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2025 ASIA CUP INTERNATIONAL LAW MOOT COURT COMPETITION

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

**THE REPUBLIC OF AURÉLIA**

**(APPLICANT)**

**v.**

**FEDERATION OF RAVALANCIA**

**(RESPONDENT)**

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

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**MEMORIAL FOR THE APPLICANT**

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## PLEADINGS

### **I. This Court has jurisdiction *ratione materiae* over Aurélia's claims.**

This Court has jurisdiction over cases that parties refer to it.<sup>1</sup> Ravalancia and Aurélia have agreed to submit to this Court: (1) any dispute; that (2) concerns the interpretation and application of the Basel Convention.<sup>2</sup>

#### 1. There is a dispute before this Court.

A dispute is a disagreement of law or fact or a conflict of legal interests between parties.<sup>3</sup> After Ravalancia's authorised the transboundary movement ("TBM") of used electronics (the "electronics") to Kvaros, Aurélia asserted that the electronics "constituted 'waste'". Ravalancia disagreed with that assertion and contended that they were "repairable electronics" intended for legitimate reuse.<sup>4</sup> This is a dispute on whether the electronics constitute "waste" arising within the broader dispute on the TBM of said electronics.<sup>5</sup>

#### 2. The dispute concerns the interpretation and application of the Basel Convention.

This Court has jurisdiction *ratione materiae* over the claims where the facts at issue, if established, are capable of constituting treaty violations.<sup>6</sup> This Court must interpret provisions that define the Basel Convention's scope and consider if the facts in issue, assuming they are established, would lead to the violation of treaty obligations.<sup>7</sup>

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<sup>1</sup> Statute of the International Court of Justice (26<sup>th</sup> June 1945) 33 UNTS 993, Art 36(1).

<sup>2</sup> *Moot Problem*, ¶33.

<sup>3</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, ¶37.

<sup>4</sup> *Moot Problem*, ¶31 – 33.

<sup>5</sup> *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019 ("Ukraine (Terrorism & Racial Discrimination)"), ¶28.

<sup>6</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States Intervening)*, Preliminary Objections, Judgment, I.C.J. Reports 2024 ("Ukraine (Genocide)"), ¶136; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, I.C.J. Reports 2024 ("Armenia v. Azerbaijan"), ¶69.

<sup>7</sup> *Ukraine (Genocide)*, ¶139.

- a. *The TBM of the electronics is capable of breaching Ravalancia's obligations under the Basel Convention, if it is established that the electronics constitute "waste".*

The Basel Convention imposes obligations to protect against the adverse effects of *waste*,<sup>8</sup> including the obligations to manage,<sup>9</sup> re-import or dispose of<sup>10</sup> and enforce rules<sup>11</sup> related to *waste*. The TBM of waste without complying with these obligations is illegal traffic, a violation of the Convention.<sup>12</sup> Under the Convention, "wastes" are objects which are intended to be disposed of.<sup>13</sup> Intention to dispose is inferred from objective circumstances, such as the objects' destination, showing that the objects are reasonably expected to be disposed of.<sup>14</sup>

If the allegation that the electronics were "destined for disposal" is true,<sup>15</sup> an intention to dispose would be established and the electronics would constitute "waste".<sup>16</sup> Since the TBM of *waste* is capable of violating treaty obligations, this Court has jurisdiction *ratione materiae*.

- b. *Aurélia need not prove for a fact that the electronics actually constitute "waste".*

Aurélia need not prove for a fact that the electronics constitute "waste" for this Court to have jurisdiction *ratione materiae*.<sup>17</sup> Finding an intention to dispose raises factual issues<sup>18</sup> that are properly reserved for the merits.<sup>19</sup> Currently, the facts that are capable of showing an intention to dispose have been admitted to by both Parties under Art 1 of the Special Agreement.<sup>20</sup> Thus,

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<sup>8</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (22<sup>nd</sup> March 1989), 1673 UNTS 57 ("Basel Convention"), Preamble.

<sup>9</sup> Basel Convention, Art 4(8); Kummer, *International Management of Hazardous Wastes: The Basel Convention and Related Legal Rules* (Oxford, 2000) ("Kummer"), 56.

<sup>10</sup> Basel Convention, Art 9; Kummer, 219 – 221.

<sup>11</sup> Basel Convention, Art 4(4); Kummer, 227.

<sup>12</sup> Basel Convention, Art 9(1); Albers, *Responsibility and Liability in the Context of Transboundary Movements of Hazardous Wastes by Sea* (2014) ("Albers"), 66.

<sup>13</sup> Basel Convention., Art 2(1).

<sup>14</sup> Basel Convention, *Glossary of Terms*, UNEP/BRS/2017/3 (2017) ("Glossary"), 8; Basel Convention, *Interpretation of certain terminology*, UNEP/CHW/OEWG.8/INF/13/Rev.1 (2012) ("Interpretation of certain terminology"), 11.

<sup>15</sup> *Moot Problem*, ¶31.

<sup>16</sup> *cf. Ukraine (Genocide)*, ¶142 – 144.

<sup>17</sup> *Armenia v. Azerbaijan*, ¶70; *Ukraine (Terrorism & Racial Discrimination)*, ¶94.

<sup>18</sup> *Supra.* footnote 14; *Ezeemo v R* [2012] EWCA Crim 2064 ("Ezeemo"), ¶51.

<sup>19</sup> *Armenia v. Azerbaijan*, ¶70; *Ukraine (Terrorism & Racial Discrimination)*, ¶63 & 94.

<sup>20</sup> *Moot Problem*, ¶33.

this Court is capable of entertaining the dispute without examining the substantive merits of intention.<sup>21</sup> Hence, this Court has jurisdiction *ratione materiae* over the dispute.

c. *In any event, the facts are sufficient to demonstrate that the electronics actually constitute “waste”, because they were actually intended to be disposed of.*

An intention to dispose is inferred from circumstances such as the acts of the person possessing the waste,<sup>22</sup> relating to the object’s: (i) condition; (ii) destination; and (iii) eventual fate.<sup>23</sup>

There are sufficient facts to prove that LLT *in fact* intended to dispose of the electronics. (i) LLT did not test the electronics’ functionality and bulk-packed them without protection from standard packaging materials;<sup>24</sup> (ii) the electronics were destined for Sortlax Circulation, set up to harvest recycled components;<sup>25</sup> and (iii) LLT’s internal documents show that it knew most of the electronics were non-functional and likely to be dismantled for parts.<sup>26</sup> “Disposal” includes the recycling of materials for their parts and their accumulation for such purposes.<sup>27</sup> In this context, LLT exported electronics, destined for disposal, with blatant disregard for their function or resale.<sup>28</sup> The electronics were not intended to be repaired,<sup>29</sup> but to be disposed of.

## **II. Aurélia has standing to bring the claims in III and IV against Ravalancia.**

Even if the waste was originally shipped from Ravalancia to Kvaros without Aurelia’s involvement,<sup>30</sup> Aurélia has standing to bring its claims as Ravalancia’s obligations under Arts 4(4), 4(8) and 9(2) of the Convention are owed: (a) *erga omnes partes*; (b) *erga omnes*; and (c)

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<sup>21</sup> *Case concerning right of passage over Indian territory (Preliminary Objections)*, Judgment of November 26th, 1957, I.C. J. Reports 1957, ¶28 – 29.

<sup>22</sup> Vienna Convention on the Law of Treaties (23 May 1969), 115 UNTS 331, Art 31(3)(b); *Interpretation of certain terminology*, Appendix 2, 28; Directive 2008/98/EC of the European Parliament and the Council of 19 November 2008 on Waste, Art 3 No.1 & No. 6.

<sup>23</sup> *Glossary*, p. 8 – 9; *Palin Granit Oy Case 9-00* [2002] ECR I-3533, ¶25; *Ezeemo*, ¶35 & 40.

<sup>24</sup> *Moot Problem*, ¶12.

<sup>25</sup> *Moot Problem*, ¶10 – 12.

<sup>26</sup> *Moot Problem*, ¶26.

<sup>27</sup> Basel Convention, Annex IV, Section B, Operations R4, R5 & R13.

<sup>28</sup> *Ezeemo*, ¶51.

<sup>29</sup> *Moot Problem*, ¶32.

<sup>30</sup> *Moot Problem*, ¶32.

to Aurélia as a specially affected state.<sup>31</sup>

1. Aurélia has *erga omnes partes* standing to bring its claims.

Regardless of special interest or injury, States Parties to a treaty can bring claims for obligations *erga omnes partes*, which: (i) arise from multilateral treaties that protect a common interest of the States Parties;<sup>32</sup> and (ii) are relevant to upholding that common interest.<sup>33</sup> As a State Party to the Basel Convention,<sup>34</sup> Aurélia can bring a claim for Ravalancia's breach of its obligations.

a. *The States Parties to the Basel Convention share a common interest in preventing harm to human health and the environment.*

Common interests "transcend the sphere of bilateral relations",<sup>35</sup> extending beyond individual State interests.<sup>36</sup> They are identified from a treaty's object and purpose,<sup>37</sup> via its text and design. This Court has found that the *Convention against Torture* ("CAT") had a common interest in its preamble, to "make more effective the struggle against torture... *throughout the world*".<sup>38</sup> Similarly, the Basel Convention's object and purpose (in its preamble) is to "protect... human health and the environment against the adverse effects... of wastes", "*whatever the place of disposal*".<sup>39</sup> The Conference of the Parties ("COP") has recognised this as a "collective concern"<sup>40</sup> which serves the world's citizens,<sup>41</sup> requires the "participation of all countries" and

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<sup>31</sup> ARSIWA, Art 42(b)(i).

<sup>32</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J Reports 2012 ("Belgium"), ¶68 – 69; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J Reports 2022 ("Gambia"), ¶112; ILC, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, adopted by the ILC at its 53rd Session, UN Doc A/56/10 (2001) ("ARSIWA Commentary"), Art 48, (7).

<sup>33</sup> *Belgium*, ¶68 – 69; *Gambia*, ¶107; ARSIWA Commentary, Art 48, (7).

<sup>34</sup> *Moot Problem*, ¶34.

<sup>35</sup> ARSIWA Commentary, Art 48, (7).

<sup>36</sup> *Belgium*, ¶69; *Gambia*, ¶108.

<sup>37</sup> Pok Yin S. Chow, "On Obligations *Erga Omnes Partes*" (2021) 52:2 GeoJInt'lL, 496;

<sup>38</sup> *Belgium*, ¶68.

<sup>39</sup> Basel Convention, Preamble, 4 & 6 – 7.

<sup>40</sup> Basel Convention, *Report of the Eighth Meeting of the Conference of the Parties to the Basel Convention*, UNEP/CHW.8/16 (2007), ¶13.

<sup>41</sup> Basel Convention, *Report of the Fourth Meeting of the Conference of the Parties to the Basel Convention*, UNEP/CHW.4/35 (1998), ¶5.

leaves “no room for self-centred... positions”.<sup>42</sup> Thus, States Parties have a common interest in protecting human health and the environment globally, not merely within their own territory.

*b. Ravalancia’s Obligations are central to fulfilling this common interest.*

The Art 4(8) obligation ensures that steps are taken to reduce the risk of harm posed to human health and the environment by waste.<sup>43</sup> If these steps are not followed, waste is considered illegally trafficked and must be re-imported to mitigate the potential harm arising from the waste.<sup>44</sup> Under Art 4(4), all States Parties must prevent and punish illegal traffic in a concerted effort,<sup>45</sup> as part of a regulatory framework central to fulfilling the common interest.<sup>46</sup> All other States Parties have a common interest in compliance with the obligations by the exporting State, no matter where the waste is exported to.<sup>47</sup> Thus, Aurélia has *erga omnes partes* standing.

2. Aurélia has *erga omnes* standing to bring its claims.

All States can bring claims for obligations *erga omnes*, which: (i) arise from treaty obligations that reflect custom;<sup>48</sup> and (ii) protect a common, essential interest owed to the international community as a whole.<sup>49</sup> The prevention of risk of harm, the aim of Ravalancia’s Obligations, embodies the customary obligation to prevent the risk of environmental harm (“**Prevention Principle**”).<sup>50</sup> Thus, Ravalancia’s Obligations must be interpreted as a reflection of the

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<sup>42</sup> Basel Convention, *Report of the Tenth Meeting of the Conference of the Parties to the Basel Convention*, UNEP/CHW.10/28 (2011), ¶17.

<sup>43</sup> Beyerlin & Marauhn, *International Environmental Law* (2011), 40 – 41; Rayfuse, “Principles of international environmental law applicable to waste management”, *Waste Management and the Green Economy* (2016) (“Rayfuse”), 23 – 24.

<sup>44</sup> Basel Convention, Arts 9(1) & 9(2). Albers, 33.

<sup>45</sup> *Belgium*, ¶74 – 75.

<sup>46</sup> Brunnée, *Procedure and Substance in International Environmental Law* (2020) (“Brunnée”), 181 – 191.

<sup>47</sup> *Belgium*, ¶68 – 69.

<sup>48</sup> ILC, ‘Report of the ILC: Seventy-Third Session’, Draft Conclusion 17, 66; Tanaka, “The Legal Consequences of Obligations *Erga Omnes* in International Law” (2021) 68:1 *NethInt’lLRev* (“Tanaka”), 3; *Responsibilities and Obligations of States with respect to activities in the Area, Advisory Opinion*, [2011] ITLOS Rep. 10, ¶180.

<sup>49</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, *I.C.J. Reports* 1970, ¶33; *ARSIWA Commentary*, Art 48 (8) – (10); Tanaka, 9.

<sup>50</sup> Maljean-Dubois, “The No-Harm Principle as the Foundation of International Climate Law”, *Debating Climate Law* (2021), 19 – 20; Brunnée, p. 102; Rayfuse, ¶21 & 24.



Prevention Principle in the context of waste.<sup>51</sup> The Prevention Principle prioritises environmental protection over territorial sovereignty<sup>52</sup> as a “common superior interest of mankind”<sup>53</sup> underlying the health and survival of humanity.<sup>54</sup> Thus, Ravalancia’s Obligations are owed “*vis-à-vis* the international community”,<sup>55</sup> and Aurélia has *erga omnes* standing.

3. Aurélia has standing to bring its claims as a specially affected state.

A State is specially affected if, considering the object and purpose of the primary obligation, the breach affects it in a way that distinguishes it from the other states to which the obligation is owed.<sup>56</sup> The consequence of the breach must be what the obligation specifically intended to prevent.<sup>57</sup> Given that Ravalancia’s Obligations protects against the risk of harm,<sup>58</sup> actual harm is exactly what was intended to be prevented – and is exactly what was inflicted upon Aurélia.<sup>59</sup> Ravalancia’s breach allowed the illegal traffic of waste to Kvaros, and eventually to Aurélia.<sup>60</sup> This very waste polluted the Lokoro Basin, depended on by half of all Aurélians for water,<sup>61</sup> leading to the widespread suffering of birth defects by Aurélian newborns.<sup>62</sup> Unlike other States, Aurélia was specially affected because her people were the very group that was harmed. Thus, if any State should have standing to hold Ravalancia responsible, it must be Aurélia.

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<sup>51</sup> *South China Sea (Philippines v. China)* (Award of 12 July 2016) 170 ILR 1, ¶941; *Iron Rhine Railway Arbitration (Belgium v The Netherlands)* (2005) 27 RIAA 35, ¶59 & 222.

<sup>52</sup> Brent, “The *Certain Activities* Case: What Implications for the No-Harm Rule” (2017) 20 APJEL 28 – 56, 36 – 37; Brunnée, 60.

<sup>53</sup> *Pulp Mills (Separate Opinion of Judge Cançado Trindade)*, ¶173.

<sup>54</sup> *Gabčíkovo-Nagymoros Project (Hungary v. Slovakia)*, *Judgment*, I.C.J Reports 1997 (“*Gabčíkovo*”), ¶53; *Gabčíkovo (Separate Opinion of Judge Weeramantry)*, 91; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J Reports 1996, ¶29; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J Reports 2010 (“*Pulp Mills*”), ¶101.

<sup>55</sup> Basel Convention, *Report of the First Meeting of the Conference of the Parties to the Basel Convention*, UNEP/CHW.1/24 (1992), ¶3 & 6.

<sup>56</sup> ARSIWA, Art 42(b)(i); ARSIWA Commentary, Art 42 (12).

<sup>57</sup> *Gambia (Declaration of Judge ad hoc Kress)*, ¶28.

<sup>58</sup> Rayfuse, 22 – 23; Brunnée, 151; *Pulp Mills (Joint Dissenting Opinion of Judge Al-Khasawneh and Simma)*, ¶26.

<sup>59</sup> ARSIWA Commentary, Art 42 (12); *Gambia (Declaration of Judge ad hoc Kress)*, ¶28.

<sup>60</sup> *Moot Problem*, ¶20 – 22.

<sup>61</sup> *Moot Problem*, ¶1.

<sup>62</sup> *Moot Problem*, ¶18 – 19.

### **III. Ravalancia failed to take appropriate measures to prevent and punish the illegal traffic of hazardous waste from its territory to Kvaros.**

Art 4(4) of the Basel Convention imposes an obligation of conduct<sup>63</sup> upon States Parties to take “appropriate” measures – which entails all means at its disposal<sup>64</sup> – to achieve its policy objective.<sup>65</sup> This entails a standard of due diligence, which is based on a State’s: (i) economic and administrative capabilities;<sup>66</sup> (ii) awareness of a potential risk;<sup>67</sup> and (iii) degree of risk.<sup>68</sup>

With Ravalancia’s growing capabilities and heightened awareness of the high degree of risk that e-waste poses, its implementation and enforcement of its: (i) Waste Export Regulation Act (“**WERA**”); and (ii) E-Waste Management Act (“**EWMA**”) fall below the due diligence standard to prevent and punish the illegal traffic of hazardous waste into Kvaros.

#### **1. Ravalancia failed to implement appropriate measures to prevent illegal traffic.**

While States Parties are free to adopt a range of rules or measures, the vigilance element of due diligence requires enforcement mechanisms to secure compliance.<sup>69</sup> However, Ravalancia’s enforcement of the EWMA and WERA was insufficient to meet the standard of due diligence.

##### *a. The EWMA lacked sufficient compliance mechanisms.*

Ravalancia’s failure to adopt sufficient compliance mechanisms for the EWMA despite having the means at its disposal amounts to a failure to discharge its Art 4(4) obligation. The EWMA implements Extended Producer Responsibility (“**EPR**”) to place the cost for waste disposal on

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<sup>63</sup> *Pulp Mills*, ¶187; *Responsibilities in the Area*, ¶111.

<sup>64</sup> *Pulp Mills*, ¶101; *Responsibilities in the Area*, ¶120.

<sup>65</sup> *Pulp Mills*, ¶81, 140 & 177.

<sup>66</sup> *Responsibilities in the Area*, ¶129, 151 – 163.

<sup>67</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)*, Judgment, I.C.J. Reports 2007 (“*Bosnian Genocide*”), ¶430 & 432.

<sup>68</sup> *Responsibilities in the Area*, ¶117; ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, UN GAOR 56th Session, Supp. No. 10, UN Doc. A/56/10 (2001) (“*PTHHA Commentary*”), Art 3 (11).

<sup>69</sup> *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, ¶138; *Pulp Mills*, ¶197.

producers, incentivising them to minimise waste generation<sup>70</sup>. This was noted by the COP to be the most effective way to prevent illegal traffic.<sup>71</sup> Uniform producer responsibility is vital to EPR programs<sup>72</sup> and other States Parties have ensured its mandatory inclusion.<sup>73</sup>

However, compliance under the EWMA was enforced almost exclusively by voluntary industry initiatives, and uniform obligations amongst different producers were not imposed.<sup>74</sup> This was despite Ravalancia having the means to do so as an industrialised country.<sup>75</sup> Responsibility for waste disposal fell to third-party waste collectors, who lacked the resources to ensure disposal in an environmentally sound manner (“**ESM**”).<sup>76</sup> As a result, waste collectors such as LLT were incentivised to engage in illegal traffic to ensure profitability.<sup>77</sup> This constituted part of Ravalancia’s failure to discharge its due diligence obligations.

*b. The WERA lacked sufficient enforcement and compliance mechanisms.*

Similarly, Ravalancia failed to discharge its Art 4(4) obligation by enforcing and adopting inadequate compliance mechanisms for the WERA. The WERA criminalises the export of waste without prior informed consent (“**PIC**”) and is enforced by inspections from customs officials. However, the customs inspections fell below the standard of due diligence. When

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<sup>70</sup> Basel Convention, *Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with mercury or mercury compounds*, UNEP/CHW.15/16/Add.6/Rev.1(2022) (“*Technical Guidelines on Mercury*”), ¶132.

<sup>71</sup> Basel Convention, Preamble (3); Basel Convention, *Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes Subject to the Basel Convention*, UNEP/BC-I/19 (1994), ¶4 – 7.

<sup>72</sup> *Technical Guidelines on Mercury*, ¶132.

<sup>73</sup> Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC.

<sup>74</sup> *Moot Problem*, ¶4.

<sup>75</sup> *Moot Problem*, ¶2.

<sup>76</sup> *Moot Problem*, ¶3 – 4.

<sup>77</sup> *Moot Problem*, ¶26.

presented with poorly packaged, untested electronics, authorities must also conduct tests to determine whether the electronics are damaged or posed an environmental hazard.<sup>78</sup>

During the 2021 inspection, the officials ought to have conducted further investigations as: (i) LLT could not have known the electronics were “repairable” without testing, especially when exporting a large volumes of electronics;<sup>79</sup> and (ii) the electronics were bulk-packaged without standard packaging materials,<sup>80</sup> which requires further investigation under the Convention guidelines.<sup>81</sup> Furthermore, the enforcement authorities failed to actively conduct investigations.<sup>82</sup> The officials instead required “objective proof” and confirmation by the importing State before taking action,<sup>83</sup> defeating the purpose of the PIC system which is to prevent TBM of hazardous waste before it takes place<sup>84</sup>.

As an industrialised State aware of a domestic e-waste crisis,<sup>85</sup> Ravalancia could and should have included stronger compliance mechanisms and a higher standard of investigation in its enforcement of the EWMA and the WERA. Thus, failure to do so amounts to a breach of its due diligence obligations to prevent illegal traffic.

## 2. Ravalancia failed to implement appropriate measures to punish illegal traffic.

Ravalancia’s failure to impose producer liability under the WERA also amounts to a failure to discharge its due diligence obligations. The COP has highlighted the need to implement national legislation to impose producer liability in case exporters abscond or otherwise cannot

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<sup>78</sup> Basel Convention, *Instruction Manual on the Prosecution of Illegal Traffic of Hazardous Wastes or Other Wastes*, UNEP/BC-IX/23 (2012), 38.

<sup>79</sup> *Moot Problem*, ¶28 – 29.

<sup>80</sup> *Moot Problem*, ¶2.

<sup>81</sup> Basel Convention, *Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes* UNEP/BC-VI/16 (2002), ¶88.

<sup>82</sup> *Ibid.* at ¶47.

<sup>83</sup> *Moot Problem*, ¶28.

<sup>84</sup> Basel Convention, Art 6.

<sup>85</sup> *Moot Problem*, ¶2 – 3.

bear liability.<sup>86</sup> But Ravalancian legislation does not allow for secondary producer liability at all.<sup>87</sup> Since LLT has dissolved, it is impossible to punish any party for the illegal traffic,<sup>88</sup> and Ravalancia failed to meet its due diligence obligations to punish illegal traffic.

#### **IV. Ravalancia is under an obligation to ensure that the waste is taken back or otherwise disposed of in an environmentally sound manner**

1. These obligations are imposed as the transfer of waste from Ravalancia to Kvaros is illegal traffic that was caused by the exporter.

For exporting States to come under the Art 9(2) obligation to either take back or dispose of waste, three elements must be satisfied: (a) there was a TBM of *hazardous* wastes or other wastes; (b) the TBM is deemed to be *illegal traffic*; and (c) the illegal traffic occurred *as a result* of conduct on the part of the exporter or generator<sup>89</sup>.

##### *a. There was a transboundary movement of hazardous wastes.*

Waste is considered hazardous<sup>90</sup> when it: (i) falls under a category in Annex I of the Convention; and (ii) has at least one hazardous characteristic under Annex III.<sup>91</sup> Here, there was a TBM of 120,000 metric tons of used electronics.<sup>92</sup> These electronics are wastes containing metallic compounds, including:<sup>93</sup> (i) mercury, found in the screens of electronics;<sup>94</sup> (ii) lead, nickel and lithium contained in batteries;<sup>95</sup> and (iii) copper and arsenic used in circuits and wiring.<sup>96</sup> Hence, the e-waste shipped to Kvaros likely contained these constituent metals under Annex I of the Convention.

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<sup>86</sup> Guidance on the Implementation of the Basel Convention Provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of article 9), UNEP/CHW.13/9/Add.1/Rev.1. (2017) ¶37

<sup>87</sup> *Moot Problem*, ¶27.

<sup>88</sup> *Moot Problem*, ¶27.

<sup>89</sup> Basel Convention, Art 9(2).

<sup>90</sup> Basel Convention, Art 1.

<sup>91</sup> Basel Convention, Annex III.

<sup>92</sup> *Moot Problem*, ¶12.

<sup>93</sup> *Moot Problem*, ¶16; Basel Convention, Annex I, Y22 – 23.

<sup>94</sup> *Moot Problem*, ¶3.

<sup>95</sup> *Moot Problem*, ¶3.

<sup>96</sup> *Moot problem*, ¶16.

Accordingly, the e-waste has hazardous characteristics under Annex III – its constituent heavy metal parts leave behind metallic compounds<sup>97</sup> that adversely impact the environment and health through accumulation in living beings.<sup>98</sup> This was indeed the case when the metal residues from e-waste, which can be traced to Kvaros,<sup>99</sup> leached into the Lokoro Basin.<sup>100</sup> Thus, the Ravalancian e-waste shipped to Kvaros is hazardous waste under the Convention.

*b. The transboundary movement is deemed to be illegal traffic.*

A TBM of hazardous waste is deemed illegal traffic if: (i) the movement was done without notification or consent; (ii) the waste does not materially conform to its documents; or (iii) it resulted in a deliberate disposal of wastes in contravention of the Convention or general principles of international law.

*First*, LLT claimed the wastes were intended for repair, not disposal, and did not inform Kvaros of their hazardous nature.<sup>101</sup> Thus, Ravalancia did not notify Kvaros, nor did Ravalancia obtain its consent to the TBM of hazardous wastes. *Second*, the e-waste was marked as “repairable electronics” despite LLT knowing that most of the electronics lacked basic functionality.<sup>102</sup> This was not an immaterial mistake such as a spelling error<sup>103</sup> – it is a material distinction as basic functionality is a precondition for repair. Thus, the wastes did not conform in a material way to its documents. *Third*, Art 4(8) of the Convention was contravened. LLT knew the electronics would not be repaired<sup>104</sup> but rather scavenged for parts.<sup>105</sup> This violates the Art 4(8) obligation to manage waste in an ESM, which requires potentially hazardous elements to be

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<sup>97</sup> Basel Convention, *Document developed by the Partnership for Action on Computing Equipment*, UNEP/CHW.13/INF/31/Rev.1 (2017) (“*PACE Document*”), ¶1.4.5.

<sup>98</sup> Basel Convention, Annex III, H12.

<sup>99</sup> *Moot problem*, ¶19.

<sup>100</sup> *Moot problem*, ¶17.

<sup>101</sup> *Moot Problem*, ¶26.

<sup>102</sup> *Moot Problem*, ¶26.

<sup>103</sup> *Docdex Case No. 290*, Decision No. 290, 4 June 2025, ICC, ¶5.

<sup>104</sup> *Moot Problem*, ¶26.

<sup>105</sup> *Moot Problem*, ¶20.

separated out and disposed of according to technical guidelines.<sup>106</sup> Hence, the TBM of the e-waste constitutes illegal traffic.

*c. The illegal traffic was the result of the conduct of the exporter in Ravalancia.*

Responsibility for illegal traffic rests on the party arranging the traffic of wastes,<sup>107</sup> regardless of who owns it.<sup>108</sup> LLT arranged for the movement of e-waste from Ravalancia to Kvaros<sup>109</sup> and its actions breached Art 9(1), by: (i) exporting the waste without notifying Kvaros authorities; (ii) labelling non-functional waste as “repairable”; and (iii) allowing the wastes to be scrapped for parts. Thus, the illegal traffic occurred as the result of LLT’s conduct. Since LLT is based in Ravalancia,<sup>110</sup> Ravalancia must ensure ESM disposal of or re-import the wastes.

2. These obligations are imposed as part of Ravalancia’s general obligation to ensure wastes are disposed of in an environmentally sound manner

Under Art 4(8), States must ensure that wastes to be exported are managed in an ESM according to technical guidelines.<sup>111</sup> Disposal in an ESM is a corollary obligation of this duty.<sup>112</sup> If the waste cannot be recycled or reclaimed, it must undergo disposal in an ESM.<sup>113</sup> This is exactly the case: the e-waste has already been harvested for their valuable parts.<sup>114</sup> Ravalancia remains responsible for ESM management, which may not be transferred to an importing State<sup>115</sup> because the ESM requirement is a precondition<sup>116</sup> of waste exportation. Thus, Ravalancia is responsible for ensuring disposal of or re-importing the waste.

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<sup>106</sup> *PACE Document*, ¶5.1.7.

<sup>107</sup> *Ibid.*

<sup>108</sup> Basel Convention, *Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes* UNEP/BC-VI/16 (2002), ¶88.

<sup>109</sup> *Moot Problem*, ¶12.

<sup>110</sup> *Moot Problem*, ¶7.

<sup>111</sup> Basel Convention, Art 4(8).

<sup>112</sup> *PACE Document*, ¶. 5.1.1.

<sup>113</sup> *PACE Document*, ¶. 2.2.3.2.

<sup>114</sup> *Moot Problem*, ¶16 & 20.

<sup>115</sup> Basel Convention, Art 4(10).

<sup>116</sup> van der Marel, “Trading Plastic Waste in a Global Economy: Soundly Regulated by the Basel Convention?” (2022) 34 J Env L 477-497.

## **SUBMISSIONS**

The Republic of Aurélia respectfully requests this Court to adjudge and declare that:

- I. This Court has jurisdiction *ratione materiae* to entertain the dispute brought to it by the Republic of Aurélia;
- II. The Republic of Aurélia has standing to bring the dispute under claims III and IV concerning the Federation of Ravalancia's failure to protect against the risk of environmental harm before this Court;
- III. Under Article 4(4), the Federation of Ravalancia did not take appropriate legal, administrative or other measures to prevent and punish the illegal traffic of hazardous waste from its territory to the State of Kvaros;
- IV. Under Article 9(2) or alternatively under Article 4(8), the Federation of Ravalancia is under an obligation to ensure that the waste concerned is taken back or otherwise disposed of in an environmentally sound manner.