BENCH MEMORANDUM FOR JUDGES

THE CASE CONCERNING THE SISTERS OF THE SUN

VERSION 1.0

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OF THE 2017 PHILIP C. JESSUP

INTERNATIONAL LAW MOOT COURT COMPETITION

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1 INTRODUCTION

1.1 PURPOSE OF THE BENCH MEMORANDUM

The Bench Memorandum provides judges with basic factual and legal information to evaluate the written and oral performances of participating teams. It should be read in conjunction with the 2017 Jessup Problem (the "Compromis") and the Corrections and Clarifications to the Compromis.

The Compromis was designed to present the competitors with a balanced problem with strengths and weaknesses on each side. Jessup teams should be able to construct logical arguments as both Applicant and Respondent. As a judge, your task is to evaluate the quality of each team's analysis, knowledge of international law, and advocacy skills. Please make sure not to confuse this task with your own personal evaluation of the merits of the case. This document is not meant to be an exhaustive treatise on the legal issues raised in the Compromis. Judges should be aware that this document has been condensed in favor of breadth. It does not purport to cover every last detail, though we do aim to contextualize the law both within society and within the events of the Compromis. In many instances, relevant case law and state practice is alluded to, but not discussed in depth. The participants should address cases and principles of law. The state practice and legal authorities cited herein are illustrative and not intended to be a comprehensive review of all relevant sources of law. As such, judges should not be surprised when participants present arguments or cite authorities that may not be discussed in this memorandum. This is perfectly appropriate, and does not suggest that such arguments are not relevant or credible.

As always, judges are encouraged to engage in their own independent research on the issues or examine the suggested research materials given to students. These materials are available online at www.ilsa.org: the First Batch of Basic Materials; the Second Batch of Basic Materials; and the Jessup Compromis Expert Panel Discussion (International Law Weekend, Fordham Law School).

1.2 INTRODUCTION TO INTERNATIONAL LAW

This section is a primer on public international law for judges who may not have professional experience or training in the field. There is an important distinction between international law and most domestic legal systems in terms of what sources of law are acceptable before the Court.

1.2.1 General

The Statute of the Court governs the conduct and rules of the International Court of Justice (ICJ). Under Article 38(1) of the ICJ Statute, the ICJ may consider the following sources of international law in order to decide disputes before it:

a) treaties or conventions to which the contesting States are parties;
b) international custom, as evidence of a general practice accepted as law;

c) general principles of law recognized by civilized nations;
d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Commentators disagree as to whether the first three sources are listed in order of importance. All of these sources are perfectly acceptable before the Court and an important aspect of argumentation before the ICJ includes advocating for why a particular source is more or less relevant than another source.

Judges from common-law systems should note the status of precedent. Article 59 of the ICJ Statute states that decisions of the Court are binding only on the parties to the case, and are without formal effect as precedent. However, in practice, the ICJ often cites both its prior decisions and those of its predecessor, the Permanent Court of International Justice, as persuasive authority (pursuant to Article 38(1)(d)). Additionally, the Court frequently evaluates rules of customary international law in its opinions and subsequently relies upon those evaluations.

Resolutions of the United Nations General Assembly are not, of themselves, binding upon the Court. Resolutions can be argued to reflect evidence of state opinion on an issue, evidence of a general principle, or even as a reflection of state practice or *opinio juris* to help establish custom.

1.2.2 **Treaties**

Treaties are agreements between and among States, by which parties obligate themselves to act according to the terms of the treaty. Rules regarding treaty procedure and interpretation are defined in the Vienna Convention on the Law of Treaties (VCLT).

Article 26 of the VCLT sets out the fundamental principle relating to treaties, *pacta sunt servanda*, which provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." Even if a State is not party to a treaty, the treaty may serve as evidence of customary international law if, over time, its provisions have come to be regarded as custom by nonparty states. Judges should be aware, however, of instances where a treaty might not be custom in its entirety, but some of its provisions may very well have ascended to the level of custom.

Article 31 of the VCLT requires that treaties be interpreted in good faith, in accordance with its ordinary meaning given its context, and in light of its object and purpose. The context of a treaty can be taken from a variety of sources including a treaty's preamble or annexes, any prior or subsequent agreements between the parties related to the treaty, and any relevant rules of international law. If the meaning is still ambiguous, one may also take into account supplementary methods of interpretation, including references to the *travaux preparatoires* (akin to legislative history) of the treaty and the circumstances of its conclusion.

1.2.3 **Customary International Law**

The second source of international law is customary international law (also known as "custom"). A rule of customary international law is one that has binding force of law because the community of states treats it and views it as a rule of law. In contrast to treaty law, a rule of customary international law is binding upon a state whether or not it has affirmatively assented to that rule.

In order to prove that a given rule has become custom, one must prove two elements: widespread state practice and *opinio juris*. "State practice" refers to a sufficient number of states behaving in a regular and repeated manner consistent with the argued for rule of custom. Some commentators argue that the practice of a small number of states in a particularized region can create "regional customary international law." Others argue that the practice of specially affected states (such as in the area of space law where there few state participants) can create custom that binds other non-specially affected states as long as those states acquiesce to the practice of the specially affected states. The ICJ has acknowledged both of these possibilities.

Opinio juris is the subjective element of customary international law. It requires that the state action in question is done out of a belief that the rule is law. Put another way, *opinio juris* is the "conviction of a State that it is following a certain practice as a matter of law and that, were it to depart from the practice, some form of sanction would, or ought to, fall on it." Mark E. Villiger, Customary International Law and Treaties 4 (1985).

Customary international law is shown by reference to treaties, decisions of national and international courts, national legislation, diplomatic correspondence, opinions of national legal advisers, and the practice of international organizations. Each of these items might be employed as evidence of state practice, *opinio juris*, or both. In the *North Sea Continental Shelf Cases*, the ICJ stated that the party asserting a rule of customary international law bears the burden of proving it meets both requirements.

1.2.4 General Principles of Law

The third source of international law consists of "general principles of law." The bulk of recognized general principles are procedural in nature (*e.g.*, burden of proof and admissibility of evidence). Many others, such as waiver, estoppel, unclean hands, necessity, and *force majeure*, may sound familiar to a common-law practitioner as doctrines of equity. The principle of general equity in the interpretation of legal documents and relationships is one of the most widely cited general principles of international law.

It is important to note, however, that "equity" in this sense differs from the Court's power to decide a case *ex aequo et bono* (considering solely principles of "right and wrong"), a separate matter treated under Article 38(2) of the Statute.

1.2.5 Subsidiary Means of Finding the Law

The final sources of international law are “a subsidiary means of finding the law” which often include judicial decisions and scholarly writings. These act, essentially, as research aids for the Court, and are often used to support or refute the existence of a customary norm, to clarify the bounds of a general principle or customary rule, or to demonstrate state practice under a treaty.

Judicial decisions, whether from international tribunals or from domestic courts, are useful to the extent that they address international law directly, demonstrate a general principle, or remark upon a similar situation to the case at hand.

Many student competitors make the mistake of believing that any published article rises to the level of an Article 38(1)(d) “teaching.” This provision is limited to the teachings of “the most highly qualified publicists.” For international law this can include names such as Grotius, Lauterpacht, Oppenheim, McNair and Brownlie. This list is illustrative, and by no means exclusive; judges should question oralists about the identity and validity of a cited scholarly source. Furthermore, authoritative sources within this list can include the writings of former Judges, the secondary opinions of Judges who decline to join the majority in a case, and documents created by the International Law Commission (ILC). Within the context of a specific field, there are additional scholars who could also be regarded as “highly qualified publicists.”

1.2.6 Burdens of Proof

In the *Corfu Channel Case* (U.K. v. Albania, 1949), the ICJ set out the burdens of proof applicable to cases before it. Applicant normally carries the burden of proof with respect to factual allegations contained in its claim and must satisfy this burden via a preponderance of the evidence. The burden falls on Respondent with respect to factual allegations contained in a cross-claim. The Court may also draw an adverse inference against a party if it refuses to produce evidence that is solely within its own control.

2 GUIDE TO THE COMPROMIS

2.1 SUMMARY OF THE CASE

The 2017 Jessup Compromis raises questions regarding the use of transboundary underground aquifers, the legality of natural resource development that causes damage to a UNESCO World Heritage Site, the repatriation of stolen cultural artifacts, and whether a country owes compensation to another country for having to host refugee camps. Judges should read the Compromis and the Corrections and Clarifications to the Compromis in their entirety in the course of their preparations.

The two countries that are parties to this dispute are the Federation of the Clans of the Atan (Atania) and the Kingdom of Rahad. Atania and Rahad are located on the Nomad Coast, an arid region. The two countries share a common cultural history; the citizens of both states are descendants of the Atans, a nomadic group that occupied the Nomad Coast region in prehistory. In 1863, most of the clans of the Atans created a federated state, Atania; the one clan that refused to join the federation formed the Kingdom of Rahad.

One of the clans of the Atans that joined in the Atanian federation is Clan Kin. Clan Kin is culturally and politically isolated from the rest of Atanian society; its members avoid modern technology and are largely subsistence farmers. For centuries, the Kin lived in a set of canyons near the Atania/Rahad border that are now known as the “Kin Canyon Complex.” These canyons are natural wonders and, with depths of up to 1.4 kilometers, they are some of the deepest canyons on earth. They are also archaeological marvels, with significant architectural and ceremonial buildings dating back thousands of years.

In approximately 500 CE, a warrior of Clan Kin, Teppa, led the other clans of the Atans to defeat an invasion led by a warlord from the surrounding deserts. To celebrate her victory Teppa raised a ceremonial shield covered in jewels. This shield is known as the “Ruby Sipar.” Teppa’s success led to the formation of an order of women among the Kin called the Sisters of the Sun. The Sisters of the Sun now serve as cultural and social leaders in Kin society and mediate local disputes. The symbol of their order is a miniature replica of the Ruby Sipar, which they wear as a necklace.

The original Ruby Sipar was believed to have been lost over time. However, in 1903, an Atanian archaeologist, Dr. Gena Logres, discovered the original Ruby Sipar while conducting an archaeological excavation of a site on the Atanian side of the border within the Kin Canyon Complex. Dr. Logres took the Ruby Sipar back to Atanagrad, the Atanian capital, where it was on display in the Atanian state university’s museum for decades.

In 1990, Atania and Rahad jointly proposed that the Kin Canyon Complex be recognized as a UNESCO World Heritage Site. UNESCO’s World Heritage Committee accepted their proposal, and the Kin Canyon Complex and its (Atanian-based) museum and cultural center draw hundreds of thousands of visitors each year. The Ruby Sipar was moved from the Atanian state museum in

Atanagrad to a display case at an Atanian-run visitor center at the Kin Canyon Complex UNESCO World Heritage Site in 1996.

Drought conditions have persisted across the Nomad Coast for more than fifty years. Both Atania and Rahad have imported water for domestic and industrial use for decades. To reduce their reliance on foreign water, Rahad's Ministry of Water and Agriculture hired Canadian hydrologists in 1988 to map subterranean water sources within Rahad. The largest of these sources was found to be the Greater Inata Aquifer. The Aquifer covers more than 250,000 square kilometers across the Nomad Coast; 65% of it is located in Rahad and the remaining 35% in Atania. The Ministry then asked the hydrologists to conduct a 10-year study on the rate of water replenishment in the Aquifer. This study revealed that the Aquifer contained over 30 cubic kilometers of extractable water, but that if water was extracted it would not be replenished for generations.

In 1993, on the first United Nations World Water Day, Rahadi Queen Teresa Savali and her Minister of Water and Agriculture joined the Atanian President, Alexander Vhen, at a ceremony in Atanagrad. In a televised address, the Rahadi Minister of Water and Agriculture promised, "to make every reasonable effort to preserve and protect the shared freshwater resources of our Nomad Coast and to ensure their equitable use." Five years later, in 1998, U.N. Secretary-General Kofi Annan specifically recognized Rahad's commitment in a speech on World Water Day.

However, in 2002, facing ongoing drought conditions, Queen Teresa ordered her government to explore the feasibility and effects of directly tapping the Aquifer to meet Rahad's domestic water needs. The Rahadi government proposed creation of the Savali Pipeline, a network of pump wells that would tap into the aquifer in northern Rahad and pump water through a pipeline for agricultural and industrial use in Rahad. This proposal included an environmental impact assessment that was conducted in accordance with Rahadi domestic law. Atania expressed serious concerns about the pipeline's effects on the transboundary aquifer and its possible effects on the Kin Canyon Complex site. Recognizing that some of the pumps would be near the Kin Canyon Complex, Rahad sent the Savali Pipeline proposal to UNESCO's World Heritage Committee in 2005.

The World Heritage Committee expressed concerns about the Savali Pipeline, and Rahad limited drilling for water to areas more than 15 kilometers away from the Kin Canyon Complex. The Savali Pipeline project was completed in early 2006, and pumping immediately began. The Savali Pipeline pumps approximately 1.2 cubic kilometers of water from the aquifer per year.

In 2009, Atanian farmers near the Rahadi border reported that wells and springs were drying up and that previously arable farmland was becoming un-farmable. The Atanian Ministry of Water and Agriculture commissioned an international study to determine whether the changing hydrology of the region was the result of the Savali Pipeline project. The study, released in 2010, concluded that the Savali Pipeline had resulted in a permanent lowering of the water table in Atania, and that 20% of Atanian farmland could no longer be farmed. It also found that if pumping continued, an additional 30% of Atanian farmland would become un-farmable within 10 years.

Also in 2010, tourists to the Kin Canyon Complex began posting photos on social media showing clear structural degradation of the Stronghold and other sites within the canyons, using the hashtag #kincanyonscrumbling. On 1 June 2011, The Atanian Herald newspaper reported that two tourists almost fell into a sinkhole that appeared when a pathway in the Complex collapsed. Sections of the Complex were closed to visitors immediately to ensure their safety. An Atanian government report linked the sinkholes and cracks in the walls of the Stronghold to the water table changes caused by the Savali Pipeline. Atania referred the matter to UNESCO's World Heritage Committee, which placed the Kin Canyon Complex site on the List of World Heritage in Danger in June 2012. At its 2014 meeting, the World Heritage Committee began discussions with Rahad on a program of corrective measures regarding the Savali Pipeline and Kin Canyon Complex. The World Heritage Committee requested that Rahad present plans for implementation of corrective measures at its 2017 conference meeting.

Rahad has refused to stop water extraction by the Savali Pipeline. Faced with rapidly dwindling water supplies and the loss of farmland in Atania, the Atanian Parliament in 2012 enacted the Water Resource Allocation Program (WRAP) Act. The WRAP Act set a quota on water supplies in Atania and required every household, farm, and business in Atania to obtain a water license. Anyone who failed to obtain a water license or used over-quota water was subject to prosecution for theft of public property. However, the WRAP exempted most commercial farms from these requirements.

Fewer than 5% of Kin farmers applied for licenses in 2012, as required by law. Atanian Bureau of Agriculture investigations also showed that in the first two quarters of 2013, more than 80% of Kin households and farms used water in excess of their quotas. In 2013, Atania prosecuted and convicted two Kin farmers for theft of public property due to use of over-quota water. These convictions did not increase Kin applications for licenses or decrease water use by Kin farms. In October 2013, the Atanian Parliament amended the WRAP Act to provide that farms using water in violation of the Act were subject, in addition to the existing criminal penalties, to the termination of their state-controlled water supply. By the end of 2013, Atania had cut off water supplies to the majority of Kin-owned farms.

The UN Food and Agriculture Organization condemned these actions in early 2014, reporting that Kin families were forced to abandon their farms as a result of the WRAP and had no other means of securing food. Six months later, the International Federation of the Red Cross and Red Crescent released a report titled "It's a WRAP: Starvation and Illness Among the Kin." The report noted rapidly rising rates of famine-related illnesses such as scurvy and beriberi in the Kin and found that over 500,000 of the 1.1 million Kin in Atania were undernourished.

On 17 July 2014, Carla Dugo, a Kin and an elder of the Sisters of the Sun, engaged in a hunger strike outside of the Atanian President's residence in Atanagrad to protest "the Atanian government's persecution of the Kin" through what she called "the theft of our water, our food, and our way of life." She called on her fellow Sisters to "stand together" and "remember Teppa, and the true meaning of the Sipar that we proudly wear." Within two weeks, over 5,000 Sisters of

the Sun, hundreds of Kin, and their supporters had congregated in the plaza. The protesters all wore replicas of the Ruby Sipar around their necks.

On 5 August 2014, the Atanian President deployed armed police to maintain the peace and issued an order banning public display of Ruby Sipar pendants and requiring their confiscation. He also ordered that the original Ruby Sipar be removed from display in the Kin Canyon Complex museum; it was taken down and placed in storage. That same day, Atanian police cleared the plaza and arrested hundreds of protesters.

In early September 2014, the Rahadi Immigration Department reported that as many as 100,000 Kin had crossed from Atania into Rahad over the previous two weeks. Newspaper reports noted that some Kin crossing the border said they feared arrest in Atania, but a substantial number claimed to be fleeing starvation. In mid-September 2014, Rahad enacted the Kin Humanitarian Assistance Act, which permitted the Kin to apply for refugee status (which would be automatic for any Sisters of the Sun), and established three refugee camps for the Kin.

One of the Kin to cross into Rahad was Carla Dugo. In her refugee camp intake interview, Ms. Dugo admitted that she had stolen the original Ruby Sipar from the Kin Canyon Complex because she believed that it belonged with the Kin. She turned the Ruby Sipar over to the Rahadi border control agents, who gave it to the Rahadi Ministry of Culture. The Rahadi Minister of Culture, Sophia Casa, notified her counterpart in Atania that she was in possession of the Ruby Sipar and that due to "the campaign to eradicate all vestiges of the Sipar" it would be "inappropriate" for it to be returned. Atania has demanded that the Ruby Sipar be returned immediately to Atania, but Rahad has rejected this request.

As of the date of the Compromis, over 800,000 Kin have left Atania and are living in the three Rahadi refugee camps. International observers have reported that Rahad's national infrastructure was being stretched beyond the breaking point as a result of caring for the migrants. Power outages were reported across Rahad, and water access was further strained. The Rahadi Ambassador to Atania sent an official memorandum to the President of Atania itemizing costs associated with running the refugee camps; the net total of the costs (after deducting foreign aid received) was $945,000,000. The memorandum demanded that Atania compensate Rahad in this amount. Atania refused to pay any compensation to Rahad for costs related to the operation of the Kin camps.

2.2 Timeline of Events

10,000 BCE to 5,000 BCE – Archaeological evidence (terracotta figurines, flint axes, and jewelry) found within the Kin Canyon Complex indicates human settlements existed in the Canyons at this time.

500 CE – Teppa united the 17 clans of the Atans and defended the Kin Canyon Complex from raiders, raising the Ruby Sipar to celebrate victory. Founding of the Sisters of the Sun.

1863 – 16 of the Atan clans, including Clan Kin, created the Federation of the Clans of the Atan (Atania).

1998 – Rahadi Ministry of Water & Agriculture hired team of Canadian hydrologists to map Rahadi subterranean fresh water resources.

1990 – First definitive map of the Greater Inata Aquifer produced. Atania and Rahad jointly proposed that the Kin Canyon Complex be included on the UNESCO World Heritage List.

22 March 1993 – First UN World Water Day. At joint Atanian/Rahadi ceremony in Atania, the Rahadi Minister of Water & Agriculture made a public statement on shared fresh water resources.

2 May 1994 – Kin Canyon Complex accepted and listed by UNESCO on the World Heritage List as a mixed heritage site.

22 March 1998 – 5th UN World Water Day. UN Secretary-General Kofi Annan recalled Rahadi Minister of Water & Agriculture's 1993 statement on shared water resources in his public statement recognizing World Water Day.

2000 – Follow-up report from Canadian hydrologists released, finding 35 cubic kilometers of extractable fresh water in the Greater Inata Aquifer.

2001 – Atanian State Weather Service reported a 1.6-degree Celsius average temperature increase throughout the Nomad Coast from 1970 to 2000.

16 June 2002 – Queen Teresa of Rahad, in a public address, described the Greater Inata Aquifer as a "fundamental natural resource" of Rahad.

17 June 2002 – Queen Teresa of Rahad directed the Inata Logistic and Scientific Organization (ILSA), a Rahadi-funded scientific organization, to study the feasibility and long-term effects of directly tapping the Greater Inata Aquifer.

17 January 2003 – ILSA released its report on the Greater Inata Aquifer. This report includes an environmental impact assessment of tapping the Greater Inata Aquifer, which was conducted in accordance with Rahadi domestic law.

2 February 2003 – Queen Teresa made televised appearance in Rahad regarding Rahad's water crisis and directs the Rahadi Bureau of the Interior to propose a plan for accessing the Greater Inata Aquifer.

30 September 2004 – Rahadi Bureau of the Interior submitted plans for the "Savali Pipeline," a network of 30 pump wells extracting water from the Greater Inata Aquifer, to the World Heritage Committee.

12 July 2005 – World Heritage Committee released its decision on the Savali Pipeline, "noting with concern" potential issues regarding the Savali Pipeline's effects on the Kin Canyon Complex.

20 February 2006 – Savali Pipeline project completed and pumping from the Greater Inata Aquifer began.

2009 – Atanian farmers in regions south of the Kin Canyon Complex reported that wells and streams were drying up. Atanian Ministry of Water and Agriculture commissioned international panel to study to determine whether changing hydrology was the result of the Savali Pipeline.

June 2010 – International panel released its study on the Savali Pipeline. Panel concluded that operation of the Savali Pipeline had permanently lowered water tables in the region.

6 July 2010 – President Vhen of Atania makes public statement regarding international panel's findings regarding the Savali Pipeline, attributing responsibility for the drought to Rahad and demanding that Rahad cease operations of the Savali Pipeline.

August to December 2010 – Foreign tourists visiting the Kin Canyons Complex posted photographs of environmental degradation in the Kin Canyon Complex on social media, using the hashtag #kincanyonscrumbling.

4 February 2011 – President Vhen of Atania ordered panel of geologists to study environmental degradation in the Kin Canyon Complex. Geologists unanimously reported clear structural degradation of the Kin Canyons and the Stronghold, and attributed the problem to subsidence due to depletion of the Greater Inata Aquifer.

1 June 2011 – *The Atanian Herald* newspaper reported that two Bhutanese tourists had barely escaped falling into a sinkhole that had appeared within the Kin Canyon Complex. The Atanian government closed off sections of the Kin Canyon Complex to the public.

7 July 2011 – President Vhen of Atania sent an urgent communique to the UNESCO World Heritage Committee requesting that the Kin Canyon Complex be added to the Committee's List of World Heritage in Danger.

June 2012 – The World Heritage Committee added the Kin Canyon Complex to the List of World Heritage in Danger.

19 July 2012 – Queen Teresa of Rahad declined a request to meet with President Vhen of Atania; Queen Teresa released a press release voluntarily committing Rahad to undertaking regular studies of the impact of the Savali Pipeline on the Kin Canyon Complex but refusing to shut down the Pipeline.

28 September 2012 – Atanian Parliament enacts the Water Resource Allocation Program (the WRAP Act).

August 2013 – Atanian Department of Justice commenced prosecution of two Kin farmers under the WRAP Act for use of over-quota water and failure to obtain a water license.

October 2013 – Atanian Parliament amended the WRAP Act to provide that farms using water in violation of the Act be subject to termination of their state-controlled water supply. Invoking the WRAP Act, Atania cut off water to the majority of farms in Kin lands.

2 February 2014 – UN Food and Agriculture Organization (FAO) Director-General José Graziano da Silva condemned the effects of WRAP on the Kin in a speech to the UN General Assembly.

15 June 2014 – UNESCO World Heritage Committee began discussions with Rahad on a program of corrective measures regarding the Savali Pipeline and Kin Canyon Complex. The Committee requested that Rahad present plans for implementation at its 2017 Meeting in Krakow, Poland.

28 June 2014 – The International Federation of the Red Cross and Red Crescent released "It's a WRAP: Starvation and Illness among the Kin," based on a six-month study of Kin villagers by IFRC staff. "It's a WRAP" found rapidly rising rates of food-deprivation-related illnesses such as scurvy and beriberi among the Kin population. It also indicated that, of the 1.1 million Kin then living in Atania, more than 500,000 were undernourished.

17 July 2014 – Carla Dugo, a Kin elder of the Sisters of the Sun, chained herself to a flagpole in the Atanian capital, Atanagrad, and engaged in a hunger strike to protest the WRAP Act and its effects on the Kin. Within 2 weeks, over 5,000 Sisters of the Sun, hundreds of Kin, and their supporters joined in the protest.

5 August 2014 – President Vhen of Atania issued an order deploying armed police to break up Carla Dugo's protest. The order also banned public display of the Ruby Sipar and ordered that all pendant replicas of the Ruby Sipar worn by the Sisters of the Sun be confiscated. Over 800 protesters were arrested at the protest, and another thousand were arrested across the country in the following days.

Early September 2014 – The Rahadi Immigration Department reported that as many as 100,000 Kin had crossed into Rahad over a two-week period.

18 September 2014 – Rahadi Parliament enacted the Kin Humanitarian Assistance Act (KHAA), giving refugee status to all Sisters of the Sun and allowing all other Kin entering Rahad to apply for refugee status. The KHAA also established 3 refugee camps in Rahad.

3 October 2014 – Rahadi border patrol agents at one of the KHAA refugee camps interview Carla Dugo. She turns over the original Ruby Sipar, which she stole from the Kin Canyon Complex Cultural Center in Atania.

3 November 2014 – Sophia Casa, Rahad's Minister of Culture, rejects Atania's request for return of the Ruby Sipar.

13 October 2015 – The *Rahadi National Times* newspaper publishes an article reporting that Kin migrants had engaged in petty crime and were sleeping on the streets, quoting numerous Rahadi citizens who expressed concerns about the costs and effects of integrating the Kin into Rahad.

17 December 2015 – The Rahadi Parliament adopts the Border Protection Act (BPA), which demands compensation for the Kin migrant crisis from Atania.

18 January 2016 – The Rahadi ambassador to Atania submitted an itemized memorandum of costs associated with the Kin migrant crisis to the Atanian Foreign Ministry. The memorandum detailed expenses amounting to $945,000,000 USD plus continuing expenses.

12 September 2016 – The Compromis was submitted to the International Court of Justice.

3 LEGAL ANALYSIS

3.1 CLAIM 1: EXTRACTION OF WATER FROM A TRANSBOUNDARY AQUIFER

The first question presented asks teams to argue, first, whether Rahad is bound by prior statements made by senior Rahadi officials vis-à-vis the use of shared transboundary water resources such as the Greater Inata Aquifer and, second, whether customary international law establishes any norms related to the development of and extraction of water from a transboundary aquifer.

Applicant's Prayer for Relief	***Respondent's Prayer for Relief***
Extraction of water from the Aquifer violates international obligations undertaken by Rahad and constitutes an inequitable use of a shared resource.	Rahad's extraction of water from the Aquifer does not violate Rahad's international legal obligations governing the proper use of shared resources
Applicant's Anticipated Argument	***Respondent's Anticipated Argument***
Atania may argue that the 22 March 1993 public statement of Rahad's Minister of Water and Agriculture represented a unilateral declaration creating a binding legal obligation on Rahad to engage in equitable use of the Aquifer. Atania may further argue that emerging norms of international law governing transboundary aquifers require Rahad to engage in equitable use of waters within the aquifer.	Rahad may argue that the 22 March 1993 statement by its Minister of Water and Agriculture did not rise to the level of a binding unilateral declaration. Further, assuming *arguendo* that a binding declaration was made, Rahad withdrew from its obligation on 2 February 2003. Rahad may further argue that emerging norms of international law on groundwater treat groundwater as a sovereign resource subject to state sovereignty, and Rahad has no obligation whatsoever to cooperate in extraction.

3.1.1 Unilateral Declarations

Just as "(e)very State possesses capacity to conclude treaties", states can also commit themselves to acts by unilaterally assuming binding legal obligations through declarations.[1] In its decisions in the *Nuclear Tests* cases, the International Court of Justice noted in *dicta* that France was bound by statements made by high-ranking government officials on the cessation of nuclear tests in the atmosphere.[2] The *Nuclear Tests* judgments noted that nothing in the nature of a *quid pro quo*, nor any subsequent acceptance, nor even any reaction from other States is required for such a unilateral

[1] *See* Vienna Convention on the Law of Treaties, 23 May 1969, article 6 (capacity to enter into treaties); Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations with Commentaries, ILC Ybk 2006/II(2), Principles 1-2.

[2] Nuclear Tests (Australia v. France; New Zealand v. France), 1974 I.C.J. Rep. 267-8, paras. 43 and 46 and pp. 472-3, paras. 46 and 49.

declaration to take effect.[3] The operative question instead is the intention of the state making the declaration and that such undertaking be given publicly. The Court has gone on to accept and apply this principle in subsequent decisions. In its 1986 *Nicaragua* case, the Court found that certain statements made by Nicaragua regarding its elections process did not rise to the level of binding declarations, but instead were "essentially political pledges", as Nicaragua had manifested no intent to actually be bound by the statements.[4] Similarly, in its 1986 *Frontier Dispute (Burkina Faso v. Republic of Mali)* judgment, the Court reemphasized, "it is only when it is the intention of the State making the declaration that it should become bound according to its terms that that intention confers on the declaration the character of a legal undertaking."[5] The *Frontier Dispute* Court emphasized that it is for the Court to "form its own view of the meaning and scope intended by the author of a unilateral declaration which may create a legal obligation."[6] "To determine the legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise."[7]

It is well established that a head of state and a state's Minister for Foreign Affairs (or the equivalent) are deemed to represent the state merely by virtue of exercising their basic functions for the purposes of binding a state to conduct by means of a unilateral declaration.[8] Where the question becomes less clear, and where many teams may focus their arguments, is when another senior state government official makes a statement. In its 2006 *Case Concerning Armed Activities on the Territory of the Congo* judgment, the ICJ stated that "with increasing frequency in modern international relations other persons representing a State in specific fields may be authorized by that State to bind it by their statements in respect of matters falling within their purview. This may be true, for example, of holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials."[9]

The question of interpretation of such statements may also arise in students' arguments. A unilateral declaration may have the effect of creating legal obligations only if it is stated with specificity.[10] Unlike traditional treaty interpretation, as envisaged by the Vienna Convention on the Law of Treaties, in analyzing a unilateral declaration, "priority consideration must be given to

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[3] *Id.*
[4] Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), 1986 I.C.J. Rep. 132, para. 261.
[5] Case Concerning the Frontier Dispute (Burkina Faso v. Republic of Mali), I.C.J. Reports 1986, pp. 573-4, para. 39.
[6] *Id.*
[7] Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations with Commentaries, ILC Ybk 2006/II(2), Principle 3.
[8] *See, e.g.,* Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda), 2005 I.C.J. Rep. 168, para. 46.
[9] *Id.*, para. 47.
[10] *See* Nuclear Tests Cases (Australia v. France; New Zealand v. France), I.C.J. Reports 1974, p. 267, para. 43, p. 269, para. 51, and p. 472, para. 46, p. 474, para. 53; Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda), 2005 I.C.J. Rep. 168, para. 50-52.

the text of the unilateral declaration [itself], which best reflects its author's intentions."[11] Further, "[w]hen States make statements by which their freedom of action is to be limited, a restrictive interpretation is called for."[12]

Here, Rahad's Minister for Water and Agriculture, in a public address on 22 March 1993 made in the presence of both the Rahadi and Atanian heads of state stated "Rahad promises to make every reasonable effort to preserve and protect the shared fresh water resources of our Nomad Coast and to ensure their equitable use."[13] The Minister's Atanian counterpart responded with a message communicating the "appreciation of the Atanian people for this neighborly gesture of cooperation and brotherhood." Five years later, UN Secretary-General Kofi Annan recalled the Rahadi Minister's statement in his public remarks on the 5th UN World Water Day: "Rahad's commitment to preserve and protect the water resources it shares with Atania and to make sure that they are used equitably is a testament to the inspiration that lies behind the UN World Water Day."

Some respondent teams may argue that, even assuming that Rahad obligated itself vis-à-vis the Greater Inata Aquifer, Queen Teresa withdrew Rahad from those obligations in 2003. In a televised address on 2 February 2003, convened in response to worsening drought conditions on the Nomad Coast, Queen Teresa stated:

> Our nation is confronted with a very grave dilemma, and I want all of our people to understand how your government is proposing to deal with it. We simply do not have enough water to sustain our farmers, who grow our food and provide our sustenance, and there is no obvious solution to this problem that is economically viable and practically possible. None, that is, except one. I am today ordering the Bureau of the Interior to begin implementation of a comprehensive program to extract water from the Greater Inata Aquifer. I certainly realize that this is a short-term solution. If we exhaust the Aquifer, we risk bankrupting our future generations. But we must do something. All of our people are affected by this crisis. So we will explore means of taking life-giving water from the Aquifer so long as drought conditions continue, and so long as we have no other way of preserving the life and culture of the great Rahadi nation.

Judge James Crawford (then Professor) has stated that "[u]nilateral declarations may reflect commitments but they are not treaties, and are not subject to the relatively strict VCLT regime for termination or withdrawal."[14] The ILC's Guiding Principles Applicable to Unilateral Declarations provides for revocation and withdrawal as follows:

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[11] Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations with Commentaries, ILC Ybk 2006/II(2), Commentary to Principle 7.
[12] Nuclear Tests (Australia v. France), I.C.J. Reports 1974, p. 267, para. 44
[13] Compromis, para. 16.
[14] James Crawford, *Brownlie's Principles of Public International Law* (8th ed. 2012), 418.

> A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:
>
> (a) Any specific terms of the declaration relating to revocation;
>
> (b) The extent to which those to whom the obligations are owed have relied on such obligations;
>
> (c) The extent to which there has been a fundamental change in the circumstances.[15]

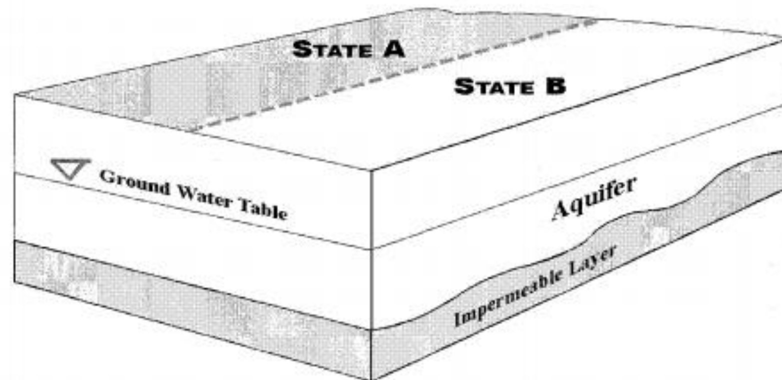
In its commentary on Principle 10, the ILC notes that: "A unilateral declaration may also be rescinded following a fundamental change of circumstances within the meaning and within the strict limits of the customary rule enshrined in article 62 of the 1969 Vienna Convention on the Law of Treaties." Article 62 of the VCLT provides that such a fundamental change cannot have been foreseen by the parties at the time the obligation was entered into, the original circumstances must have been an essential basis of the obligation originally, and the change in circumstances must radically transform the obligations to be performed.

3.1.2 International Law of Transboundary Aquifers

The international law applicable to trans-boundary sub-surface aquifers is very much in a state of flux. The Greater Inata Aquifer is an unconfined fossil aquifer, and it does not run subjacent to (directly beneath) the Kin Canyon Complex.[16] The aquifer is not directly connected to any source of surface water; it covers over 274,000 square kilometers of the Nomad Coast, of which 65% is located in Rahad and 35% in Atania.[17] The below image is included to orient judges on the basic geology of such an aquifer[18]:

[15] Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations with Commentaries, ILC Ybk 2006/II(2), Principle 10.
[16] Corrections and Clarifications, Clarification 1.
[17] Compromis, para. 15.
[18] Gabriel Eckstein & Yoram Eckstein, *A Hydrogeological Approach to Transboundary Ground Water Resources and International Law*, 19 Amer. Univ. Int'l. L. Rev. 201, 246 (2003).

Model F – A transboundary aquifer unrelated to any surface body of water and devoid of any recharge.



According to Professors Eckstein & Eckstein, "this type of aquifer does not recharge, contains non-renewable ground water, and a state could never sustainably utilize the aquifer."[19] "When a state commences production of groundwater from a water well penetrating such an aquifer, the state will generate an ever-expanding cone of depression that will eventually encroach in the subsurface across the international border."[20] In this situation, the Professors Eckstein state that "if the state do[es] not completely stop pumping, the aquifer will eventually become fully depleted."[21]

A transboundary aquifer of this type arguably is excluded from major existing conventions on transboundary waters. Teams, however, may cite to these conventions in an attempt to establish customary principles on groundwater use and extraction. For example, teams may point to the Convention on the Law of the Non-navigational Uses of International Watercourses (the UN Watercourses Convention); this convention governs "*systems of surface waters and groundwaters* constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus."[22] The UN Watercourses Convention requires that a member state sharing an international watercourse with other states "participate in the use, development and protection of an international watercourse in an equitable and reasonable manner".[23] Article 7 of the Watercourses Convention requires that member states "take all appropriate measures to prevent the causing of significant harm" to other States sharing an international watercourse.[24] However, as the Professors Eckstein point out, the Watercourses Convention "excludes aquifers that lack recharge from its scope. Non-recharging aquifers are, by definition, not part of any 'system[s] of

[19] *Id.* at 247.
[20] *Id.*
[21] *Id.*
[22] *See* G.A. Res. 51/229, 51st Sess., U.N. Doc. A/RES/51/229 at Article 2 (1996) (emphasis added).
[23] *Id.* at Article 5.
[24] *Id.* at Article 7.

surface and groundwaters,' do not have a 'physical relationship' with any other water resources, and do not 'flow[] into a common terminus'."[25] In addition, neither Atania nor Rahad is a party to the UN Watercourses Convention, and only 36 countries are currently parties to it.

In an attempt to define the laws applicable to transboundary aquifers, the UN General Assembly in 2008 adopted Resolution 63/124, the Draft Articles of Transboundary Aquifers. Representing years of negotiations by the International Law Commission, the Draft Articles of Transboundary Aquifers would directly govern the Greater Inata Aquifer; however, the Draft Articles are of course not directly binding on any state. Article 3 of the Draft Articles provides that each "aquifer State has sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory. It shall exercise its sovereignty in accordance with international law and the present draft articles."[26] However, the Draft Articles also expect states to "cooperate on the basis of sovereign equality, territorial integrity, sustainable development, mutual benefit and good faith in order to attain equitable and reasonable utilization and appropriate protection of their transboundary aquifers or aquifer systems."[27] This balancing between state sovereignty and cooperative use is very different from the scheme contemplated in the UN Watercourses Convention.

As with the Watercourses Convention, the Draft Articles require equitable utilization of the shared resource, but use a somewhat different standard:

> Aquifer States shall utilize transboundary aquifers or aquifer systems according to the principle of equitable and reasonable utilization, as follows: (a) they shall utilize transboundary aquifers or aquifer systems in a manner that is consistent with the equitable and reasonable accrual of benefits therefrom to the aquifer States concerned; (b) they shall aim at maximizing the long-term benefits derived from the use of water contained therein; (c) they shall establish individually or jointly a comprehensive utilization plan, taking into account present and future needs of, and alternative water sources for, the aquifer States; and (d) they shall not utilize a recharging transboundary aquifer or aquifer system at a level that would prevent continuance of its effective functioning.[28]

The ILC set out a number of criteria to consider in analyzing equitable utilization of a transboundary aquifer, including the population of states above the aquifer, the geological and hydrological characteristics of the aquifer, how the aquifer recharges, the actual and potential effects of proposed usage on the aquifer and the effects of that usage in other aquifer states, the availability of possible alternatives to a proposed usage, the costs and possible means of conservation of the aquifer, and the role of the aquifer in the overall ecosystem.[29] The Draft

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[25] Gabriel Eckstein & Yoram Eckstein, *A Hydrogeological Approach to Transboundary Ground Water Resources and International Law*, 19 Amer. Univ. Int'l. L. Rev. 201, 250 (2003).
[26] G.A. Res. 63/124 (2008), at Article 3.
[27] *Id.* at Article 7.
[28] *Id.*
[29] *Id.* at Article 5.

Articles also require states to "take all appropriate measures to prevent the causing of significant harm to other aquifer States" in their utilization of the aquifer, and, if harm to another aquifer state in fact occurs, the utilizing state must take "all appropriate response measures to eliminate or mitigate such harm."[30]

3.1.3 The Human Right to Water

Atania may also contend that Rahad's extraction of water from the Greater Inata Aquifer violates the human right to water of Atanian citizens. Both Atania and Rahad are parties to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). A number of international bodies and scholars have noted that a right to water is protected both under these conventions and via customary international law.

The U.N. Economic and Social Council's Committee on Economic, Social, and Cultural Rights, an interpreting body of the ICESCR, in its General Comment No. 15, found in 2002 that Article 11 of the ICESCR creates a human right to water via the right to an adequate standard of living "including adequate food, clothing and housing."[31] The right to water, the committee found, "clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival."[32] An explicit right to water can also be found within the following human rights conventions (although neither Atania nor Rahad is a party to any of these conventions):

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), art. 14(2)(h),
- Convention on the Rights of the Child, art. 24(c),
- Convention on the Rights of Persons with Disabilities, art.28,
- Geneva Convention (III) relative to the Treatment of Prisoners of War, art. 26, and
- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, arts. 85, 89, and 127.

At the regional level, a number of multilateral agreements similarly recognize, either explicitly or implicitly, a human right to water.[33] In 2010, the UN General Assembly recognized the right to

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[30] *Id.* at Article 6.

[31] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15, ¶3, U.N. Doc. E/C.12/2002/11.

[32] *Id.*

[33] *See, e.g.,* League of Arab States, Arab Charter on Human Rights, art. 39(2)(e) (15 Sept. 1994) (explicit); Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, art. 14(2), 11 July 1990, CAB/LEG/24.9/49 (1990) (explicit); *see also* Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 11, (16 Nov. 1999) (implicit); Council of Europe, European Social Charter (Revised), art. 31, ETS 163 (3 May 1996) (implicit).

"safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."[34]

3.1.4 Water as a Natural Resource

Rahad may contend that its development of the Greater Inata Aquifer is part of the exercise of its sovereign right to develop its natural resources. While Atania may argue that the Court should view the waters in the Greater Inata Aquifer as a transboundary resource, Rahad may argue that the waters of the aquifer, being ground deposits, should be treated as any other deposit of minerals or other similar resource. Unlike surface water, ground water has been treated by most major legal traditions as the property of, and exploitable by, the landowner under whose land such ground water is located.[35] The Greater Inata Aquifer, unlike most transboundary aquifers, is particularly subject to this interpretation, as it is not hydrologically connected to any surface waters.

Assuming the Court was to treat the Aquifer as a natural resource of Rahad, Rahad could effectively claim sovereignty over such a resource. The General Assembly in 1962 reaffirmed the long-standing doctrine that every State has the inalienable right "freely to dispose of its natural wealth and resources in accordance with its national interests, and on respect for the economic independence of States."[36]

3.2 CLAIM 2: PROTECTION OF WORLD HERITAGE

The second question presented asks the Court to determine whether Rahad's extraction of water from the Savali Pipeline has caused harm to the Kin Canyon Complex UNESCO World Heritage Site, and whether Rahad bears responsibility for such harm. This question asks teams to consider the laws governing transboundary harm in natural resource development and also the nature and scope of obligations incurred by states that are home to UNESCO World Heritage Sites (particularly sites "in danger").

Applicant's Prayer for Relief	***Respondent's Prayer for Relief***
The Savali Pipeline operations violate Rahad's international obligations with respect to the Kin Canyon Complex and therefore must cease.	Rahad's Savali Pipeline operations do not violate any legal obligations relating to the Kin Canyon Complex.
Applicant's Anticipated Argument	***Respondent's Anticipated Argument***
Atania may argue that Rahad's construction of the Savali Pipeline violated its obligations	Rahad may argue that it has complied with the requirements of the World Heritage

[34] GA Res. 64/292, ¶1, U.N. Doc. A/RES/64/292 (3 Aug. 2010).
[35] Gabriel Eckstein & Yoram Eckstein, *A Hydrogeological Approach to Transboundary Ground Water Resources and International Law*, 19 Amer. Univ. Int'l. L. Rev. 201, 223-24 (2003).
[36] G.A. Res. 1803 (XVII), 14 Dec. 1962, UN Doc. A/5217.

under the World Heritage Convention by causing damage to the Kin Canyon Complex World Heritage Site. Atania may further argue that Rahad's development of the Savali Pipeline violated norms of customary international law, including the prohibition on transboundary harm.	Convention. It may further argue that there is no obligation under customary international law to protect cultural and natural heritage sites from damage from economic development, and that it has not violated the customary principle prohibiting transboundary harm.

3.2.1 World Heritage Generally

Both Atania and Rahad are parties to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention). This convention, which currently has 192 state parties, was designed to create an international system for the protection of monuments, groups of buildings and sites of universal value. Each state party to the World Heritage Convention "recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage … situated on its territory, belongs primarily to that State," and states must do all that they can, "to the utmost of their resources," to meet this duty.[37] Every state party "undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage" listed as protected under the World Heritage Convention.[38]

Of the over 1,000 heritage sites listed by UNESCO, only 35 are "mixed" properties. These sites, as with all World Heritage Sites, must possess "outstanding universal value." All sites on the World Heritage List may then be considered by the World Heritage Committee for inclusion upon the List of World Heritage in Danger; this list includes those properties on the general World Heritage List that are "threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves."[39] For a site to be included on the List of World Heritage in Danger a state party must formally request that a site be included; in determining the merits of such a request, the World Heritage Committee must consult with the state party/parties in whose territory the site in question is located.[40] The World Heritage Committee's operational guidelines set out a number of factors the committee must consider before inscribing a site on the Danger List, and requires the committee to develop, in consultation with

[37] Convention Concerning the Protection of the World Cultural and Natural Heritage, 1037 UNTS 151; 27 UST 37; 11 ILM 1358 (1972) at Article 4 (hereinafter "World Heritage Convention").
[38] World Heritage Convention, Article 6(3).
[39] World Heritage Convention, Article 11(4).
[40] World Heritage Convention, Articles 11 & 13.

the affected states, a "desired state of conservation" and a set of corrective measures for eventual removal from the Danger List.[41]

3.2.2 World Heritage in Danger

Atania may argue that Rahad violated customary international law principles of cultural and natural heritage protection. Atania may point to the text of the 1972 World Heritage Convention referenced above (Article 4, specifically) as creating obligations on the part of Rahad to protect the Kin Canyon Complex. However, Rahad will likely argue there has not been, to date, any judicial finding (including any by the World Heritage Committee) definitively stating that a purported failure to protect a world heritage site from degradation establishes state responsibility. Further, while the World Heritage Convention binds member states to comply with obligations established within its text, it does not empower UNESCO or the World Heritage Committee with any real enforcement power to ensure state compliance or administer heritage sites.[42]

Arguably, the closest the international community has come to recognizing such a principle was in response to the Taliban's destruction of the Buddhas of Bamiyan, 4th-century monumental statues carved into a cliff in Afghanistan. Afghanistan ratified the World Heritage Convention in 1979, and the Buddhas of Bamiyan were nominated by Afghanistan for inclusion on the World Heritage list in 1982.[43] The Taliban destroyed the Buddhas in March 2001.[44] In October 2001, the General Assembly of States Parties to the World Heritage Convention adopted a resolution recognizing acts constituting "crimes against the common heritage of humanity", condemned the destruction of the Buddhas of Bamiyan, and called upon all states to become parties to cultural heritage conventions.[45] On 9 March 2001, prior to reports of the destruction appearing in the international press, the U.N. General Assembly adopted Resolution 55/243, "The Destruction of Relics and Monuments in Afghanistan." The General Assembly noted that the destruction of the Bamiyan sculptures would "be an irreparable loss for humanity as a whole," called upon the Taliban to abide by their commitments to protect Afghanistan's cultural heritage, urged the Taliban to take immediate action to prevent further destruction of "the irreplaceable relics", and called upon UN member states to help safeguard the sculptures via "appropriate technical measures."[46]

Nations worldwide (including the European Union, the Organization of the Islamic Conference, and the G-8) and international agencies condemned the destruction at Bamiyan, but the Taliban

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[41] 2015 Operational Guidelines for the Implementation of the World Heritage Convention, WHC.15/01, Articles 177 to 218.

[42] *See, e.g.,* Elizabeth Keogh, *Heritage in Peril: A Critique of UNESCO's World Heritage Program*, 10 Wash. Univ. Global Studies L. Rev. 593, 603 (2011).

[43] *See* UNESCO Doc. WHC-01/CONF.208/23, 2.

[44] Barbara Crossette, *Taliban Explains Buddha Demolition*, N.Y. Times, 19 March 2001, *available at* http://www.nytimes.com/2001/03/19/world/taliban-explains-buddha-demolition.html.

[45] *See* UNESCO Doc WHC-01/CONF.208/213, at 4-12.

[46] G.A. Res. 55/243, 9 Mar. 2001, U.N. Doc. A/55/PV.94.

carried out the demolition of the Buddhas and faced no real international sanction for this action. However, no explicit reference was made at any point in these many condemnations to Afghanistan's obligations under the World Heritage Convention:

> All in all, the relevant state practice attests to a remarkable universal consensus that the destruction of the Buddhas of Bamiyan was condemnable as a matter of policy…[b]ut none of it supports the conclusion that a state is presently under a customary legal obligation, in a time of peace, to protect, conserve and transmit to future generations cultural heritage situated on its territory, either straightforwardly or as a function of a human right. The requisite *opinio juris* is just not evident.[47]

Kanchana Wangkeo opined, "as a general matter, economic development is an acceptable reason for destroying cultural heritage so long as the host state makes a good faith effort to pursue the least destructive means."[48] Wangkeo points in particular to world reactions to two events in support of this statement; first, the construction of the Aswan Dam in Egypt and its effects on the Nubian Monuments World Heritage Site (which Egypt moved, in its entirety, in order to construct the Aswan Dam); and second, Turkey's soon-to-be-completed Ilisu Dam, which will flood the ancient town of Hasankeyf. At the time of Wangkeo's 2003 article, Turkey faced international pressure to move the town of Hasankeyf, an operation which Turkey at the time pledged 30 million Euros. More recently, in 2008 and 2009, the World Bank set over 150 standards, including a number of cultural protection provisions, and conditioned continued funding of the Ilisu Dam project on meeting these standards; Turkey did not meet any of the World Bank's criteria, and international creditors withdrew their support of the project.[49] However, Turkey has undertaken to complete the dam by financing it domestically, and it is projected to be completed in early 2017; although Turkey has built towns for resettlement of current residents in the area, it has made no provision for protection of the site or cultural artifacts therein.[50]

With respect specifically to natural resource exploitation in and around World Heritage Sites, the World Heritage Committee has repeatedly expressed its concern about balancing preservation of sites of outstanding universal value with resource development. The Committee, for example, cautioned "any decision to go forward with oil exploration" within the Belize Barrier Reef System "would be incompatible with World Heritage status".[51] Similarly, in a decision regarding the Virunga National Park in the Democratic Republic of the Congo, the World Heritage Committee

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[47] Roger O'Keefe, *World Cultural Heritage: Obligations to the International Community as a Whole?*, 53 Int'l & Comp. L. Q. 189, 205 (2004).

[48] *See* Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 Yale J. Int'l L. 183, 264 (2003).

[49] *See* BBC, *Insurers Halt Work on Turkish Dam*, 24 December 2008, available at http://news.bbc.co.uk/2/hi/europe/7798857.stm.

[50] *See, e.g.,* Tim Arango, *Turkish Dam Project Threatens to Submerge Thousands of Years of History*, N.Y. Times, 2 Sept. 2016, available at http://www.nytimes.com/2016/09/02/world/europe/turkey-hasankeyf-ilisu-dam.html.

[51] UNESCO World Heritage Committee, Decision 34 COM 7A.13 (2010).

"reiterate[ed] its concern with regard to the envisaged oil prospecting projects overlapping the property [and] recalls its position regarding the incompatibility of oil exploration and exploitation in respect to World Heritage status."[52] In 2015, the Committee expressed its concern that industrial development in areas surrounding the City of Potosí heritage site in Bolivia was causing structural stability issues on the Cerro Rico Mountain within the site.[53] Similarly, the Committee repeatedly has expressed concern that developments along the coast of Australia pose "major threats" to the health of the Great Barrier Reef heritage site, and in 2015 called upon Australia to show significant progress in its redevelopment plan (but declined to list the Great Barrier Reef as a Site in Danger).[54]

Sites have been removed from the List of Sites in Danger after state parties demonstrated improvements in conservation in and around the heritage sites. For example:

- **Cologne Cathedral (Germany)**: Listed 2004 | De-listed in 2006 – Proposed developments of high-rise buildings around the cathedral were reduced and relocated[55] and Germany established a construction buffer zone around the Cathedral in order to protect its integrity.[56]
- **Ichkeul National Park (Tunisia)**: Listed 1996 | De-listed 2006 – Construction of upstream dams affected the seasonally alternating levels of fresh and salt water in Ichkeul, a large lake.[57] The property was delisted after Tunisia stopped using the lake's water for agriculture and salt levels of the lake dropped back to prior levels.
- **Yellowstone National Park (United States)**: Listed 1995 | De-listed 2003 – Sewage leaks and other wastewater contaminated certain areas of the park. There was also concern about the effects of a proposed mine outside the park on groundwater and surface waters within Yellowstone.[58] It was removed from the List following remedial actions by the United States. The Committee recommended that the United States "continue its efforts in ensuring that the McLaren Mine tailings are not contaminating" the Yellowstone property.[59]

3.2.3 Protection of Cultural Heritage in Customary International Law

Atania may argue, aside from any specific treaty obligations imposed on Rahad by the 1972 World Heritage Convention, that Rahad's actions violated norms of customary international law. For

[52] UNESCO World Heritage Committee, Decision 34 COM 7A.4 (2010).
[53] UNESCO World Heritage Committee, Decision 39 COM 7A.44 (2015).
[54] *See* UNESCO World Heritage Committee, Decisions 36 COM 7B.8 (2012), 37 COM 7B.10 (2013), 38 COM 7B.63 (2014), and 39 COM 7B.7 (2015).
[55] UNESCO World Heritage Committee, Decision 30 COM 8C.3 (2006).
[56] UNESCO World Heritage Committee, Decision 32 COM 7B.92 (2008).
[57] UNESCO World Heritage Committee, Decisions 20 COM VIID.36 and 20 COM VIIIA.4 (1996).
[58] UNESCO World Heritage Committee, Decision CONF 203 VII.A.2.22/15 (1995). (Of note, the Committee in this decision "noted that whether the State Party should grant a permit to the mining company or not is entirely a domestic decision of the State Party.")
[59] UNESCO World Heritage Committee, Decision 27 COM 7A.12 (2003).

instance, extrapolating from international humanitarian law (the laws of war), Atania may argue that a customary principle has arisen prohibiting states from destroying cultural property. The Fourth Hague Convention, Respecting the Laws and Customs of War on Land, prohibits states engaged in an armed conflict from besieging or bombarding "buildings dedicated to religion, art, science, or charitable purposes, [and] historic monuments" and forbids seizure of, destruction of, or willful damage to "institutions dedicated to religion, charity and education, the arts and sciences … historic monuments, and works of art and science."[60] These protections were further codified in 1954 by the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which similarly requires belligerent states to protect cultural property.[61] The Fourth Hague Convention currently has 127 state parties, and Atania may argue that these norms have risen to the level of custom. Rahad may that any damage to the Kin Canyon Complex was (1) done in a time of peace rather than armed conflict and (2) was not intentional. Further, Rahad may argue that the IHL norms referenced herein have not risen to the level of custom given the continued destruction of cultural heritage sites during times of war.[62]

3.2.4 Transboundary Harm and Natural Resource Development

Atania may also attempt to argue that Rahad's construction of the Savali Pipeline and its effects on the Kin Canyon Complex violated international law in that they presented a risk of transboundary harm that Rahad failed to appreciate or fully address. Customary international law on the prevention of transboundary harm traces its origins to the *Trail Smelter* arbitration; the arbitral panel there stated in dicta that "[n]o state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."[63] The *Trail Smelter* maxim, also often referred to as the doctrine of *sic utere tuo ut alienum non laedas* (use your property in such a way that you do not injure that of others), was expanded upon by the ICJ in its *Corfu Channel* decision, in which it stated that it is "every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states."[64] In 1959, the *sic utere* principle was further expounded upon in the *Lake Lanoux* arbitration; there, the arbitral panel rejected Spain's claims over water diversion from Lake Lanoux by France because France was under an obligation only to "take into consideration the various interests involved [from other affected states]…compatible with [its] pursuit of its own interest,

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[60] International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, arts. 27, 56, 18 October 1907.
[61] Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 240 (1956).
[62] *See, e.g.,* Eric A. Posner, *The International Protection of Cultural Property: Some Skeptical Observations*, 8 Chi. J. Int'l L. 213, 220-22 (2007).
[63] Trail Smelter Arbitration (United States v. Canada), 3 U.N. Rep. Int'l Arb. Awards 1905 (1941).
[64] Corfu Channel Case (United Kingdom v. Alb.), 1949 I.C.J. Reports 4, 21-22.

and to show that in this regard it is genuinely concerned to reconcile the interests of the other…state with its own."[65]

In its 1996 *Nuclear Weapons* advisory opinion, the ICJ noted that there now exists a "general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control" in international law.[66] (Only the dissenting opinion of Judge Weeramantry, however, explicitly stated that this rule has risen to the level of customary international law as of the *Nuclear Weapons* opinion.[67]) The ICJ next observed, in its *Case Concerning the Gabčíkovo-Nagymaros Project*, that due to the "often irreversible" character of environmental harms and the general lack of remediation or reparation after the fact of such harms, prevention of a transboundary harm in the first place should be the goal of all states.[68]

3.3 CLAIM 3: REPATRIATION OF A CULTURAL ARTIFACT

The third question presented asks the Court to consider both the scope and applicability of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and emerging practical norms governing the repatriation of cultural artifacts to countries where the artifact may be in danger. This question asks students to engage in traditional treaty analysis but also to examine extensive and often varying state practice on cultural artifact protection and repatriation.

Applicant's Prayer for Relief	***Respondent's Prayer for Relief***
Rahad must immediately return the Ruby Sipar to Atania, its lawful owner.	Rahad is entitled to retain possession of the Ruby Sipar.
Applicant's Anticipated Argument	***Respondent's Anticipated Argument***
Atania may argue that the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property requires Rahad to repatriate the Ruby Sipar to Atania as its lawful owner. Atania may also claim that recent state practice regarding stolen cultural artifacts requires Rahad to return the Ruby Sipar.	Rahad may claim that it is not bound by the 1970 UNESCO Convention to return the Ruby Sipar because at the time the Sipar was turned over to Rahad, the 1970 Convention had not yet entered into force in Rahad. Rahad may further argue that the Ruby Sipar should be kept with the members of Clan Kin in Rahad, and also that the Ruby Sipar would be in danger of destruction if returned to Atania.

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[65] Affaire du Lac Lanoux (Spain v. Fr.), 12 R.I.A.A. (1957), digested in 53 *American Journal of International Law* 156 (1959).
[66] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, 243.
[67] *See id.* at 503-04 (Weeramantry, J., dissenting).
[68] Gabčíkovo-Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. 7, 41.

3.3.1 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

Teams' primary arguments in the third Question Presented are expected to focus on Rahad's responsibilities under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

3.3.1.1 Applicability of the 1970 UNESCO Convention

Teams will likely first examine the scope and applicability of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the "1970 Convention"). With 131 signatories, the 1970 Convention is the primary mechanism for protection and claims of repatriation for cultural objects and artifacts.

Although Atania is a full state party to the 1970 Convention (it ratified the treaty in 1991), Rahad deposited its instrument of ratification with UNESCO on 30 September 2014.[69] Per Article 21 of the UNESCO Convention, Rahad's obligations under the treaty begin three months after this deposit, namely 30 December 2014.[70] The Ruby Sipar was taken from the Atanian-run Kin Canyon Complex World Heritage Site visitors' center by Kin elder (and Atanian citizen) Carla Dugo sometime in mid-2014; Ms. Dugo handed it over to Rahadi border control agents on 3 October 2014.[71] The Rahadi Minister of Culture, Sophia Casa, notified Atania of the artifact's arrival in Rahad, Atania demanded its return, and on 3 November 2014, Ms. Casa on behalf of Rahad rejected Atania's repatriation request.[72]

Accordingly, Rahad was arguably a third-party state to the 1970 Convention during the operative times of the Ruby Sipar's disappearance from Atania and its reappearance in Rahad. Rahad may argue that, as "a treaty does not create either obligations or rights for a third State without its consent"; it is not obligated by the 1970 Convention to return the Ruby Sipar.[73] Rahad may point to cases from the Permanent Court of International Justice (the predecessor court to the ICJ) such as the *Free Zones of Upper Savoy*, wherein the PCIJ held that the Versailles Peace Treaty was not binding upon Switzerland, "who is not a Party to that Treaty, except to the extent to which that country accepted it."[74] This is also not a case in which Atania could argue that Rahad had expressed

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[69] Corrections & Clarifications, Correction 3.

[70] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, art.21, Nov. 14, 1970, 823 U.N.T.S. 231 (hereinafter "1970 UNESCO Convention").

[71] Compromis, para. 50.

[72] Compromis, paras. 51-52.

[73] Vienna Convention on the Law of Treaties, art. 35, 1155 U.N.T.S. 331, 8 I.L.M. 679.

[74] Free Zones of Upper Savoy and the District of Gex, P.C.I.J. (1932), Series A/B, No. 46, p. 141; *see also* Territorial Jurisdiction of the International Commission of the River Oder, P.C.I.J. (1929), Series A, No. 23 , p. 19-22.

intent to be bound by the treaty by signing it (as contemplated by Article 12 of the Vienna Convention on the Law of Treaties), as the 1970 UNESCO Convention does not employ the traditional two-step signing and deposit of ratification process. It instead employs a one-step deposit of an instrument of ratification process for states to signal their ratification of the treaty.[75] Similarly, the Compromis gives no indication that Rahad acceded to the 1970 UNESCO Convention at any time prior to its deposit of its instrument of ratification on 30 September 2014.[76] Atania may make an argument based on equity that Rahad had expressed intent to be bound by the 1970 UNESCO Convention prior to the Ruby Sipar's hand-off to Rahadi border control agents and, therefore, that it should be bound by the Convention's rules.

Even were the 1970 UNESCO Convention to apply to the situation before the Court, Atania must also establish that the Ruby Sipar falls within the scope of the Convention. The 1970 UNESCO Convention governs 'cultural property' , which "means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science".[77] Upon its ratification of the 1970 UNESCO Convention, Atania deposited the following declaration with the Director-General of UNESCO[78]:

> The properties designated as "of importance for archaeology, prehistory, history, literature, art or science," in accordance with Article 1 of the Convention, include, without limitation, the following:
>
> (a) All Atan archaeological objects regardless of material or value, dating from the year 1900 CE or before;
>
> (b) All Atan paintings, drawings, water-colors, pastels, photographs, and pictures more than 50 years old and worth more than US$10,000; and
>
> (c) All original Atan sculptures, bas-reliefs, engravings, and all copies thereof produced by the same process as the originals, made before 1900, regardless of their value.

Atania can likely establish that the Ruby Sipar, which is an artifact of the Atan people (via Clan Kin, one of the clans of the Atans since prehistory), falls within the ambit of this declaration. Difficulties arise for Atania in that Rahad shares a common cultural background with Atania and with the Kin, who have migrated into Rahad. Thus, the Ruby Sipar arguably may represent cultural property and cultural heritage of Rahad, as well, under Articles 1 and 4 of the 1970 UNESCO Convention.

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[75] 1970 UNESCO Convention, art. 17.
[76] *See* Vienna Convention on the Law of Treaties, art. 15.
[77] 1970 UNESCO Convention, art. 1.
[78] Compromis, para. 60.

3.3.1.2 Analysis of Atania's Repatriation Claim under the 1970 UNESCO Convention

Assuming that the Court were to find that Rahad is bound by the 1970 Convention and that the Ruby Sipar is "cultural property" within the meaning of Article 1 of the 1970 Convention, then the general international law principle *pacta sunt servanda* applies; that is, a treaty in force is binding upon the parties and obligations under that treaty must be performed in good faith.[79] Article 3 of the 1970 UNESCO Convention holds that "import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit."[80]

Article 7 of the Convention "requires a State Party to prohibit the import of specific stolen cultural property; namely, that 'from a museum or a religious or secular public monument or similar institution' which has been listed in the inventory" of that organization or entity.[81] However, the Compromis is silent as to whether the Ruby Sipar was formally listed as a property by the Kin Canyon Complex cultural center or the University of Atanagrad in Atania, which had custody of the Sipar for decades following its discovery in 1903.[82]

It is also important to note that not all of the above provisions of the 1970 UNESCO Convention are self-executing; that is, states parties (such as Atania) must have domestic legislation implementing the Convention. The Compromis is silent as to whether Atania has taken any affirmative measures, aside from its declaration of what it considers cultural property, to implement any provisions of the 1970 UNESCO Convention in domestic legislation. Similarly, there is nothing in the Compromis to suggest that Rahad has passed any domestic legislation implementing the Convention. The ICJ has in the past found that failure to timely implement a treaty through domestic legislation to be a breach of state responsibility.[83]

3.3.2 Customary International Law of Cultural Heritage Repatriation

Some teams may also argue that the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects has established norms of customary law.[84] Because neither Atania nor Rahad is a party to the 1995 UNIDROIT Convention, the treaty itself does not bind them. Furthermore, the 1995 UNIDROIT Convention currently has only 37 contracting state parties, and teams would likely have difficulty in claiming that any provision of the 1995 UNIDROIT Convention has risen to the status of a customary norm. The key clause of the 1995 UNIDROIT Convention is Article

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[79] Vienna Convention on the Law of Treaties, art. 42.
[80] 1970 UNESCO Convention, art. 3.
[81] Patrick O'Keefe & Lyndel Prott, eds., CULTURAL HERITAGE CONVENTIONS AND OTHER INSTRUMENTS: A COMPENDIUM WITH COMMENTARIES, 65 (2011).
[82] Compromis, paras. 12-13.
[83] *See* Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 2012 ICJ Rep. 422, 452-54.
[84] UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 2421 UNTS 457; 34 ILM 1322 (1995).

3(1), which imposes an absolute duty upon the possessor of a stolen artifact to return the artifact in question.

Atania may also point to state practice regarding cultural objects and property law. As one leading commentator on art law has noted, "[m]ost nations attempt to retain cultural property. They declare that cultural objects are state property ('expropriation laws'), or prohibit the export of cultural objects ('embargo laws'), or give the state or domestic institutions a preemptive right to buy objects offered for export ('preemption laws')."[85] Atania has done this with its declaration upon its ratification of the 1970 UNESCO Convention.[86] Atania's position is further buttressed in that it can claim that Carla Dugo, the Kin Sister of the Sun (and Atanian citizen) who turned the Ruby Sipar over to Rahad, allegedly stole the Ruby Sipar from the Atanian-owned Kin Canyon Complex Cultural Center. As Professor Merryman notes, "[a]ll moral and legal systems recognize and enforce ownership and condemn and punish thieves…. The case of *Kunstammlungen zu Weimar v. Elicofon* [from a United States federal district court in the state of New York] is an excellent example. Defendant Elicofon, an [American] lawyer, bought two paintings in good faith, unaware that they were Albrecht Dürer paintings and had been stolen from storage in Germany at the end of World War II. The owner of the paintings, an agency of the East German government, successfully sued for their recovery in a [United States] federal court in New York and won."[87] The *Elicofon* case, Professor Merryman argues, "illustrates the imposing power of ownership: ownership impelled an American court to order two important paintings bought in good faith and held for many years in an American collection returned, without compensation, to an agency of [another] nation."[88] If the Ruby Sipar is viewed as property stolen by Carla Dugo, then Rahad's claim to it is invalid under the widely accepted principle *nemo plus juris ad alium transferre potest quam ipse habet* (one cannot transfer more rights to another than he himself has).[89]

Rahad may also respond that while such actions for recovery of stolen cultural objects are relatively common against private individuals, they are much less frequently filed against sovereign states, diplomatic resolution being preferred in this area.[90] Further, Rahad may argue that there is a trend *against* repatriation of cultural artifacts to states where those artifacts may be in danger. For instance, the United Kingdom has repeatedly declined to repatriate the Parthenon Marbles (also known as the "Elgin Marbles") to Greece.[91] Among its arguments against repatriation, the British government has often asserted that high levels of air pollution would

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[85] John Henry Merryman, THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW 122 (2000).
[86] *See* Compromis para. 60.
[87] Merryman, *Thinking About the Elgin Marbles* at 128 (citing *Kunstammlungen zu Weimar v. Elicofo*, 536 F. Supp. 829 (E.D.N.Y. 1981), *aff'd*, 674 F.2d 1150 (2d Cir. 1982)).
[88] *Id.*
[89] *See generally* Canevaro Claim (Italy v. Peru), (1912) 11 RIAA 397 (Perm. Ct. Arb. 1912).
[90] *See generally* John Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property*, 28 U.C. Davis Env. L. & Policy J. 1, 77-86 (2004).
[91] *See* Merryman, *Thinking About the Elgin Marbles*, at 56-66.

irreparably damage the marbles should they be replaced on the Parthenon in Athens.[92] Similarly, many museums and collectors are recently refusing to repatriate artifacts to states where the integrity of the artifacts will be in danger, pointing for instance to the destruction of antiquities in Aleppo by the Islamic State.[93] The Compromis suggests that the Ruby Sipar may be in danger in Atania; the state of Atania views the Ruby Sipar as the emblem of recent protests by the Kin, has banned its public display, and has confiscated and destroyed all copies of the Ruby Sipar.[94]

Rahad may also claim that the Kin are the proper owners of the Ruby Sipar, as the Sipar is an artifact of Clan Kin. Atania may first respond that the Kin are merely a sub-group within the greater Atan people, which are the majority cultural group in both Atania and Rahad, and that Atania, as the home (until recently) of the Kin, is the proper custodial body of the Ruby Sipar. Many tribunals have adopted this state-centric approach. For example, the Amsterdam District Court in the Netherlands recently held that that hundreds of cultural artifacts from Crimea on loan to a museum in the Netherlands must be returned to Ukraine because at the time of their loan to the Netherlands Crimea was a part of Ukraine, and Ukraine had listed them as cultural property via domestic legislation.[95] That Court ruled that only sovereign states could claim objects as cultural heritage; the museums in Russian-controlled Crimea who had made the actual loans could not properly bring claims for the objects.

Some respondent teams may attempt to argue that the Kin constitute an indigenous people under international law and accordingly should be viewed as the proper owners of the Ruby Sipar. The United Nations Declaration on the Rights of Indigenous Peoples indicates that indigenous peoples have a right to "maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature" and "the right to the use and control of their ceremonial objects."[96] However, respondent teams may have difficulty establishing the Kin as an "indigenous people." "Self-identification as indigenous or tribal is considered as a fundamental criterion [of establishing status as an indigenous people]; this is the practice followed in the United Nations and its specialized agencies, as well as in certain regional intergovernmental

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[92] This argument regarding the Elgin Marbles has been strenuously opposed by Greece, which has persuasively argued that the outdoor display of the Marbles by Britain in London during the 1800s and early 1900s caused much greater damage to the Marbles, and that were the Marbles to be returned to Greece they would be displayed in a museum, not outdoors. *See, e.g., British damage to Elgin marbles 'irreparable'*, The Guardian, 12 Nov. 1999 (available at https://www.theguardian.com/uk/1999/nov/12/helenasmith).

[93] *See, e.g.,* Islamic State Destruction Renews Debate over Repatriation of Antiquities, New York Times, 30 March 2015, C1 (available at http://www.nytimes.com/2015/03/31/arts/design/islamic-state-destruction-renews-debate-over-repatriation-of-antiquities.html.

[94] Compromis, para. 43.

[95] *See Central Museum of Tavrida v. University of Amsterdam*, No. C / 13/577586 / HA ZA 14-1179, 14 Dec. 2016 (Rechtbank Amsterdam).

[96] United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 (2001), Annex arts. 11-12.

organizations."[97] The Compromis does not definitively indicate that the Kin consider themselves separate from the greater Atan cultural group (i.e.; the Kin arguably do not self-identify as a separate indigenous people), and indeed Clan Kin opted in 1863 to become a part of the Atanian federated state.[98]

3.4 Claim 4: Compensating Host States for Refugee Crisis from State of Origin

The fourth question presented asks the Court to consider whether States accepting refugees should be able to seek compensation for costs associated therewith. The question asks students to explore whether Atania committed a wrongful act that forced the Kin to flee and whether that wrongful act should result in the remedial measure of compensation.

Applicant's Prayer for Relief	***Respondent's Prayer for Relief***
Atania owes no compensation to Rahad for any costs incurred related to the Kin migrants.	Atania must compensate Rahad for all direct and indirect expenses incurred and accruing as a result of accepting members of Clan Kin fleeing from Atania.
Applicant's Anticipated Argument	***Respondent's Anticipated Argument***
Atania may argue that forcing it to pay compensation to Rahad is unprecedented in actual practice, and doing so would open the door to endless suits from States seeking compensation from their neighbors. Further, origin liability could lead States to impose restrictions on the freedom of movement in order to prevent some individuals from emigrating.	Rahad may argue the State of origin theory should be implemented as a means to deal with mass refugee crises occurring across the globe. Having the State of origin pay compensation to the host State will alleviate the burden faced by host States and force States to take more internal action in preventing mass migrations. Rahad may argue that Atania committed a wrongful act causing the mass migration and should face liability through compensation.

Refugee crises across the globe have exposed a vast uncharted territory of international law in how to cope, deal and economically redress the harm that often occurs to States taking in refugees

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[97] *Guidelines on Indigenous Peoples' Issues*, United Nations Development Group, U.N. Doc. HR/P/PT/16 (2009), at 9.
[98] Compromis, para. 10.

("Host States"). In an October 2016 Report, *Tackling the Refugee Crisis*, Amnesty International noted that, "Just 10 of the world's 193 countries host more than half its refugees."[99]

According to UNHCR, there exist to date 21.3 million refugees. The pressing need for preventative measures to be applied towards refugee flows calls for innovative legal solutions to help curb theses crises. The Compromis asks students to argue the viability of one possible response to this problem: the development and implementation within international law of a state compensation regime.

3.4.1 Atania's Treatment of the Kin as an Internationally Wrongful Act

In order to seek compensation for the alleged Atanian-created refugee crisis, Rahad must first prove that Atania committed a breach of international law and that the breach led to the outflow of the Kin into Rahadi territory. Article 3 of the Articles on State Responsibility states that "an international wrongful act occurs when (a) conduct consisting of an action or omission is attributable to the State under international law; and (b) that conduct constitutes a breach of an international obligation of the State."[100] Article 16 elaborates further by providing that such "an international wrongful act can be a proactive breach by the State or mere negligence whereby the act is not in conformity with what is required of it by that obligation."[101] While state creation of a refugee crisis has not yet been treated by tribunals as a wrongful act in and of itself, "it may become such by reason of the resulting damage."[102]

3.4.1.1 Human Rights Violations of the Kin by Atania

Rahad may assert that Atanian state actions have resulted in violations of international human rights law including the 1) mass arrest and detention of Kin spiritual leaders, members and kin supporters and 2) cutting off water to the majority of Kin farms.

Arbitrary Detention & Right to Due Process: Most of the Kin crossing the border to Rahad "identified fear of arrest as their motivation."[103] The Kin, particularly the Sisters of the Sun, the spiritual leaders of the Kin, were arrested in August 2014 and no trials have been held as of the date of the Compromis. Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), to which both Atania and Rahad are parties, ensure freedom from arbitrary detention and the right to due process. These articles require that individuals arrested on criminal

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[99] Amnesty International, Tackling the Global Refugee Crisis: From Shirking to Sharing Responsibility, *available at* https://www.amnesty.org/en/documents/pol40/4905/2016/en/.
[100] International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, U.N. Doc. A/56/10, chp. IV.E.1 (2001).
[101] *Id.*
[102] A. Tanzi, *"Is Damage a Distinct Condition for the Existence of an International Wrongful Act?"* in Spinedi and Simma, eds., U.N. Codification of State Responsibility, 1-33, at 8 (1987).
[103] *Id.*

charges be tried within a reasonable time and without undue delay. The Universal Declaration of Human Rights similarly prohibits arbitrary arrest and detention.[104] Rahad may argue that the absence of a trial in the two years between the mass arrests of Kin protestors and the submission of the Compromis[105] constitutes a violation of these rights.

Atania may argue that a two-year delay does not necessarily constitute an undue delay. Courts considering this issue have based their decisions on the particular circumstances of a case in conjunction with the length of time. However, since longer periods between arrest and trial have been found acceptable by various domestic and regional tribunals, the length of time alone cannot be determinative.[106]

Right to an Adequate Standard of Living (Right to Food and Water): The human right to water is discussed above in section 3.1.3. Regarding a possible right to food, both states are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes a right to an adequate standard of living and the right to be free from hunger.[107] Rahad may claim that violations of these rights by Atania caused the migration of the Kin.[108] A "substantial number" of Kin declared that they fled Atania because they were dying of starvation because Atania had cut off their water supply.[109] Additionally, the Compromis notes that both the UN Food & Agriculture Organization (FAO)[110] and the International Federation of the Red Cross and Red Crescent[111] separately reported that the WRAP Act led to the starvation and poor health of many Kin. Atania may assert that the Kin failed to abide by the requirements of the WRAP Act and faced the consequences of their illegal behavior. Furthermore, the government shut off water only to farms, not to individual households. Notably, the Compromis is silent on whether the Kin or the government took steps to mitigate the situation.

3.4.1.2 Breach of Sovereignty as the Wrongful Act

Rahadi teams may also argue that Atania's creation of a refugee or migrant crisis is a violation of its sovereignty or territorial integrity. Refugees may represent a direct challenge to a State's "right to exercise exclusive jurisdiction over its own territory and its legal obligation to prevent its subjects from committing acts which violate another State's sovereignty."[112] In the *Trail Smelter Arbitration*, the United States sued Canada for damage to land, crops, and trees in the State of

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[104] Universal Declaration of Human Rights, G.A. Res. 217 A (III), art. 9 (1948).
[105] Corrections and Clarifications, Clarification 7.
[106] *See generally*, Alfred de Zayas, *Human Rights and Indefinite Detention*, 87 Int'l Rev. of the Red Cross 857 (2005).
[107] International Covenant on Economic, Social, and Cultural Rights, art. 11, 16 Dec. 1966, 993 U.N.T.S 3.
[108] *See, e.g.,* Katie Sykes, *Hunger Without Frontiers: The Right to Food and State Obligations to Migrants*, in THE INTERNATIONAL LAW OF DISASTER RELIEF at 198-200 (David Caron, Michael Kelly, & Anastasia Telestesky, eds., 2014).
[109] Compromis, para. 47.
[110] Compromis, para. 39.
[111] Compromis, para. 40.
[112] Jack Garvey, *Towards a Reformulation of International Refugee Law*, 26 Ham. Int'l. L. J. 494 (1985)

Washington that had been caused by sulphur dioxide fumes emitted by a Canadian ore-smelting company.[113] The arbitral tribunal found Canada liable for allowing the fumes to cross international boundaries, holding that the fumes' crossing violated the territorial sovereignty of the United States.[114] Using the *Trail Smelter* panel's reasoning, Rahad may argue that Atania, imposed legal burdens on Rahad as a result of allowing its citizens to be forced to cross the border and, therefore, Atania violated basic international law principles regarding inter-State relations.

3.4.1.3 The Kin: Migrants vs. Refugees vs. Environmentally Displaced Persons

Many teams may try to address whether the Kin are refugees[115], migrants[116], or environmentally displaced persons.[117] In reality, the Compromis does not provide facts to definitively classify the Kin as one of these groups. Though teams may engage in these analyses, the classification of the Kin is not directly determinative of the central issue, namely whether Atania committed an internationally wrongful act and should compensate Rahad. Judges may permit teams to make their submissions on this point and guide them back to the specific internationally wrongful acts allegedly committed by Atania and the basis for awarding compensation.

3.4.2 State-of-Origin Compensation for Causing Mass Migration

Imposing compensatory liability on states of origin in mass migration situations "enforces normative rules, prevents future abrogation of those rules, and provides justice for those injured by the violation of the rules."[118] Cambridge Professor Sir Robert Yewdall Jennings in 1939 suggested that economic compensation maybe the proper repercussion for states which cause a refugee exodus; as such an exodus would affect the direct material interests of the harming State. In his view, conduct resulting in 'the flooding of other States with refugee populations' was illegal... *a fortiori* where the refugees are compelled to enter the country of refuge in a destitute

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[113] Trail Smelter Arbitration (United States v. Canada), 3 U.N. Rep. Int'l Arb. Awards 1905 (1941).
[114] *Id.*
[115] A refugee, according to the 1951 Refugee Convention, is: "Someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion." Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137.
[116] "The term 'migrant'…should be understood as covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of 'personal convenience' and without intervention of an external compelling factor." International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, G.A. Res. 45/158 (1990), U.N. Doc. A/RES/45/158; *see also* U.N. Commission on Human Rights, *Question of Arbitrary Detention*, Res. 1998/41, U.N. Doc. E/CN.4/RES/1998/41 (17 April 1998). This definition indicates that "migrant" does not refer to refugees, displaced or others forced or compelled to leave their homes. Migrants are people who make choices about when to leave and where to go, even though these choices are sometimes extremely constrained.
[117] *See, e.g.,* Suzette Brooks Masters, *Environmentally Induced Migration: Beyond a Culture of Reaction*, 14 Geo. Immigr. L. J. 855,865 (2000)
[118] *See generally* Hannah Garry, *The Right to Compensation and Refugee Flows: A Preventative Mechanism in International Law*, 10 Int'l J. Refugee L. 97, 98-99 (1998).

condition'.[119] This legal remedy, however, while receiving some attention during the 1980s and early 1990s, has received little scholarly attention until quite recently with the wave of refugees flowing from Syria throughout the Levant[120] and Europe.

At first, the concept of state-of-origin compensation was linked exclusively to the idea of compensating the refugees themselves. The Cairo Declaration of Principles of International Law on Compensation to Refugees, drafted in 1992 by the International Law Commission, stipulates that "a state is obligated to compensate its own nationals forced to leave their homes to the same extent as it is obligated by international law to compensate an alien."[121] Principle 1 of the Cairo Declaration provides that:

> The responsibility for caring for the world's refugees rests ultimately upon the countries that directly or indirectly force their own citizens to flee and/or remain abroad as refugees. The discharge of such responsibility by countries of asylum, international organizations (e.g., UNHCR, UNRWA, IOM) and donors (both governmental and non-governmental), pending the return of refugees, their settlement in place, or their resettlement in third countries, shall not relieve the countries of origin of their basic responsibility, including that of paying adequate compensation to refugees.

The idea that a State of Origin may be liable to a host state, rather than to the refugees themselves, could be argued to complement the aims of the Cairo Declaration to protect all refugees.[122] It further eliminates the real risk that "host" governments will be disinclined to aid immigrants, as they would no longer bear the sole burden on their own.

Looking at past ICJ precedents on state responsibility and compensation, students may argue that the Court should use compensation as a means to alleviate the burden of the receiving states, to aid refugees, and to deter states from acting in bad faith against their own citizens. The rule enunciated in the ICJ's *Corfu Channel* case asserted that responsibility may be attributed whenever a State, within whose territory substantial transboundary harm is generated, has knowledge or means of knowledge of the harm and the opportunity to act.[123] In the Chorzow Factory Case, the PCIJ indicated that reparation must "wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability have existed if that act had not been committed."[124] Further, in its 1962 *Case Concerning the Temple of Preah Vihear*, the ICJ held that

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[119] R.Y. Jennings, *Some International Law Aspects of the Refugee Question*, 20 BYIL 98, 111 (1939).
[120] The Levant refers to an area in the eastern Mediterranean; Cyprus, Egypt, Iraq, Israel, Jordan, Lebanon, Palestine, Syria and Turkey are sometimes considered Levant countries.
[121] Luke T. Lee, *The Cairo Declaration of Principles of International Law on Compensation to Refugees*, 87 Am. J. Int'l. L. 157, 158 (1993).
[122] *See id.*
[123] Corfu Channel Case (United Kingdom v. Albania), 1949 I.C.J. Rep. 244.
[124] Case concerning the Factory at Chorzów (Germany v. Poland), (1928) P.C.I.J., Ser. A, No. 17.

the principle *restitutio in integrum*[125] applied when calling for "payment of compensation to the victims for injury, loss, damage, or expropriation of property rights upon flight."[126]

While it is largely unprecedented for states to seek compensation as a remedy before international tribunals, a small number of States have historically consented to paying compensation as a remedy for a state caused refugee crisis. Israel, for instance, sought reparations from Germany for the cost of resetting 500,000 refugees of Nazi persecution. Israel and Germany in the 1952 Luxembourg Agreement agreed that, "the State of Israel has assumed the heavy burden of resettling so great a number of uprooted and destitute Jewish refugees from Germany and from territories formally under German rule and has on this basis advanced a claim against the Federal Republic of Germany for global recompense for the cost of the integration of these refugees."[127] The Republic of Germany agree to pay to the State of Israel the sum of three billion Deutsche Marks.[128]

Similarly, following the 1991 invasion of Kuwait, the Security Council established the United Nations Compensation Commission (UNCC), which was empowered to hear claims for compensation for any direct loss or damage, including environmental damage and the depletion of natural resources, or other injury to states and individuals.[129] Among the many types of claims permitted, states were empowered to make claims for "any direct loss, damage, or injury to Governments … suffered as a result of … departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period."[130] In this same decision, the UNCC noted that such "payments will include loss of or damage to property of a Government, as well as losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait. These payments are also available to reimburse payments made or relief provided by Governments or international organizations to others – for example to nationals, residents or employees."[131] Governments of states including Canada, Germany, Iran, Kuwait, Saudi Arabia, Sri Lanka, Syria, Turkey, Jordan, Thailand, the Netherlands, and Pakistan all submitted claims for compensation for expenses incurred as a result of providing relief for Iraqi, Kuwaiti, and other national refugees.[132]

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[125] Meaning, restoration to original condition.
[126] Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. Rep. 6.
[127] Luxembourg Agreement (Isr.-F.R.G.), 10 Sept. 1952, 162 U.N.T.S. 205.
[128] *Id.*
[129] *See* S.C. Res. 687, U.N. Doc. S/RES/687 (3 Apr. 1991); S.C. Res. 692, U.N. Doc. S/RES/692 (20 May 1991).
[130] UNCC General Decision 7, *Criteria for Additional Categories of Claims*, U.N. Doc. S/AC.26/1991/7/Rev.1, at para. 34 (17 Mar. 1992).
[131] *Id.* at para. 38.
[132] *See, e.g.,* UNCC General Decision 45, *Decision Concerning Part One of the First Instalment of Claims by Governments*, U.N. Doc. S/AC.26/Dec.45 (18 Dec. 1997); UNCC General Decision 50, *Decision Concerning Part Two of the First Instalment of Claims by Governments*, U.N. Doc. S/AC.26/Dec.50 (12 Mar. 1998); UNCC General Decision 66, *Decision Concerning the Third Instalment of "F1" Claims*, U.N. Doc. S/AC.26/Dec.66 (19 Mar. 1999); UNCC Decision 98, *Decision concerning the fourth instalment of "F1" claims*, U.N. Doc. S/AC.26/Dec.98 (15 June 2000); UNCC General Decision 112, *Decision concerning the second instalment of "F2" claims*, S/AC.26/Dec.112 (7 Dec. 2000); UNCC General Decision 131, *Decision concerning the fifth instalment of 'Fl" claims*, U.N. Doc. S/C.26/Dec.131 (21 June 2001); UNCC General Decision 151, *Decision concerning the sixth instalment of "F1" claims*, U.N. Doc. S/AC.26/Dec.151 (13 March 2002).

Saudi Arabia, for instance, sought compensation for the services numerous Saudi government agencies provided to the approximately 350,000 to 360,000 refugees who entered Saudi Arabia from Kuwait.[133] The UNCC found that "costs incurred in making payments or providing relief to the refugees who were present in Saudi Arabia as a result of departure from (or a decision not to return to) Iraq or Kuwait … are, in principle, compensable [from the fund]."[134]

3.4.2.1 Arguments Against State of Origin Liability and Compensation

Atania is expected to argue that compensation for taking in refugees is unprecedented in practice and would open the door to endless suits from neighbor states accepting refugees. Although scholars have contemplated the notion of state-of-origin liability and direct compensation to the host state, it has, in actuality, very rarely been implemented, and never ordered by an international court.

Moreover, calculating actual costs spent by the receiving Host State is somewhat difficult, as they should account for not only the out-of-pocket costs spent on immigrants but also the social costs and indirect burdens, which include long-term and short-term costs. Further, many argue that there are benefits to the Host State from immigration, which should be subtracted from expenditures.

Origin liability arguably could lead states to impose restrictions on the freedom of movement in order to prevent some individuals from emigrating. The right to leave one's state, although certain restrictions apply, has been deemed customary international law. Article 13(2) of the Universal Declaration on Human Rights provides that "everyone has a right to leave any country, including his own."[135] The ICCPR also reiterates this right in Article 12 (2).[136] Therefore, this remedial mechanism could be applied only if the right to exit a country is protected and there are serious sanctions for States that create such restrictions in an attempt to avoid liability.

In addition, Atania may claim that application of such a remedial mechanism could come about only by appealing directly to international judicial organs like the ICJ or the various regional human rights courts. As of September 2016, reports indicate that there are 21 million declared refugees in the world.[137] Were the ICJ to enforce origin liability as a remedial measure, compensation could be sought from hundreds of States taking in the world's 21 million refugees.

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[133] United Nations Compensation Commission Governing Council, *Report and Recommendation Made by the Panel of Commissioners Concerning the Second Instalment of F2 Claims*, U.N. Doc. S/AC.26/2005/10, at para. 14 (30 June 2005).

[134] *Id.* at para. 48.

[135] G.A. Res. 217A (III), art. 13(2), U.N. Doc A/810, at 71 (1948).

[136] ICCPR, supra note 8, art. 12(2)

[137] *See, e.g., Global Trends 2015: Figures at a Glance,* U.N. High Commissioner for Refugees, available at http://www.unhcr.org/en-us/figures-at-a-glance.html.

Further, states of origin are often in states of emergency, facing recent natural disasters, or they are impoverished; seeking compensation from such countries may be, at best, problematic.[138]

Scholars contemplating these issues have noted that an origin liability compensation remedial system could also serve as a means of preserving the unjust distribution of wealth, as the countries of origin would have to pay money to the host countries, which are often wealthier. "Imposing additional financial obligations on countries of origin could cause their domestic situations to deteriorate further which, in turn, could cause another mass outpouring of refugees. Therefore, this compensation mechanism should be applied with care and after close consideration of each country of origin's situation and capabilities."[139]

Students arguing on behalf of Atania may also argue that many of the Kin fleeing fall within the category of persons displaced by a *force majeure* (namely, the intense drought that has befallen the Nomad Coast), and that responsibility for their departure cannot be attributed to Atania.[140] Rahad may combat this assertion arguing that the rest of the Atanian population is not starving and that the starvation is a direct result of Atanian government action of directly cutting of the water to the Kin without proper due process.

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[138] Luke T. Lee, *The Right to Compensation: Refugees and Countries of Asylum*, 80 Am. J. Int'l. L. 532, 554-55 (1986).
[139] *See id.*
[140] *See, e.g.,* International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, art. 23, U.N. Doc. A/56/10, chp. IV.E.1 (2001).

4 SUGGESTED QUESTIONS FOR THE ORAL ROUNDS

International Law Generally:

1. Is there any priority or hierarchy of the sources of international law mentioned in Art. 38 of the ICJ Statute?
2. What is customary international law? What are the elements of customary international law?
3. When asserting a state's obligations under customary international law:
    a. Where can we find evidence of relevant State practice?
    b. What is opinio juris? How is it proven?
4. Is the ICJ bound by its prior decisions?
5. What specific remedies is the Applicant/Respondent seeking? Is the ICJ permitted by its Statute to grant those remedies?
6. What obligations exist for States who sign and/or ratify treaties? What punishment can be exuded by the ICJ for treaty violations?
7. How does a State become part of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property?
8. If a state has conflicting obligations under two treaties (or a treaty on the one hand and customary international law on the other), which obligation controls? What principle does the Court use to determine which obligation controls?

Question Presented #1 (Extraction of Water from a Transboundary Aquifer)

1. Does the 1993 statement by Rahad's Minister of Water and Agriculture bind Rahad to equitable use of the Greater Inata Aquifer?
2. Can a state withdraw from obligations created by a unilateral declaration? Has Rahad done so?
3. Does Rahad owe an obligation to equitably use the Greater Inata Aquifer? If so, from where does that obligation arise?
4. Is the water in the Greater Inata Aquifer a natural resource belonging to Rahad?
5. Is there a human right to water? If there is such a human right, have Rahad's actions violated that right?

Question Presented #2 (Protection of World Heritage)

1. What obligations, if any, does Rahad have under the World Heritage Convention with respect to its development of the Savali Pipeline Project?
2. What effect does the listing of the Kin Canyon Complex as a "World Heritage in Danger" have on Rahad?
3. Can economic development be used as a justification for causing damage to a World Heritage site?
4. Does customary international law create any obligations on Rahad to prevent damage to the Kin Canyon Complex? What state practice or *opinion juris* creates such an obligation?

5. Does the development of the Savali Pipeline by Rahad violate Rahad's obligation to prevent transboundary harm? If so, how?

Question Presented #3 (Repatriation of a Cultural Artifact)

1. Is Rahad bound by the 1970 UNESCO Convention, or at the time of the theft of the Ruby Sipar, was it a "third state" party to the Convention?
2. Does the Ruby Sipar qualify as "cultural property" under the 1970 UNESCO Convention?
3. Why should Rahad be permitted to retain possession of an object stolen from Atania?
4. Are the Kin the proper owners of the Ruby Sipar? Should Rahad maintain custody of the Ruby Sipar now that the Kin largely reside in Rahad?
5. Does Rahad have an obligation to return the Ruby Sipar if it is at risk of being destroyed by Atania?

Question Presented #4 (Compensating Host States for Refugee Crisis from State of Origin)

1. What internationally wrongful act has Atania committed that would give rise to a claim of compensation for Rahad?
2. What standard must Rahad meet in order to be awarded compensation?
3. Does it matter if the Kin are refugees or migrants?
4. Has any tribunal ever awarded compensation to a state for costs incurred for hosting refugees?
5. Is Rahad the proper recipient of compensation? Should (and can) this court instead award compensation directly to the individuals who have crossed into Rahad?