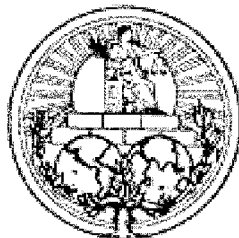


**THE 2009 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION**



**INTERNATIONAL COURT OF JUSTICE
THE HAGUE, THE NETHERLANDS**

CASE CONCERNING “OPERATION PROVIDE SHELTER”

The Republic of Alicanto
Applicant

v.

The Commonwealth of Ravisia
Respondent

12 January 2009

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF JURISDICTION

The Republic of Alicanto and the Commonwealth of Ravisia have submitted, by Special Agreement, their differences concerning “Operation Provide Shelter” to the International Court of Justice, in accordance with Article 40(1) of its Statute. The Parties have agreed to the contents of the *Compromis*. Ravisia does not concede that the Court has the authority to issue a declaration on the legality of the Secretary-General handing over Ravisian intelligence, as requested by Alicanto in its second submission. However, both Parties shall accept the Court’s judgment as final and binding and shall execute it in good faith in its entirety.

QUESTIONS PRESENTED

I. Whether Alicanto has clean hands to bring a claim against Ravisia for its humanitarian intervention. Whether Ravisia's continuing humanitarian presence in Alicanto is authorized by Resolution 6620 and justified by customary law, due to a threat of impending ethnic cleansing in Alicanto.

II. Whether the Court should call upon Ravisia to disclose its highly classified data proving the threat of imminent ethnic cleansing, and whether Alicanto may derive an evidentiary benefit from non-disclosure of this data.

Whether the Court may rule on the lawfulness of the Secretary-General handing over the classified intelligence to Alicanto, and if so, whether the Secretary-General may lawfully hand over the Ravisian classified intelligence report to the Government of Alicanto.

III. Whether Ravisian troops committed sexual exploitation within the meaning of the Convention on the Rights of the Child, and whether Ravisia's broadcasting of educational radio programs in Alicanto violated international law.

Whether the conduct of UN peacekeeping troops is attributable to Ravisia as a troop-contributing State.

Whether Alicanto has suffered an injury that must be repaired.

IV. Whether Ravisia is under an obligation to surrender Mr. Piccardo Donati to Alicanto, after an Alicantan court sentenced him *in absentia* to death by hanging.

STATEMENT OF FACTS

I. INTRODUCTION

Alicanto, a former colony of Ravisia, attained independence peacefully and amicably in 1958. Both States are members of the “Ravisian Family of Allied Nations” (R-FAN). The population of Alicanto comprises two groups, considered by some scholars to be ethnically distinct, which identify themselves as Dasu and Zavaabi. While they espouse the same religion, the Zavaabi generally embrace an orthodox interpretation of the Talonnic faith.

Since 2004 the “Guardians of the Talonnic Way”, a political group, has enjoyed substantial representation in Parliament. They have sought to incorporate orthodox Talonnic principles into Alicantan law. These include restrictions on women’s property rights and a prohibition of female participation in public life, in addition to the imposition of the death penalty on blasphemers, adulterers and murderers.

II. ARMED CONFLICT IN THE ROCIAN PLATEAU

In 2005, the neighboring State of New Benu, out of an unprecedented growth in crime rates, decided to unilaterally enforce the law on its border with Alicanto. This border lies mostly on the Rocian Plateau, an area with majority Zavaabi population.

New Benu’s policy was met with retaliation by Zavaabi armed groups. In May, a New Bennuan surveillance plane was shot down in Alicanto, prompting ethnic tension in the Plateau.

In June 2005, New Benu bombed the Rocian Plateau. In response, the Alicantan government presented a plan to its Parliament for a negotiated settlement that included ceding territory to New Benu. The government was turned out of office and the Guardians were elected as the single majority party after emergency elections were held in September. The new Prime Minister, Gregory Simurg, negotiated a cease-fire agreement with New Benu, which included a

request for the deployment of a United Nations (UN) peacekeeping force in the Rocian Plateau and its surroundings.

III. SUCCESSFUL OPERATION OF UNMORPH IN ALICANTO

By Resolution 5440 (2005), the UN Security Council authorized the United Nations Mission Overseeing the Rocian Plateau and Hinterlands (UNMORPH). Ravisia contributed a substantial number of troops, and Major-General Leila Skylark from the Ravisian Army was appointed Special Representative of the Secretary-General and Force Commander. The UN Secretary-General concluded a status-of-forces agreement (SOFA) with Ravisia.

UNMORPH successfully defused the border conflict through rapid deployment operations and person-to-person negotiations. On 18 February 2008, before ethnic violence erupted in Alicanto, Skylark filed a report that recommended full withdrawal of the troops by 31 July 2008.

UNMORPH set up a radio station at its headquarters in Camp Tara, which included educational programming from the UN Radio News Service. When the programming was found offensive by orthodox religious leaders, Major-General Skylark ordered that potentially offensive programming be preceded by warnings to listeners.

UNMORPH's deployment met with further criticism arising from sexual encounters between troops and locals. According to a UN Commission of Inquiry, peacekeeping troops had regularly engaged in non-violent sexual relations, offering food or money to young women who assented out of hunger, fear, or poverty. Consequently, Prime Minister Simurg called for UMMORPH to be shut down.

After the Special Representative of the Secretary-General reported on UNMORPH's success, Security Council Resolution 6590 (2008) called for the mission to be terminated by 31 July, 2008.

IV. ENACTMENT OF RELIGIOUS LEGISLATION AND SUBSEQUENT ETHNIC VIOLENCE

In March 2008, the government of Alicanto's Northeast Province enacted religious ordinances limiting women's property rights and secular radio broadcasting, requiring prior approval from the authorities. UNMORPH continued to broadcast its programs invoking Resolution 5440 and the SOFA. Local authorities took no measures to enforce these regulations against UNMORPH.

Renewed tension between Dasu and Zavaabi groups broke out in the Northeast Province. Thirty-five Dasu citizens were killed during the night of 25 April, the Talonnic New Year's Eve. Prime Minister Simurg responded by announcing his intention to enact nation-wide religious legislation.

Simurg's announcement was met with renewed unrest in places with mixed populations. During the next four weeks, riots claimed hundreds of lives. On 1 June, martial law was declared in the eight largest cities in the Northeast Province and in four cities of the Northwest Province. Fearing persecution, large numbers of Dasu citizens fled across the dangerous region of the Rocian Plateau into New Benu, reducing the Dasu population in the Northeast Province by 30%. The prospect of "ethnic cleansing on a massive scale" was reported by an NGO.

V. UNITED NATIONS RESPONSE AND CONTINUED VIOLENCE IN ALICANTO

On 3 July, the Security Council adopted Resolution 6620, urging Alicanto to improve the humanitarian situation in the Rocian Plateau, insisting that Alicanto allow immediate access by humanitarian organizations to all those in need of assistance, and reminding Member States to

remain vigilant and prepared to respond. The Alicantan government denied the existence of any human rights abuses within its territory.

On 7 July, Prime Minister Simurg was killed by a bomb. The Alicantan police blamed Piccardo Donati, the head of an organization known as the “Dasu Integrity Front”. The manhunt for Donati spawned Zavaabi “defense cadres” which burned six Dasu villages in the Rocian Plateau. Ethnic violence, according to the NGO “Earth Without Frontiers”, claimed thousands of Dasu lives, and tens of thousands of Dasu all over Alicanto fled their homes in fear of imminent violence. A weapons cache was found in the Plateau, which NGOs attributed to radical Zavaabi grouplets.

VI. RAVISIAN PROPOSALS AND OPERATION OF OPS IN RESPONSE TO ETHNIC VIOLENCE

The President of Ravisia announced the existence of raw intelligence data pointing to an imminent danger of ethnic cleansing in Alicanto, and requested an emergency session of the Security Council to propose two resolutions that (1) extended and expanded UNMORPH’s mandate, or (2) authorized collective action by Ravisia and other members of R-FAN. The President handed the classified data to the UN Secretary-General. The Secretary-General delivered a report to the Security Council, concluding that the data was reliable and that, from this intelligence and other sources, a campaign of systematic violence against Dasu civilians was being planned in Alicanto. The Secretary-General declined to disclose the raw intelligence data to Alicanto.

Two permanent members of the Security Council vetoed the proposed resolutions. The Assembly of R-FAN decided on the same day to endorse Ravisian intervention in Alicanto.

On 31 July, UNMORPH was terminated. The next morning Ravisia initiated “Operation Provide Shelter” (OPS) by transporting troops into Camp Tara. The Alicantan government

protested against this intervention, but took no measures to remove the Ravisian troops from its territory.

Between July and September, OPS troops engaged in police activity in order to quell further violence without substantial loss of life, save for one operation in which Alicantan police killed 25 people.

VII. TRIAL OF PICCARDO DONATI AND REFUGE AT CAMP TARA

On 15 August, Alicanto adopted a new Judicial Code following orthodox Talonnic teachings that, *inter alia*, voided the property titles of hundreds of Dasu women who had fled Alicanto and re-enacted the death penalty.

On 21 August, under this new Code, Piccardo Donati was tried *in absentia*, represented by a public defender and witnesses were heard during the trial. Donati was sentenced to death by hanging. His appeal was rejected. Donati took refuge at Camp Tara, where he currently remains. Major-General Skylark, commanding officer at the Camp, declared that she would not deliver Donati to Alicantan authorities.

SUMMARY OF PLEADINGS

I. Ravisia's military presence is justified under international law by the large-scale atrocities occurring in Alicanto and a threat of impending ethnic cleansing which Alicanto has failed to properly address. Alicanto failed to comply with its obligations under Resolution 6620 and human rights law, and thus lacks clean hands to claim a breach of its sovereignty.

Resolution 6620 authorized Ravisia to intervene in Alicanto, by calling upon Member States to remain vigilant and prepared to promote an environment of peace and security.

In the alternative, Ravisia's humanitarian intervention is justified by customary law. State practice and *opinio juris* support the right of humanitarian intervention, whenever the Security Council is unwilling or unable to fulfill its responsibilities. OPS, endorsed by the R-FAN Assembly, was assembled to prevent human suffering, and has so far been successful in its endeavor. Thus, Ravisia's intervention in Alicanto is justified under international law.

II. The legality of OPS is supported by Ravisian classified intelligence, which was handed over to the UN Secretary-General, who confirmed its reliability.

The Court should not accede to Alicanto's request to call upon Ravisia to produce these documents. The Court's power to do so is discretionary, and has only been exercised in the past to counter an overriding disadvantage in the proceedings. Alicanto is not under such a disadvantage as it has already had access to extensive documentation that demonstrates the imminence of ethnic cleansing. Ravisia may still rely directly and indirectly on this evidence, as it remains undisclosed in order to safeguard governmental interests. Furthermore, no unfavorable inference may be drawn against Ravisia for its refusal to disclose the evidence, since the only consequence envisaged in the Statute is a *formal note* of such refusal.

The Court cannot entertain Alicanto's alternative claim, as it concerns an issue which may only be resolved through an advisory opinion. Only the UN organs listed in Article 96 of the UN Charter may request an advisory opinion regarding the activities of the Organization.

In any event, the Secretary-General may not hand over the intelligence to Alicanto, as he made an undertaking not to do so. Moreover, the rules of the Organization do not allow him to disclose the data without Ravisia's prior consent.

III. The conduct of Ravisian soldiers has not been in violation of international law. As regards the alleged sexual exploitation, Ravisia as a troop-contributing State is not bound by the standards of conduct issued by the UN Secretariat, which are binding on UN staff only. Moreover, human rights treaties did not apply extraterritorially in Alicanto with respect to Ravisia, as Ravisia was not exercising jurisdiction there. In any event, there is no conclusive evidence of sexual exploitation by Ravisian troops.

The broadcasting under UNMORPH was permitted by a Chapter VII Security Council resolution. Its continuance under OPS did not violate Ravisia's obligations as an occupying power, as the local ordinances prohibiting it were contrary to human rights. Furthermore, the broadcasting has not breached the rights of the local population.

In any event, the conduct of Ravisian troops under UNMORPH is attributable to the UN and not Ravisia. The UN exercised operational command and control over the troops, thus rendering their conduct exclusively attributable to the Organization. This exclusive attribution was recognized by both Alicanto and the UN.

Ravisia does not owe reparations to Alicanto for the troops' conduct, as Alicanto has not suffered any direct injury, and any protection to its nationals would first require exhaustion of local remedies in Ravisia.

IV. Ravisia is not under an obligation to surrender Piccardo Donati to Alicanto. Ravisia did not breach international law by giving him refuge in Camp Tara, and in any case his surrender would not be an appropriate remedy. Countervailing obligations under human rights law impede Ravisia from doing so, as Donati would be subjected to a violation of his right to life. Donati's execution would violate international law, since it was imposed under a retroactive application of criminal law, following reintroduction of the death penalty and an unfair trial. In addition, the method of execution (death by hanging) amounts to cruel, inhuman and degrading treatment.

PLEADINGS

I. THE PRESENCE OF THE RAVISIAN MILITARY FORCES IN ALICANTO HAS BEEN AND CONTINUES TO BE FULLY JUSTIFIED UNDER INTERNATIONAL LAW

Since 1 August 2008, Ravisia has maintained a military presence in Alicanto for humanitarian ends. While Alicanto might claim a violation of its sovereignty, this humanitarian intervention is authorized by Resolution 6620 and justified by customary international law. Moreover, Alicanto itself has caused the circumstances leading to this intervention, and thus lacks clean hands in this dispute.

A. Alicanto does not have clean hands to claim a breach of its sovereignty

1. Alicanto breached its obligations under international law

i. Resolution 6620 is binding on Alicanto

Pursuant to article 25 of the UN Charter, decisions of the Security Council must be accepted and carried out by all Member States.¹ The binding effect of a Security Council resolution is determined by (i) the terms used, (ii) the discussions leading to it, (iii) the Charter provisions invoked, and (iv) any other relevant factor which might assist in this determination.² Both the language and the provisions invoked demonstrate the binding character of Resolution 6620.

¹ UN CHARTER, Article 25.

² Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 ICJ [hereinafter *Namibia*] ¶¶112-114; Rosalyn Higgins, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?*, 21 INT'L & COMP. L.Q. 270, 281-286 (1972).

Resolution 6620 recalled Resolution 5440, itself adopted under Chapter VII of the Charter, and referred to a continuing threat to peace and security in the region.³ Resolution 6620 also invoked a threat to peace and security, which is sufficient for it to be understood as adopted under Chapter VII.⁴

Resolution 6620 used strong terms such as *urges*, *stresses*, and *insists* and outlined concrete measures to be taken in response to the humanitarian crisis. This Court has already found that a resolution using terms such as *declares* and *calls upon* is binding.⁵ In sum, the similar terms used in Resolution 6620, combined with the circumstances of impending large-scale suffering in Alicanto (*infra* I.B.2), created obligations for Alicanto under Article 25 of the Charter.

ii. Alicanto did not comply with Resolution 6620 and human rights law

Resolution 6620 required Alicanto to establish security within its borders and to take *immediate steps* to improve the situation in the Rocian Plateau.⁶ Alicanto breached its obligations by failing to prevent the burning of six Dasu villages and the death and displacement of

³ S/RES/6620 (2008) (*Alicanto*) Preamble ¶2.

⁴ GAZZINI, *THE CHANGING RULES ON THE USE OF FORCE IN INTERNATIONAL LAW* 31-33 (2005) [hereinafter GAZZINI]; WHITE, *KEEPING THE PEACE: THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 39 (1990); SCHWEIGMAN, *THE AUTHORITY OF THE SECURITY COUNCIL UNDER CHAPTER VII OF THE UN CHARTER: LEGAL LIMITS AND THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE* 157 (2001); Peter Malanczuk, *The Kurdish Crisis and Allied Intervention in the Aftermath of the Second World War*, 2 *EJIL* 114, 128 (1991) [hereinafter Malanczuk]; Nigel White & Robert Cryer, *Unilateral Enforcement of Resolution 687: A Threat Too Far?*, 29 *CAL. W. INT'L L.J.* 243, 264 (1998-1999); S/RES/688 (1991) (*Iraq*) Preamble ¶1; S/RES/812 (1993) (*Rwanda*) Preamble ¶3; S/RES/1078 (1996) (*Great Lakes Region*) Preamble ¶18;

⁵ Namibia, *supra* note 2, ¶115.

⁶ S/RES/6620 (2008) (*Alicanto*) ¶2.

thousands of Dasu (*Compromis* ¶33), and by killing 25 people on 28 August 2008 (*Compromis* ¶46).

Furthermore, Alicanto was bound by the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), to ensure *all* persons the right to security⁷ and freedom of movement and residence.⁸ The Dasu are an ethnic group different to the Zavaabi given their distinct identity and historical sense of belonging (*Compromis* ¶¶5,6,8,10,12,15,25,29,32,33),⁹ thus making the CERD applicable to the present situation.¹⁰ Their rights under these conventions were violated by Alicanto's conduct.

Alicanto also breached its obligations under the ICCPR¹¹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹² by stripping Dasu women of their property rights (*Compromis* ¶44).

2. Therefore, Alicanto lacks clean hands

⁷ International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, [hereinafter ICCPR] Articles 2(1),9; International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 U.N.T.S. 195, [hereinafter CERD] Articles 5(b).

⁸ ICCPR, *supra* note 7, Articles 2(1),12(1); CERD, *supra* note 7, Article 5(d)(i).

⁹ Prosecutor v. Akayesu, ICTR-96-4-T, Trial Chamber I, Judgment (1998) ¶¶170-172,513.

¹⁰ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, 2008 ICJ, ¶¶126,141-142,145.

¹¹ ICCPR, *supra* note 7, Articles 3,23(4),26.

¹² Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 U.N.T.S. 13, Articles 1,2(b)(c)(d)(f),3,15(1)(2)(3),16(h).

A State may not bring an international claim if it is guilty of prior illegal conduct.¹³ Alicanto not only breached its obligations under Resolution 6620, but also violated its obligations under human rights conventions. Therefore, Alicanto committed a previous fault in the context of the present submission, and it cannot now bring a claim against Ravisia with unclean hands.

B. The UN Security Council, through Resolution 6620, authorized Ravisia's military presence in Alicanto

1. Authorizations by the Security Council to use force may be implied

According to the Charter and Security Council practice,¹⁴ the Council may authorize forcible measures by States.¹⁵ The Charter does not demand that said authorization be *explicit*. The authorization can be implied, provided that the surrounding circumstances support the view

¹³ Factory at Chorzów (Germany v. Poland), Jurisdiction, 1927 PCIJ (ser. A) No. 9, at 31; Military and Paramilitary Activities in and against Nicaragua, (Nicaragua v. United States), Merits, 1986 ICJ [hereinafter Nicaragua] (Diss. Op. Schwebel) ¶¶268-272; Stephen Schwebel, *Clean Hands in the Court*, 31 STUD. TRANSNAT'L LEGAL POL'Y 74, 74-78 (1999); Robert Kolb, *General Principles of Procedural Law*, THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY 793, 834 (Andreas Zimmerman et al. eds., 2006) [hereinafter Kolb]; Gerald Fitzmaurice, *The General Principles of International Law Considered from the Standpoint of the Rule of law*, 92 RDC 1, 119 (1957).

¹⁴ S/RES/83 (1950) (*Korea*) ¶1; S/RES/678 (1990) (*Iraq-Kuwait*) ¶2; S/RES/794 (1992) (*Somalia*) ¶10; S/RES/816 (1993) (*Bosnia and Herzegovina*) ¶4; S/RES/1031 (1995) (*Bosnia and Herzegovina*) ¶¶14-17; S/RES/1816 (2008) (*Somalia*) ¶7.

¹⁵ GAZZINI, *supra* note 4, at 43-63; CONFORTI, THE LAW AND PRACTICE OF THE UNITED NATIONS 204-206, 291-292 (2005).

that an authorization was intended.¹⁶ It is thus a matter of *interpretation* whether a Security Council resolution has granted an authorization.¹⁷

Security Council resolutions are open to interpretation,¹⁸ given that members tend to draft them in an ambiguous language.¹⁹ They have been interpreted in the past as implicitly granting authorizations, such as that authorizing *Operation Provide Comfort* in Northern Iraq in 1991,²⁰ which was widely supported by the international community;²¹ and those authorizing subsequent forcible measures against that country in 1998.²²

2. Resolution 6620 authorizes Ravisia to intervene in Alicanto

¹⁶ GAZZINI, *supra* note 4, at 92-93; Michael Wood, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK Y.B. UN L. 73, 95 (1998) [hereinafter Wood].

¹⁷ GAZZINI, *supra* note 4, at 94-95; Jules Lobel & Michael Ratner, *Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime*, 93 AJIL 124, 132 (1999) [hereinafter Lobel & Ratner]; Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AJIL 452, 469 n. 53 (1991); Malanczuk, *supra* note 4, at 130; Paul Freedman, *International Intervention to Combat the Explosion of Refugees and Internally Displaced Persons*, 9 GEO. IMMIGR. L.J. 565, 582 (1995); Wood, *supra* note 16, at 95; Jost Delbrück, *A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 IND. L.J. 887, 895-896 (1991-1992).

¹⁸ Wood, *supra* note 16, at 82, 85.

¹⁹ Lobel & Ratner, *supra* note 17, at 140.

²⁰ Michael Harrington, *Operation Provide Comfort: A Perspective in International Law*, 8 CONN. J. INT'L L. 635, 643-647 (1992-1993) [hereinafter Harrington].

²¹ GAZZINI, *supra* note 4, at 65; Lobel & Ratner, *supra* note 17, at 131-132; Michael Byers, *The Shifting Foundations of International Law: A Decade of Forceful Measures Against Iraq*, 13 EJIL 21, 25 (2002) [hereinafter Byers]; Malanczuk, *supra* note 4, at 119.

²² Nico Krisch, *Unilateral Enforcement of the Collective Will: Kosovo, Iraq, and the Security Council*, 3 MAX PLANCK Y.B. UN L. 59, 64-67 (1999); Vera Gowlland-Debbas, *The Limits of Unilateral Enforcement of Community Objectives in the Framework of UN Peace Maintenance*, 11 EJIL 361, 372 (2000).

As demonstrated above (*supra* I.A.1), Resolution 6620 was issued under Chapter VII. The surrounding circumstances prior to its adoption indicate that there was an authorization, as there were deaths, displacements, and further aggravating measures taken by the Government extending the crisis to other provinces in Alicanto (*Compromis* ¶¶26,27,29, Appendix III ¶¶1-2).

Moreover, the resolution's language expresses concern for the grave humanitarian situation, and "[r]eminds all Member States that [...] each of them should remain vigilant and prepared [...] to promote an environment of peace and security."²³ Therefore, Resolution 6620 authorized Ravisia to intervene in Alicanto.

C. In any case, Ravisia's humanitarian intervention is justified under customary international law

Humanitarian intervention is the use of force by one State in the territory of another to protect persons from human rights abuses, when the territorial State is unwilling or unable to provide protection.²⁴ Humanitarian intervention is permitted by customary international law.²⁵

²³ S/RES/6620 (2008) (*Alicanto*) ¶5.

²⁴ DAMROSCH ET AL., *INTERNATIONAL LAW, CASES AND MATERIALS* 990 (2001); MURPHY, *HUMANITARIAN INTERVENTION: THE UNITED NATIONS IN AN EVOLVING WORLD ORDER* 8-20 (1996) [hereinafter MURPHY]; J.L. Holzgrefe, *The Humanitarian Intervention Debate*, in, *HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS* 15, 18 (J.L. Holzgrefe et al. eds., 2003); A.P.V. Rogers, *Humanitarian Intervention and International Law*, 27 *HARV. J.L. & PUB. POL'Y* 725, 730 (2003-2004); Malvina Halberstam, *The Legality of Humanitarian Intervention*, 3 *CARDOZO J. INT'L & COMP. L.* 1 (1995).

²⁵ TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* 146-148 (1997); Christopher Greenwood, *Humanitarian Intervention: The Case of Kosovo*, in, *ESSAYS ON WAR IN INTERNATIONAL LAW* 593, 616-625 (2006) [hereinafter Greenwood]; FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* 135-173 (2002); MURPHY, *supra* note 24, at 391-393; ABIEW, *THE EVOLUTION OF THE DOCTRINE AND PRACTICE OF HUMANITARIAN INTERVENTION* 221-222 (1999); Halberstam, *supra* note 24, at 6-8; SOHN & BUERGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 140 (1973); UN Secretary-General Kofi Annan, Address Before the Commission on Human Rights in Geneva, Switzerland (April 8, 1999), in Inocencio Arias, *Humanitarian Intervention: Could the Security Council Kill the United Nations?*, 23 *FORDHAM INT'L L.J.* 1005, 1006-1007 (1999-2000); Jeremy Levitt,

State practice can be traced many decades back, in cases such as Bangladesh (1971),²⁶ Cambodia (1978),²⁷ and Uganda (1979).²⁸ This rule is confirmed by more recent practice in Liberia (1990),²⁹ Northern Iraq (1991)³⁰ where the United Kingdom alleged a right of humanitarian intervention,³¹ and Kosovo (1999).³² This practice has been accompanied by a widespread *opinio juris*.³³ In the cases of Liberia and Kosovo, the Security Council issued subsequent resolutions³⁴ demonstrating acceptance of humanitarian intervention by the international community.

Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone, 12 TEMP. INT'L & COMP. L.J. 333, 336 (1998) [hereinafter Levitt]; Walter Sharp, *Operation Allied Force: Reviewing the Lawfulness of NATO's Use of Military Force to Defend Kosovo*, 23 MD. J. INT'L L. & TRADE 295, 313-316 (1999); Laura Geissler, *The Law of Humanitarian Intervention and the Kosovo Crisis*, 23 HAMLINE L. REV. 323, 346 (1999-2000) [hereinafter Geissler].

²⁶ Thomas Franck & Nigel Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 AJIL 275, 275-277 (1973); Michael Bazylar, *Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia*, 23 STAN. J. INT'L L. 547, 588-590 (1987) [hereinafter Bazylar]; Ved Nanda, *A Critique of the United Nations Inaction in the Bangladesh Crisis*, 49 DENV. L.J. 53, 53-68 (1972-1973).

²⁷ Bazylar, *supra* note 26, at 550-553, 607-611.

²⁸ Farooq Hassan, *Realpolitik in International Law: After Tanzanian-Ugandan Conflict 'Humanitarian Intervention' Reexamined*, 17 WILLAMETTE L. REV. 859, 865-882 (1980-1981); Bazylar, *supra* note 26, at 590-592.

²⁹ Levitt, *supra* note 25, at 333-336; Lee Berger, *State Practice Evidence of the Humanitarian Intervention Doctrine*, 11 IND. INT'L & COMP. L. REV. 605, 615-631 (2000-2001).

³⁰ Harrington, *supra* note 20, at 643-646.

³¹ Byers, *supra* note 21, at 34.

³² Greenwood, *supra* note 25, at 593-606; Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 EJIL 1, 6-14 (1999); Geissler, *supra* note 25, at 335-345; John Currie, *NATO's Humanitarian Intervention in Kosovo: Making or Breaking the Law?*, 36 CAN. Y.B. INT'L L. 303, 317-330 (1998).

³³ Thomas Franck, *When, If Ever, May States Deploy Military Force Without Prior Security Council Authorization?*, 4 SING. J. INT'L & COMP. L. 362, 371-374 (2000); Greenwood, *supra*

Humanitarian intervention must comply with the following requirements: (i) the existence or imminent threat of a humanitarian crisis; (ii) necessity of military intervention to impede such crisis from escalating or occurring; (iii) unwillingness or inability of the territorial State to control the situation; (iv) failure of the Security Council to address the situation; (v) proportionality of the intervention; and (vi) preferably, that the action is undertaken multilaterally.³⁵

OPS meets these requirements: a humanitarian crisis evidenced by widespread killings and a massive flow of refugees (*Compromis* ¶¶29,33, Appendix III ¶¶4,12); an imminent threat of ethnic cleansing (understood as forcible removal of an ethnic group in order to render a territory ethnically homogenous³⁶) (*Compromis* ¶¶29,33-34, Appendix III ¶¶5,10-11); and Alicanto's clear unwillingness and inability to prevent such acts from occurring (*Compromis* ¶¶10,14,17,19,26,29,33-34,45-46, Appendix III ¶¶8-9). The continued presence of Ravisian troops in Camp Tara was thus the only practicable step to confront this situation.

The decision to intervene was taken after Ravisia's proposals were defeated by the veto power of two permanent members of the Security Council, notwithstanding the support from the

note 25, at 610-614, 622-623; Christopher Joyner & Anthony Arend, *Anticipatory Humanitarian Intervention: An Emerging Legal Norm?*, 10 U.S. A.F. ACAD. J. LEGAL STUD. 27, 41-42 (1999-2000) [hereinafter Joyner & Arend].

³⁴ S/RES/788 (1992) (*Liberia*); S/RES/866 (1993) (*Liberia*); S/RES/1244 (1999) (*Kosovo*).

³⁵ Joyner & Arend, *supra* note 33, at 43-46; Greenwood, *supra* note 25, at 625; Antonio Cassese, *Ex Iniuria ius oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*, 10 EJIL 23, 27 (1999); WHEELER, *SAVING STRANGERS: HUMANITARIAN INTERVENTION IN INTERNATIONAL SOCIETY* 52 (2000).

³⁶ SCHABAS, *GENOCIDE IN INTERNATIONAL LAW* 189-200 (2000); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Merits, 2007 ICJ [hereinafter *Genocide*] ¶190.

majority of the members and the UN Secretary-General (*Compromis* ¶¶39). Finally, the decision to intervene was taken multilaterally through R-FAN (*Compromis* ¶40), and the operation has been effective and proportionate, as Ravisian troops have caused no harm to Alicantan citizens (*Compromis* ¶¶45-46).

Consequently, Ravisia's humanitarian intervention in Alicanto is justified under international law.

II. RAVISIA MUST NOT BE CALLED UPON TO PRODUCE THE INTELLIGENCE DELIVERED TO THE SECRETARY-GENERAL, OR IN THE ALTERNATIVE, ALICANTO MUST NOT BE AFFORDED ANY EVIDENTIARY BENEFIT SHOULD RAVISIA CONTINUE TO WITHHOLD THE INTELLIGENCE, AND THE SECRETARY-GENERAL MAY NOT LAWFULLY HAND IT OVER TO ALICANTO

A. Ravisia must not be called upon to produce its classified intelligence

According to the Court's Statute and Rules, the Court *may* call upon the parties to produce evidence.³⁷ It is thus a discretionary power, not an obligation.³⁸

This discretionary power must be exercised in light of the principle of equality,³⁹ by which both parties to a dispute must be given the same rights and opportunities.⁴⁰ Therefore, if there is no overriding disadvantage against one of them, there is no need to exercise this power. In the *Bosnian Genocide* case, the Court twice dismissed the Applicant's request to call upon the

³⁷ ICJ STATUTE, Article 49; ICJ RULES OF COURT, Article 61(1).

³⁸ Christian Tams, *Commentary to Article 49*, THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY 1099, 1100-1101 (Andreas Zimmerman et al. eds., 2006) [hereinafter Tams].

³⁹ ROSENNE, THE LAW AND PRACTICE OF THE INTERNATIONAL COURT OF JUSTICE 1037, 1048-1052 (Volume III 4th ed. 2006) [hereinafter ROSENNE]; Nicaragua, *supra* note 13, ¶59; Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, 1970 ICJ [hereinafter Barcelona Traction] at 25; Judgments of the Administrative Tribunal of the ILO Made against UNESCO, Advisory Opinion, 1956 ICJ [hereinafter Unesco Case] at 86.

⁴⁰ Barcelona Traction, *supra* note 39, at 25; Unesco Case, *supra* note 39, at 85-86; ROSENNE, *supra* note 39, at 1049.

Respondent to produce certain documents,⁴¹ on the grounds that the Applicant had recourse to other evidence concerning the point in question.⁴²

Alicanto has had access to extensive documentation and evidence that demonstrates the threat of ethnic cleansing in its territory, namely, the June 2008 report from Doctors of the World (*Compromis* ¶29), the July 2008 report from Earth Without Frontiers and other NGOs (*Compromis* ¶33), and the Secretary-General's report delivered to the Security Council on 23 July (*Compromis* ¶¶36-38, Appendix III). This and other Courts' practice confirms that NGO reports and UN documents are valid evidence,⁴³ taking into account the freedom enjoyed by the Court in assessing evidentiary material.⁴⁴ These documents comply with the standards of neutrality, reliability and quality previously set forth by this Court's jurisprudence.⁴⁵

Furthermore, Alicanto was aware of the imminence of ethnic cleansing, as evidenced by the stipulation of the facts relating to the displacement of Dasu civilians, and the burning of Dasu villages by Zavaabi defense cadres (*Compromis* ¶¶29,33).

Consequently, as Alicanto has been fully aware of the ethnic cleansing in its territory, the Court must not call upon Ravisia to produce its classified intelligence.

B. Alternatively, if Ravisia is called upon to produce the intelligence and continues to withhold it, Ravisia may still rely on it to support the lawfulness of OPS

⁴¹ Genocide, *supra* note 36, ¶¶44,206.

⁴² *Id.*, ¶¶205-206.

⁴³ Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Merits, 2005 ICJ [hereinafter Armed Activities] ¶¶206-210; Genocide, *supra* note 36, ¶¶ 227-230, 341; Saadi v. Italy, App. 37201/06, Eur. Ct. H.R. (2008) ¶¶65-79.

⁴⁴ Nicaragua, *supra* note 13, ¶60.

⁴⁵ Genocide, *supra* note 36, ¶227.

1. Ravisia may rely directly on the evidence

According to this Court's jurisprudence, when a State is called upon by the Court to produce evidence, it may refuse to produce it alleging the protection of a governmental interest, without entailing the adoption of any negative conclusion by the Court.⁴⁶ Thus, a party may validly withhold evidence that it can subsequently introduce to the proceedings if the relevant circumstances change.

Ravisia's intelligence remains highly classified under Ravisian law and Ravisia's President has stated that it will not disclose the evidence in order to protect its intelligence sources (*Compromis* ¶¶35,51). Therefore, Ravisia may rely on the evidence directly even if it is not currently disclosed.

2. Ravisia may rely indirectly on the evidence

If a party refuses to deliver evidence when called upon to do so, the consequence is merely for the Court to take *formal note* of such refusal.⁴⁷ Evidentiary benefits are not envisaged as a consequence of this formal note,⁴⁸ and nowhere in the Court's Statute or Rules is it expressed or suggested that refusal to produce a piece of evidence entails the invalidity of any evidence derived from it. Strict rules of admissibility of evidence are wholly inappropriate for international adjudication, as demonstrated by the fact that this Court and international tribunals in general tend not to exclude evidence from the proceedings.⁴⁹

⁴⁶ *Corfu Channel (United Kingdom v. Albania)*, Merits, 1949 ICJ [hereinafter *Corfu Channel*] at 32; *Barcelona Traction*, *supra* note 39, (Sep. Op. Jessup) ¶97.

⁴⁷ ICJ STATUTE, Article 49.

⁴⁸ *Tams*, *supra* note 38, at 1106.

⁴⁹ Neill Alford, *Fact Finding by the World Court*, 4 VILL. L. REV. 37, 81 (1959); Michael Reisman & Eric Freedman, *The Plaintiff's Dilemma: Illegally Obtained Evidence and*

Furthermore, as displayed by the Court's practice in the *Corfu Channel* case, even if evidence is gathered unlawfully, it will not be deemed inadmissible.⁵⁰

Therefore, Ravisia may rely on its intelligence indirectly by means of the Secretary-General's Report (*Compromis*, Appendix III). Even though none of the stipulated facts point to an illegal gathering of evidence by Ravisia, if the Court were to find any irregularity in the gathering of said evidence, it should still hold it admissible. At any rate, the Secretary-General's Report could not be ruled out completely as evidence, as it relies on Ravisia's classified intelligence only in relation to paragraphs 5 and 10 (*Compromis*, Appendix III).

C. The Court cannot, through its contentious jurisdiction, entertain Alicanto's request regarding the lawfulness of the Secretary-General's conduct

In contentious cases, the Court may only render judgments binding on States.⁵¹ Thus, questions relating to the administrative functions of the UN Secretariat may only be entertained through the Court's advisory jurisdiction, when activated by the competent organs.⁵²

Alicanto's claim is a request for the Court to give an advisory opinion concerning a UN organ. Therefore, the Court cannot entertain it.

Alicanto might argue that the Court may consider this request as part of its inherent jurisdiction, which consists of its capacity to make legal considerations in order to ascertain its

Admissibility in International Adjudication, 76 AJIL 737, 743 (1982) [hereinafter Reisman & Freedman].

⁵⁰ *Corfu Channel*, *supra* note 46, at 35; Keith Highet, *Evidence, the Court, and the Nicaragua Case*, 81 AJIL 1, 46 (1987); Reisman & Freedman, *supra* note 49, at 747-748.

⁵¹ ICJ STATUTE, Article 59; Interpretation of the Greco-Bulgarian Agreement of 9 December 1927, Advisory Opinion, 1932 PCIJ (ser. A/B) No. 45, at 87; *South West Africa (Ethiopia & Liberia v. South Africa)*, Preliminary Objections, 1962 ICJ at 328; Kolb, *supra* note 13, at 808.

⁵² UN CHARTER, Article 96; ICJ STATUTE, Chapter IV.

primary jurisdiction over the matter before it, including those concerning the legality of UN conduct.⁵³

Alicanto's request, however, is not incidental to the Court's determination of its primary jurisdiction. The Court's primary jurisdiction has been settled by the Special Agreement between the parties, and there is no dispute between them regarding the Court's power to settle the issue of "Operation Provide Shelter."

D. In any event, the Secretary-General may not lawfully hand over the intelligence

1. The Secretary-General, by means of a unilateral undertaking, is bound not to deliver the intelligence

The Secretary-General has issued an undertaking to Ravisia not to disclose the intelligence data. These undertakings can be made by the Secretary-General, as the person entitled to represent the UN as an international legal person.⁵⁴ In analogy⁵⁵ with the relevant rules for unilateral undertakings by States,⁵⁶ the requirements for a declaration creating obligations for the UN are (i) that it be issued by a person entitled to represent it, (ii) publicly,

⁵³ Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, 1963 ICJ at 29; Nuclear Tests (Australia v. France), Judgment, 1974 ICJ [hereinafter Nuclear Tests] ¶¶23; Prosecutor v. Tadić, IT-94-1, ICTY Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal (1995) ¶¶14-21.

⁵⁴ Effect of Awards of Compensation Made by the UN Administrative Tribunal, Advisory Opinion, 1954 ICJ at 53; Certain Expenses of the United Nations, Advisory Opinion, 1962 ICJ [hereinafter Certain Expenses] at 169; Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 ICJ ¶¶50-51,60.

⁵⁵ Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 ICJ [hereinafter Reparations Case] at 177-179.

⁵⁶ *Nuclear Tests*, *supra* note 53, ¶¶42-45; BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 640-643 (7th ed. 2008) [hereinafter BROWNLIE].

and (iii) with intent to be bound. In addition, given the limited legal personality of international organizations,⁵⁷ the act must be *intra vires* the organization.⁵⁸

Upon receiving the classified intelligence, the Secretary-General assured Ravisia that he would not disclose the information (*Compromis* ¶38). This declaration was made by him in furtherance of his duty to gather information about the situation in Alicanto pursuant to resolutions 5440 and 6620, and his general fact-finding functions under Article 99 of the Charter.⁵⁹ The declaration was made public on 24 July, and the Secretary-General perceived it as a commitment from which he was “unwilling to renege” (*Compromis* ¶38).

Thus, the UN, represented by its Secretary-General, is legally bound not to disclose the classified intelligence to Alicanto.

2. In the alternative, UN administrative regulations prohibit the Secretary-General from handing over the intelligence

According to UN administrative regulations,⁶⁰ confidential documents originating from an outside source, previously marked as confidential, must retain the same classification within

⁵⁷ Reparations Case, *supra* note 55, at 180.

⁵⁸ Certain Expenses, *supra* note 54, at 168; Certain Expenses, *supra* note 54, (Sep. Op. Fitzmaurice) at 199-200.

⁵⁹ Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, GA. Res. 46/59 (1991) ¶¶28-29; Wilfried Fiedler, *Article 99, in THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 1217, 1217-1230 (Bruno Simma et al. eds., 2002); Javier Pérez de Cuéllar, *The Role of the UN Secretary-General, in, UNITED NATIONS, DIVIDED WORLD* 125, 126-136 (Adam Roberts & Benedict Kingsbury eds., 1993); Thomas Franck, *The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture*, 6 EJIL 360, 361-362 (1995).

⁶⁰ UNITED NATIONS, SECRETARIAT, SECRETARY-GENERAL'S BULLETIN ON INFORMATION SENSITIVITY, CLASSIFICATION, AND HANDLING, UN Doc. ST/SGB/2007/6 (2007).

the UN.⁶¹ The Secretary-General may not declassify such documents without giving due regard to expectations of confidentiality, and without the source's outside consent.⁶²

The Ravisian intelligence remains highly classified under Ravisian law (*Compromis* ¶35), and thus must retain the same marking within the UN. Ravisia handed this intelligence to the Secretary-General under an expectation of confidentiality (*Compromis* ¶38), and has not consented to its disclosure. Therefore, the Secretary-General may not lawfully hand over the intelligence to Alicanto.

III. THE CONDUCT OF RAVISIAN TROOPS WHILE STATIONED AT CAMP TARA DID NOT VIOLATE INTERNATIONAL LAW, IN ANY EVENT, RAVISIA BEARS NO LIABILITY FOR ANY WRONGDOING THAT MAY HAVE BEEN COMMITTED IN THE SERVICE OF THE UNITED NATIONS, AND NO ALLEGED INJURY TO ALICANTO OR ITS CITIZENS WARRANTS REPARATIONS

A. Ravisia is not responsible for the alleged sexual exploitation

1. UN standards of conduct on sexual exploitation do not bind Ravisia

The far-reaching standards of conduct issued by the Secretary-General⁶³ and the codes of conduct issued by the Department of Peacekeeping Operations,⁶⁴ are binding on UN staff only.⁶⁵

⁶¹ *Id.* §3.2.

⁶² *Id.* §4.4.

⁶³ UNITED NATIONS, SECRETARIAT, SECRETARY-GENERAL'S BULLETIN, SPECIAL MEASURES FOR PROTECTION FROM SEXUAL EXPLOITATION AND SEXUAL ABUSE, UN Doc. ST/SGB/2003/13 (2003) [hereinafter SG Bulletin].

⁶⁴ UNITED NATIONS, DEPARTMENT OF PEACEKEEPING OPERATIONS, TEN RULES: CODE OF PERSONAL CONDUCT FOR BLUE HELMETS, *available at* http://www.un.org/Depts/dpko/dpko/Conduct/ten_in.pdf; UNITED NATIONS, DEPARTMENT OF PEACEKEEPING OPERATIONS, WE ARE UNITED NATIONS PEACEKEEPERS, *available at* http://www.un.org/Depts/dpko/dpko/Conduct/un_in.pdf.

⁶⁵ UNITED NATIONS, GENERAL ASSEMBLY, A COMPREHENSIVE STRATEGY TO ELIMINATE FUTURE SEXUAL EXPLOITATION AND ABUSE IN UNITED NATIONS PEACEKEEPING OPERATIONS, UN Doc. A/59/710 (2005) [hereinafter Zeid Report] ¶19; Sandra Katrin Miller, *Accountability for the*

This is because troop-contributing States may only be bound by a treaty with the Organization,⁶⁶ as they cannot be obliged without their prior consent.⁶⁷ Ravisia never agreed to be bound by these standards of conduct.

Therefore, Ravisia was not bound by the extensive prohibitions contained in these standards, such as the absolute prohibition of prostitution or of sexual intercourse with persons under 18 years of age.⁶⁸

2. The ICCPR and CRC were not applicable in the Northeast Province

The ICCPR and the Convention on the Rights of the Child (CRC) both limit their *ratione loci* application to those places where the State party exercises its jurisdiction.⁶⁹ Jurisdiction in this sense is primarily territorial,⁷⁰ and deals only exceptionally with extraterritorial authority and control over foreign territory.⁷¹ This Court has only recognized an extraterritorial exercise of

Conduct of UN-Mandated Forces Under International Human Rights Law: A Case Study Concerning Sexual Abuse of the UN Mission in the Democratic Republic of Congo (MONUC), in PRACTICE AND POLICIES OF MODERN PEACE SUPPORT OPERATIONS UNDER INTERNATIONAL LAW 261, 278-279 (Roberta Arnold & Geert-Jan Alexander Knoops eds., 2006).

⁶⁶ Zeid Report, *supra* note 65 ¶19; Anthony Miller, *Legal Aspects of Stopping Sexual Exploitation and Abuse in UN Peacekeeping Operations*, 39 CORNELL INT'L L. J. 71, 81 (2006); Elizabeth Defeis, *UN Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity*, 7 WASH. U. GLOBAL STUD. L. REV. 185, 206 (2008) [hereinafter Defeis].

⁶⁷ Lotus (France v. Turkey), 1927 PCIJ (ser. A) No. 10 at 18.

⁶⁸ SG Bulletin, *supra* note 63, §3.2.

⁶⁹ ICCPR, *supra* note 7, Article 2(1); Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, [hereinafter CRC] Article 2(1).

⁷⁰ Bankovic et al. v. Belgium et al., App. 52207/99, Eur. Ct. H.R. (2001) [hereinafter Bankovic] ¶61.

⁷¹ Al-Skeini et al. v. Secretary of State for Defence, [2007] UKHL 26, 46 ILM 778 (2007) (UK House of Lords) [hereinafter Al-Skeini] ¶97.

jurisdiction in cases of military occupation,⁷² which requires substitution of the occupying State's authority for that of the occupied State.⁷³

Ravisian UNMORPH troops never exercised authority over the Northeast Province, as their activities were limited to rapid deployment operations and extensive person-to-person negotiations (*Compromis* ¶19). Furthermore, while Ravisia may have become an occupying power within Camp Tara since 1 August 2008, no complaints of sexual exploitation arose after the termination of UNMORPH (*Compromis* ¶50).

Accordingly, there was no extraterritorial exercise of jurisdiction by Ravisia during the relevant time. Thus, Ravisia cannot be held responsible for breaches of the ICCPR or CRC in Alicanto.

3. In the alternative, the elements for sexual exploitation are not proven

The CRC only prohibits the *exploitative* use of children in prostitution.⁷⁴ Sexual exploitation requires abuse of a position of vulnerability, differential power, or trust, for sexual purposes,⁷⁵ which means that not every paid sexual encounter will in itself amount to an *exploitative* use in prostitution.

The conduct reported by the UN Commission of Inquiry (*Compromis* ¶21) does not necessarily amount to exploitation. The sexual relations were non-violent and there is no mention of actual abuse by the peacekeeping troops. Though the local girls were in a position of vulnerability, there is no evidence of an *intentional abuse* of such position *by the troops*.

⁷² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ ¶¶101,111,114; Armed Activities, *supra* note 43, ¶¶173-179.

⁷³ Armed Activities, *supra* note 43, ¶173.

⁷⁴ CRC, *supra* note 69, Article 34(b).

⁷⁵ SG Bulletin, *supra* note 63, §1.

While the Commission of Inquiry did find that Ravisian troops were “substantially involved” in sexual exploitation (*Clarifications* ¶3), this Court is free to make its own legal findings in light of the evidence presented to it.⁷⁶ Firstly, “substantial involvement” is not the same as engaging in sexual exploitation, and responsibility for aiding and assisting would require Ravisia’s prior knowledge of the wrongful act,⁷⁷ which has not been demonstrated. Secondly, there were no reported incidents of sexual exploitation after March 2008, the date on which UNMORPH became entirely composed by Ravisian troops (*Compromis* ¶24), and there has been no complaint about the sexual conduct of OPS troops (*Compromis* ¶50), which is a strong indicia of the innocence of Ravisian troops in that regard.

Absent a further inquiry into each individual incident, this Court cannot declare Ravisia responsible for sexual exploitation. Sexual exploitation is a grave human rights violation, which therefore requires a high standard of evidence.⁷⁸

B. Broadcasting from Camp Tara has been entirely lawful

Ravisian troops have not violated Alicanto’s sovereignty by broadcasting educational radio programs from Camp Tara. They have also have not violated any obligation to respect local law, as the local ordinances prohibiting the broadcasting are in breach of international human rights law.

⁷⁶ Rights of Nationals of the United States of America in Morocco (France v. United States), Merits, 1952 ICJ at 200; Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, 1974 ICJ ¶17.

⁷⁷ UNITED NATIONS, INTERNATIONAL LAW COMMISSION, RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, UN Doc. A/56/10 (2001) at 59, [hereinafter State Responsibility] Article 16.

⁷⁸ Genocide, *supra* note 36, ¶209.

1. The broadcasting under UNMORPH was entirely lawful

Resolution 5440, adopted under Chapter VII of the Charter, underlined the need for UNMORPH to have at its disposal radio transmission facilities to “encourage the progressive development of the various communities in Alicanto”. This has been done in previous peacekeeping missions.⁷⁹

Given that UNMORPH’s mandate was established under Chapter VII, host-State consent was not necessary for its operation.⁸⁰ Therefore, neither the local ordinances nor Alicanto’s withdrawal of consent in December 2007 (*Compromis* ¶22) affected the legality of the broadcasting.

2. The broadcasting under OPS has been entirely lawful

The broadcasting which continued since 1 August 2008 (*Compromis* ¶50) is not in breach of Alicanto’s sovereignty, as it is part of OPS, and thus authorized by international law (*supra* I).

In addition, the broadcasting is not in breach of Ravisia’s obligations as an occupying power within Camp Tara, as the local ordinances are in default of international human rights law. The customary obligation to respect local law⁸¹ coexists along with an obligation to safeguard human rights and to promote the welfare of the local inhabitants.⁸² Thus, local law which does not comply with international human rights law need not be respected by an occupying power.

⁷⁹ S/RES/981 (1995) (*Croatia*) ¶10.

⁸⁰ MATHESON, COUNCIL UNBOUND: THE GROWTH OF UN DECISION MAKING ON CONFLICT AND POSTCONFLICT ISSUES AFTER THE COLD WAR 121 (2006).

⁸¹ Convention Respecting the Laws and Customs of War on Land, 18 October 1907, 187 CTS 227, 1 Bevens 631, Annex, Article 43.

⁸² Armed Activities, *supra* note 43, ¶178; S/RES/1483 (2003) (*Iraq-Kuwait*) ¶4.

The local ordinances in the Northeast Province violate the right to freedom of expression. This right may only be limited for the reasons listed in Article 19(3) of the ICCPR,⁸³ and any restriction must meet three requirements: (i) it must be provided by law, (ii) it must address the aims enumerated in Article 19(3), and (iii) it must be necessary to achieve its purpose.⁸⁴

The reason alleged by the Alicantan authorities in restricting the broadcasting relates to public morals,⁸⁵ as it was done out of an incompatibility with the Talonnic Faith (*Compromis* ¶¶20,25). Public morals are a concept with widely differing interpretations,⁸⁶ but cannot serve to justify any restriction. The restriction must be necessary,⁸⁷ and it cannot jeopardize the core contents of freedom of expression.⁸⁸ Freedom of expression protects minority views which might offend, shock, or disturb the majority or the Government.⁸⁹ Debate on public issues should be uninhibited, robust and wide-open.⁹⁰

⁸³ ICCPR, *supra* note 7, Article 19(3).

⁸⁴ Jong-Choel v. Republic of Korea, Comm. 968/2001, Hum. Rts. Comm. (2005) ¶8.3.

⁸⁵ ICCPR, *supra* note 7, Article 19(3).

⁸⁶ Hertzberg et al. v. Finland, Comm. 61/1979, Hum. Rts. Comm. (1985), Individual Opinion by Mr. Torkel Opsahl.

⁸⁷ *Id.*

⁸⁸ UNITED NATIONS, HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 10: FREEDOM OF EXPRESSION (NINETEENTH SESSION, 1983), UN Doc. HRI/GEN/1/Rev.1 (1994) at 11 ¶4; UNITED NATIONS, COMMISSION ON HUMAN RIGHTS, PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION: REPORT OF THE SPECIAL RAPPORTEUR, UN Doc. E/CN.4/1994/33 (1994) ¶11.

⁸⁹ Sunday Times v. United Kingdom, App. 6538/74, Eur. Ct. H.R. (1979) ¶65; Kimel v. Argentina, Inter-Am. Ct. H.R., Series C. No. 177 (2008) ¶88.

⁹⁰ New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964) (United States Supreme Court).

The Northeast Province's local ordinances restricting freedom of expression are in breach of the ICCPR, as they did not meet the requirement of necessity. Less restrictive measures were available such as the ones introduced by Major-General Skylark, who issued parental warnings in local dialects (*Compromis* ¶20).

C. In any event, Ravisia is not responsible for the conduct of UNMORPH soldiers

1. The conduct of troops under the authority of the UN is exclusively attributable to the Organization

The conduct of UN peacekeeping troops is attributable to the Organization, as long as it retains operational command and control.⁹¹ This must be determined by reference to the scope of the mission's mandate⁹² and to whether a chain of command can be traced to the Organization.⁹³ Exclusive attribution to the UN is explained by the fact that troop-contributing States may not decide on the course of conduct of the troops,⁹⁴ which eliminates the link that must exist between the relevant conduct and the State's organs in order to establish its responsibility.⁹⁵

⁹¹ UNITED NATIONS, INTERNATIONAL LAW COMMISSION, RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS, UN Doc. A/59/10 (2004) at 94, [hereinafter IO Responsibility] 144; AMERASINGHE, PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS 401-404 (2nd ed. 2005); UNITED NATIONS, GENERAL ASSEMBLY, ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF THE UNITED NATIONS PEACEKEEPING OPERATIONS: FINANCING OF THE UNITED NATIONS PEACEKEEPING OPERATIONS – REPORT OF THE SECRETARY-GENERAL, UN Doc. A/51/389 (1996) [hereinafter Financing Report] ¶17.

⁹² *Behrami & Behrami v. France & Saramati v. France, Germany & Norway*, Apps. 71412/01 & 78166/01, Decision on Admissibility, Eur. Ct. H.R. (2007) ¶¶123-127.

⁹³ *Id.*, ¶¶135,141-143.

⁹⁴ Danesh Sarooshi, *The Role of the United Nations Secretary-General in United Nations Peace-Keeping Operations*, 20 AUST. Y.B.I.L. 279, 290 (1999) [hereinafter Sarooshi].

⁹⁵ Genocide, *supra* note 36, ¶406.

Attribution to the UN in those cases rules out attribution to the State, unless control is retained by both the State and the Organization, as in the case of a joint operation.⁹⁶ The fact that the participating State continues to exercise criminal and disciplinary jurisdiction over its troops⁹⁷ is not dispositive of the question of attribution, since the right of jurisdiction is extensible to the State's nationals solely by the link of nationality.⁹⁸

Full authority over UNMORPH was vested on the Secretary-General. Ravisian troops were seconded to the UN, where they remained under the orders of Major-General Skylark, an agent of the Organization,⁹⁹ who as Head of Mission and Force Commander, exercised operational authority and control over military personnel.¹⁰⁰

The relevant conduct was incidental to the mandate under Resolution 5440. The broadcasting was provided for by operative paragraph 6 of this resolution (*supra* III.B.1), and the alleged sexual exploitation, even if it was *ultra vires*, occurred within the mission's area of operations, thus establishing a sufficient link to the mission.¹⁰¹ The UN has, in practice,

⁹⁶ IO Responsibility, *supra* note 91, at 101, 114; Financing Report, *supra* note 91, ¶¶17-18.

⁹⁷ Nissan v. Attorney-General, [1969] 1 All ER 629 (UK House of Lords); *Zeid Report*, *supra* note 65, ¶19; *Defeis*, *supra* note 66, at 192.

⁹⁸ Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), 1998 ICJ (Diss. Op. Oda) ¶17; *Bankovic*, *supra* note 70, ¶60; CASSESE, INTERNATIONAL CRIMINAL LAW 281-282 (2003).

⁹⁹ *Sarooshi*, *supra* note 94, at 291.

¹⁰⁰ UNITED NATIONS, GENERAL ASSEMBLY, REPORT OF THE GROUP OF LEGAL EXPERTS ON MAKING THE STANDARDS CONTAINED IN THE SECRETARY-GENERAL'S BULLETIN BINDING ON CONTINGENT MEMBERS AND STANDARDIZING THE NORMS OF CONDUCT SO THAT THEY ARE APPLICABLE TO ALL CATEGORIES OF PEACEKEEPING PERSONNEL, UN Doc. A/61/645 (2006) ¶19,26.

¹⁰¹ IO Responsibility, *supra* note 91, at 119.

compensated for acts occurring outside its orders and even outside official functions.¹⁰² It has also taken action in response to sexual exploitation, which has not included formal claims against troop-contributing States.¹⁰³

2. At any rate, both parties have acknowledged exclusive attribution to the UN

The conduct is attributable to the Organization in light of the recognition made by the UN and Alicanto. The UN adopted and acknowledged the conduct of the peacekeeping troops solely as its own by (i) signing a SOFA with Alicanto (*Compromis* ¶18) which provides for immunities to be accorded to the troops,¹⁰⁴ instead of relying on the sovereign immunity previously existing for any State organ;¹⁰⁵ (ii) the establishment of a Commission of Inquiry which referred to “UNMORPH peacekeeping troops” (*Compromis* ¶21); and (iii) Major-General Skylark’s claim for immunity with regard to the broadcasting (*Compromis* ¶25) by invoking the SOFA and Resolution 5440. This, coupled with the lack of a formal complaint by the UN against Ravisia, amounts to adoption and acknowledgement¹⁰⁶ of the conduct of the troops.

¹⁰² Finn Seyersted, *United Nations Forces: Some Legal Problems*, 37 BRIT. Y. B. INT’L L. 351, 420 (1961).

¹⁰³ Susan Notar, *Peacekeepers as Perpetrators: Sexual Exploitation and Abuse of Women and Children in the Democratic Republic of the Congo*, 14 AM. U. J. GENDER SOC. POL’Y & L. 413, 419-421 (2006).

¹⁰⁴ UNITED NATIONS, GENERAL ASSEMBLY, MODEL STATUS-OF-FORCES AGREEMENT FOR PEACE-KEEPING OPERATIONS: REPORT OF THE SECRETARY-GENERAL, UN Doc. A/45/495 (1990) ¶47(b).

¹⁰⁵ *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Merits, 2008 ICJ ¶196.

¹⁰⁶ *Prosecutor v. Nikolić*, IT-94-2, ICTY Trial Chamber II, Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal (2002) ¶¶60-67; IO Responsibility, *supra* note 91, at 120-122.

Alicanto acquiesced to this adoption and acknowledgment by (i) signing the SOFA, (ii) reacting to the alleged sexual exploitation by calling for UNMORPH to be shut down (*Compromis ¶27*) instead of bringing a claim or protesting against Ravisia at that time, and (iii) declining to enforce its local ordinances against UNMORPH for the broadcasting (*Compromis ¶25*), thus accepting the UN's claim for immunity.

Alicanto cannot now turn back on this acquiescence,¹⁰⁷ and bring a claim against Ravisia for conduct that it had already understood to be attributable to the UN.

D. Alicanto is not entitled to reparations

As demonstrated above, Ravisia has not committed any wrongful act. Accordingly, it owes no reparation to Alicanto. However, if a wrongful act had been committed, no alleged injury would warrant reparations. The injury complained of is not a direct damage to the State, and thus the allegedly injured Alicantan citizens would need to exhaust local remedies in Ravisia, which they have not.

1. Alicanto has not suffered any direct damage

Reparation for injury, aside from the existence of a wrongful act, requires the injured State to have suffered material or moral damage,¹⁰⁸ and there must be a direct causal link between the wrongful act and the damage.¹⁰⁹

The alleged sexual exploitation could have caused a damage to Alicantan nationals, but not to the Alicantan State. An espousal of their claims would first need to exhaust local remedies

¹⁰⁷ Temple of Preah Vihear (Cambodia v. Thailand), Merits, 1962 ICJ at 32; Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, 2007 ICJ ¶79-80.

¹⁰⁸ State Responsibility, *supra* note 77, Article 31(2).

¹⁰⁹ *Genocide*, *supra* note 36, ¶462.

(*infra* 2). In addition, any vicarious liability for breach of an obligation to prevent or to punish sexual exploitation would not warrant reparations for the sexual exploitation itself, as it would lack the causal nexus required for the reparation.¹¹⁰

The broadcasting did not cause any damage, as the notion of injury excludes merely abstract concerns of the State,¹¹¹ such as Alicanto's "social fabric". No material or moral harm has been caused by the broadcasting, and neither have the dignity, honor or prestige¹¹² of Alicanto been affected.

2. Alicantan citizens would need to exhaust local remedies

Insofar as any claim is made for violations of individual rights, it must first exhaust local remedies in Ravisia. International claims for injury to individuals must satisfy the requirements of diplomatic protection: nationality¹¹³ and exhaustion of local remedies.¹¹⁴

The rule of exhaustion of local remedies is subject to certain exceptions.¹¹⁵ Alicanto might argue that its claim for reparation to its citizens is a mixed claim brought preponderantly on behalf of the State,¹¹⁶ or that there was no relevant connection between the Alicantan nationals and Ravisia at the time.¹¹⁷

¹¹⁰ *Id.*

¹¹¹ State Responsibility, *supra* note 77, Article 31, Commentary (5).

¹¹² Rainbow Warrior (New Zealand v. France), 30 April 1990, 20 RIAA 217 (1994) ¶109.

¹¹³ Nottebohm (Liechtenstein v. Guatemala), Second Phase, 1955 ICJ at 20-24.

¹¹⁴ Interhandel (Switzerland v. United States), Preliminary Objections, 1959 ICJ at 27.

¹¹⁵ UNITED NATIONS, INTERNATIONAL LAW COMMISSION, DRAFT ARTICLES ON DIPLOMATIC PROTECTION, UN Doc. A/61/10 (2006) at 22, [hereinafter Diplomatic Protection] Article 15.

¹¹⁶ Avena and Other Mexican Nationals (Mexico v. United States), Merits, 2004 ICJ [hereinafter Avena] ¶40.

None of these exceptions apply. The rights set forth in the ICCPR and CRC do not confer any rights to States, but exclusively to individuals,¹¹⁸ and the “relevant connection” exception has not been recognized in customary law, as according to the International Law Commission, State practice *does not* provide clear guidance on the existence of such an exception.¹¹⁹

IV. PICCARDO DONATI NEED NOT BE HANDED OVER TO ALICANTO, WHERE HE WILL BE SUBJECTED TO JUDICIAL EXECUTION IN VIOLATION OF INTERNATIONAL LAW

Alicanto’s request for the surrender of Mr. Donati cannot be complied with. Ravisia did not violate international law by giving him refuge at Camp Tara, and is bound by the ICCPR not to surrender him to Alicanto. Therefore, even if Ravisia had committed a wrongful act by allowing Mr. Donati in Camp Tara, surrender would not be an appropriate remedy.

A. Ravisia has not breached international law by giving refuge to Mr. Donati

1. Ravisia is not in breach of the principle of non-intervention

The refuge given to Mr. Donati is not a breach of the principle of non-intervention¹²⁰ for two reasons. Firstly, the right to seek and receive asylum is recognized in the Universal Declaration on Human Rights,¹²¹ which serves as an authoritative interpretation of the UN

¹¹⁷ Diplomatic Protection, *supra* note 115, Article 15(c).

¹¹⁸ Effect of Reservations on the Entry into Force of the American Convention on Human Rights, Advisory Opinion OC-2/82, Inter-Am. Ct. H.R. (1982) ¶29.

¹¹⁹ Diplomatic Protection, *supra* note 115, Article 15(c), Commentary (9).

¹²⁰ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, GA. Res. 2625(XXV) (1970).

¹²¹ Universal Declaration on Human Rights, GA. Res. 217A(III) (1948), Article 14(1).

Charter,¹²² and thus is not purely an issue of domestic concern. Secondly, there is no coercion¹²³ involved in this refuge, as Alicanto was not forced to surrender Mr. Donati to OPS.

2. Ravisia, as an occupying power since 1 August 2008, may grant asylum to Mr. Donati

The right of asylum is a sovereign choice of territorial States, which must be respected by other States.¹²⁴ During military occupation, certain attributions of sovereignty are transferred, albeit temporarily, to the occupying State,¹²⁵ including control over the civilian population.¹²⁶

Ravisia, being an occupying power in Camp Tara since 1 August 2008 (*supra* III.A.2), enjoyed these attributions, and thus was entitled to grant asylum within the occupied territory.

B. Ravisia is obliged not to surrender Mr. Donati to Alicanto

1. States may not remove persons to a jurisdiction where their rights will be violated

States may not send persons under their jurisdiction to States where they will suffer irreparable harm.¹²⁷ This rule is not limited to extradition, but is extensive to all forms of

¹²² United States Diplomatic and Consular Staff in Tehran (*United States v. Iran*), Merits, 1980 ICJ ¶¶91; Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUST. Y.B.I.L. 82, 100-102 (1988-1989); Thomas Buergenthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1, 8 (1988).

¹²³ *Nicaragua*, *supra* note 13, ¶205; Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, GA. Res. 2131(XX) (1965) ¶2.

¹²⁴ Declaration on Territorial Asylum, GA. Res. 2312(XXII) (1967), Article 1(1); GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 172-173 (2nd ed. 1998); Felice Morgenstern, *The Right of Asylum*, 26 BRIT. Y.B. INT'L L. 327 (1949).

¹²⁵ Hans-Peter Gasser, *Protection of the Civilian Population*, in *THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS* 209, 245 (Dieter Fleck ed., 1995).

¹²⁶ MCDUGAL & FELICIANO, *THE INTERNATIONAL LAW OF WAR: TRANSNATIONAL COERCION AND WORLD PUBLIC ORDER* 733-738 (1994).

¹²⁷ *Soering v. United Kingdom*, App. 14038/88, Eur. Ct. H.R. (1989) ¶91; *Chahal v. United Kingdom*, App. 22414/93, Eur. Ct. H.R. (1996) ¶80; *Mamatkulov & Askarov v. Turkey*, App.

removal from a State's jurisdiction to that of another State, including expulsion and deportation.¹²⁸

Piccardo Donati is under Ravisia's jurisdiction, as he is under its authority and control.¹²⁹ Therefore, Ravisia must ensure his rights, by refusing to deliver him to Alicanto, where he would face a violation of his right to life.

2. The death penalty may not be imposed on Piccardo Donati

With the growing trend towards abolition of the death penalty,¹³⁰ international law sets strict requirements on its use,¹³¹ which have not been met in the present case.

i. The death sentence has been re-enacted in Alicanto in violation of the progressive abolition of the death penalty

Article 6(6) of the ICCPR, by calling for the progressive abolition of the death penalty, prohibits its re-enactment by States parties.¹³² Capital punishment in Alicanto, previously

46827/99, Eur. Ct. H.R. (2005) ¶¶67-68; UNITED NATIONS, HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 31: THE NATURE OF THE GENERAL LEGAL OBLIGATION IMPOSED ON STATES PARTIES TO THE COVENANT, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004) ¶12; Ng v. Canada, Comm. 469/1991, Hum. Rts. Comm. (1993) [hereinafter Ng Case] ¶14.2.

¹²⁸ H.L.R. v. France, App. 24573/94, Eur. Ct. H.R. (1997) ¶34; NA v. United Kingdom, App. 25904/07, Eur. Ct. H.R. (2008) ¶109.

¹²⁹ Al-Skeini, *supra* note 71, ¶¶61,90,97; López Burgos v. Uruguay, Comm. 52/79, Hum. Rts. Comm. (1989), ¶9,10.1,11.

¹³⁰ Kindler v. Canada, Comm. 470/1991, Hum. Rts. Comm. (1993) ¶14.2; SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 20,69,93,365-366 (2nd ed. 2001).

¹³¹ UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, RESOLUTION 1984/50: SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY, UN Doc. E/1984/84 (1984) at 33 [hereinafter Safeguards]; Öcalan v. Turkey, App. 46221/99, Eur. Ct. H.R. (2005) ¶¶166,174.

¹³² Judge v. Canada, Comm. 829/1998, Hum. Rts. Comm. (2002) ¶10.4-10.6.

abolished (*Clarifications* ¶6), was established in the new Judicial Code on 15 August 2008 (*Compromis* ¶44), thus violating this prohibition.

ii. The trial has been unfair

The exceptional nature of the death penalty requires that any death sentence be pronounced only “after legal process which gives all possible safeguards to ensure a fair trial”.¹³³ Due to the irreversible character of capital punishment,¹³⁴ a death sentence imposed following an unfair trial is itself a breach of the right to life.¹³⁵

Mr. Donati’s right to be tried in his presence¹³⁶ was breached by Alicanto. Although *in absentia* trials are not absolutely prohibited, they do require the accused to have been duly notified.¹³⁷ No such notification was carried out.

This absence further prejudiced his rights to consult with his attorney, adequately prepare his defense, and call witnesses at trial.¹³⁸ Mr. Donati was not able to instruct his counsel before the trial¹³⁹ or inform him on witnesses to be called in his defense.¹⁴⁰ This violation of the principle of equality of arms is demonstrated by the fact that only prosecution witnesses testified

¹³³ Safeguards, *supra* note 131, Article 5.

¹³⁴ Moratorium on the Use of the Death Penalty, GA. Res. 62/149 (2008), Preamble ¶5.

¹³⁵ *Pinto v. Trinidad and Tobago*, Comm. 232/1987, Hum. Rts. Comm. (1990) ¶12.5; *Domukovsky et al. v. Georgia*, Comm. 623/1995, Hum. Rts. Comm. (1998) ¶18.10.

¹³⁶ ICCPR, *supra* note 7, Article 14(3)(d).

¹³⁷ *Mbenge v. Zaire*, Comm. 16/1977, Hum. Rts. Comm. (1983) ¶14.1.

¹³⁸ ICCPR, *supra* note 7, Articles 14(3)(b),(d),(e).

¹³⁹ *Little v. Jamaica*, Comm. 283/1988, Hum. Rts. Comm. (1991) ¶¶8.3-8.4.

¹⁴⁰ *Smith v. Jamaica*, Comm. 282/1988, Hum. Rts. Comm. (1993) ¶10.4.

at trial (*Compromis* ¶47). Thus, even if Mr. Donati was represented by a competent attorney (*Compromis* ¶¶47-48), his fundamental fair trial guarantees were still violated by Alicanto.

The appropriate remedy for the violation of international norms regarding the conduct of judicial proceedings is review and reconsideration of the sentence.¹⁴¹ However, under Alicantan law, a retrial is only possible after 12 years of the pronouncement of the sentence (*Compromis* ¶48). Thus, Ravisia may not surrender Mr. Donati at this time, given that review and reconsideration is currently impossible.

iii. The method of execution is in violation of Article 7 of the ICCPR

A death sentence may not be carried out if it amounts to cruel, inhuman and degrading treatment.¹⁴² The Human Rights Committee has made such a finding with regard to gas asphyxiation,¹⁴³ and domestic courts have held that death by hanging constitutes prohibited ill-treatment.¹⁴⁴

Mr. Donati, if surrendered to Alicantan authorities, would be subjected to hanging (*Compromis* ¶48), and thus to a violation of his rights under Article 7 of the ICCPR.

C. Surrender of Mr. Donati would not be an appropriate remedy

Even if this Court finds that Ravisia could not give refuge to Mr. Donati, the appropriate remedy is not surrendering him to Alicantan authorities. Surrender is an obliged remedy if this is

¹⁴¹ LaGrand (Germany v. United States), Merits, 2001 ICJ ¶¶125-126; *Avena*, *supra* note 116, ¶121.

¹⁴² Ng Case, *supra* note 127, ¶¶16.1-16.4; Cox v. Canada, Comm. 539/1993, Hum. Rts. Comm. (1994) ¶17.3.

¹⁴³ *Id.*

¹⁴⁴ Republic v. Mbushuu et al., [1994] 2 LRC 335 (High Court of Tanzania); Campbell v. Wood, 18 F.3d 662, 695 (9th Cir.1994) (United States Court of Appeal).

so established by a treaty provision.¹⁴⁵ Given that no such provision exists, there is no obligation binding on Ravisia to surrender Piccardo Donati.

The remedy requested by Alicanto consists of *restitution*, which cannot be sought if it is disproportionate,¹⁴⁶ as would be the case if Mr. Donati were to be surrendered, since this would entail a breach of Ravisia's human rights obligations. This Court cannot order Ravisia to dishonor its commitments.

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Commonwealth of Ravisia respectfully requests this Court to:

- I. *Declare* that the presence of the Ravisian military forces in Alicanto has been and continues to be fully justified under international law;
- II. *Decline* to call upon Ravisia to produce its classified intelligence, or in the alternative, *decline* to afford Alicanto any evidentiary benefit should Ravisia continue to withhold the intelligence, and *declare* that the Secretary-General may not lawfully hand it over to Alicanto;
- III. *Find* that the conduct of Ravisian troops while stationed at Camp Tara did not violate international law, and that, in any event, Ravisia bears no liability for any wrongdoing that may have been committed in the service of the United Nations, and that no alleged injury to Alicanto or its citizens warrants reparations; and
- IV. *Hold* that the Alicantan citizen Piccardo Donati need not be repatriated to Alicanto, where he will be subjected to judicial execution in violation of international law.

¹⁴⁵ Haya de la Torre (Colombia v. Peru), Merits, 1951 ICJ at 81.

¹⁴⁶ State Responsibility, *supra* note 77, Article 35(b).

Respectfully submitted,

Agents for Ravisia