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INTERNATIONAL LAW MOOT COURT COMPETITION

THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS



CASE CONCERNING THE TREATMENT OF "ETERNAL ZEPHYR"

THE KINGDOM OF ALGARIA

APPLICANT

v.

THE STATE OF ROSALIA

RESPONDENT

MEMORIAL FOR THE APPLICANT

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SUMMARY OF PLEADINGS

I. Algaria is entitled to invoke the Treaty on Basic Relations and Friendship ("1945 Treaty") in relation to the treatment of the Eternal Zephyr ("Zephyr")

Algaria may file an application to this Court on behalf of Microcosmos Industry Ltd. ("Microcosmos") and Earth Wind & Solar Company ("Earth Wind") as it has fulfilled the exceptional requirements for States to exercise diplomatic protection in the context of shareholders. *First*, Eternal Wind's incorporation under Rosalia's law is a prerequisite to apply for Long-Term Occupation Permissions ("LTOP"). Moreover, such diplomatic protection does not cause any multiplicity of claims. *Second*, Eternal Wind Inc. ("Eternal Wind") has exhausted all local remedies prior to Algaria's claim to this Court.

Furthermore, this Court has jurisdiction over the present dispute. *First*, the 1945 Treaty contains a compromissory clause accepting this Court's jurisdiction pursuant to Article 36(1) of the ICJ Statute. *Second*, Algaria's claim concerning the Zephyr falls within the scope of the 1945 Treaty as the interpretation of the term 'territory' also includes Rosalia's Exclusive Economic Zone ("EEZ"). Therefore, Algaria is entitled to invoke the 1945 Treaty in relation to the treatment of the Zephyr.

II. Rosalia's suspension of the Zephyr is internationally wrongful and, thus, Rosalia shall allow the Zephyr to resume operation and pay full

compensation for the losses

Rosalia's suspension of the Zephyr is internationally wrongful because it violated Article III(2) of the 1945 Treaty. *First*, Rosalia has violated the fair and equitable treatment standard as they frustrated Microcosmos' and Earth Wind's legitimate expectations of a stable and consistent investment. These legitimate expectations arose out of Rosalia's guarantees of an environmentally and legally eligible area. *Second*, the suspension of the Zephyr was not done with due process of law as there was neither prior notification of the suspension nor a reasonable advance notice to the

investors. Rosalia failed their obligation to notify and consult with Microcosmos and Earth Wind of the decision to suspend the Zephyr. *Third*, there was no transparency from Rosalia regarding the suspension of the Zephyr because they did not provide any reasonable explanation behind the Zephyr's suspension. Instead, Rosalia confused the investors by the abrupt suspension as the Zephyr's operation is consistent with the result of the Environmental Impact Assessment ("EIA") and the Agency for the Selection of Area's ("ASA") report.

Furthermore, the suspension of the Zephyr is an unlawful indirect expropriation. *First*, the recovery of the Loons' population was not Rosalia's genuine interest and Rosalia has failed to provide any convincing facts to that effect. *Second*, the suspension of the Zephyr was disproportionate to Rosalia's alleged 'public purpose' because the Zephyr did not create any risk to Rosalia's ecological balance. Thus, Rosalia's suspension of the Zephyr was without any 'public purpose' and has violated Article III(2) of the 1945 Treaty.

Accordingly, Rosalia must allow the Zephyr to resume operation because the suspension of the Zephyr is an unlawful administrative measure that violates international law. Rosalia must also compensate Microcosmos' and Earth Wind's economic losses to ensure full reparation because restitution alone is not enough to cover the economic losses suffered. This is regardless of Rosalia's purported 'public purpose'.

PLEADINGS

**I. ALGARIA IS ENTITLED TO INVOKE THE 1945 TREATY IN RELATION TO THE
TREATMENT OF THE ZEPHYR**

**A. ALGARIA IS ENTITLED TO EXERCISE DIPLOMATIC PROTECTION OVER
MICROCOSMOS AND EARTH WIND**

Diplomatic protection is a State's invocation of another State's responsibility for injuries caused to the former's nationals by an internationally wrongful act.¹ In this Case, Algaria may exercise diplomatic protection over Microcosmos and Earth Wind, since: (1) Algaria has a right to exercise diplomatic protection over Microcosmos and Earth Wind as Eternal Wind's shareholders; and (2) Eternal Wind has exhausted all local remedies.

**1. Algaria has a right to exercise diplomatic protection over
Microcosmos and Earth Wind as Eternal Wind's shareholders**

In general, a corporation is protected by the corporation's State of nationality.² However, shareholders' States of nationality can only exercise diplomatic protection under few exceptional circumstances.³ In this Case, Algaria may exercise diplomatic protection over Eternal Wind's shareholders because: (a) Eternal Wind's incorporation under Rosalia's law is a prerequisite for doing business; and (b) there is no multiplicity of claims.

**a. Algaria can exercise diplomatic protection because Eternal
Wind's incorporation under Rosalia's law is a prerequisite for
doing business**

One of the exceptional circumstances to exercise diplomatic protection over shareholders is when a company's incorporation in the State

¹ International Law Commission, 'Draft Articles on Diplomatic Protection with commentaries' (2006) UN Doc A/61/10 ("Draft Articles on Diplomatic Protection") Art. 1.

² John Dugard, *Diplomatic Protection* (Oxford Public International Law 2009) ¶35.

³ *Ibid.*

responsible for the injury is a precondition for doing business there.⁴ In this Case, Eternal Wind's incorporation under Rosalia's law is a prerequisite to apply for a LTOP.⁵ Moreover, Rosalia is internationally responsible for the injuries suffered by Microcosmos and Earth Wind.⁶ Therefore, Algaria has fulfilled the exceptional circumstance to exercise diplomatic protection over Eternal Wind's shareholders.

b. Algaria's diplomatic protection does not cause any multiplicity of claims

In *Barcelona Traction*, this Court held that, in principle, diplomatic protection over shareholders with various nationalities should not be allowed as it may cause a multiplicity of claims.⁷ In contrast, Microcosmos, incorporated under Algerian law,⁸ and Earth Wind, owned by the Algerian government,⁹ are the only shareholders of Eternal Wind.¹⁰ Thus, as there is no multiplicity of claims, Algaria may exercise diplomatic protection over Eternal Wind's shareholders.

2. Eternal Wind has exhausted all local remedies prior to Algaria's claim to this Court

Customary international law,¹¹ as enshrined in Article 14(1) of the Draft Articles on Diplomatic Protection, governs that an injured party must exhaust all local remedies before making an international claim.¹² In this Case, Eternal Wind's lawsuit had reached the Rosalian Supreme Court to no avail.¹³ Therefore, Algaria is entitled to file an application to this Court as Eternal Wind has exhausted all local remedies.

⁴ *Ahmadou Sadio Diallo (Republic of Guinea/Democratic Republic of the Congo)* (Judgment) [2007] ICJ Rep 582, ¶93; *Barcelona Traction, Light and Power Company, Limited (Belgium/Spain)* (Judgment) [1970] ICJ Rep 4 ("Barcelona Traction") ¶92; Draft Articles on Diplomatic Protection, Art. 11(b).

⁵ Agreed Facts, ¶9

⁶ See below Section II(A).

⁷ *Barcelona Traction*, ¶96.

⁸ Agreed Facts, ¶13.

⁹ *Ibid*, ¶14.

¹⁰ *Ibid*.

¹¹ *Elettronica Sicula Case (United States of America/Italy)* (Judgment) [1989] ICJ Rep 15, ¶50.

¹² Draft Articles on Diplomatic Protection, Art. 14(1).

¹³ Agreed Facts, ¶24.

B. THIS COURT HAS JURISDICTION OVER THE PRESENT DISPUTE

1. This Court has jurisdiction over this dispute pursuant to the compromissory clause under Article XI of the 1945 Treaty

Pursuant to Article 36(1) of the ICJ Statute, this Court has jurisdiction over cases referred to it through compromissory clauses in applicable treaties.¹⁴ In this Case, both parties have appointed the ICJ to adjudicate on disputes concerning the interpretation and application of the 1945 treaty.¹⁵ Therefore, this Court has jurisdiction over the present dispute.

2. Algaria's claim falls within the scope of the 1945 Treaty as the Zephyr is located in Rosalia's territory

Rosalia claimed that offshore facilities are not protected by the 1945 Treaty as it is not located within their territory.¹⁶ However, the interpretation of certain terms in treaties must accommodate developments in international law.¹⁷ In *Navigational and Related Rights*, this Court concluded that the intention to adopt an evolving term can be presumed when a treaty uses a generic term.¹⁸ With an evolutionary interpretation, the term 'territory' in treaties today can be equated with a State's exercise of jurisdiction.¹⁹

Here, Article III(1) of the 1945 Treaty adopts a generic term²⁰ as it does not restrict the term 'territory' only to land territory.²¹ Consequently, interpretation of the term 'territory' must consider the evolution of the law of the sea, which regulates that coastal States have

¹⁴ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Art. 36(1).

¹⁵ Treaty on Basic Relations and Friendship between the Kingdom of Algaria and the Kingdom of Rosalia (signed 31 October 1945, entered into force 23 December 1945) ("1945 Treaty") Art. XI.

¹⁶ Agreed Facts, ¶26.

¹⁷ *Aegean Sea Continental Shelf Case (Greece/Turkey)* (Judgment) [1978] ICJ Rep 3, ¶77.

¹⁸ *Dispute Regarding Navigational and Related Rights (Costa Rica/Nicaragua)* (Judgment) [2009] ICJ Rep 213 ("*Navigational and Related Rights*") ¶66.

¹⁹ Ian Brownlie, *Principles of Public International Law* (7th edn, Oxford University Press 2008) pg. 112.

²⁰ *Navigational and Related Rights*, ¶¶64, 66.

²¹ 1945 Treaty, Art. III(1).

sovereign rights and jurisdiction in their EEZ.²² Thus, Algaria's claim concerning the Zephyr in Rosalia's EEZ²³ falls within the territorial scope of the 1945 Treaty.

II. ROSALIA'S SUSPENSION OF THE ZEPHYR IS INTERNATIONALLY WRONGFUL AND, THUS, ROSALIA SHALL ALLOW THE ZEPHYR TO RESUME OPERATION AND PAY FULL COMPENSATION FOR THE LOSSES

A. ROSALIA'S SUSPENSION OF THE ZEPHYR IS INTERNATIONALLY WRONGFUL

Microcosmos and Earth Wind are the shareholders of Eternal Wind²⁴ and, thus, are investors in Rosalia's territory. Rosalia's suspension of the Zephyr is a breach of international law as it is: (1) a violation of the fair and just treatment standard and (2) an unlawful indirect expropriation.

1. Rosalia has violated the fair and just treatment standard under Article III(2) of the 1945 Treaty

Rosalia must treat Microcosmos and Earth Wind in a fair and just manner,²⁵ or known as the fair and equitable treatment ("FET") standard in international investment law.²⁶ This standard, in line with the good faith principle,²⁷ (a) protects investors' legitimate expectations;²⁸ (b) ensures due process of law;²⁹ and (c) ensures transparency from the host State.³⁰

a. *Rosalia has violated Microcosmos' and Earth Wind's legitimate expectations*

²² United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, Art. 56(1).

²³ Agreed Facts, ¶11.

²⁴ *Ibid*, ¶14.

²⁵ 1945 Treaty, Art. III(2).

²⁶ *Oil Platforms (Islamic Republic of Iran/United States of America)* (Judgment) (Separate Opinion of Judge Higgins) [1996] ICJ Rep 847, ¶39.

²⁷ *Sempra Energy International v. The Argentine Republic* (Award) [2007] ICSID Case No. ARB/02/16, ¶¶290-291, 297-298.

²⁸ *International Thunderbird Gaming Corp. v. The United Mexican States* (Award) [2006] UNCITRAL, ¶147; *Saluka Investments BV v. Czech Republic* (Partial Award) [2006] UNCITRAL, ¶¶301-302, 309.

²⁹ *ADC Affiliate Ltd. and ADC & ADMC Management Ltd. v. The Republic of Hungary* (Award) [2006] ICSID Case No. ARB/03/16 ("*ADC v. Hungary*") ¶¶435, 445; *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (Award) [2002] ICSID Case No. ARB/99/6 ("*Middle East Cement v. Egypt*") ¶143.

³⁰ *Emilio Agustín Maffezini v. The Kingdom of Spain* (Award) [2000] ICSID Case No. ARB/97/7 ("*Maffezini v. Spain*") ¶83; *Metalclad Corporation v. The United Mexican States* (Award) [2000] ICSID Case No. ARB(AF)/97/1 ("*Metalclad v. Mexico*") ¶¶76, 99-100.

States cannot arbitrarily revoke any permits unexpected by foreign investors³¹ as the FET standard prohibits unreasonable impairment of investors' fair and legitimate expectations.³² In Tecmed v. Mexico, the tribunal held that the FET standard is violated when a host State frustrates an investor's legitimate expectations³³ of consistency and stability in their investments.³⁴

In this Case, the Zephyr's suspension is unreasonable as it stems from unreliable public pressure.³⁵ Moreover, the suspension frustrates Microcosmos' and Earth Wind's expectations as it is inconsistent with Rosalia's continuous guarantees of an eligible area, claimed to be safe for the Loons,³⁶ and legal stability to the investors.³⁷ Rosalia themselves had reviewed the Zephyr's LTOP and allowed their operation.³⁸ Further, Microcosmos, specifically urged by Rosalia,³⁹ and Earth Wind are sole contributors⁴⁰ to help Rosalia reduce GHG emissions and purchase renewable energies.⁴¹ These conditions have created legitimate expectations of a stable and consistent investment from the investors. Therefore, by suspending the Zephyr, Rosalia has frustrated these legitimate expectations.

b. The suspension of the Zephyr was not done with administrative due process

Administrative due process requires host States to give reasonable advance notices⁴² or warnings⁴³ of the suspension to the investors. In Amco v. Indonesia, the tribunal found that Indonesia's revocation of the

³¹ *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States* (Award) [2003] ICSID Case No. ARB(AF)/00/2 ("*Tecmed v. Mexico*") ¶154.

³² *Oil Platforms (Islamic Republic of Iran/United States of America)* (Judgment) [1996] ICJ Rep 803, ¶36.

³³ *Tecmed v. Mexico*, ¶173.

³⁴ *Ibid*, ¶154.

³⁵ Agreed Facts, ¶¶19-21, 23.

³⁶ *Ibid*, ¶¶11-12.

³⁷ *Ibid*, ¶¶12-13.

³⁸ *Ibid*, ¶16.

³⁹ *Ibid*, ¶13.

⁴⁰ *Ibid*, ¶16.

⁴¹ *Ibid*, ¶¶8, 14.

⁴² *ADC v. Hungary*, ¶435; *Middle East Cement v. Egypt*, ¶143.

⁴³ *Amco Asia Corporation and others v. Republic of Indonesia* (First Award) [1984] ICSID Case No. ARB/81/1, ¶198.

investor's operation license was unlawful⁴⁴ because no prior warnings were given to the investor⁴⁵ and the revocation was considered in only three days.⁴⁶ This duty to notify would be overridden only if there is a legal violation by the investors.⁴⁷ In contrast, the Zephyr has not committed any violation in this Case. The Zephyr's operation was always consistent with Rosalia's requirements⁴⁸ and ASA's scientific report.⁴⁹ Despite this, Rosalia abruptly suspended the Zephyr after only five days of considerations without consulting the investors.⁵⁰ Moreover, Rosalia failed to notify the investors of the actual decision to suspend the Zephyr.⁵¹ Thus, the Zephyr's suspension was not done with administrative due process.

c. There was no transparency from Rosalia in the Zephyr's suspension

The transparency standard obligates States to provide sufficient evidence, facts, and correct reasons⁵² for investors to proceed with the confident belief that their actions are lawful.⁵³ In this Case, Rosalia relied merely on unclear and unverified photos on social media.⁵⁴ Rosalia did not provide any evidence that the Zephyr decreased the Loons' population, especially considering the Zephyr's comprehensive monitoring and precautionary measures.⁵⁵ Further, the investors believed that the Zephyr's site and operation were consistent with the approved EIA and the ASA's report.⁵⁶ This proves that there was no transparency regarding the Zephyr's suspension. In conclusion, Rosalia has violated the FET standard under Article III(2) of the 1945 Treaty.

⁴⁴ *Ibid*, ¶201.

⁴⁵ *Ibid*, ¶¶196-198.

⁴⁶ *Ibid*, ¶199.

⁴⁷ *Alex Genin, Eastern Credit Ltd., Inc. and AS Baltoil v. The Republic of Estonia* (Award) [2001] ICSID Case No. ARB/99/2 ¶¶364, 367, 371.

⁴⁸ Agreed Facts, ¶¶9, 14-15, 23.

⁴⁹ *Ibid*, ¶¶11-12.

⁵⁰ *Ibid*, ¶23.

⁵¹ *Ibid*.

⁵² *Maffezini v. Spain*, ¶83; *Tecmed v. Mexico*, ¶¶123, 164; Roland Kläger, 'Fair and Equitable Treatment' in *International Investment Law* (Cambridge University Press 2011) pg. 231.

⁵³ *Metalclad v. Mexico*, ¶76.

⁵⁴ Agreed Facts, ¶¶19-20.

⁵⁵ *Ibid*, ¶15.

⁵⁶ *Ibid*, ¶¶11-12, 16, 23.

2. The suspension of the Zephyr is an unlawful indirect expropriation under Article III(2) of the 1945 Treaty

a. The suspension of the Zephyr is an indirect expropriation

Indirect expropriation is the taking of foreign investors' property without formal transfer or outright seizure.⁵⁷ It substantially deprives the investor's right to use⁵⁸ and its expected benefits⁵⁹ without any prospect of recovery.⁶⁰ Here, the Zephyr only operated for less than a year⁶¹ despite the LTOP's 30 year-guarantee.⁶² Further, Rosalia dismissed Eternal Wind's plea to reverse the suspension despite its effort to submit revised EIA reports.⁶³ Rosalia thus did not only substantially deprive Microcosmos' and Earth Wind's right to use, but also its expected benefits without any prospects to resume the operation of the Zephyr. Therefore, the suspension of the Zephyr is an indirect expropriation.

b. Rosalia's indirect expropriation violated Article III(2) of the 1945 Treaty

Article III(2) of the 1945 Treaty prohibits expropriation without a legitimate 'public purpose',⁶⁴ understood as a State's consideration of what is useful for the public good.⁶⁵ In this Case, Rosalia's alleged 'public purpose' to recover the Loons' population was not legitimate since

⁵⁷ *Metalclad v. Mexico*, ¶103; Surya P. Subedi, *International Investment Law Reconciling Policy and Principle* (Hart Publishing 2008) pg. 120.

⁵⁸ *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic* (Decision on Liability) [2006] ICSID Case No. ARB/02/1, ¶188; *Middle East Cement v. Egypt*, ¶107; *Wena Hotels Ltd. v. Arab Republic of Egypt* (Award) [2000] ICSID Case No. ARB/98/4, ¶99.

⁵⁹ *Metalclad v. Mexico*, ¶103; *Middle East Cement v. Egypt*, ¶107.

⁶⁰ *Thomas Earl Payne v. The Government of the Islamic Republic of Iran* (Award) [1986] IUSCT Case No. 335, ¶23; Louis B. Sohn and R. R. Baxter, 'Responsibility of States for Injuries to the Economic Interests of Aliens' (1961) 55(3) AJIL 548, Art. 10(3); United Nations Conference on Trade and Development, 'Expropriation' (2012) UN Doc UNCTAD/DIAE/IA/2011/7 ("UNCTAD") pg. 70.

⁶¹ Agreed Facts, ¶¶16, 23.

⁶² *Ibid*, ¶9

⁶³ *Ibid*, ¶24.

⁶⁴ 1945 treaty, Art. III(2).

⁶⁵ *James and Others v. United Kingdom* [1986] ECHR 8793/79 ("*James v. UK*") ¶46; UNCTAD, pg. 32.

it was neither: (i) genuine⁶⁶ with substantial basis;⁶⁷ nor (ii) proportionate.⁶⁸

i. Rosalia's alleged 'public purpose' was neither genuine nor provided with substantial basis

'Public purpose' must be genuine⁶⁹ and provided with a substantial basis⁷⁰ such as convincing facts or legal reasoning.⁷¹ In this Case, the recovery of the Loons' population is not Rosalia's genuine interest as the suspension was purely due to public demand⁷² which arose out of unreliable sources.⁷³ In contrast, the Zephyr's comprehensive system never detected any collision through its camera, alarms, or sensors.⁷⁴ Rosalia failed to provide convincing facts or legal reasoning to justify the Zephyr's suspension to its investors. Thus, the Zephyr's suspension was without a legitimate 'public purpose'.

ii. The Zephyr's suspension was disproportionate to Rosalia's alleged 'public purpose'

In *Tecmed v. Mexico*, the tribunal found that Mexico's public purpose claim over environmental concerns was disproportionate, as Tecmed's property violation of the investment terms did not create any risk to Mexico's ecological balance.⁷⁵ Here, the Zephyr operated in Rosalia's chosen site, proven to be scientifically safe for the Loons,⁷⁶ and was consistent with the EIA.⁷⁷ Further, despite the Zephyr's four-year suspension, the Loons' population has never recovered.⁷⁸ Evidently, there was no environmental violation by the Zephyr that would disturb Rosalia's ecological balance. Thus, the Zephyr's suspension was disproportionate to Rosalia's alleged

⁶⁶ *ADC v. Hungary*, ¶432.

⁶⁷ *Ibid*, ¶430; *Metalclad v. Mexico*, ¶107; *Tecmed v. Mexico*, ¶144.

⁶⁸ *Azurix Corp. v. Argentine Republic* (Award) [2006] ICSID Case No. ARB/01/12, ¶311; *James v. UK*, ¶50; *Tecmed v. Mexico*, ¶149.

⁶⁹ *ADC v. Hungary*, ¶432.

⁷⁰ *Metalclad v. Mexico*, ¶107; *Tecmed v. Mexico*, ¶144.

⁷¹ *ADC v. Hungary*, ¶430

⁷² Agreed Facts, ¶¶21, 23.

⁷³ *Ibid*, ¶¶19-20.

⁷⁴ *Ibid*, ¶¶19, 22.

⁷⁵ *Tecmed v. Mexico*, ¶¶149-151.

⁷⁶ Agreed Facts, ¶¶11-12.

⁷⁷ *Ibid*, ¶¶15-16, 23.

⁷⁸ *Ibid*, ¶¶17, 23.

'public purpose'. As such, Rosalia violated Article III(2) of the 1945 Treaty as there was no legitimate 'public purpose'.

B. ROSALIA MUST PROVIDE FULL REPARATION FOR MICROCOSMOS' AND EARTH WIND'S LOSSES

As Rosalia's suspension of the Zephyr is an internationally wrongful act,⁷⁹ Rosalia must provide full reparation in the form of: (1) juridical restitution and (2) full compensation to Microcosmos and Earth Wind.

1. Rosalia must allow the Zephyr to resume operation

States are obligated to provide restitution as long as it is materially possible.⁸⁰ One form of restitution is juridical restitution, including the revocation of an unlawful administrative measure as regards a foreigner's property.⁸¹ In this Case, the suspension of the Zephyr, the investors' property, is an unlawful administrative measure.⁸² Therefore, Rosalia is obligated to allow the Zephyr to resume operation.

2. Rosalia must compensate Microcosmos' and Earth Wind's economic losses

States responsible for an internationally wrongful act must also compensate injured States for any financially assessable damage⁸³ when there is a direct and certain causal nexus between the wrongful act and the injury.⁸⁴ Such compensation shall fill the damage gap when restitution is insufficient.⁸⁵ Here, Microcosmos' and Earth Wind's expected income from the Zephyr was halted for four years⁸⁶ due to Rosalia's unlawful suspension.⁸⁷ Even the continuance of the Zephyr's operation would not

⁷⁹ See above Section II(A).

⁸⁰ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries' (2001) UN Doc A/56/10 ("ARSIWA") Art. 35.

⁸¹ *Ibid*, pg. 97.

⁸² Agreed Facts, ¶23; See above Section II(A).

⁸³ ARSIWA, Art. 36.

⁸⁴ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina/Serbia-Montenegro)* [2007] ICJ Rep 43, ¶462.

⁸⁵ *Factory at Chorzów (Germany/Poland) (Merits)* [1928] PCIJ Series A. No 17, pg. 47.

⁸⁶ Agreed Facts, ¶¶9, 16, 23.

⁸⁷ See above Section II(A).

cover the loss of such expected income. Thus, Rosalia must compensate Microcosmos' and Earth Wind's economic losses.

3. Even if this Court finds that Rosalia's 'public purpose' was legitimate, Rosalia must still compensate Microcosmos and Earth Wind

Customary international law,⁸⁸ as embodied in Article III(2) of the 1945 Treaty, requires prompt, adequate, and effective compensation following an expropriation.⁸⁹ Inevitably, even if this Court finds that Rosalia's 'public purpose' was legitimate, Rosalia is still obligated to provide Microcosmos and Earth Wind with prompt, adequate, and effective compensation. Therefore, Rosalia must provide restitution and compensation to Microcosmos and Earth Wind.

⁸⁸ *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica* (Award) [2000] ICSID Case No. ARB/96/1, ¶72; *Middle East Cement v. Egypt*, ¶107.

⁸⁹ 1945 Treaty, Art. III(2).

PRAYER FOR RELIEF

For all reasons argued in this memorial, the Applicant, the Kingdom of Algaria, respectfully requests that the Court:

1. Declare that the Kingdom of Algaria is entitled to invoke the Treaty on Basic Relations and Friendship between the Kingdom of Algaria and the Kingdom of Rosalia of 2 May 1945 on behalf of Microcosmos Industry Ltd. and Earth Wind & Solar Company in relation to the treatment of Eternal Zephyr; and
2. Declare that the State of Rosalia is internationally responsible for the economic loss caused to Microcosmos Industry Ltd. and Earth Wind & Solar Company and, accordingly, shall allow Eternal Zephyr to resume operation and pay full compensation for the losses.

Submitted on this 18 June 2021

[signed]

Agents for the Applicant
The Kingdom of Algaria