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INTERNATIONAL LAW MOOT COURT COMPETITION

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

CASE CONCERNING

"THE SECESSION AND ANNEXATION OF EAST AGNOSTICA"

THE FEDERAL REPUBLIC OF AGNOSTICA

(APPLICANT)

v.

THE STATE OF REVERENTIA

(RESPONDENT)

2015

ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE

MEMORIAL FOR THE APPLICANT

AGNOSTICA

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STATEMENT OF JURISDICTION

The Federal Republic of Agnostica ["**Agnostica**"] and the State of Reverentia ["**Reverentia**"] hereby submit the present dispute to the International Court of Justice ["**The Court**"] pursuant to Article 40(1) of the Court's Statute, in accordance with the Special Agreement concerning the secession and annexation of East Agnostica and other issues, signed in the Hague, the Netherlands, on the second day of September in the year two thousand fourteen. The parties have accepted the Court's jurisdiction under Article 36(1) of its Statute.

QUESTIONS PRESENTED

I. Whether Reverentia's encouragement of the East Agnostican referendum violated Agnostica's territorial integrity, the principle of non-intervention, and the United Nations Charter generally.

II. Whether the purported secession and subsequent annexation of East Agnostica are illegal and without effect, and whether East Agnostica remains part of the territory of Agnostica.

III. Whether the Marthite Convention ceased to be in effect as of 2 April 2012, and in any event, whether Agnostica breached the Convention.

IV. Whether Reverentia's removal of the software at the Marthite extraction facilities violated international law.

STATEMENT OF FACTS

AGNOSTICA AND REVERENTIA

Agnostica and Reverentia were two colonies under the Kingdom of Credera inhabiting Thanatosian Plains. Many ethnic Reverentians migrated to Agnostica and settled in eastern Agnostica, making up 30% of the Agnostican population by 1919.

In 1925, both colonies gained independence and established their borders according to their colonial boundaries. Agnostica comprises two provinces: East Agnostica, primarily populated by ethnic Reverentians ["**Agnorevs**"], and West Agnostica, populated by ethnic Agnosticans. The Agnostican constitution grants both provinces control over cultural affairs and education respectively and empowers her federal parliament to dissolve the union by three-quarters vote.

AGNOREVS

Despite Reverentia's 30-year encouragement for Agnorevs to return, over 85% of Agnorevs chose to remain in Agnostica, participating actively in the State's politics and economy. By 1955, Agnorevs earned 157% of ethnic Agnostican families' average income.

MARTHITE CONVENTION ["MC"]

East Agnostica is the only area in the world containing Marthite, a mineral salt possessing mildly restorative properties that has been a core ingredient in Reverentian traditional medicine. Marthite was virtually unknown outside Thanatosian Plains.

In 1938, Reverentia and Agnostica concluded MC to govern Marthite production and distribution. Until 2011, the Reverentian Marthite Trust ["**RMT**"] sold all extracted Marthite to

Reverentian and East Agnostican traditional practitioners.

MARTHITE'S NEW MEDICAL VALUE

In late 2011, *Institut Luxembourgeois des Sciences Appliquées* ["**ILSA**"] discovered that Marthite was over 90% effective in treating previously untreatable autoimmune disorders afflicting tens of thousands children worldwide. In few weeks, RMT sold 75% of the total quantity of mined Marthite to major pharmaceutical companies for ten times the Marthite resale price permitted under MC.

AGNOSTICA'S TREATY TERMINATION PROPOSAL

On 1 February 2012, Agnostican Prime Minister Maxine Moritz ["**Moritz**"] proposed to terminate MC by mutual consent due to the "fundamental change in the science underlying the treaty" and offered to reimburse Reverentia the mining facilities constructing and staffing costs and some additional sum. On 21 February 2012, Reverentian President Antonis Nuvallus ["**Nuvallus**"] rejected Agnostica's proposal, claiming that Marthite supply was adequate to satisfy local demand.

TREATY TERMINATION AND LEASE TO BAXTER ENTERPRISES, LTD. ["BAXTER"]

On 2 April 2012, Moritz declared MC terminated and disclosed that Agnostica had agreed to lease all rights of Marthite facilities to Baxter. The Baxter lease entered into force the following day.

SOFTWARE REMOVAL

Nuvallus rejected Agnostica's position and ordered the Reverentian engineers to return and to remove Marthite software in the facilities, resulting in crippled operation. On 2 May 2012, Reverentian Vice-President announced in *The Reverentian Times* that if Agnostica were to recommit to the terms of MC, the software removal's effect could be reversed.

SHORTAGES OF MARTHITE

All facilities had resumed mining operations by late May 2012. By late August 2012, Baxter could only extract roughly 100 kilograms of Marthite per day, nearly all of which were sold to pharmaceutical companies. Two to three kilograms were sold to traditional users daily while ten kilograms were sold to RMT at prices higher than those before 1 April 2012.

MARTHITE CONTROL ACT ["MCA"]

Due to shortages of Marthite, the Agnostican Parliament passed MCA on 1 October 2012, banning Marthite sale and transfer into Reverentia as well as unauthorized Marthite purchase, sale, or possession within Agnostica. Under MCA, unlicensed Marthite possession would be subject to mandatory prison for 18 months to four years.

ARREST OF GOHANDAS SUGDY ["SUGDY"]

On 23 November 2012, Sugdy, a 19-year-old Agnorev miner, was charged under MCA for possessing two pocketfuls of Marthite. Claiming that the Marthite was to treat his grandfather, Sugdy asked to be with him for his final days. The magistrate rejected Sugdy's request and remanded him to jail to await trial. On the same day, Sugdy committed suicide, and his

grandfather died four days later.

AGNOREVS' DEMONSTRATIONS

Catalyzed by Sugdy's suicide, Agnorevs demonstrated over the ensuing weeks of 2012, protesting Marthite's unavailability for local distributors and various long-standing concerns, *inter alia*, "domination" of ethnic Agnosticans in armed and judicial posts, "negative" characterization of Agnorevs in Agnostican media and literature, as well as Agnostica's progressive tax structure. Agnostica, however, has a well-developed system of civil rights law prohibiting discrimination on ethnic grounds.

THE 26 DECEMBER CLASHES

On 26 December 2012, police clashed with protesters in Thanatosian streets, resulting in deaths of sixty demonstrators and several serious injuries of protesters and military personnel, termed as the "Boxing Day Massacre" by the East Agnostican media.

REVERENTIA'S OFFER OF ASSISTANCE

Nuvallus offered the Agnorev head of the East Agnostican provincial legislature Tomás Bien ["**Bien**"] any assistance to protect their lives. The offer was however dismissed.

REJECTION OF EAST AGNOSTICA'S PARLIAMENTARY PROPOSALS

By 2 January 2013, Bien's proposal for Agnostica's military presence de-escalation in East Agnostica failed by 45-64 votes. The East Agnostican parliament rallied the crowd to "decide whether to continue this federal state". Bien's subsequent proposal for the nation's dissolution to

the Agnostican parliament was defeated with all 67 West Agnostican representatives voting against it and 29 of the East Agnostican representatives voting in favor.

REVERENTIA'S RESOLUTION

On 9 January 2013, Nuvallus delivered a speech, claiming that Reverentia would aid Agnorevs' independence following Agnostica's "wrongful refusal". The next day, Reverentia adopted a resolution on "the Crisis in East Agnostica" stipulating her support for East Agnostican independence, promptly denounced by Agnostica.

SCHEDULING OF THE EAST AGNOSTICAN REFERENDUM

On 16 January 2013, the East Agnostican provincial parliament scheduled a plebiscite "open to all Agnostican citizens resident in East Agnostica" on the question of secession. The Agnostican government ordered the National Police to prepare to block the referendum.

REVERENTIA'S AMASSING OF SOLDIERS AT AGNOSTICAN BORDER

On 18 January 2013, Nuvallus ordered several hundred soldiers to her East Agnostican border but denied any claim of territorial ambition, claiming that the troops were sent to aid Agnorevs fleeing the violence in East Agnostica and to prevent violence spilling into Reverentia.

THE EAST AGNOSTICAN REFERENDUM

On 29 January 2013, the East Agnostican referendum, garnering an 80% turnout of eligible voters, concluded 73% votes in favor of East Agnostica's secession from Agnostica. Several international NGOs declared the referendum free of irregularities with fair result. Nevertheless,

Moritz denounced it immediately.

AGNOREV PEOPLE'S PARLIAMENT ["APP"]

The former East Agnostican provincial parliament's members, now sitting as the "self-styled" APP, ratified East Agnostica's secession. Bien's delegation entered into talks with Reverentia regarding possible integration of East Agnostica. Such talks were criticized by *inter alia*, the United Nations Security Council ["**UNSC**"], European Union ["**EU**"], and Association of Southeast Asian Nations ["**ASEAN**"].

INTEGRATION INTO REVERENTIA

By 22 February 2013, Nuvallus and Bien had signed an Integration Agreement. Reverentian Army units were promptly moved into the region before the Agreement was ratified. Two days later, the Agnostican military and national police units in East Agnostica were withdrawn for security reasons, without prejudice to East Agnostica's legal status. The Integration Agreement was subsequently denounced by Moritz.

RATIFICATION OF INTERNATIONAL TREATIES

Agnostica and Reverentia are members of the United Nations ["**UN**"]. Both ratified the International Covenant on Civil and Political Rights ["**ICCPR**"], the International Covenant on Economic, Social and Cultural Rights ["**ICESCR**"], the 1969 Vienna Convention on the Law of Treaties ["**VCLT**"], the 1933 Montevideo Convention on the Rights and Duties of States, and the International Convention on the Elimination of All Forms of Racial Discrimination ["**ICERD**"].

SUMMARY OF PLEADINGS

REVERENTIA'S ENCOURAGEMENT OF THE EAST AGNOSTICAN REFERENDUM

Reverentia's encouragement of the East Agnostican referendum violated Agnostica's territorial integrity, the principle of non-intervention, and the United Nations Charter as it constituted a direct intervention *vis-à-vis* threat of force or alternatively, an indirect intervention into Agnostica's domestic affairs.

Under the guise of protecting Agnorevs, Nuvallus' diplomatic statements and the resolution adopted on "the Crisis of East Agnostica" constituted a message of threat containing promise of forcible consequence against Agnostica. Reverentia's subsequent amassing of troops at her border with Agnostica made credible the existence of threat of force given its provocative timing, not negated by the absence of trans-border incursion. Such threat was illegal as it contained hostile intention to undermine Agnostica's territorial integrity and political independence.

Should the Court find lack of threat of force, Reverentia's encouragement nonetheless constituted an indirect intervention in Agnostica's domestic affairs due to its coerciveness. Collectively, Reverentia's irredentist encouragement coerced Agnostica out of her control to suppress the secession attempt, a matter falling within her domestic affairs. Adopted 19 days before the referendum, Reverentia's resolution was further tantamount to an illicit premature recognition, and its clause claiming that she would enter into negotiations on behalf of Agnorevs indicated an illicit territorial ambition to annex East Agnostica.

THE PURPORTED SECESSION AND ANNEXATION OF EAST AGNOSTICA

The purported secession of East Agnostica and subsequent annexation by Reverentia are illegal and without effect as the right to external self-determination may neither be triggered under Agnostica's domestic law nor in the form of remedial secession, absent customary status.

Even if such right exists, Agnorevs, despite sharing an ethnic background, did not constitute a 'people' entitled to exercise right to secession as remedy. Agnorevs did not collectively share a subjective self-distinction from the rest of Agnostica, manifested in persistent resistance. Further, Agnorevs' internal self-determination was not gravely suppressed since they enjoyed political, cultural and socio-economic rights. In particular, Agnostica's enactment of MCA did not deprive Agnorevs of their traditional Marthite practice, allowing Marthite possession with a Government license. Such restriction was proportionate in view of the diminishing Marthite supply and the priority to allocate such supply to treat the suffering children of the world.

Alternatively, the secession is illegal as it failed to fulfill the due process requirement to display a free and legitimate expression of the Agnorevs' will. The abruptly conducted East Agnostican referendum, although acquiring a majority vote in favor of the secession, lacked adequate organization and transparency.

In any event, Reverentia's annexation is illegal given Agnostica's retention of territorial control over East Agnostica. Even if the Court finds Agnostica to have lost her territorial control, the principle of effectivity, devoid of legal status in context of secession, may not render the annexation *de jure* legal based on *de facto* attainment of Reverentia's territorial control and states' recognition. Further, the annexation is subject to non-recognition as it violates the customary principle of non-intervention and *uti possidetis juris*.

AGNOSTICA'S LAWFUL TERMINATION OF MARTHITE CONVENTION

Agnostica has lawfully invoked Reverentia's material breach, *i.e.* excessive Marthite sales outside traditional uses and unilateral price determination, as ground to terminate MC. Alternatively, her invocation of fundamental change of circumstances as termination ground is founded since Marthite's value increase was fundamental, radically transforming Agnostica's further obligation to grant Reverentia access to Marthite. As Marthite's initial value to simply accommodate Reverentian traditional practice constituted *raison d'être* of MC, both States did not foresee such change at treaty formation. Subsequently, Agnostica's observance of the procedural safeguards *via* prior notification and mutually beneficial offer rendered MC effectively ceased as of 2 April 2012. In any event, Agnostica's subsequent lease with Baxter and enactment of MCA complied with MC.

REVERENTIA'S SOFTWARE REMOVAL UNDER INTERNATIONAL LAW

Reverentia's removal of software in Marthite facilities contravened international law by virtue of Agnostica's ownership over Marthite technology. Alternatively, the software removal could not be justified as countermeasure, absent internationally wrongful acts. In any event, the software removal was disproportionate to the alleged unlawful termination, and Reverentia's demand for Agnostica's recommitment to MC was insufficient. Should MC remain valid, Reverentia's software removal could not be warranted as non-performance. Consequently, Reverentia should make reparation.

PLEADINGS

I. REVERENTIA'S ENCOURAGEMENT OF THE EAST AGNOSTICAN REFERENDUM VIOLATED AGNOSTICA'S TERRITORIAL INTEGRITY, THE PRINCIPLE OF NON-INTERVENTION, AND THE UNITED NATIONS CHARTER GENERALLY

Entrenched in the UN Charter,[1] Friendly Relations Declaration,[2] and Helsinki Act,[3] the customary principle of non-intervention[4] obliges states not to violate other states' territorial integrity and political independence. As issues of secession fall within states' domestic affairs,[5] Reverentia's encouragement of the East Agnostican referendum violated this principle constituting (A) direct intervention *vis-à-vis* threat of force or (B) indirect intervention in Agnostica's domestic affairs.

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[1] Art.2(4), *Charter of the United Nations*, 1 UNTS 16 (1945) [UN Charter].

[2] *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of United Nations*, UN Doc. A/RES/25/2625 [Friendly Relations].

[3] Principles III-IV, *The Final Act of the Conference on Security and Co-operation in Europe*, 14 ILM 1292 (1975) [Helsinki].

[4] *Corfu Channel* (*United Kingdom v. Albania*), 1949 ICJ Rep. 4,¶35 [Corfu Channel].

[5] James Crawford, *The Creation of States in International Law*, (Clarendon Press, 1979) at 389 [Crawford].

A. REVERENTIA'S ENCOURAGEMENT AMOUNTED TO DIRECT INTERVENTION *VIS-À-VIS* THREAT OF FORCE VIOLATING ARTICLE 2(4) UN CHARTER

Article 2(4) UN Charter embeds states' customary obligations to abstain from not only the use of force but threat thereof,[6] acknowledged by this Court in *Nuclear Weapons*[7] as a promise of force conditional upon non-compliance of demands.[8] Under the guise of protecting Agnorevs' safety[9] and supporting their self-determination,[10] Reverentia's encouragement for the referendum constituted threat of force containing (1) a promise of force (2) demanding compliance with hostile intention, which was (3) unjustifiable under the available exceptions.

1. Reverentia's encouragement implied a promise of force

Threat of force may entail complementary strategies to indicate forcible consequences,[11] presently apparent from Reverentia's (a) series of diplomatic statements [12] and resolution supporting the East Agnostican referendum [13] (b) made credible with the subsequent demonstration of force (c) despite lacking incursion into Agnostica.

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[6] *Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua v. United States*), 1986 ICJ Rep. 14,¶¶187-190 [Nicaragua]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2005 ICJ Rep. 136,¶87 [Wall].

[7] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Rep. 226 at 47 [Nuclear Weapons].

[8] Ian Brownlie, *International Law and the Use of Force by States*, (Oxford University Press, 1963) at 364 [Brownlie].

[9] *Compromis*,¶30.

[10] *Compromis*,¶34.

[11] Carl Christol & Charles Davis, "Maritime Quarantine: The Naval Interdiction of Offensive Weapons and Associated Matériel to Cuba", 57 AJIL 525 (1963) at 529-530.

[12] *Compromis*,¶30,34.

[13] *Compromis*,¶35.

a. Reverentia's series of diplomatic statements and resolution supporting the East Agnostican referendum constituted an implied message of threat to Agnostica

International Law Commission ["**ILC**"] recognized that threat of force may be implied in written or oral declarations[14] regardless of ambiguity[15] inasmuch as they are delivered in sequence with consistent phraseology.[16] Threat can be inferred from Nuvallus' speech responding to Agnostica's "wrongful refusal"[17] of East Agnostica's dissolution motion.[18] His statement to "do everything in [Reverentia's] power" to support Agnorevs[19] was repeated in the resolution, empowering himself to "take all measures" "by any means at his disposal" to secure East Agnostica's secession.[20] Jurists[21] have interpreted such phraseology as promise of force,

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[14] Draft Code of Offences Against the Peace and Security of Mankind, UN Doc. A/CN.4/85 at 68 [ILC Code].

[15] Nikolas Stürchler, *The Threat of Force in International Law*, (Cambridge University Press, 2009) at 53 [Stürchler].

[16] *Fisheries Jurisdiction* (*United Kingdom v. Iceland*), 1973 ICJ Rep. 3, Diss. Op. Judge Nervo at 91.

[17] *Compromis*,¶34.

[18] *Compromis*,¶33.

[19] *Compromis*,¶34.

[20] *Compromis*,¶35.

[21] Marco Roscini, "Threats of Armed Force and Contemporary International Law", 54 Ned. Int'l L. Rev. 229 (2007) at 239 [Roscini]; Romana Sadurska, "Threats of Force", 83 AJIL 239 (1988) at 242-243 [Sadurska].

common in threatening messages, *e.g.* the 2006 US, UK, and Israeli threats to Iran[22] and the 2005 Chinese Anti-Secession Law,[23] condemned as threat of force by numerous states.[24]

Further, threat may be indirect,[25] *i.e.* addressed to proxy audience though aimed at the adversary.[26] Reverentia's diplomatic statements, despite addressed to Agnorevs,[27] were content-wise precise and legally identifiable[28] to be perceived as threat to Agnostica.

b. The indication of forcible consequence was made credible by Reverentia's subsequent amassing of troops

To identify threat, *Nuclear Weapons* emphasized the 'credibility'[29] that force may be implemented,[30] particularly through demonstrations of force as they risk armed encounter during high tension,[31] *i.e.* when the parties are especially sensitive to militarized act.[32]

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[22] UN Doc. A/60/730-S/2006/178 (Iran argued the phrase "to use all the tools at our disposal" constituted unlawful threat of force at 1-2).

[23] Anti-Secession Law of China (2005) (Stating in the event… Taiwan's secession… the state shall employ non-peaceful means and "other necessary measures" to protect China's territorial integrity in Art.8(1)).

[24] Keesing's Contemporary Archives (2005) at 46520-46521.

[25] UN Doc. A/2211 at 68.

[26] Sadurska, n.21, at 243.

[27] *Compromis*,¶¶34-35.

[28] Roscini, n.21, at 238.

[29] Nuclear Weapons, n.7,¶48; Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, Vol. II (2009) at 232.

[30] Thomas Schelling, *Arms and Influence*, (Yale University Press, 1966) at 99-109 [Schelling].

[31] Stürchler, n.15, at 113.

[32] *Ibid.*

In January 2013, Reverentia provocatively amassed her troops to her Agnostican border despite Moritz's stern denouncement of Reverentia's resolution, [33] comparable to *Guyana/Suriname* where Suriname sent military aircrafts over Guyanese vessel following Guyana's complaint to terminate exploration.[34] Taken collectively with her radical commitment to support East Agnostica,[35] Reverentian military maneuver's curt timing[36] rendered indication of force credible.

c. The absence of incursion into Agnostica did not negate Reverentia's threat of force

The low threshold of threat under Article 2(4) UN Charter does not require threats to be followed by actual use of force,[37] such as trans-border incursion.[38] ILC,[39] *Corfu Channel*,[40] and *Nicaragua*[41] concurred that "concentration of troops near frontiers" may depict threat, *e.g.* the 1951 British troops deployment to Iranian borders to protect foreign nationals from violence[42] and the 1990s US warships deployment near Taiwan Strait following official statements to

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[33] *Compromis*,¶¶36-37.

[34] *Guyana v. Suriname*, 47 ILM 166 (2008),¶¶425-438.

[35] *Compromis*,¶¶34-35.

[36] *Compromis*,¶37.

[37] Nuclear Weapons, n.7, Diss. Op. Judge Weeramantry at 526; Roscini, n.21, at 235.

[38] Brownlie, n.8, at 247.

[39] UN Doc. A/CN.4/SER.A/1989/Add.1 (Part 2) at 68.

[40] Corfu Channel, n.4,¶35.

[41] Nicaragua, n.6,¶227.

[42] Natalino Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity*, (Martinus Nijhoff, 1985) at 26-27.

support Taiwan's independence. [43] Similarly, Reverentia's amassing of border troops, even without entering Agnostica,[44] amounted to threat of force.[45]

2. Reverentia's hostile intention rendered her threat of force illegal

Corfu Channel,[46] *Nicaragua*,[47] and *Nuclear Weapons*[48] underlined that illegality of threat of force stems from the hostile intention to undermine target state's (a) territorial integrity and (b) political independence.[49]

a. Reverentia's threat harbored illicit territorial ambition to infringe Agnostica's territorial integrity

Hostile intention is analyzed from factual circumstances.[50] Reverentia's encouragement implied territorial ambition to acquire Marthite-depositing East Agnostica,[51] evident from her resolution clause "to enter into negotiation" on Agnorevs' behalf to ensure Marthite supply.[52] To achieve this aim, Reverentia must first create "an independent East Agnostica," persistently

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[43] Stürchler, n.15, at 240-245.

[44] *Compromis*,¶37.

[45] *Compromis*,¶38.

[46] Corfu Channel, n.4, at 35.

[47] Nicaragua, n.6,¶117,120.

[48] Nuclear Weapons, n.7,¶48.

[49] Eduardo Aréchaga, "International Law in the Past Third of a Century", 159 Res. des Cours 1 (1978) at 88 [Aréchaga]; Michael Walzer, *Just and Unjust Wars*, (Basic Books, 2000) at 81 [Walzer].

[50] ILC Code, n.14, at 291; Nicaragua, n.6,¶118.

[51] *Compromis*,¶9.

[52] *Compromis*,¶35.

instigated in such resolution and Nuvallus' speech.[53] In fact, East Agnostica's initial will was to dissolve the union,[54] and its decision to conduct referendum on secession only surfaced after Reverentia advocated such concept in her resolution.[55]

Corroborated by her amassing of troops to safeguard the referendum, hasty acceptance of the integration proposal, and eventual incursion into East Agnostica,[56] the sequence of Reverentia's encouragement demonstrated hostile intention to infringe Agnostica's territorial integrity. Should she be of good faith, Reverentia could have simply encouraged Agnorevs' return, which she ceased to do since 1955.[57]

b. Consequently, Reverentia's encouragement was coercive towards Agnostica's political independence

Threat is unlawful when "aimed to extract political concession",[58] *i.e.* coercing target state out of her political independence in decision-making.[59] Reverentia's diplomatic statements and subsequent amassing of troops throughout the East Agnostican referendum[60] forcibly deterred[61] Agnostica's entitlement as parent state to lawfully quell any secession attempt[62] by insisting

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[53] *Compromis*,¶34,35.

[54] *Compromis*,¶33.

[55] *Compromis*,¶35,37.

[56] *Compromis*,¶37,41.

[57] *Compromis*,¶6,37.

[58] Corfu Channel, n.4, at 31.

[59] Bruno Simma, et al., *The Charter of the United Nations: A Commentary*, Vol. I, (Oxford University Press, 2002) at 124 [UN Charter Commentary].

[60] *Compromis*,¶37.

[61] Nuclear Weapons, n.7,¶47.

[62] Crawford, n.5, at 389.

change be conducted according to constitutional processes[63] or by materializing her intention to block the referendum.[64] Had Agnostica not complied, Reverentia's troops could have at anytime entered Agnostica, comparable to Russian border troops entering eastern Ukraine in August 2014 following Ukraine's resistance against pro-Russian separatists.[65]

3. Reverentia's threat of force could not be justified under the exceptions to Article 2(4) UN Charter

Legality of threat is contingent upon the lawfulness of the projected use of force subject to exceptions to Article 2(4) UN Charter.[66] Reverentia's threat could not be justified as it was not a self-defense[67] or UNSC-sanctioned collective intervention.[68]

B. In Any Event, Reverentia's Encouragement Constituted Indirect Intervention in Agnostica's Domestic Affairs

Reverentia's external encouragement in form of (1) hasty irredentist instigation to secession and (2) premature recognition of East Agnostica met the lower threshold of indirect intervention[69] in Agnostica's domestic affairs violating the non-intervention custom,[70] as it was coercive, *i.e.* depriving Agnostica's control over the matter in question.[71]

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[63] *Ibid*, at 389.

[64] *Compromis*,¶37.

[65] Congressional Research Service Report, Ukraine: Current Issues and US Policy (2014) at 2.

[66] Nuclear Weapons, n.7,¶48.

[67] UN Charter, n.1, Art.51.

[68] Nuclear Weapons, n.7,¶49.

[69] Robert Jennings & Arthur Watts, *Oppenheim's International Law*, (Longman, 1996) at 430 [Oppenheim].

1. Reverentia's irredentist encouragement with the intention to annex East Agnostica was illicit

Irredentist act refers to external involvement of a kin state sharing ethnic-based affinity with aim to support and protect the interests and rights of the kin-minority residing in another state,[72] *e.g.* the condemned Hungarian Status Law for the protection of her minorities in Slovakia and Romania.[73]

The magnitude of Reverentia's irredentism, aggravated by her territorial ambition, resembles the UNSC-condemned South African border closure that coerced Lesotho to recognize Transkei's independence, accommodating her irredentism for a 'Greater South Africa'.[74] If not for Reverentia's encouragement, Agnostica would have retained domestic control over East Agnostican unrest.[75]

2. Reverentia's resolution amounted to an illicit premature recognition

State practice[76] and jurists[77] concur that premature recognition of 'a new state' amounts to a coercive intervention in the parent state's internal affairs, producing a "far-reaching effect" on

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[70] Friendly Relations, n.2,¶3; UN Doc. A/RES/42/22; UN Doc. A/RES/2131; UN Doc. A/RES/380; *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, UN Doc. A/RES/36/103 [Res.103].

[71] Friendly Relations, n.2,¶1; Oppenheim, n.69, at 432.

[72] Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 6, (Oxford University Press, 2013) at 385,¶2.

[73] Charles King, *Extreme Politics: Nationalism, Violence, and the End of Eastern Europe*, (Oxford University Press, 2009) at 164.

[74] UN Doc. S/RES/402 [Res.402].

[75] *Supra*, Section I.A.2.b.

[76] American Law Institute, *Restatement of the Law: The Foreign Relations Law of the United States*, Vol. 1, (American Law Institute, 1987) at 79, §202,¶f.

her territorial integrity.[78] In the case of secession, recognition is deemed premature when granted before the secessionist effort has succeeded.[79]

Reverentia's resolution, claiming to "extend diplomatic recognition" of an independent East Agnostica[80] was premature, being adopted 19 days before the referendum.[81] Although the resolution was worded conditionally upon the referendum results,[82] it nonetheless constituted an implicit recognition given Reverentia's subsequent amassing of border troops to ensure the referendum's success following the resolution.[83]

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[77] Malcolm Shaw, *International Law*, (Cambridge University Press, 2003) at 383 [Shaw]; Oppenheim, n.69, at 144.

[78] Peter Hilpold, et al., *Kosovo and International Law: The ICJ Advisory Opinion of 22 July 2010*, (Martinus Nijhoff, 2012) at 35.

[79] Art.1, *Montevideo Convention on the Rights and Duties of States*, 165 UNTS 19 (1933); Oppenheim, n.69, at 141.

[80] *Compromis*,¶35.

[81] *Compromis*,¶39.

[82] *Compromis*,¶35.

[83] *Compromis*,¶37.

II. THE PURPORTED SECESSION AND SUBSEQUENT ANNEXATION OF EAST AGNOSTICA ARE ILLEGAL AND WITHOUT EFFECT, AND THEREFORE EAST AGNOSTICA REMAINS PART OF THE TERRITORY OF THE FEDERAL REPUBLIC OF AGNOSTICA

The principle of self-determination,[84] enshrined in the UN Charter[85] and human rights treaties,[86] is primarily confined to internal self-determination ["**ISD**"],[87] fulfilled by peoples' pursuit of political, socio-economic or cultural development within the state.[88]

Presently, (A) East Agnostica may not exercise this right externally through unilateral secession. Even if such right exists, (B) Agnorevs were not a gravely oppressed 'people' entitled to such right, (C) nor was the purported secession's referendum procedure legitimate. In any event, (D) Reverentia's annexation of East Agnostica is without effect.

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[84] Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, (Cambridge University Press, 1995) at 34-42 [Cassese].

[85] UN Charter, n.1, Art.1(2).

[86] Art.1, *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966) [ICCPR]; Art.1, *International Covenant on Economic, Social and Cultural Rights*, 999 UNTS 3 (1966) [ICESCR]; Art.5(c), *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195 (1965) [ICERD]; CERD General Comment 14, UN Doc. HRI/GEN/1/Rev.6 at 125-126 [GC.14]; UN Doc. HRI/GEN/1/Rev.3 at 113-115,¶11 [HRC Instrument].

[87] Christian Tomuschat, *Modern Law of Self Determination*, (Martinus Nijhoff, 1993) at 225.

[88] *Reference re Secession of Quebec*, 2 SCR 217 (1998),¶¶125-126 [Quebec].

A. THE SELF-DETERMINATION PRINCIPLE DOES NOT CONFER THE RIGHT TO SECESSION AS A MODE OF EXTERNAL SELF-DETERMINATION IN DOMESTIC OR INTERNATIONAL LAW

Exercise of external self-determination [89] ["**ESD**"] post-decolonization must first be assessed under domestic law. [90] In this case, neither (1) Agnostica's constitution [91] nor (2) customary self-determination principle sustains ESD right *via* unilateral secession.

1. Agnostica's federal constitution does not recognize the right to unilateral secession

Pursuant to the superseding constitutional principles of federalism and democracy, federal constitutions do not warrant unilateral secession. [92] While Agnostica's constitution grants ESD right to dissolution, [93] (a) it may not be interchanged with secession. Alternatively, (b) constitutional ESD right entails negotiation with due regard to the federal interest.

a. Agnostica's constitutional right of external self-determination is limited to dissolution and not secession

Although Agnostica, comprising two provinces, [94] could split into two either through dissolution or secession, the legal distinction between both ESD mechanisms [95] is clear in

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[89] UN Doc. A/RES/50/6 at 13 [Res.06].

[90] Crawford, n.5, at 389.

[91] *Compromis*,¶8.

[92] Quebec, n.88,¶148.

[93] *Compromis*,¶8.

[94] *Compromis*,¶8.

[95] UN Charter Commentary, n.59, at 57.

principle.[96] Secession creates a new state as the parent state continues to exist,[97] while dissolution involves the parent state's extinction,[98] affirmed by Badinter Commission's opinion that Yugoslavia's dissolution is not a precedent of non-consensual secessions.[99] Moreover, recognition of right to secession is always made explicit in federal states' constitutions, *e.g.* St. Kitts and Nevis,[100] Ethiopia,[101] and Malaysia.[102] The very absence of such recognition in Agnostica's constitution[103] bespeaks non-recognition of secession.

b. Alternatively, East Agnostica has not exhausted the constitutional obligation to negotiate secession

Assuming *arguendo* there exists constitutional right to secede, *Quebec* affirmed that "democracy cannot be divorced from federalism", triggering duty to regard the federation's will by negotiating secession with federal government, even in the absence of express provision embodying such duty under the relevant constitution.[104]

East Agnostica's hasty decision to conduct a unilateral referendum without prior

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[96] Crawford, n.5, at 391.

[97] Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 9, (Oxford University Press, 2013) at 53,¶1 [Max Planck-IX].

[98] Crawford, n.5, at 417.

[99] Alain Pellet, "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples", 3 EJIL 178 (1992) at 182-183.

[100] §113, Saint Christopher and Nevis Constitution Order (1983).

[101] Art.39, Constitution of the Federal Democratic Republic of Ethiopia (1994).

[102] Art.2, Federal Constitution of Malaysia (1957).

[103] *Compromis*,¶8.

[104] Quebec, n.88,¶151.

negotiations,[105] scheduled 11 days after their dissolution motion was defeated,[106] operated in deviation of Agnostica's constitution.[107]

2. The customary right of external self-determination does not extend to remedial secession

Affirmed by UN General Assembly ["**UNGA**"] resolutions, [108] treaties, [109] and jurisprudences,[110] customary right of ESD[111] is restricted to decolonization[112] and may not be extended to post-decolonization entitling secession to remedy grave human rights violation.[113] 'Remedial secession' lacks (i) consistently uniform practice or (ii) strong *opinio juris*[114] that may accelerate its custom formation, even by virtue of 'Grotian Moment'.[115]

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[105] *Compromis*,¶38.

[106] *Compromis*,¶33,37.

[107] Quebec, n.88,¶84.

[108] *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN Doc. A/4684 [Res.4684]; UN Doc. A/RES/1541; UN Doc. A/RES/1654.

[109] *African Charter on Human and People's Rights*, 21 ILM 59 (1981) [Banjul Charter]; Helsinki, n.3, Principle IV.

[110] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution (1970)*, Advisory Opinion, 1971 ICJ Rep. 276,¶52 [Namibia]; *Western Sahara*, Advisory Opinion, 1975 ICJ Rep. 12,¶162 [Western Sahara].

[111] Res.06, n.89, at 13; European Commission for Democracy Through Law (Venice Commission) Opinion No. 762/2014,¶18 [Venice Opinion].

[112] UN Charter Commentary, n.59, at 53.

[113] Shaw, n.77, at 138.

[114] *North Sea Continental Shelf* (*Germany v. Denmark*), 1969 ICJ Rep. 3.

[115] Michael Scharf, "Accelerated Formation of Customary International Law", 20 ILSA J Int'l & Comp L 305 (2014) at 332.

First, unilateral secessions are generally unrecognized,[116] while the limited number of successful cases purported as remedial secession, *i.e.* East Timor, Bangladesh, and Kosovo, are *sui generis* and not precedents.[117] East Timor's secession was successful due to Indonesia's unlawful annexation,[118] whereas Bangladesh's due to India's military intervention.[119] EU,[120] US and Kosovo's own independence declaration have expressly asserted that Kosovo's secession is "not a precedent"[121] due to the "unusual combination" of Yugoslavia's breakup, ethnic cleansing and UN administration.[122]

Second, numerous jurists rejected the interpretation of Friendly Relations Declaration's 'safeguard clause' as basis of customary remedial secession.[123] *Åland Islands*[124] and *Quebec* expressly mentioned that its establishment as *lex lata* "remains unclear".[125] *Kosovo* recently displayed international community's rejection of remedial secession's customary status as it

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[116] Crawford, n.5, at 403.

[117] Bing Bing Jia, "The Independence of Kosovo: A Unique Case of Secession", 8 CJIL 1 (2009) at 30.

[118] UN Doc. A/RES/3485; UN Doc. A/RES/31/53; UN Doc. A/RES/32/34; UN Doc. A/RES/33/39; UN Doc. A/RES/34/40; UN Doc. A/RES/35/27; UN Doc. A/RES/36/50; UN Doc. A/RES/37/30.

[119] Marcelo Kohen, *Secession: International Law Perspectives*, (Cambridge University Press, 2012) at 121 [Kohen].

[120] Council of the European Union, Press Release 2851 Council Meeting (2008).

[121] Preamble, Kosovo Declaration of Independence (2008).

[122] UN Doc. S/RES/1244; UN Doc. S/RES/1239; UN Doc. S/RES/1203; UN Doc. S/RES/1199; UN Doc. S/RES/1160; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 ICJ Rep. 403 [Kosovo].

[123] Cassese, n.84, at 120.

[124] *Åland Islands Case*, LNOJ Spec. Supp. No.3 (1920) at 2 [Åland].

[125] Quebec, n.88, at 135.

would "endanger international legal order",[126] apparent in written submission of states,[127] *e.g.* China, Spain, Russia, Cyprus, Venezuela, Argentina, and Azerbaijan.

B. EVEN IF THE RIGHT TO SECESSION EXISTS, AGNOREVS ARE NOT A 'PEOPLE' GRAVELY DEPRIVED OF THEIR INTERNAL SELF-DETERMINATION ENTITLED TO REMEDIAL SECESSION

In any event, secession may only be exercised as remedy by (1) a group constitutive of a 'people'[128] (2) gravely abused of their human rights or effectively deprived of their internal self-determination.[129]

1. Agnorevs do not constitute a 'people' entitled to secession

Peoplehood has two-prong criteria,[130] first, sharing of ethno-historic and territorial background,[131] and second, self-conscious distinction from the rest of the nation through persistent resistance.[132]

While Agnorevs may fulfill the first element,[133] they fail at the latter, having refused Reverentia's 30-year call for return and choosing to participate actively in Agnostican politics

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[126] Kosovo, n.122, Diss. Op. Judge Koroma at 468,¶4.

[127] Simone Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices?*, (Intersentia, 2013) at 259.

[128] Shaw, n.77, at 251; Quebec, n.88,¶123.

[129] Quebec, n.88,¶¶132-133.

[130] Ved Nanda, "Self-Determination Under International Law: Validity of Claims to Secede", 13 Case W. Res. J. Intl'l L. 257 (1981) at 276 [Nanda].

[131] *Greco-Bulgarian "Communities"*, Advisory Opinion, 1930 PCIJ (Ser. B) No. 17 at 21.

[132] UN Charter Commentary, n.59, at 55,¶28; Christine Chinkin, "The East Timor Case (Portugal v. Australia)", 45 ICLQ 712 (1996) at 714.

[133] *Compromis*,¶1.

and economy.[134] Fueled by Marthite restriction,[135] Agnorevs' demonstrations did not voice secession, unlike the 2012 Catalan demonstration demanding to become "the next state of Europe".[136] In fact, such demonstrations only transpired in December 2012,[137] abating to none by January 2013.[138]

2. Alternatively, Agnorevs were not subjected to structural discrimination entitling them to remedial secession

Åland Islands[139] and *Katanga*[140] established the high threshold of remedial secession such that human rights violations must be large-scale,[141] grave, and persistent.[142] Absent "structural discrimination"[143] dimming any prospect of national reconciliation, Agnorevs were fully accorded with ISD in pursuing their (a) political, (b) socio-economic, and (c) cultural rights.[144]

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[134] *Compromis*,¶6.

[135] *Compromis*,¶29.

[136] Lluís Pérez & Marc Sanjaume, "Legalizing Secession: The Catalan Case", 4 Journal of Conflictology 3 (2013) at 6 [Catalan].

[137] *Compromis*,¶¶27-29.

[138] *Clarifications*,¶6.

[139] Åland, n.124, at 34.

[140] *Katangese Peoples' Congress v. Zaire*, Comm. No. 75/92 (1995),¶6.

[141] Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, (Oxford University Press, 2003) at 219-220.

[142] Quebec, n.88,¶135; Hurst Hannum, "Rethinking Self-Determination", 34 Va. J. Int'l L. 1 (1993) at 46-47 [Hannum].

[143] Kohen, n.119, at 41.

[144] ICCPR, n.86, Art.1; ICESCR, n.86, Art.1; ICERD, n.86, Art.5(c); CERD General Comment 21, UN Doc. A/51/18; HRC Instrument, n.86, at 113-115,¶11.

a. Agnorevs enjoyed political rights

Agnorevs were granted (i) sufficient regional political autonomy and access (ii) in the Agnostican federal parliament.

i. East Agnostica had sufficient political autonomy and access

Federal unit sovereignty is always partial,[145] *e.g.* East Agnostica's power over culture and education,[146] nonetheless amounting to ISD fulfillment.[147] Further, Agnostica has not nullified East Agnostica's cultural autonomy through MC's unilateral termination[148] nor MCA's enactment[149] as such measures were passed by federal parliament, involving East Agnostica's participation, if not consent.[150]

Individually, Agnorevs actively participated in Agnostican politics,[151] unlike in Bosnia-Herzegovina where discriminatory law barred national minorities from election to House of Peoples.[152] Likewise, Agnorevs' complaint[153] fell short of structural political discrimination, *e.g.* in Bangladesh whereby Bengalis' representation and legislative influence were reduced by West

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[145] Hannum, n.142, at 467-468.

[146] *Compromis*,¶8.

[147] Quebec, n.88,¶¶55-59.

[148] *Compromis*,¶16.

[149] *Compromis*,¶22.

[150] *Compromis*,¶16,22.

[151] *Compromis*,¶6.

[152] *Sejdić and Finci v. Bosnia and Herzegovina*, App. Nos. 27996/06 and 34838/06 at 44.

[153] *Compromis*,¶28.

Pakistan's adoption of "parity" in representation and "separate electorates" for different religions.[154]

ii. The rejection of Agnorevs' parliamentary resolutions did not amount to denial of self-determination

Quebec acknowledged that continuing failure to reach an agreement in federal parliament does not amount to ISD denial.[155] Rejection of East Agnostica's motions of military de-escalation[156] and dissolution[157] was neither caused by (i) unequal representation nor (ii) parliamentary voting requirement.

First, the quantity of 33 East Agnostican seats out of 100 is proportionate to Agnorevs' 30% population in Agnostica.[158] Akin to *Cameroon*, African Commission on Humans and Peoples' Right ["**ACHPR**"] rejected Anglophones' claim of under-representation based on population ratio.[159] Thus, even if Agnorevs population changed from the 1919 consensus, such ratio is immaterial.

Second, even in view of East Agnostica's parliamentary non-dominance,[160] the 3/4 voting requirement for dissolution was not discriminatory since such high threshold of majority votes is

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[154] Nanda, n.130, at 328.

[155] Quebec, n.88,¶108.

[156] *Compromis*,¶31.

[157] *Compromis*,¶33.

[158] *Compromis*,¶4.

[159] *Kevin Mgwanga Gunme et al. v. Cameroon*, Comm. No. 266/03 (2009),¶¶142-143 [Cameroon].

[160] *Compromis*,¶8; UN Doc. E/CN.4/Sub.2/384/Rev.1 at 96.

required for "matters affecting state's fundamental political integrity",[161] incorporated in states' constitutions, *e.g.* US,[162] Russia,[163] and China.[164]

b. Agnorevs enjoyed socio-economic rights

Agnorevs' purported "long-standing concerns", [165] raised "occasionally" by several nationalists throughout decades,[166] did not evince systematic discrimination of their (i) economic or (ii) social rights.

First, Agnorevs' earning of 157% of the average Agnostican family's[167] income displayed lack of economic discrimination, [168] unlike Pakistan's discriminatory policy whereby West Pakistan's 80% of development revenue receipt contrasted the East's 20%, a factor contributing to their secession as Bangladesh.[169] Further, Agnorevs' "progressive tax structure" protest was unfounded,[170] regarded by UN Special Rapporteur as important to achieve income sustainability and equality.[171]

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[161] Carl Schmitt, *Constitutional Theory*, (Duke University Press, 2008) at 126.

[162] Art.5, United States Constitution (1788).

[163] Art.108, Constitution of the Russian Federation (1993).

[164] Art.174(1), Constitution of the People's Republic of China (1993).

[165] *Compromis*,¶28.

[166] *Compromis*,¶28.

[167] *Compromis*,¶7.

[168] CERD General Recommendation 19, UN Doc. CCPR/CO/78/SVK,¶3.

[169] Salahuddin Ahmed, *Bangladesh: Past and Present* (APH Publishing, 2004) at 305.

[170] *Compromis*,¶28.

[171] UN Doc. A/HRC/26/28,¶¶40-46.

Second, Agnostica has "a well-developed system of civil rights law" proscribing ethnic-based discrimination in employment and education.[172] Agnorevs' mere lack of prominent positions in armed and judicial posts[173] fell short of employment denial,[174] unlike the 20% Palestinian minority disqualification due to Israel's requirement of military service for numerous jobs.[175] The "disproportionate" scholarships allocation[176] did not evince educational discrimination, *i.e.* racially segregated schools or complete denial to education.[177] Agnorevs' allegedly "negative" characterization in Agnostican textbooks and media did not denote racial incitement of "an extreme nature",[178] *i.e.* propaganda, otherwise lawful *vis-à-vis* freedom of expression.[179]

Further, unlike *Cameroon* where ACHPR found violation of right of assembly[180] when police detained and used excessive force against peaceful demonstrators,[181] Agnostica's lightly-armed troops were reasonably mobilized in Thanatos to maintain public order due to Agnorevs' volatile demonstrations.[182] In any event, "Boxing Day" incident, albeit an unfortunate tragedy,

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[172] *Clarifications*,¶4.

[173] *Compromis*,¶28.

[174] ICCPR, n.86, Art.25(c).

[175] Adalah Legal Centre for Arab Minority in Israel, The Inequality Report: The Palestinian Arab Minority in Israel (2011) at 10.

[176] *Compromis*,¶28.

[177] UN Doc. CERD/C/USA/CO/7-9; UN Doc. CERD/C/IRQ/CO/15-21.

[178] *Canadian Islamic Congress v. Rogers Media Inc.*, CHRC 20071008 (2007).

[179] ICCPR, n.86, Art.20.

[180] Cameroon, n.159,¶138.

[181] *Ibid.*

[182] *Compromis*,¶29.

remains a one-time event falling short of systematic killings against Kosovar Albanians in Kosovo, Bengalis in Pakistan, and Tamils in Sri Lanka.[183]

c. MCA did not deprive Agnorevs' cultural rights

Human Rights Committee ["**HRC**"] and Committee on the Elimination of Racial Discrimination affirmed that non-discrimination principle [184] is not absolute, rendering discriminatory measure justified when its effect is proportionate to its legitimate objective.[185] In face of severe resource constraints caused by Reverentia's sabotage and the need to supply Marthite to the world, [186] Agnorevs' cultural right to enjoy Marthite [187] protected under ICESCR[188] and ICCPR[189] was lawfully subjected to MCA's proportionate limitation,[190] which (i) did not substantially bar Agnorevs' Marthite access even (ii) with mandatory sentencing.

First, in determining disproportionality, HRC applied the 'substantial impact' test requiring discriminatory measure to effectively extinguish[191] enjoyment of traditional culture.[192] Presently,

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[183] Kohen, n.119, at 352,370.

[184] ICCPR, n.86, Art.26; ICESCR, n.86, Art.2(3); ICERD, n.86, Art.1; Art.14, *European Convention on Human Rights*, 213 UNTS 221 (1950) [ECHR]; Banjul Charter, n.109, Art.24.

[185] GC.14, n.86,¶2; HRC General Comment 18, UN Doc. HRI/GEN/1/Rev.1,¶13; Sarah Joseph, et al., *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, (Oxford University Press, 2005),¶24.30 [ICCPR Commentary].

[186] *Compromis*,¶21.

[187] *Compromis*,¶9.

[188] ICESCR, n.86, Art.15(1).

[189] ICCPR, n.86, Art.27.

[190] ICCPR Commentary, n.185,¶24.30.

[191] UN Doc. CCPR/C/79/Add.104,¶22.

[192] *Länsman et al. v. Finland*, Comm. No. 511/1992 (1994),¶9.5; *Länsman v. Finland*, Comm. No. 671/1995 (1997),¶10.3 [Länsman II].

Agnorevs' protest that MCA denied their Marthite access[193] was subjectively catalyzed by Sugdy's death.[194] In fact, Agnorevs' traditional practice remained sustainable[195] as MCA allowed authorized Marthite purchase, sale, or possession,[196] merely controlled by licensing mechanism due to its diminishing supply.[197] Similar with *Mahuika*, HRC found New Zealand's Settlement Act lawful despite restricting Maoris' traditional fishing with a 40% quota in light of fish stocks diminution,[198] as it did not substantially countervail Maoris' cultural right.[199]

Second, *Äärelä* asserted that proportionality depends on factual interpretation rather than legal application.[200] Factually, MCA prosecutions strictly penalized unlawful Marthite possession instead of banning access.[201] Its mandatory prison terms[202] and pre-trial detention[203] were not arbitrary,[204] the former practiced by states, *e.g.* Australia for home burglary with at least 12-month imprisonment even applicable to juveniles,[205] while the latter is exempted for

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[193] *Compromis*,¶29.

[194] *Compromis*,¶26.

[195] Länsman II, n.192,¶10.1.

[196] *Compromis*,¶22.

[197] *Compromis*,¶21,23.

[198] *Mahuika v. New Zealand*, Comm. No. 547/1993,¶7.1 [Mahuika].

[199] *Ibid*,¶8.3.

[200] *Äärelä v. Finland*, Comm. No. 779/1997 (1997),¶7.6.

[201] *Compromis*,¶27.

[202] *Compromis*,¶23.

[203] *Compromis*,¶25.

[204] ICCPR, n.86, Art.9(3),14.

[205] David Brown, et al., *Criminal Laws: Materials and Commentary on Criminal law and Processing in New South Wales*, (The Federation Press, 2006) at 1231.

likelihood of crime repetition.[206] Throughout MCA's operation, only 18 individuals were prosecuted and not all resulted in guilty verdicts,[207] showing absence of judicial bias.[208]

C. ALTERNATIVELY, THE EAST AGNOSTICAN SECESSION LACKS LEGITIMATE EXPRESSION OF AGNOREVS' WILL

To determine legality of exercise of self-determination, *Western Sahara* required 'due process' to reflect "free and genuine expression of the people's will"[209] to secede. East Agnostica's (1) referendum on secession failed this procedural safeguard, given insufficient degree of organization and alternatively, (2) illegitimate representation.

1. The referendum lacked adequate organization and transparency

Secession is not immediately legal upon a winning referendum[210] as the people's legitimate will must be proven[211] from various factors reflecting the referendum's transparency, *inter alia*, (i) timeline, (ii) presence of international observers, (iii) guarantee of freedom of the referendum.

First, referendums require longer period to ensure impartiality and people's timely contemplation of choice,[212] *e.g.* the recent 2014 Scotland and Catalan referendums were scheduled since 2013.[213] Presently, the referendum's abrupt 13-day organization after its

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[206] *W.B.E. v. Netherlands*, Comm. No. 432/1990 (1992),¶6.3.

[207] *Clarifications*,¶8.

[208] CERD General Recommendation 31, UN Doc. A/60/18 at 98-108.

[209] Western Sahara, n.110,¶55.

[210] Quebec, n.88,¶84.

[211] ECHR, n.184, Art.3; ICCPR, n.86, Art.25; Code of Good Practice on Referendums, CDL-AD(2007)008 (2007) at 10 [Referendum Code].

[212] UK Electoral Commission Reports (1996) at 54-55.

[213] Catalan, n.136, at 5.

scheduling lacked sufficient organization required by international standard,[214] akin to the 2014 Crimean referendum, UNGA-condemned by over 100 states due to, *inter alia*, its 10-day organization.[215]

Second, the requirement of impartial international organizations to observe referendums is customary international law ["**CIL**"],[216] evinced by successful referendums of South Sudan[217] supervised by EU, African Union, Arab League, UN; East Timor[218] and Eritrea[219] by UN. In contrast, the East Agnostican referendum was merely observed by several unverified NGOs.[220] Similar to Åland Islands, Transnistria, and South Ossetia's unrecognized referendums,[221] such absence of legitimate international observers casts doubt regarding the results' impartiality, irregularities, and computation.

Third, the freedom of referendum requires absence of military forces and neutrality of public authorities,[222] evident from states' denouncement of Crimea's referendum due to Russian soldiers' presence in the territory.[223] Similarly, the East Agnostican referendum, while seemingly

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[214] Venice Opinion, n.111,¶22.

[215] *Territorial Integrity of Ukraine*, UN Doc. A/RES/68/262 [Res.262].

[216] Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 8, (Oxford University Press, 2013) at 696-706.

[217] UN Doc. S/RES/1996.

[218] UN Doc. S/2001/42.

[219] UN Doc. A/47/114.

[220] *Compromis*,¶38.

[221] Kohen, n.119, at 368.

[222] Referendum Code, n.211,¶I.2.2-I.3

[223] Res.262, n.215.

absent violence or apparent interference with the voting,[224] was shaded with external intervention by Reverentia's stationing of border troops and diplomatic instigations.[225]

2. Alternatively, the East Agnostican parliament or the present APP does not legitimately represent Agnorevs

Kosovo dictated that secession is only valid when undertaken by legitimate representatives,[226] assessed through whether they represent the people's democratic will.[227] Here, the 'self-styled' APP is abruptly and unilaterally established a day after the referendum,[228] transitioning from the East Agnostican parliament. In fact, its decision to propose integration agreement with Reverentia upon the hasty secession ratification [229] deviated from the referendum's result that was confined to the question of secession. [230] APP's legitimacy as a representative of Agnorevs' democratic will is thus dubious.

D. In Any Event, Reverentia's Annexation Is Illegal and East Agnostica Remains Part of Agnostica

Affirmed by this Court's jurisprudences, [231] state's territorial integrity protects the inviolability of her international borders, thus prohibiting annexation[232] as it forcibly alters her

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[224] *Compromis*,¶38.

[225] *Compromis*,¶37.

[226] Kosovo, n.122,¶109.

[227] Amin Husain, "Who is the Legitimate Representative of the Palestinian People", 2 CJIL 207 (2003) at 213-214.

[228] *Compromis*,¶39.

[229] *Compromis*,¶39.

[230] *Compromis*,¶37.

[231] *Continental Shelf* (*Tunisia v. Libya*), 1982 ICJ Rep. 18 at 66 [Continental Shelf]; *Temple of Preah Vihear* (*Cambodia v. Thailand*), 1962 ICJ Rep. 6 at 34 [Preah Vihear].

frontiers.[233] Reverentia's annexation is illegal (1) given Agnostica's territorial control *vis-à-vis* sovereignty over East Agnostica (2) notwithstanding the principle of effectivity. Further, it violates the customary principles of (3) *uti possidetis juris* or (4) non-intervention, triggering non-recognition duty. Consequently, East Agnostica remains part of Agnostica.

1. Agnostica retains effective territorial control over East Agnostica

A state is only barred from claiming sovereignty over a seceding territory when she has substantially abandoned the struggle for supremacy.[234] Agnostica's withdrawal of military units and national police[235] from East Agnostica following East Agnostican-Reverentian integration agreement is without prejudice to her territorial control.[236] In fact, it was conducted for security reasons[237] as the incursion of Reverentian troops into East Agnostica two days earlier[238] would risk armed clash should Agnostican troops remain in vicinity, resembling withdrawal of Portugal's authorities from East Timor to avoid conflict following Indonesia's invasion.[239]

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[232] Max Planck, n.97, at 53,¶1.

[233] Rosalyn Higgins, et al., The Territorial Integrity of Quebec in the Event of the Attainment of Sovereignty (1992),¶2.38 [Quebec Report].

[234] Crawford, n.5, at 383.

[235] *Clarifications*,¶1.

[236] Quebec Report, n.233,¶2.41.

[237] *Clarifications*,¶1.

[238] *Compromis*,¶41.

[239] *East Timor* (*Portugal v. Australia*), 1995 ICJ Rep. 90, Diss. Op. Judge Skubiszewski,¶154 [East Timor].

Further, Agnostica's choice not to send troops into East Agnostica[240] does not constitute waiver of territorial control. Otherwise, all secession settlements would require forcible measure,[241] inconsistent with CIL of non-forcible settlement of secession.[242]

2. Alternatively, the annexation of East Agnostica should not be rendered legal based on the principle of effectivity

Should the Court find Agnostica to have lost her territorial control, the principle of effectivity, (a) devoid of legal status, cannot render the annexation *de jure* legal based on *de facto* attainment of (b) Reverentia's territorial control and (c) states' recognition.

a. The principle of effectivity lacks legal status in the context of secession

The principle of effectivity does not render the annexation legitimate in disregard of the illegal secession.[243] *Quebec* held that this principle has no legal status, reasoning that "while a power to secede can be *de facto* exercised in the absence of a right, it does not confer *de jure* legitimacy".[244] The principle of effectivity is "contrary to the rule of law and must be rejected".[245]

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[240] *Compromis*,¶42.

[241] Friendly Relations, n.2; Art.7, *Definition of Aggression*, UN Doc. A/RES/3314 [Res.3314]; Res.103, n.70; Res.4684, n.108.

[242] Res.3314, n.241, Art.7; Res.103, n.70; Res.4684, n.108,¶4.

[243] Alain Pellet, et al., *Droit international public*, (LGDJ, 1987) at 415; Shaw, n.77, at 138.

[244] Quebec, n.88,¶105.

[245] *Ibid*,¶108.

b. Effective control does not confer legitimacy

Factual changes of a territory do not remove presumption of sovereignty.[246] In *East Timor,* this Court's reiteration of East Timor's status as non-self-governing territory[247] indicated Portugal's retention of her Administering Power with "sovereignty prerogatives"[248] over East Timor despite Indonesia's territorial control.[249] Similarly, Agnostica retains sovereignty as East Agnostica's parent state regardless of Reverentia's territorial control.

Further, numerous secession cases remain illegitimate for groups controlling significant amounts of territory and running *de facto* governments, *e.g.* Moro Islamic Liberation Front ["**MILF**"] in Mindanao oversees large swathes of territory *via* an 80-person-strong Consultative Assembly.[250] In fact, local authorities' arrangements with MILF officials remain unchallenged by Philippines.[251] *A fortiori*, Reverentia's territorial control[252] over East Agnostica and APP's effectiveness in striking integration [253] do not render the annexation legal.

c. *Post facto* recognition is immaterial

Quebec affirmed that international recognition cannot "serve retroactively" to legalize illegal secession.[254] On the ratification date,[255] the annexation lacked Agnostica's consent and

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[246] East Timor, n.239, Diss. Op. Judge Skubiszewski,¶153.

[247] *Ibid*,¶37.

[248] *Ibid*, Diss. Op. Judge Skubiszewski,¶144.

[249] *Ibid*,¶102.

[250] Kohen, n.119, at 350.

[251] *Ibid.*

[252] *Compromis*,¶41.

[253] *Compromis*,¶39.

[254] Quebec, n.88,¶144.

international recognition, denounced by ASEAN and EU.[256] Thus, mere recognition of Reverentia's "new territorial border" by 30 states cannot legalize the annexation.[257] In fact, states' *de facto* recognition of Indonesia's territorial control over East Timor did not encompass recognition of her illegal annexation, leading to East Timor's independence in 1999.[258]

3. Further, the annexation violates the principle of *uti possidetis juris*

The customary principle of *uti possidetis juris*, applied by this Court strictly for decolonization,[259] dictates limitation of international borders to colonial demarcation. Any expansion of federal internal boundaries as frontiers[260] is only warranted with consent or for dissolutions instead of unilateral secessions, *e.g.* consensual secession of Eritrea[261] and dissolutions of USSR, Czechoslovakia, and Yugoslavia.[262] Consequently, the annexation violates *uti possidetis juris* that protects Agnostica's inviolable[263] frontiers demarcated by Credera.[264]

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[255] *Compromis*,¶41.

[256] *Compromis*,¶40.

[257] *Clarifications*,¶7.

[258] East Timor, n.239,¶17.

[259] *Frontier Dispute* (*Burkina Faso v. Mali*), 1986 ICJ Rep. 554,¶20.

[260] Peter Radan, *The Break-up of Yugoslavia and International Law*, (Routledge, 2002) at 5.

[261] Crawford, n.5, at 402.

[262] Malcolm Shaw, "Peoples, Territorialism and Boundaries", 3 EJIL 478 (1997) at 500.

[263] Continental Shelf, n.231, at 66; Preah Vihear, n.231, at 34

[264] *Compromis*,¶1.

4. In any event, states are under the duty of non-recognition

Recognized by ILC,[265] UNSC,[266] and *Kosovo*,[267] states are under *erga omnes*[268] duty to not recognize annexations resulting from *jus cogens* violation, *e.g.* intervention *vis-à-vis* Article 2(4) UN Charter. Since East Agnostica's annexation arose from a joint-endeavor involving Reverentia's intervention,[269] the duty of non-recognition is thus triggered.[270] Similarly, UNGA has called for states to not recognize Crimea's annexation that fundamentally relied on Russian intervention.[271]

Having established the illegality of Reverentia's annexation, East Agnostica remains part of the territory of Agnostica.

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[265] Arts.41-42, Articles on Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/83 [ARSIWA].

[266] UN Doc. S/RES/202; UN Doc. S/RES/216; UN Doc. S/RES/217; UN Doc. S/RES/277; Res.402, n.74; UN Doc. S/RES/407; UN Doc. S/RES/417.

[267] Kosovo, n.122,¶81.

[268] Wall, n.6,¶159.

[269] *Supra*, Section I.

[270] Oppenheim, n.69, at 183.

[271] Res.262, n.215.

III. THE MARTHITE CONVENTION CEASED TO BE IN EFFECT AS OF 2 APRIL 2012 AND, IN ANY EVENT, AGNOSTICA DID NOT BREACH THE CONVENTION

Consistent with states' sovereign right to freely dispose of their natural resources,[272] Agnostica has (A) lawfully denounced MC by virtue of the change in the science underlying it[273] and in any event, (B) complied with MC. As MC predated VCLT,[274] this dispute is subject to international law independently of VCLT.[275]

A. AGNOSTICA HAS LAWFULLY DENOUNCED MARTHITE CONVENTION

Absent termination provision and mutual consent,[276] a treaty may be denounced when implied in its nature, *i.e.* object and purpose.[277] VCLT's *travaux préparatoires* exemplified technical cultural cooperation treaties as denunciable, distinct from, *inter alia*, non-denunciable human rights and border delimitation treaties.[278] Accordingly, MC, purposed to regulate Marthite distribution for Reverentian traditional medical practice,[279] is by its nature denunciable.

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[272] UN Doc. A/RES/15/1515.

[273] *Compromis*,¶14.

[274] *Compromis*,¶10,44.

[275] Art.4, *Vienna Convention on the Law of Treaties*, 1155 UNTS 331 (1969) [VCLT].

[276] *Compromis*,¶15; VCLT, n.275, Art.54; UN Doc. A/CN.4/SER.A/1963 at 96, 108.

[277] VCLT, n.275, Arts.31,56; *Gabčíkovo-Nagymaros Project* (*Hungary v. Slovakia*), 1997 ICJ Rep 7 at 62,¶100 [Gabčíkovo-Nagymaros].

[278] UN Doc. A/CN.4/156 at 64, 68 [Waldock].

[279] MC, Preamble (b)-(d).

In this vein, Agnostica lawfully invoked termination grounds of (1) Reverentia's breach or (2) changed circumstances and (3) fulfilled her procedural duty, rendering MC terminated as of 2 April 2012.[280]

1. Agnostica's invocation of Reverentia's breach as termination ground was founded

States,[281] jurists,[282] *Namibia,*[283] *Wall,*[284] and *Gabčíkovo-Nagymaros*[285] recognized material treaty breach, *i.e.* violation of a provision essential to achieve the treaty's object and purpose,[286] as customary termination ground. Presently, (a) RMT's sales of Marthite to pharmaceutical companies following ILSA's discovery of Marthite's value (b) constituted material breach of MC.

a. RMT's Marthite sales to pharmaceutial companies were attributable to Reverentia

When legally empowered to exercise governmental authorities, state-owned corporation's act violating state's international obligation is attributable to the state regardless of its independent discretion.[287] *Barcelona Traction* emphasized such "lifting the corporate veil" to

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[280] *Compromis*,¶16.

[281] Mark Villiger, *Customary International Law and Treaties*, (Martinus Nijhoff, 1985) at 365.

[282] Oppenheim, n.69, at 1300-1301; Georg Dahm, et al., *Völkerrecht*, Vol. I (de Gruyter, 1989) at 732 [Dahm].

[283] Namibia, n.110, at 3.

[284] Wall, n.6,¶94.

[285] Gabčíkovo-Nagymaros, n.277,¶46,99.

[286] VCLT, n.275, Art.60(3)(b); UN Doc. A/CN.4/SER.A/1966/Add.1 at 255,¶9 [VCLT Commentaries].

[287] ARSIWA, n.265, Art.5.

prevent misuse of legal personalities' privileges.[288] Given RMT's empowerment to distribute Marthite under Article 4 MC, its sales to pharmaceutical companies were attributable to Reverentia.

b. Marthite sales to pharmaceutical companies constituted material breach

Despite their ancillary character,[289] the numerical standards under Article 4(b)-(d) MC were essential to "ensure reliable supply of Marthite" for traditional users,[290] comparable to Chemical Weapons Convention's subsidiary provision on inspection procedures essential to eliminate chemical weapons use.[291] Reverentia breached these provisions *via* RMT's (i) excessive volume sold outside traditional uses and (ii) unilateral price adjustment.

First, the sudden sales of 75% of mined Marthite to pharmaceutical companies[292] could not have complied with Article 4(d) MC that allowed sales only if mineral supply exceeded traditional users' demand by 25%,[293] as the variation of production from local demand between 1938-2011 was only 5%.[294]

Second, reflected in Article 31(3)(b) VCLT and *Namibia*,[295] both Parties' 1938-2011 practice whereby they met annually to review price parameters under Article 4(c) MC[296] must be

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[288] *Barcelona Traction, Light and Power Company, Limited* (*Belgium v. Spain*), 1970 ICJ Rep. 3,¶56 [Barcelona Traction].

[289] VCLT Commentaries, n.286, at 255,¶9.

[290] MC, Preamble (d).

[291] Anthony Aust, *Modern Treaty Law and Practice*, (Cambridge University Press, 2007) at 295.

[292] *Compromis*,¶13.

[293] MC, Art.4(d).

[294] *Clarifications*,¶10.

[295] Namibia, n.110, at 30-35.

[296] *Clarifications*,¶9.

interpreted as an agreed manner of practice thereof. Accordingly, Reverentia's unilateral price increase of "10 times maximum permitted sale price under MC", subjectively based on her market monopoly[297] rather than objective external factors, *e.g.* foreign exchange rates and domestic inflation rates,[298] violated Article 4(b)-(c) MC.[299]

2. *Rebus sic stantibus* was lawfully invoked as termination ground

Pacta sunt servanda acknowledges that agreements are not immune to changes.[300] When a changed circumstance disadvantages a state against her interests, *rebus sic stantibus* or fundamental change of circumstances may be invoked as termination ground.[301] Supported by state practice and *opinio juris*,[302] Article 62 VCLT encapsulating this doctrine was declared customary in *Fisheries*[303] and *Gabčíkovo-Nagymaros*.[304]

Agnostica has cumulatively[305] established (a) fundamentality, (b) unforeseen change, (c) circumstance essentially underlying the States' consent to MC, and (d) radical transformation of treaty obligations.

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[297] *Compromis*,¶13; MC, Art.3.

[298] MC, Art.4(c).

[299] *Clarifications*,¶9.

[300] UN Doc. A/39/504/Add.1,¶65.

[301] Paul de Waart, et al., *International Law and Development*, (Martinus Nijhoff, 1988) at 64 [Waart].

[302] UN Doc. A/CN.4/SR.695,¶14,18; The Anti-Ballistic Missile Treaty (1972).

[303] *Fisheries Jurisdiction* (*United Kingdom v. Iceland*), 1974 ICJ Rep. 3,¶36 [Fisheries].

[304] Gabčíkovo-Nagymaros, n.277,¶46,99.

[305] UN Doc. A/CN.4/SER.A/1966 at 78,¶7.

a. Marthite's value increase outside cultural practice was fundamental

A change is fundamental when resulting in imbalanced *quid pro quo* relationship,[306] *e.g.* frustrating the treaty's object of equitable resource division, exemplified by ILC.[307]

Marthite's increased value, requiring allocation of international supply to treat child autoimmune disorders, frustrated the exclusive Marthite distribution for Reverentian and East Agnostican traditional practitioners as MC's object.[308]

The stricter fundamentality test in *Fisheries, i.e.* change must imperil one of the parties' existence or vital development,[309] has been criticized as too narrow.[310] Should it apply, the sudden increased demand leading to Marthite price increase, risking serious shortages among traditional users,[311] would have imperilled both States' cultural development.

Further, Marthite's increased value was fundamental since it entitled Reverentia to garner continuous windfall profits to Agnostica's deprivation, ultimately warranting *rebus sic stantibus* invocation *vis-à-vis* Agnostica's permanent sovereignty over Marthite.[312] In any event, fundamentality must be presumed inasmuch as other conditions are fulfilled.[313]

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[306] Dahm, n.282, at 751.

[307] UN Doc. A/CN.4/107 at 61,¶154 [Fitzmaurice].

[308] MC, Preamble (b); *Compromis*,¶11.

[309] Fisheries, n.303,¶38.

[310] Oliver Dörr, et al., *Vienna Convention on the Law of Treaties: A Commentary*, (Springer, 2012) at 1084 [Dörr].

[311] *Compromis*,¶13.

[312] Waart, n.301, at 71.

[313] Dörr, n.310, at 1085.

b. Both States did not foresee Marthite's increased value

Change must be unforeseen, *i.e.* not anticipated by all parties as reflected in their intentions at treaty conclusion.[314] Marthite's increased (i) commercial and (ii) medical values were unforeseen.

First, *Iron Rhine* declared that treaty's object and purpose are "prevailing elements for interpretation."[315] The recognition of Marthite's "insignificant commercial value outside traditional uses" in MC's preamble[316] bespeaks that both States did not foresee Marthite's increased value at treaty formation.[317]

Even considering the change's impact,[318] international demand was not foreseen, as Marthite had been virtually unknown outside Thanatosian Plains.[319] The possibility of Marthite export as foreseen by both Parties[320] was strictly to meet the minute demand for souvenir collectors and small Reverentian communities.[321] In any event, had she anticipated such drastic change, Agnostica would not have entered into MC or would have drafted MC differently.[322]

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[314] Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, (Martinus Nijhoff, 2009) at 773.

[315] *Award in the Arbitration regarding the Iron Rhine ('IJzeren Rijn') Railway* (*Belgium v. Netherlands*), 27 UNRIAA 35 (2005) at 65.

[316] MC, Preamble (e).

[317] MC, Preamble (b); *Compromis*,¶9.

[318] Oliver Lissitzyn, "Treaties and Changed Circumstances (Rebus Sic Stantibus)", 61 AJIL 895 (1967) at 912.

[319] *Compromis*,¶9.

[320] MC, Art.4(d).

[321] *Compromis*,¶11.

[322] Derek Bowett, *Self Defense in International Law*, (The Lawbook Exchange, 1958) at 111-112.

Second, pursuant to the customary Article 31 VCLT,[323] literal interpretation of treaty provisions must not be allowed to defeat the drafters' evident intentions.[324] In light of both Parties' intention reflected in the preamble[325] and Article 4(a) MC envisaging restriction of Marthite distribution for traditional users, the literal term "non-restriction of intended use" under Article 4(d) MC[326] cannot be interpreted as to foresee Marthite's increased medical value outside traditional uses.

c. Marthite's initial value essentially underlay both States' consent in forming Marthite Convention

A circumstance essentially underlies the parties' consent when it constitutes the treaty's purpose.[327] Marthite's initial value, *i.e.* mildly restorative properties[328] and insignificant commercial value outside traditional uses,[329] constituted MC's *raison d'être*, resembling *Brazilian Loans* where the standard of gold franc existing at loan contract formation was regarded as the agreed standard essential for loan payment.[330]

Further, unlike Australia's Chandler Salt Mine, which extracted 9,000,000 tons annually to garner maximum commercial profits given its limited 25 years of mine-life,[331] RMT's constant

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[323] *LaGrand* (*Germany v. USA*), 2001 ICJ Rep. 466,¶99.

[324] Vaughan Lowe, *International Law*, (Oxford University Press, 2007) at 117.

[325] MC, Preamble (b).

[326] MC, Art.4(d).

[327] *Racke GmBH & Co. v. Hauptzollamt Mainz*, Case C-162/96 (1998),¶155 [Racke].

[328] *Compromis*,¶9.

[329] MC, Preamble (e).

[330] *Brazilian Loans* (*France v. United States*), 1929 PCIJ (Ser. A) No. 21 at 118.

[331] Australia, Mining Developments in the Northern Territory (2013), at 9.

minute annual extraction of 200-250 tons despite MC's 99-year long duration[332] evinced the limited priority to satisfy traditional users, reflecting Marthite's traditional value as the essence of MC.

d. Agnostica's obligation to grant Reverentia access to Marthite was radically transformed

Radical transformation exists when (i) the affected party's remaining obligation is "essentially different from what was originally undertaken" or (ii) the treaty's object and purpose realization is substantially hindered.[333]

First, treaty provisions must be interpreted according to authors' intentions.[334] MC was never intended to accommodate Marthite sales outside traditional uses, as Reverentia had always accessed and distributed Marthite for traditional practitioners between 1938-2011.[335] Marthite's increased value thus rendered Agnostica's obligation to grant Reverentia access to Marthite essentially different.

Second, Agnostica's further performance of this obligation to sell to international users would hinder the realization of MC's object and purpose to "ensure reliable supply to those for whom [Marthite] holds cultural significance".[336]

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[332] MC, Art.12.

[333] Fisheries, n.303,¶43; Fitzmaurice, n.307, at 60,¶151; Waldock, n.278, at 80.

[334] *Dispute regarding Navigational and Related Rights* (*Costa Rica v. Nicaragua*), 2009 ICJ Rep. 213 at 237.

[335] *Compromis*,¶11; VCLT, n.275, Art.31(3)(b).

[336] MC, Preamble (c).

3. The termination was effective as of 2 April 2012

Having established the substantive termination grounds, MC was legitimately terminated on 2 April 2012, (a) even absent procedural observance under CIL. In any event, (b) Agnostica's initial offer to terminate MC sufficiently fulfilled her procedural obligation.

a. The operation of material breach and changed circumstances are not conditional upon procedural observance

Reflected in the lack of state practice,[337] ILC[338] and *Racke*[339] concurred that procedural requirements for treaty termination are not customary but merely *lex ferenda*.[340] Moreover, in *Fisheries*[341] and *Namibia*,[342] treaty terminations' procedures were required due to the agreements' compromissory clause and not by CIL. Without such clause, Agnostica is not bound by any procedural limitation.

b. Alternatively, Agnostica's beneficial settlement offer fulfilled such procedural obligation

Following Reverentia's objection in response to (i) Agnostica's notification,[343] (ii) Agnostica's offer of peaceful settlement fulfilled her duty to seek a solution through the means in Article 33 UN Charter.[344]

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[337] Duncan Hollis, *The Oxford Guide to Treaties*, (Oxford University Press, 2013) at 576-605.

[338] VCLT Commentaries, n.286, at 263; UN Doc. A/CN/4/SER.A/1963 at 280.

[339] Racke, n.327,¶¶58-60.

[340] VCLT Commentaries, n.286, at 263.

[341] Fisheries, n.303,¶44.

[342] Namibia, n.110, at 66.

[343] VCLT, n.275, Art.65(1).

[344] *Ibid*, Art.65(3).

i. Agnostica's mutual termination proposal fulfilled her duty to notify intent to terminate Marthite Convention

Agnostica's offer to consensually terminate MC was a valid notice since it indicated, first, termination as the measure proposed[345] and second, "fundamental change in the science underlying the treaty"[346] as sufficient legal reason.[347] While Article 67(1) VCLT requires such notification to be made in writing, ILC[348] and jurisprudences[349] rejected the provision's customary character. Agnostica's notice was therefore valid regardless of its form.

ii. Agnostica's mutually beneficial settlement offer was sufficient

Agnostica's offer of first, mutual termination, second, compensation for loss of Marthite's supply during MC's remaining term, along with third, full reimbursement of mining facilities as well as constructing and staffing costs expressed her intention to peacefully settle with Reverentia, consistent with *Air Services*[350] and *Gabčíkovo-Nagymaros*.[351]

As found in *Tacna-Arica*, since duty to negotiate in good faith is a mutual obligation for both States,[352] Reverentia's "willful refusal" of Agnostica's offer coupled with her continued Marthite exploitation[353] relieved Agnostica from pursuing further settlement procedures.[354]

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[345] VCLT, n.275, Art.65(1).

[346] *Compromis*,¶14.

[347] Stefan Kadelbach, *Zwingendes Völkerrecht*, (Duncker & Humblot, 1992) at 331.

[348] Waldock, n.278, at 153.

[349] *Oil Platforms* (*Iran v. United States*), 1996 ICJ Rep. 803,¶1; *American International Group, Inc., et al. v. Islamic Republic of Iran, et al.*, 4 Iran-US CTR 96 (1983).

[350] *Air Services Agreement of 27 March 1946 between the United States of America and France* (*France v. United States*), 18 UNRIAA 416 (1978) at 444.

[351] Gabčíkovo-Nagymaros, n.277,¶84.

[352] *Tacna-Arica Question* (*Chile v. Peru*), 2 UNRIAA 921 (1925) at 929.

B. THE BAXTER LEASE AND MCA WERE CONSISTENT WITH MARTHITE CONVENTION

In any event, Agnostica's (1) Baxter lease and (2) MCA enactment complied with MC.[355]

1. Agnostica was permitted to lease to Baxter

Supported by UNGA resolutions[356] and jurisprudences,[357] the inclusion of "within the territory of East Agnostica" under Article 1 MC demonstrated Agnostica's continuous sovereign control over her territory and natural resources,[358] including capacity to change Marthite exploitation method.[359]

In view of her ownership over Marthite facilities,[360] Agnostica was thus entitled to lease them to Baxter. Further, Agnostican Commerce Ministry's rejection of 2012-2013 royalty payments effectively divested RMT of her ownership right over mined Marthite.[361]

2. MCA did not constitute treaty breach

Treaty provisions must be interpreted in light of the treaty's entirety.[362] MCA's banning of Marthite sale or transfer into Reverentia did not breach Article 6 MC regarding "free movement

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[353] *Compromis*,¶¶15-17.

[354] *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon v. Nigeria: Equatorial Guinea Intervening*), 1998 ICJ Rep. 275 at 303.

[355] ARSIWA, n.265, Art.12.

[356] UN Doc. A/RES/21/2158 [Res.2158]; UN Doc. A/RES/31/3171; UN Doc A/RES/29/3281.

[357] *Texaco v. Libya*, 17 ILM 1 (1978),¶77; *Kuwait v. The American Independent Oil Company*, 21 ILM 976 (1982) at 976-1053.

[358] UN Doc. A/RES/17/1803 [Res.1803].

[359] Aréchaga, n.49, at 297.

[360] MC, Art.2.

[361] MC, Art.3.

[362] Eirik Bjørge, *The Evolutionary Interpretation of Treaties*, (Oxford University Press, 2014) at 114.

of Marthite from Agnostica into Reverentia" since Agnostica's obligation was limited to providing Reverentia access to Marthite through RMT as per Article 4 MC.

In any event, the customary principle of self-preservation,[363] trumping over all rights and duties, [364] authorized Agnostica to take necessary actions to safeguard essential interest threatened by grave and imminent peril.[365] In face of depleting Marthite,[366] Agnostica was warranted to not observe MC and to enact MCA in preserving the non-renewable Marthite for present and future generations.[367]

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[363] *S.S. Wimbledon*, (*United Kingdom, France, Italy & Japan v. Germany*), 1923 PCIJ (Ser. A) No. 1, Diss. Op. MM. Anzilotti and Huber at 37; *S.S. Lotus*, (*France v. Turkey*), 1927 PCIJ (Ser. A) No. 10 at 18.

[364] Amos Hershey, *The Essentials of International Public Law and Organization*, (Macmillan, 1930) at 144.

[365] UN Doc. A/56/10 at 194,¶2 [ARSIWA Commentary].

[366] *Compromis*,¶21.

[367] UN Doc. A/RES/7/626; Res.1803, n.358; Res.2158, n.356.

IV. REVERENTIA'S REMOVAL OF THE SOFTWARE AT THE MARTHITE EXTRACTION FACILITIES VIOLATED INTERNATIONAL LAW

International law precludes states from arbitrarily taking justice into their own hands.[368] Presently, Reverentia's software removal was unlawful given (A) Agnostica's ownership over Marthite technology. Alternatively, it could not be justified as (B) countermeasure or (C) non-performance, (D) obliging Reverentia to make reparation.

A. REVERENTIA'S SOFTWARE REMOVAL WAS UNLAWFUL BY VIRTUE OF AGNOSTICA'S OWNERSHIP OVER MARTHITE TECHNOLOGY

Article 1 MC required Reverentia to construct Marthite facilities and provide technology "to maintain, equip, and operate [them]". Given the facilities' dependency on the software, the term "facilities" under Article 2 MC over which Agnostica had ownership should be interpreted as to include their operating software as otherwise, the treaty provisions would be meaningless.[369] Since treaty termination does not dissolve rights previously acquired under the treaty,[370] Agnostica was entitled to Marthite technology notwithstanding MC termination, rendering Reverentia's software removal unlawful.

B. THE SOFTWARE REMOVAL WAS AN UNLAWFUL COUNTERMEASURE

As treaty termination or *in arguendo* Baxter lease were not internationally wrongful acts,[371] Reverentia's software removal was an unlawful countermeasure. In any event, such countermeasure lacked (1) proportionality[372] and (2) call for discontinuation of wrongful act.[373]

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[368] ARSIWA Commentary, n.365, at 326-327.

[369] *Eureko v. Poland*, RG 2005/1542/A (2005),¶248.

[370] Waldock, n.278, at 94.

[371] ARSIWA, n.265, Art.22.

[372] ARSIWA, n.265, Art.51.

1. The software removal was disproportionate

State practice,[374] jurists,[375] and jurisprudences[376] regard a measure proportionate when (i) suitable and (ii) necessary to induce the breaching party's compliance, (iii) respecting the balance between objective's achievement and harm caused.

First, while Reverentia's countermeasure was supposed to induce Agnostica's recommitment to MC, the software removal limited Agnostica's response to "recreate the disabled software or work around the need for it",[377] displaying unsuitability. In fact, Reverentia's purpose was ultimately for Agnostica to "not be able to profit" from her actions,[378] showing the measure's punitive rather than inductive character.[379]

Second, *Korea-Measures*[380] and *Ancher & Lyle*[381] held that necessity is proven when alternatives are absent. The removal of the whole operating systems that crippled Marthite facilities was unnecessary since Reverentia could have simply withdrawn their engineers or

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[373] *Ibid*, Art.52(1).

[374] UN Doc. A/CN.4/330 at 27; UN Doc/A/CN.4/507/Add.1-4; UN Doc. A/CN.4/440/Add.1.

[375] Hugo Grotius, *The Law of War and Peace*, (Clarendon Press, 1925); Emmerich De Vattel, *The Law of Nations*, (Liberty Fund, 2008).

[376] Gabčíkovo-Nagymaros, n.277,¶85,87; *Responsibility of Germany for Damage Caused in the Portuguese Colonies in the South of Africa* (*Portugal v. Germany*), 2 UNRIAA 1013 (1928) at 1026 [Naulilaa].

[377] *Compromis*,¶19.

[378] *Compromis*,¶18.

[379] ARSIWA Commentary, n.365, at 135.

[380] *Korea-Measures Affecting Imports of Fresh, Chilled, and Frozen Beef*, WT/DC161/AB/R (2000),¶164.

[381] *Ancher Daniel's Midland Company and Tate & Lyle Ingredients Americas Inc. v. the United Mexican States*, Case No. ARB (AF)/04/5 (2007),¶160.

removed parts of the software and still effectively induced Agnostica's compliance,[382] considering her immemorial reliance on Reverentia's manufacture to process raw materials.[383]

Third, the 500% Marthite production drop from that of 2011 utterly curtailed traditional users' right to full Marthite supply and worldwide children's internationally protected right to medicine,[384] resembling *Gabčíkovo-Nagymaros* where Czechoslovakia's unilateral control over shared resources deprived Hungary's internationally recognized right to equitable share of resources.[385] Provided RMT's need to allocate more than 100 tons of Marthite per month to meet pharmaceutical demand in late 2011,[386] the mere 3 tons of Marthite available per month for worldwide supply due to software removal[387] created disproportionate harm.

2. Reverentia's demand for Agnostica's recommitment to Marthite Convention did not fulfill the procedural safeguard

Given their potential serious consequences, countermeasures should be preceded by notification and call for discontinuation of wrongful act.[388] Within the one-month span since Baxter lease, Reverentia did not make any prior notification nor offer to negotiate with Agnostica.[389]

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[382] *Compromis*,¶¶16-18.

[383] *Compromis*,¶2,3,5.

[384] Art.2(1), *World Health Organization Constitution*, 14 UNTS 185 (1946); UN Doc. A/HRC/RES/12/24.

[385] Gabčíkovo-Nagymaros, n.259,¶85.

[386] *Compromis*,¶11,13.

[387] *Compromis*,¶21.

[388] ARSIWA, n.265, Art.52; UN Doc. ST/LEG/Ser.B/25 at 346,¶4.

[389] *Compromis*,¶17.

Further, similar with *Naulilaa* where Germany's reprisals were illegal since messages about Portugal's alleged offenses were sent in text without including "any *formal* state-to-state request",[390] *e.g.* memorandum or note,[391] Reverentia's demand for engineers return on *The Reverentian Times*[392] was insufficient.

C. REVERENTIA'S SOFTWARE REMOVAL WAS UNWARRANTED AS NON-PERFORMANCE

Even if MC was still valid, software removal could not be justified as non-performance. Both Judge Simma[393] and Special Rapporteur Crawford[394] rejected the separate existence of this *exceptio inadimplenti contractus* principle under the law of state responsibility. Assuming its application, Reverentia's software removal could not be justified as non-performance since Agnostica had always adhered to MC.[395] *A fortiori*, Reverentia was the one who breached MC and thus had no ground to invoke this principle.

D. CONSEQUENTLY, REVERENTIA SHOULD MAKE REPARATION

In view of Reverentia's unlawful software removal, *restitutio in integrum* principle[396] accords Agnostica full reparation[397] from Reverentia[398] in form of compensation,[399] *i.e.* loss of

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[390] Naulilaa, n.376, at 1026.

[391] Bhagevatula Murty, *The International Law of Diplomacy: The Diplomatic Instrument and World Public Order*, (Martinus Nijhoff, 1989) at 83.

[392] *Compromis*,¶18.

[393] *Application of the Interim Accord of 13 September 1995* (*the former Yugoslav Republic of Macedonia v. Greece*), 2011 ICJ Rep. 644, Sep. Op. Judge Simma,¶20.

[394] UN Doc. A/CN.4/498/Add.1-4, at 79-82.

[395] *Supra,* Section III.

[396] *The Factory at Chorzów* (*Germany v. Poland*), 1928 PCIJ (Ser. A) No. 17 at 47.

[397] ARSIWA, n.265, Art.31.

prospect profits,[400] equivalent to possible amount of extracted Marthite during software removal subject to expert inquiry.[401] Additionally, the Court's judgment would suffice as satisfaction.[402]

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[398] Barcelona Traction, n.288,¶46.

[399] ARSIWA, n.265, Art.36.

[400] UN Doc. S/AC26/1999/14,¶140.

[401] Corfu Channel, n.4, Assessment of Compensation at 249.

[402] *Ibid*, at 35.

PRAYER FOR RELIEF

For the foregoing reasons, Agnostica respectfully requests this Honorable Court to adjudge and declare that:

I. Reverentia's encouragement of the East Agnostican referendum violated Agnostica's territorial integrity, the principle of non-intervention, and the UN Charter generally;

II. The purported secession and subsequent annexation of East Agnostica are illegal and without effect, and therefore East Agnostica remains part of the territory of the Federal Republic of Agnostica;

III. The Marthite Convention ceased to be in effect as of 2 April 2012 and, in any event, Agnostica did not breach the Convention; and

IV. Reverentia's removal of the software at the Marthite extraction facilities violated international law.

Respectfully submitted,

Agents for Agnostica, 315A