

**THE 2006 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION**

IN THE INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING THE ELYSIAN FIELDS

BETWEEN:

THE REPUBLIC OF ACASTUS

(Applicant)

and

THE STATE OF RUBRIA

(Respondent)

MEMORIAL FOR APPLICANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iv
STATEMENT OF JURISDICTION	xv
QUESTIONS PRESENTED	xvi
STATEMENT OF FACTS.....	xvii
SUMMARY OF PLEADINGS.....	xxi
I. THE COURT HAS JURISDICTION OVER ALL CLAIMS IN THIS CASE BECAUSE BOTH ACASTUS AND RUBRIA HAVE ACCEPTED THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE	1
A. Acastus has accepted the compulsory jurisdiction of this Court by succeeding to Nessus’ status as a party to the Statute of this Court.....	1
i. Acastus, as the continuation of Nessus, has accepted the compulsory jurisdiction of this Court	1
a) Acastus is the continuation of Nessus	1
b) As the continuation of Nessus, Acastus has continued both Nessus’ membership in the United Nations and its acceptance of the compulsory jurisdiction of this Court.....	2
c) Rubria cannot rely on Security Council Resolution 2386 to deny Acastus’ continuing membership in the United Nations.....	4
ii. In the alternative, as a successor State to Nessus, Acastus has accepted the compulsory jurisdiction of this Court	5
a) Acastus is a successor State to Nessus	5
b) The treaty rights and obligations of Nessus have devolved to Acastus as a successor State	6
c) Rubria cannot argue that the “clean slate” doctrine prevents Acastus from succeeding to Nessus’ rights and obligations under the Statute of this Court.....	7
d) Nessus’ acceptance of the compulsory jurisdiction of this Court has devolved to Acastus.....	8

B.	Rubria cannot rely on its reservation with respect to reciprocity in order to divest this Court of jurisdiction.....	8
II.	BY PERMITTING THE CONSTRUCTION OF THE PIPELINE AS PROPOSED, RUBRIA WILL VIOLATE THE RIGHTS OF ACASTUS' CITIZENS OF ELYSIAN HERITAGE.....	10
A.	Rubria's approval of the construction of the pipeline will violate the Elysians' right to self-determination	10
i.	Elysians have a right to self-determination under international law, which entitles them to determine their economic, social and cultural development	10
ii.	By permitting the construction of the pipeline, Rubria will violate the Elysians' right to self-determination by infringing on their property rights	12
iii.	By permitting the construction of the pipeline, Rubria will violate the Elysians' right to self-determination by infringing on their cultural rights	14
B.	Rubria's approval of the construction of the pipeline will violate the Elysians' right to life	15
C.	Rubria's failure to conduct an environmental impact assessment prior to their approval of the construction of the proposed pipeline will violate the Elysians' environmental rights.....	17
III.	THE ACTIVITIES OF PROF IN THE ELYSIUM ARE VIOLATIONS OF INTERNATIONAL LAW ATTRIBUTABLE TO RUBRIA	19
A.	The activities of PROF in the Elysium are in violation of international law.....	19
i.	The forced labour of Elysians is a violation of the norms in respect of slavery under international law	19
ii.	Further, the forced labour of Elysians is a violation of international legal norms relating to fair labour practices	21
iii.	The imprisonment of Elysians is a violation of international norms of human rights and further constitutes a crime against humanity	22
B.	The activities of PROF in the Elysium are attributable to Rubria	23
i.	PROF's activities are imputable to Rubria because PROF is exercising elements of government authority	23

- ii. Alternatively, PROF’s activities are imputable to Rubria because PROF is controlled by Rubria 25

IV. THE OUTCOME OF THE *BORIUS* LITIGATION DOES NOT PLACE ACASTUS IN BREACH OF ARTICLE 52 OF THE *RABBIT*..... 26

- A. As TNC is a mere shareholder in COG, its exclusion as a party in the *Borius* litigation is in conformity with the *RABBIT* because the *RABBIT* only applies to Acastian corporations... 26

- i. A proper interpretation of the *RABBIT* does not require the inclusion of TNC in the *Borius* litigation..... 27

- ii. Rubria cannot rely on any alleged human rights obligations to argue the *RABBIT* should be interpreted so as to require the inclusion of TNC in the *Borius* litigation 28

- B. Rubria cannot rely on any exceptions to the separate personality of the corporation to require the inclusion of TNC in the *Borius* litigation..... 28

CONCLUSION AND PRAYER FOR RELIEF 32

INDEX OF AUTHORITIES

CASES

<i>Application For Revision of the Judgment of 11 July 1996 in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)</i> , [2003] I.C.J. Rep. 7.....	2
<i>Association X v. United Kingdom</i> (1978), 14 Eur. Comm. H.R.D.R. 31 (1978).....	16
<i>Baker v. Raymond International Inc.</i> , 656 F.2d 173 (5 th Cir. 1981).....	30
<i>Case Concerning East Timor (Portugal v. Australia)</i> , [1995] I.C.J. Rep. 90	10
<i>Case Concerning Elettronica Sicula S.p.A. (ELSI) (U.S. v. Italy)</i> , [1989] I.C.J. Rep. 15.....	29
<i>Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.)</i> , [1986] I.C.J. Rep. 14.....	26
<i>Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.)</i> , Jurisdiction of the Court and Admissibility of the Application, [1984] I.C.J. Rep. 392.....	9
<i>Case Concerning Right of Passage Over Indian Territory (Portugal v. India)</i> , [1957] I.C.J. Rep. 125	8
<i>Case Concerning Application of Convention on Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)</i> , Preliminary Objections, [1996] I.C.J. Rep. 595	7
<i>Case Concerning the Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)</i> , [1970] I.C.J. Rep. 3	20,29
<i>Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)</i> , [1997] I.C.J. Rep. 7.....	16,26
<i>Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria)</i> , Preliminary Objections, [1998] I.C.J. Rep. 275	9
<i>Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)</i> , Merits, [1980] I.C.J. Rep. 3	26
<i>Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia, Conference For Peace in Yugoslavia, Arbitration Commission, Opinion No.8</i> , 31 I.L.M. 1488 (1992)	1
<i>Connelly v. RTZ Corp. Plc</i> , [1997] 3 W.L.R. 373 (H.L.).....	30

<i>Dadoo Ltd. v. Krugersdorp Municipal Council</i> , [1920] A.D. 530	29
<i>Delgamuukw v. British Columbia</i> , [1997] 3 S.C.R. 1010	12
<i>Differences Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights</i> , Advisory Opinion, [1999] I.C.J. Rep. 62.....	24,26
<i>Doe I v. Unocal Corp.</i> , 395 F.3d 932 (9 th Cir. 2002).....	20,30
<i>E.H.P v. Canada</i> , U.N. Hum. Rt. Comm., Communication No. 67/1980, UN Doc. CCPR/C/OP/1 (1982).....	16
<i>Electricity Company of Sofia and Bulgaria</i> , Order of 5 December 1939, P.C.I.J. (Ser. A/B) No. 79	8
<i>Far East Oil Tanker S.A. v. Owner of the Ship or Vessel "Andres Bonifacio"</i> , [1993] 3 Sing L.R. 521 (Sing. C.A.)	29
<i>Harris v. Nelson</i> , 89 S.Ct. 1082 (1969).....	22
<i>Hyatt International Corporation v. Islamic Republic of Iran</i> (1985), 9 Iran-U.S. Cl. Trib Rep. 72	24
<i>In re World War II Era Japanese Forced Labour Litigation</i> , 164 F.Supp.2d 1160 (N.D. Cal. 2001).....	20
<i>Lansman v. Finland</i> (1996), U.N. Hum. Rt. Comm., Communication No. 671/1995, UN Doc. CCPR/C/58/D/671/1995	14,15
<i>LCB v. UK</i> (1999) 27 E.H.R.R. 212	16
<i>Lee v. Lee's Air Farming Ltd.</i> , [1961] A.C. 12 (P.C.).....	29
<i>Legal Consequences For States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)</i> , [1971] I.C.J. Rep. 16.....	4,10
<i>Lovelace v. Canada</i> , No. 24/1977, UN Doc.CCPR/C/13/D/24/1977 (1980).....	15
<i>Lowendahl v. Baltimore & Ohio R.R. Co.</i> , 287 N.Y.S. 62 (N.Y. App. Div. 1936) aff'd, 6 N.E.2d 56 (1936).....	30
<i>Lubbe v. Cape Plc.</i> , [2000] 1 W.L.R. 1545 (H.L.).....	30
<i>Mabo v. Queensland (No. 2)</i> (1992), 175 C.L.R. 1 (H.C.A.)	12
<i>Macaura v. Northern Assurance Co. Ltd.</i> , [1925] A.C. 619 (H.L.).....	29

<i>Mary and Carrie Dann v. United States</i> (2002), Inter-Am. Comm. H.R. Report No. 75/02 Case 11.140, <i>Annual Report of the Inter-American Commission on Human Rights: 2002</i> OEA/Ser.L/V/II.117 Doc. 1 rev. 1	12,14,15
<i>Maya Indigenous Communities of the Toledo District v. Belize</i> (2004), Inter-Am. Comm. H.R. No.40/04, <i>Annual Report of the Inter-American Commission on Human Rights: 2004</i> , OEA/Ser.L/V/II.122/doc.5/rev. 1 (2005).....	12,13,15
<i>Ominayak and the Lubicon Lake Band v. Canada</i> , 1990 Annual Report of the Human Rights Committee, U.N. Doc. A/45/40, Vol.II, App. A (1990).....	14
<i>Petrolane Inc. v. Islamic Republic of Iran</i> (1991), 27 Iran-U.S. Cl. Trib. Rep. 64	24
<i>Phillips Petroleum v. Islamic Republic of Iran</i> (1989), 21 Iran-U.S. Cl. Trib. Rep. 79	24
<i>Prosecutor v. Akayesu</i> (1998), Case No. ICTR-96-4-T (International Criminal Tribunal for Rwanda, Trial Chamber I), online: United Nations < http://65.18.216.88/default.htm >	23
<i>Prosecutor v. Kordic and Cerkez</i> (2004), Case No. IT-95-14/2-A (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations < http://www.un.org/icty/cases-e/index-e.htm >.....	23
<i>Prosecutor v. Kordic and Cerkez</i> (2001), Case No. IT-95-14/2-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber), online: United Nations < http://www.un.org/icty/cases-e/index-e.htm >.....	22,23
<i>Prosecutor v. Kunarac et al.</i> (2001), Case No. IT-96-23-T & IT-96-23/1-T (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations < http://www.un.org/icty/cases-e/index-e.htm >.....	20
<i>Prosecutor v. Tadić</i> (1999), Case No. IT-94-1 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations < http://www.un.org/icty/cases-e/index-e.htm >	24,25,26
<i>Quarles v. Fuqua Industries Inc.</i> , 504 F.2d 1358 (10 th Cir. 1974)	30
<i>Quintanilla Claim (U.S. v. Mexico)</i> (1926), 4 R.I.A.A. 101	22
<i>R. v. Corbett</i> , [2004] B.C.J. No. 1340 (C.A.)	22
<i>Salomon v. Salomon & Co. Ltd.</i> , [1897] A.C. 22 (H.L.).....	29
<i>Sithole v. Thor Chemicals Holdings Ltd.</i> (1999), 96(9) L.S.G. 32 (C.A.)	30
<i>The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua</i> (2001), Inter-Am. Ct. H.R. (Ser. C) No.79, <i>Annual Reporter of the Inter-American Court of Human Rights</i>	12,13

<i>United States v. Matta-Ballesteros</i> , 71 F.3d 754 (9 th Cir. 1995)	20
<i>Walker v. Wimbourne</i> , [1976] 137 C.L.R. 1 (H.C.A.)	29
<i>Wehner v. Syntex Agribusiness Inc.</i> , 616 F.Supp. 27 (E.D. Mo. 1985)	30
<i>Western Sahara</i> , [1975] I.C.J. Rep. 12.....	10
<i>Yanomami of Brazil</i> , Res. No. 12/85, Case No. 7615 Inter-Am C.H.R. 24 (1985), <i>Annual Report of the Inter-American Commission on Human Rights 1984-85</i> , OEA/Ser.L/V/II.66, doc.10.....	14
<i>Youmans Claim (U.S. v. Mexico)</i> (1926), 4 R.I.A.A. 110	25

TEXTS

Anaya, S. James, <i>Indigenous Peoples in International Law</i> , 2 nd ed. (New York: Oxford University Press, 2004).....	11,14
American Law Institute, <i>Third Restatement of the Law, the Foreign Relations Law of the United States</i> , vol. 2 (St. Paul: American Law Institute, 1987)	20,21,22
Aust, Anthony, <i>Modern Treaty Law and Practice</i> (Cambridge: Cambridge University Press, 2000).....	7,27
Bainbridge, Stephen, <i>Corporation Law and Economics</i> (New York: Foundation Press, 2002)...	29
Bantekas, Ilias & Susan Nash, <i>International Criminal Law</i> , 2 nd ed. (London: Cavendish Publishing Limited, 2003)	20,21
Bassiouni, M. Cherif, <i>Crimes Against Humanity in International Criminal Law</i> , 2 nd ed. (Boston: Kluwer, 1999)	20
Blumberg, Phillip, <i>The Multinational Challenge to Corporation Law: the Search for a New Corporate Personality</i> (New York: Oxford University Press, 1993)	29,30
Brownlie, Ian, <i>Principles of Public International Law</i> , 6 th ed. (Oxford: Oxford University Press, 2003).....	10,21
Cassese, Antonio, <i>International Criminal Law</i> (Oxford: Oxford University Press, 2003).....	23
Cassese, Antonio, <i>International Law</i> , 2 nd ed. (Oxford: Oxford University Press, 2005).....	6
Cassese, Antonio, <i>Self-Determination of Peoples: a Legal Reappraisal</i> (Cambridge: Cambridge University Press, 1995).....	10

Compa, Lance & Stephen Diamond, <i>Human Rights, Labor Rights, and International Trade</i> (Philadelphia: University of Pennsylvania Press, 1996)	21
Crawford, James, <i>The Creation of States in International Law</i> (Oxford: Clarendon Press, 1979).....	2
Crawford, James, <i>The International Law Commission's Articles on State Responsibility: Introduction, Text, and Commentaries</i> (Cambridge: Cambridge University Press, 2002).....	24,25,26
Davies, Paul & Lawrence Gower, <i>Gower and Davies' Principles of Modern Company Law</i> , 7 th ed. (London: Sweet & Maxwell, 2003)	29
De Than, Claire & Edwin Shorts, <i>International Criminal Law and Human Rights</i> , 1 st ed. (London: Sweet & Maxwell, 2003).....	20,23
International Labour Office, <i>International Labour Standards: a Workers' Education Manual</i> , 2 nd ed. (Geneva: International Labour Office, 1982).....	21
Kelsen, Hans, <i>The Law of the United Nations: a Critical Analysis of its Fundamental Problems</i> (London: Stevens & Sons, 1950)	8
Kindred, Hugh, <i>International Law, Chiefly as Interpreted and Applied in Canada</i> , 6 th ed. (Toronto: Emond, 2000)	6
McGuinness, Kevin, <i>The Law and Practice of Canadian Business Corporations</i> (Markham: Butterworths, 1999).....	29
McNair, Lord, <i>The Law of Treaties</i> (Oxford: Clarendon Press, 1961)	7
Meron, Theodor, <i>Human Rights in International Law: Legal and Policy Issues</i> (Oxford: Clarendon Press, 1984).....	21
Mrak, Mojmir, <i>Succession of States</i> (Boston: Kluwer, 1999)	2,6
O'Connell, Daniel, <i>State Succession in Municipal Law and International Law</i> , vol. 2 (Cambridge: Cambridge University Press, 1967).....	1,6
Poulose, T., <i>Succession in International Law: A Study of India, Pakistan, Ceylon and Burma</i> (Delhi: Orient Longman, 1974).....	1
Powell, Frederick, <i>Parent and Subsidiary Obligations</i> (Chicago: Callaghan, 1931)	30
Ramcharan, B., <i>The Right to Life in International Law</i> (Dordrecht: Nijhoff, 1985)	16

Schweigman, David, <i>The Authority of the Security Council Under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice</i> (Boston: Kluwer), 2001	4
Shaw, Malcolm, <i>International law</i> , 5 th ed. (New York: Cambridge University Press, 2003	1,6,16,27
Thornberry, Patrick, <i>Indigenous Peoples and Human Rights</i> (New York: Manchester University Press, 2002	11
Thornberry, Patrick, <i>International Law and the Rights of Minorities</i> (Oxford: Clarendon Press, 1991	11
Tiburcio, Carmen, <i>The Human Rights of Aliens Under International and Comparative Law</i> (Boston: Nijhoff, 2001.....	22
Udokang, Okon, <i>Succession of New States to International Treaties</i> (New York: Oceana Publications, 1972	6

ESSAYS, JOURNALS & ARTICLES

Anaya, S. James & Robert Williams, “The Protection of Indigenous Peoples' Rights over Lands and Natural Resources under the Inter-American Human Rights System” (2001) 14 Harv. Hum. Rts. J. 33.....	12,15
Barber, David, “Piercing the Corporate Veil” (1980-1981) 17 Willamette L. Rev. 371	29
Bassiouni, M. Cherif, “Enslavement as an International Crime” (1990-1991) 23 N.Y.U. J. Int'l L. & Pol. 445	20
Bear, Dinah, “The National Environmental Policy Act: Its Origins and Evolutions” (1995) 10 Nat. Res. & Env't 3	18
Blum, Yehuda, “Russia Takes over the Soviet Union's Seat at the United Nations” (1992) 3 Eur. J. Int'l L. 354	3
Blum, Yehuda, “U.N. Membership of the ‘New’ Yugoslavia: Continuity or Break?” (1992) 86 Am. J. Int'l L. 830.....	3
Gevurtz, Franklin, “Piercing Piercing: An Attempt to Lift the Veil of Confusion Surrounding the Doctrine of Piercing the Corporate Veil” (1997) 76 Or. L. Rev. 853	30
Higgins, Rosalyn, “Advisory Opinion on Namibia: Which UN Resolutions are Binding under Article 25 of the Charter?” (1972) 21 Int'l & Comp. L.Q. 270.....	4
Higgins, Rosalyn, “Peace and Security Achievements and Failures” (1995) 6 Eur. J. Int'l L. 445	4

Holland, Maria, “Judicial Review of Compliance with the National Environmental Policy Act: An Opportunity for the Rule of Reason” (1985) 12 B. C. Envtl. Aff. L. Rev. 743	18
Lamm, Vanda, “The Legal Character of the Optional Clause System” (2001) 42 Acta Juridica Hungarica 25	8
Lloyd, David, “Succession, Secession, and State Membership in the United Nations” (1993-1994) 26 N.Y.U. J. Int'l L. & Pol. 761	3
Mullerson, Rein, “Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia” (1993) 42 Int'l & Comp. L.Q. 473.....	2
O'Connell, Daniel, “Independence and Succession to Treaties” (1962) 38 Brit. Y.B. Int'l L. 84 ..	6
Popovic, Neil, “In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment” (1995-1996) 27 Colum. Hum. Rts. L. Rev. 487.....	16
Preiss, Erika, “The International Obligation to Conduct an Environmental Impact Assessment: The ICJ Case Concerning the Gabčíkovo-Nagymaros Project” (1999) 7 N.Y.U. Envtl. L.J. 307	18
Radnay, John, “Piercing the Corporate Veil under International Law” (1964-1965) 16 Syracuse L. Rev. 779.....	29
Ratner, Steven, “Corporations and Human Rights: A Theory of Legal Responsibility” (2001-2002) 111 Yale L.J. 443	30
Roland, Rich, “Recognition of States: The Collapse of Yugoslavia and the Soviet Union” (1993) 4 Eur. J. Int'l L. 36.....	1
Robinson, Nicholas, “International Trends in Environmental Impact Assessment” (1991-1992) 19 B. C. Envtl. Aff. L. Rev. 591	18
Rodriguez-Rivera, Luis, “Is the Human Right to Environment Recognized Under International Law? It Depends on the Source” (2001) 12 Colo. J. Int'l Envtl. L.& Pol'y 1.....	16
Stanic, Ana, “Financial Aspects of State Succession: The Case of Yugoslavia” (2001) 12 Eur. J. Int'l L. 751	1
Temoshenko, Alexandre, “The Problem of Preventing Damage to the Environment in National and International Law: Impact Assessment and International Consultations” (1987-1988) 5 Pace Envtl. L. Rev. 475	18
Wirth, David, “The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?” (1994-1995) 29 Ga. L. Rev. 599	18

TREATIES, DECLARATIONS & OTHER INTERNATIONAL AGREEMENTS

<i>Abolition of Forced Labour Convention</i> , 4 July 1957, 320 U.N.T.S. 291, I.L.O. No. 105.....	21
<i>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights</i> , 14 November 1988, O.A.S.T.S. 69, 28 I.L.M. 156.....	16
<i>African Charter on Human Rights and Peoples' Rights</i> , 27 June 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 5810,	11,16,20,22
<i>American Convention on Human Rights</i> , 22 November 1969, O.A.S.T.S. 36, 1144 U.N.T.S. 123	16,20,21,22
<i>Association of South East Asian Nations (ASEAN) Agreement on the Conservation of Nature and Natural Resources</i> , 9 July 1985, reprinted in (1985) 15 J. Env'tl. Pol'y & L. 64.....	18
<i>Charter of the United Nations</i> , 26 June 1945, Can. T.S. 1945 No. 7.....	3,4,5,10
<i>Convention Concerning Forced or Compulsory Labour</i> (ILO No. 29), 28 June 1930, 39 U.N.T.S. 55.....	20,21,22
<i>Convention Concerning Indigenous and Tribal Peoples in Independent Countries</i> (ILO No. 169), 27 June 1989, 72 I.L.O. Official Bull. 59.....	13
<i>Convention on Environmental Impact Assessment in a Transboundary Context</i> , 25 February 1991, 30 I.L.M. 800.....	18,19
<i>Convention on the Elimination of All Forms of Racial Discrimination</i> , 21 December 1965, 660 U.N.T.S. 195	16
<i>Convention on the Law of the Non-Navigational Uses of International Watercourses</i> , 21 May 1997, 36 I.L.M. 700.....	18
<i>Convention on the Protection and Use of Transboundary Watercourses and International Lakes</i> , 17 March 1992, 31 I.L.M. 1312.....	18
<i>European Convention on Human Rights</i> , 4 November 1950, 213 U.N.T.S. 221	16,21,22
<i>European Social Charter</i> , 18 October 1961, 529 U.N.T.S. 89.....	16
<i>Final Act of the Conference on Security and Cooperation in Europe</i> , 1 August 1975, 14 I.L.M. 1292	10,11
<i>Inter-American Commission on Human Rights, Proposed American Declaration on the Rights of Indigenous Peoples</i> , 26 February 1997, UN Doc. OEA/Ser/L/ V/II.95.....	13,14

<i>International Covenant on Civil and Political Rights</i> , 19 December 1966, 999 U.N.T.S. 171	10,11,14,16,20,21,22
<i>International Covenant on Economic, Social and Cultural Rights</i> , 16 December 1966, 993 U.N.T.S. 3	10,11,16,21,22
<i>Rio Declaration on Environment and Development</i> , 14 June 1992, UN Doc. A/CONF.151/5/Rev.1, 31 I.L.M. 874	18
<i>Rome Statute of the International Criminal Court</i> , 17 July 1998, 2187 U.N.T.S. 90	22,23
<i>Slavery Convention of 1926</i> , 25 September 1926, 60 L.N.T.S. 253	20
<i>Stockholm Declaration on the Human Environment of the United Nations Conference on the Human Environment</i> , 16 June 1972, UN Doc. A/CONF.48/14/Rev.1, 11 I.L.M. 1416	16,17
<i>Universal Declaration of Human Rights</i> , 10 December 1948, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71	12,16,20,22
<i>United Nations Draft Declaration on the Rights of Indigenous Peoples</i> , 26 August 1994, 34 I.L.M. 541	13,14
<i>United Nations Convention on Environment and Development: Convention on Biological Diversity</i> , 5 June 5 1992, 31 I.L.M. 818.....	18
<i>Vienna Convention on the Law of Treaties</i> , 23 May 1969, 1155 U.N.T.S. 331	27,28
<i>Vienna Convention on the Succession of States in Respect of Treaties</i> , 23 August 1978, 17 I.L.M. 1488	6,7,8
<i>World Charter for Nature</i> , 28 October 1982, UN Doc.A/RES13717, 22 I.L.M. 455	18
<u>MISCELLANEOUS</u>	
Appendix to UN Doc.1991/RUSSIA (24 December 1991); International Law Commission, “Memorandum by the United Nations Secretariat” in <i>Yearbook of the International Law Commission 1962</i> , vol. II, (New York: UN, 1964).....	3
Bekker, Peter, <i>ASIL Insights: International Court of Justice Upholds its Jurisdiction in Case Brought by Cameroon Against Nigeria</i> , (Washington: ASIL, 1998), online: ASIL Insights < http://www.asil.org/insights/insigh19.htm >	9
Chavez, L-E., Commission on Human Rights, <i>Report of the Working Group on Draft Declaration on Indigenous Peoples</i> , 46th Sess., Provisional Agenda Item 15, U.N.Doc.E/CN.4/2000/84 (1999)	11

Committee on Civil and Political Rights (CCPR), <i>The Rights of Minorities (Article 27 ICCPR): General Comment No.23</i> , 50th Sess., U.N. Doc. CCPR/C/21/Rev.1/add.5 (1994).....	14,15
Commission of the European Communities (CEC), <i>Assessment of the Effects of Certain Public and Private Projects on the Environment</i> , Council Directive No. 85/337 (1985), O.J. (L175) 40	18
Cristescu, Aureliu, Sub-Commission on Prevention of Discrimination and Protection of Minorities, <i>The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments</i> , UN Doc.E/CN.4/Sub.2/404/Rev.1 (1981).....	10,11
Daes, Erica-Irene, Commission on Human Rights, <i>Explanatory Note Concerning the Draft Declaration on the Rights of Indigenous Peoples</i> , 45th Sess., Provisional Agenda Item 14, UN Doc.E/CN.4/Sub.2/1993/26/Add.1 (1993)	11
<i>Inter-American Commission on Human Rights, Proposed American Declaration on the Rights of Indigenous Peoples</i> , 26 February 1997, UN Doc. OEA/Ser/L/ V/II.95	13,14
International Court of Justice, <i>Only States May be Parties to Cases Before the Court</i> , online: The Parties < http://www.icj-cij.org/icjwww/igeneralinformation/ibook/Bbookchapter3.htm >	8
International Law Commission, <i>Draft Articles on Prevention of Transboundary Harm from Hazardous Activities</i> , UN GAOR, 53 rd Sess., Supp. No. 10(A/56/10)	18
International Law Commission, <i>Commentaries to the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, Report of the International Law Commission on the work of its 53rd Session</i> , UN GAOR, 56 th Sess., Supp. No. 10 (A/56/10), General Commentary.....	19
International Law Commission, <i>Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its Fifty-third Session</i> , UN GAOR, 56 th Sess., Supp. No. 10, UN Doc. A/56/10 (2001).....	24,25,26
<i>Letter from Chairman of the Sixth Committee to the Chairman of the First Committee</i> , UN GAOR, 1st Comm., Annex 14g, UN Doc.A/C.1/212 (1947)	3
MacPherson, Bryan, “Authority of the Security Council to Exempt Peacekeepers from International Criminal Court Proceedings” <i>ASIL Insights</i> (July 2002), online: ASIL Insights < http://www.asil.org/insights/insigh89.htm >	4
<i>Report on the Situation of Human Rights in Ecuador</i> (1997), Inter-Am. Comm. H.R., OEA/Ser.L/V/II.96 Doc.10 Rev.1	12,16
Rules of Procedure of the General Assembly, UN Doc.A/520/Rev.15, 1985	4

United Nations Committee on the Elimination of Racial Discrimination (CERD), *Rights of Indigenous Peoples: General Comment No.23*, 51st Sess., Annex V, U.N. Doc A/52/18 (1997)..... 13

United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, The Right to the Highest Attainable Standard of Health: General Comment No.14, 22nd Sess. Geneva, Agenda item 3, U.N. Doc. E/CN.12/2000/4 (2000)..... 17

United Nations Human Rights, Office of the High Commissioner for Human Rights, *The Right to Life General Comment No.6*, (Geneva: UN, 1996) online: <<http://www.unhchr.ch/tbs/doc.nsf>> 16

United States National Environmental Policy Act (1969), 42 U.S.C. § 4321-4370d (1994 & Supp. II 1996) 18

STATEMENT OF JURISDICTION

The Republic of Acastus, Applicant, and the State of Rubria, Respondent, have submitted their differences concerning the Elysian Fields by Special Agreement dated 15 September 2005, without reservation, to the International Court of Justice in accordance with Article 40(1) of the *Statute of the International Court of Justice*. The parties have agreed to the contents of the *Compromis*, subject to the *Corrections and Clarifications* issued 4 November 2005. In accordance with Article 36(1) of the *Statute of the International Court of Justice*, each party will accept the judgment of this Court as final and binding and shall execute it in its entirety and in good faith.

QUESTIONS PRESENTED

1. Whether Acastus has succeeded to Nessus' status as a party to the *Statute of the International Court of Justice* and, consequently, whether the Court has jurisdiction over all claims in this case;
2. Whether by permitting the construction of the pipeline as proposed, Rubria will violate the rights of Acastus' citizens of Elysian heritage;
3. Whether the activities of PROF in the Elysium are attributable to Rubria and are violations of international law; and
4. Whether the outcome of the *Borius* litigation places Acastus in breach of Article 52 of the *RABBIT*.

STATEMENT OF FACTS

In 2000, the Republic of Nessus was dissolved and its territory divided into two new States – the Republic of Acastus and the State of Rubria. Nessus was a founding member of the United Nations (U.N.), and was a party to the *Statute of the International Court of Justice* and accepted the compulsory jurisdiction of the International Court of Justice (ICJ). Beginning in 1999, Nessus failed to pay its U.N. membership dues, but submitted a multi-year payment plan to the U.N. under which it committed to repay its 1999 dues by 2006.

The border between Acastus and Rubria runs through the Elysium, a territory occupied by the Elysians since prehistory. The Elysians are a community of approximately 5,000 indigenous inhabitants with a unique and ancient language, religion and cultural heritage unrelated to those of their neighbours. The Elysians' villages are located in Acastus but their agricultural lands are in Rubria. The Elysians' economy is insular, wholly agricultural and unchanged since well before the industrial revolution. The Elysians are also completely dependent upon the rich agricultural lands. Acastus has granted all rights of citizenship to the Elysians. Under Rubrian law, in order to vote in parliamentary elections, a person must prove that he or she is a permanent resident of Rubria – no Elysian has met this requirement. The Elysians have always had unrestricted movement across the border of Acastus and Rubria.

In April 2001, Rubria applied for U.N. membership and was admitted in October 2001. Rubria accepted the ICJ's compulsory jurisdiction with one reservation: Rubria refused to accept the jurisdiction of the Court over any case in which the opposing State has not been a party to the *Statute of the ICJ* for at least twelve months at the time of the application to the Court. At the time Rubria applied for U.N. membership, Acastus sent a diplomatic note to the U.N. Secretary-General indicating that Acastus would continue Nessus' U.N. membership and would continue

membership of all U.N. organs, including the ICJ. Acastus' note also indicated that it would continue Nessus' party status to all treaties for which the U.N. serves as depository.

On December 1, 2001, in response to Acastus' note, the U.N. Security Council unanimously adopted Resolution 2386, stating that the State formerly known as Nessus had ceased to exist and that Acastus should apply for U.N. membership. On December 15, 2001, the U.N. Under-Secretary General for Legal Affairs issued a memorandum interpreting Resolution 2386, which stated that while the Security Council decided Acastus should apply for its own U.N. membership, Acastus was not prevented from temporarily continuing Nessus' U.N. membership until its membership was accepted. Other than Rubria, only a few States argued that Acastus was not entitled to continue Nessus' U.N. membership. Nevertheless, Acastus has been seated behind nameplates reading "Acastus" in the General Assembly and the flag of Acastus has been flown in place of Nessus' flag at all U.N. buildings. The Acastian government has assumed Nessus' repayment obligations.

In December 2002, the Parliament of Acastus passed the "*Multinational Corporation Responsibility Act*" (*MCRA*). In February 2003, Rubria and Acastus signed the "*Rubria-Acastus Binding Bilateral Investment Treaty*" (*RABBIT*). The *RABBIT* established a most-favoured-nation relationship between the two States with respect to investment. At Rubria's insistence, Article 52 was included in the *RABBIT* to denote corporate responsibilities. Article 62 of the *RABBIT* denotes a choice of jurisdiction clause in favour of the ICJ, under which both parties undertake to respect and carry out ICJ decisions. The *RABBIT* was ratified and entered into force on March 15, 2003. Upon signing the *RABBIT*, Rubria's President noted Rubria's anticipation of increased investment from Acastus in its developing economy, and also noted the incorporation of the *MCRA* into the *RABBIT*.

The Trans-National Corporation (TNC) is a privately-owned limited-liability company incorporated and headquartered in Acastus. In 2002, TNC discovered oil deposits in the Rubrian portion of the Elysium. In May 2003, TNC and the Rubrian government formed a joint-venture corporation incorporated and headquartered in Rubria named Corporation for Oil & Gas (COG), to develop this resource. All employees of COG work full-time and exclusively for the corporation. In April 2004, COG experts recommended the construction of a petroleum pipeline that would require destroying over half of the Elysians' agricultural lands, harming the yield of the remaining lands. This proposal was accepted by Rubria.

Conscious that the harm to local agriculture would affect the Elysians, COG authorized and financed the creation of a private security concern, Protection & Retention Operations Force (PROF), to accompany and guard COG personnel.

The announcement of the proposed pipeline was immediately criticized in the international media, and denounced in Acastian Parliament. Acastus retained the Institute of Local Studies and Appraisals (ILSA), an internationally-respected non-governmental organization, and an expert in environmental and social consequences of industrial projects, to study the pipeline's likely effects. ILSA's report concluded that the destruction of the agricultural lands would make it impossible for the Elysians to continue their traditional way of life. Elysians would be forced to either leave their ancestral homeland or starve.

ILSA also found evidence that PROF had seized Elysians and forced them to work on the COG project. In September 2004, Mr. Borius brought an action for damages in an Acastian civil court against COG, Rubria, PROF and TNC (the *Borius* litigation). The action alleged that PROF had on multiple occasions, seized Elysians, and forced them to perform dangerous work without compensation, contravening international law and the *MCRA*. It claimed that COG, Rubria, and TNC were responsible for these violations, and that the Acastian court had

jurisdiction over the case and the claims against TNC pursuant to the “*Acastian International Rights Enforcement Statute*” (AIRES) and the *MCRA*.

TNC was dismissed as a defendant from the *Borius* litigation on the grounds that, as a mere shareholder, it was not liable under the standard legal rules governing limited-liability corporations. In January 2005, the court issued a judgment against COG and Rubria, finding them jointly and severally liable to the plaintiffs for compensatory damages.

Rubria refused to recognize the judgment and demanded its nullification. As a result, in March 2005, Acastus instituted proceedings against Rubria before the ICJ. Acastus’ application to the ICJ noted that Rubria had accepted the compulsory jurisdiction of the ICJ and that Acastus had succeeded Nessus as a party to *Statute of the ICJ*, and Nessus likewise accepted the compulsory jurisdiction of the Court.

In September 2005, Acastus and Rubria agreed to submit their differences to the ICJ, including the issue of jurisdiction.

SUMMARY OF PLEADINGS

This Court has jurisdiction over all claims in this case because both Acastus and Rubria have accepted the compulsory jurisdiction of this Court. As the continuation of Nessus, Acastus has continued Nessus' membership in the U.N. and Nessus' acceptance of this Court's compulsory jurisdiction. Even if this Court were to decide that Acastus is not the continuation of Nessus, Acastus has accepted the compulsory jurisdiction of this Court as a successor State to Nessus. Nessus' treaty rights and obligations, including acceptance of the compulsory jurisdiction of this Court, have devolved to Acastus. Moreover, Rubria cannot rely on its reservation with respect to reciprocity in order to divest the Court of jurisdiction.

By permitting the construction of the pipeline as proposed, Rubria will violate the rights of Acastus' citizens of Elysian heritage. Firstly, as an indigenous people, the Elysians have a right to self-determination under international law, which entitles them to determine the use of their lands and resources in fulfillment of their economic, social and cultural development. Rubria will violate the Elysians' right to self-determination by infringing on their property and cultural rights as indigenous peoples. Secondly, by permitting the construction of the pipeline as proposed, Rubria will violate the Elysians' right to life. Finally, Rubria's failure to conduct an environmental impact assessment prior to approving the proposed pipeline will violate the Elysians' environmental rights.

The forced labour of Elysians by PROF is a violation of the norms in respect of slavery and fair labour practices. PROF's activities also constitute either unlawful imprisonment or a crime against humanity. PROF's activities are imputable to Rubria because PROF is controlled by Rubria or, alternatively because PROF is exercising elements of government authority. Accordingly, PROF's activities in the Elysium are violations of international law attributable to Rubria.

The outcome of the *Borius* litigation does not place Acastus in breach of Article 52 of the *RABBIT*. A proper interpretation of the *RABBIT* only requires the inclusion of Acastian corporations. As TNC is a mere shareholder in COG, its exclusion as a party in the *Borius* litigation is in conformity with the *RABBIT*. Moreover, Rubria cannot rely on any alleged human rights obligations to argue that the *RABBIT* should be interpreted so as to require the inclusion of TNC in the *Borius* litigation. Finally, Rubria cannot rely on any exceptions to the separate personality of the corporation to require the inclusion of TNC in the *Borius* litigation.

PLEADINGS

I. THE COURT HAS JURISDICTION OVER ALL CLAIMS IN THIS CASE BECAUSE BOTH ACASTUS AND RUBRIA HAVE ACCEPTED THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE.

A. Acastus has accepted the compulsory jurisdiction of this Court by succeeding to Nessus' status as a party to the Statute of this Court.

i. Acastus, as the continuation of Nessus, has accepted the compulsory jurisdiction of this Court.

a) Acastus is the continuation of Nessus.

1. Under customary international law, as reflected in State practice¹ and confirmed by publicists,² mere loss of territory through the independence of part of a State does not extinguish that State's personality. International jurisprudence confirms that the question of a State's continued existence is a matter of fact,³ to be determined by reference to the behaviour and declarations of the State claiming continuation and to the practice of other States.⁴ Accepting the undivided debts of a predecessor State strengthens a claim to continuation.⁵ Publicists recognize that a continuing State need not possess the majority of the landmass or population of its

¹ T. Poulou, *Succession in International Law: A Study of India, Pakistan, Ceylon and Burma* (Delhi: Orient Longman, 1974) at 12-14; Rich Roland, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union" (1993) 4 Eur. J. Int'l L. 36 at 44.

² Malcolm Shaw, *International Law*, 5th ed. (New York: Cambridge University Press, 2003) at 865; Daniel O'Connell, *State Succession in Municipal Law and International Law*, vol. 1 (Cambridge: Cambridge University Press, 1967) at 4-5.

³ *Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia, Conference For Peace in Yugoslavia, Arbitration Commission, Opinion No.8*, 31 I.L.M. 1488 (1992) at 1522.

⁴ *Id.* at 1523.

⁵ Ana Stanic, "Financial Aspects of State Succession: The Case of Yugoslavia" (2001) 12 Eur. J. Int'l L. 751 at 759.

predecessor.⁶ Moreover, this Court's jurisprudence confirms that a Security Council resolution that a State has ceased to exist is not dispositive.⁷

2. The behaviour and declarations of Acastus establish that it is the continuation of Nessus. Acastus has in all respects consistently acted as the continuation of Nessus: it maintains that it is subject to all of Nessus' treaty rights and obligations,⁸ it occupies the continuing seat of Nessus in the U.N. General Assembly,⁹ and it continues to repay the entire debt owed by Nessus to the U.N..¹⁰ Accordingly, Acastus is rightfully considered to be the continuation of Nessus. By contrast, Rubria pursued its own membership in the U.N.¹¹ and abdicated responsibility for Nessus' obligations,¹² effectively renouncing any claim to continuation.

b) As the continuation of Nessus, Acastus has continued both Nessus' membership in the United Nations and its acceptance of the compulsory jurisdiction of this Court.

⁶ James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) at 404; Rein Mullerson, "Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia" (1993) 42 Int'l & Comp. L.Q. 473 at 478; Mojmir Mrak, *Succession of States* (Boston: Kluwer, 1999) at 103.

⁷ *Application For Revision of the Judgment of 11 July 1996 in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, [2003] I.C.J. Rep. 7 at 39-50.

⁸ *Compromis* ¶¶8,36.

⁹ *Compromis* ¶12.

¹⁰ *Id.*

¹¹ *Compromis* ¶7.

¹² *Compromis* ¶12.

3. State practice,¹³ publicists¹⁴ and the U.N. itself¹⁵ confirm that a State may continue its predecessor's membership in the U.N.. Acquiescence by other States and agreement by the continuing State to abide by the U.N. Charter and international law are two of the most important factors in enabling a State to continue its predecessor's U.N. membership.¹⁶ Furthermore, members of the U.N. are *ipso facto* parties to the Statute of this Court.¹⁷ Moreover, States which continue their predecessor's U.N. membership must of necessity also continue their predecessor's status as party to the Optional Protocol of this Court, thereby accepting its compulsory jurisdiction.

4. Notwithstanding the objections of a few, the vast majority of U.N. member States have raised no objection to Acastus continuing Nessus' membership.¹⁸ Acastus has explicitly accepted the obligations of U.N. membership,¹⁹ and its willingness to assume Nessus' treaty obligations, including submission to this Court's compulsory jurisdiction,²⁰ indicates its commitment to abide

¹³ Appendix to UN Doc.1991/RUSSIA (24 December 1991); International Law Commission, "Memorandum by the United Nations Secretariat" in *Yearbook of the International Law Commission 1962*, vol. II, (New York: UN, 1964) at 101.

¹⁴ David Lloyd, "Succession, Secession, and State Membership in the United Nations" (1993-1994) 26 N.Y.U. J. Int'l L. & Pol. 761; Yehuda Blum, "Russia Takes over the Soviet Union's Seat at the United Nations" (1992) 3 Eur. J. Int'l L. 354 at 357-359.

¹⁵ *Letter from Chairman of the Sixth Committee to the Chairman of the First Committee*, UN GAOR, 1st Comm., Annex 14g, UN Doc.A/C.1/212 (1947).

¹⁶ Yehuda Blum, "U.N. Membership of the 'New' Yugoslavia: Continuity or Break?" (1992) 86 Am. J. Int'l L. 830 at 831; Lloyd, *supra* note 14 at 778.

¹⁷ *Charter of the United Nations*, 26 June 1945, Can. T.S. 1945 No. 7 at Article 93(1) [*U.N. Charter*].

¹⁸ *Compromis*, ¶11.

¹⁹ *Compromis* ¶8.

²⁰ *Compromis* ¶36.

by international law. Accordingly, Acastus has continued Nessus' U.N. membership. As a U.N. member, Acastus is *ipso facto* subject to the Court's jurisdiction. Moreover, as the continuation of Nessus, Acastus continues Nessus' acceptance of the compulsory jurisdiction of this Court.

c) Rubria cannot rely on Security Council Resolution 2386 to deny Acastus' continuing membership in the United Nations.

5. U.N. member States are obligated to carry out "decisions of the Security Council",²¹ but it is unclear which kinds of resolutions are covered by the term "decisions".²² While resolutions taken under the authority of Chapter VII are presumed to be binding,²³ Chapter VI resolutions are presumed to be non-binding unless they are expressly intended to bind all member States.²⁴ A range of factors, including the language of a resolution, whether it explicitly invokes Article 25 of the U.N. Charter, and the subsequent practice of member States, may point to whether the Security Council intended a resolution to be binding.²⁵ Moreover, a State's continuing U.N. membership is effectively confirmed every session by the U.N. Credentials Committee.²⁶ Of necessity, the recognition of a government's credentials must imply recognition of the State as a

²¹ *U.N. Charter*, *supra* note 17 at Article 25.

²² Rosalyn Higgins, "The Advisory Opinion on Namibia: Which UN Resolutions are Binding under Article 25 of the Charter?" (1972) 21 *Int'l & Comp. L.Q.* 270 at 280-282.

²³ David Schweigman, *The Authority of the Security Council Under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice* (Boston: Kluwer, 2001) at 31; Rosalyn Higgins, "Peace and Security Achievements and Failures" (1995) 6 *Eur. J. Int'l L.* 445 at 445-46.

²⁴ Bryan MacPherson, "Authority of the Security Council to Exempt Peacekeepers from International Criminal Court Proceedings" *ASIL Insights* (July 2002), online: *ASIL Insights* <<http://www.asil.org/insights/insigh89.htm>>; Higgins, *supra* note 21 at 280-282.

²⁵ Higgins, *supra* note 22 at 283; *Legal Consequences For States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, [1971] *I.C.J. Rep.* 16 at 52-53 [*Legal Consequences*].

²⁶ Rules of Procedure of the General Assembly, UN Doc.A/520/Rev.15, 1985 at Rule 28.

member. Furthermore, Article 4(2) and 5 of the U.N. Charter provide that issues related to membership must be dealt with jointly by the Security Council and the General Assembly.²⁷

6. The dispute between Acastus and Rubria does not pose a threat to international peace and security; therefore, Resolution 2386 cannot issue from the Council's Chapter VII powers. If Resolution 2386 is valid at all, it is so only because it issues from the Council's powers under Chapter VI related to the pacific settlement of disputes. However, the Resolution bears no indication that it is intended to be binding. The Security Council merely "considers" that Nessus has ceased to exist; it does not "insist" that Acastus apply for membership.²⁸ The resolution does not invoke Article 25, requiring States to comply. Finally, most States have not treated Resolution 2386 as having any binding effect, and have acquiesced in Acastus' continuation of Nessus' membership.²⁹ Thus Resolution 2386 is recommendatory only, and Acastus remains free to continue Nessus' U.N. membership; indeed, the U.N.'s yearly accreditation of the Acastian delegation indicates acceptance of its membership in the U.N.. In any event, to the extent that Resolution 2386 suggests Acastus is no longer a U.N. member, it is *ultra vires* the Security Council, as membership questions must be dealt with jointly by the Security Council and the General Assembly. Permitting the Security Council to make unilateral decisions regarding membership would amount to rewriting the U.N. Charter.

ii. In the alternative, as a successor State to Nessus, Acastus has accepted the compulsory jurisdiction of this Court.

a) Acastus is a successor State to Nessus.

²⁷ *U.N. Charter*, *supra* note 17 at Articles 4(2) and 5.

²⁸ *Compromis* ¶¶9.

²⁹ *Compromis* ¶¶10-11.

7. State succession is the legal consequence of a change in territorial sovereignty.³⁰ One way in which State succession may occur is dissolution.³¹ Dissolution occurs when two or more new States are formed from the territory of a predecessor State.³²

8. Should this Court find that Nessus has been dissolved, the logical consequence of this change in territorial sovereignty is that Acastus is a successor State to Nessus. This consequence is in conformity with Security Council Resolution 2386, and indeed follows from the cessation of Nessus' existence.³³

b) The treaty rights and obligations of Nessus have devolved to Acastus as a successor State.

9. Under customary international law, as reflected in State practice,³⁴ upon the dissolution of a State, any treaty in force in respect of the entire territory of the predecessor State continues in force in respect of each successor State. International convention³⁵ and publicists³⁶ confirm that a State which comes into existence through dissolution may succeed to the treaty rights and obligations of its predecessor.

³⁰ Okon Udokang, *Succession of New States to International Treaties* (New York: Oceana Publications, 1972) at 106; Shaw, *supra* note 2 at 864; O'Connell, *supra* note 2 at 3.

³¹ O'Connell, *supra* note 2 at 4-5; Hugh Kindred, *International Law, Chiefly as Interpreted and Applied in Canada*, 6th ed. (Toronto: Emond, 2000) at 67.

³² Mrak, *supra* note 6 at 3; Antonio Cassese, *International Law*, 2nd ed. (Oxford: Oxford University Press, 2005) at 77.

³³ *Compromis* ¶9.

³⁴ Mrak, *supra* note 6 at 109.

³⁵ *Vienna Convention on the Succession of States in Respect of Treaties*, 23 August 1978, 17 I.L.M. 1488 at Article 34 [VCSSRT].

³⁶ Shaw, *supra* note 2 at 875; Udokang, *supra* note 30 at 225-226; Daniel O'Connell, "Independence and Succession to Treaties" (1962) 38 Brit. Y.B. Int'l L. 84.

10. Acastus came into being through the dissolution of Nessus. Accordingly, treaties that were in force in respect of the entire territory of Nessus continue in force in respect of Acastus. Because Nessus was a party to the *Statute of the ICJ*,³⁷ Acastus has succeeded to the rights and obligations under that Statute.

c) Rubria cannot argue that the “clean slate” doctrine prevents Acastus from succeeding to Nessus’ rights and obligations under the Statute of this Court.

11. The clean slate doctrine, if it exists at all at international law, is restricted to States that have gained independence from a colonial power, also known as “newly independent States”.³⁸ Moreover, this doctrine is only justified by reference to the principle of self-determination: States should not be bound to treaties against their will.³⁹ Accordingly, this Court has held that the clean slate doctrine is an opt-out mechanism and does not prevent a successor State from electing to continue as a party to the treaties entered into by its predecessor.⁴⁰ Publicists⁴¹ confirm that a successor State can succeed to the treaty rights and obligations of its predecessor.

12. The clean slate doctrine is not applicable in this case because Acastus is not a “newly independent State” within the meaning of the *Vienna Convention on State Succession in Respect of Treaties*,⁴² as Acastus was not a colony of Nessus. Even if the “clean slate” doctrine is

³⁷ *Compromis* ¶1.

³⁸ *VCSSRT*, *supra* note 35 at Article 16; Lord McNair, *The Law of Treaties* (Oxford: Clarendon Press, 1961) at 600-601.

³⁹ *Case Concerning Application of Convention on Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, [1996] I.C.J. Rep. 595 at 640.

⁴⁰ *Id.*

⁴¹ McNair, *supra* note 38; Anthony Aust, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2000) at 310.

applicable, Acastus has willingly accepted the obligations incurred by Nessus. Since Acastus notified the U.N. that it will continue the party status of Nessus to all treaties for which the U.N. serves as depository,⁴³ it has succeeded to Nessus' status as party to this Court's Statute.

d) Nessus' acceptance of the compulsory jurisdiction of this Court has devolved to Acastus.

13. International jurisprudence⁴⁴ confirms that a State's acceptance of this Court's compulsory jurisdiction is not merely a unilateral declaration, but rather constitutes the accepting State a party to an agreement. Publicists confirm that such declarations have a contractual character.⁴⁵ Moreover, the U.N. Secretary-General registers and publishes declarations of acceptance of the compulsory jurisdiction of this Court as international agreements in the U.N. Treaty Series.⁴⁶ Accordingly, Nessus' acceptance of this Court's compulsory jurisdiction constitutes a treaty obligation, and Acastus has succeeded to that acceptance.

B. Rubria cannot rely on its reservation with respect to reciprocity in order to divest this Court of jurisdiction.

14. The mere fact that one State is unaware that another has accepted the compulsory jurisdiction of this Court does not negate the existence of reciprocity. This Court has confirmed that reciprocity is not affected if a declaration is received by other States even nine months after

⁴² *VCSSRT*, *supra* note 35 at Article 2(f).

⁴³ *Compromis* ¶8.

⁴⁴ *Electricity Company of Sofia and Bulgaria*, Order of 5 December 1939, P.C.I.J. (Ser. A/B) No. 79 at 408; *Case Concerning Right of Passage Over Indian Territory (Portugal v. India)*, [1957] I.C.J. Rep. 125 at 146.

⁴⁵ Hans Kelsen, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (London: Stevens & Sons, 1950) at 521–522; Vanda Lamm, “The Legal Character of the Optional Clause System” (2001) 42 *Acta Juridica Hungarica* 25 at 29.

⁴⁶ International Court of Justice, *Only States May be Parties to Cases Before the Court*, online: The Parties <<http://www.icj-cij.org/icjwww/igeneralinformation/ibook/Bbookchapter3.htm>>.

its formal deposit with the U.N. Secretary-General.⁴⁷ Moreover, reciprocity is concerned with the substance of a State's commitments, not with the formalities of their creation;⁴⁸ a State may fulfill the conditions of reciprocity even if its acceptance of the compulsory jurisdiction of this Court is imperfect.⁴⁹

15. Rubria's reservation to this Court's jurisdiction applies only to States which have not been party to this Court's Statute for at least twelve months at the time of application to the Court.⁵⁰ Acastus, as the continuation of Nessus,⁵¹ has been party to this Court's Statute since the founding of the U.N..⁵² In the alternative, Acastus succeeded to Nessus' status as party to this Court's Statute⁵³ upon the dissolution of Rubria.⁵⁴ In the further alternative, Acastus temporarily continued Rubria's membership on 15 December 2001 in accordance with the memorandum of the Under-Secretary-General for Legal Affairs.⁵⁵ Under all these alternatives, Acastus has been party to this Court's Statute for more than twelve months prior to application to this Court in the

⁴⁷ Peter Bekker, *ASIL Insights: International Court of Justice Upholds its Jurisdiction in Case Brought by Cameroon Against Nigeria*, (Washington: ASIL, 1998), online: ASIL Insights <<http://www.asil.org/insights/insigh19.htm>>.

⁴⁸ *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, [1998] I.C.J. Rep. 275 at 43.

⁴⁹ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.)*, Jurisdiction of the Court and Admissibility of the Application, [1984] I.C.J. Rep. 392 at 62.

⁵⁰ *Compromis* ¶7.

⁵¹ *Compromis* ¶1.

⁵² *Id.*

⁵³ Pleadings ¶10.

⁵⁴ *Compromis* ¶2.

⁵⁵ *Compromis* ¶10.

instant case. Moreover, Acastus' notice to the U.N. Secretary General in April 2001⁵⁶ amounted in substance to acceptance sufficient to bring Acastus within the condition of reciprocity required by Rubria's reservation.

II. BY PERMITTING THE CONSTRUCTION OF THE PIPELINE AS PROPOSED, RUBRIA WILL VIOLATE THE RIGHTS OF ACASTUS' CITIZENS OF ELYSIAN HERITAGE.

A. Rubria's approval of the construction of the pipeline will violate the Elysians' right to self-determination.

i. Elysians have a right to self-determination under international law, which entitles them to determine their economic, social and cultural development.

16. The right of all peoples to self-determination is a human right under customary international law, as evidenced by international jurisprudence,⁵⁷ international conventions⁵⁸ and publicists.⁵⁹ The right must permit all peoples to freely pursue their economic, social and cultural

⁵⁶ *Compromis* ¶8.

⁵⁷ *Legal Consequences, supra* note 25; *Western Sahara*, [1975] I.C.J. Rep. 12; *Case Concerning East Timor (Portugal v. Australia)*, [1995] I.C.J. Rep. 90.

⁵⁸ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171 at Article 1(1) [ICCPR]; *U.N. Charter, supra* note 17 at Article 1; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3 at Article 1(1) [ICESCR]; *African Charter on Human Rights and Peoples' Rights*, 27 June 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 at Article 20 [ACHRPR]; *Final Act of the Conference on Security and Cooperation in Europe*, 1 August 1975, 14 I.L.M. 1292 at Principle 8 [*Helsinki Declaration*].

⁵⁹ Antonio Cassese, *Self-Determination of Peoples: a Legal Reappraisal* (Cambridge: Cambridge University Press, 1995) at 140; Ian Brownlie, *Principles of Public International Law*, 6th ed. (Oxford: Oxford University Press, 2003) at 489; Aureliu Cristescu, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments*, UN Doc.E/CN.4/Sub.2/404/Rev.1 (1981) at ¶216 [Self-Determination Report].

development.⁶⁰ The term “peoples” indicates the right is collective.⁶¹ A group can be considered a “people” if it possesses a unique ethnicity, language, religion or culture,⁶² or, a tie to specific lands.⁶³ Finally, State practice⁶⁴ and publicists⁶⁵ confirm that the right to self-determination must be afforded to indigenous peoples so long as the territorial integrity of the State is maintained.

17. As an indigenous population,⁶⁶ the Elysians possess a language, religion and culture that are unique and unrelated to those of their neighbours.⁶⁷ Moreover, they have occupied ancestral lands in both Acastus and Rubria since prehistory.⁶⁸ The lands in Rubria have been the basis of the Elysians’ traditional way of life and economy since well before the industrial revolution.⁶⁹

⁶⁰ *ICCPR*, *supra* note 58 at Article 1(1); *ICESCR*, *supra* note 58 at Article 1(1); *ACHRPR*, *supra* note 58 at Article 20; *Helsinki Declaration*, *supra* note 58 at Principle 8.

⁶¹ Self-Determination Report, *supra* note 59 at ¶214; S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (New York: Oxford University Press, 2004) at 100.

⁶² Erica-Irene Daes, Commission on Human Rights, *Explanatory Note Concerning the Draft Declaration on the Rights of Indigenous Peoples*, 45th Sess., Provisional Agenda Item 14, UN Doc.E/CN.4/Sub.2/1993/26/Add.1 (1993) at ¶5; Self-Determination Report, *supra* note 59 at ¶279.

⁶³ Patrick Thornberry, *Indigenous Peoples and Human Rights* (New York: Manchester University Press, 2002) at 409; Self-Determination Report, *supra* note 59 at ¶279.

⁶⁴ L-E. Chavez, Commission on Human Rights, *Report of the Working Group on Draft Declaration on Indigenous Peoples*, 46th Sess., Provisional Agenda Item 15, U.N.Doc.E/CN.4/2000/84 (1999), at ¶50-81.

⁶⁵ Thornberry, *supra* note 63; Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991) at 14; Anaya, *supra* note 61.

⁶⁶ *Compromis* ¶3.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

Therefore, the Elysians are a “people” with a right to self-determination entitled to freely determine the use of their lands and how their economy, society and culture will develop.

ii. By permitting the construction of the pipeline, Rubria will violate the Elysians’ right to self-determination by infringing on their property rights.

18. Under customary international law, as reflected in jurisprudence,⁷⁰ international conventions⁷¹ and confirmed by publicists,⁷² the collective property rights of indigenous peoples are recognized as necessary for the fulfillment of the right to self-determination. Indigenous peoples’ own accounts of their traditional systems of communal land and resource tenure establish the content of their property rights.⁷³ Indigenous lands include lands used only for agricultural or cultural purposes.⁷⁴ Under customary international law, indigenous property

⁷⁰ *Maya Indigenous Communities of the Toledo District v. Belize* (2004), Inter-Am. Comm. H.R. No.40/04, *Annual Report of the Inter-American Commission on Human Rights: 2004*, OEA/Ser.L/V/II.122/doc.5/rev.1 (2005) at ¶113 [*Maya*]; *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), Inter-Am. Ct. H.R. (Ser. C) No.79, at 148-149, *Annual Reporter of the Inter-American Court of Human Rights [Awas Tingi]*.

⁷¹ *Universal Declaration of Human Rights*, 10 December 1948, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 at Article 21 [*UDHR*].

⁷² S. James Anaya & Robert Williams, “The Protection of Indigenous Peoples’ Rights over Lands and Natural Resources under the Inter-American Human Rights System” (2001) 14 *Harv. Hum. Rts. J.* 33 at 59-73.

⁷³ *Mary and Carrie Dann v. United States* (2002), Inter-Am. Comm. H.R. Report No. 75/02 Case 11.140, at ¶129-131, *Annual Report of the Inter-American Commission on Human Rights: 2002*, OEA/Ser.L/V/II.117 Doc. 1 rev. 1 [*Dann*]; *Report on the Situation of Human Rights in Ecuador* (1997), Inter-Am. Comm. H.R., OEA/Ser.L/V/II.96 Doc.10 Rev.1 [*Ecuador Report*]; *Awas Tingni*, *supra* note 70 at ¶151; *Mabo v. Queensland* (1992), 175 C.L.R. 1 (H.C.A.) at ¶52; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at 1066-69; *Maya*, *supra* note 70 at ¶115.

⁷⁴ *Maya*, *supra* note 70 at ¶129.

rights are distinct from those recognized under a State's domestic law,⁷⁵ and can exist even when use of the lands and resources are not exclusive to an indigenous people.⁷⁶ Given the existence of indigenous property rights, a State has an obligation to guarantee the enjoyment of these rights by demarcating and officially recognizing the lands of indigenous peoples.⁷⁷ Since control over the use of their lands is an aspect of indigenous peoples' right to self-determination, a State has an additional obligation to obtain free, prior and informed consent from indigenous peoples when State policies or operations affect their interests.⁷⁸ The initiative of free, prior and informed consent must be undertaken by a State in good faith with the objective of achieving agreement.⁷⁹

19. The Elysians have property rights to their communal agricultural lands in Rubria in accordance with their right to self-determination. The mere fact that these land are under the stewardship of Rubria's National Parks Authority,⁸⁰ not "owned" by the Elysians under Rubria's domestic land tenure system, does not preclude the recognition of the Elysians' property rights in these lands under international law. Rubria has violated and continues to violate the Elysians'

⁷⁵ *Inter-American Commission on Human Rights, Proposed American Declaration on the Rights of Indigenous Peoples*, 26 February 1997, UN Doc. OEA/Ser/L/V/II.95 at Article XVIII, ¶2, 3(iii) [PADRIP]; *Awas Tingi*, *supra* note 70 at 146; *Maya*, *supra* note 70 at ¶117; *Dann*, *supra* note 73 at 134.

⁷⁶ *Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169)*, 27 June 1989, 72 I.L.O. Official Bull. 59 at Article 14(1) [ILO No. 169].

⁷⁷ *Maya*, *supra* note 69 at 5,99,132-133; *ILO No. 169*, *supra* note 76 at Article 14.1(1).

⁷⁸ *ILO No. 169*, *supra* note 76 at Article 7(1); United Nations Committee on the Elimination of Racial Discrimination (CERD), *Rights of Indigenous Peoples: General Comment No. 23*, 51st Sess., Annex V, U.N. Doc A/52/18 (1997) at 4(d); *United Nations Draft Declaration on the Rights of Indigenous Peoples*, 26 August 1994, 34 I.L.M. 541 at Article 30 [UNDDRIP]; *Maya*, *supra* note 70 at ¶142.

⁷⁹ *ILO No. 169*, *supra* note 76.

⁸⁰ *Compromis* ¶5.

property rights by failing to adequately demarcate and protect these lands. Furthermore, Rubria's approval of the proposed pipeline will result in the destruction of half the Elysians' cultural lands and will severely harm the remainder.⁸¹ Finally, Rubria will also violate the Elysians' property rights by failing to obtain their free, prior and informed consent regarding the construction of the proposed pipeline. In the result, Rubria's conduct has infringed the Elysians' property rights and has thereby violated their right to self-determination.

iii. By permitting the construction of the pipeline, Rubria will violate the Elysians' right to self-determination by infringing on their cultural rights.

20. Under customary international law, confirmed by jurisprudence,⁸² international instruments,⁸³ and publicists,⁸⁴ the cultural rights of indigenous peoples are recognized as necessary for the fulfillment of their right to self-determination. Indigenous cultural rights provide special protection for indigenous peoples by preserving their traditional way of life associated with the use of their lands, whether for social or economic purposes.⁸⁵ The cultural rights of indigenous peoples exist independently of a State's recognition of indigenous property

⁸¹ *Compromis* ¶21.

⁸² *Yanomami of Brazil*, Res. No. 12/85, Case No. 7615 Inter-Am C.H.R. 24 (1985) at ¶9 *Annual Report of the Inter-American Commission on Human Rights 1984-85*, OEA/Ser.L/V/II.66, doc.10 [Yanomami]; *Dann*, *supra* note 73 at ¶131.

⁸³ *ICCPR*, *supra* note 58 at Article 27; *UNDDRIP*, *supra* note 78 at Article 7(a); *PADRIP*, *supra* note 75 at Articles VII.

⁸⁴ *Anaya*, *supra* note 61 at 129,131-140.

⁸⁵ Committee on Civil and Political Rights (CCPR), *The Rights of Minorities (Article 27 ICCPR): General Comment No.23*, 50th Sess., U.N. Doc. CCPR/C/21/Rev.1/add.5 (1994) at 3.2 [General Comment No.23]; *ILO No.169*, *supra* note 76 at Article 13.1(1); *Ominayak and the Lubicon Lake Band v. Canada*, 1990 Annual Report of the Human Rights Committee, U.N. Doc. A/45/40, Vol.II, App. A (1990) at 32.2; *Lansman v. Finland* (1996), U.N. Hum. Rt. Comm., Communication No. 671/1995, U.N. Doc. CCPR/C/58/D/671/1995 at 10.2 [Lansman].

rights.⁸⁶ A State is prohibited from undertaking an activity that negatively affects an indigenous people's culture, unless the State can reasonably and objectively demonstrate that the activity is necessary to the continued viability and welfare of that people.⁸⁷ Moreover, even if a State can justify an undertaking affecting the cultural rights of indigenous peoples, it is obligated to take measures to ensure their informed participation in evaluating the effects of such an activity.⁸⁸

21. The Elysians' culture is strongly tied to their agricultural lands in Rubria.⁸⁹ The internationally-respected ILSA concluded that the destruction of the lands will make it impossible for the Elysians to continue their traditional way of life.⁹⁰ Moreover, Rubria has made no effort to demonstrate that the pipeline as proposed would in any way be necessary for the viability of the Elysians. Nor has Rubria made any effort whatsoever to engage the Elysians' participation in the decision to approve the proposed pipeline. In the result, the construction of the pipeline as proposed will infringe upon the Elysians' cultural rights and violate their right to self-determination.

B. Rubria's approval of the construction of the pipeline will violate the Elysians' right to life.

22. Under customary international law, as confirmed by international conventions⁹¹ and publicists,⁹² the right to life is the most fundamental of all human rights. The scope of the right

⁸⁶ Anaya, *supra* note 72 at 52; Lansman, *supra* note 85 at ¶2.

⁸⁷ *Lovelace v. Canada*, No. 24/1977, UN Doc.CCPR/C/13/D/24/1977 (1980).

⁸⁸ *General Comment No.23*, *supra* note 85 at 7; Dann, *supra* note 73 at 140; Maya, *supra* note 70 at 132.

⁸⁹ *Compromis* ¶24.

⁹⁰ *Id.*

⁹¹ *UDHR*, *supra* note 71, at Article 3; *ICCPR*, *supra* note 58 at Article 6 (1); *European Convention on Human Rights*, 4 November 1950, 213 U.N.T.S. 221 at Article 2(1) [*ECHR*];

should not be interpreted narrowly⁹³ but must include protection from actions that both recklessly threaten life⁹⁴ and fail to ensure respect for the right to life.⁹⁵ Moreover, under customary law, as confirmed by international organizations,⁹⁶ international jurisprudence⁹⁷ and publicists,⁹⁸ the right to health and the right to a healthy environment are indispensable for the exercise of the right to life. The term “health” is not confined to health care but embraces a wide-range of socio-economic factors such as food, housing, water and the environment.⁹⁹ Furthermore, any activity

American Convention on Human Rights, 22 November 1969, O.A.S.T.S. 36, 1144 U.N.T.S. 123 at Article 4(1) [*ACHR*]; *ACHRPR*, *supra* note 58.

⁹² *Shaw*, *supra* note 2 at 256; B. Ramcharan, *The Right to Life in International Law* (Dordrecht: Nijhoff, 1985) at 6.

⁹³ United Nations Human Rights, Office of the High Commissioner for Human Rights, *The Right to Life General Comment No.6*, (Geneva: UN, 1996) online: <<http://www.unhcr.ch/tbs/doc.nsf>>.

⁹⁴ *Association X v. United Kingdom* (1978), 14 Eur. Comm. H.R.D.R. 31 (1978) [*Assoc. X*].

⁹⁵ *ICCPR*, *supra* note 58 at Article 2(1); *Assoc. X*, *supra* note 94 at 31,32-34; *LCB v. UK* (1999), 27 E.H.R.R. 212.

⁹⁶ *UDHR*, *supra* note 71 at Article 25.1; *ICESCR*, *supra* note 58 at Article 12.1; *Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 U.N.T.S. 195 at Article 5(e)(v); *European Social Charter*, 18 October 1961, 529 U.N.T.S. 89 at Article 11; *ACHRPR*, *supra* note 58 at Article 16; *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, 14 November 1988, O.A.S.T.S. 69, 28 I.L.M. 156 at Article 10; *Ecuador Report*, *supra* note 73; *Stockholm Declaration on the Human Environment of the United Nations Conference on the Human Environment*, 16 June 1972, UN Doc. A/CONF.48/14/Rev.1 at Preamble [*Stockholm*].

⁹⁷ *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, [1997] I.C.J. Rep. 7 [*Gabčíkovo*]; *E.H.P v. Canada*, U.N. Hum. Rt. Comm., Communication No. 67/1980, UN Doc. CCPR/C/OP/1 (1982) at 20.

⁹⁸ Luis Rodriguez-Rivera, “Is the Human Right to Environment Recognized Under International Law? It Depends on the Source” (2001) 12 *Colo. J. Int'l Envtl. L. & Pol'y* 1; Neil Popovic, “In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment” (1995-1996) 27 *Colum. Hum. Rts. L. Rev.* 487 at 512.

⁹⁹ *United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, The Right to the Highest Attainable Standard of Health: General Comment No.14*, 22nd

by a State that results in the displacement of indigenous peoples from traditional lands against their will, thereby denying them their source of food, is a violation of both their right to health and life.¹⁰⁰

23. By permitting the construction of the pipeline as proposed, Rubria will threaten the survival of the Elysians by destroying or damaging all of their agricultural lands.¹⁰¹ The Elysians depend entirely upon these lands as a means of subsistence.¹⁰² According to the ILSA report, destruction of the lands would not only render it impossible for the Elysians to continue their traditional way of life, it would result in their starvation.¹⁰³ In order to survive, the Elysians would be forced to move.¹⁰⁴ In the result, Rubria would violate the Elysians' right to health and a healthy environment, thereby violating their right to life.

C. **Rubria's failure to conduct an environmental impact assessment prior to their approval of the construction of the proposed pipeline will violate the Elysians' environmental rights.**

24. Under customary international law as evidenced by State practice,¹⁰⁵ and confirmed by publicists¹⁰⁶ and international instruments,¹⁰⁷ a State has an obligation to conduct an

Sess. Geneva, Agenda item 3, U.N. Doc. E/CN.12/2000/4 (2000), at 4 [*General Comment No.14*]; *Stockholm*, *supra* note 96 at Preamble.

¹⁰⁰ *General Comment No.14*, *supra* note 99 at 27.

¹⁰¹ *Compromis* ¶21,25.

¹⁰² *Compromis* ¶5.

¹⁰³ *Compromis* ¶24,25.

¹⁰⁴ *Id.*

¹⁰⁵ *United States National Environmental Policy Act* (1969), 42 U.S.C. § 4321-4370d (1994 & Supp. II 1996); Commission of the European Communities (CEC), *Assessment of the Effects of Certain Public and Private Projects on the Environment*, Council Directive No. 85/337 (1985), O.J. (L175) 40; Dinah Bear, "The National Environmental Policy Act: Its Origins and

environmental impact assessment (EIA) before undertaking activities with potentially adverse effects on the environment. The purpose of an EIA is to ensure consideration of a project's environmental impacts so as to aid in the mitigation and alleviation of any harm.¹⁰⁸ The duty to perform an EIA is clearest where the acts or omissions of a State have transboundary effects.¹⁰⁹ Transboundary effects include effects that endanger the health of the population of another State.¹¹⁰

Evolutions” (1995) 10 Nat. Res. & Env't 3 at 71; Nicholas Robinson, “International Trends in Environmental Impact Assessment” (1991-1992) 19 B. C. Env'tl. Aff. L. Rev. 591 at 597.

¹⁰⁶ Erika Preiss, “The International Obligation to Conduct an Environmental Impact Assessment: The ICJ Case Concerning the Gabčíkovo-Nagymaros Project” (1999) 7 N.Y.U. Env'tl. L.J. 307; Maria Holland, “Judicial Review of Compliance with the National Environmental Policy Act: An Opportunity for the Rule of Reason” (1985) 12 B. C. Env'tl. Aff. L. Rev. 743 at 755-56; Alexandre Temoshenko, “The Problem of Preventing Damage to the Environment in National and International Law: Impact Assessment and International Consultations” (1987-1988) 5 Pace Env'tl. L. Rev. 475 at 480; David Wirth, “The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?” (1994-1995) 29 Ga. L. Rev. 599 at 629.

¹⁰⁷ *Rio Declaration on Environment and Development*, 14 June 1992, UN Doc. A/CONF.151/5/Rev.1, 31 I.L.M. 874 at Principle 17; *United Nations Convention on Environment and Development: Convention on Biological Diversity*, 5 June 1992, 31 I.L.M. 818 at Article 14; *World Charter for Nature*, 28 October 1982, UN Doc.A/RES13717, 22 I.L.M. 455 [*World Charter*]; *Association of South East Asian Nations (ASEAN) Agreement on the Conservation of Nature and Natural Resources*, 9 July 1985, reprinted in (1985) 15 J. Env'tl. Pol'y & L. 64 at Article 14.

¹⁰⁸ *World Charter*, *supra* note 107 at Article 11(c).

¹⁰⁹ *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, 17 March 1992, 31 I.L.M. 1312 at Article 3 [*Transboundary Watercourses*]; *Convention on the Law of the Non-Navigational Uses of International Watercourses*, 21 May 1997, 36 I.L.M. 700 at Article 12; *Convention on Environmental Impact Assessment in a Transboundary Context*, 25 February 1991, 30 I.L.M. 800 at Article 2 [*CEIATC*]; International Law Commission, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, UN GAOR, 53rd Sess., Supp. No. 10(A/56/10) at Article 7.

¹¹⁰ International Law Commission, *Commentaries to the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, Report of the International Law Commission on the work of its 53rd Session*, UN GAOR, 56th Sess., Supp. No. 10 (A/56/10), General

25. The pipeline will clearly have devastating effects on the environment. Rubria must have been aware of this harm as both a shareholder of COG¹¹¹ as well as due to the immediate criticism from the international media and the ILSA study on the environmental and social effects of the proposed pipeline.¹¹² Despite the clear threat to the environment, Rubria has neither met its obligation to conduct an EIA nor has it attempted to mitigate or alleviate any of the harm that the pipeline will cause. Rubria has chosen to irrevocably damage the portion of the Elysium within its territory merely because other routes are more expensive.¹¹³ Moreover, the construction of the pipeline as proposed will have transboundary effects on the health of Acastus citizens of Elysian heritage.¹¹⁴ Therefore, Rubria will violate the Elysians' environmental rights by failing to conduct an EIA prior to approving the construction of the proposed pipeline.

III. THE ACTIVITIES OF PROF IN THE ELYSIUM ARE VIOLATIONS OF INTERNATIONAL LAW ATTRIBUTABLE TO RUBRIA.

A. The activities of PROF in the Elysium are in violation of international law.

i. The forced labour of Elysians is a violation of the norms in respect of slavery under international law.

26. State practice,¹¹⁵ international conventions,¹¹⁶ publicists¹¹⁷ and international jurisprudence¹¹⁸ confirm slavery is a violation of customary international law and of norms of *jus*

Commentary ¶4; *Transboundary Watercourses, supra* note 109 at Article 1 (2); *CEIATC, supra* note 108 at Article 1(vii).

¹¹¹ *Compromis* ¶23.

¹¹² *Compromis* ¶24.

¹¹³ *Compromis* ¶21.

¹¹⁴ Pleadings ¶23.

¹¹⁵ American Law Institute, *Third Restatement of the Law, the Foreign Relations Law of the United States*, vol. 2 (St. Paul: American Law Institute, 1987) at 702 [*Restatement*]; *United States v. Matta-Ballesteros*, 71 F.3d 754 at 764 (9th Cir. 1995); *In re World War II Era Japanese Forced*

cogens. Forced labour is a modern variant of slavery,¹¹⁹ where a person is compelled to work for little or no payment under threat of violence. Moreover, the crime of slavery includes a restriction of a person's autonomy, freedom of choice, and freedom of movement.¹²⁰

27. PROF's enslavement of Elysians constituted a violation of customary international law. On a number of occasions,¹²¹ PROF restricted the autonomy and freedom of Elysians by removing them from their agricultural fields and forcing them to "[carry] impossibly heavy loads and [break] large rocks with heavy hammers".¹²² PROF transported Elysians to COG's worksite and forced them, under constant armed threat and violence, to provide physical labour without

Labour Litigation, 164 F.Supp.2d 1160 at 1179 (N.D. Cal. 2001) [*Labour Litigation*]; *Doe I v. Unocal Corp.*, 395 F.3d 932 at 29 (9th Cir. 2002) [*Unocal*].

¹¹⁶ *ICCPR*, *supra* note 58; *ACHR*, *supra* note 91; *ACHRPR*, *supra* note 58; *Convention Concerning Forced or Compulsory Labour* (ILO No. 29), 28 June 1930, 39 U.N.T.S. 55 [*ILOFLC*]; *Slavery Convention of 1926*, 25 September 1926, 60 L.N.T.S. 253 [*Slavery Convention*].

¹¹⁷ *Restatement*, *supra* note 115 at 702; M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 2nd ed. (Boston: Kluwer, 1999); Claire De Than & Edwin Shorts, *International Criminal Law and Human Rights*, 1st ed. (London: Sweet & Maxwell, 2003) at 263; Ilias Bantekas & Susan Nash, *International Criminal Law*, 2nd ed. (London: Cavendish Publishing Limited, 2003) at 110; M. Cherif Bassiouni, "Enslavement as an International Crime" (1990-1991) 23 N.Y.U. J. Int'l L. & Pol. 445.

¹¹⁸ *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, [1970] I.C.J. Rep. 3 at 32 [*Barcelona*].

¹¹⁹ *Unocal*, *supra* note 115 at 32; *Labour Litigation*, *supra* note 115; *UDHR*, *supra* note 71; *ILOFLC*, *supra* note 116 at Article 2(1).

¹²⁰ *Prosecutor v. Kunarac et al.* (2001), Case No. IT-96-23-T & IT-96-23/1-T (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations <<http://www.un.org/icty/cases-e/index-e.htm>>.

¹²¹ *Compromis* ¶27.

¹²² *Compromis* ¶26.

payment.¹²³ The small bag of sorghum left with Elysians cannot be reasonably interpreted to be payment for the arduous labour endured by Elysian workers.¹²⁴ As a result, PROF's actions constitute slavery under international law.

ii. Further, the forced labour of Elysians is a violation of international legal norms relating to fair labour practices.

28. Under customary international law, as confirmed by State practice,¹²⁵ international conventions¹²⁶ and publicists,¹²⁷ there exists an international minimum fair labour standard which prohibits the practice of forced labour. The International Labour Organisation's *Forced Labour Convention*,¹²⁸ which is recognized as reflecting customary international law,¹²⁹ defines forced labour as performed work not offered voluntarily and under the threat of retribution.¹³⁰ The minimum fair labour standard provides the right to freely choose work.¹³¹

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Restatement, supra* note 115 at 702.

¹²⁶ *ICESCR, supra* at note 58 at Articles 6,7; *ECHR, supra* note 91 at Article 4; *ACHR, supra* note 91 at Article 6; *Abolition of Forced Labour Convention*, 4 July 1957, 320 U.N.T.S. 291, I.L.O. No. 105 at Article 1 [*AFLC*]; *ICCPR, supra* note 58 at Article 8(3); *ILOFLC, supra* note 116 at Article 1,2(1),4,25.

¹²⁷ Lance Compa & Stephen Diamond, *Human Rights, Labor Rights, and International Trade* (Philadelphia: University of Pennsylvania Press, 1996) at 1; International Labour Office, *International Labour Standards: a Workers' Education Manual*, 2nd ed. (Geneva: International Labour Office, 1982) at 28; Brownlie, *supra* note 59 at 530; Theodor Meron, *Human Rights in International Law: Legal and Policy Issues* (Oxford: Clarendon Press, 1984) at 273.

¹²⁸ *ILOFLC, supra* note 116 at Article 1.

¹²⁹ Bantekas, *supra* note 117 at 110.

¹³⁰ *ILOFLC, supra* note 116 at Article 1.

¹³¹ *ICESCR, supra* note 58 at Article 6.

29. PROF violated the minimum fair labour standards by directing or allowing non-voluntary work to be exacted from Elysians under threat of violence.¹³² Further, PROF violated the Elysians' freedom of choice by forcing them to work.¹³³ As a result, the forced labour of Elysians was a violation of minimum labour standards required under international law.

iii. The imprisonment of Elysians is a violation of international norms of human rights and further constitutes a crime against humanity.

30. Under customary international law as reflected by State practice,¹³⁴ international conventions,¹³⁵ publicists¹³⁶ and international jurisprudence,¹³⁷ the arbitrary imprisonment or the removal of a person's physical liberty is prohibited if not in accordance with procedures established by law, and constitutes crimes against humanity if widespread or systematic.¹³⁸ Acts which are neither widespread nor systematic will still constitute crimes against humanity if they

¹³² *Compromis* ¶26.

¹³³ *Id.*

¹³⁴ *R. v. Corbett*, [2004] B.C.J. No. 1340 (C.A.); *Harris v. Nelson*, 89 S.Ct. 1082 (1969).

¹³⁵ *ICCPR*, *supra* note 58 at Article 9; *ECHR*, *supra* note 91 at Articles 3,5; *ACHR*, *supra* note 91 at Article 7; *ACHRPR*, *supra* note 58 at Article 6; *UDHR*, *supra* note 71 at Article 9.

¹³⁶ *Restatement*, *supra* note 115 at 702; *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 U.N.T.S. 90 [*RSICC*]; Carmen Tiburcio, *The Human Rights of Aliens Under International and Comparative Law* (Boston: Nijhoff, 2001) at 75.

¹³⁷ *Quintanilla Claim (U.S. v. Mexico)* (1926), 4 R.I.A.A. 101 at 102-3; *Prosecutor v. Kordic and Cerkez* (2001), Case No. IT-95-14/2-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber), online: United Nations <<http://www.un.org/icty/cases-e/index-e.htm>> [*Kordic Trial*].

¹³⁸ *Prosecutor v. Kordic and Cerkez* (2004), Case No. IT-95-14/2-A (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations <<http://www.un.org/icty/cases-e/index-e.htm>>; *RSICC*, *supra* note 136 at Article (7)(1); Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003) at 64-66; De Than, *supra* note 117 at 90.

are inhumane acts committed as part of a consistent pattern of misbehaviour.¹³⁹ Moreover, criminal acts can be crimes against humanity if they are organized through a regular pattern and linked to a deliberate policy pursued against identifiable groups.¹⁴⁰

31. The seizure and imprisonment of Elysians by PROF were violations of human rights law and, further, crimes against humanity. The Elysians were arbitrarily detained against their will by PROF on a number of occasions.¹⁴¹ The Elysians had their physical liberty removed when they were seized by PROF, and forced to follow the orders of COG managers.¹⁴² Only Elysians were reported as having been subjected to such egregious violations of their physical liberty.¹⁴³ These acts of imprisonment violated the Elysians' human rights. Further, as a consistent pattern of misconduct organized and carried out by PROF, these acts constitute crimes against humanity.

B. The activities of PROF in the Elysium are attributable to Rubria.

i. PROF's activities are imputable to Rubria because PROF is exercising elements of government authority.

32. Under customary international law, as codified¹⁴⁴ in the International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, the actions of an

¹³⁹ Cassese, *supra* note 138 at 66.

¹⁴⁰ *Prosecutor v. Akayesu* (1998), Case No. ICTR-96-4-T (International Criminal Tribunal for Rwanda, Trial Chamber I), online: United Nations <<http://65.18.216.88/default.htm>>; Cassese, *supra* note 138 at 65; *Kordic Trial*, *supra* note 137.

¹⁴¹ *Compromis* ¶¶26,27.

¹⁴² *Clarification* ¶7.

¹⁴³ *Compromis* ¶27.

¹⁴⁴ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its Fifty-third Session*, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001) [*ILC Draft Articles*]; James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text, and Commentaries* (Cambridge: Cambridge University Press, 2002) at 100

entity empowered by the State to exercise elements of governmental authority, provided it is acting in that capacity, are attributable to the State.¹⁴⁵ The scope of government authority and what is ‘governmental’ “depends on the particular society, its history and traditions.”¹⁴⁶ The actions of a private company, empowered to exercise functions of a public character normally exercised by State organs, will be attributable to the State when that conduct relates to an exercise of government authority.¹⁴⁷ Moreover, conduct of a private entity exercising *de facto* government authority, will amount to an act of the State¹⁴⁸ even if the entity has independent discretion or power to act¹⁴⁹ or the acts are beyond the entity’s authority or contravene its instructions.¹⁵⁰

33. PROF’s actions are attributable to Rubria, as PROF was empowered by Rubria to exercise elements of governmental authority – in particular, to provide armed protection, a function traditionally carried out by the Rubrian army or police forces. The actions of PROF were an

[*ILC Commentary*]; *Differences Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, [1999] I.C.J. Rep. 62 [*Differences Relating to Immunity*]; *Prosecutor v. Tadić* (1999), Case No. IT-94-1 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations <<http://www.un.org/icty/cases-e/index-e.htm>> [*Tadić*].

¹⁴⁵ *ILC Commentary*, *supra* note 144 at 100; *Phillips Petroleum v. Islamic Republic of Iran* (1989), 21 Iran-U.S. Cl. Trib. Rep. 79; *Petrolane Inc. v. Islamic Republic of Iran* (1991), 27 Iran-U.S. Cl. Trib. Rep. 64; *Hyatt International Corporation v. Islamic Republic of Iran* (1985), 9 Iran-U.S. Cl. Trib Rep. 72.

¹⁴⁶ *ILC Commentary*, *supra* note 144 at 101.

¹⁴⁷ *ILC Commentary*, *supra* note 144 at 100.

¹⁴⁸ *ILC Commentary*, *supra* note 144 at 101.

¹⁴⁹ *Tadić*, *supra* note 144.

¹⁵⁰ *ILC Commentary*, *supra* note 144 at 106; *Youmans Claim (U.S. v. Mexico)* (1926), 4 R.I.A.A. 110.

extension of the civil power of Rubria performing *de facto* government functions.¹⁵¹ Moreover, Rubria allowed PROF to operate its protection services instead of utilizing the Rubrian armed forces. Further, PROF's actions are imputable to Rubria even if they were beyond the authority given. PROF, created to protect COG personnel from potential Elysian hostility, abducted Elysians while providing this protection.¹⁵² Rubria cannot tolerate the exercise of governmental authority by PROF and at the same time deny responsibility for wrongful acts committed by PROF. PROF's actions are attributable to Rubria because PROF was empowered by Rubria to exercise elements of governmental authority even if PROF exercised their authority by independent discretion.

ii. Alternatively, PROF's activities are imputable to Rubria because PROF is controlled by Rubria.

34. Under customary international law, the conduct of private persons is attributable to the State when performed under the State's direction or control.¹⁵³ This principle is reflected in the *ILC Articles*,¹⁵⁴ which are recognized as a codification of customary international law.¹⁵⁵ The principles reflected in State responsibility are confirmed by publicists¹⁵⁶ and are further supported by international jurisprudence.¹⁵⁷ The required degree of State control for attribution to attach is

¹⁵¹ *ILC Commentary*, *supra* note 144 at 110; *Compromis* ¶23.

¹⁵² *Compromis* ¶¶23,26.

¹⁵³ *ILC Draft Articles*, *supra* note 144 at Article 8.

¹⁵⁴ *ILC Draft Articles*, *supra* note 144.

¹⁵⁵ *Differences Relating to Immunity*, *supra* note 144 at 87; *Tadić*, *supra* note 144.

¹⁵⁶ *ILC Commentary*, *supra* note 144.

¹⁵⁷ *Gabcikovo*, *supra* note 97 at 39-46; *Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, Merits, [1980] I.C.J. Rep. 3.

low and will depend on the circumstances of each case.¹⁵⁸ For example, although a relatively strict test of control has been applied for attributing conduct abroad,¹⁵⁹ when actions take place within a State's territory, the State control required for attribution is low.¹⁶⁰

35. Rubria had control of PROF. Both leaders and other personnel of PROF largely consisted of individuals trained in the Rubrian armed forces.¹⁶¹ Moreover, PROF operated in a Rubrian State-protected public park and wildlife area.¹⁶² PROF's actions are imputable to Rubria.

IV. THE OUTCOME OF THE *BORIUS* LITIGATION DOES NOT PLACE ACASTUS IN BREACH OF ARTICLE 52 OF THE *RABBIT*.

A. As TNC is a mere shareholder in COG, its exclusion as a party in the *Borius* litigation is in conformity with the *RABBIT* because the *RABBIT* only applies to Acastian corporations.

i. A proper interpretation of the *RABBIT* does not require the inclusion of TNC in the *Borius* litigation.

36. A treaty must be interpreted in good faith and in accordance with its ordinary meaning, in light of its context, object and purpose.¹⁶³ In interpreting a treaty, it is the first duty of this Court to give effect to the natural and ordinary meaning of the words in the context in which they occur.¹⁶⁴ This Court may only refer to the preparatory work of the treaty and the circumstances

¹⁵⁸ *Tadić*, *supra* note 144 at ¶117,137.

¹⁵⁹ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.)*, [1986] I.C.J. Rep. 14.

¹⁶⁰ *Id.*

¹⁶¹ *Compromis* ¶23.

¹⁶² *Compromis* ¶5.

¹⁶³ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331 at Article 31 [VCLT]; Shaw, *supra* note 2 at 839; Aust, *supra* note 41 at 186.

¹⁶⁴ Aust, *supra* note 41 at 188.

of its conclusion if the plain meaning interpretation results in ambiguity or obscurity, or leads to a result which is manifestly absurd or unreasonable.¹⁶⁵

37. Article 52 of the *RABBIT* requires Acastus to enforce all its domestic legislation, including the *MCRA*.¹⁶⁶ The *MCRA* sets out rules for a “domestic corporation ... in its conduct abroad”.¹⁶⁷ The phrase “domestic corporation” is unambiguous and should be interpreted in accordance with its plain meaning. The plain meaning of this term is a corporation, incorporated in Acastus, acting in its own right and does not include an Acastian corporation acting merely as a shareholder. If the *MCRA* and the *RABBIT* were interpreted to include Acastian corporations acting as shareholders, such corporations would effectively become the guarantors of proper behaviour of any company acting abroad in which they invest, no matter how small the investment. This would be a manifestly absurd and unreasonable interpretation of the *MCRA* and the *RABBIT*. The *Borius* litigation was directed at the operations of COG, a Rubrian corporation, in which TNC is a mere shareholder. As the *MCRA* and the *RABBIT* apply only to corporations acting in their own right, and not corporations acting as shareholders, the exclusion of TNC in the *Borius* litigation is in accordance with the *MCRA* and therefore in conformity with Article 52 of the *RABBIT*. Nor can Rubria argue that there has been any lack of enforcement of the AIRES inconsistent with Article 52 of the *RABBIT*. Rubria raised no objection to this effect in the Acastian civil court,¹⁶⁸ and indeed the Rubrian President’s diplomatic note, which refers to the

¹⁶⁵ *VCLT*, *supra* note 163 at Article 32.

¹⁶⁶ *Compromis* ¶15.

¹⁶⁷ *Compromis*, *MCRA* §4.

¹⁶⁸ *Compromis* ¶29.

“illegal, extraterritorial judgment”,¹⁶⁹ would suggest that Rubria considers the application of the AIRES in this case impermissible under international law.

ii. Rubria cannot rely on any alleged human rights obligations to argue the *RABBIT* should be interpreted so as to require the inclusion of TNC in the *Borius* litigation.

38. Acastus recognizes that no treaty is valid if it conflicts with a norm of *jus cogens*¹⁷⁰ and that any interpretation that has this effect is untenable. However, the fact that COG may have committed breaches of the norms of *jus cogens*¹⁷¹ does not by itself mean that the *RABBIT* must be interpreted so as to require the inclusion of a mere shareholder of COG in the *Borius* litigation. An interpretation of the *RABBIT* which would exclude shareholders of COG from the *Borius* litigation would not preclude human rights obligations owed to the Elysians. COG would still be held accountable for breaches of the norms of *jus cogens*. TNC, as a shareholder of COG, would still be penalized financially, through a decreased share value, for any misdeeds of COG.

B. Rubria cannot rely on any exceptions to the separate personality of the corporation to require the inclusion of TNC in the *Borius* litigation.

39. Under customary international law, as reflected in State practice¹⁷² and confirmed by international jurisprudence¹⁷³ and publicists,¹⁷⁴ a corporation possesses its own legal personality

¹⁶⁹ *Compromis* ¶32.

¹⁷⁰ *VCLT*, *supra* note 163 at Articles 53,64.

¹⁷¹ *Pleadings* ¶26.

¹⁷² *Salomon v. Salomon*, [1897] A.C. 22 (H.L.); *Macaura v. Northern Assurance Co. Ltd.*, [1925] A.C. 619 (H.L.); *Walker v. Wimbourne*, [1976] 137 C.L.R. 1 (H.C.A.); *Lee v. Lee's Air Farming Ltd.*, [1961] A.C. 12 (P.C.); *Far East Oil Tanker S.A. v. Owner of the Ship or Vessel "Andres Bonifacio"*, [1993] 3 Sing L.R. 521 (Sing. C.A.); *Dadoo Ltd. v. Krugersdorp Municipal Council*, [1920] A.D. 530.

separate from that of its shareholders; as a result a shareholder cannot be held liable for the actions of a corporation. International norms relating to the separate personality of corporations are drawn from domestic practice.¹⁷⁵ An analysis of domestic practice demonstrates a general consensus on separate personality of corporations, but reveals a lack of consensus on when this separate personality can be ignored.¹⁷⁶ As there is no consensus on when it is appropriate for a court to ignore the separate personality of the corporation, there can be no obligation in international law to pierce the corporate veil.¹⁷⁷ If there were any consensus in domestic practice it would be in favour of not piercing the corporate veil. Moreover, even those States that are the most aggressive in piercing the corporate veil will do so only when the corporation is completely controlled by the shareholder.¹⁷⁸ Control is strictly defined and does not mean just majority, or even complete, stock control.¹⁷⁹ Control requires complete domination in respect to finances,

¹⁷³ *Barcelona*, *supra* note 118 at ¶50; *Case Concerning Elettronica Sicula S.p.A. (ELSI) (U.S. v. Italy)*, [1989] I.C.J. Rep. 15 at 83 [*Elettronica*].

¹⁷⁴ Paul Davies & Lawrence Gower, *Gower and Davies' Principles of Modern Company Law*, 7th ed. (London: Sweet & Maxwell, 2003) at 175; Stephen Bainbridge, *Corporation Law and Economics* (New York: Foundation Press, 2002) at 126; John Radnay, "Piercing the Corporate Veil under International Law" (1964-1965) 16 *Syracuse L. Rev.* 779 at 782.

¹⁷⁵ *Barcelona*, *supra* note 118 at ¶50; *Elettronica*, *supra* note 173.

¹⁷⁶ David Barber, "Piercing the Corporate Veil" (1980-1981) 17 *Willamette L. Rev.* 371 at 373.

¹⁷⁷ Gower, *supra* note 174 at 189; Bainbridge, *supra* note 174 at 128; Kevin McGuinness, *The Law and Practice of Canadian Business Corporations* (Markham: Butterworths, 1999) at 44; Phillip Blumberg, *The Multinational Challenge to Corporation Law: the Search for a New Corporate Personality* (New York: Oxford University Press, 1993) at 84.

¹⁷⁸ Steven Ratner, "Corporations and Human Rights: A Theory of Legal Responsibility" (2001-2002) 111 *Yale L.J.* 443 at 519; Franklin Gevurtz, "Piercing Piercing: An Attempt to Lift the Veil of Confusion Surrounding the Doctrine of Piercing the Corporate Veil" (1997) 76 *Or. L. Rev.* 853 at 862; Blumberg, *supra* note 177 at 92.

¹⁷⁹ Blumberg, *supra* note 177 at 92; Frederick Powell, *Parent and Subsidiary Obligations* (Chicago: Callaghan, 1931); *Baker v. Raymond International Inc.*, 656 F.2d 173 at 180 (5th Cir.

policies and business practices, so that the corporate entity has no separate mind of its own.¹⁸⁰ In any domestic case in which a parent company has been held responsible for the acts of its subsidiaries abroad, the courts found that the parent company controlled all the shares, and had full financial and decision-making control of the subsidiary.¹⁸¹

40. TNC was a mere shareholder in COG and therefore cannot be held responsible for the actions of COG. There is no obligation under international law that requires Acastus to pierce the corporate veil and include TNC in the *Borius* litigation. Even adopting the most aggressive approach on piercing of the corporate veil, the facts of this case do not merit ignoring the separate personality of COG. TNC did not possess sufficient control of COG to warrant piercing the corporate veil. TNC and Rubria were nearly equal shareholders in COG and all decisions made regarding COG were based on a shareholder vote.¹⁸² All decisions made by COG regarding the activities in the Elysium were accepted unanimously, and financed by both shareholders.¹⁸³ The Chief Executive Officer of COG was hired by COG's Board of Directors. Additionally, all employees of COG were hired by COG and worked full time and exclusively for COG.¹⁸⁴ At all times, COG had a corporate mind and finances separate from those of TNC. Therefore, TNC did

1981); *Wehner v. Syntex Agribusiness Inc.*, 616 F.Supp. 27 at 29-30 (E.D. Mo. 1985); *Lowendahl v. Baltimore & Ohio R.R. Co.*, 287 N.Y.S. 62 at 76 (N.Y. App. Div. 1936) aff'd, 6 N.E.2d 56 (1936) [*Lowendahl*]; Ratner, *supra* note 178 at 519.

¹⁸⁰ Powell, *supra* note 179; *Lowendahl*, *supra* note 179; *Quarles v. Fuqua Industries Inc.*, 504 F.2d 1358 at 1364 (10th Cir. 1974).

¹⁸¹ *Unocal*, *supra* note 115 at 55; *Sithole v. Thor Chemicals Holdings Ltd.* (1999), 96(9) L.S.G. 32 (C.A.); *Connelly v. RTZ Corp. Plc.*, [1997] 3 W.L.R. 373 (H.L.); *Lubbe v. Cape Plc.*, [2000] 1 W.L.R. 1545 (H.L.).

¹⁸² *Compromis* ¶19.

¹⁸³ *Compromis* ¶22.

¹⁸⁴ *Clarifications* ¶5.

not have sufficient control of COG to require the piercing of the corporate veil, and the Acastian court's exclusion of TNC from the *Borius* litigation was both reasonable and in conformity with international law.

CONCLUSION AND PRAYER FOR RELIEF

The Republic of Acastus respectfully requests that this Honourable Court adjudge and declare:

1. That the Court has jurisdiction over all claims in this case, since Acastus has succeeded to Nessus' status as a party of the *Statute of the ICJ*;
2. That by permitting the construction of the pipeline as proposed, Rubria would violate the rights of Acastus' citizens of Elysian heritage;
3. That the activities of PROF in the Elysium, including the forced labour of civilians, are attributable to Rubria and are violations of international law; and
4. That the outcome of the *Borius* litigation does not place Acastus in breach of Article 52 of the *RABBIT*.

All of which is respectfully submitted by,

707A