I. RYDAL MAY NOT LAWFULLY TAKE STEPS GIVING EFFECT TO THE INDEPENDENCE OF THE WINDSCALE ISLANDS AND MUST CEDE ADMINISTRATION OVER THE ISLANDS TO ASPATRIA.

The universally recognized principle of sovereignty[1] entails the territorial integrity and political independence of States,[2] as well as the *jus cogens* right of permanent sovereignty over natural resources.[3] Rydal's current presence on the Islands –much like the Goa incident, the Iran/Irak dispute, and the Malvinas/Falkland Islands case- constitutes a continued illegal occupation,[4] which breaches the principle of sovereign equality and friendly relations among States.[5] Consequently, Rydal must cease any further action concerning the Islands –particularly any steps giving effect to their independence - since: (a) sovereignty over the Islands belongs to Aspastria; and (b) the Islanders are not entitled to independence based on the principle of self-determination, as proven *infra*.

A. Sovereignty Over The Islands Belongs To Aspatria.

The claims of each party to this case rely on a series of acts spreading over a time-span of over 200 years. In sovereignty disputes, a certain date will assume particular significance in deciding between rival claims.[6] The "critical date" is the date after which the actions of the parties can no longer affect the issue,[7] and it has generally been set at the time when a dispute over territory crystallizes.[8] In *Sovereignty over Pedra Branca/Pulau Batu Puteh*, this Court established that the dispute crystallized when the parties to the territorial dispute formally opposed each other's claim.[9] In this case, the first formal opposing claims of sovereignty over the Islands occurred in 1818, when Plumbland and Rydal exchanged formal correspondence regarding the issue. Consequently, this must be deemed the critical date, and any subsequent actions of either party shall have no effect for the purposes of determining sovereignty over the Islands.

1. Aspatria Inherited Sovereignty upon Gaining Independence from Plumbland.

Between the 15th and 19th centuries, viceregal power was characterized by an important degree of independence from royal control, mainly because of distance and difficult communications with the motherland.[10] Therefore, once viceroyalties gained independence, their boundaries were set in accordance with those of the territories they administered,[11] by application of the universally recognized principle of *uti possidetis juris*.[12] Aspatria –a viceroyalty of Plumbland- occupied and settled the Islands in 1778. Consequently, Aspatria inherited sovereignty when it declared its independence from Plumbland on 2 November 1819, hence Aspatria is competent to bring this claim before the Court.

Rydal may argue that Plumbland transferred to it any sovereignty it possessed over the Islands in the Treaty of Great Corby. However, States cannot transfer more rights than they posses,[13] and said treaty was signed on 22 September 1821, two years after Aspatria's declaration of independence. Therefore, Plumbland transferred sovereignty over a territory that was no longer under its jurisdiction, and Rydal's claim is unfounded.

2. Aspatria gained Sovereignty over the Islands by Right of First Occupation.

Occupation is the act of appropriation by which a State intentionally acquires sovereignty over a territory not previously belonging to another State (*terra nullius*).[14] Sovereignty is acquired when occupation is effective, requiring an actual, continuous, and peaceful display of State functions,[15] evidenced by two elements: (a) possession of territory, evidenced by: *corpus* (State presence), and *animus* (the intention of maintaining sovereignty); and, (b) administration, understood as the representation of the State's government and exercise of control.[16] Although Rydal was the first to discover the Islands, it was Aspastria which first complied with these elements, since: (a) Aspatria took possession of the Islands by: (i) establishing the Salkeld settlement (*corpus*), and (ii) sending Lieutenant Ricoy to establish such settlement (*animus*), thereby taking possession of the territory; and, (b) Lieutenant Ricoy was sent to the Islands as a representative of Aspatria, and exercised control for over 20 years, fulfilling the administration element. Therefore, Aspatria complied with all the elements of effective occupation, and is the sovereign of the Islands.

Rydal may attempt to weaken Aspatria's claim by arguing that the extent of Ricoy's control is questioned by historians. However, there is no legal provision establishing a degree of control or administration, particularly regarding sovereignty claims over thinly populated areas or unsettled territories,[17] hence Aspatria should not be required to fulfill a non-existent standard of control.

Rydal may also seek to ascertain sovereignty under the doctrine of Intertemporal Law,[18] and the 18th-century rule awarding inchoate title to first discoverers.[19] However, even if the Court were to recognize said rule, inchoate title only confers a right of preference,[20] and still demands an actual –not merely nominal- taking of possession,[21] which clearly Rydal did not fulfill before the critical date, since Aikton's settlement was the result of an accidental shipwreck, which only became known to Rydal by Aspatria's letter, making Aikton's actions before the critical date the acts of a private individual, and not acts *a titré de souverain* (acts consistent with sovereignty).[22] Hence, Rydal does not put forward a better title to that of Aspastria, as required by international law.[23] Consequently, Rydal may not claim sovereignty over the Islands.

3. Aspatria did not Relinquish Sovereignty by Dereliction.

Dereliction occurs when a territory that once belonged to a State, but was later abandoned, is a possible object of occupation by another State.[24] In this case, Rydal may claim that Aspatria incurred in dereliction because Lieutenant Ricoy and his men abandoned the Islands in 1799. However, dereliction requires two elements: (a) abandonment of territory; and (b) express intention of relinquishing sovereignty.[25] Here, Aspatria did not order Ricoy and his men to leave the Islands with intent to abandon, but because of internal disturbances in the Viceroyalty which required their presence. Moreover, before leaving the Islands, a flag and record of the settlement and Aspatria's intention to remain sovereign were left at Salkeld. Clearly, it was never the intention of Aspatria to relinquish sovereignty over the Islands, thus the test for dereliction is not met.

B. The Islanders Are Not Entitled To Independence Based On The Principle Of Self-Determination.

As the International Law of Human Rights progresses, a tendency to derogate from certain rights of States in order to enforce their compliance with human rights norms has spawned a struggle between the traditional State-based approach, and the developing human rights-based approach to International Law.[26] This case presents the Court with a problem of careful balance between respect for territorial integrity –deemed the foundation-stone of international peace and security under the Charter-[27] and self-determination –a major UN objective.[28] However, these two principles are not mutually exclusive,[29] hence Aspatria submits that the correct and measured application of both standards will lead the Court to conclude that, although self-determination is universally recognized,[30] respect for territorial integrity has led States to endorse certain forms of self-determination in very clearly defined, limited cases,[31] and must never be utilized to convert illegal possession into full sovereignty.[32] Accordingly: (1) the Islanders are entitled to exercise *internal* self-determination; (2) *external* self-determination does not apply to the Islanders; and (3) the right of self-determination does not authorize the Islanders to secede.

1. The Islanders are Entitled to Exercise Internal Self-Determination.

The right to self-determination is construed as two-fold,[33] defining: (a) a pursuit of a people's political, economic, and social development within the framework of an existing State (*internal* self-determination); and (b) the establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a people (*external* self-determination).[34] In this case, Rydal seeks to grant independence to the Islanders by arguing that they must be allowed to exercise their right to self-determination. However, said exercise does not necessarily entail that the Islands should become independent, since the Islanders are a minority of Aspatrian citizens who are entitled to exercise their right to *internal* self-determination within the framework of the State.

Minorities have been defined as groups of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with distinct ethnic, religious, linguistic or cultural characteristics.[35] The Islanders clearly constitute a minority within Aspatria since: (a) they constitute a non-dominant numerical minority who have the status of full citizens of Aspatria; (b) they have distinct ethnic characteristics because they are the offspring of a mixture of Rydalians, Sodorians and other immigrants; and (c) they have their own culture and traditions, having historically dedicated to the domestication of a native wild equine species that exists only on the Islands, and to farming and fishing. Consequently, Aspatria recognizes the Islanders as a minority of Aspatrian citizens.

Accordingly, the Islanders are entitled to exercise their rights as a minority within Aspatria. In this regard, as a principle of human rights,[36] *internal* self-determination constitutes the continuing right of a people to freely participate in the governance of a State,[37] but only within its territorial framework.[38] In this case, despite restrictions imposed by Rydal's illegal occupation, Aspatria has respected the Islanders' right to *internal* self-determination by: (i) treating them as full citizens; (ii) granting them free entry into Aspatria whether for business or educational purposes; (iii) allowing them to choose their own livelihood; and (iv) seeking to contribute to their economy by not imposing import duties. Moreover, there is no indication that Aspatria would impair the Islanders from fully exercising their *internal* self-determination once administration over the Islands is ceded to its rightful sovereign.

2. External Self-Determination does not Apply to the Islanders.

States have historically expressed their intention to exclude any notion of an automatic right of secession or dismemberment of territories from the right to self-determination.[39] Indeed, in Canada, they established Nunavut,[40] but refused Quebec secession.[41] In France, they implemented a process to accord Corsica limited powers to run its own affairs.[42] The UK accorded various degrees of autonomy to Northern Ireland, Scotland, and Wales.[43] The European Court of Human Rights has talked of democratic restructuring without destroying Turkey's territorial integrity with respect to its Kurdish population.[44] These examples corroborate that international practice gives preference to a full exercise of *internal* self-determination, rather than allowing the disruption of a State's territorial integrity.[45]

Accordingly, *external* self-determination applies exclusively to non-self governing territories, colonies, and –arguably- foreign occupations.[46] In this case, Rydal has not stipulated that the Islands are a colony, or subject to foreign occupation, but a non-self governing territory. However, non-self governing territories are deemed as having a status separate and distinct from the territory of the administering State,[47] and Aspatria has never given the Islands a distinct status, having considered the territory as part of the State, and giving its population full citizenship. Consequently, Aspatria does not view the Islands as a non-self governing territory, despite Rydal's designation before the UN, which blatantly disregarded Aspatria's sovereignty claims over the territory.

In this connection, where there is a dispute concerning sovereignty –such as in this case, or for instance the Falkland Islands/Malvinas case - the only way to put an end to the situation of the population involved is to resolve the issue of sovereignty through negotiation between the parties.[48] Indeed, as UN practice shows, when territories administered by foreign powers were the subject of a sovereignty claim –as occurred with Hong Kong and Macau- their status as non-self governing territories was revoked in order to respect the claims of the concerned States.[49] Similarly, Aspatria has the right to have its sovereignty claim over the Islands duly respected, and thus Rydal could not legally designate the Islands as a non-self governing territory without Aspatria's consent, and said designation must be deemed null.

Additionally, the General Assembly assumed competence to define non-self governing territories in 1972.[50] Yet, there is no indication that the GA –or, for that matter, any other UN organ- has ever recognized the Islands as a non-self governing territory. In fact, the Special Committee has regularly taken up the matter of the competing claims to the Islands, tacitly recognizing that the matter is unresolved. Consequently, Rydal cannot unilaterally make decisions concerning the status of the Islands, and its categorization of that territory as non-self governing must be dismissed.

3. The Right to Self-Determination does not Authorize the Islanders to Secede.

As Stated by the UN Secretary General, respect for a State's fundamental sovereignty and integrity are crucial to any common international progress.[51] Indeed, since the formation of the UN, States have asserted that the principle of sovereign equality and territorial integrity prevails under international law,[52] to the extent that –although international law does not explicitly prohibit secession-[53] State practice has lent no support to the formation of any customary rule affording a right of secession to minorities.[54]

Quite to the contrary, the international community agrees that the principle of equal rights and self-determination of peoples should serve to unite peoples on a voluntary and democratic basis, not to break up existing national unities.[55] Therefore, States should refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State.[56] Consequently, in its determination of the correct balance between the principles of equal sovereignty and territorial integrity, on the one hand, and self-determination, on the other, Aspatria submits that the former must prevail, and thus Rydal must not act in any way that might disrupt Aspatria's national unity.

4. Rydal must Cease all action giving effect to the Independence of the Islands, and cede Administration to Aspatria.

This Court has awarded declaratory judgments establishing obligations on States to act in a certain ways, and providing detailed guidance on their future conduct.[57] Accordingly, Aspatria respectfully requests the Court to declare that Rydal may not take any further action giving effect to the independence of the Islands, and must cede administration thereof to Aspatria, its rightful sovereign.

II. RYDAL'S REJECTION OF MDR'S BID BREACHED THE ASPATRIA-RYDAL BIT.

Aspatria hereby reiterates its submission regarding the illegality of Rydal's bidding process, since Aspastria is the rightful sovereign of the Islands, as stated in Section I. However, since MDR –an Aspatrian national- did present a bid, and the result of the process wronged the company, Aspatria is prepared to argue that Rydal's rejection of MDR's bid breached the BIT.
In this connection, MDR is an investor, defined by the BIT as a party or State enterprise thereof, or a national or an enterprise of a party, that attempts to make, is making, or has made an investment in the territory of the other party.[58] Clearly, MDR is protected by the BIT, since it is an Aspatrian company that attempted to make an investment by participating in Rydal's bidding process. In this connection, Aspatria will present convincing argument that Rydal treated MDR in a manner inconsistent with the BIT, but it is the violation of the BIT as a direct breach to the State –and not the interests of MDR- what concerns this claim. Consequently, Aspatria's claims regarding Rydal's breach of its obligations towards MDR must not be mistaken as an exercise of diplomatic protection on its behalf.

A. Rydal's Rejection Of MDR's Bid Breached Article IV Of The BIT.

Under the BIT, each party shall accord investments and investors of the other Party treatment no less favorable than it accords, in like circumstances, to its own investors and to investors of any non-party.[59] Said provision enshrines the national treatment clause, used to eliminate distortion in competition and allow non-discriminatory access to foreign markets,[60] and considered an international investment standard, as evidenced by its inclusion in international instruments,[61] and several BITs.[62] In order to prove a breach of the national treatment clause, it is sufficient to show that in like circumstances, a foreign investor has received less favorable treatment than a domestic one.[63] In this case, ROCO and MDR were in like circumstances, since both companies are of the same industry, and participated in the same bidding process. Additionally,

although MDR presented a better proposal, as evidenced by the Assembly's recommendation to Governor Black, and affirmed by First Minister Craven, who stated that "[t]he MDR bid was without question the more economically attractive to the people of the Islands", Black favored ROCO because it was a domestic corporation, stating that "[t]he future of the Windscale Islands lies with that community of States, led by Rydal, which shares a common history, culture, and values...", and dismissed MDR solely because of its Aspatrian nationality. Therefore, Rydal, treated its national more favorably than it did MDR, a foreign investor, thus breaching Article IV of the BIT.

B. Rydal's Rejection Of MDR's Bid Breached Article V Of The BIT.

The commitment of capital or other resources, the expectation of gain or profit, or an assumption of risk, are deemed investments according to the BIT.[64] Clearly, MDR's bid constitutes an investment, since it was a commitment of capital with an expectation of profit.[65] Consequently, MDR's is protected by the BIT.

Under the BIT, each party shall accord to investments fair and equitable treatment (FET), full protection and security, and non-discrimination.[66] Since these principles are not expressly defined in the treaty, and said provision expressly calls for their interpretation in accordance with customary law, Aspatria will look to the text of similar provisions in international instruments,[67] and other BITs,[68] as well as examining their interpretation in international decisions.[69]

Admittedly, international law today does not provide unified concepts for FET.[70] However, two interpretations have been accepted by the majority of experts: (a) that FET is equal to the customary minimum standard of treatment; and (b) that FET stands alone, requiring a higher threshold of compliance.[71] In this case, under either interpretation, Rydal's conduct towards MDR did not fulfill the FET standard.

a. Rydal's conduct towards MDR falls short of the international minimum standard of treatment owed to foreign investors.

State practice, international tribunals, and legal experts strongly support the notion that customary law equates FET to the international minimum standard of treatment guaranteed to foreign nationals.[72] The 1926 *Neer Claim* decision established a test requiring treatment of an alien to amount to an outrage, bad faith, willful neglect of duty, or an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency.[73] Today, the test requires an act to be sufficiently egregious and shocking –a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, or manifest lack of reasons.[74] In this case, First Minister Craven announced that the bidding process would be "open, transparent and competitive".[75] However, once the bids had been examined, and MDR's was recommended by the Assembly, Governor Black –after a week of closed-door consultation with Prime Minister Abbott- dismissed the recommendation and invited the Assembly to reconsider, expressing her disapproval of MDR because of its nationality. MDR reasonably relied on Craven's representation that the process would be open and transparent, but Black showed exactly the opposite conduct, displaying manifest arbitrariness, and a complete

lack of transparency which was sufficiently shocking of juridical propriety as to constitute a breach of the minimum standard, and hence of Article V of the BIT.

b. Even if the Court adopts the interpretation that FET stands alone, Rydal's conduct does not meet that higher threshold.

When interpreted as a stand-alone principle, FET is generally combined with the principles of full protection and security and non-discrimination.[76] Under that view, States owe a greater duty of care vis-à-vis foreign investors than they would if only the customary minimum standard applied,[77] since the parties of a BIT are required to act free from ambiguity, and with total transparency, so that investors may know beforehand the regulations, relevant policies and administrative practices that will govern their investments.[78] Surely, had MDR known that, despite its better offer, it would be rejected because of its nationality –a factor that was never stated as a relevant policy- the company might have reconsidered its decision to participate at all. Accordingly, Rydal did not act free from ambiguity and with total transparency, discriminating MDR on the basis of its nationality, and breaching the FET principle enshrined in Article V of the BIT.

Furthermore, under the principle of full protection and security, which goes beyond physical protection,[79] the Host State must guarantee due diligence and non-denial of justice to the foreign investor.[80] Rydal's dismissal of MDR's judicial complaint due to a purported lack of standing constituted a denial of justice because MDR clearly had a direct legal interest to protect its investment. Therefore, Rydalian courts denied MDR justice, breaching the full protection and security guarantee enshrined in Article V of the BIT.

C. The Breach Of The BIT Is Attributable To Rydal.

There is an internationally wrongful act when conduct is attributable to the State and constitutes a breach of an international obligation of the State.[81] In this connection, the conduct of any State organ –including an individual who represents pro tanto the State-[82] shall be considered an act of that State under international law. Governor Black is an agent of Rydal, as evidenced by the fact that she acts on behalf of the State, and was appointed by Rydal as the King's representative. Consequently, her conduct is attributable to Rydal.

D. The Court Should Award Declaratory Relief.

Declaratory judgments provide satisfaction for breaches of international law,[83] and have been granted by this Court and its predecessor,[84] in particular as a categorical issue regarding the illegality of specific conduct of a State.[85] Accordingly, Aspatria requests the Court to declare that Rydal's rejection of MDR's bid breached the Aspastria-Rydal BIT, and thus was contrary to international law.

III. RYDAL DOES NOT HAVE STANDING TO INVOKE THE ASPATRIA-RYDAL BIT TO PROTECT THE ASSETS OF ALEC, AN ASPATRIAN COMPANY, AND IN ANY EVENT, ASPATRIA DID NOT VIOLATE THE ASPATRIA-RYDAL BIT.

A. Rydal Lacks The Necessary Locus Standi To Bring This Claim Before The Court.

Rydal does not claim that Aspatria's actions have caused a direct breach to the State, but to a private corporation (ALEC). However, Rydal lacks standing to protect ALEC, since: (1) it has no direct interest in protecting a non-national; and (2) even if Rydal had standing, local remedies have not been exhausted.

1. Rydal has no direct interest in protecting ALEC, a non-national.

The object and purpose of the BIT is to promote and protect the investments of investors of one Party in the territory of the other.[86] Since Rydal seeks to protect ALEC's assets, it must establish its direct legal interest in bringing its claim before the Court, as required by international law.[87] In this case, Rydal's claim is barred because, as proven *infra*: (a) ALEC is an Aspatrian corporation not protected by the BIT; and (b) Rydal may not claim standing to protect ROCO as a shareholder of ALEC.

a. ALEC is an Aspatrian Corporation not protected by the BIT.

In principle, States are entitled to exercise diplomatic protection only on behalf of nationals.[88] In order to establish nationality of a corporation, international tribunals have uniformly adopted the test of incorporation,[89] requiring merely that the company: (a) be incorporated in the State claiming it as a national; and (b) have its registered office within that State.[90] In this case, ALEC is clearly an Aspatrian corporation since: (a) it was incorporated in Aspatria; and (b) it has its registered office in Aspatria.

Nonetheless, due to ROCO's evident financial control over ALEC, Rydal may request the Court to apply the control test.[91] However, this exceptional approach applies only when a company has no substantial activities in the State of incorporation, and its seat of management and financial control are in the claimant State.[92] In this case, ALEC's substantial business activities are in Aspatria. Consequently, the first element of the test is not met, hence exception does not apply.

b. Rydal may not claim Standing in order to Protect ROCO as a Shareholder of ALEC.

Rydal may attempt to base its standing on the protection of ROCO as a major shareholder ALEC. However, States cannot protect nationals as shareholders of a company against acts affecting the company while the latter exists as a separate person,[93] unless: the company has ceased to exist for reasons unrelated to the injury or incorporation was required by the allegedly injuring State as a precondition for doing business there.[94] In this case, ALEC clearly still exists under Aspatrian law, and it was freely incorporated and conducted business in Aspatria many years before the enactment of the NRA, and there is no evidence of any other existing regulation that might have compelled ROCO to incorporate ALEC in Aspatria. Consequently, the exceptions that would allow Rydal to protect ROCO as a shareholder of ALEC do not apply.

Finally, Rydal may attempt to base its claim on the grounds that Aspatria's seizure of ALEC's assets caused a direct injury to ROCO –its major shareholder. Admittedly, States may protect the interests of shareholders who have suffered a direct injury by the acts of the respondent

State.[95] However, Rydal must prove that Aspatria has breached an obligation which causes a direct injury to ROCO as a shareholder of ALEC, which is not the case, as proven in Section III.B. herein. Consequently, Rydal does not have standing to exercise diplomatic protection on behalf of ROCO as ALEC's shareholder.

2. Even if Rydal has Standing, Local Remedies have not been Exhausted.

Every State has the right to redress an alleged wrong within the framework of its own legal system.[96] Indeed, as a general rule, a State may exercise diplomatic protection on behalf of its nationals only if all the available resources within municipal law have been exhausted.[97] In this case, although the case of *ALEC v. Langdale Administrative Court* has reached is final decision, this proceeding was merely a part of the underlying criminal case against ALEC under the NRA –*Prosecutor v. ALEC*- which is still under examination by Aspatrian courts. Since this case is still ongoing, and ALEC may be found not guilty, or else exercise its right to appeal, which is available in Aspatria, as required under international law,[98] local remedies have not yet been exhausted.

Admittedly, whenever local remedies are futile, the non-exhaustion objection does not apply.[99] However, mere appearance of futility is insufficient,[100] and, in any case, the burden of proof is on the claimant.[101] In this case, Rydal may argue that local remedies are futile because Aspatria's criminal proceedings are slow-paced, but such a claim would succeed only if Rydal proves that Aspatrian courts have caused undue delay, which is not the case, since most criminal cases in Aspatrian courts take between four and six years to conclude, with another two to three years for appeals –as stated by several independent international NGOs- and *Prosecutor v. ALEC* is barely two years underway. Consequently, Aspatrian remedies are effective, and the futility exception does not apply.

B. In Any Event, Aspatria Did Not Violate The Aspatria-Rydal BIT.

1. Aspatria did not Breach Article VI(a) of the BIT.

Under the BIT, neither Party may not expropriate an investment directly or indirectly through measures equivalent to expropriation, except for a public purpose; in accordance with due process of law; in a non-discriminatory manner; and on prompt, adequate, and effective compensation.[102] In this case, Rydal may argue that Aspatria's seizure of ALEC's assets was tantamount to expropriation. However, certain State measures have similar effects –but do not amount to expropriation- because they constitute a lawful exercise of government power.[103]

Three criteria are used to determine whether a government measure amounts to expropriation: (a) the degree of interference with the property right; (b) the character of the governmental measure; and (c) the interference of the measure with reasonable and investment-backed expectations.[104]

The first criterion –interference with property rights- requires proof that government action has removed all or most of the property's economic value by depriving the foreign investor of fundamental rights of ownership, or interfering with an investment over a significant period of time,[105] by permanently transferring powers of management and control to the State.[106] However, the standard is not met if the investor's rights are only substantially reduced and the

situation is not irreversible.[107] In this case, ALEC's assets are temporarily being held by the administrative court until the conclusion of the underlying criminal case. If the defendant is found guilty, the seized assets may be used to satisfy the penalty; and if not, they shall be returned.

As to the duration of the regulation, a temporary measure merely causing a delay in opportunity does not constitute expropriation.[108] In this case, Aspatria's seizure will stand until the criminal court delivers its judgment, and while ALEC's ability to freely conduct its business may be delayed, it will suffer no permanent or irrevocable effects. Consequently, the standard of proof for this first criterion is not met.

Secondly, a government measure does not constitute expropriation when it refers to the State's right to protect general welfare by regulation.[109] Indeed, States are entitled to control the use of property by enforcing such laws as deemed necessary to protect general interest,[110] and shall not be responsible for economic disadvantages resulting from actions commonly accepted as within their police power.[111] In this case, the administrative petition was filed pursuant to §117-10 of the Aspatrian Criminal Code, which allows the Public Prosecutor to request the seizure of assets which might be used to further criminal conduct alleged in an underlying criminal case. Therefore, Aspatria acted within a commonly police power to impede further criminal conduct, and the second criterion for creeping expropriation is not met.

Finally, Rydal may argue that ROCO had reasonable expectations to exploit oil on the Islands using ALEC's equipment and personnel. However, a reasonable expectation requires proof that an investment was based on a state of affairs that did not include the challenged regulatory regime, and not upon subjective expectations.[112] While ROCO may have had subjective expectations of profit, the circumvention of an Aspatrian license, and promise of use of assets of an Aspatrian company, breached the NRA. Therefore, Rydal cannot argue that ROCO's expectations were reasonable, and the third criterion for indirect expropriation is not fulfilled. Consequently, Aspatria did not breach Article VI(a) of the BIT.

2. Aspatria's Seizure of ALEC's Assets did not Breach Article VI(b) of the BIT.

Under the BIT, non-discriminatory measures applied to protect public welfare do not constitute indirect expropriation, unless a measure is so severe in light of its purpose that it cannot be reasonably viewed as having been applied in good faith.[113] Indeed, a measure based on legitimate public welfare is an action that serves and benefits the community as a whole, and not mere private interests,[114] generally seeking to preserve public health, safety, security, or prosperity.[115] ALEC's violation of the NRA was a criminal offense that affected Aspatria's public safety, security, and prosperity. Therefore, Aspatria was compelled to apply its domestic law in order to protect this legitimate interest.

Certainly, such a measure must never be discriminatory,[116] and cannot be based upon unreasonable distinctions without objective justification.[117] In this case, Aspatria acted in strict application of domestic laws –the NRA and the Aspastrian Criminal Code- which govern every subject under Aspatrian jurisdiction, applying said laws to an Aspatrian national accused of committing a criminal offense. Thus, Aspatria's measure was objectively justified.

Finally, the principle of good faith –described as the foundation of all law-[118] entails that every party of a legal relationship must deal honestly, reasonably, and fairly, representing its motives and purposes truthfully.[119] A corollary of good faith is the duty to maintain the *status quo*

during a judicial process, abstaining from measures capable of causing a prejudicial effect to the execution of the decision.[120] In this case, Aspatria applied a measure duly established by law, and made a clear representation of its motives, by expressing that the seizure was intended to maintain the *status quo* while the criminal court delivers its final judgment. Consequently, Aspatria's measure was consistent with the principle of good faith, and since all the elements of a legitimate State were fulfilled, Aspastria did not breach Article VI(b) of the BIT.

3. Even if the Court finds that Aspatria Breached the BIT, there was a circumstance precluding wrongfulness.

Certain wrongful acts of States are justified under special circumstances,[121] such as the state of necessity, which allows a State non-performance of an obligation to safeguard an essential interest facing grave or imminent peril.[122] The preclusion of wrongfulness occurs only when the act of the State invoking necessity is the only way to safeguard an essential interest against grave and imminent peril; and does not seriously impair an essential interest of the State towards which the obligation exists, or of the international community as a whole.[123] In this case, the NRA protects Aspatria's right of permanent sovereignty over its natural resources, which is undoubtedly an essential interest of the State, recognized as a *jus cogens* right,[124] which prevails over Rydal's rights under the BIT. Said right was threatened by an imminent peril, because ALEC's material participation in the bidding process violated the NRA, and placed the company in a position to breach Aspastria's sovereign rights. Consequently, Aspatria's measure was applied by virtue of necessity.

4. The Court Should Award Declaratory Relief.

As stated *supra*, declaratory judgments provide satisfaction for breaches of international law,[125] and have been granted by this Court and its predecessor.[126] Accordingly, Aspatria requests the Court to declare that Rydal does not have standing to invoke the Aspatria-Rydal BIT in order to protect the assets of ALEC, an Aspatrian company. However, should the Court find that Rydal does have standing to raise this claim, Aspatria requests the Court to declare that Aspatria did not violate the Aspastria-Rydal BIT.

IV. PRAYER FOR RELIEF.

Based on the foregoing, Aspatria respectfully request that the Court: **Declare** that Rydal may not lawfully take steps giving effect to the independence of the Windscale Islands, and must cede administration over the Islands to Aspatria; **Declare** that Rydal's rejection of MDR's bid breached the Aspatria-Rydal BIT; and **Declare** Rydal does not have standing to invoke the Aspatria-Rydal BIT to protect the assets of ALEC, an Aspatrian company, and in any event, Aspatria did not violate the Aspatria-Rydal BIT.

[1] UN Charter, entered into force 1945, Art. 2(1); UNGAR 2625(XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations, 1970, Pple. F(b).

[2]

UN Charter, *supra* note xx, Art.2(4).

[3]

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