

**INTERNATIONAL COURT OF JUSTICE**

**THE PEACE PALACE  
THE HAGUE, THE NETHERLANDS**



**2025 ASIA CUP INTERNATIONAL LAW MOOT COURT COMPETITION**

**THE CASE CONCERNING THE TRANSBOUNDARY MOVEMENT OF USED  
ELECTRONICS**

**THE REPUBLIC OF AURÉLIA  
(APPLICANT)**

**v.**

**THE FEDERATION OF RAVALANCIA  
(RESPONDENT)**

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**COUNTER-MEMORIAL OF RESPONDENT**  
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**2025**

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PLEADINGS

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**I. THE COURT LACKS JURISDICTION *RATIONE MATERIAE* OVER CLAIMS REGARDING ARTICLE 4(4), 4(8) AND 9(2) OF THE BASEL CONVENTION**

**A. THE ICJ CANNOT ADJUDICATE DOMESTIC POLICY AND SPECULATIVE CAUSATION.**

A fundamental principle of international law is the sovereign equality of States.<sup>1</sup> A State is free to choose the means to carry out its international obligations.<sup>2</sup> Domestic law is treated as a “mere fact” by the international court, serving as evidence relevant to a State’s conduct.<sup>3</sup> Although the dispute concerns Federation of Ravalancia’s (“**Ravalancia**”) legal measures,<sup>4</sup> the Court's jurisdiction under the Special Agreement is strictly limited to interpreting and applying the Basel Convention in light of agreed facts.<sup>5</sup>

**B. THE INSTANT PROCEEDING FALLS OUTSIDE THIS COURT'S JURISDICTION UNDER THE ICJ STATUTE.**

Jurisdiction should not be presumed,<sup>6</sup> and Court's constitutional rule that its jurisdiction is limited to the consent of States party.<sup>7</sup> All parties to a dispute must consent to proceedings.<sup>8</sup> State of Kvaros (“**Kvaros**”) being an indispensable State, has not consented,<sup>9</sup> though the responsibility under the Convention rests between Ravalancia and Kvaros.<sup>10</sup>

**C. THE COURT LACKS JURISDICTION UNDER MONETARY GOLD PRINCIPLE**

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<sup>1</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Art. 2(1); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua/USA)* (Merits) [1986] ICJ Rep 14, ¶205 (“**Military and Paramilitary Activities**”).

<sup>2</sup> *Nuclear Tests (Australia v France)* (Judgment) [1974] ICJ Rep 253, 268 ¶59.

<sup>3</sup> *Certain German Interests in Polish Upper Silesia (Germany v Poland)* (Merits) [1926] PCIJ Rep Series A No 7, 19 (“**Certain German Interests**”); *Nottebohm Case (Liechtenstein v Guatemala)* (Second Phase) [1955] ICJ Rep 4, 20.

<sup>4</sup> Compromis, ¶27.

<sup>5</sup> Compromis, ¶33.

<sup>6</sup> See *Anglo-Iranian Oil Co. (UK/Iran) (Preliminary Obj.)* Judgment of 22 July 1952 [1952] ICJ Rep 93, 103; *Dispute regarding Navigational and Related Rights (Costa Rica/Nicaragua)* Judgment of 13 July 2009 [2009] ICJ Rep 213, 233, ¶34; J I Charney, 'Compromissory Clauses and the Jurisdiction of the International Court of Justice' (1987) 81(4) AJIL 855, 870.

<sup>7</sup> *Case of the Monetary Gold Removed from Rome in 1943 (Italy/France, UK and USA)* (Preliminary Question) Judgment of 15 June 1954 [1954] ICJ Rep 19, 32 (“**Monetary Gold**”); *East Timor (Portugal/Australia)* Judgment of 30 June 1995 [1995] ICJ Rep 90, 102, ¶26 (“**East Timor**”); *Documents of the United Nations Conference on International Organization, San Francisco, 1945* vol 15 (UN Information Organizations 1945) 335.

<sup>8</sup> Alexander Orakhelashvili, 'Consensual Principle' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law* (OUP January 2019) ¶33.

<sup>9</sup> Pleadings (I)(C)(1).

<sup>10</sup> Compromis, ¶32.

Generally, decisions of this Court only have binding force *inter partes*.<sup>11</sup> Nevertheless, this Court has recognized that its decisions have second-order effects on third States.<sup>12</sup> Hence, indispensable third States must consent too.<sup>13</sup> While the Republic of Aurélia (“**Aurélia**”) expressed its consent,<sup>14</sup> Kvaros is indispensable [1] and did not express its consent [2].

**1. Kvaros is indispensable under the Monetary Gold principle.**

A State is considered indispensable, and the ICJ's jurisdiction is precluded,<sup>15</sup> if the Court cannot decide upon the dispute presented without addressing questions that form the very subject-matter of a third State's legal interests.<sup>16</sup> This occurs when the non-party's “responsibility [is] a prerequisite for” the Court's decision on the matter.<sup>17</sup> To prevail on its claim, Aurélia must prove that Kvaros accepted the waste, *vis-à-vis* import rules<sup>18</sup> despite lacking the capacity to properly dispose of it, and violated its duty to manage the waste in an environmentally sound manner.<sup>19</sup> Thus, Kvaros's legal interests form the very subject-matter of Aurélia's claim and the Court must dismiss it.<sup>20</sup>

**2. Kvaros has not expressed its consent.**

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<sup>11</sup> *Statute of the International Court of Justice* (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS xvi, Art. 59 (“**ICJ Statute**”).

<sup>12</sup> Eyal Benvenisti and Doreen Lustig, 'The Monetary Gold Principle: From Monetary Law to a General Principle of International Law?' (2021) 115(1) AJIL 41, 43, 67

<sup>13</sup> *Monetary Gold*, 32.

<sup>14</sup> *Compromis*, ¶33.

<sup>15</sup> *Monetary Gold*, 32, ¶¶33; *Military and Paramilitary*, ¶88.

<sup>16</sup> *Monetary Gold*, 32; *East Timor*, ¶28; Zachary Mollengarden and Noam Zamir, 'The Monetary Gold Principle: Back to Basics' (2021) 115 AJIL 41, 41.

<sup>17</sup> *Certain Phosphate Lands in Nauru (Nauru v Australia)* (Preliminary Objections) [1992] ICJ Rep 240, ¶55 (“**Certain Phosphate Lands**”).

<sup>18</sup> *Compromis*, ¶9.

<sup>19</sup> *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (adopted 22 March 1989, in force 5 May 1992) 1673 UNTS 126, Art. 11 (“**Basel Convention**”).

<sup>20</sup> ICJ Statute, Art. 59; *Monetary Gold*, 32.

Under the principle of *pacta tertiis nec nocent nec prosunt*,<sup>21</sup> codified under the VCLT,<sup>22</sup> a treaty does not create obligations for a third State without consent.<sup>23</sup> Consent to the jurisdiction must be clear, unequivocal, and specific to the dispute.<sup>24</sup> Special agreement being a treaty,<sup>25</sup> while expressing the consent of Aurélia and Ravalancia,<sup>26</sup> cannot be interpreted as expressing Kvaros's consent to the Court's jurisdiction.

**D. THE COURT DOES NOT HAVE JURISDICTION AS THE PARTIES HAVE NOT COMPLIED WITH ARTICLE 20(2) OF THE BASEL CONVENTION.**

Article 20(2) of the Basel Convention makes clear that the ICJ can only hear a case if all parties to the dispute agree.<sup>27</sup> The Convention's main goal, as stated in the Preamble<sup>28</sup> and Article 1,<sup>29</sup> is to protect health and the environment from hazardous waste by regulating its movement and ensuring safe handling. This goal would be undermined if the ICJ ruled on the rights of a state like Kvaros without its consent to the proceedings.<sup>30</sup>

**II. THE REPUBLIC OF AURÉLIA DOES NOT HAVE STANDING TO SUBMIT CLAIMS SET OUT IN SUBPARAGRAPHS (C) AND (D) BELOW AGAINST THE FEDERATION OF RAVALANCIA.**

Ravalancia submits four main arguments: Aurélia's own actions constitute a *novus actus interveniens* that precludes its claim (A); it cannot invoke any *erga omnes* obligations (B); its

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<sup>21</sup> *Certain German*, 28–29; *Case of the Free Zones of Upper Savoy and the District of Gex (France v Switzerland)* Judgment of 7 June 1932 PCIJ Rep Series A/B No 46, 96, 141.

<sup>22</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art. 34 (“VCLT”).

<sup>23</sup> *Case relating to the Territorial Jurisdiction of the International Commission of the River Oder (UK, Czechoslovakia, Denmark, Fr., Germany, Sweden v Poland)* Judgment of 10 September 1929 PCIJ Rep Series A No 23, 5, 21; *Island of Palmas Case (Netherlands v United States of America)* Award of 4 April 1928 (1928) 2 RIAA 829, 842, 850, 870.

<sup>24</sup> *Aegean Sea Continental Shelf (Greece v Turkey)* (Jurisdiction of the Court) Judgment of 19 December 1978 [1978] ICJ Rep 3, 17, ¶40.

<sup>25</sup> *Kasikili/Sedudu Island (Botswana/Namibia)* Judgment of 13 December 1999 [1999] ICJ Rep 1045, 1055, ¶18; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* Judgment of 23 May 2008 [2008] ICJ Rep 12, 23, ¶32.

<sup>26</sup> Compromis, ¶33.

<sup>27</sup> Basel Convention, Art. 20.

<sup>28</sup> Basel Convention, Preamble.

<sup>29</sup> Basel Convention, Art. 1.

<sup>30</sup> Compromis, ¶33.

conduct undermines its standing (C); and by denying Kvaros's role, Aurélia lacks standing to bring this proceeding solely against Ravalancia (D).

**A. AURÉLIA'S OWN ACTIONS AS *NOVUS ACTUS INTERVENIENS* PRECLUDE ITS CLAIM.** Causation requires a “sufficiently direct and certain causal nexus” between violation and injury.<sup>31</sup> This link can be severed by an unforeseeable or overwhelmingly significant subsequent, independent act by a third party or the injured State.<sup>32</sup> Proximate cause demands the “efficient and predominating cause,” not merely a “but for” condition.<sup>33</sup> Here, Aurélia's sovereign decision to import waste was the direct and proximate consequence.<sup>34</sup>

**B. AURÉLIA CAN NOT INVOKE ANY *ERGA OMNES* OBLIGATIONS.** Standing before this Court requires a legal interest, arising from either the Applicant's special affectedness<sup>35</sup> or alleged violations of erga omnes obligations<sup>36</sup> which is allowed under *jus cogens* treaties regarding the Torture and Genocide Conventions,<sup>37</sup> besides, here the alleged violation is secondary to the claim of the specially affected State.<sup>38</sup> Therefore, enforcement *via erga omnes* is barred until the State with the special interest waives its privilege.<sup>39</sup>

**C. AURÉLIA'S CONDUCT PRECLUDES AURÉLIA'S STANDING.**

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<sup>31</sup> *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina/Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43, ¶462 (“*Crime of Genocide*”).

<sup>32</sup> ILC, ARSIWA with commentaries, 2001, YILC, vol. II, Part Two, ¶10, 13.

<sup>33</sup> *Administrative Decision No II (US/Germany)* (Decision of 1 November 1923) 7 RIAA 23, 29-30; *Civilian Claims – Eritrea's Claims 15, 16, 23 & 27-32 (Eritrea v Ethiopia)* (Award of 17 December 2004) 26 RIAA 1, ¶32.

<sup>34</sup> *Compromis*, ¶13.

<sup>35</sup> International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) *Yearbook of the International Law Commission* [2001] vol II (Part Two) 26, Art. 42 (“*ARSIWA*”); *Arctic Sunrise Arbitration (Netherlands/Russia)* Award on the Merits of 14 August 2015 PCA Case No 2014-02, ¶117.

<sup>36</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium/Senegal)* Judgment of 20 July 2012, ICJ Rep 422, 448, ¶69 (“*Obligation to Prosecute or Extradite*”).

<sup>37</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Second Phase) [1970] ICJ Rep 3; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia/Myanmar)* (Preliminary Objections) [2022] ICJ Rep 476 ¶¶106–109; *Obligation to Prosecute or Extradite*, ¶¶68–70.

<sup>38</sup> James Crawford, *State Responsibility: The General Part* (CUP 2013) 365–366.

<sup>39</sup> *Application on the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Declaration Judge Ad hoc Kre, General List No 178, 29.



**1. Aurélia's lack of standing due to 'principle of contributory fault'.**

Under Article 39 of ARSIWA, a general principle of law,<sup>40</sup> Aurélia's own negligent omissions contributed to the contamination and health crisis.<sup>41</sup> Specifically, its failure to maintain the Diagloss site and its initial,<sup>42</sup> deficient regulatory framework directly<sup>43</sup> led to the injury. Therefore, Aurélia cannot claim for damage that was avoidable.<sup>44</sup>

**2. Ex turpi causa non oritur actio bars Aurélia's claim due to 'unclean hands'.**

The clean hands doctrine, a general principle held by PCIJ<sup>45</sup> and ICJ,<sup>46</sup> jurists<sup>47</sup> and state practice<sup>48</sup> States are barred from bringing claims<sup>49</sup> and lack *locus standi in judicio*<sup>50</sup> where parties fail to meet the standards they invoke<sup>51</sup> or helped create the situation they challenge.<sup>52</sup>

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<sup>40</sup> ARSIWA, commentary to Art. 39, para (2); *Middle East Cement Shipping and Handling Co SA v Arab Republic of Egypt* (Award, 12 April 2002) ICSID Case No ARB/99/6, 7 ICSID Rep 178 ¶169.

<sup>41</sup> ARSIWA, Art. 39.

<sup>42</sup> Compromis, ¶16.

<sup>43</sup> Compromis, ¶14-15.

<sup>44</sup> *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7, 55 (“**Gabcikovo-Nagymaros**”).

<sup>45</sup> *Factory at Chorzów (Jurisdiction)* PCIJ Rep Series A No 9 (1927) 4, 31; *Diversion of Water from the Meuse* PCIJ Rep Series A/B No 70 (1937) 4 (“**Diversion of Water**”); *Mavrommatis Palestine Concessions (Greece v United Kingdom)* (Jurisdiction) PCIJ Rep Series A No 2 (1924) 6; *Legal Status of Eastern Greenland (Denmark v Norway)* PCIJ Rep Series A/B No 53 (1933) 22, 95 (Anzilotti J diss op).

<sup>46</sup> *Military and Paramilitary Activities*, 382–391, 392–394 (Schwebel J diss op); *Case concerning United States Diplomatic and Consular Staff in Tehran (USA/Iran) (Merits)* [1980] ICJ Rep 3, 53–55 (Morozov J diss op); *Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) (Merits)* [1980] ICJ Rep 3, 62–63 (Tarazi J diss op); Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (CUP 2006) 155.

<sup>47</sup> G Fitzmaurice, 'The General Principles of International Law considered from the Standpoint of the Rule of Law' (1957) 92 RCADI 1, 119 (“**Fitzmaurice**”).

<sup>48</sup> *Legality of Use of Force (Yugoslavia/USA)*, Oral submissions of Agent of the United States, ICJ Verbatim Record CR 99/24 (12 May 1999) ¶3.17.

<sup>49</sup> Schwebel S, 'Clean Hands, Principle', *Max Planck Encyclopedia of Public International Law* (2012) ¶4.

<sup>50</sup> *Diversion of Water*, 77 (J. Hudson sep); Brownlie I, *Principles of Public International Law* (7th edn, OUP 2008) 503; *Military and Paramilitary Activities* (Schwebel J, dissenting), ¶14.

<sup>51</sup> *Military and Paramilitary*, 392–394 (Schwebel J, diss); *Certain Phosphate*, 255 ¶¶37–38. *LaGrand Case (Germany/USA) (Merits)* [2001] ICJ Rep 466 ¶63; *Maritime Delimitation in the Indian Ocean (Somalia/Kenya)* (Pre. Obj.) [2017] ICJ Rep 3 ¶142.

<sup>52</sup> Fitzmaurice, 119; *Arrest Warrant of 11 April 2000 (Congo/Belgium) (Merits)* [2002] ICJ Rep 3 ¶35; C Amerasinghe, *Diplomatic Protection* (OUP 2008) 212; A Shapovalov, 'Should a



Despite regulatory failings and the main facility not being ready, Aurélia started storing imported e-waste from Kvaros.<sup>53</sup> Aurélia then absolved Kvaros of the take-back obligation;<sup>54</sup> it cannot now seek to impose on Ravalancia due to unclean hands.

**D. WHILE DENYING KVAROS’S ROLE, AURÉLIA HAS NO STANDING TO BRING THIS INSTANT PROCEEDING AGAINST RAVALANCIA ONLY.**

Under the principle of good faith,<sup>55</sup> the doctrine of estoppel<sup>56</sup> bars a State from inconsistent conduct<sup>57</sup> that causes detriment to another.<sup>58</sup> By establishing a waste-receiving facility<sup>59</sup> and providing prior informed consent (“PIC”) to Kvaros,<sup>60</sup> Aurélia treated Kvaros as the exporting State and accepted it as the responsible counterparty—its current claim is inconsistent<sup>61</sup> and contrary to equity.<sup>62</sup>

**III. RAVALANCIA IS IN COMPLIANCE WITH ART. 4(4) OF THE BASEL CONVENTION AS IT TOOK APPROPRIATE MEASURES TO PREVENT AND PUNISH THE ILLEGAL TRAFFIC OF HAZARDOUS WASTE.**

Ravalancia advances three main arguments: the electronics handled by LLT were not classified as “hazardous waste” (A); it took measures to prevent illegal traffic (B); and it responded with appropriate measures to punish the illegal traffic (C).

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Requirement of "Clean Hands" be a Prerequisite to the Exercise of Diplomatic Protection?' (2005) 20 Am U Intl L Rev 829, 834, 836.

<sup>53</sup> Compromis, ¶13.

<sup>54</sup> Basel Convention, Art. 9(2).

<sup>55</sup> D Bowett, 'Estoppel Before International Tribunals and Its Relation to Acquiescence' (1957) 33 BYIL, 176; I. MacGibbon, 'Estoppel in International Law' (1958) 7 ICLQ 468, 487; Michael Rubin, 'The International Legal Effects of Unilateral Declarations' (1977) 71 AJIL 1, 2.

<sup>56</sup> ICJ Statute, Art. 38; *Certain Norwegian Loans (France/Norway)* [1957] ICJ Rep 9, 53 (Lauterpacht J sep op); *North Sea Continental Shelf (Germany/Denmark; Federal Republic of Germany/Netherlands)* (Merits) [1969] ICJ Rep 3, 130 (“**North Sea Continental Shelf**”).

<sup>57</sup> *Legal Status of Eastern Greenland (Den/Nor)* PCIJ Rep Ser A/B No 53 (1933) 22, 73; *Case Concerning the Temple of Preah Vihear (Cambodia/Thailand)* (Merits) [1962] ICJ Rep 6, 39 (Alfaro J sep op) (“**Temple of Preah Vihear**”); *North Sea Continental Shelf*, 101 (Ammoun J sep op).

<sup>58</sup> *Temple of Preah Vihear* (Merits), 143–144 (Spender J diss op); *Argentine-Chile Frontier Case* (1966) 16 RIAA 109, 164; M N Shaw, *International Law* (6th edn, CUP 2008) 102; T Cottier and J P Müller, 'Estoppel' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2012) ¶1.

<sup>59</sup> Compromis, ¶13.

<sup>60</sup> Clarifications, ¶General.

<sup>61</sup> I MacGibbon, 'The Scope of Acquiescence in International Law' (1954) 31 BYIL 143, 176.

<sup>62</sup> *North Sea Continental*, ¶88.

**A. WHILE LLT WAS EXPORTING ELECTRONICS, THEY WERE NOT CONSIDERED “HAZARDOUS WASTE.”**

“Wastes” are substances, or objects, or intended to be disposed of,<sup>63</sup> or required to be disposed of under national law.<sup>64</sup> Definitions may vary between countries.<sup>65</sup> Under Ravalancia’s Waste Export Regulation Act (“WERA”)<sup>66</sup> and principle of ‘discard’,<sup>67</sup> “waste” is defined by the exporter’s intent for disposal. Since LLT consistently labeled the items as “reusable” or “repairable”<sup>68</sup> Ravalancian authorities lawfully deemed it non-waste.<sup>69</sup>

**B. RAVALANCIA TOOK APPROPRIATE LEGAL, ADMINISTRATIVE & OTHER MEASURES TO PREVENT ILLEGAL TRAFFIC UNDER ARTICLE 4(4) OF THE BASEL CONVENTION.**

**1. Ravalancia's domestic ‘legal framework’ is adequate to prevent illegal traffic.**

Ravalancia’s WERA and Ministry Guidelines<sup>70</sup> represents its sovereign duty to adopt environmental legislation,<sup>71</sup> fulfilling its obligation<sup>72</sup> under the Basel Convention<sup>73</sup> to establish national laws punishing illegal traffic.<sup>74</sup>

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<sup>63</sup> Basel Convention, Art. 2(1); UNEP, *Technical guidelines on transboundary movements* (UNEP/CHW.16/INF/10/Rev.1, 4 May 2023) ¶22 (“**Basel Technical Guidelines**”).

<sup>64</sup> Basel Technical Guidelines, ¶29.

<sup>65</sup> K Baldé and others, *Regional E-waste Monitor for the Arab States 2021* (UNU, UNITAR and ITU 2021) 46.

<sup>66</sup> Compromis, ¶5.

<sup>67</sup> *ARCO Chemie Nederland Ltd/Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer* [2000] ECR I-4475; *Criminal proceedings against Antonio* [2004] ECR I-10853.

<sup>68</sup> Compromis, ¶12.

<sup>69</sup> *Palin Granit Oy/Lounais-Suomen Ympäristökeskus* (Case C-9/00) [2002] ECR I-3533; *Staat der Nederlanden/Essent Energie Productie BV* (Case C-359/11) [2012] 614.

<sup>70</sup> Compromis ¶¶5-6.

<sup>71</sup> Rio Declaration, Principle 11.

<sup>72</sup> Illegal Traffic Guidance, 12, ¶13.

<sup>73</sup> Basel Convention, Art. 9(5).

<sup>74</sup> Guidance on the Implementation of the Basel Convention provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of Article 9), Secretariat of the Basel Convention (December 2019) ¶6 (“**Guidance on Illegal Traffic**”).

Environmental protection requires vigilance and timely action due to the irreversible nature of harm.<sup>75</sup> Ravalancia's domestic framework ensures treaty compliance<sup>76</sup> and satisfies the test of due diligence.<sup>77</sup>

**2. Ravalancia's 'administrative' enforcement measures were viable.**

As affirmed by this Court<sup>78</sup> and international tribunals,<sup>79</sup> a State must take adequate measures<sup>80</sup> and exert its best efforts<sup>81</sup> to achieve the desired result<sup>82</sup> but is not required to prevent all harm.<sup>83</sup> Ravalancia had no obligation to prevent harm, particularly when caused by LLT's private fraud,<sup>84</sup> as it was not foreseeable.<sup>85</sup>

**3. The standard of 'appropriate measures' taken by Ravalancia was viable.**

The "appropriate measures" imposes a due diligence of conduct,<sup>86</sup> not result.<sup>87</sup> It is variable & must be assessed based on the knowledge available at the time.<sup>88</sup> It requires the "State of origin" to make best efforts to minimize harm,<sup>89</sup> not prevent it absolutely, by exercising due care through a regulatory framework that authorizes<sup>90</sup> and supervises private actors without

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<sup>75</sup> *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) ICJ Report 1997, ¶140 ("**Gabčíkovo-Nagymaros**").

<sup>76</sup> *Corfu Channel case (United Kingdom v Albania)* [1949] ICJ Rep 4, 22 ("**Corfu Channel**"); ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) UN Doc A/56/10, ch IV, Art. 5, commentary ¶5 ("**ILC 2011**").

<sup>77</sup> ILC, 'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries' (2001) UN Doc A/56/10, ch V, Art. 3.

<sup>78</sup> *Crime of Genocide*, ¶430.

<sup>79</sup> *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission* (Case No 21) Advisory Opinion [2015] ITLOS Rep 4, ¶148.

<sup>80</sup> *Corfu Channel*, 4; *Crime of Genocide*, 43.

<sup>81</sup> *Pulp Mills*, 14; *Crime of Genocide*, 43; *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* [2015] ICJ Rep 665.

<sup>82</sup> *Crime of Genocide*, 43.

<sup>83</sup> *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10, ¶110 ("**Responsibilities and Obligations**"); *Corfu Channel (UK/Albania)* [1949] ICJ Rep 4; *Crime of Genocide*, 43.

<sup>84</sup> *Compromis*, ¶26; *Elettronica Sicula SpA (US/Italy)* ¶¶124-129; ILC 2011, Arts. 4-11.

<sup>85</sup> *Trail Smelter Arbitration*, 1965; *Corfu Channel Case*, 22.

<sup>86</sup> *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Judgment) [1994] ICJ Rep 6, ¶51.

<sup>87</sup> *Pulp Mills*, ¶101.

<sup>88</sup> *Request for Advisory Opinion submitted by the SRFC* [2015] ITLOS Rep 4, ¶¶117, 132.

<sup>89</sup> ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries (2001) UN Doc A/56/10, Art. 3, cmt. (7).

<sup>90</sup> ARSIWA, Arts 5, 6.

controlling their operations.<sup>91</sup> Ravalancia adopted laws penalizing e-waste dumping, required PIC, and issued guidelines<sup>92</sup>—ensuring due care and supervision over private actors.<sup>93</sup>

**C. RAVALANCIA TOOK ‘APPROPRIATE’ MEASURES TO PUNISH THE ILLEGAL TRAFFIC.** Following public revelations about Sortlax and LLT, Ravalancian authorities promptly launched an investigation into LLT.<sup>94</sup> Ravalancia submits that this timing complies with the principle that a State’s duty to act arises once it learns of a serious risk.<sup>95</sup> The prosecutor then pursued liability against the company and its executives,<sup>96</sup> demonstrating the State’s obligation to cooperate<sup>97</sup> and fulfill treaty duties in good faith.<sup>98</sup> The duty to take “appropriate measures to punish” does not require guaranteed convictions or asset recovery,<sup>99</sup> especially when offenders flee or become judgment-proof.<sup>100</sup>

**IV. ARGUENDO, RAVALANCIA IS NOT UNDER AN OBLIGATION TO ENSURE THE TAKE-BACK OR ENVIRONMENTALLY SOUND DISPOSAL OF THE WASTE, NEITHER UNDER ART. 4(8) NOR ART. 9(2) OF THE BASEL CONVENTION.**

Ravalancia raises two main arguments: it has no obligation under Article 4(8) to ensure environmentally sound management (“ESM”) of residues in Aurélia (A); and Article 9(2) imposes obligations only on the State of export in cases of illegal traffic (B).

**A. RAVALANCIA IS NOT OBLIGATED UNDER ARTICLE 4(8) OF THE BASEL CONVENTION TO ENSURE ESM OF THE RESIDUES IN AURÉLIA.**

**1. Article 4(8) establishes an obligation for the ‘state of export’ (Kvaros) towards the ‘state of import’ (Aurélia) regarding waste management.**

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<sup>91</sup> ARSIWA, UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2) 156.

<sup>92</sup> Compromis, ¶¶4-6.

<sup>93</sup> UN GAOR 56th Sess, Supp No 10, UN Doc A/56/10 (2001) 377, Art. 3, comm. 8; Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law & the Environment* (3rd edn, OUP 2009) 146; UN GAOR 55th Sess, Supp No 10, UN Doc A/55/10 (2000) 758.

<sup>94</sup> Compromis ¶25.

<sup>95</sup> *Crime of*, ¶430; *Genocide Case (Bosnia v. Serbia)*, Merits, ¶430; *Corfu Channel Case*, 22; *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights, Judgment of July 29, 1988, Series C No. 4, ¶174 (“*Velásquez Rodríguez v. Honduras*”).

<sup>96</sup> Compromis, ¶27.

<sup>97</sup> United Nations Convention against Corruption UNTS 41, Arts 30, 46; UN Convention against Transnational Organized Crime, Arts 10, 11, 18; *Gabcíkovo-Nagymaros*, ¶142.

<sup>98</sup> VCLT, Art. 26; *Gabčíkovo-Nagymaros*, ¶141.

<sup>99</sup> *Velásquez Rodríguez v. Honduras*, ¶176-177.

<sup>100</sup> ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) UN Doc A/56/10, Art. 2 and cmt; *Crime of Genocide*, ¶430.

Article 4(8) of the Basel Convention<sup>101</sup> requires the State of export<sup>102</sup> to ensure environmentally sound waste management,<sup>103</sup> while under customary international law,<sup>104</sup> the “State of origin” must prevent or minimize significant transboundary harm.<sup>105</sup> Aurélia is the ‘State of origin’/‘State of export’<sup>106</sup> as its territory, jurisdiction, or control<sup>107</sup> of which the activities resulting in transboundary harm were carried out<sup>108</sup> or from which a TBM is planned or initiated<sup>109</sup> and in the Ravalancia-originated shipment, Kvaros—not Aurélia<sup>110</sup>—was the ‘State of import’ as the Party to which a TBM is planned for the purpose of disposal.<sup>111</sup>

## 2. *Arguendo, Ravalancia’s actions aimed to prevent greater harm under the ‘no-harm’ rule.*

Under CIL, States are obliged to prevent their territory from being used for activities that infringe upon the rights of other States.<sup>112</sup> This duty entails exercising the best possible efforts to minimize environmental risks,<sup>113</sup> constituting an obligation of means rather than of result.<sup>114</sup> A State breaches this duty if it fails to take reasonable preventive measures<sup>115</sup> and uphold

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<sup>101</sup> Ibid, Art. 4(8).

<sup>102</sup> Basel Convention, Art. 2(10).

<sup>103</sup> Ibid, Art. 2(11).

<sup>104</sup> *Rail Smelter Arbitration*, 1905, 1965; ILC, Draft Articles (2001), Art. 3, commentary ¶14.

<sup>105</sup> Draft Articles on Prevention of Transboundary Harm from Hazardous Activities with Commentaries, adopted by the ILC at its 53<sup>rd</sup> Sess., U.N. Doc. UN/A/56/10 (2001), ¶¶1-18 of Art. 3; Rio Declaration, Principle 2 (**“Prevention of Transboundary Harm Commentaries”**); Stockholm Convention, Principle 21.

<sup>106</sup> Compromis, ¶¶13-14.

<sup>107</sup> Compromis, ¶¶12, 20.

<sup>108</sup> Prevention of Transboundary Harm Commentaries, ¶¶7-12 of Art. 1, ¶10 of Art. 2.

<sup>109</sup> Secretariat of the Basel Convention, Basel Convention Glossary of terms (UNEP/BRS/2017/3, UNEP 2017), 7 (**“Glossary”**).

<sup>110</sup> Compromis, ¶¶12, 22.

<sup>111</sup> Glossary, 7; Compromis, ¶¶13-14.

<sup>112</sup> *Corfu Channel*, 21-22; *Gabcikovo-Nagymaros*, ¶140; *Pulp Mills*, ¶¶203-205.

<sup>113</sup> Rio Declaration 14, Principle 2; *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, ¶29; *Iron Rhine Railway Arbitration (Belgium v Netherlands)* (Award, 24 May 2005) 27 RIAA 35, ¶222 (**“Iron Rhine”**); *Pulp Mills*, ¶101; *Corfu Channel*, 22-23.

<sup>114</sup> *Pulp Mills*, ¶187; Responsibilities and obligations, ¶110.

<sup>115</sup> *Corfu Chanel*, 23; *Iron Rhine*, ¶222.

standard of due diligence<sup>116</sup>. In compliance, Ravalancia adopted key measures through WERA, including a requirement for PIC for the export of "waste" and the establishment of criteria and a system to distinguish waste from used electronics.<sup>117</sup>

**B. ARTICLE 9(2) FOUNDS OBLIGATIONS FOR THE ‘STATE OF EXPORT’ IN CASES OF ILLEGAL TRAFFIC.**

**1. *Being the ‘state of export’, Kvaros has an obligation to ensure ‘take-back’ under Article 9(2)(a).***

Waste Management Norms (“WMN/s”)—encompassing environmentally sound hazardous waste disposal (“ESM”),<sup>118</sup> and take-back duties<sup>119</sup>—are well-established CIL as evinced by State practice<sup>120</sup> and *opinio juris*.<sup>121</sup> Being the State of export,<sup>122</sup> Kvaros has the primary responsibility,<sup>123</sup> to ensure take-back under Article 9(2)(a).<sup>124</sup>

**2. *In Alternatim, Kvaros has obligation ESM disposal under Article 9(2)(b).***

If impracticable,<sup>125</sup> then under WMNs, an established customary international law,<sup>126</sup> obligate the ‘State of export’, Kvaros<sup>127</sup> to procure the proper disposal of waste transported in

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<sup>116</sup> ILC, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Yearbook of the International Law Commission 2001, Vol. II, Part Two, Article 3; Advisory Opinion OC-23/17, ¶124.

<sup>117</sup> Compromis, ¶¶5-6.

<sup>118</sup> Basel Convention, Arts 4(2)(d)–(e), 10.

<sup>119</sup> Ibid, Arts.8-9.

<sup>120</sup> *Regulation (EC) 1013/2006 of the European Parliament* [2006] OJ L190/1; H N Vu, 'The Law of Treaties and the Export of Hazardous Waste' (2001) 425–428; OECD Council, *Decision of the Council Concerning the Control of Transboundary Movements* C(2001)107/FINAL; Resource Conservation and Reco. Act, 42 USC §§ 6921–6939 (2018).

<sup>121</sup> Bamako Convention, Arts 6–9; J Albers, *Responsibility and Liability in the Context of Transboundary Movements of Hazardous Wastes by Sea* (Springer 2015) 112; Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes, Arts 6–9; G.A. Res. 66/288, ¶213, 219.

<sup>122</sup> Compromis, ¶¶13-14, 20.

<sup>123</sup> Secretariat of the Basel Convention, *Guidance on Illegal Traffic* (2015) ¶48.

<sup>124</sup> Basel Convention, Art. 9(2)(a).

<sup>125</sup> Guidance on Illegal Traffic, ¶94.

<sup>126</sup> Pleadings (IV)(A)(i).

<sup>127</sup> Ibid; Compromis, ¶13-14, 20.

contravention of ESM standards.<sup>128</sup> Kvaros would be responsible for complying with Article 6 obligations<sup>129</sup> for any new transboundary movement required for this ESM disposal.<sup>130</sup>

**3. *Ravalancia had no 'reason to believe' that Kvaros would not dispose/re-export of the waste in an ESM.***

The 'State of export' must ensure ESM of hazardous waste.<sup>131</sup> Waste transfers violate Art. 11<sup>132</sup> & WMNs<sup>133</sup> if: recipient believed to lack ESM, or no contract details disposal method/site/technical.<sup>134</sup> 'State of export' must then highly scrutinize<sup>135</sup> recipient's ESM legal/infrastructure.<sup>136</sup> Kvaros, having advanced tech industries<sup>137</sup> and EIA;<sup>138</sup> its major firm, Sortlax Technologies, established Sortlax Circulation for diagnostics, using advanced machine learning,<sup>139</sup>—all of which are reasonable grounds to expect Kvaros had capacity for ESM.

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<sup>128</sup> Basel Convention, Art. 9(2)(b).

<sup>129</sup> Basel Convention, Art. 6.

<sup>130</sup> Guidance on Illegal Traffic, ¶97; Appendix 4.

<sup>131</sup> Guidance on Illegal Traffic, ¶48; Fajar Alje Setiawan, 'Re-interpreting the environmentally sound management under Basel Convention' (2020) 6 Padj J Intl L 160, 174.

<sup>132</sup> Basel Convention, Arts 4(2)(e), 11; K Kummer, *International Management of Hazardous Wastes: The Basel Convention and Related Legal Rules* (OUP 1995) 56.

<sup>133</sup> Basel Convention, Arts. 4(2)(d), 4(10).

<sup>134</sup> Basel Convention, Art. 6.3, Annex VA.

<sup>135</sup> E V der Marel, 'Trading plastic waste in a global economy' (2022) 34 J Environ Law 1, 17.

<sup>136</sup> Framework for the environmentally sound management of hazardous wastes and other wastes, UN Doc UNEP/CHW.11/3/Add.1/Rev.1 (2 May 2013) ¶39.

<sup>137</sup> Compromis, ¶8.

<sup>138</sup> Compromis, ¶9.

<sup>139</sup> Compromis, ¶11.



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**SUBMISSIONS**

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For the aforementioned reasons, the Federation of Ravalancia, respectfully prays that this Court:

- I. **DECLARE** that the Court lacks jurisdiction *ratione materiae* over the claims submitted by Aurélia;
- II. **DECLARE** that Aurélia lacks standing to bring claims against the Federation of Ravalancia;
- III. In the alternative, should the Court find that it has jurisdiction and that the Republic of Aurélia has standing, **DECLARE** that Ravalancia took appropriate measures consistent with its obligations under Article 4, paragraph 4 of the Basel Convention;
- IV. In the alternative, **DECLARE** that Ravalancia is not under an obligation, pursuant to Article 4, paragraph 8 or Article 9, paragraph 2 of the Basel Convention, to take back the waste concerned or ensure its disposal in an environmentally sound manner.

Respectfully submitted,

**AGENTS FOR RESPONDENT**