

**THE 2017 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT  
COMPETITION**

---



---

IN THE  
**INTERNATIONAL COURT OF JUSTICE**  
AT THE  
PEACE PALACE, THE HAGUE

---

**CASE CONCERNING THE SISTERS OF THE SUN**

FEDERATION OF THE CLANS OF THE ATAN  
Applicant

v.

THE KINGDOM OF RAHAD  
Respondent

---

**ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE**

**MEMORIAL FOR APPLICANT**

**FEDERATION OF THE CLANS OF THE ATAN**

## TABLE OF CONTENTS

---

<b>INDEX OF AUTHORITIES .....</b>	<b>IV</b>
<b>STATEMENT OF JURISDICTION.....</b>	<b>XII</b>
<b>QUESTIONS PRESENTED .....</b>	<b>XIII</b>
<b>STATEMENT OF FACTS.....</b>	<b>XIV</b>
<b>SUMMARY OF PLEADINGS.....</b>	<b>XIX</b>
<b>PLEADINGS AND AUTHORITIES.....</b>	<b>1</b>
<b>I. EXTRACTION OF WATER FROM THE AQUIFER VIOLATES INTERNATIONAL OBLIGATIONS UNDERTAKEN BY RAHAD AND CONSTITUTES AN INEQUITABLE USE OF A SHARED RESOURCE. ...</b>	<b>1</b>
<b>A. EXTRACTION OF WATER VIOLATES RAHAD’S OBLIGATION OF EQUITABLE USE OF THE AQUIFER UNDER CUSTOMARY INTERNATIONAL LAW.....</b>	<b>2</b>
1. Extraction of water violates Rahad’s obligation of equitable apportionment.....	2
a. Rahad fails to protect Atania’s existing use.....	2
b. In any event, Rahad violates its obligation to exchange data and information...4	
2. Extraction of water violates Rahad’s obligation to protect the Aquifer.....	5
3. Extraction of water violates Rahad’s obligation to protect vital human needs of Atania.....	5
<b>B. EXTRACTION OF WATER VIOLATES RAHAD’S OBLIGATION OF SUSTAINABLE USE OF THE AQUIFER BOUND BY ITS UNILATERAL DECLARATION. ....</b>	<b>7</b>
1. Rahad’s unilateral declaration is binding upon it. ....	7
2. Extraction of water undermines Rahad’s declaration by exhausting the Aquifer.....	8
3. In any event, Rahad is estopped from contravening its explicit statement.....	8
<b>C. RAHAD CANNOT RELY ON STATE OF NECESSITY TO JUSTIFY ITS NON-COMPLIANCE WITH EQUITABLE USE OBLIGATIONS. ....</b>	<b>9</b>
1. No imminent and grave peril necessitates extraction of the Aquifer.....	9
2. Extracting water is not the only means in response to alleged shortage of water. ..	10
3. Extracting water illegally impairs the essential interests of Atania.....	10
<b>II. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD’S INTERNATIONAL OBLIGATIONS WITH RESPECT TO KIN CANYON</b>	

<b>COMPLEX AND THEREFORE MUST CEASE.....</b>	<b>10</b>
<b>A. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD’S OBLIGATION TO PREVENT TRANSBOUNDARY HARM TO KIN CANYON COMPLEX UNDER CUSTOMARY INTERNATIONAL LAW.....</b>	<b>11</b>
1. Rahad had an obligation to prevent transboundary harm to Atania. ....	11
2. Rahad violates its obligation to prevent transboundary harm because it carried out a deficient EIA. ....	12
3. Rahad violates its obligation to prevent transboundary harm because it did not inform and consult with the Atania of its proposed plan.....	13
4. Rahad violates its obligation to prevent transboundary harm because it did not conduct environmental monitoring. ....	14
<b>B. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD’S OBLIGATIONS TO PROTECT WORLD HERITAGE UNDER THE 1972 CONVENTION. ....</b>	<b>14</b>
1. Rahad violates its obligation not to take deliberate measures which damage the Complex under Article 6(3) of 1972 Convention.....	14
a. The structural integrity of transboundary heritage is specifically protected under the 1972 Convention. ....	14
b. Structural integrity of the Complex is damaged by the Operations.....	15
2. Rahad violates its obligation to give its help in the protection of the Complex under Article 6(2) of 1972 Convention. ....	15
<b>C. CONSEQUENTLY, THE SAVALI PIPELINE OPERATIONS MUST CEASE. ....</b>	<b>16</b>
<b>III. RAHAD MUST IMMEDIATELY RETURN RUBY SIPAR TO ATANIA, ITS LAWFUL OWNER.....</b>	<b>16</b>
<b>A. RAHAD MUST IMMEDIATELY RETURN RUBY SIPAR TO ATANIA BECAUSE IT WAS STOLEN AND ILLICITLY EXPORTED CULTURAL PROPERTY FROM ATANIA UNDER THE 1970 CONVENTION.....</b>	<b>16</b>
1. Ruby Sipar was stolen and illicitly exported from Atania under Article 6(i) of the 1970 Convention. ....	17
2. Rahad is obliged to return Ruby Sipar to Atania under the 1970 Convention according to Article 11 and 18 of VCLT.....	17
3. Alternatively, Ruby Sipar must be returned under customary law. ....	18
<b>B. RAHAD MUST IMMEDIATELY RETURN RUBY SIPAR BECAUSE IT IS ATANIA’S STATE PROPERTY.....</b>	<b>19</b>

1. Atania owns Ruby Sipar because of acquisitive prescription principle. ....	19
2. Atania owns Ruby Sipar because it is origin country. ....	20
<b>IV. ATANIA OWES NO COMPENSATION TO RAHAD FOR ANY COSTS INCURRED RELATED TO THE KIN MIGRANTS. ....</b>	<b>22</b>
<b>A. ATANIA IS NOT RESPONSIBLE FOR COMPENSATION TO RAHAD. ....</b>	<b>22</b>
1. Kin migrants’ acts are not attributable to Atania. ....	22
a. Kin migrants did not act under Atania’s effective control. ....	23
b. Atania has never acknowledged the Kin’s migration. ....	23
2. Atania does not violate its obligations on human rights protection. ....	23
a. Rahad lacks legal standing to claim for compensation either via diplomatic protection or erga omnes. ....	24
b. Atania does not breach ICCPR, especially right to peaceful assembly, right of non-discrimination and right to life. ....	24
c. Atania’s lawful limitations do not infringe right to water, food and health under ICESCR. ....	26
d. Atania does not violate its obligation to prevent forced displacement because Kin migrants cannot claim upon the refugee status. ....	27
3. Atania does not violate Rahad’s sovereignty because Rahad is not coerced to accept Kin migrants. ....	28
4. The WRAP Act is legitimate and permissible as the exercise of Atania’s sovereign right in time of serious drought crisis. ....	29
5. The WRAP Act can be justified by plea of necessity. ....	30
<b>B. ATANIA IS NOT LIABLE FOR COMPENSATION BY EXERCISING DUE DILLIGENCE. ....</b>	<b>31</b>
<b>C. ATANIA HAS NO OBLIGATION TO SHARE THE BURDEN UNDER PRINCIPLE OF FAIRNESS. ....</b>	<b>32</b>
1. No <i>lex lata</i> obliges Atania to share the burden. ....	32
2. Rahad shall bear the costs <i>per se</i> for its contribution to migration of the Kin. ....	33
<b>CONCLUSION AND PRAYER FOR RELIEF .....</b>	<b>35</b>

## INDEX OF AUTHORITIES

### INTERNATIONAL CASES AND ARBITRAL DECISIONS

<i>Acevedo Buendía et al. v. Peru</i> , Judgment, IAtHR (2009) .....	38
<i>Advisory Opinion on the Western Sahara</i> (1975) I.C.J. Rep. ....	41
<i>Al Skeini v. United Kingdom</i> , Judgment, ECtHR App. no. 55721/07 (2001) .....	32
<i>Amnesty International v. Zambia</i> , African Commission Communication No. 212/98 (1999) .....	37
<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide</i> (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, (2007) I.C.J. ....	32
<i>Barcelona Traction, Light and Power Co., Ltd</i> (Belgium v. Spain), Judgment, (1927) I.C.J. ....	33
<i>Biwater Gauff Ltd (UK) v. United Republic of Tanzania</i> , ICSID Case No. ARB/05/22 (2008).....	44
<i>Camargo v. Colombia</i> , Merits, U.N. Doc. CCPR/C/15/D/45/1979 (1982).....	36
<i>CARAF v. United Kingdom</i> , Judgment, ECtHR App. no. 8440/78 21 DR 138 (1980) .....	34
<i>Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide</i> (Bosnia and Herzegovina v. Yugoslavia), Judgment, (2007) I.C.J. ....	11
<i>Case Concerning Armed Activities on the Territory of the Congo</i> (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, (1999) I.C.J. [ <i>Congo</i> ].....	2, 11
<i>Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area</i> (Canada v. United States of America), Judgment (1984) I.C.J. [ <i>Gulf of Maine</i> ].....	3, 12
<i>Case Concerning Military and Paramilitary Activities in and against Nicaragua</i> (Nicaragua v. United States of America), Jurisdiction of the Court and Admissibility of the Application, (1984) I.C.J. [ <i>Military and Paramilitary Activities</i> ] .....	11, 27, 32, 39, 43
<i>Case concerning the Aerial Incident of 10 August 1999</i> (Pakistan v. India), Jurisdiction of the Court, (2000) I.C.J.....	12
<i>Case concerning the Frontier Dispute</i> (Burkina Faso v. Republic of Mali), Judgment, (1986) I.C.J. [ <i>Frontier Dispute</i> ] .....	2, 11
<i>Case Concerning the Interhandel</i> (Switz. v. U.S.), Judgment, (1959) I.C.J. ....	33
<i>Case Relating to certain aspects of the laws on the use of languages in education in Belgium</i> , Judgment, ECtHR App. no. 2126/64 (1968).....	35
<i>Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder</i> , PCIJ Reports, Series A, No.16, (1929) [ <i>River Oder</i> ] .....	4
<i>Certain Norwegian Loans</i> (France v. Norway), Judgment, (1957) I.C.J.....	33
<i>Cisse v. France</i> , Judgment, ECtHR App. no. 51346/99 (2002) .....	34
<i>Construction of a Road in Costa Rica Along the San Juan River</i> (San Juan River v. Costa Rica), Judgment, (2015) I.C.J. [ <i>San Juan River</i> ].....	15, 16, 17, 18
<i>Corfu Channel</i> (U.K. v. Albania), Judgment, (1949) I.C.J. [ <i>Corfu Channel</i> ].....	15, 16
Francesco Francioni and Federico Lenzerini, <i>The Destruction of the Buddhas of Bamiyan and International Law</i> , 14 EJIL 619, (2003).....	30
<i>Frontier Disputes</i> (Burkina Faso v. Niger), Judgment, (2013) I.C.J. [ <i>Frontier Dispute 2013</i> ] .....	8, 9
<i>Gabčíkovo-Nagymaros Project</i> (Hungary v. Slovakia), Judgment, (1997) I.C.J. [ <i>Gabčíkovo-Nagymaros</i> ] 1,	

3, 4, 7, 10, 11, 13, 14, 19, 42, 43	
<i>Handyside v. the UK</i> , ECtHR A.24 (1976).....	36, 37
<i>Hertzberg et al. v. Finland</i> , Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex XIV, communication No. R.14/61, (1982).....	27
<i>Hirsi Jamaa and others v. Italy</i> , Judgment, ECtHR App. no. 27765/09 (2012) .....	32
<i>Jacob and Jantina Hendrika van Oord v. The Netherlands</i> , CCPR/C/60/D/658/1995 (1997) .....	35
<i>Kaboulov v. Ukraine</i> , Judgment, EHRR App. no. 41015/04 (2010) .....	36
<i>Kasikili-Sedudu Island</i> (Botswana v. Namibia), Judgment, (1999) I.C.J. [ <i>Kasikili-Sedudu Island</i> ]8, 9, 26	
<i>Lac Lanoux Arbitration</i> , (France v. Spain), 24 ILR, (1957) [ <i>Lac Lanoux</i> ].....	9, 17
<i>LaGrand (Germany v. United States of America)</i> , Judgment, (2001) I.C.J. ....	46
<i>Legality of the Threat or Use of Nuclear Weapons</i> , Advisory Opinion, (1996) I.C.J. ....	14, 16
<i>M.C. against the Federal Republic of Germany</i> , Decision, ECtHR App. no. 13079/87 (1989).....	34
<i>Maestri v. Italy</i> , 39 EHRR 38 (2004).....	36, 37
<i>MOX Plant</i> (Ireland v. United Kingdom), 42 ILM 1187 (2003).....	44
<i>Mox Plant Case</i> (Ireland v. United Kingdom), Order, ITLOS Case No.10 (2001).....	19
<i>North Sea Continental Shelf</i> (Federation of Germany v. Netherlands), Judgment, (1969) I.C.J. ....	3, 11
<i>Nuclear Tests</i> (Australia v. France; New Zealand v. France), Judgment, (1974) I.C.J. ....	2, 11
<i>NV Waterleiding Maatschappij Limburg v. Anonymous</i> , Appeal Judgment, HD 200 018 358, (2010) ..	37
<i>Passage through the Great Belt</i> (Finland v. Denmark), Provisional Measures, (1991) I.C.J. ....	22
<i>Phosphates in Morocco</i> (Italy v. France), Preliminary Objections, (1938) P.C.I.J. (ser. A/B) NO.74 ....	31
<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Judgment, ICTY IT-95-14/2 (2001).....	30
<i>Prosecutor v. Tihomir Blasškić</i> , Judgment, ICTY IT-95-14 (2000) .....	30
<i>Pulp Mills on the River Uruguay</i> (Argentina v. Uruguay), Judgment, (2010) I.C.J. ....	3, 10, 15, 16, 18
<i>Questions Relating to the Obligation to Prosecute or Extradite</i> (Belgium v. Senegal), Judgment, (2012) I.C.J. ....	33
<i>S.S. Wimbledon</i> , Judgment, P.C.I.J. Series A, No. 1, (1923), 30.....	46
<i>Sahin v. Turkey</i> , 44 EHRR 5 (2007).....	36, 37
<i>Silver and ors v. United Kingdom</i> , ECtHR A.61 (1983).....	37
<i>T.K. v. France</i> , individual opinion of Rosalyn Higgins, H.R.C., Communication No.220/1987, in Report of the H.R.C., U.N.GAOR, H.R.C. 45th Sess., Supp. No.40 (1987), 133.....	41
<i>Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States</i> , ICSID Case No. ARB (AF)/00/2 (2003) .....	44
<i>Temple of Preah Vihear</i> (Cambodia v. Thailand), Judgment, (1961) I.C.J. ....	29
<i>Texaco Overseas Petroleum Co v. Libya</i> , 17 ILM 1 (1977).....	41
<i>The Indus Water Kishenganga Arbitration</i> (the Islamic Republic of Pakistan v. the Republic of India), Final Award, (2013) P.C.A. [ <i>Indus Water</i> ].....	3, 4, 5
<i>The M/V 'SAIGA', Saint Vincent and the Grenadines v. Guinea</i> , Merits and Judgments, ITLOS Case No. 2, ICGJ 336 (1999).....	44
<i>United States Diplomatic and Consular Staff in Tehran</i> ( <i>United States of America v. Iran</i> ), Judgment, (1980) I.C.J. [ <i>Tehran</i> ].....	16, 17, 32
<i>Young, James and Webster v. the United Kingdom</i> , Eur. Court H.R., Series A, No. 44 (1981) .....	27

## **INTERNATIONAL CONVENTIONS**

Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Y.B.I.L.C., vol. II (Part II) [ARSIWA].....	10, 15, 16, 19, 22, 30, 31
Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972, 1037 U.N.T.S. 151 [1972 Convention].....	14, 15
Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, U.N. Doc. A/RES/ 51/229 [WCC].....	1, 2, 3, 4, 7, 11
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14 1970, 823 UNTS 231 [1970 Convention].....	17, 18, 21
Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, 1936 U.N.T.S.269 [UNECE].....	1, 4, 7
Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 UNTS 137 .....	24, 28
International Covenant on Civil and Political Rights, 1966, G.A. Res. 2200A (XXI) [ICCPR].....	26
Revised Protocol on Shared Watercourses in the Southern African Development Community, 2000, [SADC] .....	1, 4
Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331 [VCLT].....	7, 17, 18

## **OTHER INTERNATIONAL INSTRUMENTS**

Advisory Opinion on Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, LTLOS, No. 17, (2011). .....	11
Berlin Rules on International Water Resources, ILA, 71 Int'l L. Ass'n Rep. Conf. 334, (2004) [Berlin] .	1
Commentary on the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, in Report of The I.L.C. in Its 53rd Session, (2001) .....	32
Decisions Adopted by the World Heritage Committee at its 35 <sup>th</sup> Session, UNESCO, WHC-11/35.COM/20, (2011) .....	15
Draft commentary to guiding principles, HRC, A/HRC/25/51 (2014) .....	25
General Comment No. 18, HRC, HRI/GEN/1/Rev.9 (Vol. I) (1989) .....	25
Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, HCR/IP/4 Eng/REV.1, (1988) .....	28
ILA Study Group on Due Diligence in International Law, Second Report, (2016) .....	11
Model Provisions on State Ownership of Undiscovered Cultural Objects Explanatory Report with model provisions and explanatory guidelines, UNESCO and UNIDROIT, Expert Committee on State Ownership of Cultural Heritage, CLT-2011/CONF.208/COM.17/5, 3 (2011) [Model Provision] .....	20
Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Res. 3.MSP 11, (2015) [1970 Operational Guidelines].....	18, 20
Operational Guidelines for the Implementation of the World Heritage Convention, WHC.15/01, (2015) [Operational Guideline 2015].....	14, 15
Report on the Fifty-Fifth Seccion Supplement No.3, OHCHR, E/1999/23 E/CN.4/1999/167, 319 (1999)	24
Slavko Bogdanovic, Charles Bourne, Stefano Burchi & Patricia Wouters, ILA Berlin Conference, Water Resources Committee Dissenting Opinion [Dissenting Opinion] .....	7

Strategic Overview Series Ecosystem Conservation and Groundwater, International Association of Hydrogeologist, (Mar. 9, 2016) .....	5
---	---

**REGIONAL CONVENTIONS**

Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, (1995) [Cambodia-Laos-Thailand-Vietnam].....	6
Border Groundwaters Agreement, 1985 (South Australia – Victoria) .....	11
Establishment of a Consultation Mechanism for the Northwestern Sahara Aquifer System (SASS) (2002) [Algeria-Libya-Tunisia] [Consultation Mechanism] .....	4, 11
Program for the Development of a Regional Strategy for the Utilization of the Nubian Sandstone Aquifer System (NSAS) -Terms of Reference for the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System (2000) [Chad-Egypt-Libya -Sudan] .....	4
Treaty Concerning the Intergrated Development of the Mahakali River, (1996) [India-Nepal].....	6

**BOOKS**

B. BOLLECKER-STERN, LE PRÉJUDICE DANS LA THÉORIE DE LA RESPONSABILITÉ INTERNATIONALE, (1973)	33
B. S. KRILOV, PROBLEMS OF SOVEREIGNTY IN RUSSIAN FEDERATION, (1994).....	21
BERGKAMP, LIABILITY AND ENVIRONMENT: PRIVATE AND PUBLIC LAW ASPECTS OF CIVIL LIABILITY FOR ENVIRONMENTAL HARM IN AN INTERNATIONAL CONTEXT, (2001).....	32
Draft Articles on the Law of the Non-navigational Uses of International Watercourses and Commentaries thereto and Resolution on Transboundary Confined Groundwater, Y.I.L.C. vol.II Part Two, (1994) [Watercourse Commentaries] .....	1, 11
DUPUY, INTERNATIONAL LIABILITY FOR TRANS FRONTIER POLLUTION, IN TRENDS IN ENVIRONMENTAL POLICY AND LAW, (1980).....	31
FRANCESCO FRANCONI, 1972 WORLD HERITAGE CONVENTION: A COMMENTARY, (2008).....	15
GREGOR NOLL, Negotiating Asylum: THE EU ACQUIS, EXTRATERRITORIAL PROTECTION AND THE COMMON MARKET OF DEFLECTION, (2000) .....	33
H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW, (1952) .....	28
I. BROWNIE, SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY, Part I, (1983).....	33
I. Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, (7 <sup>th</sup> ed. 2008) .....	29
Ignat T. Winkler, THE HUMAN RIGHT TO WATER, SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION, (2012) .....	31
JAMES CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART, (2013) .....	9
LAURENCE BOISSON DE CHAZOURNES, FRESH WATER IN INTERNATIONAL LAW, (2013) .....	2
MALCOLM N. SHAW, INTERNATIONAL LAW, (6 <sup>th</sup> ed. 2008) .....	32
MARIE-THERES ALBERT, BIRGITTA RINGBECK, 40 YEARS WORLD HERITAGE CONVENTION-POPULARIZING THE PROTECTION OF CULTURAL AND NATURAL HERITAGE, (2015).....	14
MICHELLE FOSTER, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGEE FROM DEPRIVATION, (2007).....	28
O’KEEFE. P.J., TRADE IN ANTIQUITIES: REDUCING DESTRUCTION AND THEFT, (1997).....	17
OPPENHEIM, OPPENHEIM’S INTERNATIONAL LAW, (8 <sup>th</sup> ed. 1955).....	28

OWEN MCINTYRE, ENVIRONMENTAL PROTECTION OF INTERNATIONAL WATERCOURSES UNDER INTERNATIONAL LAW, (2007) .....	7
OWEN MCINTYRE, THE UNECE CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSE AND INTERNATIONAL LAKES: ITS CONTRIBUTION TO INTERNATIONAL WATER COOPERATION, (2015).....	2
STEPHEN C. MCCAFFERY, THE LAW OF INTERNATIONAL WATERCOURSES, (2 <sup>nd</sup> ed. 2008) .....	1, 2, 11, 13
UNHCR, A THEMATIC COMPILATION OF EXECUTIVE COMMITTEE CONCLUSIONS, (4 <sup>th</sup> ed. 2009).....	32
XUE HANQIN: TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW, (2003) [XUE] .....	11, 12

**U.N. DOCUMENTS**

2005 World Summit Outcome, G.A. Res. 60/1, U.N.GAOR, 60 <sup>th</sup> Sess., Agenda Item 46/120, U.N. Doc. Res. A/60/1 (2005) .....	30
CCPR General Comment No. 27, UNHRC, U.N. Doc. CCPR/C/21/Rev.1/Add.9, (1999) .....	29
Chusei Yamada, Second Report on shared natural resources: transboundary groundwaters, U.N. Doc. A/CN.4/539 and Add.1, (2004) .....	3
Commentaries to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/10, art.25, (2001) [ARSIWA Commentaries] .....	9
Conclusion 19 (XXXI), Temporary Refuge, 48(4), U.N.H.C.R. ExCom, U.N. Doc. A/AC.96/588 (1981) .....	32
Declaration on the Inadmissibility of Intervention, U.N. Doc. A/Res/20/2131, (1965) .....	28
Declaration on the Right to Development, G.A. Res. 41/128, U.N. GAOR, 41 <sup>st</sup> Sess. Supp. No.53, U.N. Doc. A/41/53, (1986) .....	29
Draft Articles on Diplomatic Protection, art.8, 2006, Official Records of the General Assembly, Sixty-first Session, Supp. No. 10 (A/61/10) .....	23
Draft Articles on the Law of Transboundary Aquifers, Official Records of the General Assembly, Supplement No. 10 (A/63/10), (2008) [Draft Articles of TBA] .....	3, 5
Draft articles on the Law of Transboundary Aquifers, with commentaries, U.N. Doc. A/63/10, (2008) [Draft articles commentaries].....	5, 8
Draft Declaration on the rights of indigenous peoples, U.N. Doc.E/CN.4/Sub2/1992/28 (1992) .....	30
Eckstein Gabriel, and Yoram Eckstein, <i>A Hydrogeological Approach to Transboundary Ground Water Resources and International Law</i> , 2 A.Uni. Int’l Rev. 201, (2003) [ <i>A Hydrogeological Approach</i> ] ...	3
G.A. Res. 1803 (XVII) (1962) .....	29
G.A. Res. 41/128, U.N. Doc. A/RES/41/128(1986).....	29
G.A. Res. 61/52, U.N. Doc. A/RES/61/52 (Dec. 4, 2006) .....	18
G.A. Res. 64/78, U.N. Doc. A/RES/64/78 (Dec. 7, 2009) .....	18
G.A. Res. A/RES/50/152, 26 (1995) .....	27
<i>General Comment 6(16) on article 6 of the ICCPR, HRC, U.N. Doc. A/37/40, Annex V, 1 (1982)</i> .....	31
General Comment No. 12, CESCR, U.N. Doc. E/C.12/1999/5, 6 (1999) .....	27
General Comment No. 14 The right to the highest attainable standard of health, CESCR, U.N. Doc. E/C.12/2000/4, 43(c) (2000) .....	26
General Comment No. 15, CESCR, U.N. Doc. E/C.12/2002/11, 23 (2003) .....	26, 27
General Comment No.3, CESCR, U.N. Doc. E/1991/23 (1990).....	30

Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, U.N. Doc. A/61/10, (2006) [Guiding Principles] .....	1
High Commission for the promotion and protection of all human rights, U.N.GAOR, 48 <sup>th</sup> Sess., Supp.No.49, U.N. Doc. A/48/141, (1993) .....	29
Interim Report in International Law Association The Hague Conference Report, Committee on the Rights of Indigenous Peoples, (2010) .....	31
LOUISE DOSWALD-BECK, HUMAN RIGHTS IN TIMES OF CONFLICT AND TERRORISM, (2011) .....	25
Prevention of discrimination and protection of indigenous peoples and minorities Indigenous peoples and their relationship to land, UNCHR, E/CN.4/Sub.2/2001/21, 45 (2001) .....	30
Report of the Sixth Committee convening as the Working Group of the Whole, U.N. Doc. A/51/869, (1997) .....	5
Report of the Special Rapporteur on the human right to safe drinking water and sanitation, UNHRC, U.N. Doc. A/HRC/21/42, 47 (2012) .....	31
<i>Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UNCHR, UN A/HRC/4/26, 43 (2007)</i> .....	25
Report of the working group established in accordance with Commission on Human Rights resolution, UNCHR, U.N. Doc. E/CN.4/2002/98, 42-44 (2002) .....	30
Reports of the International Law Commission on the Work of its Forty-sixth session, U.N. Doc. A/49/10/, (1994) .....	7
Six Report on State Responsibility, Year Book of International Law Commission, 1977, Vol. II .....	12
<i>Special Rapporteur of the UN Commission on Human Rights, A/37/564</i> .....	31
U.N. Doc. A/AC.96/904, 4 (1998) .....	33
U.N. Doc. A/CN.4/543, 128 .....	31
U.N. Doc.A/45/40 .....	30

**NATIONAL CASES**

<i>Allgemeine Versicherungsgesellschaft v. E. K.</i> , BGHZ 59, 83 (1972) .....	19
<i>Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg &amp; Feldman Fine Arts, Inc</i> , United States Court of Appeals, Seventh Division, No. 89-289 (1990) .....	20
<i>Brokaw v. Seatrain UK Ltd.</i> 2 Q.B. 476 (1971) .....	20
<i>Cheung v. Canada (Minister of Employment and Immigration)</i> , 2 F.C. 314, (C.A., 1993) .....	28
<i>Colorado v. New Mexico</i> , 467 U.S. 310, (1984) [ <i>Colorado</i> ] .....	1, 2, 3, 4
<i>Gramara (Private) Limited and ors v. Government of Zimbabwe and Attorney-General of Zimbabwe</i> , HH 169/2009, (High Court, 2010) .....	17
<i>Italia Nostra v. Ministry of Cultural Heritage and Libyan Arab Jamahiriya</i> , 3154/2008, ILDC 1138 (IT 2008) [ <i>Italia</i> ] .....	19, 20
<i>Kansas v. Colorado</i> , 206 U.S. 46, (1907) .....	2
<i>Nebraska v. Wyoming</i> , 325 U.S 589 (1945) .....	1
<i>Redmond v. New Jersey Historical Soc.</i> , 132 N.J. Eq, 464, 473-76, 28 A.2d, 189, 194 (1942) .....	19
<i>Trail Smelter Case (United States v. Canada)</i> , 3 UNRIAA 1906, (1938/1941) [ <i>Trail</i> ] .....	11, 32
<i>United States v. McClain</i> , 545 F. 2d 988 (5 <sup>th</sup> Cir. 1977) [ <i>McClain</i> ] .....	20, 21

<i>Washington v. Oregon</i> , 297 U.S.517, (1936) .....	5
<i>Wyoming v. Colorado</i> , 259 U.S. 419, (1922) [Wyoming].....	2
<i>X v. Ireland</i> , application No. 4125/69 (1973) .....	20

**ARTICLES**

Ahilan T. Arulanantham, <i>Restructured Safe Havens: A Proposal for Reform of the Refugee Protection System</i> , 22 HUM. RTS. Q. 1, 29 (2000) .....	28
Ames, <i>The Disseisin of Chattels</i> , 3 Harv. L. Rev. 313, 321 (1890) .....	19
Eiko R. Thielemann, <i>Towards A Common EU Asylum Policy: The Political Economy of Refugee Burden-Sharing</i> , 15-16 (2006) .....	33
Fabienne D. Struell, <i>Cultural Property</i> , 31 INT'L LAW. 691, 691-693 (1996).....	21
John Kelson, <i>State Responsibility and Abnormally Dangerous Activities</i> , 13 HARV.INT'L.L.J. 197, 200 (1972) .....	31
Johnson, <i>Acquisitive Prescription in International Law</i> , 27 Brit. Y.B. Int'l L. 332, 353 (1950) [Johnson]19	
Karen Gevorgyan, <i>Concept of State Sovereignty: Modern Attitudes</i> .....	21
Katarzyna Januszkiewicz, <i>Retroactivity in the 1970 UNESCO Convention: Cases of the United States and Australia</i> , 41 Brook. J. Int'l L. 329, 372 (2015) .....	18
Luke T. Lee, <i>The Right to Compensation: Refugees and Countries of Asylum</i> , 80 AM. J. INT'L L. 532, 539 (1986) .....	27
Maziar Jamnejad & Michael Wood, <i>The Principle of Non-Intervention</i> , 22 LEIDEN J. INT'L L., 345, 348 (2009) .....	28
Michael J. Reppas II, <i>Empty "International" Museums' Trophy Cases of Their Looted Treasures and Return Stolen Property to the Countries of Origin and the Rightful Heirs of Those Wrongfully Dispossessed</i> , 36 DENV. J. INT'L L. & POL'Y. 93, 113-19 (2007) .....	21
Michael J. Reppas II, <i>The Deflowering of the Parthenon: A Legal and Moral Analysis on Why the "Elgin Marbles" Must Be Returned to Greece</i> , 9 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 911, 944 (1999) .....	21
Nafziger, <i>The New International Framework For The Return, Restitution or Forfeiture of Cultural Property</i> , 15 Intl Law & Politics 789, 799-811, 840-846 (1983) .....	19
Tally Kritzman-Amir & Thomas Spijkerboer, <i>On the Morality and Legality of Borders: Border Policies and Asylum Seekers</i> , 26 HARV. HUM. RTS. J. 1, 6 (2013) .....	29

**NATIONAL LAWS**

1983 Egypt <Law 117> .....	21
Ley Sobre Monumentos Arqueologicos, Diario Oficial de Mayo de 1897.....	21
Regulation on the Prize to be Granted to Persons Who Have Found and Reported Movable Cultural and Natural Property and Public Officials Who Have Intercepted These .....	21
Royal Decree No 1271 .....	21

**OTHER AUTHORITIES**

Human Rights Handbook on Policing Assemblies, OSCE/ODIHR, (Warsaw: ODIHR, 2016), at

<http://www.osce.org/odihr/226981> .....25

## STATEMENT OF JURISDICTION

The Federation of the Clans of the Atan (“**Atania**”) and the Kingdom of Rahad (“**Rahad**”) hereby respectfully submit the present dispute to the International Court of Justice (“**The Court**”), in accordance with Article 36(1) and Article 40(1) of the Statute of the Court, by way of *Compromis* transmitted to the Register on 12 September 2016. Atania and Rahad agree to accept the Court’s decision as final and binding on them and commit to comply with it in its entirety and in good faith.

## **QUESTIONS PRESENTED**

- I.** Whether Rahad's extraction of water from the Aquifer violates its obligations of equitable use and sustainable use of the shared Aquifer.
  
- II.** Whether Rahad's Savali Pipeline operations violate its obligation to prevent transboundary harm to the Kin Canyon Complex and its obligations to protect world heritage.
  
- III.** Whether Atania is the lawful owner of Ruby Sipar and whether Ruby Sipar was stolen and illicitly exported cultural property from Atania and whether consequently Ruby Sipar must be returned to Atania.
  
- IV.** Whether Atania is responsible to compensate to Rahad; Whether Atania is liable to compensate to Rahad; Whether Atania must share the burden caused by the Kin influx under principle of fairness.

## **STATEMENT OF FACTS**

### **Background**

Atania and Rahad are neighboring states occupying the Nomad Coast, characterized by arid and semi-arid lands and bound to the Great Garnet Desert.

The Greater Inata Aquifer (“the Aquifer”) is an unconfined fossil aquifer shared by Atania and Rahad, as the largest underground source of fresh water in Nomad Coast. It is a non-recharging aquifer containing approximately 35 cubic kilometers fresh water. Historically, people of Nomad Coast have relied on its discharge for generations.

The Kin Canyon Complex (“the Complex”) is a mixed heritage between Atania and Rahad, inserted into UNESCO’s World Heritage List in 1994, consisting of many significant historical sites and critical archeological discoveries. Among these sites, “Stronghold” is an architecturally and archaeologically significant assembly of ancient dwellings and ceremonial structures in the Complex located within Atania’s territory.

The Kin is the one of the original inhabitants of the Complex and currently lived in the east of the Complex in Atania. They remain largely culturally and politically isolated from the rest of Atania’s society, accounting for 98% of subsistence farmers in Atania.

### **The Savali Pipeline operations**

On 22 March 1993, the Rahad published a unilateral declaration by making a nationally-televised address of Minister of Water and Agriculture. In its declaration, Rahad committed to protect the shared Aquifer and ensure its equitable and sustainable

use. In response to Rahad's declaration, the Minister's Atania's counterpart revealed Atania's willingness to cooperation with Rahad in utilizing the shared Aquifer.

On 16 June 2002, in order to end Rahad's reliance on imported water since 1983 and re-establish self-sufficiency of water, Queen Teresa of Rahad unilaterally commissioned the Inata Logistic and Scientific Association ("ILSA") to study the feasibility of directly tapping the Aquifer. It was estimated by ILSA that extracting 1.2 cubic kilometers of water per year would exhaust the Aquifer in approximately 30 years.

On 2 February 2003, despite of intense objection from Atania, Rahad's Bureau of the Interior prepared a plan to construct subterranean system to extract water from the Aquifer, which was known as Savali Pipeline operations (the Operations) afterwards. After learning Rahad's plan on the Operations, the World Heritage Committee [WHC] expressed concerns regarding the potential subsidence and reminded Rahad of its obligation to prevent risking harm to outstanding universal value of the Complex.

Disregarding Atania's objection and concerns of the WHC, on 20 February 2006, the Operations was completed and commenced to extract water from the shared Aquifer.

In June 2010, an international panel of climatologist, geologists and hydrologists confirmed the Operations caused permanent lowering of the water table in the region of the Complex and discharge from the Aquifer could no longer provide sufficient water for Atania's agricultural use. The Study further found that 20% of farmland of Atania could not be farmed and additional 30% would be lost if the Operations continued at the same rate.

On 4 February 2011, a panel of geologists reported that the subsidence due to the Operations caused structural degradation of the Canyons and Stronghold in the Complex. Atania decided to close the perilous sections of the Complex to ensure the safety of tourists.

In June 2012, WHC added the Complex to the List of World Heritage in Danger. Following the decision of WHC, President of Atania proposed a consultation with Rahad but the proposal was rejected by Rahad.

### **Illegal Export of the Ruby Sipar**

The Ruby Sipar was a ceremonial shield originated from 500 CE in anti-aggression war, and it denoted unity and peace. In 1903, an Atania's archaeologist from University of Atanagrad, a public university, discovered Ruby Sipar in an excavation within Atania's territory. Since then the Ruby Sipar was displayed publicly in Atanagrad University until it was moved to a Cultural Center owned by Atania's government in 1996. Around 3 October 2014, Carla Dugo, one of the elders of the Sister of the Sun, which was an order of women dedicated to preserve the culture of the Kin, stole the Ruby Sipar from the Cultural Center. And Ruby Sipar was then exported to Rahad and delivered to the Rahad's Minister of Culture. Rahad refused to return Ruby Sipar upon the request of Atania until now.

### **Water Resource Allocation Program Act (WRAP Act)**

Impacted by Rahad's water extraction and continuing drought conditions, in order to allocate more water to agriculture to ensure the food production, the Atania's Parliament

enacted the WRAP Act in September 2012. WRAP Act set a quota on water generally supplied to every household and required all farming operations to purchase licenses before utilizing public water. To maintain the security of food, WRAP Act offered license exemptions for farms that sold more than US\$75,000 annually. However, fewer than 5% of Kin farmers applied for licenses, however more than 80% of Kin farmers used over-quota water.

In August 2013, two Kin farmers were prosecuted due to violation of WRAP Act. However no improvement on Kin's non-compliance with the WRAP Act was manifested. Therefore, in October 2013, the Atanian Parliament amended the WRAP Act, adding the termination of the state-controlled water supply as the punishment of violation to the WRAP Act. Complying with legitimate procedure, water supply of majority of Kin farmlands was cut off by the end of 2013.

### **The Violent Protest of the Kin and the Sisters of the Sun**

Since 17 July 2014, massively violent protest of Kin and the Sisters of the Sun officially began. The protestors defaced the public properties of Atania including the Parliament. Thousands of demonstrators assembled in the plaza and formed human chains across major roads, blocking traffic and preventing employees from entering municipal offices to hamper law enforcement. The conditions of the city then became chaotic, dangerous and unsustainable. In order to preserve public order and peace, Atanian police legally arrested over 1000 Kin demonstrators across the country.

### **Kin Humanitarian Assistance Act (KHAA)**

In response to the mass influx of the Kin crossing into Rahad in September 2014, the Rahad's Parliament enacted the KHAA. According to KHAA, the Sisters of the Sun and their family members were accepted as refugees, while other migrants were entitled to apply for refugee status subject to KHAA. Rahad established three temporary camps to settle the Kin. Since September 2014, approximately 800,000 Kin migrated into Rahad, but only 155,000 of them were accepted as refugees according to KHAA.

### **Border Protection Act (BPA)**

In December 2015, Rahad's Parliament adopted the BPA to address the issues of Kin's migration. In January 2016, Rahad submitted a memorandum to Atania, demanding compensation for all the expenditures and damages incurred and accruing for accepting the Kin, the total amount of which was US\$945,000,000. However, Atania dismissed such a request because such request was unfounded and groundless under international law.

## **SUMMARY OF PLEADINGS**

Rahad's extraction of water from the Aquifer constitutes an inequitable use of a shared resource. First, Rahad violates its obligation of equitable use of the Aquifer because it failed to assure the equitable apportionment of the Aquifer by undermining existing use enjoyed by Atania. In addition, Rahad failed to protect the Aquifer and protect the vital human needs of Atania by destroying traditional agricultural use supported by the Aquifer. Second, Rahad violates its obligation of sustainable use of the Aquifer. Rahad is bound by its unilateral declaration committed to sustainable use because the declaration was made publicly by competent authority in clear and specific terms with intent to be bound. However, exhaustive utilization of the Aquifer violated the obligation of sustainable use.

The Savali Pipeline operations violate Rahad's customary obligation to prevent transboundary harm and treaty obligation to protect world heritage. With respect to customary obligation, the transboundary significant harm was caused by Savali Pipeline operations and Rahad failed to exercise due diligence to prevent transboundary harm because it did not carry out a competent EIA; it did not notify and consult with Atania regarding its proposed plan; it did not conduct continuing monitoring. In light of treaty obligation, Rahad undertook deliberate measures which damaged the Kin Canyon Complex in violation of Article 6(3) of 1972 World Heritage Convention. In addition, upon request from Atania, Rahad refused to give its help in the protection of Kin Canyon Complex in violation of Article 6(2) of 1972 World Heritage Convention. Since the

internationally wrongful act is continuing, cessation is an appropriate remedy.

Rahad must immediately return the Ruby Sipar to Atania, its lawful owner. First, Ruby Sipar was stolen and illicitly cultural property exported from Atania to Rahad. Therefore Rahad was obliged to return the Ruby Sipar to Atania under 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention) and customary international law. Second, Atania owns the Ruby Sipar based on the principle of acquisitive prescription. Alternatively, Atania owns the Ruby Sipar because it was found within its territory with no prior ownership.

Atania is not obligated to compensate Rahad for costs of Kin migrants based on responsibility, liability or burden-sharing. First, the Kin's outflow cannot be attributed to Atania for the lack of effective control or further adoption or acknowledgment. Second, Rahad has no standing to claim on Atania's treatment of the Kin who are not Rahadi nationals. Third, even if attribution can be established, Atania is not responsible to compensate because it acted in compliance with its international obligations, *inter alia*, respecting other states' sovereignty and treaty obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Forth, assuming Respondent's analogy between migrants and transboundary harm is acknowledged by this Court, Atania is precluded from liability to compensate due to lack of proximate causal link and its fulfillment of due diligence obligation. Ultimately, the notion of burden-sharing in

international refugee regime has not attained customary status. And its existing mechanism does not pose any duty on State of origin to compensate.

## PLEADINGS AND AUTHORITIES

### **I. EXTRACTION OF WATER FROM THE AQUIFER VIOLATES INTERNATIONAL OBLIGATIONS UNDERTAKEN BY RAHAD AND CONSTITUTES AN INEQUITABLE USE OF A SHARED RESOURCE.**

Principle of equitable use of international watercourse has been recognized by this Court as customary international law in *GabCikovo-Nagymaros*,<sup>1</sup> as evidenced by wide State practice.<sup>2</sup> As an unconfined aquifer shared by Atania and Rahad, the Greater Inata Aquifer [Aquifer] is physically related to surface water, constituting an integrated part of international watercourse.<sup>3</sup> Accordingly, principle of equitable use shall be applicable. The *lex lata* of the principle encapsulates obligation of equitable use of the shared Aquifer, which Rahad shall respect.<sup>4</sup> In addition, Rahad shall bear the obligation of sustainable use of the Aquifer, which is *de lege ferende* but binding upon Rahad based on its unilateral declaration released on 22 March 1993.<sup>5</sup>

---

<sup>1</sup> *GabCikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, (1997) I.C.J. ¶85 [*Gabč kovo-Nagymaros*].

<sup>2</sup> Berlin Rules on International Water Resources, ILA, 71 Int'l L. Ass'n Rep. Conf. 334, art.12 (2004) [Berlin]; Convention on the Law of the Non-navigational Uses of International Watercourses, art.5, 1997, U.N. Doc. A/RES/51/229 [WCC]; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, art.2, 1992, 1936 U.N.T.S.269 [UNECE]; Revised Protocol on Shared Watercourses in the Southern African Development Community, art.8, 2000, [SADC].

<sup>3</sup> *Compromis*, ¶4; Clarification, ¶1; WCC, art.2; UNECE, art.1; SADC, art.5; Berlin, art.3.

<sup>4</sup> STEPHEN C. MCCAFFREY, THE LAW OF INTERNATIONAL WATERCOURSES, 385 (2<sup>nd</sup> ed. 2008) [STEPHEN]; Draft Articles on the Law of the Non-navigational Uses of International Watercourses and Commentaries thereto and Resolution on Transboundary Confined Groundwater, Y.I.L.C. vol.II Part Two, ¶17 (1994) [Watercourse Commentaries]; *Nebraska v. Wyoming*, 325 U.S 589 (1945); *Colorado v. New Mexico*, 467 U.S. 310, ¶184 (1984) [*Colorado*].

<sup>5</sup> Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, U.N. Doc. A/61/10, art.1 (2006) [Guiding Principles]; *Nuclear Tests* (Australia v. France), Judgment, (1974) I.C.J. 43 [*Nuclear Tests*]; *Case concerning the Frontier Dispute* (Burkina Faso v. Republic of Mali), Judgment, (1986)

**A. EXTRACTION OF WATER VIOLATES RAHAD’S OBLIGATION OF EQUITABLE USE OF THE AQUIFER UNDER CUSTOMARY INTERNATIONAL LAW.**

When applying equitable use obligation, the test of *community of interest* which is recognized by decisions of this Court<sup>6</sup> and other international tribunals<sup>7</sup> requires [1] Rahad to comply with its obligation of equitable apportionment, [2] obligation to protect the Aquifer and [3] obligation to protect vital human needs of Atania.<sup>8</sup>

**1. Extraction of water violates Rahad’s obligation of equitable apportionment.**

The obligation of equitable apportionment requires Rahad to assure the equitable share and access of Atania to the Aquifer.<sup>9</sup> In particular, the equitable share obliges Rahad to [a] protect the Atania’s existing use [b] and comply with the obligation to exchange data and information.

**a. Rahad fails to protect Atania’s existing use.**

No State has preferential right to the shared resource,<sup>10</sup> thus deprivation of right

---

I.C.J. ¶39 [*Frontier Dispute*]; *Case Concerning Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, (1999) I.C.J. ¶¶50, 52 [*Congo*].

<sup>6</sup> *Gabčíkovo-Nagymaros*, ¶85; *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgment, (2010) I.C.J. ¶177 [*Pulp Mills*]; *North Sea Continental Shelf* (Federation of Germany v. Netherlands), Judgment, (1969) I.C.J. ¶¶88-89 [*North Sea*]; *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada v. United States of America), Judgment (1984) I.C.J. ¶339 [*Gulf of Maine*].

<sup>7</sup> *The Indus Water Kishenganga Arbitration* (the Islamic Republic of Pakistan v. the Republic of India), Final Award, (2013) P.C.A. ¶108 [*Indus Water*].

<sup>8</sup> STEPHEN, 393; LAURENCE BOISSON DE CHAZOURNES, FRESH WATER IN INTERNATIONAL LAW, 109 (2013); WCC, art.5; OWEN MCINTYRE, THE UNECE CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSE AND INTERNATIONAL LAKES: ITS CONTRIBUTION TO INTERNATIONAL WATER COOPERATION, 147 (2015); *Colorado*, ¶184; *Wyoming v. Colorado*, 259 U.S. 419, ¶484 (1922) [*Wyoming*].

<sup>9</sup> *Kansas v. Colorado*, 206 U.S. 46, ¶117 (1907).

<sup>10</sup> *Case Relating to the Territorial Jurisdiction of the International Commission of the*

of other States to use the shared resource is prohibited.<sup>11</sup> And the rule of protecting existing use is continuously outlined by State practice when a State initiates new use of the shared water resource.<sup>12</sup> In doing so, Rahad is obliged to protect Atania's existing use, which requires the injury caused by the new use [i] to be necessary; [ii] cannot be outweighed by the benefit; [iii] and can be remedied.<sup>13</sup>

First, the Atania's injury is not necessary for Rahad's extraction of water. Necessity test requires the injury caused by the water extraction is indispensable for its sustainable operations.<sup>14</sup> Rahad fails to prove that the permanent lowering of the water table and infertility of the farming land was inevitable for Rahad's water extraction. Even assuming lowering of water table occurred inevitably,<sup>15</sup> Rahad failed to undertake preventive measures, making injury sustained by Atania unnecessary.

Second, Rahad cannot prove the benefits can outweigh the Atania's injury. The injury is justifiable insofar as the benefit outweighs the injury to Atania.<sup>16</sup> However,

---

*River Oder*, PCIJ Reports, Series A, No.16, ¶27 (1929) [*River Oder*].

<sup>11</sup> *Gabčíkovo-Nagymaros*, ¶85.

<sup>12</sup> *Colorado*, ¶186; WCC, Annex I, art.7(2); Draft Articles on the Law of Transboundary Aquifers, Official Records of the General Assembly, Supplement No. 10 (A/63/10), art.6 (2008) [Draft Articles of TBA]; *Indus Water*, Partial Award, ¶233.

<sup>13</sup> *Colorado*, ¶186 (1982); STEPHEN, 396.

<sup>14</sup> *Indus Water*, Partial Award, ¶516.

<sup>15</sup> Chusei Yamada, Second Report on shared natural resources: transboundary groundwaters, U.N. Doc. A/CN.4/539 and Add.1, ¶22 (2004); Eckstein Gabriel, and Yoram Eckstein, *A Hydrogeological Approach to Transboundary Ground Water Resources and International Law*, 2 A.Uni. Int'l Rev. 201, 251 (2003) [*A Hydrogeological Approach*].

<sup>16</sup> *Colorado*, ¶186.

Rahad fails to prove the benefits brought by its extraction of water.<sup>17</sup> Conversely, injury was abundantly clear since economic losses and infertility of the farming land massively occurred.<sup>18</sup>

Third, the injury cannot be remedied by Atania. The protection of existing use means the damage could be remedied by conservative measures.<sup>19</sup> While the water extraction caused permanent lowering of water table in the Complex,<sup>20</sup> such permanent injury cannot be remedied by conservative measures.

***b. In any event, Rahad violates its obligation to exchange data and information.***

Procedural requirement under equitable use obligation obliges a State to exchange data and information which has been widely and consistently recognized by treaties.<sup>21</sup> Although Rahad has published data and information prior to its water extraction, but no specific data and information was published after the extraction was put into operation. Thus, Rahad violates procedural duty under equitable apportionment obligation.

---

<sup>17</sup> *Compromis*, ¶26.

<sup>18</sup> *Compromis*, ¶28.

<sup>19</sup> *Colorado*, ¶188.

<sup>20</sup> *Compromis*, ¶28.

<sup>21</sup> WCC, Annex I, art.9; SADC, art.3(6); UNECE, art.6; Program for the Development of a Regional Strategy for the Utilization of the Nubian Sandstone Aquifer System (NSAS) -Terms of Reference for the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System (2000) [Chad-Egypt-Libya -Sudan]; Establishment of a Consultation Mechanism for the Northwestern Sahara Aquifer System (SASS) (2002) [Algeria-Libya-Tunisia] [Consultation Mechanism].

## **2. Extraction of water violates Rahad's obligation to protect the Aquifer.**

A State's obligation to protect the water resource in its utilization is emphasized by this Court,<sup>22</sup> requiring State to reasonably use the resource.<sup>23</sup> Hence Rahad is obliged to preserve the shared Aquifer<sup>24</sup> and the ecosystem relying on it.

Given the non-renewable nature of the Aquifer, utilization of it should be conducted in a non-exhaustive manner in pursuit to its maximum use.<sup>25</sup> Rahad's current rate of pumping will exhaust the Aquifer in the immediate future.<sup>26</sup> Also, protection of its ecosystem requires the extraction of water not to cause the permanent lowering of water table.<sup>27</sup> However, Rahad's violation of obligation was witnessed by the panel report in June 2010.<sup>28</sup>

## **3. Extraction of water violates Rahad's obligation to protect vital human needs of Atania.**

The obligation to protect vital human needs *inter alia* the needs of water for drinking and food production<sup>29</sup> is recognized by decisions of this Court.<sup>30</sup> In

---

<sup>22</sup> *Gabč kovo-Nagymaros*, ¶112.

<sup>23</sup> *Washington v. Oregon*, 297 U.S.517, ¶527 (1936); LAURENCE BOISSON DE CHAZOURNES, FRESH WATER IN INTERNATIONAL LAW, 109 (2013).

<sup>24</sup> *Wyoming*, ¶484.

<sup>25</sup> Draft articles on the Law of Transboundary Aquifers, with commentaries, U.N. Doc. A/63/10, art.4 (2008) [Draft articles commentaries].

<sup>26</sup> *Compromis*, ¶26.

<sup>27</sup> Strategic Overview Series Ecosystem Conservation and Groundwater, International Association of Hydrogeologist, 2 (Mar. 9, 2016).

<sup>28</sup> *Compromis*, ¶26.

<sup>29</sup> Draft Articles of TBA, art.7; Report of the Sixth Committee convening as the Working Group of the Whole, U.N. Doc. A/51/869, ¶8 (1997).

<sup>30</sup> *Kasikili-Sedudu Island* (Botswana v. Namibia), Judgment, (1999) I.C.J. ¶100

*Kasikili-Sedudu Island*, this Court stressed that local community's continuing agricultural activities related to the river shall not be hampered after the settlement of disputed territory.<sup>31</sup> Also in *Frontier Dispute 2013*, this Court selected a methodology in which "access to water resource of all people living in riparian villages is better met" to delimitate the disputed river.<sup>32</sup> Accordingly, Rahad is obliged to protect the agricultural production of population relying on the Aquifer.

However, extraction of water undermined agricultural production which was supported by the Aquifer for many generations. Historically, Atania's population enjoyed consistent utilization of the Aquifer by discharging from it. And agricultural production showed strong reliance on the water supply from the Aquifer.<sup>33</sup> Extraction of water terminated such traditional water supply, disregarding vital human needs of Atania's population.<sup>34</sup>

Moreover, as an emerging notion, minimum flow to satisfy vital human needs should be taken into account in extraction of water,<sup>35</sup> as evidenced by State practice.<sup>36</sup> Here, the discharge from the Aquifer is analogical to natural flow of river since they

---

[*Kasikili-Sedudu Island*]; *Frontier Disputes* (Burkina Faso v. Niger), Judgment, (2013) I.C.J. ¶101 [*Frontier Dispute 2013*]; *Frontier Dispute 2013*, Separate Opinion, per Judge ad hoc Georges Abi-Saab, ¶17.

<sup>31</sup> *Kasikili-Sedudu Island*, ¶100.

<sup>32</sup> *Frontier Dispute 2013*, ¶101.

<sup>33</sup> *Compromis*, ¶4.

<sup>34</sup> *Compromis*, ¶16.

<sup>35</sup> *Lac Lanoux Arbitration*, (France v. Spain), 24 ILR, ¶119 (1957) [*Lac Lanoux*].

<sup>36</sup> Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, art.II(3) (1995) [Cambodia-Laos-Thailand-Vietnam]; Treaty Concerning the Intergrated Development of the Mahakali River, art.1(2) (1996) [India-Nepal].

are both allocating the shared water. However, no evidence presents that minimum flow was guaranteed.

**B. EXTRACTION OF WATER VIOLATES RAHAD'S OBLIGATION OF SUSTAINABLE USE OF THE AQUIFER BOUND BY ITS UNILATERAL DECLARATION.**

Sustainable use of shared resource is currently *de lege ferende* of equitable use principle,<sup>37</sup> recognized by this Court,<sup>38</sup> consistent State practice<sup>39</sup> and scholarly observations.<sup>40</sup> Rahad is bound by such obligation because of its unilateral declaration released on 22 March, 1993.

**1. Rahad's unilateral declaration is binding upon it.**

Rahad is bound by the nationally-televised address given by the Rahadi Minister because it was made publicly<sup>41</sup> by competent authority<sup>42</sup> in clear and specific term<sup>43</sup> expressing Rahad's intent to be bound.<sup>44</sup> And the content of the declaration manifested no contravention to *jus cogens*.<sup>45</sup> Accordingly, Rahad shall utilize the

---

<sup>37</sup> Slavko Bogdanovic, Charles Bourne, Stefano Burchi & Patricia Wouters, ILA Berlin Conference, Water Resources Committee Dissenting Opinion, 3 [Dissenting Opinion].

<sup>38</sup> *Gabč kovo-Nagymaros*, ¶140; *Pulp Mills*, ¶140.

<sup>39</sup> UNECE, art.5; WCC, art.6.

<sup>40</sup> OWEN MCINTYRE, ENVIRONMENTAL PROTECTION OF INTERNATIONAL WATERCOURSES UNDER INTERNATIONAL LAW, 247 (2007); Reports of the International Law Commission on the Work of its Forty-sixth session, U.N. Doc. A/49/10/, 11 (1994).

<sup>41</sup> *Nuclear Tests*, ¶43.

<sup>42</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia), Judgment, (2007) I.C.J. ¶44.

<sup>43</sup> *North Sea*, ¶30.

<sup>44</sup> *North Sea*, ¶30; *Congo*, ¶¶50, 52; *Frontier Dispute*, ¶39.

<sup>45</sup> *Congo*, ¶69.

Aquifer in non-exhaustive manner. And such obligation can only be revoked when fundamental change of circumstances occurs,<sup>46</sup> and States relying on declaration would suffer no prejudice.<sup>47</sup>

However, no evidence enunciates the fundamental change of circumstances and Atania would be negatively affected by alteration of Rahad's position. Both Atania's statement and act reflected its reliance on Rahad's declaration,<sup>48</sup> and alteration of Rahad's position rendered Atania more difficult to use the Aquifer because the water table was lower due to the extraction. Accordingly, revocation was impermissible.

## **2. Extraction of water undermines Rahad's declaration by exhausting the Aquifer.**

Rahad has been extracted water from the Aquifer at a consistent rate of 1.2 cubic kilometers per year, which will exhaust the Aquifer in immediate future.<sup>49</sup> Given the non-renewable nature of the Aquifer,<sup>50</sup> the Aquifer will be exhausted in this generation, which consequently denied the access of future generations to the Aquifer.

## **3. In any event, Rahad is estopped from contravening its explicit statement.**

Rahad is estopped from contravening its explicit statement,<sup>51</sup> if change of

---

<sup>46</sup> *Gabč kovo-Nagymaros*, ¶104; Vienna Convention on the Law of Treaties, art.62(1)(a), Jan. 27, 1980, 1155 U.N.T.S. 331 [VCLT].

<sup>47</sup> *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Jurisdiction of the Court and Admissibility of the Application, (1984) I.C.J. ¶51 [*Military and Paramilitary Activities*].

<sup>48</sup> *Compromis*, ¶16.

<sup>49</sup> *Compromis*, ¶17.

<sup>50</sup> Draft articles commentaries, art.4.

<sup>51</sup> *Gulf of Maine*, ¶45.

position is detrimental to Atania.<sup>52</sup> As outlined above, Atania relied on Rahad's the statement and converse of the position rendered Atania suffer prejudice.

**C. RAHAD CANNOT RELY ON STATE OF NECESSITY TO JUSTIFY ITS NON-COMPLIANCE WITH EQUITABLE USE OBLIGATIONS.**

Extraction of the Aquifer was driven by the need of alternative water supply, not the alleged shortage of water since Rahad *per se* admitted the extraction was intended to end the reliance on imported water and re-establish self-sufficiency.<sup>53</sup>

In any event, Rahad cannot make out a case for state of necessity inasmuch as [1] no imminent and grave peril necessitates extraction of the Aquifer; [2] extracting water is not the only means in response to alleged shortage of water; [3] extraction of the Aquifer illegally impairs the essential interests of Atania.<sup>54</sup>

**1. No imminent and grave peril necessitates extraction of the Aquifer.**

To comply with necessity, the peril must be objectively established. Mere apprehension of the possible risk is not sufficient.<sup>55</sup> Alleged shortage of water cannot be judged by the subjective concerns from head of the Service,<sup>56</sup> or Queen Teresa.<sup>57</sup>

Additionally, the peril must be proximate or immediate.<sup>58</sup> First, construction of

---

<sup>52</sup> *Case concerning the Aerial Incident of 10 August 1999* (Pakistan v. India), Jurisdiction of the Court, (2000) I.C.J. ¶45.

<sup>53</sup> *Compromis*, ¶21.

<sup>54</sup> JAMES CRAWFORD, *STATE RESPONSIBILITY: THE GENERAL PART*, 307-311 (2013).

<sup>55</sup> *Gabčíkovo-Nagymaros*, ¶54; Commentaries to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/10, art.25, ¶14 (2001) [ARSIWA Commentaries].

<sup>56</sup> *Compromis*, ¶19.

<sup>57</sup> *Compormis*, ¶20.

<sup>58</sup> *Gabčíkovo-Nagymaros*, ¶54.

Pipelines lasted for 7 years which indicated the peril was not proximate. Second, temperature increase was long-term process. Although this Court does not preclude the long-term risk to be imminent, it is not thereby any less certain or inevitable.<sup>59</sup> Accordingly, the alleged shortage of water is not imminent and grave.

**2. Extracting water is not the only means in response to alleged shortage of water.**

Necessity requires that non-compliance with the obligation must be the only means in response to the peril. And the alternative to the non-compliance does not necessarily have to be less expensive or more convenient.<sup>60</sup> Importation of water was a proper alternative to the shortage of water, making the extraction of water not the only means.

**3. Extracting water illegally impairs the essential interests of Atania.**

Necessity requires Rahad cannot seriously impair the essential interests of Atania.<sup>61</sup> Natural environment has been recognized by this Court as the essential interests.<sup>62</sup> Extracting water amounted to environmental damage, which disrupted the balance of interests between Rahad and Atania.<sup>63</sup>

**II. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD'S INTERNATIONAL OBLIGATIONS WITH RESPECT TO KIN CANYON COMPLEX AND THEREFORE MUST CEASE.**

---

<sup>59</sup> *Id.*

<sup>60</sup> *Gabčíkovo-Nagymaros*, ¶55.

<sup>61</sup> Articles on Responsibility of States for Internationally Wrongful Acts, art.25, 2001, Y.B.I.L.C., vol. II (Part Two) [ARSIWA].

<sup>62</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, (1996) I.C.J. ¶29 [Nuclear Weapons].

<sup>63</sup> *Compromis*, ¶25.

**A. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD’S OBLIGATION TO PREVENT TRANSBOUNDARY HARM TO KIN CANYON COMPLEX UNDER CUSTOMARY INTERNATIONAL LAW.**

Under customary international law,<sup>64</sup> no-harm rule requires a State has responsibility to ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or areas beyond national jurisdiction.<sup>65</sup>

**1. Rahad had an obligation to prevent transboundary harm to Atania.**

State practice<sup>66</sup> progressively accepts no-harm rule in transboundary aquifer, which obliges Rahad to exercise due diligence with its best practicable means concerning activities within its jurisdiction or control<sup>67</sup> where its activities may cause transboundary significant damage.<sup>68</sup>

As *lex specialis* in international watercourse law, the applicable threshold of transboundary harm requires two-tire analysis: [a] damage to human health and safety is prohibited;<sup>69</sup> [b] other categories of damage should be significant.<sup>70</sup>

---

<sup>64</sup> *Construction of a Road in Costa Rica Along the San Juan River* (San Juan River v. Costa Rica), Judgment, (2015) I.C.J. ¶19 [*San Juan River*].

<sup>65</sup> *Pulp Mills*, ¶101; *Trail Smelter Case* (United States v. Canada), 3 UNRIAA 1906, ¶1965 (1938/1941) [*Trail*]; *Corfu Channel* (U.K. v. Albania), Judgment, (1949) I.C.J. ¶22 [*Corfu Channel*].

<sup>66</sup> Border Groundwaters Agreement, 1985 (South Australia – Victoria); Consultation Mechanism.

<sup>67</sup> *United States Diplomatic and Consular Staff in Tehran* (United States of America v. Iran), Judgment, (1980) I.C.J. ¶63 [*Tehran*].

<sup>68</sup> *Trail*, ¶253; *Corfu Channel*, ¶22; *Nuclear Weapons*, ¶29; *Pulp Mills*, ¶101; *San Juan River*, ¶104; ILA Study Group on Due Diligence in International Law, Second Report, 5 (2016); Advisory Opinion on Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, LTLOS, No. 17, 110 (2011).

<sup>69</sup> Watercourse Commentaries, art.1; STEPHEN, 435.

<sup>70</sup> WCC, art.7; STEPHEN, 435; *Pulp Mills*, ¶91; *San Juan River*, ¶104.

In judging significant harm, the affected State is the sole judge of whether its interests have been damaged.<sup>71</sup> Thus, the threshold of significant harm refers to whether the affected State is justified to make a necessary response to initiating State.<sup>72</sup> The persisting threat to the Complex confirmed by the panel made it necessary for Atania to respond to Rahad.<sup>73</sup> Hence, transboundary harm has been caused.

Every State is obliged to exercise due diligence to prevent transboundary harm, as this Court notes in *San Juan River*.<sup>74</sup> Due diligence is an obligation of conduct,<sup>75</sup> requiring Rahad to “take necessary means at its disposal to carry out its obligations.”<sup>76</sup> The due diligence obligation customarily takes the form of procedural obligations:<sup>77</sup> [1] to carry out a competent environment impact assessment; [2] to inform and consult the Atania of proposed activity; [3] to conduct environmental monitoring.

## **2. Rahad violates its obligation to prevent transboundary harm because it carried out a deficient EIA.**

Due diligence requires Rahad to [a] carry out an ex ante EIA when there is a risk of causing significant harm;<sup>78</sup> [b] directly provide EIA to Atania;<sup>79</sup> [c] render the EIA

---

<sup>71</sup> *Lac Lanoux*, ¶119.

<sup>72</sup> XUE HANQIN: TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW, 170 (2003) [XUE].

<sup>73</sup> *Compromis*, ¶31.

<sup>74</sup> *San Juan River*, ¶104.

<sup>75</sup> Six Report on State Responsibility, Year Book of International Law Commission, 1977, Vol. II, Part One, 4; XUE, 165.

<sup>76</sup> *Tehran*, ¶68.

<sup>77</sup> *San Juan River*, ¶104.

<sup>78</sup> *Id.*

reflect the nature and magnitude of the proposed activity;<sup>80</sup> [d] include alternative measures in the EIA;<sup>81</sup> [e] conduct a continuing EIA.<sup>82</sup>

Rahad failed to comply with all these requirements because the EIA was not notified and provided to Atania,<sup>83</sup> and lacked evaluation of the nature and magnitude of the Savali Pipeline operations. Moreover, no evidence shows that the EIA was inserted with any alternative measure or it was conducted continuously. Accordingly, Rahad violates its obligation to prevent transboundary harm by carrying out a deficient EIA.

**3. Rahad violates its obligation to prevent transboundary harm because it did not inform and consult with the Atania of its proposed plan.**

Due diligence requires Rahad to notify and consult Atania of pertinent information of the proposed activity once it apprehends the risk of significant harm.<sup>84</sup> Rahad's televised announcement was not a proper manner of notification or consult.<sup>85</sup> Furthermore, after the damage was caused, due diligence requires Rahad to conduct subsequent consultation to mitigate the damage.<sup>86</sup> However, Rahad neither notify nor conduct the consultation thus failed to comply with the obligation to consult and

---

<sup>79</sup> *Id.*

<sup>80</sup> *Pulp Mills*, ¶205.

<sup>81</sup> *Pulp Mills*, ¶¶207-217;

<sup>82</sup> *San Juan River*, ¶104.

<sup>83</sup> Clarification, ¶β.

<sup>84</sup> *San Juan River*, ¶104; *Mox Plant Case* (Ireland v. United Kingdom), Order, ITLOS Case No.10 (2001), ¶78.

<sup>85</sup> *Compromis*, ¶22.

<sup>86</sup> STEPHEN, 476.

notify.<sup>87</sup>

**4. Rahad violates its obligation to prevent transboundary harm because it did not conduct environmental monitoring.**

After authorizing the Savali Pipeline operations, due diligence requires Rahad to conduct continuous environmental monitoring.<sup>88</sup> No evidence suggests any environmental monitoring during the construction of the Savali Pipeline operations.

**B. THE SAVALI PIPELINE OPERATIONS VIOLATE RAHAD’S OBLIGATIONS TO PROTECT WORLD HERITAGE UNDER THE 1972 CONVENTION.**

Kin Canyon Complex [Complex] is undisputedly a site of “Outstanding Universal Value”, inserted in World Heritage List in 2 May 1994,<sup>89</sup> under Convention Concerning the Protection of the Natural and Cultural Heritage [1972 Convention].<sup>90</sup> Far from complying with its obligations under 1972 Convention, Rahad violates its treaty obligation by [1] taking deliberate measures which damage the Complex subject to Article 6(3); [2] failing to give its help in the protection of the Complex in pursuant to Article 6(2).

**1. Rahad violates its obligation not to take deliberate measures which damage the Complex under Article 6(3) of 1972 Convention.**

***a. The structural integrity of transboundary heritage is specifically protected under the 1972 Convention.***

Although the Complex is a transboundary heritage, it is protected under Article 6

---

<sup>87</sup> *Compromis*, ¶3.

<sup>88</sup> *Gabčíkovo-Nagymaros*, Separate Opinion of Vice-President Weeramantry, ¶¶111-112.

<sup>89</sup> *Compromis*, ¶13.

<sup>90</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, art.1, 1972, 1037 U.N.T.S. 151 [1972 Convention].

of the 1972 Convention, Rahad is obliged not to take deliberate measures which might directly or indirectly damage the Complex.<sup>91</sup>

***b. Structural integrity of the Complex is damaged by the Operations.***

Integrity of the Complex is a mandatory criterion of maintaining Outstanding Universal Value,<sup>92</sup> including all necessary elements to express it.<sup>93</sup> As a measure of wholeness and intactness, integrity requires that the physical fabric of heritage should be in good condition.<sup>94</sup>

The deliberate measure is not restricted to direct attack to the heritage, as evidenced by practices of UNESCO,<sup>95</sup> but also includes indirectly injurious act such as extraction of groundwater near the Complex.

**2. Rahad violates its obligation to give its help in the protection of the Complex under Article 6(2) of 1972 Convention.**

Under Article 6(2) of the 1972 Convention, once requested by Atania where the heritage is situated, Rahad is obliged to give its help in the protection of the Complex.<sup>96</sup> The assistance may operate outside the mechanism of UNESCO and directly at bilateral level between States concerned.<sup>97</sup> And such assistance may vary

---

<sup>91</sup> 1972 Convention, art.6(3).

<sup>92</sup> MARIE-THERES ALBERT, BIRGITTA RINGBECK, 40 YEARS WORLD HERITAGE CONVENTION-POPULARIZING THE PROTECTION OF CULTURAL AND NATURAL HERITAGE, 26 (2015).

<sup>93</sup> Operational Guidelines for the Implementation of the World Heritage Convention, WHC.15/01, ¶88, (2015) [Operational Guideline 2015].

<sup>94</sup> Operational Guideline 2015, ¶89.

<sup>95</sup> Decisions Adopted by the World Heritage Committee at its 35<sup>th</sup> Session, UNESCO, WHC-11/35.COM/20, 48 (2011).

<sup>96</sup> 1972 Convention, art.6(2).

<sup>97</sup> FRANCESCO FRANCONI, 1972 WORLD HERITAGE CONVENTION: A COMMENTARY,

in form and content.<sup>98</sup> Atania requested the Rahad to suspend the Savali Pipeline operation for its protection, however, such request was rejected by Rahad.

**C. CONSEQUENTLY, THE SAVALI PIPELINE OPERATIONS MUST CEASE.**

The Savali Pipeline Operations violate Rahad's customary obligation to prevent transboundary harm and treaty obligation to protect the mixed heritage, thus constitute an internationally wrongful act.<sup>99</sup> Since it is continuing, cessation would be an appropriate remedy.<sup>100</sup>

Although no future damage of Complex was confirmed by the panel, a State engaged in works that may violate the rights of another State can proceed only at its own risk.<sup>101</sup> Accordingly, the extraction must cease.

**III. RAHAD MUST IMMEDIATELY RETURN RUBY SIPAR TO ATANIA, ITS LAWFUL OWNER.**

Rahad must immediately return Ruby Sipar to Atania, because [A] Ruby Sipar was stolen and illicitly exported from Atania under the 1970 Convention; and [B] Ruby Sipar was Atania's state property.

**A. RAHAD MUST IMMEDIATELY RETURN RUBY SIPAR TO ATANIA BECAUSE IT WAS AN STOLEN AND ILLICITLY EXPORTED CULTURAL PROPERTY FROM ATANIA UNDER THE 1970 CONVENTION.**

Under the 1970 Convention, [1] Ruby Sipar is a cultural property stolen and

---

125 (2008).

<sup>98</sup> *Id.*

<sup>99</sup> ARSIWA, art.2.

<sup>100</sup> ARSIWA, art.25.

<sup>101</sup> *Passage through the Great Belt* (Finland v. Denmark), Provisional Measures, (1991) I.C.J. ¶3.

illicitly exported from Atania. Accordingly, [2] Rahad shall return it to Atania in compliance with its obligation of restitution.

**1. Ruby Sipar was stolen and illicitly exported from Atania under Article 6(i) of the 1970 Convention.**

Ruby Sipar, raised by Teppa in 500 CE<sup>102</sup> and excavated after centuries in Atania,<sup>103</sup> falls into the definition of cultural property subject to Article 1 of the 1970 Convention.<sup>104</sup> It was stolen<sup>105</sup> and removed to Rahad without any export license,<sup>106</sup> which could be categorized as a stolen and illicitly exported cultural property under Article 6(i) of the 1970 Convention.<sup>107</sup>

**2. Rahad is obliged to return Ruby Sipar to Atania under the 1970 Convention according to Article 11 and 18 of VCLT.**

The importing State is obliged to facilitate the recovery and repatriation of stolen or illicitly exported cultural properties back to the country of origin according to the 1970 Convention.<sup>108</sup> Accordingly, Rahad shall perform such obligation under (a) the 1970 Convention; and (b) alternatively, customary international law.

Ratification is a legal express of State's consent to be bound by a convention

---

<sup>102</sup> *Compromis*, ¶8.

<sup>103</sup> *Compromis*, ¶12.

<sup>104</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, art.1(c), Nov. 14 1970, 823 UNTS 231 [1970 Convention].

<sup>105</sup> O'KEEFE. P.J., TRADE IN ANTIQUITIES: REDUCING DESTRUCTION AND THEFT, 37 (1997); *United State v. Schultz*, 333 F.3d 393, 399 (2003) [*Schultz*].

<sup>106</sup> *Compromis*, ¶¶50-51.

<sup>107</sup> 1970 Convention, art.6(i).

<sup>108</sup> 1970 Convention, art.2, 5(a), 13(b).

according to Article 11 of VCLT.<sup>109</sup> An interval before entering into force of the convention does not indulge States who have ratified the convention to disregard their treaty obligations.<sup>110</sup> Rahad therefore was bound by the 1970 Convention because of its ratification, although at the time of illegal export of Ruby Sipar,<sup>111</sup> the 1970 convention has not entered into force in Rahad.<sup>112</sup>

Furthermore, States are obliged to refrain from acts that would defeat the purpose of the Convention based on Article 18 of VCLT. The object of 1970 Convention is to facilitate the restitution of stolen and illicitly imported cultural property.<sup>113</sup> Therefore even if the 1970 Convention has no retroactivity, refusal to return would defeat the object and purpose of the 1970 Convention. Accordingly, Rahad is obligated to return Ruby Sipar to Atania both according to the 1970 Convention and the principle of *pacta sunt servanda*.<sup>114</sup>

### **3. Alternatively, Ruby Sipar must be returned under customary law.**

Even assuming the 1970 Convention is not applicable, Rahad is still bound by obligation of restitution under customary international law.

Obligation of returning cultural property to country of origin was admitted as

---

<sup>109</sup> VCLT, art.11.

<sup>110</sup> *Gramara (Private) Limited and ors v. Government of Zimbabwe and Attorney-General of Zimbabwe*, HH 169/2009, ¶30 (High Court, 2010).

<sup>111</sup> *Compromis*, ¶59.

<sup>112</sup> Correction, ¶3.

<sup>113</sup> Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Res. 3.MSP 11, ¶¶9, 13 (2015) [1970 Operational Guidelines]; 1970 Convention, preamble.

<sup>114</sup> VCLT, art.26.

international custom during the third meeting of States Parties of the 1970 Convention.<sup>115</sup> General acceptance of the obligation of restitution<sup>116</sup> is evidenced by numerous State practice<sup>117</sup> and judicial decisions<sup>118</sup> since its adoption.<sup>119</sup> Accordingly, Rahad shall return Ruby Sipar to Atania even if the 1970 Convention is not applicable.

**B. RAHAD MUST IMMEDIATELY RETURN RUBY SIPAR BECAUSE IT IS ATANIA’S STATE PROPERTY.**

Ruby Sipar is state property of Atania because of [1] acquisitive prescription principle on property and [2] Atania’s status as origin country.

**1. Atania owns Ruby Sipar because of acquisitive prescription principle.**

The acquisitive prescription principle stipulates that a State may obtain entitlement to property when it exercises its “authority in a continuous, uninterrupted, and peaceful manner for a sufficient period of time provided that all other interested and affected States acquiesce in this exercise of authority.”<sup>120</sup> It is recognized by this

---

<sup>115</sup> 1970 Operational Guidelines, 48.

<sup>116</sup> G.A. Res. 64/78, U.N. Doc. A/RES/64/78 (Dec. 7, 2009); G.A. Res. 61/52, U.N. Doc. A/RES/61/52 (Dec. 4, 2006).

<sup>117</sup> Katarzyna Januszkiewicz, *Retroactivity in the 1970 UNESCO Convention: Cases of the United States and Australia*, 41 Brook. J. Int'l L. 329, 372 (2015).

<sup>118</sup> *Italia Nostra v. Ministry of Cultural Heritage and Libyan Arab Jamahiriya*, 3154/2008, ILDC 1138 (IT 2008) [Italia]; *Allgemeine Versicherungsgesellschaft v. E. K.*, BGHZ 59, 83 (1972).

<sup>119</sup> Nafziger, *The New International Framework For The Return, Restitution or Forfeiture of Cultural Property*, 15 Intl Law & Politics 789, 799-811, 840-846 (1983).

<sup>120</sup> Johnson, *Acquisitive Prescription in International Law*, 27 Brit. Y.B. Int'l L. 332, 353 (1950) [Johnson].

Court in *Kasikili-sedudu Island*,<sup>121</sup> and applies with equal force to chattel.<sup>122</sup>

First, since the conduct executed or functioned under the effective control of State is attributed to the State,<sup>123</sup> the discovery of Ruby Sipar by the archaeologist from the public university under Atania's effective control<sup>124</sup> constituted an act of a State. Further, the display of Ruby Sipar in public university was also conducted by Atania's authority.<sup>125</sup>

Second, sufficient time<sup>126</sup> has elapsed since Atania excavated Ruby Sipar during which Atania was "exercising its authority" over it by publicly displaying it in government institution.<sup>127</sup>

Ultimately, Rahad and Kin's lack of effective objection towards Atania's ownership over 111 years<sup>128</sup> amounted to acquiescence on Atania's ownership.

## **2. Atania owns Ruby Sipar because it is origin country.**

A State is entitled to own the property which is found in its territory<sup>129</sup> without

---

<sup>121</sup> Johnson, 343; *Kasikili/Sedudu Island*, ¶97.

<sup>122</sup> Ames, *The Disseisin of Chattels*, 3 Harv. L. Rev. 313, 321 (1890); *Redmond v. New Jersey Historical Soc.*, 132 N.J. Eq. 464, 473-76, 28 A.2d, 189, 194 (1942).

<sup>123</sup> ARSIWA, art.8; *Military and Paramilitary Activities*, ¶115.

<sup>124</sup> Clarification, ¶4; *Military and Paramilitary Activities*, ¶115.

<sup>125</sup> *Prosecutor v. Duško Tadić*, ICTY Case IT-94-1-A (1999), ¶117; *Hertzberg et al. v. Finland*, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex XIV, communication No. R.14/61, (1982), ¶9.1; *Young, James and Webster v. the United Kingdom*, Eur. Court H.R., Series A, No. 44 (1981); *X v. Ireland*, application No. 4125/69 (1973), 199.

<sup>126</sup> *Compromis*, ¶¶12-13.

<sup>127</sup> *Compromis*, ¶¶12-13.

<sup>128</sup> *Id.*

<sup>129</sup> Model Provisions on State Ownership of Undiscovered Cultural Objects Explanatory Report with model provisions and explanatory guidelines, UNESCO and

prior ownership,<sup>130</sup> according to the 1970 Operational Guidelines which is a highly authoritative international instrument made by UNESCO<sup>131</sup> and widely accepted by State practice.<sup>132</sup> Since Ruby Sipar was discovered within Atania's territory and no one claimed prior ownership during Atania's possession,<sup>133</sup> Atania owns it as the origin country.

A State is prohibited from depriving another State of its properties,<sup>134</sup> as observed by this Court.<sup>135</sup> Accordingly, Rahad is obliged to return Ruby Sipar to its lawful owner, Atania.<sup>136</sup>

Alternatively, in any event, it is more appropriate for Atania to retain the cultural property of Ruby Sipar because cultural property's "true value can be appreciated only in relation to the fullest possible information regarding its origin, history, and traditional setting."<sup>137</sup> Accordingly, Ruby Sipar shall be possessed by Atania,<sup>138</sup>

---

UNIDROIT, Expert Committee on State Ownership of Cultural Heritage, CLT-2011/CONF.208/COM.17/5, 3 (2011) [Model Provision].

<sup>130</sup> Model Provision, art.2; *Brokaw v. Seatrain UK Ltd.* 2 Q.B. 476 (1971); *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, United States Court of Appeals, Seventh Division, No. 89-289 (1990).

<sup>131</sup> 1970 Operational Guidelines, ¶2.

<sup>132</sup> *Italia; United States v. McClain*, 545 F. 2d 988 (5<sup>th</sup> Cir. 1977) [*McClain*]; *Schultz*; Royal Decree No 1271; 1983 Egypt <Law 117>; Ley Sobre Monumentos Arqueologicos, Diario Oficial de Mayo de 1897; Regulation on the Prize to be Granted to Persons Who Have Found and Reported Movable Cultural and Natural Property and Public Officials Who Have Intercepted These.

<sup>133</sup> *Compromis*, ¶¶12-13.

<sup>134</sup> Karen Gevorgyan, *Concept of State Sovereignty: Modern Attitudes*, 1; B. S. KRILOV, PROBLEMS OF SOVEREIGNTY IN RUSSIAN FEDERATION, 4 (1994).

<sup>135</sup> *Temple of Preah Vihear* (Cambodia v. Thailand), Judgment, (1961) I.C.J. 45.

<sup>136</sup> *McClain; Schultz*.

<sup>137</sup> 1970 Convention, preamble.

because it is a bridge to the past, an emotional and cultural link to the achievements of Atania's ancient forefathers.<sup>139</sup>

Moreover, the physical integrity is by no means at risks to be compromised,<sup>140</sup> because Atania's restrictive measures only aimed at duplicates of Ruby Sipar.<sup>141</sup>

#### **IV. ATANIA OWES NO COMPENSATION TO RAHAD FOR ANY COSTS INCURRED RELATED TO THE KIN MIGRANTS.**

##### **A. ATANIA IS NOT RESPONSIBLE FOR COMPENSATION TO RAHAD.**

Atania bears no international responsibility to Rahad in respect of the migration of the Kin since [1] Kin migrants' acts are not attributable to Atania;<sup>142</sup> [2] Atania does not violate its international obligations; [3] Alternatively, the WRAP can be justified by state of necessity.

##### **1. Kin migrants' acts are not attributable to Atania.**

Kin migrants' acts do not satisfy any of the established grounds for attribution under ARSIWA<sup>143</sup> since they are not carried out by an official State organ,<sup>144</sup> or by

---

<sup>138</sup> Fabienne D. Struell, *Cultural Property*, 31 INT'L LAW. 691, 691-693 (1996); Michael J. Reppas II, *Empty "International" Museums' Trophy Cases of Their Looted Treasures and Return Stolen Property to the Countries of Origin and the Rightful Heirs of Those Wrongfully Dispossessed*, 36 DENV. J. INT'L L. & POL'Y. 93, 113-19 (2007).

<sup>139</sup> Michael J. Reppas II, *The Deflowering of the Parthenon: A Legal and Moral Analysis on Why the "Elgin Marbles" Must Be Returned to Greece*, 9 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 911, 944 (1999).

<sup>140</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Judgment, ICTY IT-95-14/2 (2001), ¶206; *Prosecutor v. Tihomir Blasškić*, Judgment, ICTY IT-95-14 (2000), ¶227; Francesco Francioni and Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan and International Law*, 14 EJIL 619, 635 (2003).

<sup>141</sup> *Compromis*, ¶43.

<sup>142</sup> *Phosphates in Morocco* (Italy v. France), Preliminary Objections, (1938) P.C.I.J. (ser. A/B) NO.74, 28; ARSIWA, art.2.

<sup>143</sup> ARSIWA, art.5-8, 11.

other entities exercising elements of governmental authority,<sup>145</sup> or by entities within the State's direction or control.<sup>146</sup> Ultimately, Atania never subsequently "adopted or acknowledged" the migration as its own plan.

***a. Kin migrants did not act under Atania's effective control.***

Under Article 8 of ARSIWA, attribution on the basis of "effective control" requires Atania's control over Kin migrants in respect of each operation when the alleged violation occurred.<sup>147</sup> As Kin migrants retained absolute discretion and disconnected from Atania government during the process of migration,<sup>148</sup> Atania cannot exercise effective control over them.<sup>149</sup>

***b. Atania has never acknowledged the Kin's migration.***

Acknowledgment means a formal, unambiguous and long-standing endorsement of the conduct in public official statements, as noted in *Tehran Hostage* case.<sup>150</sup> Atania has never made such statement regarding activities of Kin migrants, thus acts of the Kin migrants in Rahad cannot be attributed to Atania.

**2. Atania does not violate its obligations on human rights protection.**

---

<sup>144</sup> *Id.*, art.4.

<sup>145</sup> *Id.*, art.5.

<sup>146</sup> *Id.*, art.8.

<sup>147</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, (2007) I.C.J. 400; *Military and Paramilitary Activities*, Merits, 65.

<sup>148</sup> *Compromis*, ¶47; *Al Skeini v. United Kingdom*, Judgment, ECtHR App. no. 55721/07 (2001), ¶¶133-137,138-140.

<sup>149</sup> *Hirsi Jamaa and others v. Italy*, Judgment, ECtHR App. no. 27765/09 (2012), ¶¶81-82.

<sup>150</sup> *Tehran*, 3, 33-35.

***a. Rahad lacks legal standing to claim for compensation either via diplomatic protection or erga omnes.***

Exhaustion of local remedies is a prerequisite for diplomatic protection.<sup>151</sup> Since the Kins have not exhausted effective<sup>152</sup> local remedies in Atania,<sup>153</sup> Rahad is not entitled to exercise diplomatic protection<sup>154</sup> over refugees against Atania for compensation. Let alone it is hard to classify the Kin as refugees according to the Refugee Convention.<sup>155</sup>

Rahad has no standing for compensation via *erga omnes* either.<sup>156</sup> *Erga omnes* or *erga omnes partes* can only entitle the State to claim the cessation of an alleged breach but not other remedies.<sup>157</sup> Thus Rahad's capacity to enforce the Kin's right as *erga omnes* or *erga omnes partes* is not entitled to the claim for compensation.

Therefore Rahad lacks standing to claim for compensation in respect of Atania's treatment of the Kin.

***b. Atania does not breach ICCPR, especially right to peaceful assembly, right of non-discrimination and right to life.***

First, Atania does not infringe right to peaceful assembly. Article 21 of ICCPR

---

<sup>151</sup> Draft Articles on Diplomatic Protection, art.8, 2006, Official Records of the General Assembly, Sixty-first Session, Supp. No. 10 (A/61/10).

<sup>152</sup> *Certain Norwegian Loans* (France v. Norway), Judgment, (1957) I.C.J. 496.

<sup>153</sup> Clarification, ¶6.

<sup>154</sup> *Case Concerning the Interhandel* (Switz. v. U.S.), Judgment, (1959) I.C.J. 6, 27.

<sup>155</sup> Convention Relating to the Status of Refugees, art.2(1), Apr. 22, 1954, 189 UNTS 137 [Refugee Convention].

<sup>156</sup> *Barcelona Traction, Light and Power Co., Ltd* (Belgium v. Spain), Judgment, (1927) I.C.J. 34.

<sup>157</sup> *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), Judgment, (2012) I.C.J. 424.

guarantees right to peaceful assembly but not violent assembly<sup>158</sup> where the organizers and participants suggest violent intentions<sup>159</sup> that will result in public disorder<sup>160</sup> and physically or psychologically negative impact to other citizens.<sup>161</sup> The Kin's protest was a violent assembly because defacement of public property, arbitrary occupation of major roads into the city, and attempt to disturb municipal office<sup>162</sup> resulted in disruption of public order seriously.<sup>163</sup>

Second, Atania does not infringe right of non-discrimination. Article 26 of ICCPR allows for different treatment<sup>164</sup> with an objective and reasonable ground<sup>165</sup> prohibiting illegitimate aim<sup>166</sup> and unreasonable proportionality between the means and the aim.<sup>167</sup> Atania's treatment of the Kin through WRAP Act was

---

<sup>158</sup> Report on the Fifty-Fifth Session Supplement No.3, OHCHR, E/1999/23 E/CN.4/1999/167, 319 (1999).

<sup>159</sup> *CARAF v. United Kingdom*, Judgment, ECtHR App. no. 8440/78 21 DR 138 (1980), 4.

<sup>160</sup> *Cisse v. France*, Judgment, ECtHR App. no. 51346/99 (2002), ¶¶35-36; *M.C. against the Federal Republic of Germany*, Decision, ECtHR App. no. 13079/87 (1989).

<sup>161</sup> Human Rights Handbook on Policing Assemblies, OSCE/ODIHR, (Warsaw: ODIHR, 2016), at <http://www.osce.org/odihr/226981>, last visit: 2017/1/10.

<sup>162</sup> *Compromis*, ¶42.

<sup>163</sup> *Compromis*, ¶43.

<sup>164</sup> General Comment No. 18, HRC, HRI/GEN/1/Rev.9 (Vol. I) (1989).

<sup>165</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, UNCHR, UN A/HRC/4/26, 43 (2007); LOUISE DOSWALD-BECK, HUMAN RIGHTS IN TIMES OF CONFLICT AND TERRORISM, 56-57 (2011).

<sup>166</sup> *Jacob and Jantina Hendrika van Oord v. The Netherlands*, HRC U.N. Doc. CCPR/C/60/D/658/1995 (1997), 311–316.

<sup>167</sup> *Case Relating to certain aspects of the laws on the use of languages in education in Belgium*, Judgment, ECtHR App. no. 2126/64 (1968), ¶10.

non-discriminatory<sup>168</sup> because WRAP Act has legitimate aim to efficiently allocate water to survive in extreme shortage of water,<sup>169</sup> and its quota-setting had no detrimental effects upon equilibrium between economic control and national security.<sup>170</sup>

Third, Atania does not infringe right to life.<sup>171</sup> Article 6 requires States not to deprive individuals of life arbitrarily<sup>172</sup> by exposing individuals to a real risk of capital punishment or other mass violence.<sup>173</sup> Atania does not infringe Kin's right to life since no personal injury even occurred in maintaining social peace and security disrupted by chaotic protests.<sup>174</sup>

***c. Atania's lawful limitations do not infringe right to water, food and health under ICESCR.***

The restrictive measures are lawful<sup>175</sup> if they have legitimacy and proportionality<sup>176</sup> to reinforce general welfare<sup>177</sup> under Article 4 of ICESCR.<sup>178</sup>

---

<sup>168</sup> Draft commentary to guiding principles, HRC, A/HRC/25/51 (2014).

<sup>169</sup> *Compromis*, ¶2.

<sup>170</sup> *Compromis*, ¶34.

<sup>171</sup> *Camargo v. Colombia*, Merits, U.N. Doc. CCPR/C/15/D/45/1979 (1982), ¶13.

<sup>172</sup> International Covenant on Civil and Political Rights, art.6, 1966, G.A. Res. 2200A (XXI) [ICCPR].

<sup>173</sup> *Kaboulov v. Ukraine*, Judgment, EHRR App. no. 41015/04 (2010), ¶30.

<sup>174</sup> *Compromis*, ¶40.

<sup>175</sup> *Maestri v. Italy*, 39 EHRR 38 (2004), 843.

<sup>176</sup> *Sahin v. Turkey*, 44 EHRR 5 (2007), 124; *Compromis*, ¶34.

<sup>177</sup> *Handyside v. the UK*, ECtHR A.24 (1976), 48-49; *Silver and ors v. United Kingdom*, ECtHR A.61 (1983), 97-98.

<sup>178</sup> International Covenant on Economic, Social and Cultural Rights, art.4, 1966, G.A. Res. 2200A (XXI) [ICESCR].

Atania permissibly limited the Kin's right to water, food and health under Article 15, 11 and 14 of ICESCR<sup>179</sup> by prescribing its restrictive measures in law.<sup>180</sup>

First, legitimacy of Atania's inhibition on over-consumption of water was underlined by unprecedented drought condition.<sup>181</sup>

Second, proportionality was accordingly met when social needs for water resource management appeared to be necessary to reinforce general welfare.<sup>182</sup>

Third, when applying limitations, Atania's obligation to provide minimum standards for individual's survival<sup>183</sup> only prohibits prevention or pollution to the equal access of its citizens to living<sup>184</sup> but does not extend to confer specific ways of living.<sup>185</sup> Since Atania's termination of water supply to the Kin's farmlands did not deny their access to living with a variety of opportunities to find alternatives of water, the minimum standards were not undermined.<sup>186</sup>

***d. Atania does not violate its obligation to prevent forced displacement because Kin migrants cannot claim upon the refugee***

---

<sup>179</sup> ICESCR, art.11; General Comment No. 15, CESCR, U.N. Doc. E/C.12/2002/11, 23 (2003); General Comment No. 14, CESCR, U.N. Doc. E/C.12/2000/4, 43(c) (2000).

<sup>180</sup> *Maestri v. Italy*, 39 EHRR 38 (2004), 843.

<sup>181</sup> *Sahin v. Turkey*, 44 EHRR 5 (2007), 124; *Compromis*, ¶4.

<sup>182</sup> *Handyside v. the UK*, ECtHR A.24 (1976), 48-49; *Silver and ors v. United Kingdom*, ECtHR A.61 (1983), 97-98.

<sup>183</sup> *NV Waterleiding Maatschappij Limburg v. Anonymous*, Appeal Judgment, HD 200 018 358, 38 (2010); *Amnesty International v. Zambia*, African Commission Communication No. 212/98 (1999), 25.

<sup>184</sup> General Comment No. 15, CESCR, U.N. Doc. E/C.12/2002/11, 23 (2003); General Comment No. 12, CESCR, U.N. Doc. E/C.12/1999/5, 6 (1999).

<sup>185</sup> *Acevedo Buendía et al. v. Peru*, Judgment, IAHR (2009), 103.

<sup>186</sup> *Compromis*, ¶8.

*status.*

Kin migrants cannot claim upon refugee status.<sup>187</sup> Under Refugee Convention, refugees are those who have well-founded fear of being persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>188</sup> Persecution must pose objective<sup>189</sup> threat to life or liberty.<sup>190</sup> Mere subjective horrors or fear alone is far from qualifying refugees.<sup>191</sup>

Atania's WRAP Act only prosecuted those who violated WRAP Act subject to due procedure and no one of the Kin has been persecuted for the above reasons. Therefore Kin migrants are not refugees but mere economic migrants to leave for better opportunities.<sup>192</sup>

### **3. Atania does not violate Rahad's sovereignty because Rahad is not coerced to accept Kin migrants.**

Violation of State's sovereignty occurs in unlawful intervention<sup>193</sup> on other State's internal affairs using coercion<sup>194</sup> to subordinate its sovereign will.<sup>195</sup> The

---

<sup>187</sup> G.A. Res. A/RES/50/152, 26 (1995); Luke T. Lee, *The Right to Compensation: Refugees and Countries of Asylum*, 80 AM. J. INT'L L. 532, 539 (1986).

<sup>188</sup> Refugee Convention, art.2(1).

<sup>189</sup> Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, HCR/IP/4 Eng/REV.1, ¶189 (1988).

<sup>190</sup> *Cheung v. Canada (Minister of Employment and Immigration)*, 2 F.C. 314, ¶18 (C.A., 1993).

<sup>191</sup> Ahilan T. Arulanantham, *Restructured Safe Havens: A Proposal for Reform of the Refugee Protection System*, 22 HUM. RTS. Q. 1, 29 (2000).

<sup>192</sup> MICHELLE FOSTER, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGEE FROM DEPRIVATION, 2–21 (2007).

<sup>193</sup> OPPENHEIM, OPPENHEIM'S INTERNATIONAL LAW, 396 (8<sup>th</sup> ed. 1955).

<sup>194</sup> *Military and Paramilitary Activities*, ¶205; H. Kelsen, PRINCIPLES OF INTERNATIONAL LAW, 64 (1952).

threshold of intervention is considerably high, thus vast majority of state action within another State's territory does not violate this obligation.<sup>196</sup> Here, this criterion was not satisfied because Atania never challenged Rahad's existing<sup>197</sup> border control<sup>198</sup> and whether to accept the Kin migrants was fully at Rahad's discretion.<sup>199</sup> In any event, as approximately 800,000 Kin had entered into Rahad but Rahad showed no intention of rejection.<sup>200</sup> Even if Rahad claims coercion, the Kin's conduct is not attributable to Atania. Accordingly, Atania does not violate Rahad's sovereignty.

#### **4. The WRAP Act is legitimate and permissible as the exercise of Atania's sovereign right in time of serious drought crisis.**

Atania is entitled to exercise territorial sovereignty<sup>201</sup> and inherent right<sup>202</sup> of development<sup>203</sup> to control and exploit their natural resources,<sup>204</sup> which includes, *inter*

---

<sup>195</sup> Declaration on the Inadmissibility of Intervention, U.N. Doc. A/Res/20/2131, ¶ (1965); Maziar Jamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT'L L., 345, 348 (2009).

<sup>196</sup> Lori F. Damrosch, *Politics Across Borders: Nonintervention and Non-forcible Influence over Domestic Affairs*, 83 AM.J.INTL.L. 1, 14-17 (1989).

<sup>197</sup> *Compromis*, ¶50.

<sup>198</sup> CCPR General Comment No. 27, UNHRC, U.N. Doc. CCPR/C/21/Rev.1/Add.9, (1999).

<sup>199</sup> Tally Kritzman-Amir & Thomas Spijkerboer, *On the Morality and Legality of Borders: Border Policies and Asylum Seekers*, 26 HARV. HUM. RTS. J. 1, 6 (2013).

<sup>200</sup> *Compromis*, ¶49.

<sup>201</sup> I. Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 105 (7<sup>th</sup> ed. 2008).

<sup>202</sup> High Commission for the promotion and protection of all human rights, U.N.GAOR, 48<sup>th</sup> Sess., Supp.No.49, U.N. Doc. A/48/141, ¶¶43, 50 (1993).

<sup>203</sup> Declaration on the Right to Development, G.A. Res. 41/128, U.N. GAOR, 41<sup>st</sup> Sess. Supp. No.53, U.N. Doc. A/41/53, 186 (1986).

<sup>204</sup> *Advisory Opinion on the Western Sahara* (1975) I.C.J. Rep. 12, 31-37; *Texaco Overseas Petroleum Co v. Libya*, 17 ILM 1 (1977), 30.

*alia*, development of the domestic economy<sup>205</sup> for the national interest.<sup>206</sup>

Experiencing increasing losses of farmland, efficient reallocation of water to agriculture, its major sources of revenues,<sup>207</sup> is necessary for Atania's national interest.

In drought conditions,<sup>208</sup> minority<sup>209</sup> or indigenous people's<sup>210</sup> right to freely utilize natural resources is limited to general interest of the whole nation.<sup>211</sup> Attempts to seek additional rights for them lack acceptance on international plane.<sup>212</sup> Thus the WRAP Act is manifestly legitimate. Since the Kin stuck to abusing the life-giving water, Atania's further treatment of the Kin based on domestic legislation is lawful.

##### **5. The WRAP Act can be justified by plea of necessity.**

Any assertion of Atania's wrongfulness<sup>213</sup> can be precluded by plea of

---

<sup>205</sup> GA. Res. 1803 (XVII) (1962); GA. Res. 41/128, U.N. Doc. A/RES/41/128 (1986).

<sup>206</sup> *Id.*

<sup>207</sup> *Compromis*, ¶2.

<sup>208</sup> General Comment No.3, CESCR, U.N. Doc. E/1991/23 (1990).

<sup>209</sup> *T.K. v. France*, individual opinion of Rosalyn Higgins, HRC., Communication No.220/1987, in Report of the HRC., U.N.GAOR, HRC. 45th Sess., Supp. No.40 (1987), 133; U.N. Doc.A/45/40.

<sup>210</sup> Report of the working group established in accordance with Commission on Human Rights resolution, UNCHR, U.N. Doc. E/CN.4/2002/98, 42-44 (2002).

<sup>211</sup> Prevention of discrimination and protection of indigenous peoples and minorities Indigenous peoples and their relationship to land, UNCHR, E/CN.4/Sub.2/2001/21, 45 (2001).

<sup>212</sup> Draft Declaration on the rights of indigenous peoples, U.N. Doc.E/CN.4/Sub2/1992/28 (1992); 2005 World Summit Outcome, G.A. Res. 60/1, U.N.GAOR, 60<sup>th</sup> Sess., Agenda Item 46/120, U.N. Doc. Res. A/60/1 (2005).

<sup>213</sup> ARSIWA, art.25.

necessity.<sup>214</sup>

Suffering from lasting drought and unrecoverable shortage of water, Atania's essential interest<sup>215</sup> namely survival of its citizens is threatened.<sup>216</sup> Also, it is the only way for Atania to save water and promote national welfare<sup>217</sup> since extraction of water done by Rahad will deprive future generations' use, which is manifestly forbidden. The necessary test of proportionality<sup>218</sup> and reasonableness<sup>219</sup> of the WRAP Act is also met via fulfilling its peremptory obligation<sup>220</sup> of right to life,<sup>221</sup> which supersedes over the Kin's traditional interest.<sup>222</sup>

**B. ATANIA IS NOT LIABLE FOR COMPENSATION BY EXERCISING DUE DILLIGENCE.**

Only fault liability is applicable since international consensus over strict liability<sup>223</sup> has not been reached yet.<sup>224</sup> In fault liability, a State is only liable for the

---

<sup>214</sup> *Gabčikovo-Nagymaros*, ¶51.

<sup>215</sup> ARSIWA, art.25(1)(a).

<sup>216</sup> *Compromis*, ¶38.

<sup>217</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, UNHRC, U.N. Doc. A/HRC/21/42, 47 (2012); Igna T. Winkler, *THE HUMAN RIGHT TO WATER, SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION*, 54 (2012).

<sup>218</sup> ARSIWA, art.25(1)(b).

<sup>219</sup> *Military and Paramilitary Activities*, 237; *Gabcikovo-Nagymaros*, ¶51.

<sup>220</sup> General Comment 6(16) on article 6 of the ICCPR, HRC, U.N. Doc. A/37/40, Annex V, 1 (1982); Special Rapporteur of the UN Commission on Human Rights, A/37/564, 22.

<sup>221</sup> *Id.*

<sup>222</sup> Interim Report in International Law Association The Hague Conference Report, Committee on the Rights of Indigenous Peoples, 21, (2010).

<sup>223</sup> John Kelson, *State Responsibility and Abnormally Dangerous Activities*, 13

injuries caused by it and the causation must be normal and proximate.<sup>225</sup> Unlawful measure resulting in no injury gives rise to no compensation.<sup>226</sup> And the test of due diligence<sup>227</sup> only requires reasonable efforts<sup>228</sup> in a timely fashion to prevent generation<sup>229</sup> of harm<sup>230</sup>.

No injuries can be established here and Rahad's voluntary acceptance of the Kin migrants broke the casual link.<sup>231</sup> Moreover, as the Kin's migration were all carried out on their free will, Atania has complied with its obligation of due diligence and is not liable to compensate for the costs of the Kin.

**C. ATANIA HAS NO OBLIGATION TO SHARE THE BURDEN UNDER PRINCIPLE OF FAIRNESS.**

**1. No *lex lata* obliges Atania to share the burden.**

Burden-sharing is an emerging notion in international community to solve the

---

HARV.INT'L.L.J. 197, 200 (1972); DUPUY, INTERNATIONAL LIABILITY FOR TRANS FRONTIER POLLUTION, IN TRENDS IN ENVIRONMENTAL POLICY AND LAW, 363-369 (1980).

<sup>224</sup> U.N. Doc. A/CN.4/543, 128; *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2 (2003), ¶177.

<sup>225</sup> *The M/V 'SAIGA', Saint Vincent and the Grenadines v. Guinea*, Merits and Judgments, ITLOS Case No. 2, ICGJ 336 (1999).

<sup>226</sup> *Biwater Gauff Ltd (UK) v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 (2008).

<sup>227</sup> Commentary on the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, in Report of The I.L.C. in Its 53rd Session, (2001); MALCOLM N. SHAW, INTERNATIONAL LAW, 221 (6<sup>th</sup> ed. 2008).

<sup>228</sup> *MOX Plant* (Ireland v. United Kingdom), 42 ILM 1187 (2003) ¶8.

<sup>229</sup> *Trail*, 281.

<sup>230</sup> BERGKAMP, LIABILITY AND ENVIRONMENT: PRIVATE AND PUBLIC LAW ASPECTS OF CIVIL LIABILITY FOR ENVIRONMENTAL HARM IN AN INTERNATIONAL CONTEXT, 165 (2001).

<sup>231</sup> *Compromis*, ¶47.

challenge of refugee protection.<sup>232</sup> But State practice shows abundant inconsistency and there is currently no binding instrument<sup>233</sup> explicitly endorsing such notion.<sup>234</sup> In EU, burden-sharing takes the form of financial aid by developed countries<sup>235</sup> or small number of resettlement programs through negotiation among States,<sup>236</sup> which is inapplicable in this case.

## **2. Rahad shall bear the costs *per se* for its contribution to migration of the Kin.**

Even assuming burden-sharing can be established, Rahad itself shall bear the costs incurred since it made gross negligent contribution to the generation of Kin migrants.<sup>237</sup> The underlying idea of principle of fairness<sup>238</sup> is supported in the *LaGrand case*.<sup>239</sup> Rahad's unilateral extraction of water caused permanent lowering of water in the region where the Kin inhabited,<sup>240</sup> contributing to the Kin's migration by worsening its living conditions.<sup>241</sup>

---

<sup>232</sup> UNHCR, A THEMATIC COMPILATION OF EXECUTIVE COMMITTEE CONCLUSIONS, 38-62 (4<sup>th</sup> ed. 2009).

<sup>233</sup> Conclusion 19 (XXXI), Temporary Refuge, 48(4), U.N.H.C.R. ExCom, U.N. Doc. A/AC.96/588 (1981).

<sup>234</sup> GREGOR NOLL, Negotiating Asylum: THE EU ACQUIS, EXTRATERRITORIAL PROTECTION AND THE COMMON MARKET OF DEFLECTION, 265-266 (2000).

<sup>235</sup> Eiko R. Thielemann, *Towards A Common EU Asylum Policy: The Political Economy of Refugee Burden-Sharing*, 15-16 (2006).

<sup>236</sup> U.N. Doc. A/AC.96/904, 4 (1998).

<sup>237</sup> S.S. Wimbledon, Judgment, P.C.I.J. Series A, No. 1, (1923), 30.

<sup>238</sup> B. BOLLECKER-STERN, LE PRÉJUDICE DANS LA THÉORIE DE LA RESPONSABILITÉ INTERNATIONALE, (1973); I. BROWNIE, SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY, Part I, 56-88 (1983).

<sup>239</sup> *LaGrand* (Germany v. United States of America), Judgment, (2001) I.C.J. ¶81.

<sup>240</sup> *Compromis*, ¶28.

<sup>241</sup> *Compromis*, ¶27.

Thus, Rahad *per se* shall bear the burden of their costs incurred for its negligent contribution to the Kin's migration.

## **CONCLUSION AND PRAYER FOR RELIEF**

Atania respectfully requests the Court to adjudge and declare that:

- I.** Rahad's extraction of water from the Aquifer violates its obligation of equitable use under customary international law and its obligation of sustainable use bound by its unilateral declaration on 22 March 1993 and thus constitutes an inequitable use of the shared Aquifer;
- II.** Rahad's Savali Pipeline operations violate its customary obligation to prevent significant harm and its treaty obligation to protect world heritage;
- III.** Atania is the lawful owner of Ruby Sipar and Ruby Sipar was stolen and illicitly exported cultural property from Atania and thus Rahad is obliged to return Ruby Sipar; and
- IV.** The Kin influx was not attributable to the Atania and alternatively it did not constitute an internationally wrongful act and thus Rahad is not entitled to compensation.

**RESPECTFULLY SUBMITTED,**

**AGENTS OF ATANIA**