

INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE
THE HAGUE, THE NETHERLANDS



**QUESTIONS RELATING TO
CULTURAL PROPERTY AND THE PROTECTION OF ELEPHANTS**

**THE FEDERAL STATES OF ALIYA
(APPLICANT)**

v.

**THE REPUBLIC OF RINCOSSI
(RESPONDENT)**

MEMORIAL FOR THE APPLICANT

2015

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STATEMENT OF JURISDICTION

The Federal States of Aliya (“Aliya”) and the Republic of Rincossi (“Rincossi”) have submitted by Special Agreement their differences concerning questions relating to cultural property and the protection of elephants, and transmitted a copy thereof to the Registrar of the International Court of Justice (“ICJ”). The Registrar acknowledged receipt of the notification of the Parties regarding this matter. Therefore, Aliya and Rincossi have accepted the jurisdiction of the ICJ pursuant to Article 36(1) of the Statute.

QUESTIONS PRESENTED

I.

WHETHER RINCOSSI VIOLATED INTERNATIONAL LAW BY FAILING TO ARREST OR PROSECUTE AMBASSADOR CUSI AND THE TWENTY MEMBERS OF BARNUM URITOVSKY FOR TRAFFICKING ILLEGAL THORNON ELEPHANT IVORY.

II.

WHETHER RINCOSSI VIOLATED INTERNATIONAL LAW BY REFUSING TO RETURN THE CONFISCATED THORNON ELEPHANT IVORY TO ALIYA.

STATEMENT OF FACTS

Aliya and Rincossi are developing coastal nations on two different continents, separated by Bomud Ocean. Aliya is in Thorno while Rincossi is in Rabab. Aliya's economy hinges primarily on mining, agriculture and ecotourism, while Rincossi's is based on manufacturing and consumerism.

The Thornon elephant is indigenous to Thorno and plays a significant role in Aliyan culture. It is the national animal of Aliya, is featured prominently on its national flag and currency and, as keystone species, is considered ecologically important to Aliya. In 1990, Aliya declared Thornon elephants and their parts and derivatives to be of historical and scientific importance.

Thornon elephant is listed as vulnerable on the IUCN Red List of Threatened Species and under Annex I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). Due to hunting and illegal poaching, their population dropped by 90% from 1940 to May 2015. Of the 300,000 remaining Thornon elephants, 10,000 live in Aliya.

Both Aliya and Rincossi are members of the UN and parties to the CITES, CBD, CMS, UNTOC, UNCAC, UNESCO 1970, VCLT, among others. Both states had also actively participated in various conferences affecting the environment in Stockholm, Rio, Johannesburg, Nairobi, and in Doha on crime prevention and justice.

Ivory trade is illegal in Aliya, but a black market for ivory exists in Rincossi as primary destination. In July 2014, Rincossi officials discovered that Ambassador Pam Cusi ("Cusi") transported 25kg of illegal ivory from Aliya. Security video showed that despite warning from a poacher that the act is illegal, she persisted, remarking that her diplomatic immunity will shield her from prosecution.

Investigation revealed that Cusi's act had been part of a larger criminal operation that transported illegal ivory between both countries involving members of Barnum Uritovsky ("Barnum"), a group which runs a large international transport business. For the last three years, twenty members of Barnum have been actively involved in trafficking illegal ivory from Aliya. Approximately 1,500kg of Thornon elephant ivory were confiscated by Rincossi officials after raiding several Barnum transport containers, all matching the DNA signature of the Thornon elephant living in Aliya's National Park.

Barnum members were briefly detained and questioned, but no arrests were made. Aliya requested for the arrest and prosecution of Cusi and the twenty Barnum members, but Rincossi refused, claiming that issuance of warning and monitoring of the group's activities suffice.

Aliya requested for the return of all the confiscated ivory, which it considers cultural property but Rincossi refused, disputing its being cultural property. Rincossi plans to publicly destroy the ivory.

Failing to resolve the disputes, both states agreed to submit the matter to the ICJ for adjudication.

SUMMARY OF ARGUMENTS

By failing to arrest or prosecute Cusi and the twenty members of Barnum, Rincossi breached its obligations to arrest or prosecute under United Nations Convention Against Transnational Organized Crime (“UNTOC”) and United Nations Convention Against Corruption (“UNCAC”); to penalize traffickers under CITES; and to conserve biodiversity under CITES and Convention on Biological Diversity (“CBD”). In any case, Rincossi cannot invoke its internal law as justification for its failure to perform its treaty obligations.

Further, Rincossi violated an *erga omnes inter partes* norm to prosecute wildlife offenses. In any event, its refusal to arrest or prosecute offenses that affect keystone species is a violation of its *erga omnes* duty to protect and preserve the environment and of the Principles of ‘Sustainable Development’ and ‘Sustainable Use.’

Thornon elephant ivory is Aliya’s cultural property under the UNESCO Convention on The Means of Prohibiting and Preventing The Illicit Import, Export, and Transfer of Ownership of Cultural Property (“UNESCO 1970”). Hence, Rincossi is obligated to repatriate the ivory.

The discretion granted by CITES, UNTOC and UNCAC regarding the disposal of the ivory as specimens of illegally-traded species and as proceeds of crime must yield to the mandate of UNESCO 1970.

Lastly, the repatriation of cultural property has become customary international law.

ARGUMENTS

I. RINCOSSI VIOLATED INTERNATIONAL LAW BY FAILING TO ARREST OR PROSECUTE CUSI AND THE TWENTY MEMBERS OF BARNUM FOR ILLEGAL TRAFFICKING OF THORNON ELEPHANT IVORY.

Cooperation among states to combat criminal impunity is expressed in relevant international instruments.¹ As widely shared by States,² such cooperation is shown in the obligation to arrest and prosecute,³ because strengthening the investigation and prosecution of illegal trade in wildlife is viewed as effective means of combating such criminal activity.⁴

Aliya will establish that Rincossi’s failure to arrest or prosecute Cusi and the twenty members of Barnum constitutes a breach of its treaty obligations [A] and a violation of customary international law [B].

A. TEXTUAL AND TELEOLOGICAL INTERPRETATIONS OF UNTOC, UNCAC, CITES, CBD AND OTHER RELEVANT CONVENTIONS OBLIGATE RINCOSSI TO ARREST OR PROSECUTE.

Treaties are binding upon parties and demand performance in good faith.⁵

¹ *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), I.C.J. Reports (2012) ¶120.

² Belgium (A/CN.4/612, ¶33); Denmark, Finland, Iceland, Norway and Sweden (A/C.6/66/SR. 26, ¶10); Switzerland (*ibid.*, ¶18); El Salvador (*ibid.*, ¶24), Italy (*ibid.*, ¶42); Peru (*ibid.*, ¶64); Belarus A/C.6/66/SR. 27, ¶41; Russian Federation (*ibid.*, ¶64); and India (*ibid.*, ¶81); *see* 2014 Final Report of the International Law Commission (“ILC”) on The Obligation to Extradite or Prosecute (*aut dedere aut judicare*) [Yearbook of the International Law Commission, 2014, Vol. II (Part Two) (hereinafter “2014 Final Report”)].

³ *Supra note 1*, ¶50, 68, 74-75.

⁴ Tackling Illicit Trafficking in Wildlife, U.N. Res. No. A/RES/69/314 (30 July 2015), ¶3.

⁵ Vienna Convention on the Law of Treaties, Art. 26, May 23, 1969, 1155 U.N.T.S. 331.

Pacta sunt servanda obligates parties to perform treaty obligations in a reasonable way and in such a reasonable manner that its purpose can be realized,⁶ otherwise, state responsibility arises.⁷

1. Rincossi breached its obligation to arrest or prosecute under UNTOC and UNCAC which follow the *Hague Formula*.

a. UNTOC applies to the twenty members of Barnum

UNTOC applies to the prevention, investigation and prosecution of serious crime that is transnational and committed by an organized criminal group.⁸

i. Illegal trafficking of Thornon elephant ivory is a 'serious crime.'

A “serious crime” is an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.⁹ Rincossi’s and Aliya’s legislations punish illegal ivory trade and violations of CITES with penalties of eight years¹⁰ and ten years¹¹ of imprisonment, respectively.

ii. The offense committed by the twenty Barnum members is 'transnational in nature.'

⁶ *Advisory Opinion concerning Legality of the Threat of Use of Nuclear Weapons* (“Nuclear Weapons Case”), I.C.J. Reports (1996) ¶241-242, 29; *Gabcikovo-Nagymaros Project Case*, I.C.J. Reports (1997) ¶41, ¶53; See Stockholm Declaration, Principle 21 (1972); HOHMANN, *BASIC DOCUMENTS OF ENVIRONMENTAL LAW* 26 (1992); See also FENWICK, *INTERNATIONAL LAW* 301 (1952); See also AUST, *HANDBOOK OF INTERNATIONAL LAW* 317 (2010).

⁷ See *Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania, Advisory Opinion*, I.C.J. 221 (1950).

⁸ See UNTOC, Art. 3(1).

⁹ UNTOC, Art. 2(b).

¹⁰ Record, ¶21.

¹¹ Record, ¶17; Clarifications, A8.

An offense is transnational if committed in more than one state; in one state but a substantial part of its preparation, planning, direction, or control takes place in another; in one state but involves an organized criminal group that engages in criminal activities in more than one state; or in one state but has substantial effects in another state.¹²

The illegal trafficking of Thornon elephant ivory was committed in Aliya and Rincossi for failure to secure an import permit from Rincossi and an export permit from Aliya.¹³ It was committed in Aliya by an organized criminal group engaged in criminal activities in Rincossi.¹⁴ The crime has substantial effects in Aliya as it involves Thornon elephant ivory which forms part of Aliya's culture and considered an endangered species.

iii. The twenty Barnum members constitute an 'organized criminal group.'

An "organized criminal group" means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with UNTOC, in order to obtain, directly or indirectly, a financial or other material benefit.¹⁵

The illegal trafficking of Thornon elephant ivory by the twenty Barnum members had been actively done for three years.¹⁶ Barnum runs a large international transport business and the

¹² UNTOC, Art. 3(2).

¹³ See CITES, Art. III(2) and III(3).

¹⁴ Record, ¶25.

¹⁵ UNTOC, Art. 2(a).

¹⁶ Record, ¶24, ¶26.

members are politically well-connected.¹⁷ No other purpose could be inferred from the offense but to obtain, directly or indirectly, financial or other material benefit.

A “structured group” means a group that is not randomly formed for the immediate commission of an offense.¹⁸ The nature and scale of the offense of illegal trafficking involving the Thornon ivory and the length of time trafficking had been going on negate random formation or organization for the immediate commission of an offense.

b. UNCAC applies to Cusi as she abused her function.

Committing an offense to obtain undue advantage for one’s self or for another is an abuse of function which states parties, including Aliya and Rincossi, have declared as an act of corruption.¹⁹ Cusi illegally purchased Thornon elephant ivory and used her diplomatic immunity to evade authorities.²⁰

c. Following the Hague Formula, the object and purpose of UNTOC and UNCAC impose a legally binding obligation upon Rincossi to arrest or prosecute regardless of an extradition request.

The general trend of more recent conventions containing the obligation to prosecute follows the *Hague Formula*²¹ which obliges states parties of conventional international laws to

¹⁷ Record, ¶25.

¹⁸ CITES, Art. 2(c).

¹⁹ See UNCAC, Art. 19.

²⁰ See Record, ¶24.

²¹ See A/CN.4/630 (“Secretariat’s Survey (2010)”), ¶91.

ensure that the alleged offender, who is present in their territory and is not extradited, is under custody and there is a preliminary inquiry, and the offense is considered extraditable.²²

These obligations are elements of a single conventional mechanism aimed at preventing suspects from escaping the consequences of their criminal responsibility.²³

The *Hague Formula* served as model for several subsequent conventions for the suppression of specific offenses, including UNTOC and UNCAC.²⁴ These conventions oblige states to exercise universal jurisdiction over perpetrators of the offenses under the treaty, without making this obligation conditional on refusal to honor a prior extradition request.²⁵

Rincossi is a party to UNTOC and UNCAC²⁶ and must comply in a reasonable way and in such a reasonable manner that their purpose can be realized.

2. Rincossi is obligated to penalize traffickers under CITES and not just to confiscate the proceeds of crime.

CITES requires each party to “take appropriate measures to enforce” the Convention,²⁷ both by imposing penalties²⁸ and by confiscating illegal specimens.²⁹ Within their borders, parties

²² *Id.*, ¶109.

²³ *Supra note 1*, ¶74-75, 78, 94.

²⁴ Secretariat’s Survey (2010), ¶108; 2014 Final Report, *supra note 2*.

²⁵ See Special Rapporteur Galicki in his fourth report (A/CN.4/648, ¶85 and fn. 56).

²⁶ Record, ¶11-12.

²⁷ See CITES, Art. VIII(I).

²⁸ CITES, Art. VIII(I)(a).

²⁹ CITES, Art. VIII(I)(b).

are required to penalize illegal traffickers and confiscate live specimens and/or products of species protected under CITES.³⁰

While Rincossi enacted the Rincossi Flora and Fauna Trafficking Act to protect wildlife and implement CITES,³¹ its duty extends to penalizing violators of CITES³² and not just to confiscating illegally traded specimens.³³ Rincossi's mere issuance of a written warning to Cusi and Barnum³⁴ falls short of its obligation to penalize violators.

3. Rincossi is obligated to conserve biodiversity under CITES and CBD by arresting or prosecuting offenders.

As keystone species, elephants are important. They help increase plant biodiversity by spreading seeds³⁵ and benefit their ecosystems by creating gaps in heavily vegetated areas³⁶ which would allow plants³⁷ and other animals to access sunlight leading to a more diverse and productive

³⁰ Glennon, *Has International Law Failed the Elephant?*, 84 Am. J. Int'l L. 1 (1990).

³¹ See Record, ¶18.

³² CITES, Art. VIII(1)(a).

³³ CITES, Art. VIII(1)(b).

³⁴ Record, ¶28.

³⁵ Arthur, *Poaching Cultural Property: Invoking Cultural Property Law to Protect Elephants*, *Journal of International Wildlife Law & Policy* (2014) at 231–253.

³⁶ Western, *The Ecological Role of Elephants in Africa*, 12 *PACHYDERM* 42-43 (1989).

³⁷ *Id.*, at 44.

habitat.³⁸ Ecosystems would suffer greatly if elephant populations are reduced.³⁹ Protection of elephants leads to protection of biodiversity in general.⁴⁰

Extremely low level of prosecution is one of the key issues in combating illegal wildlife trade.⁴¹

Most cases of ivory smuggling in Rincossi have not resulted in criminal prosecution.⁴² Confiscations of illegal ivory and public destruction of several tonnes of illegal ivory⁴³ have turned out futile as evinced by the commission of the offense by Cusi and the twenty Barnum members, and the decrease of Thornon elephants in Aliya.⁴⁴ Rincossi's failure to arrest or prosecute contributes to the extinction of Thornon elephants as this will only embolden illegal traders of Thornon elephant ivory.

4. In any case, Rincossi cannot invoke its internal law as justification for its failure to perform its treaty obligations under UNTOC, UNCAC, CITES and CBD.

³⁸ Van Couvering, *Proboscideans, Hominids, and Prehistory*, in *ELEPHANT: THE ANIMAL AND ITS IVORY IN AFRICAN CULTURE* 63, 70 (DORAN ed., 1992).

³⁹ Campos-Arceiz & Blake, *Megagardeners of the Forest—The Role of Elephants in Seed Dispersal* 37 *ACTA OECOLOGICA* 550 (2011).

⁴⁰ International Union for Conservation of Nature, *Strategy for the Conservation of West African Elephants* (2005).

⁴¹ Lowther and Cook, *World Wide Fund for Nature Traffic Report*, University of Wolverhampton (2002).

⁴² See Record, ¶22.

⁴³ *Id.*

⁴⁴ Record, ¶2.

Rincossi invokes its internal law in saying it has discretion not to prosecute.⁴⁵ However, under Art. 27 of the VCLT, internal law cannot be invoked as justification for failure to perform treaty obligations.

In any case, Rincossi must ensure that any discretionary legal powers under domestic law relating to the prosecution of persons for offenses covered by the convention are exercised to maximize the effectiveness of law enforcement measures with respect to those offenses and with regard to the need to deter the commission of such offenses.⁴⁶

B. RINCOSSI VIOLATED CUSTOMARY INTERNATIONAL LAW.

1. Prosecution of wildlife offenses is an *erga omnes inter partes* norm.

a. Acts of International Consortium on Combating Wildlife Crime (ICCWC) and of States evince state practice.

Custom is sufficiently established by the practice of interested states,⁴⁷ which includes their acts relating to international organizations and national legislations.⁴⁸ The practice of prosecuting wildlife offenses is reflected in acts of states, particularly through ICCWC and domestic laws.

ICCWC is an international organization formed to effectively combat transnational wildlife offenses.⁴⁹ With expressed desire to liaise together more closely,⁵⁰ it has five partner organizations

⁴⁵ Record, ¶28.

⁴⁶ UNTOC, Art. 11(2).

⁴⁷ See *North Sea Continental Shelf Cases*, 1969, I.C.J.

⁴⁸ SHAW, *PUBLIC INTERNATIONAL LAW*, 82 (2008); SANDS & PEEL, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW*, 112 (2012).

⁴⁹ ICCWC, Strategic Plan 2014-2016 (2014).

⁵⁰ Letter of Understanding, *Establishing the International Consortium on Combating Wildlife Crime*, CITES (2010).

agreeing to collaborate, namely: CITES (181 states parties),⁵¹ INTERPOL (190),⁵² United Nations Office on Drugs and Crime,⁵³ The World Bank (188 member countries)⁵⁴ and The World Customs Organization (180).⁵⁵ There are now at least 87 countries that seek to prosecute international trade of endangered species.⁵⁶ All these prove uniform and consistent state practice.

b. The adoption of UN General Assembly (G.A.) Resolutions, multilateral conventions and bilateral treaties against illicit trafficking of wildlife evince opinio juris.

G.A. Resolutions are themselves evidence of *opinio juris*.⁵⁷ The 2015 UN G.A. Resolution 69/314 urges States to prosecute illicit trafficking in wildlife.⁵⁸ Such was adopted by the General

⁵¹ List of Parties in CITES, <https://www.cites.org/eng/disc/parties/index.php> (last visited Nov. 2, 2015).

⁵² Interpol Overview, <http://www.interpol.int/About-INTERPOL/Overview> (last visited Oct. 31, 2015).

⁵³ United Nations Office on Drugs and Crime, <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/iccwc.html> (last visited Nov. 1, 2015).

⁵⁴ The World Bank Member Countries, <http://www.worldbank.org/en/about/leadership/members> (last visited Nov. 3, 2015).

⁵⁵ World Customs Organization, <http://www.wcoomd.org/en/about-us/wco-members/~media/WCO/Public/Global/PDF/About%20us/WCO%20Members/List%20of%20Members%20with%20membership%20date.ashx> (last visited Nov. 1, 2015).

⁵⁶ CITES, Status of Legislative Progress for Implementing CITES (2013).

⁵⁷ *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), I.C.J. Reports (1986) ¶88-91; SHAW (2008), *supra* note 48, at 88

⁵⁸ G.A. Res. 69/314, ¶3, U.N. Doc. A/Res/69/314 (July 30, 2015).

Assembly *without a vote*,⁵⁹ thus, marking consensus from all states⁶⁰ in approving the resolution without objection.⁶¹ Other UN G.A. Resolutions also call for such action.⁶²

2. In any case, Rincossi's refusal to arrest or prosecute offenses that affect keystone species is a violation of its *erga omnes* duty to protect and preserve the environment.

The present generation owes a duty to future generations to have a global environment that is in no worse condition than the one they enjoy.⁶³ This duty is an emerging norm of customary international law.⁶⁴ It is reflected in the Principle of Trusteeship of earth resources,⁶⁵ recognized as part of customary international law and a *sine qua non* for human survival.⁶⁶

The obligation to respect the environment⁶⁷ has become common concerns of humanity⁶⁸ giving rise to an *erga omnes* obligation that may be pursued by any party.⁶⁹

3. Rincossi violated the Principle of 'Sustainable Development' and 'Sustainable Use'.

⁵⁹ Resolutions adopted by the General Assembly at its 69th session, <http://research.un.org/en/docs/ga/quick/regular/69> (last visited Nov.4, 2015).

⁶⁰ BOYLE & CHINKIN, *THE MAKING OF INTERNATIONAL LAW*, 157 (2007).

⁶¹ BOSCH, *VOTES IN THE UN GENERAL ASSEMBLY*, 95 (1998).

⁶² G.A. Res. 67/189*, U.N. Doc. A/Res/67/189*, ¶12; G.A. Res. 68/193, U.N. Doc. A/Res/68/193, ¶32.

⁶³ WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY AND INTERGENERATIONAL EQUITY* (1989).

⁶⁴ See Weiss, *The Planetary Trust: Conservation and Intergenerational Equity*, (1984) 11 Ecology L.Q. 495.

⁶⁵ *Hungary v Slovakia*, *supra* note 6; See also C.G. WEERAMANTRY, *NAURU: ENVIRONMENTAL DAMAGE UNDER INTERNATIONAL TRUSTEESHIP* (1992).

⁶⁶ See *Nuclear Weapons Case*, ¶502-504 (Weeramantry, J., dissenting).

⁶⁷ *Nuclear Weapons Case*, ¶226.

⁶⁸ See Shelton, *Common Concern of Humanity*, The George Washington University Law School 33-40 (2009).

⁶⁹ *Id.*

“Sustainable Development Principle” provides for close interdependence between the policy goals of development and environmental protection⁷⁰ constituting an integral part of the development process and which cannot be considered in isolation from it.⁷¹

In *North Sea Continental Shelf Cases*,⁷² this was regarded as already adopted by States⁷³ in their domestic practices and a reflection of state practice⁷⁴, creating a customary norm. Some of the most highly qualified publicists⁷⁵ regard sustainable development as customary international law.

“Sustainable Use” mandates that the use of components of biological diversity be in a way and at a rate that does not lead to the long-term decline of biological diversity.⁷⁶ It is a special emanation of Sustainable Development.

⁷⁰ BEYERLIN AND MARAUHN, *INTERNATIONAL ENVIRONMENTAL LAW*, 76 (2011).

⁷¹ 1992 Rio Declaration, Principle 4.

⁷² *Supra*, note 47

⁷³ See Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, 16 *Geo. Int'l Env'tl. L. Rev.* 21 (2003).

⁷⁴ Aggarin, *Principle of Sustainable Development in International Environmental Law* (2012), available at <http://www.ecolex.org/server2neu.php/libcat/restricted/li/MON-086900.pdf>.

⁷⁵ See *Hungary v. Slovakia*, separate opinion of Judge Weeramantry; See also Lowe, *Sustainable Development and Unsustainable Arguments*, in *INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT: PAST ACHIEVEMENTS AND FUTURE CHALLENGES* (1999); Magraw and Hawke, *Sustainable Development*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 613, 624(2010).

⁷⁶ CBD, Art. 2.

This has been integrated in interstate practices as revealed by a large number of international environmental agreements in all levels,⁷⁷ showing that the duty to sustainably use natural resources has gained the status of a universal customary rule.⁷⁸

Rincossi is a rapidly developing country with manufacturing and consumerism as some of its drivers for economic growth. It is extensively involved in international trade,⁷⁹ and has a legal ivory market.⁸⁰ Rincossi is obliged not to compromise nor destroy the environment of another state if it wants to continue the trading of ivory products as an economic driver.

II. RINCOSSI VIOLATED INTERNATIONAL LAW BY REFUSING TO RETURN THE CONFISCATED THORNON ELEPHANT IVORY.

Cultural property constitutes one of the basic elements of national culture.⁸¹ It is the intimate and irreplaceable expression of a nation's moral and spiritual character,⁸² and states should protect what they consider essential to them.⁸³

Illicit trafficking of cultural property is the second most profitable underground market,

⁷⁷ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208, Article 1; *See also* African Convention on the Conservation of Nature and Natural Resources, Sept. 15, 1968, 1001 U.N.T.S. 4, Preamble; *See also* Revised African Nature Convention, Article II.

⁷⁸ *Supra* note 70, at 82.

⁷⁹ Record, ¶4.

⁸⁰ Record, ¶18.

⁸¹ *See* UNESCO 1970, Preamble.

⁸² Graham, *Protection and Reversion and Cultural Property: Issues of Definition and Justification*, 21 Int'l Law, 755 (1987).

⁸³ Prott, *The International Movement of Cultural Objects*, International Journal of Cultural Property 225-248 (2005).

second only to illegal drug trafficking.⁸⁴

International law said little about the issue until late 1960s, when looting and international smuggling reached a critical level of visibility and transnational discourse.⁸⁵ This opened the dialogue on effective and appropriate means to protect and preserve cultural property.⁸⁶ A product of this dialogue is the trend in international law to repatriate cultural property to the source nation.⁸⁷

Aliya will establish that Thornon elephant ivory is Aliya's cultural property [A] and Rincossi's refusal to repatriate the confiscated ivory violates international law [B].

A. THORNON ELEPHANT IVORY IS ALIYA'S CULTURAL PROPERTY.

1. Thornon elephant ivory is cultural property under the UNESCO 1970.

a. Aliya has the authority to determine what it considers cultural property

Defining cultural property cannot be done without reference to one's culture.⁸⁸ One must

⁸⁴ Charter of Courmayeur, June 25-27, 1992, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Charter_Courmayeur_en.pdf, (last visited: November 1, 2015); Warring, *Underground Debates: The Fundamental Differences of Opinion to Thwart UNESCO'S Progress in Fighting the Illicit Trade in Cultural Property*, 19 Emory Int'l L. Rev. 227 (2005).

⁸⁵ Nafziger, *SYMPOSIUM: ANTIQUITIES LAW: The Principles for Cooperation in the Mutual Protection and Transfer of Cultural material*, 8 Chi. J. Int'l L. 147 (2007).

⁸⁶ See Bator, *An Essay on the International Trade in Art*, 34 Stan. L. Rev. 275 (1982).

⁸⁷ Riding, *REPATRIATION SYMPOSIUM: Introduction: Human Rights and the American Indian Movement: A Manifesto*, 44 Ariz. St. L.J. 613 (2012); Merryman, *Two Ways Of Thinking About Cultural Property*, The American Journal Of International Law, Vol. 80, No. 4, 831-53 (1986); Mastalir, "A Proposal for Protecting the 'Cultural' and 'Property' Aspects of Cultural Property Under International Law", 16 Fordham Int'l L.J. 1033 (1993).

⁸⁸ *Ibid* Mastalir (1993).

balance the *cultural* significance of the object with its *property* aspect,⁸⁹ lest cultural property be placed in the same footing as any other property or reduced to a mere object.

Cultural property is property which has a special cultural significance to a nation, being intertwined with the very identity of the group claiming it,⁹⁰ serving as basis for cultural memory,⁹¹ and reflecting the history of lost civilizations.⁹² Being personal to a particular group, no universal definition can embrace it.⁹³ Hence, UNESCO 1970 has ultimately left it to states to designate items as cultural property⁹⁴ because they are the only entities competent to do so.⁹⁵

- i. *Aliya has declared the Thornon elephant ivory as cultural property and therefore passed the first requirement under UNESCO 1970.*

UNESCO 1970 provides a two-tier test for an item to be considered cultural property, the first requires a positive act from the state to specifically designate the item as property of pre-historical, historical, literary, artistic or scientific significance.⁹⁶

In 1990, Aliya enacted a law recognizing the historical and scientific importance of the

⁸⁹ *Ibid*, at 1039.

⁹⁰ Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)*, 28 *Environ's Env't'l. L. & Pol'y J.* 1 (2004).

⁹¹ Merryman, *The Public Interest in Cultural Property*, 77 *Calif. L. Rev.* 339 (1989).

⁹² Chimento, *Comment: Lost Artifacts of the Incas: Cultural Property and the Repatriation Movement*, 54 *Loy. L. Rev.* 209 (2008).

⁹³ *Supra* note 91.

⁹⁴ UNESCO 1970; *see* WILLIAMS, *THE INTERNATIONAL AND NATIONAL PROTECTION OF MOVABLE CULTURAL PROPERTY: A COMPARATIVE STUDY*, 224-229 (1978); Detling, *Eternal Silence: The Destruction of Cultural Property in Yugoslavia*, 17 *Md. J. Int'l L.* 41 (1993).

⁹⁵ Mastalir (1993), *supra* note 87.

⁹⁶ *See* UNESCO 1970, Art. I.

Thornon elephants, their parts and their derivatives,⁹⁷ recognizing their pivotal role in Aliyan folklore, mythology, art, architecture, and religion.⁹⁸

Similar to the African elephant,⁹⁹ Thornon elephant plays a crucial role in Aliyan agriculture, biodiversity, and environmental homeostasis.¹⁰⁰ It is Aliya's national animal and is prominently featured on the Aliyan national flag and currency.¹⁰¹ These show the symbolic significance¹⁰² of the Thornon elephant to Aliyans, and manifest its importance to Aliyan identity.¹⁰³

Ivory, as part of the anatomy of the Thornon elephant, is covered by the declaration since Aliyan law speaks of "parts and derivatives" of the Thornon elephant. Aliya considers the ivory of the Thornon elephant its cultural property.

- ii. *Thornon elephant ivory is covered by Art. 1(a) of UNESCO 1970 on rare collections of specimens of fauna and their anatomy.*

UNESCO 1970 provides general categories to which the items must belong. Thornon elephant ivory falls within Art. 1(a). Category A provides that rare collections and specimens of

⁹⁷ Record, ¶15.

⁹⁸ *Id.*

⁹⁹ Record, ¶2.

¹⁰⁰ Record, ¶15.

¹⁰¹ Record, Annex B.

¹⁰² Tsavo Media Canada, Inc., Introduction to Flags, <http://www.worldflags101.com/> (last visited: Oct. 31, 2015.).

¹⁰³ Agarunov, The Art of Currency: Unique Notes from Around the World, <http://design.tutsplus.com/articles/the-art-of-currency-unique-notes-from-around-the-world--psd-11311> (2010) (last visited: Oct. 31, 2015).

fauna and their anatomy are considered cultural property. Applying rules on treaty interpretation,¹⁰⁴ words must be given their ordinary meaning as ordinary meaning is most likely to reflect what the parties intended.¹⁰⁵

Classified as endangered under CITES since 1977,¹⁰⁶ Thomson elephant qualifies as rare collection of fauna. Based on *travaux preparatoires* of UNESCO 1970, Art 1(a) encompasses living animals.¹⁰⁷ The coverage of living animals as cultural property has been expanded to include all body parts which make up the animal with the inclusion of the word “*anatomy*” in Category A.

Taking the ordinary meaning of the word, ivory can be considered cultural property under Art 1(a) because it is part of the anatomy of the rare specimen of fauna.

b. Even without the express inclusion of “anatomy” in UNESCO 1970 Art. 1(a), ivory must still be considered cultural property.

Even applying the teleological approach in interpreting a treaty,¹⁰⁸ ivory is still considered cultural property under UNESCO 1970. The object and purpose of UNESCO 1970 is the protection and preservation of cultural property.¹⁰⁹ Granting that living animals are considered cultural property, the interpretation must favor their protection.¹¹⁰

¹⁰⁴ See VCLT, Arts. 31-32.

¹⁰⁵ AUST (2010), *supra* note 6, at 83.

¹⁰⁶ Record, ¶8.

¹⁰⁷ Arthur (2014), *supra* note 35.

¹⁰⁸ AUST (2010), *supra* note 6, at 83; CRAWFORD, *BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 381 (2012).

¹⁰⁹ Ghoshray, *Essay: Repatriation of the Kohinoor Diamond: Expanding the Legal Paradigm for Cultural Heritage*, 31 Fordham Int'l L.J. 741 (2008).

¹¹⁰ AUST (2010), *supra* note 6; CRAWFORD (2012), *supra* note 108, at 381.

Ivory trade is a highly lucrative business, with one pound of this “white gold”¹¹¹ costing as high \$1000.¹¹² Since the only way to get the ivory is to kill the elephants,¹¹³ the demand for blood ivory¹¹⁴ has decimated elephant population. In one decade, Thornon elephant population has been halved largely due to illegal poaching.¹¹⁵

Similar to the African elephant,¹¹⁶ the Thornon elephant has a wider and stronger tusk than the Asian elephant,¹¹⁷ making it highly attractive to poachers.

Excluding ivory from the definition of cultural property would lead to an absurd situation where the elephant, as cultural property, becomes divisible. The entire cultural property is lost in order to sever its most coveted part.¹¹⁸

UNESCO 1970 was created to address the problem of illegal trafficking of cultural property.¹¹⁹ It can be inferred that animals, as cultural property, were meant to be indivisible. The coverage of animals as cultural property extends to all their parts.

B. RINCOSSI IS OBLIGATED TO REPATRIATE THE CONFISCATED THORNON ELEPHANT IVORY.

¹¹¹ WALKER, *IVORY'S GHOSTS: THE WHITE GOLD OF HISTORY AND THE FATE OF ELEPHANTS*, 3 (2010).

¹¹² James Reinl, *Anti-poaching drones to take off in Africa*, <http://www.aljazeera.com/indepth/features/2013/01/2013117135422298209.htm> (2013) (last visited: Nov. 2, 2015.).

¹¹³ Hutchens, *The Law Never Forgets: An Analysis of the Elephant Poaching Crisis, Failed Policies, and Potential Solutions*, 31 *Wis. Int'l L. J.* 934 (2014).

¹¹⁴ Walker, *Rethinking Ivory: Why Trade Tusks Won't Go Away*, *World Policy Journal*, Volume XXX, No. 2 (2009).

¹¹⁵ Record, ¶1.

¹¹⁶ Record, ¶2.

¹¹⁷ *Supra*, note 113

¹¹⁸ Rosen, *What Is It About Elephant Tusks That Make Them so Valuable?*, *THE ATLANTIC*, September 6, 2012.

¹¹⁹ *Supra* note 91.

1. Rincossi is obligated by UNESCO 1970 to repatriate cultural property.

a. Rincossi is obligated to repatriate the cultural property under the Cultural Nationalism Regime

Two regimes govern cultural property: *cultural nationalism* and *cultural internationalism*.¹²⁰ Cultural nationalism provides the reigning assumptions in literature on cultural property.¹²¹ It views cultural property as belonging within the boundaries of the nation of origin.¹²² It is retentive in nature¹²³ because of the special relationship between the object and the territory.¹²⁴ If found abroad, the regime demands market nations to return cultural property to the source nations,¹²⁵ following Art. 7(b)(ii) of UNESCO 1970.¹²⁶

Rincossi and Aliya are parties to UNESCO 1970¹²⁷ and are bound by it under *pacta sunt servanda*.¹²⁸

b. Under the same regime, Aliya has the right of replevin over the ivory.

¹²⁰ Merryman (1986), *supra* note 87, 831-53.

¹²¹ MERRYMAN, *THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW* 99 (2009).

¹²² *Id.*

¹²³ Merryman (1986), *supra* note 87; Mastalir (1993) *supra* note 87.

¹²⁴ Warring (2005), *supra* note 84.

¹²⁵ Sljivic, *Why Do You Think It's Yours? An Exposition of the Jurisprudence Underlying the Debate between Cultural Nationalism and Cultural Internationalism*, 31 *Geo. Wash. J. Int'l L. & Econ.* 393, 401-02 (1998); Chimento (2008), *supra* note 94.

¹²⁶ *See* UNESCO 1970, Art 7(b)(ii).

¹²⁷ Record, ¶10.

¹²⁸ SHAW (2008), *supra* note 48, at 94.

There is a presumed state ownership of cultural property¹²⁹ which gives the source nation a better title over it.¹³⁰ This was upheld in *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*¹³¹ involving four Byzantine mosaics stolen from the Church of Panagaria Kanakaria in Cyprus by Turkish military.

The 25kg of ivory transported by Ambassador Cusi to Rincossi were stolen from Aliya.¹³² Since ivory is Aliya's cultural property, Aliya has the right of replevin.¹³³

c. *In any case, the Cultural Internationalism Regime does not justify Rincossi's refusal to repatriate the confiscated ivory.*

Cultural internationalism views cultural property as part of the collective heritage of all people¹³⁴ which should be made available to everyone to remedy the "cultural impoverishment" of people in other parts of the world.¹³⁵

¹²⁹ *Attorney General of New Zealand v Ortiz* [1984] AC 1; [1984] 2 WLR 809; [1983] 2 All ER 93; [1983] 2 Lloyd's Rep 265, *Don Alonso v Cornero (1611)* Hob. 212; 2 Brownl. 29; *King of Italy v Marquis Cosimo de Medici Tornaquinci (1918)* 34 T.L.R. 623; *Princess Paley Olga v Weisz [1929]* 1 K.B. 718, C.A.; *Brokaw v Seatrain UK Ltd. [1971]* 2 Q.B. 476; [1971] 2 W.L.R. 791; [1971] 2 All E.R. 98.

¹³⁰ Mastalir (1993), *supra* note 87.

¹³¹ United States Court of Appeals, Seventh Division, No. 89-289, Oct. 24, 1990.

¹³² Record, ¶16, ¶23, ¶31.

¹³³ Mastalir (1993), *supra* note 87.

¹³⁴ Jowers, *Comment: International and National Legal Efforts to Protect Cultural Property: The 1970 UNESCO Convention, The United States, and Mexico*, 38 Tex. Int'l L. J. 145 (2003).

¹³⁵ Merryman (1986), *supra* note 87.

Cultural internationalism mandates preservation.¹³⁶ There is a presumption that market nations are better situated to care for, and preserve the property for the enjoyment of mankind,¹³⁷ as argued by Britain in retaining the Elgin Marbles.¹³⁸

Cultural internationalists believe that all states have an obligation for the care and maintenance of cultural property.¹³⁹ Under the “Principle of Covetous Neglect”, market nations may refuse to repatriate cultural property if to do so would lead to its destruction.¹⁴⁰ Rincossi’s proposed destruction of the ivory¹⁴¹ is irreconcilable with the principles of cultural internationalism that mandate preservation.

2. Rincossi is obligated under CITES, UNTOC and UNCAC to return the confiscated Thornon elephant ivory to Aliya.

While CITES¹⁴², UNTOC¹⁴³, and UNCAC¹⁴⁴ leave the disposal of the confiscated material to the discretion of states, Rincossi must return the confiscated ivory to Aliya.

- a. *The discretion granted to Rincossi by CITES on the disposal of specimens of illegally-traded species must yield to the mandate of UNESCO 1970.*

Apart from being Aliya’s cultural property, Thornon elephant ivory is also an Appendix I

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Knox, *Note: They’ve Lost Their Marbles: 2002 Universal Museum’s Declaration, The Elgin Marbles and The Future of The Repatriation Movement*, 29 Suffolk Transnat’l L. Rev. 315 (2006).

¹³⁹ Graham (1987), *supra* note 84.

¹⁴⁰ Merryman (1986), *supra* note 87.

¹⁴¹ Record, ¶30.

¹⁴² Art. VIII (1)(b).

¹⁴³ Art. 14(2).

¹⁴⁴ Art. 57(1).

categorized species under CITES.¹⁴⁵ Rincossi must treat the ivory in a manner consistent with both CITES and UNESCO 1970 since Rincossi is a party to both conventions.¹⁴⁶

As part of the species, ivory may be confiscated by an importing state, or it may be returned to the requesting state under CITES.¹⁴⁷ Its transfer is recommended only for *bona fide* scientific, educational, enforcement or identification purposes.¹⁴⁸

Granting that Rincossi has discretion regarding stockpile management, the option not to return is removed because ivory is Aliya's cultural property under UNESCO 1970. Thornon elephant ivory has historical and scientific significance,¹⁴⁹ thus, falls within the limitations adopted by the 131 states parties to CITES.¹⁵⁰

Further, Rincossi's Flora and Fauna Trafficking Act provides for the destruction of confiscated ivory only *if practicable*.¹⁵¹ The destruction of the ivory would not be practicable because the ivory in question is Aliya's cultural property. To destroy it would cause Rincossi to

¹⁴⁵ Record, ¶8.

¹⁴⁶ Record, ¶10.

¹⁴⁷ See CITES, Art. VIII (1)(b).

¹⁴⁸ CITES Resolution Conference 9.10 (Rev. CoP13); See also Explaining Resolution Conf. 9.10 (Rev. CoP13) – Disposal of illegally traded, confiscated and accumulated specimens, CITES World: Official Newsletter of Parties, Issue 16 (2005).

¹⁴⁹ Record, ¶15.

¹⁵⁰ UNESCO 1970 State Parties, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/states-parties/>, (last visited: Nov. 5, 2015.).

¹⁵¹ Record, ¶21.

breach its conventional obligations under UNESCO 1970.¹⁵²

- b. The discretion granted to Rincossi by UNTOC and UNCAC regarding the disposal of proceeds of crime must yield to the mandate of UNESCO 1970.*

Although under UNTOC and UNCAC, proceeds of crimes are to be confiscated and disposed of by the state in accordance with its domestic law,¹⁵³ states must give priority consideration to returning the confiscated proceeds of crime¹⁵⁴ to its prior legitimate owners.¹⁵⁵

The confiscated Thornon elephant ivory is proceeds of illegal ivory trade under the definition of UNTOC and UNCAC.¹⁵⁶ Rincossi law allows destruction of ivory *only when practicable*.¹⁵⁷ Aliya's request for the return of its cultural property must be effected by Rincossi otherwise it will breach its obligation under UNESCO 1970.

3. Repatriation of cultural property has become customary international law, obligating Rincossi to repatriate the Thornon elephant ivory to Aliya.

- a. State practice shows general acceptance of states.*

¹⁵² See Verhoeven, *The Law of Responsibility and the Law of Treaties* in *THE LAW OF INTERNATIONAL RESPONSIBILITY*, 105 (CRAWFORD ed., 2010).

¹⁵³ See UNTOC, Art. 14 (1); See also UNCAC, Art. 57(1).

¹⁵⁴ See UNTOC, Art. 14(2); See also UNCAC, Art. 57(3)(c).

¹⁵⁵ See UNCAC, Art. 57(1).

¹⁵⁶ See UNTOC, Art. 2(e).

¹⁵⁷ Record, ¶21.

Repatriation of cultural property was an emerging norm in customary international law in 1979.¹⁵⁸ Almost four decades later, constant state practice shows that repatriation has reached customary international law status.

The acts of states directly affected provide primary evidence.¹⁵⁹ Since 1979, an additional 87 countries have become parties to UNESCO 1970 including major market nations like US, Great Britain, Ireland, Germany and China.¹⁶⁰ Canada,¹⁶¹ Australia¹⁶² and Netherlands have a voluntary repatriation policy,¹⁶³ while US has a law to repatriate cultural property and human remains of Native Americans.¹⁶⁴

Cultural properties have been repatriated worldwide, including the return of the Ahayu:da to New Mexico,¹⁶⁵ the Astrolabium to Germany,¹⁶⁶ Maori heads to New Zealand,¹⁶⁷ the Ekeko¹⁶⁸

¹⁵⁸ *Supra* note 90.

¹⁵⁹ MALANCZUK, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW* 39 (1997).

¹⁶⁰ *Supra*, note 150.

¹⁶¹ Fisher, *Repatriation Issues in First Nations Heritage Collections*, *Journal of Integrated Studies*, Vol.1, No.3 (2012).

¹⁶² *See* Indigenous Repatriation, <http://arts.gov.au/indigenous/repatriation>, (last visited Nov. 7, 2015).

¹⁶³ BUIJIS, ET AL., *SHARING KNOWLEDGE & CULTURAL HERITAGE: FIRST NATIONS OF THE AMERICAS* 126 (2010).

¹⁶⁴ *See* Native American Graves Protection and Repatriation Act, Section 7.

¹⁶⁵ MERRILL, ET AL., *THE RETURN OF THE AHAYU:DA: LESSONS FOR REPATRIATION FROM ZUNI PUEBLO AND THE SMITHSONIAN INSTITUTION* (1993).

¹⁶⁶ Toledo Museum of Art to Return Scientific Instrument to Germany <http://www.toledomuseum.org/provenance/astronomical-compendium-or-astrolabium-astrolabel/>, (last visited: Nov. 3, 2015).

¹⁶⁷ Maori Chief's Mummified Head to Return to New Zealand After 150 Years in UK, <http://www.theguardian.com/culture/2013/aug/06/maori-chief-head-returned-new-zealand>, (last visited: Nov. 6, 2015).

¹⁶⁸ Bolivia Caravan Celebrates Return of God of Prosperity, <http://www.dailymail.co.uk/wires/ap/article-2924874/Bolivia-caravan-celebrates-return-god-prosperity.html> (last visited: Nov. 6, 2015).

and sacred Coroma weavings to Bolivia,¹⁶⁹ Pukkwan Victory Monument to North Korea,¹⁷⁰ Andean¹⁷¹ and Paracas textiles¹⁷² to Peru, Vigango to Kenya,¹⁷³ zodiac heads to China,¹⁷⁴ Khmer statues to Cambodia,¹⁷⁵ and the famous repatriation of the Codex Regius and Flatey jarbok to Iceland¹⁷⁶.

A practice can be general even if not universally accepted. What is required is a reflection of wide acceptance among states particularly involved in the activity.¹⁷⁷ Rincossi is bound as it is not a persistent objector. Being a major market nation of Aliyan ivory,¹⁷⁸ Rincossi should have made its objections against repatriation clear and unequivocal.¹⁷⁹ Instead, Rincossi became a party to UNESCO 1970¹⁸⁰ which mandates repatriation of cultural property.¹⁸¹

¹⁶⁹ Lobo, *The Fabric of Life: Repatriating the sacred Coroma textiles*, Cultural Survival Quarterly (1991).

¹⁷⁰ War Victory Monument Returned to North Korea, http://www1.korea-np.co.jp/pk/227th_issue/2006033106.htm (last visited Nov. 4, 2015).

¹⁷¹ Swedish Returns Ancient Andean Textiles to Peru, http://artsbeat.blogs.nytimes.com/2014/06/05/sweden-returns-ancient-andean-textiles-to-peru/?_r=0 (last visited Nov. 6, 2015).

¹⁷² Return of the First Paracas Textiles from Gothenburg, <http://www.peruviantimes.com/17/return-of-the-first-paracas-textiles-from-gothenburg/22328> (last visited Nov. 7, 2015).

¹⁷³ Sending Artworks Home, but to Whom? <http://www.nytimes.com/2014/01/04/arts/design/denver-museum-to-return-totems-to-kenyan-museum.html> (last visited Nov. 6, 2015).

¹⁷⁴ Two Returned Bronze Zodiac Heads Officially Unveiled at Chinese Museum <http://www.theheritagist.com/2013/07/two-returned-bronze-zodiac-heads.html> (last visited Nov. 6, 2015).

¹⁷⁵ Bradford, Knocked-Off Kneeling Statues Repatriated, Portable Antiquity and Heritage Issues, <http://paul-barford.blogspot.com/2013/06/knocked-off-kneeling-statues-repatriated.html>. (last visited Nov. 6, 2015).

¹⁷⁶ HOFFMAN, *ART AND HERITAGE: LAW, POLICY AND PRACTICE*, 4 (2006).

¹⁷⁷ MALANCZUK (1997), *supra* note 159, at 42.

¹⁷⁸ Record, ¶20

¹⁷⁹ CRAWFORD (2012), *supra* note 108, at 28

¹⁸⁰ Record, ¶10

¹⁸¹ *See* UNESCO 1970, Art. 7(b)(ii).

b. *UN G.A. Resolutions are reflective of opinio juris.*

Resolutions of the General Assembly also prove effective in articulating customary process.¹⁸² *Opinio juris* may be deduced from the attitude of states to G.A. Resolutions.¹⁸³ Since 1972, the UN G.A. has adopted twenty-six Resolutions supporting repatriation movement of cultural property,¹⁸⁴ reflecting the required *opinio juris* for the establishment of a new customary rule.

¹⁸² DEGAN, *SOURCES OF INTERNATIONAL LAW* 194 (1997).

¹⁸³ *Supra* note 57.

¹⁸⁴ UN G.A. Res. 3026 A XXVII, G.A. Res. 3148 XXVIII, G.A. Res. 3187 XXVIII, G.A. Res. 3391 XXX, Res 31/40, G.A. Res. 32/18, G.A. Res. 33/50, G.A. Res. 34/64, G.A. Res. 35/127, and 35/128, G.A. Res. 36/64, G.A. Res.38/34, G.A. Res.40/19, G.A. Res. 42/7, G.A. Res.44/18, G.A. Res. 46/10, G.A. Res.48/15, G.A. Res. 50/56, G.A. Res. 52/24, G.A. Res.54/190, G.A. Res. 56/97, G.A. Res. 1483, G.A. Res. 58/17, G.A. Res. 61/52, G.A. Res. 64/78, G.A. Res.A.67/L.34.

CONCLUSION AND PRAYER

Aliya requests the court to adjudge that Rincossi violated international law by:

1. failing to arrest or prosecute Cusi and the twenty members of Barnum for illegal trafficking of Thornon elephant ivory; and
2. refusing to return the confiscated Thornon elephant ivory.

Respectfully submitted,

AGENTS FOR APPLICANT