisdiction is not barred by *ratione temporis* limitation under Article XXI(b)(i).

Secondly, the legal grounds invoked concern the rules on jurisdiction and immunity, which is a question of international law. Therefore, the present dispute is not essentially within Rovinia’s domestic jurisdiction and is not excluded under Article XXI(b)(ii).

**Second Pleading**

The Republic of Rovinia (“**Rovinia**”) violated the international legal rules on jurisdiction and immunity by arresting and prosecuting Ms. Gertrude Cross.

Firstly, Rovinia violated the international legal rules on jurisdiction allocation. According to customary international law, Ambrosia holds primary jurisdiction as the State where the crime was committed. The primary jurisdiction is not precluded since Ambrosia is both willing and able to exercise jurisdiction. Therefore, the universal jurisdiction exercised under the International Convention for the Protection of All Persons from Enforced Disappearance (“**ICPPED**”) Article 9(2) by Rovinia is unlawful.

Secondly, Rovinia violated the customary international law on immunity. Customary international law recognizes that immunity *ratione materiae* applies even in involving violations of *jus cogens* crimes. Accordingly, Ms. Cross is entitled to immunity *ratione materiae*, rendering Rovinia’s arrest and prosecution unlawful. Furthermore, Ms. Cross’s immunity is not precluded by the ICPPED.

Thirdly, Rovinia must bear State responsibilities under customary international law. The Court shall declare Rovinia’s arrest and prosecution unlawful and Rovinia must cease its violation, release Ms. Cross, and extradite her to Ambrosia in accordance with the bilateral extradition treaty.

**Third Pleading**

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

Firstly, Rovinia violated Article 56(1) and Article 62 of the United Convention on the Law of the Sea (“**UNCLOS**”). Triton Shoal still lies within Ambrosia’s exclusive economic zone (“**EEZ**”) since Ambrosia’s fixed baseline is permitted under both UNCLOS and regional customary law. Ambrosia enjoys the exclusive right to manage living resources in its EEZ under Article 56(1) of the UNCLOS, which is substantiated under Article 62. Rovinia failed to ensure its nationals comply with Ambrosia’s legislation.

Secondly, Rovinia violated Article 64 of the UNCLOS by negotiating with Ambrosia neither directly nor through OCDP regarding the conservative measures of yellowfin tuna.

Thirdly, Rovinia’s issuance of licenses constitutes a wrongful act. Rovinia shall cease issuing licenses since it is continuing and the UNCLOS is still in force. Rovinia shall revoke all issued licenses since they cause injuries to Ambrosia, and revocation is neither materially impossible nor disproportionate.

**Forth Pleading**

Rovinia’s seizure and sale of Ambrosia’s aircraft is a violation of Ambrosia’s immunity from post-judgment measures of constraint since it wrongfully recognized the Transitional Council’s waiver of immunity.

Firstly, Rovinia should have recognized Ms. Zavala’s refusal to waive immunity on behalf of Ambrosia because customary international law on government recognition values constitutionality over effective control, and Ms. Zavala’s government is the only constitutional government of Ambrosia.

Alternatively, Rovinia should still have recognized Ms. Zalava’s refusal to waive immunity on behalf of Ambrosia since her government exercised effective control and the recognition of the Transitional Council would constitute a premature recognition, which would be void of effect.

Additionally, other exceptions to the State’s immunity from post-judgment of constraint are not met.

As a result, the court should declare Rovinia’s violation of international law since damages cannot be made good by restitution or compensation.

**PLEADINGS**

1. **THE COURT HAS JURISDICTION TO ENTERTAIN AMBROSIA’S SUBMISSION (II).**

According to Article 36 of the Statute of the International Court of Justice (“**ICJ Statute**”), the jurisdiction of theCourt may be established by the *compromis*,[[1]](#footnote-1) compromissory clauses in treaties conferring jurisdiction,[[2]](#footnote-2) or declarations by States accepting this Court’s compulsory jurisdiction.[[3]](#footnote-3)

In the present case, under Article 36(1) of the ICJ Statute, the Court’s jurisdiction arises under Article XXI of the Charter of the Organization for Cooperation and Development in the Paine (“**OCDP**”),[[4]](#footnote-4) which serves as the compromissory clause. Specifically, **[A]** the Court has jurisdiction over juridical disputes arising between the Union of Ambrosia (“**Ambrosia**”) and the Republic of Rovinia (“**Rovinia**”) under Article XXI(a), and **[B]** the Court’s jurisdiction is not excluded by Article XXI(b).

1. **The Court has jurisdiction according to Article XXI(a) of the OCDP Charter.**

Under Article XXI(a) of the OCDP Charter, except as provided in paragraph (b), the Member States recognize the Court’s jurisdiction in all juridical disputes that may arise among them.[[5]](#footnote-5) In the present case, a juridical dispute exists between Ambrosia and Rovinia.

A dispute refers to a disagreement on a point of law or fact, a conflict of legal views or of interests between the parties.[[6]](#footnote-6) Specifically, there must be clearly opposing views regarding whether certain international obligations have been performed,[[7]](#footnote-7) with one party’s claim being positively opposed by the other.[[8]](#footnote-8) On the date the application is filed, the Respondent must be aware, or could not have been unaware, that the Applicant positively opposed its views.[[9]](#footnote-9)

In the case at hand, Ambrosia has positively rejected the arrest and prosecution of Ms. GertrudeCross since the Ambassador of Ambrosia in Rovinia notified the competent Rovinian authorities of her immunity,[[10]](#footnote-10) after Ms. Cross’s arrest.[[11]](#footnote-11) Furthermore, Ambrosian President Derey wrote to Rovinian President Slimm, demanding the immediate release of Ms. Cross.[[12]](#footnote-12) Rovinia was aware of Ambrosia’s positive opposition to its views, as evidenced by President Slimm’s refusal to release Ms. Cross in response to President Derey’s demand.[[13]](#footnote-13)

The facts outlined above clearly establish that, as of the date of the application,[[14]](#footnote-14) a dispute of a juridical nature exists under Article XXI(a) of the OCDP Charter concerning whether the arrest and prosecution against Ms. Cross violated international rules on jurisdiction and immunity.

Therefore, the Court has jurisdiction under Article XXI(a) of the OCDP Charter.

1. **The Court’s jurisdiction is not excluded under Article XXI(b) of the OCDP Charter.**

Since a dispute exists as illustrated above,[[15]](#footnote-15) the key issue to address is whether this dispute falls within the scope of the compromissory clause, specifically Article XXI.[[16]](#footnote-16) It is a question the Court must ascertain,[[17]](#footnote-17) based on the interpretation of the provisions that define the scope of the treaty.[[18]](#footnote-18)

In the present case, the Member States do not recognize the Court’s jurisdiction with respect to the two categories of disputes specified in Article XXI(b).[[19]](#footnote-19) Specifically, the Court’s jurisdiction is neither excluded **[1]** under Article XXI(b)(i) nor **[2]** under Article XXI(b)(ii).

* + - 1. **The Court’s jurisdiction is not excluded under Article XXI(b)(i) of the OCDP Charter.**

Pursuant to Article XXI(b)(i) of the OCDP Charter, the Court lacks jurisdiction over disputes arising out of facts or situations occurring prior to the entry into force of Article XXI.[[20]](#footnote-20) Under paragraph (c) of this Article, Article XXI shall become effective five years after the entry into force of the OCDP Charter, which is on 17 March 2016.[[21]](#footnote-21) Accordingly, Article XXI became effective on 17 March 2021.[[22]](#footnote-22)

Article 31 of the Vienna Convention on the Law of Treaties (“**VCLT**”) requires interpretation considering ordinary meaning to be given to its terms when read in the context as a whole and in the light of its object and purpose.[[23]](#footnote-23) In interpreting this *ratione temporis* limitation, the Court emphasized the terms “facts or situations” from which the dispute arose as those which must be considered as the *source* of the dispute or its *real cause*,[[24]](#footnote-24) and the two words “situations” and “facts” are placed in conjunction with one another and should be interpreted together.[[25]](#footnote-25) This determination must be made on a case-by-case basis.[[26]](#footnote-26) For instance, the Court determined in one case that the *real cause* of the dispute was a controversy that arose between India and Portugal regarding India’s failure to comply with obligations concerning Portugal’s right of passage, as it reflected conflicting views of the parties.[[27]](#footnote-27)

In the present case, the *real cause* of the dispute are Rovinia’s prosecution and arrest against Ms. Cross in May 2024,[[28]](#footnote-28) not any event prior to 17 March 2021. Rovinia’s arrest and prosecution reflected its legal position that its criminal jurisdiction applies to Ms. Cross and that she is not entitled to immunity.[[29]](#footnote-29) Hence, the prosecution and arrest of Ms. Cross constitute the *source* or the *real cause*, giving rise to the dispute between Ambrosia and Rovinia concerning international rules on jurisdiction and immunity.[[30]](#footnote-30) These facts occurred after 17 March 2021, the date when Article XXI entered into force.[[31]](#footnote-31)

The Respondent is likely to argue that the *real cause* of the present dispute lies in the facts or situations of Ms. Cross’s alleged involvement in the crime of enforced disappearance, which occurred between June 2017 and December 2018.[[32]](#footnote-32) However, these facts cannot reflect both sides’ legal position regarding submission (II).

Therefore, the Court’s jurisdiction over the dispute should not be excluded under Article XXI(b)(i).

* + - 1. **The Court’s jurisdiction is not excluded under Article XXI(b)(ii) of the OCDP Charter.**

Under Article XXI(b)(ii) of the OCDP Charter, the Court lacks jurisdiction for disputesrelating to judicial proceedings andon matters which, in accordance with international law, are essentially within a Member State’s domestic jurisdiction.[[33]](#footnote-33)

Taking reference from previous cases of the Court, matters cannot be considered essentially within a State’s domestic jurisdiction if the validity and interpretation of relevant legal grounds invoked by the State are questions of international law.[[34]](#footnote-34) For instance, questions related to the validity and interpretation of an international agreement are a matter of international law.[[35]](#footnote-35)

In the present case, the dispute between Ambrosia and Rovinia regarding submission (II) pertains to the alleged assertion of jurisdiction and entitlement to immunity of Ms. Cross.[[36]](#footnote-36) Accordingly, the legal grounds invoked concern the relevant rules on jurisdiction and immunity under customary international law, as well as the interpretation of certain provisions within the framework of the International Convention for the Protection of All Persons from Enforced Disappearance (“**ICPPED**”),[[37]](#footnote-37) thereby making the dispute a matter of international law.

Thus, the present dispute is not essentially within Rovinia’s domestic jurisdiction, and the Court has jurisdiction over the present dispute concerning submission (II).

1. **ROVINIA VIOLATED THE INTERNATIONAL LEGAL RULES ON JURISDICTION AND IMMUNITY BY ARRESTING AND PROSECUTING MS. GERTRUDE CROSS.**

The Rovinian domestic court prosecuted and arrested Ms. Cross, an Ambrosian national, for an alleged crime that occurred exclusively in Ambrosia and involved only Ambrosian victims.[[38]](#footnote-38) In doing so, Rovinia violated international legal rules regarding **[A]** jurisdiction and **[B]** immunity.

1. **Rovinia violated the international legal rules on jurisdiction allocation.**

Ambrosia holds jurisdiction over Ms. Cross for the alleged crime under Article 9(1)(a) of the ICPPED,[[39]](#footnote-39) as the offense occurred exclusively within its territory.[[40]](#footnote-40)

Meanwhile, Article 9(2) of the ICPPED grants universal jurisdiction, allowing a State party to try and punish the perpetrator of a crime regardless of where the crime was committed or the nationality of the perpetrator or victim.[[41]](#footnote-41) Thus, Rovinia may only assert jurisdiction under Article 9(2) of the ICPPED based solely on the suspect’s presence within its territory,[[42]](#footnote-42) as it has no other connections to the alleged offense.[[43]](#footnote-43)

Under customary international law, Rovinia’s assertion of criminal jurisdiction is unlawful since Ambrosia **[1]** holds primary jurisdiction as the State where the crime was committed and **[2]** is both willing and able to exercise jurisdiction, thereby precluding Rovinia from exercising jurisdiction.

* + - 1. **Ambrosia holds primary jurisdiction, prevailing over Rovinia’s asserted jurisdiction.**

Although the treaty itself does not address the hierarchy between the competing criminal jurisdictions on different grounds,[[44]](#footnote-44) customary international law offers rules resolving such conflicts. Specifically, in situations where more than one State may assert jurisdiction over a person, the courts of the State where the alleged crime occurred should assume primary jurisdiction.

The establishment of custom requires sufficient State practice and *opinio juris*.[[45]](#footnote-45) ***Firstly***, the State practice of a sufficient number of States, including those whose interests are specially affected, must be extensive and virtually uniform.[[46]](#footnote-46) In this regard, countries such as Switzerland,[[47]](#footnote-47) El Salvador,[[48]](#footnote-48) Spain,[[49]](#footnote-49) and Croatia[[50]](#footnote-50) have implemented domestic laws stressing that the primary responsibility for investigating and prosecuting international crimes rests with the State where the crime occurred.

***Secondly***, the requisite *opinio juris* has manifested in public governmental statements and comments,[[51]](#footnote-51) made by States including Australia,[[52]](#footnote-52) Chile,[[53]](#footnote-53) Slovakia,[[54]](#footnote-54) Germany,[[55]](#footnote-55) Argentina,[[56]](#footnote-56) Morocco,[[57]](#footnote-57) and Slovenia.[[58]](#footnote-58) A sufficient number of States have emphasized that the principle of territoriality prevails in criminal jurisdiction and explained the underlying reasons for this, such as greater proximity to evidence and victims.[[59]](#footnote-59)

Therefore, it is evident from sufficient State practice and *opinio juris* that the territorial State holds priority in instances of competing jurisdiction.

Accordingly, as the State where the alleged crime occurred, Ambrosia holds primary jurisdiction over Ms. Cross, while Rovinia’s asserted jurisdiction is unlawful and contravenes customary international law.

* + - 1. **Ambrosia is both willing and able to exercise jurisdiction, thereby precluding Rovinia from exercising jurisdiction.**

The Respondent may contend that the territorial State does not hold primacy to exercise jurisdiction in certain circumstances, as suggested by some scholars.[[60]](#footnote-60) It is the Applicant’s submission that, under customary international law, the exercise of universal jurisdiction remains supplementary and can only be invoked when the territorial State is unwilling or unable to act.

***Firstly***, there is widespread and representative State practice supporting this custom, including national decisions from Germany,[[61]](#footnote-61) Austria,[[62]](#footnote-62) and El Salvador,[[63]](#footnote-63) which demonstrate that the power of a national court to prosecute crimes under universal jurisdiction is subject to a certain hierarchy and can only be exercised when the territorial State is unwilling or unable to prosecute, for example when the territorial State refuses to continue the proceeding procedure.[[64]](#footnote-64)

***Secondly***, regarding *opinio juris*, public governmental statements from countries such as Argentina,[[65]](#footnote-65) Cuba,[[66]](#footnote-66) Canada,[[67]](#footnote-67) Egypt,[[68]](#footnote-68) and New Zealand[[69]](#footnote-69) reflect the view that the universal jurisdiction of a State other than the territorial State should be secondary and can be exercised only if the territorial State is unwilling or unable to investigate or prosecute the crime.

In the present case, Ambrosia is both willing and able to exercise jurisdiction for the following reasons, thereby precluding Rovinia from doing so.

***Firstly***, Ambrosia is willing to exercise jurisdiction. Such willingness is often evidenced by an investigation in progress or readiness to prosecute, as reflected in the State’s statements.[[70]](#footnote-70) Immediately after Human Rights International provided new evidence in June 2023, the Acting President, Ms. Zavala, urged the Prosecutor General to conduct further inquiry and claimed that there must be no impunity.[[71]](#footnote-71) As a result, the Ambrosian Prosecutor General had already reopened the investigation specifically targeting Ms. Cross as early as June 2023, which remained ongoing when Rovinia asserted jurisdiction.[[72]](#footnote-72)

***Secondly***, Ambrosia is able to exercise jurisdiction as well. This ability can be reflected in the capacity of its national judiciary to conduct fair and credible legal proceedings, as suggested by States’ opinions.[[73]](#footnote-73) The legal system within Ambrosia remains functional, and it is easier for Ambrosia to interview witnesses and gather evidence, as the victims are all Ambrosia’s nationals, and the crime occurred within its territory.[[74]](#footnote-74)

Thus, since Ambrosia is both willing and capable of exercising jurisdiction, Rovinia is excluded from asserting jurisdiction.

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

The question regarding immunity should be addressed after determining the legality of the exercise of universal jurisdiction.[[75]](#footnote-75) In the present case, even assuming that Rovinia has jurisdiction over Ms. Cross, Rovinia violated the international legal rules on immunity because **[1]** Ms. Cross enjoys immunity *ratione materiae* based on customary international law, and **[2]** immunity is not excluded by the ICPPED.

* + - 1. **Ms. Cross enjoys immunity *ratione materiae* based on customary international law.**

The arrest and prosecution of Ms. Crossare unlawful because **[a]** customary international law recognizes immunity *ratione materiae* for *jus cogens* crimes, and **[b]** Ms. Cross is entitled to immunity *ratione materiae*.

1. ***Customary international law recognizes immunity ratione materiae for jus cogens crimes.***

Article 7 of the Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction does not reflect international custom,[[76]](#footnote-76) and the burden of proof lies with Rovinia.[[77]](#footnote-77) The relevant State practice is insufficient since the cases cited by the International Law Commission (“**ILC**”) come from merely ten States,[[78]](#footnote-78) and only a small number of national laws that address immunity[[79]](#footnote-79) have been mentioned as supportive evidence. These are neither widespread nor directly indicative of a customary norm, as explained by scholarly opinions.[[80]](#footnote-80)

Regarding*opinio juris*, States including Brazil, Russia, Singapore, and the US have directly expressed that the above-mentioned Article cannot reflect the trend in customary international law.[[81]](#footnote-81) In addition, it was adopted by twenty-one votes to eight, with one abstention, rather than by unanimous consent.[[82]](#footnote-82) Moreover, none of the global treaties addressing specific international crimes explicitly exclude immunity *ratione materiae*,[[83]](#footnote-83) further demonstrating the absence of *opinio juris*.

By contrast, international custom allows State officials to invoke immunity *ratione materiae* for *jus cogens* crimes, including enforced disappearances, as evidenced by State practiceand *opinio juri*s. National court decisions, such as in France,[[84]](#footnote-84) demonstrate the consistent application of immunity *ratione materiae* to the *jus cogens* crimes. *Opinio juris* can be inferred from public statements made on behalf of the State.[[85]](#footnote-85) Countries including Brazil, France, Iran, Israel, Singapore and Russia have explicitly disapproved of exceptions and limitations to immunity *ratione materiae*.[[86]](#footnote-86)

Thus, sufficient State practice and *opinio juris* exist to establish a custom that allows immunity *ratione materiae* for *jus cogens* crimes.

1. ***Ms. Cross is entitled to immunity ratione materiae.***

Customary international law accepts that State officials enjoy immunity *ratione materiae* only with respect to acts performed in an official capacity,[[87]](#footnote-87) evidenced by State practice[[88]](#footnote-88) and *opinio juris*.[[89]](#footnote-89) Acts performed in an official capacity include military activities, the exercise of police powers, legislative actions,[[90]](#footnote-90) and instances such as arrests and the treatment of individuals as determined and organized by high-ranking officials.[[91]](#footnote-91)

In the present case, Ms. Cross, as head of the Ministry of the Interior, acted in an official capacity by launching the “Implementing the Law for a Safer Ambrosia” (“**ILSA**”) program,[[92]](#footnote-92) and authorizing the National Police to arrest persons engaged in illicit drug production, distribution, and use under this program.[[93]](#footnote-93) Hence, she is entitled to immunity *ratione materiae*, and her arrest and prosecution are unlawful under customary international law.

* + - 1. **Ms. Cross’s immunity *ratione materiae* is not excluded by the ICPPED.**

Rovinia may contend that Ms. Cross’s immunity *ratione materiae* is excluded by the ICPPED on the ground that such immunity conflicts with its object and purpose, namely combating impunity.[[94]](#footnote-94) However, such persons who enjoy immunity may still be tried in accordance with the relevant rules of domestic law.[[95]](#footnote-95) Furthermore, becoming a contracting party of an international convention of this kind does not mean immunity *ratione materiae* are waived since immunity can only be waived expressly.[[96]](#footnote-96) Hence, immunity *ratione materiae* is not excluded by the ICPPED.

Therefore, Ms. Cross is entitled to immunity as former Minister of Ambrosia, and Rovinia violated international rules on immunity.

1. **Rovinia must bear State responsibilities under the customary rules of international law.**

As Stated above,[[97]](#footnote-97) Rovinia’s arrest and prosecution constituted an internationally wrongful act.[[98]](#footnote-98) Rovinia should bear State responsibility according to the customary rules of cessation and reparation reflected in Articles 30 and 37 of the Responsibility of States for Internationally Wrongful Acts (“**ARSIWA**”).[[99]](#footnote-99)

* + - 1. **Rovinia shall cease its internationally unlawful action.**

According to Article 30 of the ARSIWA, the State shall cease the internationally wrongful act if it is continuing.[[100]](#footnote-100) In the present case, Ms. Cross remains a detainee in Rovinia.[[101]](#footnote-101) Rovinia must cease its breach of customary international law, release Ms. Cross, and extradite her to Ambrosia in accordance with the bilateral extradition treaty.[[102]](#footnote-102)

* + - 1. **The Court shall declare Rovinia’s arrest and prosecution unlawful.**

According to Article 37 of the ARSIWA, as one of the forms of reparation, the State may take satisfaction insofar as it cannot be made good by restitution or compensation,[[103]](#footnote-103) which consists in declaration of the wrongfulness of the act by a competent court and tribunal.[[104]](#footnote-104) Hence, the Court shall declare Rovinia’s arrest and prosecution unlawful.

1. **ROVINIA’S ISSUANCE OF LICENSES TO FISH IN THOSE PARTS OF THE TRITON SHOAL WITHIN 200 NAUTICAL MILES OF AMBROSIA’S FIXED BASELINE VIOLATES INTERNATIONAL LAW AND MUST CEASE, WITH EXISTING LICENSES REVOKED.**

Rovinia’s issuance of licenses to fish in parts of the Triton Shoal violates **[A]** Article 56 and Article 62 of the United Nations Convention on the Law of the Sea (“**UNCLOS**”) and **[B]** Article 64 of the UNCLOS. In turn, **[C]** the Court should declare and order Rovinia to cease the issuance of licenses with existing licenses revoked.

1. **Rovinia’s issuance of licenses to fish in** **parts of the Triton Shoal violates Article 56 and Article 62 of the UNCLOS.**

In the present case, **[1]** the Triton Shoal lies within Ambrosia’s exclusive economic zone (“**EEZ**”), as measured from its fixed baseline. **[2]** Rovinia’s issuance of licenses to fish in the Triton Shoal violates Ambrosia’s exclusive rights in its EEZ under Article 56(1) of the UNCLOS as further substantiated under Article 62.

* 1. **Triton Shoal lies within Ambrosia’s EEZ.**

Parts of the Triton Shoal remain within Ambrosia’s EEZ since **[a]** the measurement of baselines was in accordance with the UNCLOS; **[b]** once measured, the UNCLOS allows its Member States to fix their baselines in the face of sea-level rise; **[c]** alternatively, the subsequent practice of the parties has resulted in a departure from the original intent of the UNCLOS in allowing fixed baselines; **[d]** in any event, an emerging regional customary international rule among the Paine Peninsula States provides for a basis of fixed baselines in the face of sea-level rise.

1. ***The measurement of baselines was in accordance with the UNCLOS.***

The UNCLOS allows States to measure their baselines at the low-water line along the coast.[[105]](#footnote-105) Once measured following the UNCLOS, the convention does not require States to update their charts marking such lines.

In the present case, Ambrosia measured its baselines at the “low-water lines existing on 1 November 2015”[[106]](#footnote-106) and submitted the renewed charts reflecting the new coordinates.[[107]](#footnote-107)

Thus, Rovinia should recognize Ambrosia’s baselines, which are measured following the UNCLOS.

1. ***Once measured, the UNCLOS allows Member States to fix their baselines in the face of sea-level rise.***

The Respondent might argue that the UNCLOS prohibits baselines that no longer reflect the actual low-water line. However, it allows fixing baselines in the face of sea-level rise.

To be more specific, the acceptance of fixed baselines under the UNCLOS could be established from an evolutive interpretation of the convention.[[108]](#footnote-108) This is because **[i]** the term “baselines” should be presumed to have an evolving meaning, and **[ii]** “baselines” could be a “fixed” line in light of sea-level rise.

1. *The term “baselines” should be presumed to have an evolving meaning.*

A treaty term is presumed to have an evolving meaning if, ***first***, it is generic, referring to a class of matters.[[109]](#footnote-109) ***Second***,the treaty is of a general, continuing nature that intends to establish a permanent legal regime.[[110]](#footnote-110) Similarly here:

***First***, the term “baselines” under the UNCLOS is generic. Just as the Court deemed “Commerce” generic because it refers to a class of activities,[[111]](#footnote-111) “baselines” here refers to a class of lines, encompassing both the actual lines and those reflected on charts.[[112]](#footnote-112) Moreover, concerning the former, “baselines” include a series of lines under different provisions of the UNCLOS.[[113]](#footnote-113)

***Second***, the UNCLOS is a treaty of continuous duration, since no limitation date has been set under the force duration provision.[[114]](#footnote-114) Moreover, reflected in its preambles, the UNCLOS intends to establish a comprehensive legal regime[[115]](#footnote-115) and to settle allissues relating to the law of the sea[[116]](#footnote-116) holistically.[[117]](#footnote-117)

Therefore, the meaning of “baselines” in the UNCLOS shall be presumed to evolve with contemporary meanings.

1. *In the face of sea-level rise, baselines could be fixed under the UNCLOS.*

When a treaty term is presumed to have an evolving meaning, it must be interpreted based on the factual and legal circumstances at the time of interpretation.[[118]](#footnote-118) This involves examining the treaty’s object and purpose,[[119]](#footnote-119) as indicated by its preamble,[[120]](#footnote-120)  and related articles dealing with the same issue.[[121]](#footnote-121)

***First***, the overarching object and purpose of the UNCLOS is the establishment of a continuing, comprehensive legal order,[[122]](#footnote-122) which implies the promotion of certainty, predictability and stability.[[123]](#footnote-123)

Therefore, in the face of permanent coastline regression induced by sea-level rise, the UNCLOS’s purpose supports fixing baselines to ensure stability.

***Second***, the context of the UNCLOS further supports the interpretation of allowing fixed baselines. Article 7(2) allows straight baselines to remain effective despite subsequent regression of the low-water line in highly unstable geographical conditions.[[124]](#footnote-124)

This suggests that fixed baselines are permitted and encouraged under the UNCLOS amid changing geographical conditions.[[125]](#footnote-125)

Overall, the UNCLOS was intended to be applied in an evolving way. In light of sea-level rise, the UNCLOS allows fixing baselines to preserve coastlines.

1. ***Alternatively, the parties’ subsequent practice has resulted in a departure from UNCLOS’s original intent in allowing fixed baselines.***

The subsequent practice of the parties[[126]](#footnote-126) may result in a departure from the original intent of the parties.[[127]](#footnote-127) Moreover, such practice may sometimes remove a textual limit on the scope for evolutive interpretation.[[128]](#footnote-128)

The practice used to establish such new interpretation shall, ***first***, be practice in the application of the treaty, including official Statements regarding its interpretation.[[129]](#footnote-129) ***Second***, a virtual consensus regarding the new meaning can be reached through the practice.[[130]](#footnote-130)The existence of contrary practice *per se* does not preclude consensus.[[131]](#footnote-131)

In the present case, a virtual consensus has been established through the subsequent practice. Over *one hundred* States have endorsed the practice of not updating baselines.[[132]](#footnote-132) In addition, many States support the interpretation of not having an obligation to update submitted charts under the UNCLOS and that preserving maritime zones by fixing baselines in the face of sea-level rise is in accordance with the UNCLOS.[[133]](#footnote-133) Such a view faced objection from “*no State, even States who adopt ambulatory baselines in domestic legislation*”, as noted by the ILC.[[134]](#footnote-134)

Moreover, contrary practice does not preclude consensus. It is noteworthy that States adopt ambulatory baselines either to move the coastlines seawardthrough physical protection measures[[135]](#footnote-135) or because their domestic legislation has not accounted for sea-level rise.[[136]](#footnote-136) Therefore, these States’ legislations do not indicate opposition to fixed baselines in the face of sea-level rise.

Therefore,subsequent State practice demonstrates a virtually unified recognition that fixed baselines in the face of sea-level rise are legitimate under the UNCLOS.

1. ***Alternatively, an emerging regional rule of customary international law provides for an exception of fixed baselines in the face of sea-level rise.***

Even if the Court is not convinced by the above arguments,[[137]](#footnote-137) and deems that the UNCLOS does not regulate the legal effect of fixing baselines in the face of sea-level rises, a regional customary international law regarding such matters shall apply.

In this respect, the establishment of a regional customary international law requires a constant and uniform practice that is accepted as law by all the parties among which the rule applies.[[138]](#footnote-138)

In some occasions, failure to react to the practice may constitute an acceptance,[[139]](#footnote-139) provided that, ***first***, the circumstances call for some reaction, typically when States’ rights are unfavorably affected.[[140]](#footnote-140) The more widespread and potent the practice, the stronger evidence of protest may be required.[[141]](#footnote-141) ***Second***, States are aware of the practice and have sufficient time and ability to react.[[142]](#footnote-142)

Herein, all Members of the Organization for Cooperation and Development in the Paine (“**OCDP**”) except Rovinia have acknowledged that fixing baselines constitutes a regional customary rule.[[143]](#footnote-143) Rovinia, by failing to protest against a resolution recognizing the importance of fixed baselines in the face of sea-level rise,[[144]](#footnote-144) acquiesced to this rule since:

***First***, circumstances called for Rovinia’s active protest. Other OCDP Members made continuous efforts to establish fixed baselines as a regional custom through OCDP resolutions from 2016 to 2023.[[145]](#footnote-145) In light of the OCDP’s function, which addresses topics of mutual interest including member States’ maritime rights,[[146]](#footnote-146) this resolution adopted in the OCDP carries profound legal weight and directly affected Rovinia’s right to fish.

***Second***, Rovinia could have raised an objection to the provision regarding fixed baselines but chose not to do so.[[147]](#footnote-147)

Therefore, Rovinia has acquiesced to a regional customary rule warranting fixed baselines, thereby becoming bound by it.

In conclusion, Ambrosia’s fixed baseline is in conformity with international law. Therefore, as measured from its fixed baseline, Triton Shoal still lies within Ambrosia’s EEZ.

* 1. **Rovinia’s issuance of licenses to fish in Triton Shoal violated Ambrosia’s exclusive rights in its EEZ under Article 56(1) of the UNCLOS as further substantiated under Article 62.**

Coastal States enjoy an exclusive right to conserve and manage living natural resources within their EEZ under Article 56(1) of the UNCLOS.[[148]](#footnote-148) This right is further substantiated by Article 62 of the UNCLOS, which endows the coastal States exclusive control over granting access and issuing licenses for other States to fish in their EEZ.[[149]](#footnote-149)

Correspondingly, other States are obliged to ensure their nationals who fish in other State’s EEZ to comply with the coastal States’ laws and regulations.[[150]](#footnote-150) Therefore, allocating licenses for its nationals to fish in the coastal States’ EEZ without their permission constitutes an active violation of their rights.[[151]](#footnote-151)

Herein, Ambrosia’s domestic legislation proclaimed its exclusive right to fish in its EEZ.[[152]](#footnote-152) Rovinia’s issuance of licenses for its nationals to fish in Triton Shoal proactively precipitated its nationals’ violation of Ambrosia’s legislation, infringing Ambrosia’s rights under Article 62 and Article 56(1).

1. **Rovinia’s issuance of licenses to fish in the Triton Shoal violates Article 64 of the UNCLOS.**

States are obligated to negotiate conservative measures for highly migratory species, including yellow tuna fish in the present case,[[153]](#footnote-153) within or beyond the EEZ, either directly or through international organizations.[[154]](#footnote-154)

* 1. **Rovinia did not cooperate directly with Ambrosia.**

This obligation requires States to make substantial efforts to consult with each other to determine conservative measures for the species.[[155]](#footnote-155) A unilateral issuance of licenses to its nationals without even engaging in a consultation with the coastal State constitutes a violation of cooperation obligation.[[156]](#footnote-156)

In the present case, Rovinia did not negotiate with Ambrosia concerning the conservative measures.

* 1. **Rovinia did not cooperate through the OCDP with Ambrosia.**

In the present case, the OCDP is established by all Paine Peninsula States as an appropriate regional organization to cooperate in the conservation of all tuna species under Article 64 of the UNCLOS.[[157]](#footnote-157)

A sudden concentration of yellowfin tuna occurred in Triton Shoal in 2018.[[158]](#footnote-158) As indicated by Article 1(c) of the OCDP Charter, Members are expected to coordinate regarding exploiting these newly emerged resources.[[159]](#footnote-159) Nonetheless, Rovinia unilaterally issued fishing permits to its nationals without seeking coordination with Ambrosia in the OCDP.[[160]](#footnote-160)

Thus, Rovinia neither cooperated directly with Ambrosia nor through the OCDP, violating Article 64 of the UNCLOS.

1. **The Court should declare and order Rovinia to cease the issuance of licenses with existing licenses revoked.**

As illustrated, Rovinia’s issuance of licenses constitutes a wrongful act and shall bear responsibility.[[161]](#footnote-161) The Court should order Rovinia to **[1]** cease granting licenses and **[2]** revoke all granted licenses.

* 1. **Rovinia shall cease granting its nationals licenses to fish within Ambrosia’s EEZ.**

Obligation to cease a wrongful conduct arises when such an act has a continuing character and the violated rule is still in force at the time in which the order is issued.[[162]](#footnote-162)

Herein, Rovinia is still issuing licenses,[[163]](#footnote-163) and the UNCLOS is still in force between the parties. Therefore, cessation shall be ordered.

* 1. **Rovinia shall make restitution and revoke all granted licenses.**

States are obliged to make restitution when the wrongful act caused injuries,[[164]](#footnote-164) including interests which are assessable in financial terms.[[165]](#footnote-165) Moreover, restitution is neither materially impossible nor disproportionate to the benefits gained by victim States.[[166]](#footnote-166)

In the present case, Ambrosia lost fish resources from Rovinia’s exploitation. Restitution is possible and proportionate, since Ronivia has the power to revoke licenses as it had granted them, and will not benefit Ambrosia disproportionately.

Therefore, Rovinia shall revoke all granted licenses.

1. **ROVINIA’S SEIZURE AND SALE OF AMBROSIA’S AIRCRAFT PURSUANT TO THE PERMOLA COURT’S DECISION ON 15 JULY 2023 ON THE BASIS OF THE TRANSITIONAL COUNCIL’S PURPORTED WAIVER OF IMMUNITY VIOLATED INTERNATIONAL LAW.**

Rovinia’s seizure and sale of Ambrosia’s Aircraft is a violation of international law. More specifically, **[A]** Rovinia violated Ambrosia’s immunity from post judgment measures. **[B]** In turn, the Court should declare such measures as unlawful.

1. **Rovinia violated Ambrosia’s immunity from post-judgment measures.**

Customary international law on State’s immunity from post-judgment measures of constraint, as established through State practice[[167]](#footnote-167) and *opinio juris[[168]](#footnote-168)* and recognized by this Court,[[169]](#footnote-169) is reflected in Article 19 of the United Nations Convention on Jurisdictional Immunities of States and Their Property (“**UNCJISP**”).

A State’s property, referring to any property that a State owns, possesses or controls,[[170]](#footnote-170) is immune from post-judgment measures of constraint.[[171]](#footnote-171) In the present case, since Ambrosia owns The Falcon,[[172]](#footnote-172) it is presumed to enjoy immunity.

There are three exceptions to the afore-mentioned immunity, namely, when **[1]** the State gives express consent to such measure, **[2]** the State has allocated or earmarked the property for the satisfaction of the claim which is the object of that proceeding,or **[3]** the property is for non-governmental commercial use.

* + - 1. **Ambrosia did not waive its immunities by expressly consenting to the measures taken against The Falcon.**

The first exception to the general rule of the immunity of a State’s property from post-judgment measures of constraint is where and to the extent that the State whose property it is has expressly consented to such measures.[[173]](#footnote-173)

In the present case, the first exception has not been met since **[a]** Ms. Zavala’s refusal to waive immunity on behalf of Ambrosia should have been recognized, as her government was constitutional. **[b]** Alternatively, her refusal to waive immunity should still have been recognized as she exercised effective control. **[c]** In any event, the recognition of the Transitional Council would constitute a premature recognition and thus void of effect.

1. ***Ms. Zavala’s refusal to waive immunity on behalf of Ambrosia should have been recognized, as her government was the constitutional government.***

Ms. Zavala’s refusal to waive immunity should have been recognized since **[i]** modern customary international law on government recognition favors constitutionality over effective control, and **[ii]** Ms. Zavala’s government was the only constitutional government.

*Modern customary international law on government recognition favors constitutionality over effective control.*

Although traditional customary international law may support the view of effective control being the single most crucial element of government recognition,[[174]](#footnote-174) a new trend in State practice has led to the emergence of a new rule which values the government’s constitutionality.[[175]](#footnote-175) To be more specific, a constitutional government should be recognized even in the absence of effective control over the country’s territory and population.[[176]](#footnote-176)

In terms of State practice, such a trend is supported by the widespread recognition of constitutional governments when a rival claimant is exercising effective control.[[177]](#footnote-177) Examples include the universal recognition of the Côte d’Ivoire government of Alassane Ouattara in 2010,[[178]](#footnote-178) the Gambia government of Adama Barrow in 2016,[[179]](#footnote-179) the Nigerian government of Mohamed Bazoum in 2023,[[180]](#footnote-180) as well as the Haiti government between 1991 and 1994,[[181]](#footnote-181) and so forth.

Additionally, the *opinio juris* of the aforementioned rule is reflected by regional treaties[[182]](#footnote-182) and binding international resolutions.[[183]](#footnote-183)

Thus, there exists an established customary international law on government recognition that favors recognizing constitutional government even when faced with an opposing claim to government status that exercises effective control.

*Ms. Zavala’s government was the only constitutional government.*

The criterion of constitutionality refers to governments that have a basis in the State’s established constitution.[[184]](#footnote-184)

In the present case, Ms. Zavala’s government is constitutional as the Ambrosian Constitution stipulates that the Vice-President should have the powers over Ambrosia’s office when the President is temporarily absent.[[185]](#footnote-185)

In the meantime, such an element of constitutionality has not been satisfied by the Transitional Council since it only came to existence through a *coup d’etat* with no constitutional basis whatsoever,[[186]](#footnote-186) which President Derey confirmed upon his recovery.[[187]](#footnote-187)

Thus, Zavala’s government is the only constitutional government that should be recognized.

1. ***Alternatively, Ms. Zavala’s refusal to waive immunity on behalf of Ambrosia should still have been recognized as her government exercised effective control.***

If the Court finds that the above-mentioned new trend in State practice[[188]](#footnote-188) has not yet established customary international law and that the traditional theory valuing effective control applies, Ms. Zavala’s refusal to waive immunity should still have been recognized as **[i]** she exercised effective control, whereas **[ii]** the Transitional Council did not, and the recognition of which will constitute a premature recognition.

*Ms. Zavala exercised effective control.*

The legal test of “effective control” refers to the control over the country’s territory and population[[189]](#footnote-189) as reflected through the military presence[[190]](#footnote-190) and the habitual obedience by the population.[[191]](#footnote-191) The lack of opposition within the country could serve as evidence for such obedience.[[192]](#footnote-192) In addition, the effective control doctrine requires the functioning of governmental organs[[193]](#footnote-193) as reflected by the discharge of international and external duties,[[194]](#footnote-194) as well as a reasonable prospect of permanence and stability.[[195]](#footnote-195)

In the case at hand, Ms. Zavala had already been recognized and had been exercising effective control and discharging governmental functions without any opposing claims for a whole year before the establishment of the Transitional Council.[[196]](#footnote-196)

Also, it is important to note that Ms. Zavala is only a temporary replacement for President Derey[[197]](#footnote-197) and they both essentially represent the same government.[[198]](#footnote-198) Following this logic, the public warmly welcomed President Derey upon his return[[199]](#footnote-199) with no opposing claim to governmental status.[[200]](#footnote-200) Also, he resumed his executive functions immediately after recovery,[[201]](#footnote-201) and had an expectancy of permanence as he has been in power since 2012[[202]](#footnote-202) and has already been elected twice.[[203]](#footnote-203) It is fair to say that the government of President Derey and Ms. Zavala has indeed satisfied the requirement of effective control.

*The Transitional Council should not be recognized as Ambrosia’s government, as it did not exercise effective control.*

In the present case, the Transitional Council did not exercise effective control when the Permola court ordered the seizure and sale of The Falcon. As previously mentioned,[[204]](#footnote-204) the exercise of effective control implies the element of permanency and stability. Yet, the Transitional Council had only been established for four months,[[205]](#footnote-205) with numerous demonstrations escalating into violent clashes.[[206]](#footnote-206)

Thus, Rovinia should have recognized Ms. Zavala’s government instead of the Transitional Council even applying the traditional approach.

1. ***In any event, recognizing the Transitional Council would constitute a premature recognition, and thus void of effect.***

Even ifeffective control has been established, recognizing the Transitional Council instead of the constitutional Ms. Zavala would be a premature recognition.

This is because the formerly recognized government is presumed to represent the State,[[207]](#footnote-207) and “*so long as the lawful government offers resistance which is not ostensibly hopeless or purely nominal, the de jure recognition of the revolutionary party as a government constitutes premature recognition*”.[[208]](#footnote-208)

In the present case, the government led by Ms. Zavala is, without doubt, the previously recognized government for at least a year and has been fully functional, though operating from Caron.[[209]](#footnote-209) Additionally, numerous groups still support Ms. Zavala within the country,[[210]](#footnote-210) including legal scholars and activists,[[211]](#footnote-211) thus indicating Zavala’s government’s hope of regaining control.

Thus, recognizing the Transitional Council within 4 months of its establishment[[212]](#footnote-212) and ignoring the lawfully functional government would be premature and void of any effect.[[213]](#footnote-213)

1. **Ambrosia has not allocated or earmarked The Falcon for the satisfaction of the claim through the Transitional Council’s purported waiver of immunity.**

The second exception to the rule of the immunity of a State’s property from post-judgment measures of constraint is where and to the extent that the State allocated or earmarked the property for the satisfaction of the claim, which is the object of that proceeding.[[214]](#footnote-214)

However, since no facts support such allocation by either Ms. Zavala or the Transitional Council, Rovinia cannot rely on Article 19(b) of the UNCJISP to argue the legality of its seizure and sale of The Falcon.

1. **The Falcon only serves government non-commercial purposes.**

The third exception to the rule of the immunity of a State’s property from post-judgment measures of constraint is when the property is in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the other State.[[215]](#footnote-215)

In the present case, since The Falcon was intended for and was used “exclusively for government non-commercial purposes”,[[216]](#footnote-216) the third exception is not satisfied.

Therefore, Rovinia’s seizure and sale of The Falcon violates Ambrosia’s immunity from post-judgment measures of constraint.

1. **In turn, the Court should declare Rovinia’s seizure and sale of The Falcon unlawful.**

It is well established that States may be granted satisfaction as a form of reparation insofar as the injuries caused by the wrongful act cannot be made good by restitution or compensation,[[217]](#footnote-217) which includes the declaration of the wrongful act by a competent court or tribunal.[[218]](#footnote-218)

In the present case, since The Falcon has already been auctioned,[[219]](#footnote-219) the damages could not be made good by restitution or compensation.

Thus, Ambrosia is entitled to the Court’s declaration of such wrongful acts.

PRAYER FOR RELIEF

*Ambrosia, as Applicant, respectfully requests the Court to adjudge and declare that:*

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

*Respectfully submitted,*

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