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THE 2015 PHILIP C. JESSUP

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 RESPONDENT

REVERENTIA

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Georg Dahm, et al., *Völkerrecht*, Vol. I, (de Gruyter, 1989) 35

Hans Kelsen, *Pure Theory of Law*, (University of California Press, 1960) 44

Hersch Lauterpacht, *Private Law Sources and Analogies of International Law: With Special Reference to International Arbitration*, (The Lawbook Exchange, Ltd., 1927) 34

Hugo Grotius, *The Law of War and Peace*, (Clarendon Press, 1925) 45

Ian Brownlie, *International Law and the Use of Force by States*, (Oxford University Press, 1963) 2

James Crawford, *The Creation of States in International Law*, (Cambridge University Press, 2006) 7, 14, 27, 28

John Moore, *A Digest of Internaitonal Law*, (Government Printing Office, 1906) 34

Julie Dahlitz, *Secession and International Law: Conflict Avoidance – Regional Appraisals*, (TMC Asser Press, 2003) 15

Malcolm Shaw, *International Law*, (Cambridge University Press, 2003) 8

Marcelo Kohen, *Secession, International Law Perspectives*, (Cambridge University Press, 2006) 8, 14, 15

Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, (Martinus Nijhoff, 2009) 36, 37

Matt Qvortrup, *A Comparative Study of Referendums: Government by the People*, (Manchester University Press, 2002) 24

Mojmir Mrak, *Sucession of States*, (Martinus Nijhoff, 1999) 29

Nikolas Stürchler, *The Threat of Force in International Law*, (Cambridge University Press, 2009) 4, 5

Peter Hilpold, *Kosovo and International Law: The ICJ Advisory Opinion of 22 July 2010*, (Martinus Nijhoff, 2012) 8

Peter Radan, *The Break-up of Yugoslavia and International Law*, (Routledge, 2002) 26

Robert Jennings & Arthur Watts, *Oppenheim's International Law*, (Longman, 1996) 7, 8, 28

Robert McGee, *The Philosophy of Taxation and Public Finance*, (Kluwer Academic Publishers, 2004) 19

Rüdifer Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 6, (Oxford University Press, 2013) 9

Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 8, (Oxford University Press, 2013) 24

Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 9, (Oxford University Press, 2013) 26, 28

Sarah Joseph, et al., *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, (Oxford University Press, 2005) 18, 20, 21, 23

Simone Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices?*, (Intersentia, 2013) 15

Stefan Kadelbach, *Zwingendes Völkerrecht*, (Duncker & Humblot, 1992) 40

Steven Wheatley, *Democracy, Minorities and International Law*, (Cambridge University Press, 2005) 12, 13, 18

Thomas Schelling, *Arms and Influence*, (Yale University Press, 1966) 4

William Hall, *International Law*, (Clarendon Press, 1917) 34

Yonah Alexander & Robert Friedlander, *Self-Determination: National, Regional and Global Dimensions*, (Westview Press, 1980) 28

INTERNATIONAL COURT OF JUSTICE CASES

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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 support for the referendum in East Agnostica was consistent with international law.

II. Whether East Agnostica's secession from Agnostica and integration into Reverentia are consistent with international law, and in any event, whether this Court should order the retrocession of East Agnostica to Agnostica against the expressed will of its population.

III. Whether the Marthite Convention was in effect until 1 March 2013, and whether Agnostica breached that Convention.

IV. Whether Reverentia's removal of the software in the Marthite extraction facilities was consistent with international law.

STATEMENT OF FACTS

REVERENTIA AND AGNOSTICA

Reverentia and Agnostica were two separate colonies with distinct language, culture and religion under the Kingdom of Credera ["**Credera**"]. During the colonial era, ethnic Reverentians migrated to eastern Agnostica, making up 30% of the Agnostican population by 1919.

In 1925, Reverentia and Agnostica gained independence. As a federal union, Agnostica comprises two provinces: East Agnostica, populated by ethnic Reverentians ["**Agnorevs**"], and West Agnostica, by ethnic Agnosticans. Her constitution empowers the federal parliament to dissolve the union.

AGNOREVS

For 30 years since her independence, Reverentia encouraged Agnorevs to return. Nevertheless, over 85% of Agnorevs chose to remain in Agnostica, participating in politics and economy. By 1955, Agnorevs earned 157% of ethnic Agnostican families' average income.

THE MARTHITE CONVENTION ["MC"]

East Agnostica is the only area worldwide to contain deposits of Marthite, a mineral salt possessing mildly restorative properties that has been a core ingredient in Reverentian traditional medicine. In 1938, Reverentia and Agnostica concluded MC to govern Marthite production and distribution. Until 2011, the state-owned Reverentian Marthite Trust ["**RMT**"] sold the annual 200 to 250 tons of Marthite extracted from the East Agnostican facilities to the traditional

medicine practitioners in Reverentia and East Agnostica.

MARTHITE'S NEW MEDICAL VALUE

In late 2011, *Institut Luxembourgeois des Sciences Appliquées* ["**ILSA**"] discovered that Marthite was 90% effective in treating previously untreatable autoimmune disorders afflicting children worldwide. In response to the catapulting international demand, RMT sold 75% of the total mined Marthite to pharmaceutical companies for ten times the initial Marthite sale price.

THE PROPOSAL OF TREATY TERMINATION

On 1 February 2012, Agnostican Prime Minister Maxine Moritz ["**Moritz**"] contacted Reverentian President Antonis Nuvallus ["**Nuvallus**"], proposing to mutually terminate MC due to Marthite's new medical value. On 21 February 2012, Nuvallus rejected Agnostica's proposal, ensuring that Marthite supply was more than adequate to satisfy local demand.

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

On 2 April 2012, Moritz unilaterally declared MC to be terminated and disclosed that Agnostica had agreed to lease all rights of the East Agnostican facilities to Baxter for an undisclosed sum. The next day, the Baxter lease had entered into force.

THE SOFTWARE REMOVAL

In rejecting Agnostica's position, Nuvallus ordered the Reverentian engineers' return and the removal of RMT's software from the facilities, which then crippled the Marthite operation.

On 2 May 2012, Reverentian Vice-President announced that if Agnostica were to recommit to MC, Reverentian engineers would reverse the software removal's effect within hours.

THE SHORTAGE OF MARTHITE

By late May 2012, the facilities resumed mining operations, albeit relying heavily on Agnorevs' manual labor. In late August 2012, although unable to restore the computer systems, Baxter was extracting roughly 100 kilograms of Marthite daily, selling nearly all to multinational pharmaceutical companies and only 2-3 kilograms to the traditional users at prices far higher than before 1 April 2012.

THE MARTHITE CONTROL ACT ["MCA"]

On 1 October 2012, Agnostica passed MCA, a law banning Marthite sale or transfer into Reverentia and unauthorized Marthite purchase, sale, or possession within Agnostica. If violated, MCA provided a mandatory prison term of 18 months to four years. MCA was denounced in Reverentian and East Agnostican media as "discrimination against ethnic Reverentians", depriving their practice of ancient traditions.

GOHANDAS SUGDY ["SUGDY"]

On 23 November 2012, Sugdy, a 19-year-old Agnorev miner found to possess two pocketfuls of Marthite, was charged under MCA. During his arraignment, Sugdy requested to be with his ill grandfather, who was in need of Marthite, for his final days. To the magistrate's regret, MCA deprived him of any discretion but to reject Sugdy's request and remand him to jail to await trial. Later that day, prison guards found Sugdy dead from an apparent suicide. Sugdy's

grandfather, informed of the death, soon died due to heart failure.

AGNOREVS' DEMONSTRATIONS

Over the ensuing weeks of 2012, Sugdy's suicide catalyzed Agnorevs' demonstrations including the protests of Marthite's unavailability for traditional medicines and the long-standing discrimination in various sectors, *e.g.* unequal tax structure and ethnic Agnosticans' domination in armed and judicial posts, advocated by academics and Agnorev nationalists for decades.

THE BOXING DAY MASSACRE

On 26 December 2012, police clashed with demonstrators in Thanatosian streets, resulting in sixty demonstrators killed and several seriously injured. This "Boxing Day Massacre" prompted Nuvallus' concern for Agnorevs' safety. However, his subsequent offer for assistance to the head of East Agnostican's legislature, Tomás Bien [**"Bien"**], was dismissed.

THE REJECTION OF EAST AGNOSTICA'S PARLIAMENTARY PROPOSALS

By 2 January 2013, as clashes continued, Bien proposed to the federal parliament to de-escalate the military presence in East Agnostica. Although all 33 East Agnostican representatives voted in favor, the resolution failed by a vote of 45-64.

With the rejection seen as the federal government's disregard for Agnorevs, Bien called upon Agnorevs to "decide whether to continue this federal state". Nevertheless, Bien's proposal for dissolution was defeated with all 67 West Agnostican representatives voting against it and 29 of all East Agnostican representatives voting in favor.

REVERENTIA'S RESOLUTION

The constant rejection of East Agnostica's parliamentary proposals amplified Reverentia's concern. On 9 January, Nuvallus expressly claimed that Reverentia would aid Agnorevs' cause for independence, further solidified by the adoption of a resolution on "the Crisis in East Agnostica".

THE SCHEDULING OF EAST AGNOSTICA'S REFERENDUM

On 16 January 2013, the East Agnostican provincial parliament, following a majority vote, scheduled a plebiscite "open to all Agnostican citizens" in East Agnostica on the question of secession. In response, Moritz ordered the Agnostican 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 Reverentia's border with East Agnostica, specifically prohibiting them from leaving Reverentian territory. Nuvallus also sent a diplomatic note to Moritz clarifying that Reverentia has no territorial ambition and that the soldiers were sent to aid any Agnorevs fleeing the violence in East Agnostica. Further, the troops served as a precautionary measure in case violence spilled over into Reverentia.

THE EAST AGNOSTICAN REFERENDUM

On 29 January 2013, the East Agnostican referendum transpired free of violence or interference and its accurate result is confirmed by international NGOs. The referendum, garnering an 80% turnout of eligible voters, saw 73% votes in favor of secession. Nevertheless,

Moritz denounced it immediately.

THE INTEGRATION INTO REVERENTIA

The next day, the former East Agnostican provincial parliament, now the Agnorev People's Parliament ["**APP**"], ratified the secession. Upon a unanimous vote, a delegation headed by Bien entered into talks with Reverentia aimed at the integration of East Agnostica. The international community's reaction varied. On 22 February 2013, Nuvallus and Bien had signed an Integration Agreement. Reverentian Army units were promptly moved into the region while two days later the Agnostican National Police and military personnel were withdrawn from East Agnostica.

RATIFICATION OF INTERNATIONAL TREATIES

Reverentia and Agnostica 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 SUPPORT FOR THE EAST AGNOSTICAN REFERENDUM

Reverentia's support for the East Agnostican referendum did not violate the principle of non-intervention, as it was not tantamount to direct intervention *vis-à-vis* threat of force nor indirect intervention of Agnostica's domestic affairs.

Impelled by Agnostica's rejection of Agnorevs' self-determination, Nuvallus' diplomatic statements and the resolution adopted on "the Crisis of East Agnostica" contained no promise of forcible consequence against Agnostica. Reverentia's stationing of troops, expressly prohibited from incursion, did not make credible any threat of force. Rather, such maneuver lacked hostile intention to render threat illegal as it served a humanitarian purpose to aid Agnorevs, or at a minimum, a precautionary measure in the event that the violence spilled over into Reverentia.

Reverentia's political support fell short of an indirect intervention, as it was not coercive. Although adopted 19 days before the referendum, Reverentia's resolution did not amount to an illicit premature recognition. Her intention to recognize East Agnostica was deferred and conditional upon positive result of referendum on secession. Further, although irredentist, Reverentia's support neither contained any territorial ambition to annex East Agnostica nor coerced Agnostica from her control to suppress the secessionist movement.

EAST AGNOSTICA'S SECESSION AND INTEGRATION INTO REVERENTIA

The secession of East Agnostica is consistent with international law given the granting of such right under Agnostica's federal constitution *via* the interchangeable dissolution clause or, alternatively, the customary law of remedial secession. Agnorevs, sharing distinct linguistic,

cultural and religious background and unanimous desire to secede, constituted a 'people' entitled to exercise right of secession as a remedy to their gravely supressed self-determination, *i.e.* the systematic discrimination in political, cultural and socio-economic sectors.

In particular, Agnorevs were acutely deprived of their cultural rights following the MCA enactment that curtailed their internationally protected traditional practice of Marthite. MCA's mandatory sentencing contravened the principle of non-arbitrariness. Agnorevs' subsequent demonstrations over the unavailability of Marthite, mistreatment of their kinsman, and their long standing discriminations climaxed into the Boxing Day Massacre, which ultimately violated their right to life, freedom of assembly, and security from state officials.

Further, the secession is legal as it fulfilled the due process requirement of exercising self-determination, *i.e.* a free and legitimate expression of the people's will, presently displayed through the transparently organized East Agnostican referendum with the majority votes in favor of secession.

Following the secession, East Agnostica has lawfully integrated into Reverentia, as the integration was mutually consented by Reverentia and East Agnostica with APP as the legitimate representative. Alternatively, pursuant to the principle of effectivity, the integration is rendered *de jure* legal upon the *de facto* attainment of Reverentia's territorial control and recognition by thirty states. Further, the integration is not subject to non-recognition as it does not violate the customary principle of non-intervention and *uti possidetis juris.*

AGNOSTICA'S UNLAWFUL TERMINATION AND BREACH OF MARTHITE CONVENTION

In line with the *quid pro quo* treaty relationship, Agnostica has unlawfully invoked the ground of material breach, *i.e.* RMT's excessive sales outside traditional uses and unilateral price

determination, to terminate MC. Her invocation of fundamental change of circumstances as alternative termination ground was also unlawful since Marthite increased value was foreseen by both States, not fundamental, and also insufficient to radically transform Agnostica's further obligation to grant Reverentia access to Marthite. Additionally, Marthite's initial value did not *per se* constitute both States' consent at treaty formation, as Agnostica prominently entered into MC upon respect for Reverentian traditional medical practice.

Assuming validity of grounds, MC was not effectively terminated as of 2 April 2012 given Agnostica's failure to observe the procedural safeguards required under CIL, *i.e.* prior notification and further negotiations. Consequently, Agnostica's lease with Baxter and enactment of MCA breached MC. Above all, MC ceased to be in effect as of 1 March 2013 by virtue of East Agnostica's integration into Reverentia.

REVERENTIA'S SOFTWARE REMOVAL UNDER INTERNATIONAL LAW

Reverentia's removal of software from the Marthite extraction facilities was consistent with international law, as it was justified as non-performance under the principle of *exceptio non adimpleti contractus* or as countermeasure, given its proportionality and Reverentia's sufficient subsequent demand of Agnostica's recommitment to MC. Reverentia is thus entitled to reparation.

PLEADINGS

I. REVERENTIA'S SUPPORT FOR THE REFERENDUM IN EAST AGNOSTICA WAS CONSISTENT WITH INTERNATIONAL LAW

State sovereignty[1] entails the duty to protect the people's rights and will,[2] the failure of which transposes human rights matter from state's domestic affairs[3] to legitimate international concern. Impelled by Agnostica's suppression of Agnorevs' self-determination, Reverentia's support for the East Agnostican referendum did not constitute (A) direct intervention *vis-à-vis* threat of force or (B) indirect intervention of Agnostica's domestic affairs.[4]

A. REVERENTIA'S SUPPORT DID NOT AMOUNT TO DIRECT INTERVENTION *VIS-À-VIS* THREAT OF FORCE VIOLATING ARTICLE 2(4) UN CHARTER

Article 2(4) UN Charter entrenches states' customary[5] obligations to abstain from use of force and threat thereof. [6] Reflected in *Nuclear Weapons*,[7] Reverentia's support, piqued by

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

[2] Art.1(1), *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966) [ICCPR]; Art.21, *Universal Declaration on Human Rights*, UN Doc. A/810 [UDHR].

[3] Human Rights Integral to Regional Security, IOR 64/01/98 (1998).

[4] *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty*, UN Doc. A/RES/20/2131 [Res.2131]; Principle III-IV, *The Final Act of the Conference on Security and Co-operation in Europe*, 14 ILM 1292 (1975) [Helsinki].

[5] *Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua v. United States*), 1986 ICJ Rep. 14,¶¶187-190 [Nicaragua].

[6] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Rep. 226 at 526 [Nuclear Weapons].

[7] *Ibid.*

fraternal obligation to protect the discriminated Agnorevs[8] and pave way for their wrongfully rejected independence,[9] did not constitute threat of force absent (1) promise of force (2) demanding compliance with hostile intention[10] to undermine Agnostica's territorial integrity and political independence.[11]

1. Reverentia's support did not contain a promise of force

Article 2(4) UN Charter prohibits threats containing promise to use physical armed force.[12] Reverentia's (a) diplomatic statements[13] and resolution[14] neither contained such promise (b) nor were made credible by her stationing of troops.[15]

a. Reverentia's diplomatic statements and resolution supporting the East Agnostican referendum did not constitute message of threat to Agnostica

Nuvallus' diplomatic statements, *i.e.* pronouncement of concern[16] and speech,[17] coupled with Reverentia's resolution supporting the East Agnostican referendum[18] did not contain (i) explicit or (ii) implicit[19] message of threat to Agnostica.

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[8] *Compromis*,¶¶29-30.

[9] *Compromis*,¶¶33-34.

[10] Antonio Cassese, *International Law*, (Oxford University Press, 2005) at 273.

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

[12] Bruno Simma, et al., *The Charter of the United Nations: A Commentary*, Vol. I, (Oxford University Press, 2002) at 188 [UN Charter Commentary].

[13] *Compromis*,¶30,34.

[14] *Compromis*,¶35.

[15] *Compromis*,¶37.

[16] *Compromis*,¶30.

[17] *Compromis*,¶34.

First, Reverentian resolution's phraseology "[to use] all necessary measures" to support East Agnostica[20] indicated no explicit message of threat in form of "open extractions of concession", *i.e.* ultimatum,[21] unlike the 2005 Chinese Law against Taiwan's separation stating China "shall employ *non-peaceful means* and other necessary measures".[22]

Second, Nuvallus' promise to do "everything in [Reverentia's] power"[23] did not imply any threat since it was followed by a peaceful adoption of resolution while her troops were stationed in good faith.[24] In contrast, while the North Atlantic Treaty Organization's ["**NATO**"] claim to "use all necessary measure" against Yugoslavia had similar phraseology, force was implied by NATO's claim of possible air strikes.[25]

b. Further, Reverentia's stationing of troops did not equate to inevitable use of force

Nuclear Weapons emphasized that threats must be 'credible', *i.e.* displaying commitment that they may be implemented,[26] commonly through demonstrations of force.[27] The stationing of

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[18] *Compromis*,¶35.

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

[20] *Compromis*,¶35.

[21] Corfu Channel, n.19, at 35; Romana Sadurska, "Threats of Force", 83 AJIL 239 (1988) at 242.

[22] Zou Keyuan, "Governing the Taiwan Issue in Accordance with Law: An Essay on China's Anti-Secession Law", 4 CJIL 455 (2005) at 461.

[23] *Compromis*,¶34.

[24] *Infra*, Section I.A.1.b; *Compromis*,¶35.

[25] NATO, Statement by the North Atlantic Council on Kosovo (1999),¶5.

[26] Nuclear Weapons, n.6,¶48.

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

Reverentia's troops at her Agnostican border[28] (i) did not constitute demonstration of force, (ii) falling short of 'credibility'.

First, *Corfu Channel* established that demonstration of force[29] must entail "an unnecessarily large display of force"[30] indicating commitment to risk an armed encounter.[31] Reverentia's stationing of less than 1,000 troops[32] disproved any preparation for the alleged "occupation",[33] contrasting with the 1994 Iraqi deployment of 70,000 soldiers along her Kuwait border[34] or the August 2014 Russian deployment of 45,000 troops along her Ukraine border, regarded by NATO "to signal invasion".[35]

Second, Reverentia's troops were deployed for the humanitarian mission of aiding Agnorevs fleeing Agnostica[36] in light of the volatile and continuous demonstrations[37] and to prevent possible violence breakout into Reverentia,[38] comparable to Saudi Arabia's deployment

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[28] *Compromis*,¶37.

[29] Independent International Fact-Finding Mission on the Conflict in Georgia, Vol. II (2009) at 232.

[30] Corfu Channel, n.19, at 35.

[31] Nikolas Stürchler, *The Threat of Force in International Law*, (Cambridge University Press, 2009) at 173 [Stürchler].

[32] *Compromis*,¶37.

[33] *Compromis*,¶39.

[34] UN Doc. S/PV.3438; UN Doc. S/RES/949; Stürchler, n.31, at 230.

[35] NATO Secretary General Condemns Entry of Russian Convoy into Ukraine (2014).

[36] *Compromis*,¶35.

[37] *Clarifications*,¶6.

[38] *Compromis*,¶37.

of 30,000 troops to her Iraqi border to protect her territory from internal Iraqi-Sunni rebels conflict.[39] Hence, Reverentia's stationing of troops negated the alleged threat's 'credibility'.[40]

2. Alternatively, Reverentia's support for East Agnostica entailed no hostile intention to infringe Agnostica's territorial integrity and political independence

Corfu Channel,[41] *Nicaragua,*[42] and *Nuclear Weapons*[43] underlined that illicit threats of force must undermine the target state's (a) territorial integrity and (b) political independence,[44] an intention absent in Reverentia's support for Agnorevs.[45]

a. Reverentia's support did not harbor territorial ambitions

Nicaragua asserted that threat must be analyzed according to the prevailing circumstances. [46] Reverentia's lack of territorial ambition was factually corroborated by circumstances prior and after the referendum.

Ex ante, Reverentia's diplomatic note and prohibition against troops' incursion[47] bespeak respect for Agnostica's inviolable frontier. *Ex post,* the integration proposal was initiated by

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[39] "Report: Saudi Troops Deployed to Iraq Border", 3 July 2014 Al Jazeera <www.aljazeera.com>.

[40] Stürchler, n.31, at 115.

[41] Corfu Channel, n.19, at 35.

[42] Nicaragua, n.5,¶117,120.

[43] Nuclear Weapons, n.6,¶48.

[44] Eduardo Aréchaga, "International Law in the Past Third of a Century", 159 Res. Des Cours 1 (1978) at 88.

[45] *Compromis*,¶¶30-35.

[46] Nicaragua, n.5,¶118.

[47] *Compromis*,¶37.

APP.[48] Unlike Russia who actively contacted Crimean secessionist leaders before signing the integration treaty,[49] Reverentia's rejected offer of support to East Agnostica was not followed by any further communication.[50] Agnostica's and several regional organizations' allegation of "unlawful occupation"[51] is unfounded.

b. Reverentia's support was not aimed to coerce Agnostica out of her political independence

A threat is unlawful when "aimed to extract political concession",[52] *i.e.* depriving the target state's political independence to freely make decisions. ILC asserted that such deprivation requires objective "verification by an impartial third party" rather than target state's subjective perception.[53] In *Nicaragua,* the Court rejected Nicaragua's subjective perception of threat that the American-Honduran military maneuvers coerced her compliance of US' political demands.[54]

Objectively, Agnostica's perception that the Reverentian troops' presence deterred her from suppressing the East Agnostican referendum[55] is unfounded. Reverentia's troops were stationed to aid Agnorevs,[56] particularly since Agnostica's previous mobilization caused Boxing

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[48] *Compromis*,¶39.

[49] Christian Marxsen, "The Crimea Crisis – An International Law Perspective", 74 Heidelberg Journal of International Law 367 (2014) at 373 [Marxsen].

[50] *Compromis*,¶30.

[51] *Compromis*,¶39.

[52] Corfu Channel, n.19, at 31.

[53] UN Doc. A/44/10 at 181.

[54] Nicaragua, n.5, at 98.

[55] *Compromis*,¶37.

[56] *Supra*, Section I.A.1.b.

Day Massacre.[57] Given Nuvallus' prohibition of incursion,[58] Reverentia's aid would strictly be rendered in her territory, unlike the internationally condemned Russian 'aid convoy' that entered Ukraine without authorization.[59]

B. REVERENTIA'S SUPPORT DID NOT CONSTITUTE INDIRECT INTERVENTION IN AGNOSTICA'S DOMESTIC AFFAIRS

Consistent with the customary principle of non-intervention in state's domestic affairs,[60] Reverentia's political support also fell short of indirect intervention.[61] External support amounts to such intervention only when coercive, *i.e.* depriving the state's control over the matter in question, [62] an attribute lacking in Reverentia's (1) resolution and (2) irredentist diplomatic support.

1. Reverentia's resolution did not amount to an illicit premature recognition

Recognition is premature[63] when granted to a 'new state' before its effort to secede has succeeded.[64] Nevertheless, granting premature recognition is (i) not a coercive political act

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[57] *Compromis*,¶29.

[58] *Compromis*,¶37.

[59] Lawrence Freedman, "Ukraine and the Art of Limited War", 56 Survival: Global Politics and Strategy 7 (2014) at 16.

[60] Art.8, *Montevideo Convention on the Rights and Duties of States*, 165 UNTS 19 (1933); Art.3, *Charter of the Organization of African Unity*, 47 UNTS 39 (1963); Art.8, *Charter of Arab League*, 70 UNTS 237 (1945); Res.2131, n.4; UN Doc. A/RES/21/2225; *Declaration on Principles of International Law concerning Friendly Relations and Co-operations*, UN Doc. A/RES/25/2625 [Friendly Relations].

[61] Nicaragua, n.5, at 123-127, 146; Lori Damrosch, "Politics Across Borders: Non-intervention and Non-forcible Influence over Domestic Affairs", 83 ASIL 1 (1989) at 5.

[62] Robert Jennings & Arthur Watts, *Oppenheim's International Law*, (Longman, 1996) at 432 [Oppenheim].

[63] James Crawford, *The Creation of States in International Law*, (Cambridge University Press, 2006) at 45 [Crawford].

amounting to indirect intervention in the parent state's domestic affairs. In any event, Reverentia's (ii) resolution, even if adopted 19 days before the referendum,[65] did not constitute premature recognition.

First, states and jurists do not consider premature recognition as intervention into the parent state's domestic affairs.[66] Germany's premature recognition of Croatia, alleged as intervention against Yugoslavia, was shortly followed by European countries and Croatia's admittance into UN.[67] In any event, an act of recognition lacks coerciveness, a *raison d'être* for intervention, thus constituting a simple manifestation of political will or at most an unfriendly act.[68]

Second, Reverentia's intention to recognize East Agnostica's independence was expressly deferred, as her resolution was phrased conditionally and not active. Reverentia's resolution conferred Nuvallus the authority to grant future recognition only when the referendum results "demonstrate East Agnostica's desire to secede",[69] unlike US' recognition stating she "recognizes the provisional government as the *de facto* authority of the new state of Israel".[70]

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[64] Oppenheim, n.62, at 141.

[65] *Compromis*,¶35,37.

[66] Malcolm Shaw, *International Law*, (Cambridge University Press, 2003) at 383; Oppenheim, n.62, at 141; Marcelo Kohen, *Secession, International Law Perspectives*, (Cambridge University Press, 2006) at 123-130 [Kohen].

[67] *Declaration on Yugoslavia and on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union*, 31 ILM 1495 (1992).

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

[69] *Compromis*,¶35.

[70] Draft of Recognition of Israel (1948).

2. Reverentia's irredentist support was not aimed at annexing East Agnostica

Irredentism refers to a kin state's external involvement of protecting the rights and interests of her kin-minorities residing in another state or due to a previous possession.[71] Reverentia's support for East Agnostica was admittedly irredentist due to Agnorevs' Reverentian ethnicity,[72] affirmed by Nuvallus' call for "Reverentian brothers and sisters".[73] Nevertheless, irredentism (i) is not unlawful *per se* absent (ii) aim for annexation (iii) and coerciveness.

First, irredentism is generally lawful as states' irredentist claims in their constitutions remain uninterrupted.[74] China, in her 1982 constitution's preamble describes Taiwan as part of her "sacred territory".[75] Ireland's constitution, prior to its eighteenth amendment, stipulated an obligation to reunify with Northern Ireland.[76]

Second, irredentism only amounts to intervention when there is aim to annex territories,[77] an ambition Reverentia lacked.[78] Reverentia's initial irredentist policy was aimed at Agnorevs' return instead of the territory.[79] In fact, such policy stopped in the 1950s and only resumed due to

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[71] Rüdifer Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 6, (Oxford University Press, 2013) at 385,¶1 [Max Plack-VI].

[72] *Compromis*,¶6.

[73] *Compromis*,¶30,34.

[74] Max Planck-VI, n.71,¶10.

[75] *Ibid.*

[76] *Ibid.*

[77] *Ibid*,¶1.

[78] *Compromis*,¶37.

[79] *Compromis*,¶6.

concern of Agnorevs' safety,[80] unlike Russia's November 2014 treaty mandating a socio-economic coordination and joint military unit with Abkhazia, a previously USSR-occupied Georgian territory, regarded by NATO as "a step towards Russia's *de facto* annexation".[81]

Third, contrasting with US' extensive support of "training, arming, equipping, financing and supplying" the *contra* forces found in *Nicaragua* as coercive intervention,[82]Reverentia's support was not substantial, confined to advocating Agnorevs' will of self-determination *via* referendum.[83]

[80] *Compromis*,¶29.

[81] NATO Parliamentary Assembly Resolution 417 (2014).

[82] Nicaragua, n.5,¶292.

[83] *Compromis*,¶35.

II. EAST AGNOSTICA'S SECESSION FROM AGNOSTICA AND INTEGRATION INTO REVERENTIA ARE CONSISTENT WITH INTERNATIONAL LAW, AND IN ANY EVENT, THIS COURT SHOULD NOT ORDER THE RETROCESSION OF EAST AGNOSTICA TO AGNOSTICA AGAINST THE EXPRESSED WILL OF ITS POPULATION

The territorial integrity of a state may be questioned when she gravely suppresses her own peoples' internal self-determination[84] ["**ISD**"], *i.e.* their pursuit of political, economic, social and cultural development.[85] In such situation, the people may exercise (A) the right of self-determination externally through unilateral secession. Agnorevs, (B) a 'people' acutely deprived of ISD, are entitled to secede without Agnostica's consent given (C) the legitimate expression of their will. Consequently, (D) East Agnostica may independently integrate with Reverentia.

A. EAST AGNOSTICA'S RIGHT TO SECESSION AS A MODE OF EXTERNAL SELF-DETERMINATION IS VESTED UNDER DOMESTIC AND INTERNATIONAL LAW

The right to secession, a mode to exercise external self-determination ["**ESD**"],[86] is primarily assessed from (1) state's domestic law, presently ingrained in Agnostica's federal constitution.[87] Alternatively, (2) such right is conferred by the customary principle of self-determination.[88]

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

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

[86] UN Doc. A/RES/50/6 at 13; European Commission for Democracy Through Law, Opinion No. 762/2014,¶18.

[87] *Compromis*,¶8.

[88] UN Charter, n.1, Art.1(2); ICCPR, n.2, Art.1; Art.1, *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (1966) [ICESCR]; Art.5(C), *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195 (1965) [ICERD]; UN Doc. HRI/GEN/1/Rev.3 at 113-115,¶11; Helsinki, n.4, Principle IV.

1. Agnostica's federal constitution recognizes the right of external self-determination in any form

Noting this Court's competence to assess national law, *e.g.* constitutions *vis-à-vis* international law,[89] (a) the primary right of ESD[90] in the dissolution clause of Agnostica's constitution[91] may extend from dissolution to secession. East Agnostica's unilateral secession also (b) has fulfilled its constitutional duty to negotiate.

a. Secession and dissolution are interchangeable methods to exercise external self-determination

When interpreted with the overarching constitutional principles of democracy and minority protection, [92] the ESD right in the dissolution clause[93] of Agnostica's constitution affirms right of secession. [94] ILC's former president Alain Pellet asserted that distinguishing secession and dissolution is "entirely meaningless". [95] Such interchangeability is supported by federal

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[89] *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, Advisory Opinion, 1932 PCIJ (Ser. A/B) No. 44 at 24-25.

[90] Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, (Oxford University Press, 2003) at 352.

[91] *Compromis*,¶8.

[92] Quebec, n.85,¶148.

[93] *Compromis*,¶8.

[94] Steven Wheatley, *Democracy, Minorities and International Law*, (Cambridge University Press, 2005) at 100 [Wheatley].

[95] Alain Pellet, "Legal Opinion on Certain Questions of International Law Raised by the Reference", in Anne Bayefsky, *Self-Determination in International Law: Quebec and Lessons Learned*, (Kluwer Law International, 2000) 85 at 103.

constitutions of Yugoslavia[96] and USSR,[97] which secession clauses led to their dissolutions. Since Agnostica comprised two provinces,[98] dissolution would result into *de facto* secession.[99]

b. Moreover, East Agnostica has fulfilled the constitutional duty to negotiate its exercise of external self-determination

Jurists[100] observed that the duty to pay due regard to the federation's will by negotiating secession with the federal government introduced by *Quebec*[101] is devoid of validity due to absence of state practice requiring ESD to be supported by constitutional legitimacy. In any event, East Agnostica sufficiently fulfilled this duty by proposing dissolution with due regard to Agnostican federal government's interests.[102]

2. Alternatively, the customary principle of self-determination gives rise to the right of unilateral secession as remedy

External exercise of the customary right of self-determination is not restricted to decolonization,[103] now providing secession to remedy 'structural discrimination' affecting a people's lives.[104] Remedial secession has crystallized into customary international law ["**CIL**"]

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[96] Basic Principle I, Constitution of the Socialist Federal Republic of Yugoslavia (1974).

[97] Art.72, Constitution of the Union of Soviet Socialist Republics (1977).

[98] *Compromis*,¶8.

[99] Wheatley, n.94, at 101.

[100] Peter Hogg, "The Duty to Negotiate", 7 Canada Watch 1 (1999) at 34-35; Patrick Monahan, "The Public Policy Role of the Supreme Court of Canada in the Secession Reference", 11 NJCL 65 (2000) at 89-92.

[101] Quebec, n.85,¶88.

[102] *Compromis*,¶33.

[103] 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 [Badinter].

[104] Kohen, n.66, at 41.

even without extensive and uniform state practice[105] by virtue of the 'Grotian Moment',[106] which accelerates custom creation inasmuch as there exists strong *opinio juris*[107] concerning a fundamental change to international law.[108]

Since introduced by *Åland Islands* in 1921,[109] the crystallization of remedial secession as CIL has been propelled by international community's goal to protect human rights, resulting in East Timor and Bangladesh's successful unilateral secessions.[110] The 'safeguard clause'[111] of the customary[112] Friendly Relations Declaration, *i.e.* territorial integrity depends on a state's protection of her people's human rights,[113] has been interpreted by jurists[114] and its *travaux préparatoires*[115] as treaty basis for remedial secession. Furthermore, the strong *opinio juris* is buttressed by international community's rapid affirmation of remedial secession in *Katanga*,[116]

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[105] Nicaragua, n.5,¶¶186–188.

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

[107] Nicaragua, n.5,¶¶186–188.

[108] Scharf, n.106, at 332.

[109] *Report of the International Committee of Rapporteurs*, LN Council Document B7/2I/68/106 [VII] (1921) at 13.

[110] Crawford, n.63, at 386.

[111] Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, (Cambridge University Press, 1995) at 117-118 [Cassese].

[112] Bin Cheng, "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?", 5 Indian J Int L 23 (1965).

[113] Friendly Relations, n.60,¶7.

[114] Cassese, n.111, at 118; Kohen, n.66, at 103-104.

[115] UN Doc. A/AC.125/SR.107 at 73-85.

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

Quebec,[117] *Cameroon*,[118] and most recently by judges[119] and written submissions of Netherlands, Albania, Finland, Ireland, Poland and Switzerland[120] in *Kosovo*.

B. VIOLATION OF AGNOREVS' RIGHT OF INTERNAL SELF-DETERMINATION TRIGGERED UNILATERAL SECESSION AS REMEDY

Having established existence of remedial right to secession, (1) Agnorevs as a 'people' validly bear such right[121] due to (2) the deprivation of their ISD. [122]

1. Agnorevs constituted a 'people' entitled to secession

Agnorevs fulfilled the two-prong criteria of peoplehood,[123] *i.e.* (i) objective sharing of ethno-historic and territorial background, as well as (ii) subjective self-conscious distinction.[124]

First, as Reverentian ethnics, Agnorevs shared a racial, ethnic, linguistic and cultural background distinct from Agnosticans. [125] Agnorevs' collective territorial claim over East

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[117] Quebec, n.85,¶124.

[118] *Kevin Mgwanga Gunme et al. v. Cameroon*, Comm. No. 266/03 (2009),¶¶186-187 [Cameroon].

[119] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 ICJ Rep. 403, Sep. Op. Judge Trinidade, at 594,¶¶176-178; Sep. Op. Judge Yusuf, at 622,¶¶12-16 [Kosovo].

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

[121] Julie Dahlitz, *Secession and International Law: Conflict Avoidance – Regional Appraisals*, (TMC Asser Press, 2003) at 78-79.

[122] Cassese, n.111, at 120.

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

[124] Nanda, n.123; UN Charter Commentary, n.12, at 55,¶28.

[125] *Compromis*,¶1,6.

Agnostica was evident from their historical pedigree,[126] *i.e.* their migration into eastern Agnostica circa 1900s prior to Agnostican independence.[127] Other ethnicities' existence[128] did not negate East Agnostica's status as one population, similar to peoples of former-Yugoslav federal units regarded as one population despite the units' diverse ethnicities.[129]

Second, Agnorevs' solidarity as a distinct people was reflected in the protests of their kinsman's mistreatment and prolonged discrimination in Agnostica.[130] Although initially triggered by Marthite's unavailability,[131] Agnorevs' demonstration turned into a rally to dissolve the union,[132] continuing persistently[133] after the rejected dissolution motion[134] into desire to secede. Such unanimous will for self-determination solidified their claim of peoplehood.[135]

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[126] Jure Vidmar, "Confining New International Borders in the Practice of Post-1990 State Creations", 70 ZaöRV 319 (2010) at 328 [Vidmar].

[127] *Compromis*,¶8.

[128] *Clarifications*,¶2.

[129] Aleksandar Pavković & Peter Radan, "In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order", 3 Macquarie LJ 1 (2003) at 3 [Pavković].

[130] *Compromis*,¶¶27-28.

[131] *Compromis*,¶28.

[132] *Compromis*,¶32.

[133] *Clarifications*,¶6.

[134] *Compromis*,¶33.

[135] Pavković, n.129, at 3.

2. Agnorevs were gravely deprived of their right of internal self-determination by systematic discrimination

Unilateral secession accrues when the people are collectively subjected to systematic discrimination[136] that gravely deprives their ISD, *i.e.* (a) political, (b) socio-economic and (c) cultural rights,[137] owed to Agnorevs under ICCPR, ICESCR, and CERD, of which Agnostica is a party.[138]

a. Agnorevs' political rights were denied

The denial of Agnorevs' political rights was manifested in the deprivation of (i) sufficient political autonomy and (ii) access to public affairs as well as (iii) arbitrary rejection of their parliamentary proposals.

i. Agnorevs were deprived of sufficient political autonomy

Agnostica wrongfully nullified East Agnostica's political autonomy over cultural affairs enshrined in the federal constitution[139] when she enacted MCA,[140] which culturally affected Agnorevs.[141]

ii. Agnorevs were granted insufficient political accessibility

Quebec gauged political accessibility from Quebecers' attainment of prominent positions within Canadian [142] legislative, executive, and judicial institutions. [143] *A fortiori*, ethnic

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[136] Ian Brownlie, "Rights of Peoples in Modern International Law", 9 Bull. Austl. Soc. Leg. Phil. 104 (1985).

[137] Quebec, n.85,¶126,134.

[138] *Compromis*,¶44.

[139] *Compromis*,¶8.

[140] *Compromis*,¶22.

[141] *Infra,* Section II.B.2.c.

Agnostican lawyers' domination[144] of East Agnostican judicial posts denoted inequality of participation in public service against Agnorevs.[145]

iii. Likewise, the rejections of their parliamentary proposals were arbitrary

East Agnostica's (i) under-representation in federal parliament[146] and (ii) Agnostican constitution's voting requirement led to arbitrary rejections of their parliamentary proposals, showing incompatibility with federal government.

First, resembling Anglophones' complaint in *Cameroon*,[147] the quantity of 33 seats displayed Agnostica's disproportionate representation to population ratio,[148] which would have significantly changed from the 30% figure in the century-old 1919 census.[149] Such under-representation led to Agnostican government's unreasonable rejection of East Agnostican members' unanimous motion to de-escalate military presence in East Agnostica following Boxing Day Massacre.[150]

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[142] Quebec, n.85,¶136.

[143] Sarah Joseph, et al., *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, (Oxford University Press, 2005),¶22.49 [ICCPR Commentary].

[144] *Compromis*,¶28.

[145] ICCPR, n.2, Art.25(c); UDHR, n.2, Art.21.

[146] *Compromis*,¶33.

[147] Cameroon, n.118,¶8.

[148] Wheatley, n.94, at 141; Cameroon, n.118,¶142.

[149] *Compromis*,¶4.

[150] *Compromis*,¶31.

Second, having only 33 seats, the three-quarters vote requirement for dissolution[151] frustrated East Agnostica's ISD given its difficulty to attain.[152] Such standard is significantly higher than numerous constitutions, *e.g.* Germany,[153] Netherlands,[154] South Korea[155] and Japan,[156] requiring two-thirds majority votes even for significant constitutional amendments.

b. Moreover, Agnorevs were subjected to persistent discrimination of socio-economic rights

Although her civil rights law proscribes ethnic-based discrimination in employment and education,[157] Agnostica failed to combat discrimination given Agnorevs' long-standing[158] discriminations raised by academics and Agnorev nationalists in various journals and meetings.[159]

Progressive tax structure economically marginalized[160] the high-GNP Agnorevs[161] while concentrating subsidy to West Agnostica. Further, similar to Pakistani textbooks containing

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[151] *Compromis*,¶41.

[152] *Compromis*,¶33.

[153] Art.79(2), Basic Law for the Federal Republic of Germany (1949).

[154] Art.137(4), Constitution of the Kingdom of the Netherlands (2008).

[155] Art.128(1), Constitution of the Republic of Korea (1987).

[156] Art.96, Constitution of Japan (1947).

[157] *Clarifications*,¶4.

[158] *Compromis*,¶28.

[159] *Clarifications*,¶3.

[160] Robert McGee, *The Philosophy of Taxation and Public Finance*, (Kluwer Academic Publishers, 2004) at 18.

[161] *Compromis*,¶7.

religious bigotry against non-Muslims,[162] Agnorevs' "unrelentingly negative" characterization in West Agnostican literature and media [163] constituted prohibited racial vilification. [164] Disproportionate scholarships allocation to ethnic Agnosticans [165] also indicated educational discrimination.[166]

Even surpassing *Cameroon* where the Anglophone demonstrators' right to assemble,[167] life,[168] and physical security from state's officials[169] was violated when security forces applied "excessive force" causing six deaths,[170] Agnostican military troops' suppression during Boxing Day Massacre causing sixty demonstrators' deaths proved grave suppression of Agnorevs' ISD.

c. MCA curtailed Agnorevs' cultural rights over Marthite

MCA constituted indirect discrimination[171] as it solely impacted Agnorevs given their exclusive Marthite use in Agnostica. [172] Although Marthite's international priority to treat

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[162] Ayesha Jalal, "Conjuring Pakistan: History as Official Imagining", 27 Int J Middle East Stud 73 (1995).

[163] *Compromis*,¶28.

[164] ICERD, n.88, Art.4; ICCPR, n.2, Art.20.

[165] *Compromis*,¶28.

[166] ICESCR, n.88, Art.13; ICERD, n.88, Art.5(e)(v); Art.3(c), *Convention against Discrimination in Education*, 429 UNTS 93 (1960).

[167] ICERD, n.88, Art.5(d)(ix).

[168] UDHR, n.2, Art.3; ICCPR, n.2, Art.6(1).

[169] ICERD, n.88, Art.5(b).

[170] Cameroon, n.118,¶111,138.

[171] ICCPR Commentary, n.143,¶23.31.

[172] *Compromis*,¶9,11,21.

autoimmune disease[173] is a legitimate cause,[174] Agnorevs' traditional use of Marthite[175] protected under ICESCR [176] and ICCPR [177] was acutely abrogated *via* MCA's (i) disproportionate restriction and (ii) mandatory sentencing, which (iii) were continuously disregarded by Agnostica.

i. MCA's restriction of Marthite was disproportionate

Cultural right limitation is only proportionate when the least restrictive measure is utilized. [178] In *Mahuika*, New Zealand's restriction was legitimate as it conferred 40% commercial fishing quota to Maori people. [179] Contrariwise, although authorizing licensed possession,[180] MCA ironically created substantial discrimination[181] to Agnorevs, the manual Marthite extractors,[182] since the license was barely attainable, evident from Marthite's general unavailability to local distributors.[183]

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[173] *Compromis*,¶22.

[174] *Compromis*,¶23.

[175] *Compromis*,¶9,11,21.

[176] ICESCR, n.88, Art.15(1).

[177] ICCPR, n.2, Art.27.

[178] ICCPR Commentary, n.143,¶24.30; CESCR General Comment 21, UN Doc. E/C.12/GC/21,¶19.

[179] *Mahuika v. New Zealand*, Comm. No. 547/1993 (2000),¶7.1 [Mahuika].

[180] *Compromis*,¶23.

[181] HRC General Comment 18, UN Doc. HRI/GEN/1/Rev.1,¶13 [GC.18]; ICCPR Commentary, n.143,¶24.30; *Länsman v. Finland*, Comm. No. 511/1992 (1994),¶¶9.4-9.5,10.3; CERD General Comment 18, UN Doc HRI/GEN/1/Rev.7,¶13.

[182] *Compromis*,¶20.

[183] *Compromis*,¶23,27,29.

At any rate, *Mahuika*,[184] *Ominayak*,[185] and *Äärelä*[186] emphasized the fulfilment of prior consultations with minorities to determine the lawfulness of a legislation restricting their cultural right. Absent such negotiations with Agnorevs, MCA is thus unlawful.[187]

ii. Mandatory sentencing further aggravated MCA's discriminatory effect

The trial judges in *Ambo*, [188] *Mahendra*, [189] and *Magaming* [190] affirmed mandatory sentencing [191] as arbitrary, [192] as found in MCA's (i) mandatory pre-trial detention and (ii) removal of judges' discretion to impose case-by-case penalty.

First, arbitrary mandatory pre-trial detention was evident from MCA's first prosecution where the magistrate had no judicial discretion but to remand Sugdy "to jail to await trial".[193] Article 9(3) ICCPR renders pre-trial detention *ipso facto* arbitrary[194] except in the exceptional circumstance of "serious evidence giving rise to strong suspicion"[195] that suspects may flee,

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[184] Mahuika, n.179,¶7.1.

[185] *Ominayak v. Canada*, Comm. No. 167/1984 (1990).

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

[187] *Compromis*,¶¶21-22.

[188] *R v. Ambo*, NSWDC 182 (2011).

[189] *The Queen v. Mahendra*, NTSC 57 (2011).

[190] *Magaming v. The Queen*, HCA 40 (2013).

[191] ICERD, n.88, Art.5; ICCPR, n.2, Art.14; GC.18, n.181.

[192] ICCPR, n.2, Art.9.

[193] *Compromis*,¶25.

[194] ICCPR, n.2, Art.9(3).

[195] Council of Europe, Report on the Detention of Persons Pending Trial, Doc. 1403-30/5/94-1-E,¶16; UN Doc. A/HRC/26/32/Add.1.

destroy evidence or influence witnesses,[196] presently absent given the magistrate's regret in his remand.[197]

Had Sugdy received bail to visit his ill grandfather, he would not have committed suicide,[198] displaying mandatory sentencing's grave effect upon people's lives, particularly as it entails high probability of guilty verdicts.[199]

Second, HRC regarded sentences disproportionate to crime severity as arbitrary.[200] MCA's prison terms, spanning from 18 months to 4 years,[201] for mere unauthorized Marthite possession was unreasonably stringent as states strictly practice mandatory sentencing for graver crimes, *e.g.* US and Australia for murder of police officer and people-smuggling.[202]

iii. In any event, Agnostica failed to take measure to remedy MCA's discriminatory effect

Similar to *Cameroon,*[203] Agnostica's failure to take any measure[204] to ameliorate MCA's discriminatory effects despite widespread demonstration[205] categorically corroborated violation of non-discrimination.

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

[197] *Compromis*,¶25.

[198] *Compromis*,¶23.

[199] *Clarifications*,¶8.

[200] Concluding Observations of the Human Rights Committee: Australia, UN Doc. A/55/40,¶522; ICCPR Commentary, n.143, at 363.

[201] *Compromis*,¶23.

[202] Fact Sheet: Sentencing Amendment Act 2013 of Australia (2013).

[203] Cameroon, n.118,¶108.

[204] ICERD, n.88, Art.2(1)(c); CERD General Recommendation 31, UN Doc. A/60/18 at 98-108.

[205] *Compromis*,¶¶27-29; *Clarifications*,¶6.

C. FURTHER, THE EAST AGNOSTICAN REFERENDUM LEGITIMATELY EXPRESSED AGNOREVS' WILL TO SECEDE

Western Sahara affirmed that the legality of the exercise of self-determination requires due process to ensure "a free and genuine expression" of the people's will,[206] which East Agnostica has satisfied through a referendum[207] legitimately displaying Agnorevs' will from (1) its results and (2) transparent organization.

1. The referendum attained sufficient majority votes

A referendum reflects the people's will through simple majority support and significant participant turnout.[208] The East Agnostican referendum marked a clear majority with 73% votes favoring secession and 80% turnout,[209] significantly higher than most secession referendums, *e.g.* 60% turnout requirement in South Sudan[210] and 50% in Montenegro.[211] Even when calculated against 100% of eligible voters,[212] the result would still fulfill the simple majority vote at 58.4%.

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[206] *Western Sahara*, Advisory Opinion, 1975 ICJ Rep. 12,¶55.

[207] Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 8, (Oxford University Press, 2013) at 696,¶2.

[208] Matt Qvortrup, *A Comparative Study of Referendums: Government by the People*, (Manchester University Press, 2002).

[209] *Compromis*,¶38.

[210] Art.41, Southern Sudan Referendum Act (2009).

[211] OSCE/ODIHR Referendum Observation Mission Final Report (2006).

[212] *Compromis*,¶38.

2. The referendum was conducted transparently

The transparency of the East Agnostican referendum, affirmed by several international NGOs,[213] is apparent from the (i) freedom of voters, (ii) clarity of questions asked and (iii) timeline.

First, absent military violence and interference,[214] the referendum guaranteed freedom,[215] akin to successful referendums of Eritrea and South Sudan.[216] Reverentia's amassing of troops was confined to border control,[217] contrasting with Crimean referendum where Russian troops created suppressive environment by occupying Crimea.[218]

Second, *Quebec* recognizes that the referendum question "must be free of ambiguity".[219] The present referendum's question of secession[220] only allowing a simple yes or no answer reflects clarity and unambiguity,[221] distinct from the recent Catalan referendum's two-leveled question that must be answered both affirmatively to constitute a vote for independence.[222]

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[213] *Compromis*,¶38.

[214] *Compromis*,¶38.

[215] Code of Good Practice on Referendums, CDL-AD(2007)008 at 5 [Referendum Code].

[216] Statement by Secretary-General's Panel After Conclusion of Voting in Southern Sudan Referendum (2011).

[217] *Compromis*,¶37.

[218] Marxsen, n.49, at 377; *Concerning the Territorial Integrity of Ukraine*, UN Doc. A/RES/68/262.

[219] Quebec, n.85,¶87.

[220] *Compromis*,¶37.

[221] Referendum Code, n.215,¶I.3.

[222] Catalonia Decree 129/2014 (2014).

Third, even if the length of the East Agnostican referendum organization may not conform to international standards,[223] the rationale for such standard is merely for administrative purposes.[224] In fact, the 13-day organization of the East Agnostican referendum is comparable to the 17-day organized Slovenia and Croatia's referendums on secession from Yugoslavia.[225]

D. EAST AGNOSTICA'S INTEGRATION INTO REVERENTIA IS LEGAL AND THE COURT SHOULD NOT ORDER RETROCESSION OF EAST AGNOSTICA TO AGNOSTICA

Following secession, the new entity may choose integration into an existing state over independence.[226] The present integration is not an illegal annexation as it is conducted with (1) mutual consent of Reverentia[227] and East Agnostica with APP as the legitimate representative.[228] Alternatively, the integration is legal (2) pursuant to the principle of effectivity and (3) absent violation of *uti possidetis* principle.

1. APP legitimately represents Agnorevs' will to integrate

Kosovo underlined that secession is valid when undertaken by the people's legitimate representative.[229] East Agnostica's provincial parliament possessed sufficient political viability to act on Agnorevs' behalf since it was democratically elected.[230] Upon transition to APP, it

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[223] Venice Commission Opinion No. 762/2014, CDL-AD(2014)002,¶22.

[224] Report of the Commission on the Conduct of Referendums (1996) at 54-55.

[225] Peter Radan, *The Break-up of Yugoslavia and International Law*, (Routledge, 2002) at 171-177.

[226] Rüdiger Wolfrum, *The Max Planck Encyclopedia of Public International Law*, Vol. 9, (Oxford University Press, 2013) at 53-66,¶10 [Max Planck-IX].

[227] *Compromis*,¶41.

[228] *Compromis*,¶39.

[229] Kosovo, n.119,¶109.

[230] *Compromis*,¶8; Kosovo, n.119,¶103.

retained legitimacy to represent Agnorevs in ratifying the secession and entering into Integration Agreement with Reverentia upon unanimous vote and without Agnorevs' internal opposition.[231]

2. The integration is legal pursuant to the principle of effectivity

Jurists[232] argued that pursuant to the principle of effectivity, independence or integration of a new state may be legitimate regardless of the legality of her creation.[233] Presently, (a) Agnostica's loss of territorial control over East Agnostica and (b) states' recognition of Reverentia's new borders establish the effectiveness of East Agnostican integration.

a. Agnostica's loss of effective territorial control over East Agnostica renders the integration legal

When a state has virtually abandoned the struggle for supremacy, she has no right to claim sovereignty over the seceding territory by a mere assertion of right.[234] Affirmed by Badinter Commission and jurists in the Quebec Report, a state's existence is not a question of law but of fact,[235] rendering possible legitimate integration upon loss of parent state's control over the territory.

In response to Reverentia's deployment of troops into East Agnostica,[236] Agnostica's withdrawal of her troops and local police[237] constituted a waiver of territorial sovereignty,

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[231] *Compromis*,¶39.

[232] Hersch Lauterpacht, "Recognition of States in International Law", 53 Yale LJ 385 (1944) at 408; Josef Kunz, "Critical Remarks on Lauterpacht's 'Recognition in International Law'", 44 AJIL 714 (1950) at 715.

[233] Quebec, n.85,¶141.

[234] Crawford, n.63,¶383.

[235] Roselyn Higgins, et al., The Territorial Integrity of Quebec in the Event of the Attainment of Sovereignty (1992),¶2.40,2.42 [Quebec Report]; Badinter, n.103, at 182-183.

[236] *Compromis*,¶41.

resembling Portugal's withdrawal of her authorities from East Timor one day after Indonesia's invasion in 1975.[238] Agnostica's loss of control may not be justified for the security of her personnel,[239] as Portugal's withdrawal of her authorities to avoid conflict was still deemed an abandonment of her sovereignty.[240]

b. States' recognition further legitimizes the integration

Incorporation of a territory into a state is deemed legal upon states' recognition, even without parent state's consent.[241] Jurists[242] recognize that the principle of permissive recognition, *i.e.* transfer of sovereignty by the parent state,[243] is not applicable when the parent state is unable to subdue the secessionists.[244] This is evinced by *de jure* India's recognition of Bangladesh before Pakistan's,[245] and international community's recognition of Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia before Yugoslavia's.[246]

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[237] *Clarifications*,¶1.

[238] *East Timor* (*Portugal v. Australia*), 1995 ICJ Rep. 90, Sep. Op. Judge Oda,¶13; Sep. Op. Judge Skubiszewski,¶151,153 [East Timor].

[239] *Clarifications*,¶1.

[240] East Timor, n.238, Sep. Op. Judge Skubiszewski,¶151,153.

[241] Max Planck-IX, n.226, at 53-66,¶2; Quebec, n.85,¶155; Crawford, n.63, at 383.

[242] Christine Haverland, "Secession", 10 EPIL 384 (1987) at 387 [Haverland]; David Raič, *Statehood and the Law of Self-Determination*, (Martinus Nijhoff, 2002) at 93; Oppenheim, n.62, at 144.

[243] Haverland, n.242, at 388.

[244] Oppenheim, n.62, at 144.

[245] Yonah Alexander & Robert Friedlander, *Self-Determination: National, Regional and Global Dimensions*, (Westview Press, 1980) at 98.

[246] Mojmir Mrak, *Sucession of States*, (Martinus Nijhoff, 1999) at 26.

In fact, numerous states recognized Indonesia's UN-opposed[247] annexation of East Timor against the people's self-determination that was yet to be exercised. *A fortiori*, 30 states' recognition of the new Reverentian borders[248] legitimizes the peaceful integration of East Agnostica consistent with Agnorevs' will of self-determination.

3. The integration does not violate the principle of *uti possidetis juris*

In the event of secession, the customary principle[249] of *uti possidetis juris* allows establishment of international borders from the most recent internal federal boundaries and not limited to colonial demarcation.[250] Such expansion was confirmed by the Badinter Commission in the non-consensual dissolution of Yugoslavia,[251] Russia and Latvia in determining the latter's frontiers in case of secession,[252] and jurists.[253] Hence, the alteration of Agnostica's frontiers as demarcated by Credera[254] in the present integration does not violate this principle.

Since East Agnostica's secession and integration into Reverentia are legal, this Court should not order its retrocession to Agnostica against Agnorevs' will.

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[247] East Timor, n.238, Sep. Op. Judge Skubiszewski,¶26.

[248] *Clarifications*,¶7.

[249] *Frontier Dispute* (*Burkina Faso v. Mali*), 1986 ICJ Rep. 554,¶20,23.

[250] Steven Ratner, "Drawing a Better Line: Uti Possidetis and the Border of New States", 90 AJIL 590 (1996) at 590-591.

[251] Badinter, n.103, at 183-185.

[252] Vidmar, n.126, at 338.

[253] Quebec Report, n.235,¶2.2,2.46.

[254] *Compromis*,¶1.

III. THE MARTHITE CONVENTION WAS IN EFFECT UNTIL 1 MARCH 2013, AND AGNOSTICA BREACHED THAT CONVENTION

Pacta sunt servanda is the treaty regime's pillar in pursuing international cooperation.[255] In contravention to this principle, Agnostica has (A) unlawfully terminated MC on 2 April 2012 and (B) breached it. Subsequently, (C) MC was still in effect until 1 March 2013.

A. AGNOSTICA HAS UNLAWFULLY TERMINATED MARTHITE CONVENTION

Preliminarily, since MC predated VCLT,[256] this dispute is subject to international law independently of VCLT.[257] Agnostica (1) may not denounce MC through *quid pro quo* relationship. Alternatively, Agnostica has unlawfully invoked termination grounds of (2) material breach or (3) changed circumstances (4) without fulfilling her procedural duty.

1. Marthite Convention was non-denunciable by way of *quid pro quo*

Reflected in *Fisheries*, one party that has benefited from the execution of the same treaty provisions may not denounce her obligations.[258] Agnostica had benefited from Reverentia's facilities construction for 100 Swiss francs,[259] equivalent to only less than 30 grams of gold based on the 1938 currency at MC's conclusion.[260] Given such minimum payment, MC should be deemed to guarantee Reverentia access to Marthite for 99 years.[261] Hence, Agnostica was barred from denouncing MC.

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[255] UN Charter, n.1, Art.2(2); *Nuclear Tests* (*New Zealand v France*), 1974 ICJ Rep. 457,¶49.

[256] *Compromis*,¶10,44.

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

[258] *Fisheries Jurisdiction* (*United Kingdom v. Iceland*), 1973 ICJ Rep. 3,¶34 [Fisheries].

[259] MC, Art.2.

[260] Switzerland and Gold Transactions in the Second World War: Interim Report (1998).

[261] MC, Art.12.

2. Agnostica's invocation of material breach as termination ground was unfounded

Termination ground of material breach under Article 60 VCLT is controversial,[262] as reflected in *ICAO Appeal*,[263] *ELSI*,[264] and *Hostages*.[265] Assuming its application, a violation of a provision essential to achieve the treaty's object and purpose would form material breach.[266] Consequently, (a) RMT's Marthite sales to pharmaceutical companies (b) did not constitute material breach of MC.

a. RMT's Marthite sales to pharmaceutical companies were not attributable to Reverentia

Pursuant to *Barcelona Traction*'s notion of 'corporate veil',[267] state-owned corporation's conduct is not attributable to the state unless it exercises governmental authority.[268] Comparable to *Schering* where the formation of a supervisory Council by the operation of Iranian law was insufficient to attribute the Council's future actions to Iran,[269] RMT's empowerment under

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[262] Duncan Hollis, *The Oxford Guide to Treaties*, (Oxford University Press, 2012) at 576-633 [Hollis].

[263] *Appeal Relating to the Jurisdiction of the ICAO Council* (*India v. Pakistan*), 1972 ICJ Rep. 46 at 62¶29(1)(b) [ICAO].

[264] *Elettronica Sicula S.p.A. (ELSI)* (*United States v. Italy*), 1989 ICJ Rep. 15.

[265] *United States Diplomatic and Consular Staff in Tehran* (*United States v. Iran*), 1980 ICJ Rep. 3 [Tehran].

[266] VCLT, n.257, Art.60(3)(b).

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

[268] Art.5, *Articles on Responsibility of States for Internationally Wrongful Acts*, UN Doc. A/56/83 [ARSIWA].

[269] *Schering Corporation v. Iran*, (1984) 5 Iran-US CTR 361.

Reverentia's Government charter[270] *vis-à-vis* MC did not *ipso facto* attribute RMT's subsequent Marthite sales. Since RMT was empowered to distribute Marthite only for traditional users,[271] its sales to pharmaceutical companies without specific orders from Reverentia were not attributable.

b. Even if attributable, RMT's Marthite sales to pharmaceutical companies did not constitute material breach

Consequently, (i) the mineral volume sold under Article 4(d) and (ii) RMT's price adjustment under Article 4(b) and (c) MC did not constitute material breach.

First, Article 4(d) MC allowed Marthite export when "the supply of Marthite *in such year*" exceeded traditional users' demand by 25%. Given several weeks were allocated before RMT focused on international market in late 2011,[272] RMT could increase production level before the end of 2011. As Marthite's local demand between 1938-2011 only varied 15-20 tons per month,[273] the production could be increased from 20 tons to 100 tons, *i.e.* 25 tons for traditional users to meet the 125% margin and 75 tons for pharmaceutical companies.[274] Hence, RMT could still "satisfy local demand".[275]

Second, Article 4(b) and (c) MC stipulated RMT's right to set "prices at which [it] may resell Marthite" based on the prevailing market. Absent ambiguity, both States' practice of annually reviewing price parameters[276] did not constitute agreement for such provisions'

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[270] MC, Art.3.

[271] MC, Art.4.

[272] *Compromis*,¶13.

[273] *Compromis*,¶11; *Clarifications*,¶10.

[274] *Compromis*,¶13.

[275] *Compromis*,¶15.

[276] *Clarifications*,¶9.

interpretation.[277] Since Marthite price increase is required to maintain market equilibrium, RMT's adjustment of Marthite reselling price as applied to pharmaceutical companies conformed to such provisions.

3. *Rebus sic stantibus* was unlawfully invoked as termination ground

Absent consistent state practice and *opinio juris*,[278] international tribunals[279] and jurists[280] do not recognize fundamental change of circumstances or *rebus sic stantibus* as customary termination ground. The Court, despite recognizing Article 62 VCLT as CIL in *Fisheries*[281] and *Gabčíkovo-Nagymaros*,[282] never specified which parts were customary. In fact, jurisprudences indicated lack of defined scope,[283] *e.g.* impossibility of performance was required in *Canal*[284] but not in *Racke*.[285]

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[277] *Brazilian Loans* (*France v. United States*), 1929 PCIJ (Ser. A) No. 21 at 119 [Brazilian Loans].

[278] John Moore, *A Digest of International Law*, (Government Printing Office, 1906),§143; Revue Générale de Droit International Public (1920) at 106.

[279] Hollis, n.262.

[280] Hersch Lauterpacht, *Private Law Sources and Analogies of International Law: With Special Reference to International Arbitration*, (The Lawbook Exchange, Ltd., 1927) at 167-170; William Hall, *International Law*, (Clarendon Press, 1917) at 369.

[281] Fisheries, n.258,¶36.

[282] *Gabčíkovo-Nagymaros Project Case* (*Hungary v. Slovakia*), 1997 ICJ Rep. 7,¶46,99 [Gabčíkovo-Nagymaros].

[283] *Nationality Decrees Issued in Tunis and Morocco* (*France v. United Kingdom*), 1923 PCIJ (Ser. B) No. 4; *Free Zones of Upper Savoy and the District of Gex* (*France v. Switzerland*), 1932 PCIJ (Ser. A) No. 22 [Free Zones].

[284] *De Gallifet v. Commune de Pélissanne*, D. 1876. 1. 193 (1876).

[285] *Racke GmbH & Co. v. Hauptzollamt Mainz*, Case C-162/96 (1998),¶¶53-57 [Racke].

Assuming its applicability, Marthite's increased value[286] outside traditional uses[287] was not sufficient to invoke termination ground absent fulfillment of cumulative conditions,[288] *i.e.* (a) fundamentality, (b) unforeseen change, (c) circumstance underlying States' consent to MC, and (d) radical transformation of obligations.

a. Marthite's increased value was not fundamental

A change is only fundamental when it imperils one party's existence or vital development.[289] Contrary to *Fisheries* where UK's law could have endangered Iceland's subsistence on fisheries,[290] Agnostica's development was not contingent upon Marthite availability, provided existence of other minerals.[291]

Even applying the lower fundamentality test, *i.e.* imbalance in the *quid pro quo* relationship, fundamentality is not met when the change is offset by other circumstances.[292] In *Fisheries*, UK contended fundamentality since the increased efficiency of trawlers fishing in Icelandic waters was offset by the reduction of national fleets, rendering the total fish catch fairly similar.[293]

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[286] *Compromis*,¶12.

[287] MC, Preamble (e).

[288] UN Doc. A/CN.4/156/Add.1-3 at 78,¶7 [Waldock]; Gabčíkovo-Nagymaros, n.282,¶104.

[289] Fisheries, n.258,¶38.

[290] *Ibid*,¶41.

[291] *Compromis*,¶3,5,9-11.

[292] Georg Dahm, et al., *Völkerrecht*, Vol. I, (de Gruyter, 1989) at 751.

[293] Fisheries, n.258,¶39.

Comparably, Marthite's new value causing escalated demand[294] was counter-balanced by increased production or resale price,[295] resulting in Agnostica's increased revenue since the 10% royalty was tied to resale price.[296] In contrast, the 16% royalties under D'Arcy concession, tied to net profit, were small and fluctuated violently.[297] As both States' earnings rose exponentially, fundamentality was disproven.

b. Both Parties foresaw Marthite's value increase outside traditional uses

A change must be unforeseen, *i.e.* not anticipated by all parties as reflected in their intentions at treaty conclusion.[298] Although MC's preamble recognized Marthite's insignificant value outside traditional uses,[299] ILC underlined that treaty provision is prioritized in ascertaining both Parties' original intention.[300]

Resembling *Gabčíkovo-Nagymaros* where the language of obligations requiring environmental protection throughout the project's execution was found to have anticipated environmental law developments,[301] Article 4 MC providing Marthite export "without restriction on [...] intended use" contemplated an increased value possibility. This 'evolutionary

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[294] *Compromis*,¶¶12-13.

[295] *Compromis*,¶13.

[296] MC, Art.3.

[297] Alan Ford, *The Anglo-Iranian Oil Dispute of 1951-1952*, (University of California Press, 1954) at 17.

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

[299] MC, Preamble (e); VCLT, n.257, Art.31(2).

[300] UN Doc. A/CN.4/Ser.A/1964 at 278, 287.

[301] Gabčíkovo-Nagymaros, n.282,¶18,104.

interpretation'[302] was also applied in *Namibia*[303] and *Aegean Sea*.[304] In any event, reflected by its annual price adjustment,[305] Marthite as a non-renewable resource was bound to increase in economical value.[306]

c. Marthite's previous value was not a circumstance underlying both States' consent to Marthite Convention

A circumstance essentially underlies the parties' consent when it constitutes the treaty's purpose,[307] without which the parties would not have entered into the treaty or would have drafted it differently.[308] Applying this 'but for' test in *Gabčíkovo-Nagymaros*, Hungary's argument that the prevailing political uprising constituted fundamental change was rejected since such circumstance was "not so closely linked" to the 1977 treaty's purpose.[309]

MC was established to honor Reverentian traditional practice,[310] a purpose that would be upheld even in the absence of Marthite's significant commercial value at treaty formation,[311]

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[302] Eirik Bjørge, *The Evolutionary Interpretation of Treaties*, (Oxford University Press, 2014) at 76.

[303] *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. 16 at 53 [Namibia].

[304] *Aegan Sea Continental Shelf* (*Greece v. Turkey*), 1978 ICJ Rep. 3 at 77.

[305] *Clarifications*,¶9.

[306] Shatayanan Devarajan & Anthony Fisher, "Hotelling's "Economics of Exhaustible Resources": Fifty Years Later", 19 J. Econ. Lit. 65 (1981).

[307] Racke, n.285,¶55.

[308] Villiger, n.298, at 774.

[309] Gabčíkovo-Nagymaros, n.282,¶104.

[310] MC, Preamble (b)-(c),(e).

[311] *Compromis*,¶11.

contrary to *Racke* where maintenance of peace in Yugoslavia constituted essential condition since the Cooperation Agreement would not be accomplished without it.[312]

d. Agnostica's obligation to grant Reverentia access to Marthite was not radically transformed

Agnostica's obligation was not radically transformed, as (i) it was not "essentially different from what was originally undertaken"[313] and (ii) the realization of MC's object and purpose was not substantially hindered.[314]

First, in *Brazilian Loans*, the Court decided that payment in *gold franc* could still be calculated based on the standard of gold value existing at the formation of loan contract.[315] Similarly, Agnostica's obligation to grant Reverentia access to Marthite could still be performed regardless of Marthite's increased value by accruing royalty payment.[316] Absent undue burden upon Agnostica,[317] her obligation was not essentially different.

Second, comparable with *Gabčíkovo-Nagymaros* where the Court deemed the changed political, economic, and environmental conditions to not have substantially hindered the realization of the 1977 treaty's object and purpose,[318] Marthite's two competing uses[319] did not

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[312] Racke, n.285,¶55.

[313] Fisheries, n.258,¶43.

[314] Waldock, n.288, at 80,¶2.

[315] Brazilian Loans, n.277, at 110,125.

[316] *Supra*, Section III.A.3.a; MC, Art.3.

[317] UN Doc. A/CN.4/SER.A/1966/Add.1 at 258,¶6 [YBILC].

[318] Gabčíkovo-Nagymaros, n.282,¶104.

[319] *Compromis*,¶13.

hinder MC's object and purpose, *i.e.* the assurance of Marthite supply for traditional users.[320] In any event, similar with Whaling Convention's purpose to conserve whaling sustainability that evinced its evolving nature,[321] MC's purpose of "respecting and honoring [Reverentia's] ancient traditions"[322] reflected an attribute of living instrument, designed to adapt to changes.

4. The termination was not effective as of 2 April 2012

Even if found valid, Agnostica's invocation did not terminate MC as of 2 April 2012, since (a) the procedural safeguards (b) had not been observed.

a. Termination is conditional upon observance of procedural rules

Noting states' customary obligation to cooperate,[323] any treaty breach by Reverentia and changed circumstance, however serious, did not *ipso facto* terminate MC.[324] ILC,[325] jurists,[326] state practice,[327] and jurisprudences[328] have acknowledged that invocation of said termination

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[320] MC, Preamble (d).

[321] *Whaling in the Antarctic* (*Australia v. Japan: New Zealand Intervening*), 2014 ICJ Rep. 2 at 45.

[322] MC, Preamble (c).

[323] ARSIWA, n.268, Art.41; Friendly Relations, n.60; UN Doc. A/RES/29/3281.

[324] UN Doc. A/CONF.39/II/Add.1-2, at 79.

[325] *Ibid*, at 182.

[326] Namibia, n.303, at 339,¶31; Herbert Briggs, "Unilateral Denunciation of Treaties: The Vienna Convention and the International Court of Justice", 68 AJIL 51 (1974) at 55-57.

[327] *Denunciation of the Treaty of November 2nd, 1865, between China and Belgium* (*Belgium v. China*), 1929 PCIJ (Ser. A) No. 18.

[328] Fisheries, n.258,¶21; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, 1980 ICJ Rep. 73 at 94-95,¶47; Tehran, n.265, at 94,¶46.

grounds must fulfill procedural safeguards,[329] consistent with Article 2(3) and 33(1) UN Charter[330] to peacefully settle disputes.[331]

b. Agnostica did not fulfill the customary procedural safeguards

The Court may rely on Articles 65-68 VCLT as *lex specialis* on treaty termination procedures as they reflect *lex ferenda*[332] and 'good faith' principle.[333] Accordingly, Agnostica failed to (i) notify[334] and (ii) negotiate[335] with Reverentia before terminating MC.

i. Agnostica's proposal to mutually terminate Marthite Convention was insufficient to fulfill her duty to notify

Agnostica's offer to consensually terminate MC could not be considered a valid notice absent written[336] indication of unilateral termination as alternative measure along with legal reasons.[337]

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[329] UN Doc. A/CN.4/191, at 424.

[330] *Compromis*,¶44.

[331] Friendly Relations, n.60, Annex.

[332] Fisheries, n.258,¶44.

[333] Gabčíkovo-Nagymaros, n.282,¶109.

[334] VCLT, n.257, Art.65(1).

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

[336] *Compromis*,¶14; VCLT, n.257, Art.67(1); OR 1969 Plenary 157,¶39.

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

ii. Agnostica failed to negotiate with Reverentia prior to declaring termination

Even if the notice was valid, Agnostica should not have terminated MC[338] without Reverentia's consent, resembling *Free Zones* where the Switzerland-France treaties abrogation was held impossible absent Switzerland's consent.[339]

Alternatively, Reverentia's objection on 21 February 2012[340] obliged Agnostica to seek a solution through the means under Article 33 UN Charter.[341] Similarly required by this Court in *Fisheries*,[342] Agnostica should have initiated a meaningful negotiation[343] to agree on justified reasons for the termination[344] or to revise MC in good faith,[345] *e.g.* by negotiating price-sharing agreement in addition to the yearly price band adjustments.[346]

B. AGNOSTICA'S BAXTER LEASE AND MCA ENACTMENT BREACHED MARTHITE CONVENTION

Correspondingly, Agnostica's (1) leasing agreement with Baxter and (2) enactment of MCA violated MC.[347]

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[338] *Compromis*,¶16.

[339] Free Zones, n.283, at 18.

[340] *Compromis*,¶15.

[341] VCLT, n.257, Art.65(3); OR 1968 CoW at 402, 418, 429.

[342] Fisheries, n.258,¶¶41-70.

[343] Gabčíkovo-Nagymaros, n.282,¶77.

[344] YBILC, n.317, at 262,¶1.

[345] Athanassios Vamvoukos, *Termination of Treaties in International Law: The Doctrines of Rebus Sic Stantibus and Desuetude*, (Clarendon Press, 1985) at 206-14.

[346] *Clarifications*,¶9.

[347] ARSIWA, n.268, Art.12.

1. The Baxter lease contravened Agnostica's exclusive arrangement with RMT

In light of Agnostica's limited sovereignty over Marthite upon treaty formation,[348] Article 3 MC stipulated that RMT shall "become the *exclusive owner* of [extracted] Marthite" upon royalty payment.[349] The 1938-2011 practice where only RMT accessed Marthite for traditional practitioners[350] further confirmed their agreement as to said treaty interpretation.[351] Such exclusive arrangement with RMT prohibited Agnostica from leasing to Baxter.

2. MCA violated Reverentia's right to access Marthite

MCA's complete ban of Marthite sale or transfer into Reverentia[352] utterly disregarded Agnostica's obligation to ensure mineral supply to Reverentian traditional users.[353] Reverentia is entitled to bring claim with respect to RMT and traditional users given the infringement of her own right under MC, contrary to *Barcelona Traction* where the Court decided to rule the issue of protection over nationals under diplomatic protection in the absence of treaty between Serbia and Belgium.[354]

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[348] MC, Art.1; *Texaco v. Libya*, 17 ILM 1 (1978),¶¶66-67.

[349] MC, Art.3.

[350] *Compromis*,¶11.

[351] VCLT, n.257, Art.31(3)(b).

[352] *Compromis*,¶22.

[353] MC, Art.4(a).

[354] Barcelona Traction, n.267,¶36,86.

C. IN ANY EVENT, MARTHITE CONVENTION AUTOMATICALLY CEASED AS OF 1 MARCH 2013 IN LIGHT OF EAST AGNOSTICA'S INTEGRATION INTO REVERENTIA

Under 'moving treaty frontiers' principle, a territory undergoing change in sovereignty automatically passes out of the predecessor sovereign's treaty regime into the successor sovereign's regime.[355] Applying this rule, since MC was concerned with Marthite located within East Agnostica for the protection of Reverentian traditional users, East Agnostica's integration into Reverentia thus resulted in MC's unnecessary validity and thus automatic cessation.

[355] UN Doc. A/CN.4/214 at 52,¶2.

IV. REVERENTIA'S REMOVAL OF THE SOFTWARE IN THE MARTHITE EXTRACTION FACILITIES WAS CONSISTENT WITH INTERNATIONAL LAW

Pursuant to the principle of reciprocity, international law entitles a state injured from an unlawful act to take justice into her own hands.[356] Reverentia's removal of the software was warranted as (A) non-performance or (B) countermeasure. Thus, (C) Agnostica should make reparation.

A. THE SOFTWARE REMOVAL WAS JUSTIFIED AS NON-PERFORMANCE

Recognized by numerous states[357] and jurists,[358] the principle of *exceptio inadimplenti contractus* allows the other party's non-performance of obligation to justify a state's non-performance of closely related obligation.[359] Similar to *River Meuse* where the Court rejected Netherlands' complaint of Belgium's lock construction "of which [Netherlands] themselves set an example in the past",[360] Agnostica's unlawful MC termination or *arguendo* Baxter lease legitimized Reverentia's subsequent removal of Marthite technology.[361]

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[356] Hans Kelsen, *Pure Theory of Law*, (University of California Press, 1960) at 321.

[357] Art.82, Swiss Code of Obligations (1911); Art.1460, Italian Codice Civile (1942); Art.1426, Spanish Código Civil (1889).

[358] *Diversion of Water from the Meuse* (*Netherlands v. Belgium*), 1937 PCIJ (Ser. A/B) No. 70, Sep. Op. Judge Hudson at 75-78 [River Meuse]; Namibia, n.303, Sep. Op. Judge de Castro at 213-213.

[359] UN Doc. A/CN.4/498/Add.2,¶325.

[360] River Meuse, n.358, at 25.

[361] MC, Art.1.

B. ALTERNATIVELY, THE SOFTWARE REMOVAL CONSTITUTED A LAWFUL COUNTERMEASURE

In response to Agnostica's unlawful termination or treaty breach,[362] Reverentia's resort to software removal constituted a lawful countermeasure,[363] given (1) its proportionality[364] and (2) her calling to cessation of the wrongful act.[365] Consequently, (3) Agnostica is obliged to make reparation.

1. The software removal was proportionate

Supported by state practice, [366] doctrines, [367] and jurisprudences, [368] a measure is proportionate when it is (i) suitable to induce the breaching party's compliance and (ii) necessary in view of (iii) the proper balance between that objective's achievement and harm caused.

First, a measure is suitable when taken in relation to the closely related obligation.[369] In *ICAO*, India's clearance to Pakistani aircraft was suitable in light of its legal equivalence with

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[362] ARSIWA, n.268, Art.2.

[363] *Ibid*, Art.22.

[364] *Ibid*, Art.51.

[365] *Ibid*, Art.49.

[366] 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.

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

[368] *Responsibility of Germany for Damage Caused in the Portuguese Colonies in the South of Africa* (*Portugal v. Germany*), 2 UNRIAA 1013 (1928) at 1026; Gabčíkovo-Nagymaros, n.282,¶85,87.

[369] *Air Services Agreement of 27 March 1946 between the United States of America and France* (*France v. United States*), 18 UNRIAA 416 (1978),¶83 [Air Services].

Pakistan's hijacking of aircraft.[370] Similarly, the software removal was suitable given its reciprocity towards Agnostica's recommitment to the terms of MC.[371]

Second, *Korea-Measures*[372] and *Ancher & Lyle*[373] held that necessity is proven when alternatives are absent. Presently, there were no other alternatives equally effective to induce Agnostica's compliance considering the mining operations' dependency on the operation systems,[374] *e.g.* the withdrawal of only engineers would not suffice given her Baxter lease providing substitutions of engineers.[375]

Third, the software removal was not extremely harmful noting Agnostica's capability to resume mining operation[376] and Baxter's ability to increase Marthite price given the absence of price band provisions in the lease[377] and Marthite monopoly in the market.[378] In fact, the daily production drop from 550-700 kilograms in 2011 to 100 kilograms in April 2012 was far outweighed by prices increased much higher than those set by RMT in late 2011.[379] Even

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[370] ICAO, n.263.

[371] *Compromis*,¶18.

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

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

[374] *Compromis*,¶18; *Clarifications*,¶13.

[375] *Compromis*,¶18.

[376] *Compromis*,¶20.

[377] *Clarifications*,¶11.

[378] *Compromis*,¶9; *Clarifications*,¶5.

[379] *Compromis*,¶11,21.

considering the measure's reversibility reflected in *Gabčíkovo-Nagymaros*,[380] the software removal was proportional since Marthite production returned to 2011 levels upon software re-installment in November 2013.[381]

Any legitimate interest of children worldwide in Marthite[382] was inapposite since a countermeasure's impact is confined to loss suffered by third states, as found in *Air Services* where the impact of France's action on international agreements with third states was considered.[383] Agnostica was further barred from alleging harm suffered by Agnorev traditional users absent guarantee of supply for traditional users in the Baxter lease[384] and her own MCA.[385] Since the measure's aim for inducing Agnostica's recommitment with MC superseded Agnostica's loss of software, the countermeasure was hence proportionate.

2. Reverentia's promise to return the software sufficiently called for Agnostica's recommitment to Marthite Convention

Countermeasures, when taken urgently to preserve the injured state's rights, exempt the necessity of prior notification.[386] Since the Baxter lease entered into force one day after MC termination,[387] Reverentia could not have notified Agnostica nor provided her opportunity to

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[380] Gabčíkovo-Nagymaros, n.282,¶87.

[381] *Clarifications*,¶13.

[382] *Compromis*,¶12.

[383] Air Services, n.369, at 83.

[384] *Clarifications*,¶11.

[385] *Compromis*,¶22.

[386] ARSIWA, n.268, Art.52(2).

[387] *Compromis*,¶16.

respond[388] but to immediately order the engineers to remove the software before returning to Reverentia.[389]

In any event, Nuvallus's statement "…until such time as Agnostica agrees to respect its treaty obligations"[390] promised the measure's reversibility, as affirmed by Reverentian Vice-President on *The Reverentian Times* that the software would immediately be returned upon Agnostica's approval for the engineers' return.[391] Similar with Hungary's several notices given to Czechoslovakia in *Gabčíkovo-Nagymaros*,[392] Reverentia sufficiently called Agnostica to recommit to MC.

C. CONSEQUENTLY, REVERENTIA IS ENTITLED TO REPARATION

Restitutio in integrum principle[393] accords Reverentia full reparation[394] from Agnostica.[395] Since restitution[396] by recommitting to MC would be impossible given East Agnostica's integration, Agnostica should compensate[397] Reverentia equitable to the value of the Baxter

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[388] ARSIWA, n.268, Art.52(1)(b).

[389] *Compromis*,¶17.

[390] *Compromis*,¶17.

[391] *Compromis*,¶18.

[392] Gabčíkovo-Nagymaros, n.282,¶73.

[393] *Guiso-Gallisay v. Italy*, App. No. 58858/00 (2009),¶53.

[394] ARSIWA, n.268, Art.31.

[395] Barcelona Traction, n.267,¶46.

[396] ARSIWA, n.268, Art.35.

[397] *Ibid*, Art.36.

lease,[398] similar with *Chorzów* where the injured company was entitled to the value of property lost at the time of expropriation.[399]

Moreover, *Trail Smelter* established that extent of damages is assessed based on just and reasonable inferences to reach an approximate result.[400] Given MC's validity from 2 April 2012 until 1 March 2013, Reverentia is also proportionately[401] entitled to loss of prospect profits[402] equivalent to extracted Marthite subject to further expert inquiry. In addition to compensation, the Court's judgment would suffice as satisfaction.[403]

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[398] *Compromis*,¶16.

[399] *The Factory at Chorzów* (*Germany v. Poland*), 1928 PCIJ (Ser. A) No. 17 at 47-48, 53.

[400] *Trail Smelter Case* (*United States v. Canada*), 3 UNRIAA 1905 (1938/1941) at 1920.

[401] *Standley and Others*, ECR I-2603 (1999),¶52.

[402] UN Doc. S/AC26/1999/14,¶140.

[403] Corfu Channel, n.19, at 35.

PRAYER FOR RELIEF

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

I. Reverentia's support for the referendum in East Agnostica is consistent with international law;

II. East Agnostica's secession from Agnostica and integration into Reverentia are consistent with international law, and in any event, this Court should not order the retrocession of East Agnostica to Agnostica against the expressed will of its population;

III. The Marthite Convention was in effect until 1 March 2013, and Agnostica breached that Convention; and

IV. Reverentia's removal of the software in the Marthite extraction facilities was consistent with international law.

Respectfully submitted,

Agents for Reverentia, 315R