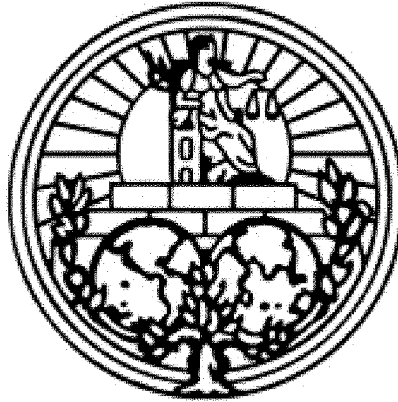
387R



IN THE

INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE,

NETHERLANDS

THE 2022 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

CASE CONCERNING THE SUTHAN REFERENDUM

THE DEMOCRATIC REPUBLIC OF ANTARA

APPLICANT

v.

THE VELAN KINGDOM OF RAVARIA

RESPONDENT

MEMORIAL *for the* **RESPONDENT**

TABLE OF CONTENTS

INDEX OF AUTHORITIES VI

STATEMENT OF JURISDICTION XIX

QUESTIONS PRESENTED XX

STATEMENT OF FACTS XXI

SUMMARY OF PLEADINGS XXV

PLEADINGS 1

A. THE DOCUMENTS OBTAINED IN THE ILLEGAL SEARCH OF MS. WALTERS' VEHICLE AND THE 30 MAY 2021 RECORDING ARE INADMISSIBLE AS EVIDENCE IN THESE PROCEEDINGS 1

I. THE DOCUMENTS OBTAINED IN THE ILLEGAL SEARCH OF MS. WALTERS' VEHICLE ARE INADMISSIBLE AS EVIDENCE 1

1. The documents were obtained in violation of the VCDR 1

a. Seizure and opening of the briefcase were unlawful 2

b. Photocopying of the documents was unlawful 2

2. The documents must not be admitted as evidence 4

a. Reliance cannot be placed on Corfu Channel 4

b. Admissibility is prohibited by the doctrine of the fruit of the poisonous tree 4

c. Admissibility is prohibited on the ground of procedural fairness 5

II. THE 30 MAY 2021 RECORDING IS INADMISSIBLE AS EVIDENCE 5

1. The recording is protected by the evidentiary privilege of settlement negotiations ... 6

2. The recording is protected by the evidentiary privilege of confidentiality 7

B. RAVARIA'S ALLEGED FINANCIAL CONTRIBUTIONS AND CYBER OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM WERE CONSISTENT WITH INTERNATIONAL LAW 9

I. THE ALLEGED FINANCIAL CONTRIBUTIONS WERE CONSISTENT WITH INTERNATIONAL LAW 9

1. The alleged financial contributions did not violate Antara's sovereignty 10

2. The alleged financial contributions did not violate the principle of non-intervention 11

3. The alleged financial contributions did not violate the right of self-determination . 11

II. THE CYBER OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM WERE CONSISTENT WITH INTERNATIONAL LAW 12

1. The cyber operations are not attributable to Ravaria 12

2. *In any event*, the cyber operations were consistent with international law 13

a. The cyber operations did not violate Antara's sovereignty 13

b. The cyber operations did not violate the principle of non-intervention 14

c. The cyber operations did not violate the ICCPR 15

C. ANTARA'S ORDER SUSPENDING PROF. LIAM HUNLAND'S PANO ACCOUNT WAS IN VIOLATION OF INTERNATIONAL LAW, AND ANTARA MUST THEREFORE RESCIND THE ORDER 18

I. RAVARIA HAS THE STANDING TO BRING A CLAIM OF HUMAN RIGHTS VIOLATIONS OF HUNLAND 18

1. The requirement to establish an effective nationality is not applicable to cases of singular nationality 19

2. In any case, this Court did not propound a general rule with regards effective nationality in *Nottebohm* 19

II. ANTARA'S ORDER VIOLATES ITS OBLIGATIONS UNDER THE ICCPR 20

1. Antara's Order interferes with the right guaranteed under Article 19 of the ICCPR 20

2. Antara's Order interferes with the right guaranteed under Article 21 of the ICCPR 21

3. Antara's Order violated Articles 19 and 21 read in conjunction with Article 2(3) of the ICCPR 21

4. Antara's Order does not satisfy the three-part test 22

a. Antara's Order is not provided by law 22

b. Antara's Order does not fulfil any legitimate aim 24

c. Antara's Order is not necessary in a democratic society 26

D. ANTARA'S INTERFERENCE WITH COMPUTERS AND DEVICES OPERATING ON RAVARIAN SOIL, RESULTING FROM THE DECISION TO TAKE DOWN THE LUNAR BOTNET, WAS IN VIOLATION OF INTERNATIONAL LAW 29

I. ANTARA VIOLATED RAVARIA'S SOVEREIGNTY 29

1. Extraterritorial enforcement jurisdiction usurps an inherently governmental function 29

2. Intent of the violation or consequential harm is immaterial 30

3. Operation Moonstroke violated Ravaria's sovereignty 31

II. ANTARA VIOLATED THE PRINCIPLE OF NON-INTERVENTION 31

1. Antara's actions affected Ravaria's *domaine réservé* 32

2. Antara's actions were coercive 33

III. ANTARA VIOLATED THE OBJECT AND PURPOSE OF THE BUDAPEST CONVENTION....... 33

IV. ANTARA'S WRONGFULNESS CANNOT BE JUSTIFIED UNDER THE DOCTRINE OF NECESSITY...35

PRAYER FOR RELIEF 36

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

1. Convention on Cybercrime, (2001) ETS. No. 185. 29
2. Convention on International Civil Aviation, Dec. 12, 1944, 15 U.N.T.S. 295. 29
3. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171... 11
4. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. 11
5. U.N. Charter. 5
6. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95. .... 1, 2, 3

UNITED NATIONS SOURCES

7. G.A. Res. 56/83, Responsibility of States for Internationally Wrongful Acts, (2002). 12, 33
8. Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law, A/57/562 and Corr. 1 (2002). 6
9. UN ECOSOC, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights', E/CN.4/1985/4 (1984). 25
10. UNCITRAL, 'Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation', A/CN.9/514 (2002). 7
11. UNCITRAL, 'Report of the Working Group on Arbitration on the work of its thirty-fifth session', A/CN.9/506 (2001) 7
12. UNCITRAL, 'Report of the Working Group on Arbitration on the work of its thirty-fourth session', A/CN.9/487 (2001). 7
13. UNGA, 'Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations', A/RES/2625(XXV) (1970). 11, 31

14. UNGA, ‘Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States’, A/RES/36/103 (1981). 14

15. UNGA, ‘Report of the International Law Commission to the General Assembly, A/CN.4/117 (1958). 3

16. UNGA, ‘Report of the International Law Commission to the General Assembly’, A/44/10 (1989). 2

17. UNGA, ‘Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes’, A/RES/52/119 (1998). 9

18. UNGA, ‘Report by the International Law Commission to the General Assembly’, A/CN.4/191 (1966). 32

19. UNGA, ‘Report by the International Law Commission to the General Assembly’, A/56/10 (2001). 12, 29, 34

20. UNGA, ‘Report by the International Law Commission to the General Assembly’, A/61/10 (2006). 18, 19

21. UNGA, ‘Voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States’, A/76/136 (2021). 30

22. UNHRC, ‘CCPR General Comment No. 34: Article 19 (Freedoms of Opinion and Expression)’, CCPR/C/GC/34 (2011). 18, 20, 22, 23, 26

23. UNHRC, ‘Concluding Observations: Cameroon’, CCPR/C/79/Add.116 (1999). 20

24. UNHRC, ‘General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public services’, CCPR/C/21/Rev.1/Add.7 (1996). 17

25. UNHRC, ‘General Comment No. 37 (2020) on the right of peaceful assembly (article 21)’, CCPR/C/GC/37 (2020). 21, 25, 26

26. UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan’, A/HRC/47/25 (2021). 15, 21, 22

27. UNHRC, ‘The promotion, protection and enjoyment of human rights on the Internet’, A/HRC/RES/38/7 (2018). 20

28. UNILC 'Second Report on General Principles of Law, by Marcelo Vázquez-Bermúdez Special Rapporteur', A/CN.4/741 (2020). 4

29. UNILC, 'First Report on Diplomatic Protection by John Dugard, Special Rapporteur', A/CN.4/ 506 (2000). 19, 20

DECISIONS AND ADVISORY OPINIONS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE AND THE INTERNATIONAL COURT OF JUSTICE

30. Barcelona Traction, Light and Power Company Limited (Belg. v. Spain), Merits, 1970 I.C.J. 3. 18

31. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Judgment, 2015 I.C.J. 665. 28

32. Ahmadou Sadio Diallo (Guinea v. D.R.C.), Merits, 2007 I.C.J. 582. 18

33. Factory at Chorzow (Ger. v. Pol.), Claim for Indemnity, 1927 P.C.I.J. (Ser. A) No. 9. 6

34. Jurisdiction of the European Commission of the Danube between Galatz and Braila, Advisory Opinion, 1927 P.C.I.J. (Ser. B) No. 14. 7

35. Jurisdiction of the International Commission of the River Oder the Court held in a Ruling of August 20, 1929 P.C.I.J. (Ser. A) No. 23. 7

36. Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. 99. 5

37. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgement, 1986 I.C.J. 4. 5, 11, 12, 28, 29, 30, 31, 32

38. Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Austl.), Provisional Measures, 2014 I.C.J. 147. 5

39. Territorial Jurisdiction of the International Commission of the River Order (U.K. v. Pol.), Merits, 1929 P.C.I.J. (Ser. A) No. 23. 6

40. The Diversion of Water from the Meuse (Neth. v. Belg.), 1937 P.C.I.J. (Ser. A/B) No. 70. 6

41. S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (Ser. A) No. 10. 29

42. United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Merits, 1980 I.C.J. 3. .... 1, 2, 3

43. Armed Activities (D.R.C. v. Uganda), Judgment, 2005 I.C.J. 168. 28

44. Nuclear Tests (Austl. v. Fr.), Judgment, 1974 I.C.J. 253. 5

45. Frontier Dispute (Burkina Faso/Mali), Merits, 1986 I.C.J. 554. 6

46. Arrest Warrant of 11 April 2000 (D.R.C. v. Belg.), Merits, 2002 I.C.J. 3. 2

47. Nottebohm (Liech. v. Guat.), Merits, 1955 I.C.J. 4 18

48. Corfu Channel (U.K. v. Alb.), Judgement, 1949 I.C.J. 4. .... 3, 4, 28, 29

DECISIONS OF DOMESTIC COURTS

49. Abrams v. United States, 250 U.S. 616 (1919). 25

50. Brandenburg v. Ohio, 395 U.S. 444 (1969). 25

51. Chavunduka v. Minister of Home Affairs, 2000 JOL 6540. 22

52. Human Rights Watch v. Secretary of State for the Foreign and Commonwealth Office, [2016] All ER(D) 105. 15

53. In Re: Westinghouse Electric Corporation, [1978] A.C. 547 31

54. Meir Kahane v. Board of Directors of the Broadcasting Authority, (1987) 41(3) PD 255 25

55. Nardone v. United States, 302 U.S. 379 (1937). 4

56. National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre, [2014] ZACC 30. 31

57. R v. Hape, [2007] 2 S.C.R. 292. .... 28, 31

58. R v. Zundel, [1990] 3 S.C.R. 697. 22

59. Rose v. The King, [1947] 3 D.L.R. 618. 2

60. Sable Offshore v Ameron International, [2013] 2 S.C.R. 623. 6

61. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920). 4

62. Smith, R v. Secretary for Defence, [2010] UKSC 29. 31

63. Swissbourgh Diamond Mines v. Kingdom of Lesotho, [2018] SGCA 81. 31

64. Wong Sun v. United States, 371 U.S. 471 (1963). 4

OTHER INTERNATIONAL DECISIONS

65. Adimayo Aduayom, v. Togo, CCPR/C/51/D/422/1990, HRC (1996). 17, 24

66. Alexander Protsko v. Belarus, CCPR/C/109/D/1919-1920/2009, HRC (2013). 23

67. Amnesty International v. Sudan, Comm. No. 48/1990, ACmHPR (1999). 26

68. Bader v. Austria, App. No. 26633/95, ECtHR (1996). 16

69. Ballantyne v. Canada, CCPR/C/47/D/359/1989, HRC (1993). 26

70. Cengiz v. Turkey, App. No. 48226/10, ECtHR (2016). 23

71. Çetin v. Turkey, App No. 40153/98, ECtHR (2003). 24

72. Charles Onyango Obbo v. Attorney General, (2004) AHRLR 256. 22

73. Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Comm. No. 102/93, ACmHPR (1998). 26

74. EDF (Services) Limited v. Romania, ICSID Case No. ARB/05/13, Procedural Order No. 3 (2008). 5

75. Eritrea-Ethopia Claims Commission, Partial Award: Diplomatic Claim – Ethiopia's Claim 8 (2005) 26 UNRIAA 407. 2

76. Europapress Holding Doo v. Croatia, App. No. 25333/06, ECtHR (2009). 26

77. Faurisson v. France, CCPR/C/58/D/550/1993, HRC (1996). 26

78. Flegenheimer Case, XIV UNRIAA 327 (1958). 19

79. Gul v. Turkey, App. No. 4870/02, ECtHR (2010). 25

80. Handyside v. United Kingdom, App. No. 5493/72, ECtHR (1976). 20

81. International Schools Services, Inc. v. Iran, (1987) 14 Iran-US CTR 223 6

82. Ioan Micula v. Romania, ICSID Case No. ARB/05/20 (2008). 19

83. Island of Palmas (Neth./U.S.), Award, II UNRIAA 829 (1928). 28

84. Jong-Kyu Sohn v. Republic of Korea, CCPR/C/54/D/518/1992, HRC (1994). 26

85. Kablis v. Russia, App. No. 48310/16, ECtHR (2019). 20

86. Kita v. Poland, App. No. 57659/00, ECtHR (2008). 16

87. Koktish v. Belarus, CCPR/C/111/D/1985/2010, HRC (2014). 21

88. Kwiecien v. Poland, App. No. 51744/99, ECtHR (2005). 16

89. Leonid Svetik v. Belarus, CCPR/C/81/D/927/2000, HRC (2004). 17

90. Mobil Oil Iran, Inc. v. Iran, (1987) 16 Iran-US CTR 3. 6

91. Nepomnyashchiy v. Russian Federation, CCPR/C/123/D/2318/2013, HRC (2018). 22

92. Perinçek v. Switzerland, App. No. 27510, ECtHR (2015). 25

93. Philip Njaru v. Cameroon, CCPR/C/89/D/1353/2005, HRC (2007). 21

94. Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica, Advisory Opinion OC-4/84, IACtHR (1984). 20

95. Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgment, Appeals Chamber, ICTY (2004). 4

96. Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the Admission of Material from the 'Bar Table' (2009). 5

97. Salov v. Ukraine, App. No. 65518/01, ECtHR (2005). 16, 20

98. Stoll v. Switzerland, App. No. 69698/01, ECtHR (2007). 7

99. Surek v. Turkey, App. No. 24735/94, ECtHR (1999). 25

100. Tatsiana Reviako v. Belarus, CCPR/C/129/D/2455/2014, HRC (2020). 21

101. Toregozhina v. Kazakhstan, CCPR/C/112/D/2137/2012, HRC (2015). 26

102. United States on behalf of Lehigh Valley and Various Underwriters v. Germany, U.S.-Ger. Mixed Claims Comm., Docket Nos. 8103 (1922). 8

103. Vajnai v. Hungary, App. No. 6061/10, ECtHR (2008). 26

104. Waguih Siag v. Arab Republic of Egypt, ICSID Case No. ARB/05/15 (2009). 19

BOOKS, BOOK CHAPTERS AND REPORTS

105. Aguilar Mawdsley, *Evidence Before the International Court of Justice, in* ESSAYS IN HONOUR OF WANG TIEYA (Ronald St. John MacDonald ed. 1994). 7

106. ANTONIO CASSESE, INTERNATIONAL LAW (2nd ed. 2005). 28

107. Christopher Joyner, *Coercion, in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (OUP 2006). 11

108. CHITTHARANJAN AMERASINGHE, EVIDENCE IN INTERNATIONAL LITIGATION (Martinus Nijhoff 2005). 5, 6

109. Clive Parry, *Some Considerations upon the Protection of Individuals in International Law, in* COLLECTED COURSES OF THE HAGUE ACADEMEDY OF INTERNATIONAL LAW (Académie de Droit International ed. 1968). 19

110. DAVID RAIĆ, STATEHOOD AND THE LAW OF SELF DETERMINATION (Kluwer 2002). 11

111. DURWARD SANDIFER, EVIDENCE BEFORE INTERNATIONAL TRIBUNALS (University Press of Virginia 1974). 1, 8

112. EDWARD AMOROSO, CYBER ATTACKS: PROTECTING NATIONAL INFRASTRUCTURE (Butterworth-Heinemann 2011). 34

113. EILEEN DENZA, DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS (OUP 2016). 1, 2, 3

114. GEOFF BERRIDGE, DIPLOMACY: THEORY AND PRACTICE (Palgrave Macmillan 2010). 7

115. HANNAH TONKIN, STATE CONTROL OVER PRIVATE MILITARY AND SECURITY COMPANIES IN ARMED CONFLICT (CUP 2011). 12

116. JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (9th ed. 2019). 20, 31

117. JEFFREY PINSLER, EVIDENCE AND THE LITIGATION PROCESS (Lexis Nexis 2015)........ 6

118. JENS OHLIN & DUNCAN HOLLIS, DEFENDING DEMOCRACIES (OUP 2021). 15

119. JENS OHLIN, ELECTION INTERFERENCE: INTERNATIONAL LAW AND THE FUTURE OF DEMOCRACY (CUP 2020)........ 10, 11, 15

120. JOHN HUMPHREY, HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE (Transnational Publishers 1984)........ 11

121. LORD GORE-BOOTH, SATOW'S GUIDE TO DIPLOMATIC PRACTICE (Longman Group 1979)........ 1, 2

122. MOJTABA KAZAZI, BURDEN OF PROOF AND RELATED ISSUES: A STUDY ON EVIDENCE BEFORE INTERNATIONAL TRIBUNALS (Kluwer 1996). 6

123. OLIVER DORR, VIENNA CONVENTION ON THE LAW OF TREATIES (2nd ed. 2018)........ 32, 33

124. PETER ASHFORD, THE IBA RULES ON THE TAKING OF EVIDENCE IN INTERNATIONAL ARBITRATION (CUP 2013)........ 5

125. ROBERT JENNINGS, OPPENHEIM'S INTERNATIONAL LAW (OUP 2005). 32

126. RÜDIGER WOLFRUM & MIRKA MÖLDNER, INTERNATIONAL COURTS AND TRIBUNALS, EVIDENCE (MPEIL 2013). 4

127. Sanderijn Duquet & Jan Wouter, *Legal Duties of Diplomats Today*, *in* DIPLOMATIC LAW IN A NEW MILLENNIUM (Paul Behrens ed. 2017)........ 3

128. TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS (Michael Schmitt ed. CUP 2017) 12, 13, 14, 15, 16, 28, 29, 31, 32

ARTICLES

129. Ahmed Ghappour, 'Searching Places Unknown: Law Enforcement Jurisdiction on the Dark Web' (2017) 69 STAN. L. REV. 1075. .... 32, 33

130. Aurélien Colson, 'The Ambassador Between Light and Shade: The Emergence of Secrecy as the Norm for International Negotiation' (2008) 13 INTERNATIONAL NEGOTIATION 179.. 7

131. Björnstjern Baade, 'Fake News and International Law' (2019) 29 EUR. J. INT'L L. 1357. 16

132. Gregory Fox, 'The Right to Political Participation in International Law' (1992) 17 YALE J. INT'L L. 539. 9

133. Hugh Thirlway, 'Dilemma or Chimera? Admissibility of Illegally Obtained Evidence in International Adjudication' (1984) 78(3) AM. J. INT'L L. 622. 4

134. Ido Kilovaty, 'Doxfare: Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information' (2018) 9 HARV. NAT'L SEC. J. 172... 14

135. Joseph Kunz, 'The Nottebohm Judgment' (1960) 54(3) AM. J. INT'L L. 536. 19

136. Kevin Heller, 'In Defense of Pure Sovereignty and Cyberspace' (2021) 97 INT'L L. STUD. 1432. 33

137. Lori Damrosch, 'Politics Across Borders: Non-intervention and Nonforcible Influence over Domestic Affairs' (1989) 83(1) AM. J. INT'L L. 1. 9

138. Luca Ferro, 'No Interference, No Problem: Voter Influence Operations and International Law' (2020) REVUE BELGE DE DROIT INTERNATIONAL 323. 10

139. Maziar Jamnejad & Michael Wood, 'The Principle of Non-Intervention' (2009) 22 LEIDEN J. INT'L L. 345. .... 11, 14, 28

140. Michael Akehurst, 'Jurisdiction in International Law' (1972-73) BRIT. Y.B. INT'L L. 145.10

141. Michael Schmitt, 'Foreign Cyber Interference in Elections' (2021) 97 INT'L L. STUD. 739. 13

142. Michael Schmitt, 'Virtual Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law' (2018) 19(1) CHIC. J. INT'L L. 30. .... 13, 14

143. Michel Virally, 'Review Essay: Good Faith in Public International Law' (1983) 77 AM. J. INT'L L. 130, 132. 5

144. Nasim Hasan Shah, 'Discovery by Intervention: The Right of a State to Seize Evidence Located Within the Territory' (1959) 53(3) AM. J. INT'L L. 595. 4

145. Nicholas Tsagourias, 'Cyber Attacks, Self-Defence and the Problem of Attribution' (2012) 17(2) J. CONFLICT & SEC. L. 229. 12

146. Peter Tomka & Vincent-Joel Proloux, 'The Evidentiary Practice of the World Court' 1-24 (NUS LAW Working Paper No. 10, 2015). 5

147. Rahik Moloo, 'A Comment on the Clean Hands Doctrine in International Law' (2010) 39 INTER ALIA 39. 5

148. Robert Pietrowski, 'Evidence In International Arbitration' (2006) 22(3) ARB. INT'L 373... 6

149. Sara Fallah, 'The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals' (2020) 19 L. PRACT. INT'L COURTS TRIB. 147. 4

150. Sarah H. Cleveland, 'Embedded International Law and the Constitution Abroad' (2010) 110 COLUM. L. REV. 225. 15

151. Siyuan Chen, 'Re-assessing the Evidentiary Regime of the International Court of Justice: A Case for Codifying Its Discretion to Exclude Evidence' (2015) 13(1) INT'L COMMENT. EVID. 1. .... 5, 6

152. Won-Mog Choi, 'Diplomatic and Consular Law in the Internet Age' (2006) 10 SING. Y. B. INT'L L. 117. 2

DOMESTIC STATUTES AND CONSTITUIONS

153. Australian Evidence Act, 1995. 6

154. Australian National Uniform Legislation Evidence Act, 2011 4

155. Constitution of Brazil, 1988. 4

156. Constitution of Croatia, 1991. 4

157. Constitution of Greece, 1975. 4

158. Constitution of Kenya, 2010. 4

159. Constitution of Russia, 1993. 4

160. Canadian Elections Modernization Act, 2018. 23

161. Indian Evidence Act, 1872. 6

162. France Law No. 2018-1202 of December 22, 2018 on the fight against the manipulation of information, 2018. 23

163. New Zealand Evidence Act, 2006. 6

164. Nigerian Evidence Act, 2011. 4

165. Spanish Civil Procedure Code, 2000. 4

166. Switzerland Civil Procedure Code, 2008. 4

167. U.S. Federal Rules of Evidence, 1975. 6

ONLINE AND MISCELLANEOUS SOURCES

168. Aerial Herbicide Spraying (Ecuador v. Colom.), Memorial, https://www.icj-cij.org/public/files/case-related/138/17540.pdf (2009). 29

169. Al Jazeera, 'Qatar complains to UNSC after UAE violates airspace', https://www.aljazeera.com/news/2018/1/12/qatarcomplains-to-unsc-after-uae-violates-airspace (2018). 29

170. Bao Yinan, 'When Old Principles Face New Challenges: A Critical Analysis of the Principle of Diplomatic Inviolability', http://sro.sussex.ac.uk/id/eprint/51411/1/Bao%2C_Yinan.pdf (University of Sussex 2014). 3

171. Brett Stone-Gross et al., 'Your Botnet is my Botnet: Analysis of a Botnet Takeover', https://seclab.cs.ucsb.edu/media/uploads/papers/torpig.pdf (2009). 34

172. David Kaye, Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OL ITA 1/2018 (2018). 22

173. David Sancho et al., 'Sinkholing Botnets', http://www.trendmicro.com.tr/media/misc/sinkholing-botnets-technical-paper-en.pdf (2011) 34

174. Declaration of General Staff of the Armed Forces of the Islamic Republic of Iran, https://nournews.ir/En/News/53144/General-Staff-of-Iranian-Armed-Forces-Warns-of-Tough-Reaction-to-Any-Cyber-Threat (2020). 30

175. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990). 9

176. Ece Toksaby, 'Turkey says Russian jet violated its airspace again, warns of consequences', https://www.reuters.com/article/us-turkey-russia-airspace-idUSKCN0V80NM (2016). ... 29

177. European Parliament, Working Document on Covert Funding of Political Activities by Foreign Donors (2021). 9

178. Henrik Kaspersen, 'Cybercrime and Internet Jurisdiction', https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016803042b7 (2009). 33

179. IBA Rules of the Taking of Evidence in International Arbitration, 2020.. 6

180. Jonathan Marcus, 'Russia and South Korea spar over airspace intrusion', https://www.bbc.com/news/world-asia-49091523 (2019). 29

181. Ministère des Armées, 'International Law Applied to Operations in Cyberspace', https://www.defense.gouv.fr/content/download/567648/9770527/file/international+law+applied+to+operations+in+cyberspace.pdf (2019). 30

182. NATO, 'Russian Fighter Jet Violates NATO Airspace over Bornholm Island', https://ac.nato.int/archive/2020/russian-fighter-jet-violates-nato-airspaceover-bornholm-island (2020). 29

183. Note Verbale dated 22 July, 2013 from the Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations, A/67/946 (2013). 30

184. OSCE ODIHR, Guidelines on Political Party Regulation (2011). 9

185. Restatement (Second) of Foreign Relations Law of the United States (1965). 31

186. Mandate of the Special Rapporteur on Promotion and Protection of Freedom of Opinion and Expression, 'Freedom of Expression and Elections in the Digital Age',

https://www.ohchr.org/Documents/Issues/Opinion/ElectionsReportDigitalAge.pdf (2019). 27

187. T-CY, 'Guidance Note #3: Transborder access to data', https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e726a (2014). 31

188. The Oxford Statement On International Law Protections Against Foreign Electoral Interference Through Digital Means (2020). 13

189. UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use (2002). 1, 6, 7

190. Venice Commission, Conference on International Standards of Financing of Political Parties and Election Campaigns (2008). 9

STATEMENT OF JURISDICTION

The Democratic Republic of Antara ["**Antara**"] and the Velan Kingdom of Ravaria ["**Ravaria**"] have agreed to submit their dispute *Concerning the Suthan Referendum* to the International Court of Justice ["**ICJ**"] pursuant to Article 40(1) of the Statute of the ICJ and the Special Agreement signed in The Hague, The Netherlands on 13 September 2021. The Parties have jointly notified the Court on the same date.

In accordance with Article 36 of the Statute of the ICJ and Article 3 of the Special Agreement, the ICJ has jurisdiction to adjudicate all matters submitted to it and both the Parties undertake to consider the judgment as final and binding and execute it in good faith.

QUESTIONS PRESENTED

ISSUE A

WHETHER THE DOCUMENTS OBTAINED IN THE ILLEGAL SEARCH OF MS. WALTERS' VEHICLE AND THE 30 MAY 2021 RECORDING ARE INADMISSIBLE AS EVIDENCE IN THESE PROCEEDINGS?

ISSUE B

WHETHER RAVARIA'S ALLEGED FINANCIAL CONTRIBUTIONS AND CYBER OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM WERE CONSISTENT WITH INTERNATIONAL LAW?

ISSUE C

WHETHER ANTARA'S ORDER SUSPENDING PROF. HUNLAND'S PANO ACCOUNT WAS IN VIOLATION OF INTERNATIONAL LAW, AND ANTARA MUST THEREFORE RESCIND THE ORDER?

ISSUE D

WHETHER ANTARA'S INTERFERENCE WITH COMPUTERS AND DEVICES OPERATING ON RAVARIAN SOIL, RESULTING FROM THE DECISION TO TAKE DOWN THE LUNAR BOTNET, WAS IN VIOLATION OF INTERNATIONAL LAW?

STATEMENT OF FACTS

BACKGROUND

The Democratic Republic of Antara ["**Antara**"], and the Velan Kingdom of Ravaria ["**Ravaria**"], are developed and technologically advanced countries, located in the Benthamian Peninsula, with populations of 21 million and 12 million respectively.

ZEMIN COLONIAL RULE

In the 18th century, the Zemin Empire colonised the entire Peninsula, and divided it into three administrative districts: Antara, Ravaria, and Sutha. Despite having no natural resources, Sutha generated some economic activity due to the Kuvil Shrine.

DISPUTE OVER SUTHA AND THE TREATY OF SINGAPORE

In 1949, both Antara and Ravaria became independent, with territories corresponding to their colonial district boundaries. However, Sutha remained under Zemin colonial control until 1962. Antara proposed the incorporation of Sutha within its territory, whilst Ravaria urged for Suthan independence.

In 1959, the dispute was referred to the United Nations Secretary General, and in 1962, Zemin, Antara and Ravaria signed the Treaty of Singapore, which provided for Sutha to continue as an Antaran province for at least next 25 years, having a locally elected Suthan Legislative Council ["**SLC**"]. A referendum could be authorised with two-thirds vote of both the National Antaran Parliament ["**NAP**"] and SLC, in or after 1987. Ravarians could freely visit Kuvil Shrine, and Antara would provide security and abstain from restricting their freedom of worship.

Article 119 of the Antaran Constitution was amended to provide for the Suthan referendum and a two year transition period.

VELAN FAITH

Vela is a monotheistic religion. Its liturgical landmarks include five ancient temples, one being the Kuvil Shrine. Velans must visit and pray at each of the temples during their lifetimes. As per the

1955 Census, Velans constituted 24% of Antarans, 47% of Suthans, and 85% of Ravarians. In 1957, Vela was declared as the State religion of Ravaria.

AFFILIATION OF PROF. HUNLAND WITH SIP

In 1963, the Suthan Independence Party ["**SIP**"] was formed to support Suthan independence. In 1980s, Professor Liam Hunland ["**Hunland**"], a Ravarian citizen and devout Velan, moved to Sutha and became an Antaran permanent resident, as a tenured professor of Velan Theology at University of Sutha. In 2009, he became affiliated with SIP and wrote its new manifesto.

ONLINE SOCIAL MEDIA PLATFORM: PANO

Pano, owned by Panoptest Corporation, a Zemin public company, allows for messaging, posting and sharing content on feed, livestream videos and creating private groups of up to 10,000 users. Pano has the maximum market penetration of 12 million users in the Peninsula, including four million in Antara.

By 2019, Hunland's personal page acquired over nine million followers, the third highest in the Peninsula.

COVID-19 MEASURES AND THEIR AFTERMATH

In April 2020, owing to the COVID-19 pandemic, Antara introduced Decree No. 20-32, mandating masks and prohibiting gathering of more than five people at all public venues, including religious places. Border restrictions were imposed stopping Ravarian Velans from accessing the Kuvil Shrine.

Between April and June 2020, Hunland expressed his dissatisfaction towards these restrictions and termed them as infringements of the freedom of religion and assembly. He also established Suthans Against Domination ["**SAD**"], a think tank for promoting Velan culture and Suthan autonomy.

Meanwhile, on 12 May 2020, the Internet Law and Security Assembly reported registration of 180,000 new Pano accounts lacking authenticity and amplifying misinformation concerning Antaran pandemic measures.

SUSPENSION OF HUNLAND'S PANO ACCOUNT PRIOR TO THE SUTHAN REFERENDUM

After the 2020 Antaran parliamentary elections, a coalition government including SIP was formed. On 13 and 22 October 2020, SLC and NAP, respectively, passed the proposal of holding the Suthan referendum on 1 March 2021. SAD launched a grassroots campaign for mobilizing voters, which included public posts on Pano. Hunland criticised social gathering restrictions as attempts to repress Velan worship and eliminate Suthan provincial autonomy.

Pano flagged 63% of Hunland's posts later, under its rules for abusive behaviour and deceptive content, based on calls by users and political groups. His rally on 31 January 2021 was broken up by Antaran police with violent altercations, leading to 225 injuries and three deaths. On 5 February 2021, the Data Protection and Cybersecurity Agency ["**DPCA**"], established under the Protect Antaran Cyberspace Act ["**PACA**"], applied for the suspension of Hunland's Pano account. On 15 February 2021, the court ordered the suspension of his account for one year and removal of his social media posts on the basis of threat to public order and risk of violence ["**Antara's Order**"].

Hunland's application for injunction against account suspension was rejected by the Antaran court for lack of standing. The Appellate Court affirmed this dismissal without opinion, and Antara's law allowed for no further appeal. The referendum finally took place on its scheduled date and the majority voted for independence.

OPERATION MOONSTROKE AND EXTRATERRITORIAL ENFORCEMENT

On 4 April 2021, the Sunday Morning Herald reported about a Botnet Takedown Order received by DPCA, against Lunar Botnet, that infected 30,000 devices three months before the referendum and led to spread of misinformation online. DPCA hacked the Botnet's server and launched Operation Moonstroke on 26 February 2021, disabling the botnet and removing web shells from infected devices, 5,000 of which were located in Ravarian territory.

ARREST OF MS. WALTERS AND PHOTOCOPYING OF DOCUMENTS

In the early hours of 25 April 2021, Emma Walters, wife of the Ravarian Ambassador to Antara, was arrested on a charge of vehicular homicide. Arresting officers seized her briefcase containing her license and diplomatic passport, handing it over to duty sergeant without mentioning that she was from foreign embassy.

The sergeant found what appeared to be the alleged records of financial transactions and five year old meetings outlining the Ravarian Ambassador's program to fund SIP and SAD. The contents were delivered to the Antaran National Intelligence Agency. Later that morning, although Ms. Walters was released, the documents were photocopied and then returned.

ANTARA'S CRIMINAL INVESTIGATION AND EXTENSION OF SUSPENSION

In its criminal investigation, Antara found that the SAD controlled the Lunar Botnet, and confirmed financial transactions from the Ravarian Embassy, which did not violate Antara's domestic campaign finance laws.

In October 2021, the Federal Judge extended the suspension of Hunland's Pano account for additional six months, in light of ongoing criminal investigations. Antara's law did not provide for any judicial remedy against such extension.

ATTEMPTS AT CONCILIATION

The Foreign Minister of Zemin brokered an *ad hoc* conciliation meeting between Attorneys-General of Antara and Ravaria. An agreement was reached on 1 June 2021, allowing the Walters to return to Ravaria after paying compensation to the victim of the vehicular accident. The exchange on the second day of conciliation concerning the briefcase was revealed in the official transcription.

Thereafter, Antara and Ravaria agreed to refer unresolved disputes to the ICJ. Antara indicated to rely on the photocopied documents from Ms. Walters' briefcase and transcription of conciliation meeting, to which Ravaria objected.

TREATIES IN FORCE BETWEEN PARTIES

Antara and Ravaria are parties to the Charter of the United Nations, the Statute of the International Court of Justice, the International Covenant on Civil and Political Rights ["**ICCPR**"], the International Covenant on Economic, Social and Cultural Rights ["**ICESCR**"], the Council of Europe Convention on Cybercrime ["**Budapest Convention**"], the Vienna Convention on Diplomatic Relations ["**VCDR**"], and the Vienna Convention on the Law of Treaties ["**VCLT**"].

SUMMARY OF PLEADINGS

ISSUE A

The documents obtained in the illegal search of Ms. Walters' vehicle were illicitly obtained, in violation of the VCDR. Ms. Walters, as the wife of the Ravarian Ambassador, enjoyed absolute immunity from search and arrest. The briefcase and its contents were inviolable, irrespective of their contents. The acts of Ms. Walters' arrest, seizure and opening of the briefcase, and photocopying of the documents were unlawful and in breach of the VCDR, and could not be justified under any grounds, including national security. Since the documents were obtained in violation of international law, their admissibility is barred by virtue of the doctrine of the fruit of the poisonous tree, and procedural fairness. Further, the recording from the conciliation meeting of 30 May 2021 contains admissions of the Attorneys-General during direct negotiations of disputes between Antara and Ravaria. Since the recording is protected by the evidentiary privileges of settlement negotiations and confidentiality, it is inadmissible as evidence. Therefore, both the documents and the recording are inadmissible as evidence in these proceedings.

ISSUE B

Ravaria's alleged financial contributions were a part of the routine contributions made by the Ravarian Embassy to Velan religious organizations across Sutha. Through these contributions, Ravaria did not usurp Antara's inherently governmental function of holding elections, and thus, did not violate Antara's sovereignty. As the contributions lacked any intrusive or coercive quality, and were a part of general pre-election support, they did not violate the principle of non-intervention. Since the contributions did not have temporal proximity with the referendum, they did not violate the right of self-determination. Further, in the absence of effective control over the cyber operations conducted by the SAD, the operations were not attributable to Ravaria. In any event, the cyber operations did not interfere with Antara's ability to conduct elections, or coercively influence Antara's decision-making, and thus, did not violate Antara's sovereignty or the principle of non-intervention. Ravaria did not owe any extraterritorial obligations under the ICCPR to Antarans, and in any event, did not interfere with their rights. Therefore, Ravaria's alleged financial contributions and cyber operations were consistent with international law.

Issue C

Ravaria has the standing to present a claim of Antara's human rights violations of Hunland. Such standing can be maintained by exercising diplomatic protection over Hunland, who is a Ravarian national. Further, the invocation of diplomatic protection does not require Ravaria to establish effective nationality with Hunland. Antara's Order suspending Hunland's Pano account and taking down all of his Pano posts interferes with his freedom of expression and assembly guaranteed under Articles 19 and 21 of the ICCPR. Moreover, Antara's Order cannot be justified under Article 19(3) of the ICCPR as it is not provided by law. Moreover, Antara's Order neither fulfills any legitimate aim, nor is necessary in a democratic society. Lastly, Antara breached its obligation under Article 2(3) of the ICCPR, as it failed to provide an effective remedy to Hunland for his human rights violations. Therefore, Antara's Order is in violation of international law and Antara must rescind the same.

Issue D

Operation Moonstroke was a blatant exercise of extraterritorial hacking of devices located in Ravaria, without its consent. The right to exercise enforcement jurisdiction is an inherently governmental function. Antara, through Operation Moonstroke, has exercised such jurisdiction on Ravaria's territory, thereby violating Ravaria's sovereignty. Antara's actions also violated the principle of non-intervention by interfering in Ravaria's domestic affairs. Antara has deprived Ravaria of its free will to exercise enforcement powers within its territory and to decide upon requests for mutual legal assistance as per its external policies. Lastly, Antara has also violated the object and purpose of the Budapest Convention by unilaterally accessing transborder data located in Ravaria without its consent. The aforesaid violations of Antara cannot be justified under the doctrine of necessity as they were not the means of last resort. Therefore, Antara's actions violated international law.

PLEADINGS

A. THE DOCUMENTS OBTAINED IN THE ILLEGAL SEARCH OF MS. WALTERS' VEHICLE AND THE 30 MAY 2021 RECORDING ARE INADMISSIBLE AS EVIDENCE IN THESE PROCEEDINGS

This Court has wide discretionary authority to refuse to accept evidence.[1] Both the **[I]** documents obtained in the illegal search of Ms. Walters' vehicle, and **[II]** 30 May 2021 recording, are inadmissible as evidence.

I. THE DOCUMENTS OBTAINED IN THE ILLEGAL SEARCH OF MS. WALTERS' VEHICLE ARE INADMISSIBLE AS EVIDENCE

The documents are inadmissible since **[1]** they were obtained in violation of the VCDR, and **[2]** illicitly obtained evidence must not be admitted.

1. The documents were obtained in violation of the VCDR

Diplomatic law encompasses the oldest and most resilient set of rules providing the procedural framework for the very construction of international law and relations.[2] The documents were illicitly obtained, since the acts of **[a]** seizure and opening of the briefcase, and **[b]** photocopying of the documents, were unlawful.

---

[1] DURWARD SANDIFER, EVIDENCE BEFORE INTERNATIONAL TRIBUNALS 184-185 (University Press of Virginia 1974) ["**SANDIFER**"].

[2] EILEEN DENZA, DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 2 (OUP 2016) ["**DENZA**"]; United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Merits, 1980 I.C.J. 3, ¶91 ["**Tehran Hostages**"].

a. Seizure and opening of the briefcase were unlawful

The diplomatic bag and its contents are inviolable and cannot be opened or detained under any circumstances under the VCDR,[3] and general international law.[4] There lies a presumption that all documents emanating from an Embassy constitute diplomatic correspondence.[5] Further, the lack of external indicia does not diminish this inviolability.[6] The presence of a diplomatic passport amply evidences the diplomatic and inviolable character of the bag.[7]

The moment the duty sergeant and the police had found Ms. Walters' diplomatic passport in the briefcase,[8] along with the papers of the Ravarian Embassy,[9] cognizance of the inviolability of the briefcase and its contents must have been taken. The presence of external indicia, or the nature of the contents, are immaterial. Therefore, the seizure and opening of the briefcase were unlawful.

b. Photocopying of the documents was unlawful

The inviolability of the diplomatic bag and archives is not contingent upon its contents,[10] and in no circumstance can the bag or archives be examined by the receiving State.[11] Only if there is clear evidence that a diplomatic bag contains illegal materials can the State request that the bag be

---

[3] Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95, arts. 27(3), 24 ["**VCDR**"]; LORD GORE-BOOTH, SATOW'S GUIDE TO DIPLOMATIC PRACTICE 115 (Longman Group 1979) ["**SATOW**"].

[4] Tehran Hostages, ¶62; Arrest Warrant of 11 April 2000 (D.R.C. v. Belg.), Merits, 2002 I.C.J. 3, ¶52 ["**Arrest Warrant**"].

[5] Rose v. The King, [1947] 3 D.L.R. 618.

[6] Eritrea-Ethopia Claims Commission, Partial Award: Diplomatic Claim – Ethiopia's Claim 8 (2005) 26 UNRIAA 407, 423-24.

[7] *Id.*

[8] *Compromis*, ¶35.

[9] *Id.* ¶37.

[10] DENZA, 192.

[11] SATOW, 115.

opened in the presence of an authorized representative of the sending State.[12] Further, in *Tehran Hostages*, this Court held that the VCDR is a self-contained regime.[13] Hence, even in case of any breach of duties under the VCDR by a diplomatic mission, the receiving State can only employ means provided for in the VCDR itself, for example, declaring the diplomat *non grata.*[14]

Moreover, this Court has held than even alleged interferences in the internal affairs of or criminal activities in the receiving State, by a diplomatic mission, do not justify any breach of the VCDR.[15] The *travaux préparatoires* of the VCDR,[16] and subsequent State practice, evidence that States reject exceptional measures in self-defence which are violative of the VCDR.[17]

The contents of the seized documents did not dilute their inviolability, and thus, they could not be read, examined or photocopied by the Antaran police or intelligence. Even if the documents suggested an abuse of diplomatic immunity by Ravaria, Antara was obligated to pursue remedies under the VCDR only. Therefore, Antara cannot invoke national security as a justification for its extreme step of permanently duplicating and storing diplomatic archives of Ravaria without its consent and refusing to return them.

---

[12] DENZA, 202; UNGA, 'Report of the International Law Commission to the General Assembly', A/44/10, 1 (1989); Won-Mog Choi, 'Diplomatic and Consular Law in the Internet Age' (2006) 10 SING. Y. B. INT'L L. 117, 125.

[13] Tehran Hostages, ¶¶81-87.

[14] VCDR, art. 9; Sanderijn Duquet & Jan Wouter, *Legal Duties of Diplomats Today*, *in* DIPLOMATIC LAW IN A NEW MILLENNIUM 267 (Paul Behrens ed. 2017); UNGA, 'Report of the International Law Commission to the General Assembly', A/56/10, 134 (2001).

[15] *Id.*

[16] UNGA, 'Report of the International Law Commission to the General Assembly, A/CN.4/117, 97 (1958); Bao Yinan, 'When Old Principles Face New Challenges: A Critical Analysis of the Principle of Diplomatic Inviolability', 175, http://sro.sussex.ac.uk/id/eprint/51411/1/Bao%2C_Yinan.pdf (University of Sussex 2014).

[17] DENZA, 6.

2. The documents must not be admitted as evidence

The documents, obtained in violation of international law, cannot be admitted by this Court **[a]** by placing reliance on *Corfu Channel*. Moreover, admissibility is prohibited by virtue of **[b]** the doctrine of the fruit of the poisonous tree, and **[c]** procedural fairness.

a. Reliance cannot be placed on Corfu Channel

This Court's decision in *Corfu Channel*[18] cannot be relied upon to conclude a general rule of admissibility of illicitly obtained evidence, since the question of inadmissibility was neither raised by the parties, nor decided by the Court.[19] Therefore, reliance cannot be placed on *Corfu Channel*.

b. Admissibility is prohibited by the doctrine of the fruit of the poisonous tree

The doctrine of the *fruit of the poisonous tree* bars the admissibility of illicitly obtained evidence.[20] This doctrine is supported by widespread State practice of countries such as Australia, Brazil, Croatia, France, Greece, Italy, Nigeria, Russia, Spain, and Switzerland.[21] Since the doctrine is endorsed by several diverse legal systems, it constitutes a general principle of law.[22] Further, scholarly opinion and judicial decisions consider documents improperly obtained from diplomatic

---

[18] Corfu Channel (U.K. v. Alb.), Judgement, 1949 I.C.J. 4 ["**Corfu**"].

[19] Hugh Thirlway, 'Dilemma or Chimera? Admissibility of Illegally Obtained Evidence in International Adjudication' (1984) 78(3) AM. J. INT'L L. 622, 642; Nasim Hasan Shah, 'Discovery by Intervention: The Right of a State to Seize Evidence Located Within the Territory' (1959) 53(3) AM. J. INT'L L. 595, 605.

[20] Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920); Wong Sun v. United States, 371 U.S. 471 (1963); Nardone v. United States, 302 U.S. 379 (1937).

[21] Sara Fallah, 'The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals' (2020) 19 L. PRACT. INT'L COURTS TRIB. 147, 167; Australian National Uniform Legislation Evidence Act, 2011, art. 138; Constitution of Brazil, 1988, art. 5(56); Constitution of Croatia, 1991, art. 29(4); Constitution of Greece, 1975, art. 19(3); Constitution of Kenya, 2010, art. 50(4); Nigerian Evidence Act, 2011, s. 14; Constitution of Russia, 1993, art. 50(2); Spanish Civil Procedure Code, 2000, art. 287; Switzerland Civil Procedure Code, 2008, art. 152(2).

[22] RÜDIGER WOLFRUM & MIRKA MÖLDNER, INTERNATIONAL COURTS AND TRIBUNALS, EVIDENCE ¶60 (MPEIL 2013); UNILC 'Second Report on General Principles of Law, by Marcelo Vázquez-Bermúdez, Special Rapporteur', A/CN.4/741, ¶27 (2020); Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgment, Appeals Chamber, ICTY, ¶141 (2004).

missions as inadmissible.[23] Therefore, admissibility of the documents is prohibited by the doctrine of the fruit of the poisonous tree.

c. *Admissibility is prohibited on the ground of procedural fairness*

Admitting illicitly obtained evidence violates the principles of good faith,[24] procedural fairness,[25] and sovereign equality of States.[26] Further, it also violates the *doctrine of clean hands* which precludes the responsible State from taking advantage of its internationally wrongful act.[27] Therefore, admissibility of the documents is prohibited on the ground of procedural fairness.

II. THE 30 MAY 2021 RECORDING IS INADMISSIBLE AS EVIDENCE

The 30 May 2021 recording is protected by the evidentiary privileges of **[1]** settlement negotiations, and **[2]** confidentiality.

[23] Peter Tomka & Vincent-Joel Proloux, 'The Evidentiary Practice of the World Court' 1-24 (NUS LAW Working Paper No. 10, 2015); PETER ASHFORD, THE IBA RULES ON THE TAKING OF EVIDENCE IN INTERNATIONAL ARBITRATION 141 (CUP 2013).

[24] EDF (Services) Limited v. Romania, ICSID Case No. ARB/05/13, Procedural Order No. 3, ¶38 (2008); Nuclear Tests (Austl. v. Fr.), Judgment, 1974 I.C.J. 253, ¶46; Michel Virally, 'Review Essay: Good Faith in Public International Law' (1983) 77 AM. J. INT'L L. 130, 132.

[25] Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the Admission of Material from the 'Bar Table', ¶42 (2009); Siyuan Chen, 'Re-assessing the Evidentiary Regime of the International Court of Justice: A Case for Codifying Its Discretion to Exclude Evidence' (2015) 13(1) INT'L COMMENT. EVID. 1, 36 ["**Chen**"].

[26] U.N. Charter, art. 2(1); Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Austl.), Provisional Measures, 2014 I.C.J. 147, ¶27; Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. 99, ¶¶56-57.

[27] CHITTHARANJAN AMERASINGHE, EVIDENCE IN INTERNATIONAL LITIGATION 179 (Martinus Nijhoff 2005) ["**AMERASINGHE**"]; Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgement, 1986 I.C.J. 4, ¶268 (Diss. Op. Judge Schwebel) ["**Nicaragua**"]; Rahik Moloo, 'A Comment on the Clean Hands Doctrine in International Law' (2010) 39 INTER ALIA 39, 43.

1. The recording is protected by the evidentiary privilege of settlement negotiations

Evidence resulting from prior settlement negotiations is inadmissible,[28] since in trying to reach a settlement, parties may have compromised on a well-founded case, and would not want evidence of these earlier settlement negotiations to prejudice their case before the Court.[29] This rule of inadmissibility exists by virtue of this Court's jurisprudence,[30] and has also been applied as a procedural rule in international litigation,[31] and domestic legal systems.[32] The privilege extends to all declarations or admissions that parties may have made during direct negotiations,[33] and even to subsequent proceedings unrelated to the negotiations.[34]

The conciliation meeting between the Attorneys-General was brokered to discuss potential resolution *of all the issues* in dispute between the countries.[35] While an agreement was reached in

---

[28] AMERASINGHE, 174-175; JEFFREY PINSLER, EVIDENCE AND THE LITIGATION PROCESS 621-627 (Lexis Nexis 2015).

[29] MOJTABA KAZAZI, BURDEN OF PROOF AND RELATED ISSUES: A STUDY ON EVIDENCE BEFORE INTERNATIONAL TRIBUNALS (Kluwer 1996); Robert Pietrowski, 'Evidence In International Arbitration' (2006) 22(3) ARB. INT'L 373; Chen, 36.

[30] Factory at Chorzow (Ger. v. Pol.), Claim for Indemnity, 1927 P.C.I.J. (Ser. A) No. 9, 51 ["**Chorzow**"]; Territorial Jurisdiction of the International Commission of the River Order (U.K. v. Pol.), Merits, 1929 P.C.I.J. (Ser. A) No. 23, 42; The Diversion of Water from the Meuse (Neth. v. Belg.), 1937 P.C.I.J. (Ser. A/B) No. 70, 220-224 ["**Meuse**"]; Frontier Dispute (Burk. Faso/Mali), Merits, 1986 I.C.J. 554.

[31] International Schools Services, Inc. v. Iran, (1987) 14 Iran-US CTR 223, ¶37; Mobil Oil Iran, Inc. v. Iran, (1987) 16 Iran-US CTR 3, ¶162; IBA Rules of the Taking of Evidence in International Arbitration, 2020, art. 9.4(b); Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law, art. 10, A/57/562 and Corr. 1 (2002) ["**Model Law**"].

[32] Australian Evidence Act, 1995, s. 131; New Zealand Evidence Act, 2006, s. 57; Indian Evidence Act, 1872, s. 23; U.S. Federal Rules of Evidence, 1975, Rule 408; Sable Offshore v Ameron International [2013] 2 S.C.R. 623.

[33] Chorzow, 51.

[34] UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 46-47 (2002) ["**Guide**"].

[35] *Compromis*, ¶42.

relation to the arrest of Ms. Walters,[36] meetings to resolve other differences continued.[37] Therefore, the 30 May 2021 recording, which captured the admissions of the Attorneys-General during the conciliation meeting,[38] is protected by the evidentiary privilege of settlement negotiations.

2. The recording is protected by the evidentiary privilege of confidentiality

Conciliation proceedings are confidential,[39] to ensure frank and open communication in the process.[40] This affords protection to information disclosed during the proceedings, as well as matters relating to a conciliation that occurred before the agreement to conciliate was reached.[41] Moreover, secrecy and confidentiality are integral to diplomatic relations,[42] with States bearing the responsibility for ensuring the same.[43]

[36] *Id.* ¶43.

[37] *Id.* ¶45.

[38] *Id.* ¶44.

[39] Model Law, art. 9; UNCITRAL Conciliation Rules, 1980, art. 14; UNCITRAL, 'Report of the Working Group on Arbitration on the work of its thirty-fifth session', A/CN.9/506, ¶86 (2001) ["**A/CN.9/506**"]; Guide, 41.

[40] UNCITRAL, 'Report of the Working Group on Arbitration on the work of its thirty-fourth session', A/CN.9/487, ¶131 (2001).

[41] A/CN.9/506, ¶83; UNCITRAL, 'Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation', A/CN.9/514, ¶58 (2002).

[42] GEOFF BERRIDGE, DIPLOMACY: THEORY AND PRACTICE (Palgrave Macmillan 2010); Aurélien Colson, 'The Ambassador Between Light and Shade: The Emergence of Secrecy as the Norm for International Negotiation' (2008) 13 INTERNATIONAL NEGOTIATION 179, 186.

[43] Stoll v. Switzerland, App. No. 69698/01, ¶142, ECtHR (2007).

This Court has declined to admit confidential information in previous instances.[44] In *Meuse*, the PCIJ declined to admit the treaty draft considered during abortive negotiations.[45] International tribunals have also held that governments cannot be compelled to produce evidence from their confidential files.[46]

The recording contains a conversation between diplomats of the two States,[47] shared between the participants of the conciliation meeting only.[48] Since the recording consists of diplomatic exchanges with high political sensitivity, it is protected by the evidentiary privilege of confidentiality. Therefore, the recording is inadmissible.

---

[44] Jurisdiction of the European Commission of the Danube between Galatz and Braila, Advisory Opinion, 1927 P.C.I.J. (Ser. B) No. 14, 32; Jurisdiction of the International Commission of the River Oder the Court held in a Ruling of August 20, 1929 P.C.I.J. (Ser. A) No. 23, 41-42; Aguilar Mawdsley, *Evidence Before the International Court of Justice, in* ESSAYS IN HONOUR OF WANG TIEYA 533, 540 (Ronald St. John MacDonald ed. 1994).

[45] Meuse, 220, 224.

[46] SANDIFER, 266; United States on behalf of Lehigh Valley and Various Underwriters v. Germany, U.S.-Ger. Mixed Claims Comm., Docket Nos. 8103, 8117 (1922).

[47] *Compromis*, ¶44.

[48] *Id.* ¶43.

B. RAVARIA'S ALLEGED FINANCIAL CONTRIBUTIONS AND CYBER OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM WERE CONSISTENT WITH INTERNATIONAL LAW

Elections are not an immutable mainstay of the domestic sphere.[49] This is evidenced by the encouragement for transboundary political activities by States.[50] Both Ravaria's **[I]** alleged financial contributions, and **[II]** cyber operations in connection with the Suthan Referendum, were consistent with international law.

I. THE ALLEGED FINANCIAL CONTRIBUTIONS WERE CONSISTENT WITH INTERNATIONAL LAW

International law does not prohibit foreign financial contributions to political parties or organizations.[51] In fact, foreign support for organizations can promote external cooperation, human rights and fundamental freedoms.[52] Further, contemporary electoral campaigns are impossible without spending significant amount of finance.[53] Consequently, several States place no, or only partial, restrictions on foreign donations.[54]

The alleged financial contributions to SIP and SAD did not violate **[1]** Antara's sovereignty, **[2]** the principle of non-intervention, or **[3]** the right of self-determination.

---

[49] Gregory Fox, 'The Right to Political Participation in International Law' (1992) 17 YALE J. INT'L L. 539.

[50] Lori Damrosch, 'Politics Across Borders: Non-intervention and Nonforcible Influence over Domestic Affairs' (1989) 83(1) AM. J. INT'L L. 1, 5 ["**Damrosch**"].

[51] UNGA, 'Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes', A/RES/52/119, ¶5 (1998) ["**A/RES/52/119**"].

[52] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, ¶¶10.4, 26 (1990); OSCE ODIHR, Guidelines on Political Party Regulation ¶172 (2011).

[53] Venice Commission, Conference on International Standards of Financing of Political Parties and Election Campaigns 27 (2008).

[54] European Parliament, Working Document on Covert Funding of Political Activities by Foreign Donors, 3 (2021).

1. The alleged financial contributions did not violate Antara's sovereignty

Sovereignty is violated through the usurpation of an inherently governmental function.[55] Admittedly, holding of an election, involving activities such as setting up polling places, running voting machines, counting ballots, is an inherently governmental function.[56]

There exists no presumption under international law that all forms of covert or overt financing of political parties or groups undermines State sovereignty.[57] Moreover, usurpation must be determined by the *nature* or *purpose* of the act.[58] If the *nature* of the act is such that the foreign State seeks to perform what only State officials are entitled to perform, or if the *purpose* is the extraterritorial enforcement of laws, then such acts would constitute usurpation.[59]

The alleged financial contributions to SIP and SAD did not seek to usurp the function of holding elections in Antara. This is evident from the routine nature of financial contributions made by the Ravarian Embassy to Velan religious organizations across Sutha,[60] which did not violate Antaran domestic campaign finance laws.[61] Moreover, the purpose of financing was the promotion of Velan ideals globally, through aid to parties and foundations.[62]

Merely because the contributions were covert, it did not undermine State sovereignty, as it failed to usurp governmental functions. Therefore, the alleged financial contributions did not violate Antara's sovereignty.

---

[55] JENS OHLIN, ELECTION INTERFERENCE: INTERNATIONAL LAW AND THE FUTURE OF DEMOCRACY 68 (CUP 2020) ["**OHLIN**"].

[56] *Id.* 87.

[57] A/RES/52/119, ¶5 (1998).

[58] Michael Akehurst, 'Jurisdiction in International Law' (1972-73) BRIT. Y.B. INT'L L. 145, 146-150.

[59] Luca Ferro, 'No Interference, No Problem: Voter Influence Operations and International Law' (2020) REVUE BELGE DE DROIT INTERNATIONAL 323.

[60] *Compromis*, ¶36.

[61] *Id.* ¶39.

[62] *Id.* ¶41.

2. The alleged financial contributions did not violate the principle of non-intervention

Interference in another State's election violates the principle of non-intervention only if such interference is coercive.[63] There must be some loss of the State's freedom for the intervention to count as coercive.[64] While funding a party on the eve of an election may be intrusive, not all forms of pre-election political support are intrusive.[65]

The alleged financial contributions to SIP and later SAD did not occur at the eve of the Suthan referendum, or even in the days leading up to it, but dated back years.[66] Moreover, the contributions did not violate the Antaran domestic campaign finance laws.[67] The contributions lacked the coercive, intrusive element of influencing the Suthan referendum. Therefore, the contributions did not violate the principle of non-intervention.

3. The alleged financial contributions did not violate the right of self-determination

All people have a right to freely determine their political status.[68] This right can be exercised through formation of States by people under colonial or comparable alien domination[69] in non-independent or trust territories.[70]

---

[63] Nicaragua, ¶205; Christopher Joyner, *Coercion*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (OUP 2006); UNGA, 'Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations', A/RES/2625(XXV) (1970) ["**A/RES/2625(XXV)**"].

[64] OHLIN, 79.

[65] Maziar Jamnejad & Michael Wood, 'The Principle of Non-Intervention' (2009) 22 LEIDEN J. INT'L L. 345, 369 ["**Wood**"].

[66] *Compromis*, ¶36.

[67] *Id.* ¶39.

[68] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 1 ["**ICCPR**"]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art. 1.

[69] DAVID RAIĆ, STATEHOOD AND THE LAW OF SELF DETERMINATION 218 (Kluwer 2002).

[70] JOHN HUMPHREY, HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE 129 (Transnational Publishers 1984).

The contributions did not have any temporal proximity with the Suthan referendum or parliamentary elections.[71] In fact, Ravaria's support to SIP and SAD which had been mounting pressure for the referendum and resolution of the long-standing demands for independence since years, furthered the right of self-determination of the Suthan peoples. Therefore, the contributions did not violate the right of self-determination.

II. THE CYBER OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM WERE CONSISTENT WITH INTERNATIONAL LAW

SAD's grassroots campaign comprising of cyber operations **[1]** is not attributable to Ravaria. In any event, **[2]** the cyber operations were consistent with international law.

1. The cyber operations are not attributable to Ravaria

According to the *effective control* standard, private actions can only be attributed to a State when conducted on its specific instructions.[72] For example, in *Nicaragua*, some actions of the contras were not attributed to the U.S. since their relationship was not of *complete dependence*; even decisive participation in financing could not meet the high threshold.[73] A State's general support for, or encouragement of, a non-State actor or its cyber operations, is therefore insufficient to establish attribution,[74] as evidenced by widespread State practice.[75]

---

[71] *Compromis*, ¶36.

[72] G.A. Res. 56/83, Responsibility of States for Internationally Wrongful Acts, art. 8 (2002) ["**ARSIWA**"]; HANNAH TONKIN, STATE CONTROL OVER PRIVATE MILITARY AND SECURITY COMPANIES IN ARMED CONFLICT 24 (CUP 2011); TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS 96 (Michael Schmitt ed. CUP 2017) ["**TALLINN**"]; Nicaragua, ¶17 (Sep. Op. Judge Ago).

[73] Nicaragua, ¶109.

[74] TALLINN, 96; UNGA, 'Report by the International Law Commission to the General Assembly', A/56/10, 47 (2001) ["**DARSIWA**"].

[75] TALLINN, 96; Nicholas Tsagourias, 'Cyber Attacks, Self-Defence and the Problem of Attribution' (2012) 17(2) J. CONFLICT & SEC. L. 229, 237.

The grassroots campaign in relation to the referendum was carried out by SAD.[76] Ravaria's alleged financial contributions to SAD fail to meet the threshold of specific control over the cyber operations, and merely indicate general support extended to the protection of Velan ideas, which SAD carried out through a range of activities.[77] Therefore, the cyber operations are not attributable to Ravaria.

2. *In any event*, the cyber operations were consistent with international law

The cyber operations did not violate **[a]** Antara's sovereignty, **[b]** the principle of non-intervention, or **[c]** the ICCPR.

a. The cyber operations did not violate Antara's sovereignty

Remote cyber operations violate State sovereignty only if they infringe upon the target State's territorial integrity, or usurp its inherently governmental functions.[78] Transmission of information or propaganda through cyberspace does not violate sovereignty.[79] Further, unlike incidents such as the Stuxnet attack resulting in loss of functionality, cyber information operations do not result in damage of the cyber infrastructure or injury to persons.[80] Furthermore, unlike voter suppression or ballot fraud,[81] these operations do not interfere with the State's ability to conduct elections and do not usurp inherently governmental functions.[82]

---

[76] *Compromis*, ¶22.

[77] *Id.* ¶16.

[78] TALLINN, 20.

[79] *Id.* 26.

[80] Michael Schmitt, 'Virtual Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law' (2018) 19(1) CHIC. J. INT'L L. 30, 43 ["**Schmitt 2018**"].

[81] Michael Schmitt, 'Foreign Cyber Interference in Elections' (2021) 97 INT'L L. STUD. 739, 753 ["**Schmitt 2021**"]; The Oxford Statement On International Law Protections Against Foreign Electoral Interference Through Digital Means (2020).

[82] Schmitt 2018, 46.

The cyber operations persuaded Suthans to vote in favour of independence.[83] The operations did not engage in any disruption to the referendum, either through ballot manipulation or voter suppression, and thus, failed to usurp Antara's inherently governmental functions. Therefore, the cyber operations did not violate Antara's sovereignty.

b. The cyber operations did not violate the principle of non-intervention

Only those cyber operations that are coercive[84] and subordinate the will of the target State are prohibited.[85] Coercion must be designed to influence outcomes in, or conduct with respect to, a matter reserved to a target State.[86]

The non-forceful, non-dictatorial and secretive nature[87] of persuasion merely involves influencing, and is non-coercive.[88] Moreover, mere criticism of the internal politics of another State, albeit biased[89] and distorted,[90] does not amount to prohibited intervention.

SAD's campaign sought to influence voters in Sutha and involved posts on Pano that criticized the Antaran government.[91] Although certain posts were flagged,[92] they lacked the coercive element of

---

[83] *Compromis*, ¶22.

[84] UNGA, 'Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States', A/RES/36/103, ¶¶II(e)-(f) (1981).

[85] A/RES/2131(XX); Wood, 348.

[86] TALLINN, 318.

[87] Ido Kilovaty, 'Doxfare: Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information' (2018) 9 HARV. NAT'L SEC. J. 172.

[88] TALLINN, 318.

[89] Philip Kunig, *Prohibition of Intervention*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (OUP 2008); Eric de Brabandere, *Propaganda*, *in* MAX PLANCK ENCYCLOPAEDIA OF PUBLIC INTERNATIONAL LAW 510 (Rüdiger Wolfrum ed. 2012); TALLINN, 318-19.

[90] Schmitt 2018, 15-17.

[91] *Compromis*, ¶22.

[92] *Id.* ¶24.

affecting Antara's decisions. Therefore, the cyber operations did not violate the principle of non-intervention.

c. *The cyber operations did not violate the ICCPR*

The cyber operations did not violate the ICCPR, since **[i]** Ravaria did not owe any extraterritorial obligations to the Antarans. In any case, **[ii]** the cyber operations did not violate human rights of the Antarans under the ICCPR.

i. Ravaria did not owe any extraterritorial human rights obligations to the Antarans under the ICCPR

The generally recognized bases for extraterritorial jurisdiction squarely apply to cyber or digital conduct as well.[93] Under the *effective control* test, human rights obligations extend only to individuals present within a geographical area which is under a State's *de facto* control, and individuals subject to a State's jurisdiction or physical control.[94] Such a high degree of control cannot be met in instances of digital election interference in elections.[95]

Ravaria's actions did not entail any physical control over Antaran territory or its peoples. Therefore, Antara did not exercise the requisite degree of control to owe human rights obligations extraterritorially.

---

[93] TALLINN, 51-52.

[94] ICCPR, art. 2(1); Sarah H. Cleveland, 'Embedded International Law and the Constitution Abroad' (2010) 110 COLUM. L. REV. 225, 252.

[95] JENS OHLIN & DUNCAN HOLLIS, DEFENDING DEMOCRACIES 198 (OUP 2021); TALLINN, 185; Human Rights Watch v. Secretary of State for the Foreign and Commonwealth Office, [2016] All ER(D) 105.

ii. *Alternatively*, the cyber operations did not violate human rights of Antarans

People have the freedom to be subjected to a wide range of information and influences.[96] The cyber operations, in furtherance of this freedom, did not violate Antarans' rights to **[a]** freedom of opinion, and **[b]** political participation.

(a) The cyber operations did not violate the right to freedom of opinion

False news can be distinguished from distorted election information, as the latter is merely the presentation of accurate information in a way that reinforces peoples' pre-conceived notions, and does not violate any right.[97] The criticism of internal politics of another State, even if biased or exaggerated, is not prohibited.[98] In any case, the right to impart information also includes the right to impart non-objective information and false news.[99]

There is no prohibition on criticism of the internal politics in Antara. There was already resentment against Antara's policies, and demands for autonomy and subsequent independence. The news circulated was not false and premised on reasonable grounds of belief including *inter alia* the long-standing dispute on Suthan independence, prohibiting access to the Kuvil Shrine,[100] use of force by Antaran police at the rally of 31 January 2021,[101] and banning of Hunland's account,[102] *etc.* Therefore, the cyber operations did not violate the right to freedom of opinion.

---

[96] ICCPR, art. 19(2); UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan', A/HRC/47/25, ¶34 (2021) ["**A/HRC/47/25**"].

[97] Björnstjern Baade, 'Fake News and International Law' (2019) 29 EUR. J. INT'L L. 1357, 1376

[98] TALLINN, 318-319.

[99] Salov v. Ukraine, App. No. 65518/01, ¶113, ECtHR (2005) ["**Salov**"]; Bader v. Austria, App. No. 26633/95, ECtHR (1996).

[100] *Compromis*, ¶15.

[101] *Id.* ¶25.

[102] *Id.* ¶29.

(b) <u>The cyber operations did not violate the right to political participation</u>

During electioneering period, information of all kinds must be allowed to freely circulate,[103] and any restriction must be interpreted narrowly.[104] Value judgements during political debates are permissible.[105] Further, people must be allowed to inform themselves of alternatives to the political system.[106] The information which was shared was in the nature of value judgements and criticisms of the policies of the Antaran government, in the atmosphere of political debate.

The right to political participation is violated through active suppression of the right to choice,[107] through intimidation or coercion of voters.[108] Even calls to boycott elections do not meet this high threshold.[109] The information shared neither intimidated nor coerced voters, and could not be deemed as active suppression. Therefore, the cyber operations did not violate the right to political participation.

---

[103] Kwiecien v. Poland, App. No. 51744/99, ¶47, ECtHR (2005).

[104] *Id.* ¶51.

[105] Kita v. Poland, App. No. 57659/00, ¶46, ECtHR (2008).

[106] Adimayo Aduayom, v. Togo, CCPR/C/51/D/422/1990, ¶7.4, HRC (1996) ["**Aduayom**"].

[107] UNHRC, 'General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public services', CCPR/C/21/Rev.1/Add.7, ¶13 (1996).

[108] Leonid Svetik v. Belarus, CCPR/C/81/D/927/2000, ¶7.3, HRC (2004) ["**Svetik**"].

[109] *Id.*

C. ANTARA'S ORDER SUSPENDING PROF. LIAM HUNLAND'S PANO ACCOUNT WAS IN VIOLATION OF INTERNATIONAL LAW, AND ANTARA MUST THEREFORE RESCIND THE ORDER

International human rights law affords strong protection to expressions on matters of public interest, given their fundamental importance to democracy.[110] Antara violated international law by suspending Hunland's Pano account and removing all his posts on Pano. **[I]** Ravaria has the standing to bring a claim of human rights violations of Hunland, and **[II]** Antara's Order violates its obligations under the ICCPR.

I. RAVARIA HAS THE STANDING TO BRING A CLAIM OF HUMAN RIGHTS VIOLATIONS OF HUNLAND

A State has complete discretion to exercise diplomatic protection for any injury caused to its national by an internationally wrongful act of another State.[111] Particularly, the International Law Commission ["**ILC**"] and this Court have expressly recognized States' competence to exercise diplomatic protection for violations of internationally guaranteed human rights.[112] Antara, by suspending Hunland's Pano account and removing all his posts on Pano, violated international human rights law. Therefore, Ravaria can present an international claim against Antara's wrongful acts.

Antara may contend that a State cannot exercise diplomatic protection without establishing effective nationality with its national as per the *Nottebohm* standard.[113] However, the requirement of effective nationality is not applicable to **[1]** cases involving singular nationalities, and **[2]** in any case, this Court did not propound a general rule with regards effective nationality.

---

[110] UNHRC, 'CCPR General Comment No. 34: Article 19 (Freedoms of Opinion and Expression)', CCPR/C/GC/34, ¶38 (2011) ["**GC 34**"].

[111] UNGA, 'Report by the International Law Commission to the General Assembly', A/61/10, 28 (2006) ["**DADP**"]; Barcelona Traction, Light and Power Company Limited (Belg. v. Spain), Merits, 1970 I.C.J. 3, ¶33.

[112] DADP, 27; Ahmadou Sadio Diallo (Guinea v. D.R.C.), Merits, 2007 I.C.J. 582, ¶39.

[113] Nottebohm (Liech. v. Guat.), Merits, 1955 I.C.J. 4, 24.

1. **The requirement to establish an effective nationality is not applicable to cases of singular nationality**

The ILC and subsequent decisions have expressly limited the principle of effective nationality to cases of dual or multiple nationalities.[114] The requirement to establish an effective nationality in cases of singular nationality finds no support in State practice, scholarly opinion and judicial decisions.[115]

Hunland is a national of Ravaria and only enjoys a permanent residency status in Antara.[116] Since *effective nationality* is not a condition precedent in cases of singular nationality, Hunland's residency and occupation in Antara does not affect Ravaria's right to diplomatic protection. Therefore, notwithstanding the tenuous relations with Hunland, Ravaria can exercise diplomatic protection over him.

2. **In any case, this Court did not propound a general rule with regards effective nationality in *Nottebohm***

The ILC and subsequent decisions have held *Nottebohm* to not propound a general rule to establish effective nationality.[117] The *ratio* of the judgment was concerned with the manner of conferring citizenship. This Court held that the sole aim of conferring Liechtenstein's nationality to Nottebohm was to substitute his status as a national of a belligerent State to a neutral State. Since the nationality was conferred in *bad faith*, it was only in this context that this Court discussed Nottebohm's social bond with Liechtenstein.

---

[114] DADP, 30; Flegenheimer Case, XIV UNRIAA 327, 376 (1958) ["**Flegenheimer**"]; Ioan Micula v. Romania, ICSID Case No. ARB/05/20 (2008); Waguih Siag v. Arab Republic of Egypt, ICSID Case No. ARB/05/15 (2009).

[115] *Id.*, UNILC, 'First Report on Diplomatic Protection by John Dugard, Special Rapporteur', A/CN.4/ 506, ¶125 (2000) ["**Dugard**"]; Nottebohm, 42 (Diss. Op. Judge Read); Clive Parry, *Some Considerations upon the Protection of Individuals in International Law*, *in* COLLECTED COURSES OF THE HAGUE ACADEMEDY OF INTERNATIONAL LAW 90 (Académie de Droit International ed. 1968); Joseph Kunz, 'The Nottebohm Judgment' (1960) 54(3) AM. J. INT'L L. 536.

[116] *Compromis*, ¶13.

[117] DADP, 30; Flegenheimer, 376.

At the outset, there exists a high presumption of the validity of the nationality conferred by a State and its conformity with international law.[118] Further, there is no bad faith on Hunland's or Ravaria's part in conferring nationality upon Hunland. Hunland has not acquired the nationality of Antara, and continues to own property in Ravaria,[119] which further establishes his intention to remain a Ravarian national. Therefore, the principle of effective nationality is inapplicable in the present case.

II. ANTARA'S ORDER VIOLATES ITS OBLIGATIONS UNDER THE ICCPR

Antara's Order constitutes an interference with **[1]** Article 19, **[2]** Article 21, **[3]** Articles 19 and 21 read in conjunction with Article 2(3) of the ICCPR. Further, **[4]** Antara's Order does not satisfy the three-part test.

1. Antara's Order interferes with the right guaranteed under Article 19 of the ICCPR

Article 19 guarantees every person the right of freedom of expression, to impart information and ideas,[120] through internet and social media.[121] Expression includes information which is deeply offensive, untrue or misleading.[122]

A restriction on accessing social media platforms and take down of social media posts interferes with the freedom of expression.[123] Such restrictions, solely on account of the falsity of the

---

[118] Dugard, ¶118; JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 507 (9th ed. 2019) ["**BROWNLIE**"]; Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica, Advisory Opinion OC-4/84, ¶62, IACtHR (1984).

[119] *Compromis*, ¶28.

[120] ICCPR, art. 19.

[121] GC 34, ¶12; UNHRC, 'The promotion, protection and enjoyment of human rights on the Internet', A/HRC/RES/38/7, ¶1 (2018).

[122] GC 34, ¶¶11,47; Handyside v. United Kingdom, App. No. 5493/72, ¶49, ECtHR (1976); Salov, ¶113.

[123] Kablis v. Russia, App. No. 48310/16, ¶¶ 99, 103, ECtHR (2019).

information, violates Article 19 of the ICCPR unless justified under Article 19(3).[124] For instance, the Special Rapporteur considered Singapore's legislation, which allows restricting false information from influencing the outcome of an election, without defining *"false"* or *"fake"*, as *prima facie* interfering with the freedom of expression.[125]

Antara ordered the suspension and takedown of Hunland's Pano account and his posts. Therefore, as Hunland exercised his right of political speech on Pano and imparted information about government policies, Antara's Order interferes with Hunland's freedom of expression.

2. Antara's Order interferes with the right guaranteed under Article 21 of the ICCPR

Article 21 recognizes the right to peaceful assembly and even protects assemblies that take place online.[126] Moreover, internet and social media are facilitators in organizing, participating and even monitoring physical gatherings.[127]

Antara suspended Hunland from accessing Pano for eighteen months. Pano allows the creation of private groups of up to 10,000 users, through which, Hunland could create and engage in discussions on such groups and participate in online assemblies. Therefore, Antara's Order interferes with the right guaranteed under Article 21.

3. Antara's Order violated Articles 19 and 21 read in conjunction with Article 2(3) of the ICCPR

The Human Rights Committee [**"HRC"**] has considered violations of rights under the ICCPR in conjunction with Article 2(3), which obliges a State to provide effective remedy to persons

[124] UNHRC, 'Concluding Observations: Cameroon', CCPR/C/79/Add.116 (1999); UNCHR et al., 'Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda', FOM.GAL/3/17 (2017) ["**Joint Declaration**"].

[125] A/HRC/47/25, ¶54.

[126] ICCPR, art. 21; UNHRC, 'General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)', CCPR/C/GC/37, ¶6 (2020) ["**GC 37**"].

[127] *Id.* ¶¶34, 62.

claiming such violations.[128] For instance, where an individual's complaint regarding denial of accreditation was dismissed for lack of jurisdiction and without any recourse to determine the legality or necessity of the restriction, the HRC concluded a lack of effective remedy.[129]

Hunland's rights were restricted without providing him with any right to challenge Antara's Order. Moreover, the order extending the suspension by 6 months is not judicially reviewable. Consequently, Hunland was not provided with any opportunity to contest the interference with his rights enshrined under the ICCPR. Therefore, Antara violated Articles 19 and 21 in conjunction with Article 2(3)(a) of the ICCPR.

4. Antara's Order does not satisfy the three-part test

Antara's Order violates Articles 19 and 21 of the ICCPR, as it does not satisfy the three-part test which requires every restriction to **[a]** be provided by law, **[b]** fulfil a legitimate aim, and **[c]** be necessary in a democratic society.

a. Antara's Order is not provided by law

Antara's Order is not provided by law, since Section 5 of the PACA **[i]** is vague and overbroad, and in any case, **[ii]** Antara's Order is beyond the scope of PACA.

i. <u>Section 5 of the PACA is vague and overbroad</u>

A restriction must be formulated with sufficient precision so as to enable an individual to foresee the consequences and accordingly regulate their conduct.[130] For instance, phrases such as *"injury or mischief to a public interest"*,[131] *"false"* or *"fake"* are termed as vague and overbroad if not

---

[128] ICCPR, art. 2(3); Tatsiana Reviako v. Belarus, CCPR/C/129/D/2455/2014, ¶8.5, HRC (2020); Philip Njaru v. Cameroon, CCPR/C/89/D/1353/2005, ¶6.1, HRC (2007).

[129] Koktish v. Belarus, CCPR/C/111/D/1985/2010, ¶¶8.6-8.7, HRC (2014).

[130] GC 34, ¶25; Nepomnyashchiy v. Russian Federation, CCPR/C/123/D/2318/2013, ¶7.6, HRC (2018).

[131] R v. Zundel, [1990] 3 S.C.R. 697 ["**Zundel**"].

defined in the legislation.[132] Moreover, legislations in Canada, Uganda and Zimbabwe restricting speech on the *likelihood* of harm, fear or despondency without proof of actual or imminent damage to public order, have been deemed as vague and overbroad.[133]

Antara's legislation does not define *imminent lawless action* or *false or misleading allegations*. Further, Section 5 of the PACA allows suspension of user account on mere *likelihood* without requiring any evidence of actual or imminent harm. Therefore, Section 5 of the PACA is vague and not formulated with sufficient precision.

Further, any restriction imposed on freedom of expression must not be overbroad.[134] For instance, similar legislations in Canada and France only operate till the completion of the election and specifically list the types of prohibited expression, such as false information regarding the withdrawal of a candidate.[135]

However, under the PACA, the two-year suspension of the user account can last even beyond the completion of the election. In this manner, Antara can impose prior restraint on future expressions and restrict a person from criticising government policies and participate in political discussions post the election. Therefore, Section 5 of the PACA is overbroad.

[132] A/HRC/47/25, ¶54; David Kaye, 'Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression', OL ITA 1/2018, 4 (2018).

[133] Chavunduka v. Minister of Home Affairs, 2000 JOL 6540; Charles Onyango Obbo v. Attorney General, (2004) AHRLR 256.

[134] GC 34, ¶34.

[135] Canadian Elections Modernization Act 2018, s. 92; France Law No. 2018-1202 of December 22, 2018 on the fight against the manipulation of information 2018, art. 11.

ii. Antara's Order is beyond the scope of the PACA

Any restriction must be strictly applied only for the prescribed purposes and the specific need on which they are predicated.[136] For instance, where a legislation only permits blocking the access to a specific publication, restricting access to an entire website was held as not provided by law.[137]

Sections 5(1)(b) and 5(1)(d) of the PACA only allows the removal of such posts which are likely to impact the outcome of an election or incite imminent lawless action in connection with such election. However, all of Hunland's posts were removed, without any assessment if every such post constituted *"Election Misinformation"*, especially since some of the posts remained unflagged.[138]

Further, while the referendum took place on 1 March 2021,[139] the suspension of Hunland's account remained in operation even after 17 months of the referendum. Since information posted solely in the context of an election can be restricted under Section 5, restrictions which continued after the completion of the election were unlawful. Therefore, Antara's Order is beyond the scope of Section 5 of the PACA.

b. Antara's Order does not fulfil any legitimate aim

Antara's Order does not fulfil any legitimate aim, since it cannot be justified **[i]** for the respect of the rights of others, or for the protection of **[ii]** national security, or **[iii]** public order.

---

[136] GC 34, ¶22; Alexander Protsko v. Belarus, CCPR/C/109/D/1919-1920/2009, ¶7.3, HRC (2013).

[137] Cengiz v. Turkey, App. No. 48226/10, ¶65, ECtHR (2016).

[138] *Compromis*, ¶24.

[139] *Id.* ¶30.

i. Antara's Order cannot be justified for the respect of the rights of others

An interference with the freedom of expression to protect the right to vote[140] is only valid when sought to prevent the intimidation or coercion of voters.[141] People must be allowed to criticize and evaluate their government and inform themselves of alternatives to political systems or parties in power.[142]

Since the truth of the information is immaterial,[143] influencing voters even through false information, so long as not amounting to intimidation or coercion, cannot be restricted. Even if Hunland's posts amounted to false statement of facts, they did not coerce the voters. Therefore, Antara's Order cannot be justified for the protection of human rights of others.

ii. Antara's Order cannot be justified for protection of national security

A restriction is justified for national security only when necessary to preserve the State's capacity to protect its existence as a whole.[144] Further, in situations of existing violence or serious disturbances,[145] or where expression advocates harm to a particular person or group, such expression may impact national security.[146]

Hunland's posts were merely critical of Antara's policies and could not have threatened its territorial integrity or Antara's capacity to protect its existence. Further, even the 8 December re-post[147] merely had an aggressive undertone, and did not advocate for violence against a particular

[140] ICCPR, art. 25.

[141] Svetik, ¶7.3.

[142] Aduayom, ¶7.1.

[143] Çetin v. Turkey, App No. 40153/98, ¶57, ECtHR (2003); Joint Declaration, ¶¶1(a), 2(a).

[144] GC 37, ¶42; UN ECOSOC, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights', E/CN.4/1985/4, ¶29 (1984) ["**Siracusa**"].

[145] Surek v. Turkey, App. No. 24735/94, ¶40, ECtHR (1999); Perinçek v. Switzerland, App. No. 27510, ¶205, ECtHR (2015).

[146] Gul v. Turkey, App. No. 4870/02, ¶42, ECtHR (2010) ["**Gul**"].

[147] *Compromis*, ¶23(c).

group. Therefore, considering that there was no history of violence in Sutha and Hunland's posts did not result in any actual disturbance, Antara's Order cannot be justified under national security.

iii. Antara's Order cannot be justified for the protection of public order

A State must establish a clear and imminent danger to public order to justify any restriction.[148] For instance, the European Court of Human Rights considered restriction on slogans such as *"Fascist State will surely be demolished"* and *"the barrel of the gun that will call into account"* as unjustified without clear or imminent danger of violence.[149]

Antara has not provided any instance of clear threat in connection with the December 8 re-post. Further, a restriction imposed after several months of the re-post does not satisfy the requirement of imminence and proximity, especially when such post did not result in any actual disorder. Therefore, Antara's Order cannot be justified for the protection of public order.

c. Antara's Order is not necessary in a democratic society

To fulfill the requirement of necessity, a State must establish a pressing social need and only employ proportionate restrictions.[150] Antara's Order fails to satisfy these requirements as it is **[i]** not in response to a pressing social need, and **[ii]** disproportionate.

---

[148] Gul, ¶42; Abrams v. United States, 250 U.S. 616, 630 (1919); Brandenburg v. Ohio, 395 U.S. 444, 447 (1969); Meir Kahane v. Board of Directors of the Broadcasting Authority, (1987) 41(3) PD 255.

[149] Gul, ¶41-42.

[150] GC 37, ¶40; Europapress Holding Doo v. Croatia, App. No. 25333/06, ¶54, ECtHR (2009); Faurisson v. France, CCPR/C/58/D/550/1993, ¶8, HRC (1996).

i. Antara's Order is not in response to a pressing social need

A State must demonstrate a direct and immediate nexus between the expression and the specific threat to the social need.[151] Unless the State can establish an actual danger of harm, a restriction merely on account of speculative danger is unjustified.[152]

Hunland's solitary re-post[153] neither actually nor expressly called for violence, and only had an underlying aggressive tone. Even the DPCA provided no instance of actual violence or imminent danger of violence resulting from the said re-post.[154] Therefore, Antara's Order is not in response to a pressing social need.

ii. Antara's Order is disproportionate

A restriction is proportional only if it is the least intrusive measure to protect the legitimate aim.[155] Blanket restrictions are presumptively disproportionate.[156] There exist adequate and less intrusive measures to tackle the spread of false information, such as empowering traditional media communications, independent fact-checking institutions and public literacy campaigns.[157]

Antara could have ordered the removal of only such posts which incited violence and the rest of the false posts could have remained flagged by Pano. Further, Antara disproportionately removed *all* of Hunland's Pano posts, including those that remained unflagged, or were unrelated to the

---

[151] GC 34, ¶35; Jong-Kyu Sohn v. Republic of Korea, CCPR/C/54/D/518/1992, ¶10.4, HRC (1994).

[152] Vajnai v. Hungary, App. No. 6061/10, ¶55, ECtHR (2008).

[153] *Compromis*, ¶23(c).

[154] *Id.* ¶26.

[155] GC 34, ¶34; Ballantyne v. Canada, CCPR/C/47/D/359/1989, ¶11.4, HRC (1993); Toregozhina v. Kazakhstan, CCPR/C/112/D/2137/2012, ¶7.4, HRC (2015); Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Comm. No. 102/93, ¶¶55, 58, ACmHPR (1998).

[156] Amnesty International v. Sudan, Comm. No. 48/1990, ¶80, ACmHPR (1999).

[157] Mandate of the Special Rapporteur on Promotion and Protection of Freedom of Opinion and Expression, 'Freedom of Expression and Elections in the Digital Age', https://www.ohchr.org/Documents/Issues/Opinion/ElectionsReportDigitalAge.pdf (2019).

referendum.[158] Therefore, the blanket removal of Hunland's posts renders Antara's Order as disproportionate.

[158] *Compromis*, ¶¶24, 27.

D. ANTARA'S INTERFERENCE WITH COMPUTERS AND DEVICES OPERATING ON RAVARIAN SOIL, RESULTING FROM THE DECISION TO TAKE DOWN THE LUNAR BOTNET, WAS IN VIOLATION OF INTERNATIONAL LAW

Respect for territorial sovereignty is an essential foundation of international relations.[159] Antara's interference with computers and devices on Ravarian soil violated **[I]** Ravaria's sovereignty, **[II]** the principle of non-intervention, and **[III]** the object and purpose of the Budapest Convention. Further, **[IV]** Antara's actions cannot be justified under the doctrine of necessity.

I. ANTARA VIOLATED RAVARIA'S SOVEREIGNTY

Sovereignty in international relations signifies independence and the right to exercise to the exclusion of other States, the functions of a State.[160] This Court has consistently adjudicated violations of sovereignty as a distinct cause of action.[161] Antara violated Ravaria's sovereignty as **[1]** extraterritorial enforcement jurisdiction usurps an inherently governmental function, **[2]** intent of the violation or consequential harm is immaterial, and **[3]** Operation Moonstroke violated Ravaria's sovereignty.

1. Extraterritorial enforcement jurisdiction usurps an inherently governmental function

A State's authority to exercise law enforcement powers on its territory is an exclusive attribute of sovereignty and amounts to an inherently governmental function.[162] It is prohibited for States to

---

[159] Corfu, 35.

[160] Island of Palmas (Neth./U.S.), Award, II UNRIAA 829, 838 (1928).

[161] Nicaragua, ¶251; Corfu, 35; Armed Activities (D.R.C. v. Uganda), Judgment, 2005 I.C.J. 168, ¶165; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Judgment, 2015 I.C.J. 665, ¶93.

[162] ANTONIO CASSESE, INTERNATIONAL LAW 49-51 (2nd ed. 2005); R v. Hape, [2007] 2 S.C.R. 292, ¶105; TALLINN, 53; Arrest Warrant, 52 (Diss. Op. Judge Oda); Wood, 372.

exercise power on another State's territory without its consent.[163] Even in cyberspace, the exercise of law enforcement powers is considered an inherently governmental function.[164]

Particularly, the *Tallinn Manual* categorizes measures such as transborder access of data or extraterritorial hacking of devices, without the territorial State's consent, as violative of sovereignty.[165] Therefore, extraterritorial enforcement jurisdiction, such as unlawful transborder access to data, usurps an inherently governmental function.

2. Intent of the violation or consequential harm is immaterial

Under international law, only the State's actions are relevant, and the unintentional or unforeseeable nature of such actions is immaterial.[166] Further, actual harm or damage is not a compulsory element for a breach of sovereignty.[167] For instance, as States exercise exclusive sovereignty over airspace,[168] this Court,[169] and State practice consider any excursion into their airspace to violate sovereignty.[170]

---

[163] *Id.*; S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (Ser. A) No. 10, 18 ["**Lotus**"]; Arrest Warrant, 87 (Joint Sep. Op. Judges Higgins, Kooijmans, and Buergenthal); Arrest Warrant, 168 (Diss. Op. Judge Wyngaert).

[164] TALLINN, 22.

[165] *Id.* 23, 68, 71.

[166] DARSIWA, 36; TALLINN, 24.

[167] TALLINN, 21-23; Corfu, 35.

[168] Convention on International Civil Aviation, Dec. 12, 1944, 15 U.N.T.S. 295, arts. 1 and 3.

[169] Nicaragua, ¶251.

[170] Jonathan Marcus, 'Russia and South Korea spar over airspace intrusion', https://www.bbc.com/news/world-asia-49091523 (2019); Al Jazeera, 'Qatar complains to UNSC after UAE violates airspace', https://www.aljazeera.com/news/2018/1/12/qatarcomplains-to-unsc-after-uae-violates-airspace (2018); NATO, 'Russian Fighter Jet Violates NATO Airspace over Bornholm Island', https://ac.nato.int/archive/2020/russian-fighter-jet-violates-nato-airspaceover-bornholm-island (2020); Ece Toksaby, 'Turkey says Russian jet violated its airspace again, warns of consequences', https://www.reuters.com/article/us-turkey-russia-airspace-idUSKCN0V80NM (2016); Aerial Herbicide Spraying (Ecuador v. Colom.), Memorial, https://www.icj-cij.org/public/files/case-related/138/17540.pdf, ¶7.17 (2009).

Similarly, States deem unauthorised intrusions into their cyber infrastructure or usurpation of inherently governmental function, even without harm, to violate their sovereignty.[171] Since the power to exercise enforcement jurisdiction is an exclusive attribute of sovereignty, harm is not an element for a violation of sovereignty. Therefore, intent or harm of the actions is immaterial.

3. Operation Moonstroke violated Ravaria's sovereignty

Antara, pursuant to a Botnet Takedown Order,[172] hacked the command-and-control server of the Lunar Botnet.[173] From the said server, Antara launched Operation Moonstroke and removed the web shells from the affected devices, 5,000 of which were located in Ravaria. Antara, in complete disregard of Ravaria's sovereignty, even accessed and hacked devices located within Ravaria without its consent.

Antara's contention that it was unaware of the infected devices' location in Ravaria or that its actions did not result in any harm is untenable, since foreseeability, intention or consequential harm is immaterial. Therefore, Operation Moonstroke violated Ravaria's sovereignty.

II. ANTARA VIOLATED THE PRINCIPLE OF NON-INTERVENTION

The principle of non-intervention protects the sovereign right of a State to conduct its internal or external affairs without any foreign interference.[174] Antara's actions violated the principle of non-intervention as they **[1]** affected Ravaria's *domaine réservé*, and **[2]** were coercive.

---

[171] UNGA, 'Voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States', A/76/136, 57, 68, 87 (2021); Ministère des Armées, 'International Law Applied to Operations in Cyberspace', https://www.defense.gouv.fr/content/download/567648/9770527/file/international+law+applied+to+operations+in+cyberspace.pdf (2019); Declaration of General Staff of the Armed Forces of the Islamic Republic of Iran, https://nournews.ir/En/News/53144/General-Staff-of-Iranian-Armed-Forces-Warns-of-Tough-Reaction-to-Any-Cyber-Threat (2020); Note Verbale dated 22 July, 2013 from the Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations, A/67/946 (2013).

[172] *Compromis*, annex 1, s. 8(1).

[173] *Id.* ¶32

[174] Nicaragua, ¶205; A/RES/2625(XXV), 7.

1. Antara's actions affected Ravaria's *domaine réservé*

Domaine réservé refers to matters in which a State is permitted, by the principle of State sovereignty, to decide freely.[175] States have recognized their exclusive competence to exercise law enforcement powers on their territory.[176] Particularly, domestic courts and scholarly opinion consider extraterritorial enforcement jurisdiction as violative of the principle of non-intervention.[177]

While States may prescribe laws that govern foreign actions, it is strictly impermissible for States to enforce such legislation on foreign territory.[178] A State cannot remotely access devices located in foreign territory, hack them or delete information stored therein, without the target State's consent.[179] Analogous situations include the execution of an arrest warrant, summons or an order for production of document, on another State's territory, without its consent.[180]

Antara remotely accessed devices located in Ravaria and hacked them without Ravaria's consent. In effect, Antara enforced Section 8 of the PACA, a domestic legislation, upon Ravaria's territory. Such exercise of extraterritorial enforcement directly interferes with the exclusive right of Ravaria to exercise enforcement jurisdiction. Therefore, Antara's actions affected Ravaria's *domaine réservé.*

---

[175] Nicaragua, ¶205.

[176] Restatement (Second) of Foreign Relations Law of the United States §6-7 (1965); Smith, R v. Secretary for Defence, [2010] UKSC 29; Swissbourgh Diamond Mines v. Kingdom of Lesotho, [2018] SGCA 81.

[177] R v. Hape, [2007] 2 S.C.R. 292; National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre, [2014] ZACC 30; In Re: Westinghouse Electric Corporation, [1978] A.C. 547.

[178] Lotus, 18; Arrest Warrant, 87 (Joint Sep. Op. Judges Higgins, Kooijmans).

[179] TALLINN, 68, 71; T-CY, 'Guidance Note #3: Transborder access to data', https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e726a (2014) ["**Guidance Note #3**"].

[180] BROWNLIE, 462.

2. Antara's actions were coercive

Coercion is established if it has the effect of depriving the State's control over its *domaine réservé* or subordinating its sovereign will.[181] Further, the target State's knowledge of the coercion or intervention is not a condition precedent to constitute non-intervention.[182] Given the prohibition on unilateral exercise of extraterritorial enforcement, a State in order to access or seize any data, must seek the authorization of the State where the data is located.[183]

As a corollary, it is every State's sovereign right to grant such authorizations pursuant to its external policy, and the applicable mutual legal assistance treaties or principles of international cooperation. In the present case, Antara entered Ravaria's sovereign cyberspace and hacked the devices located in Ravaria's its territory without its consent. Consequently, Antara's unilateral hacking of computer devices within Ravaria, deprived Ravaria of its right to grant such authorizations.

Moreover, since a State has the exclusive right to enforce its laws, it has the consequential power to hack or seize electronic data as per its domestic laws. However, Antara's unilateral hack of devices and enforcement of its domestic laws upon Ravaria's territory, deprived Ravaria of its sovereign and free will to hack, search, seize or delete data stored on computer devices. Therefore, Antara's actions were coercive.

III. ANTARA VIOLATED THE OBJECT AND PURPOSE OF THE BUDAPEST CONVENTION

A State must not undertake any action which deprives a treaty of its object and purpose, even if such actions are not expressly prohibited under the treaty.[184] The object and purpose of a treaty

---

[181] ROBERT JENNINGS, OPPENHEIM'S INTERNATIONAL LAW 428 (OUP 2005).

[182] TALLINN, 320.

[183] Ahmed Ghappour, 'Searching Places Unknown: Law Enforcement Jurisdiction on the Dark Web' (2017) 69 STAN. L. REV. 1075, 1103 ["**Ghappour**"].

[184] UNGA, 'Report by the International Law Commission to the General Assembly', A/CN.4/191, 211 (1966); OLIVER DORR, VIENNA CONVENTION ON THE LAW OF TREATIES 484-485 (2nd ed. 2018) ["**DORR**"]; Nicaragua, ¶¶270, 273-274.

can be determined from its Preamble.[185] The Preamble of the Budapest Convention requires international cooperation amongst States to fight cybercrime.[186] Article 19 of the Budapest Convention confines a State's powers of accessing computer devices to only those which are located within its territory.[187]

Any transborder access of computer system or data must be pursuant to the relevant mutual legal assistance treaties, or the provisions for international cooperation under the Budapest Convention.[188] The only exceptions for unilateral access to stored computer data are consent or public availability of such data.[189]

Considering the object of the Budapest Convention to foster international cooperation, and allow unilateral transborder access to data only in limited circumstances,[190] unlawful transborder access violates the object and purpose of the Budapest Convention.

Section 8(5) of the PACA validates a Botnet Takedown Order, notwithstanding its effects on the servers or devices located outside national territory.[191] Further, through Operation Moonstroke, Antara unilaterally and unlawfully accessed the computer devices located in Ravaria. Therefore, Antara violated the object and purpose of the Budapest Convention.

---

[185] DORR, 256.

[186] Convention on Cybercrime, (2001) ETS. No. 185, prmbl ["**Budapest Convention**"].

[187] *Id.* art. 19.

[188] *Id.* arts. 23, 25, 31; Ghappour, 1103.

[189] Budapest Convention, art. 32; Guidance Note #3, 2; Kevin Heller, 'In Defense of Pure Sovereignty and Cyberspace' (2021) 97 INT'L L. STUD. 1432.

[190] Henrik Kaspersen, 'Cybercrime and Internet Jurisdiction', https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016803042b7, 26 (2009).

[191] *Compromis*, Annex 1, s. 8(4).

IV. ANTARA'S WRONGFULNESS CANNOT BE JUSTIFIED UNDER THE DOCTRINE OF NECESSITY

Under the doctrine of necessity, the wrongfulness of a State's actions is only justified when the course of action is the *only way* available to safeguard its essential interest.[192] The plea of necessity cannot be invoked when other lawful means exist, even if they are more costly or less convenient.[193] Further, the term *way* is not restricted to unilateral action, and even includes cooperative action with other States.[194]

Antara had adequate lawful alternatives such as ordering Pano to restrict incoming traffic, suspend account or domain names, and remove posts associated with the suspicious IP addresses. Further, through measures such as sinkholing, Antara could ascertain the geographic locations of the infected devices by redirecting the botnet traffic to a new server.[195]

Moreover, through measures of geo-location and IP tracking,[196] Antara could have estimated the location of the devices since it was already aware of their IP addresses.[197] Based on the IP tracking, it could have initiated the international cooperation and mutual legal assistance provisions provided under the Budapest Convention. Therefore, as Operation Moonstroke was not the only way available to safeguard its essential interest, Antara's wrongfulness cannot be justified under the doctrine of necessity.

---

[192] ARSIWA, art. 25.

[193] DARSIWA, 83.

[194] *Id.*

[195] David Sancho et al., 'Sinkholing Botnets', http://www.trendmicro.com.tr/media/misc/sinkholing-botnets-technical-paper-en.pdf (2011); Brett Stone-Gross et al., 'Your Botnet is my Botnet: Analysis of a Botnet Takeover', https://seclab.cs.ucsb.edu/media/uploads/papers/torpig.pdf (2009).

[196] EDWARD AMOROSO, CYBER ATTACKS: PROTECTING NATIONAL INFRASTRUCTURE (Butterworth-Heinemann 2011).

[197] *Compromis*, ¶31.

PRAYER FOR RELIEF

Ravaria respectfully requests this Court to adjudge and declare that:

1. The documents obtained in the illegal search of Ms. Walters' vehicle and the 30 May 2021 recording are inadmissible as evidence in these proceedings;
2. Ravaria's alleged financial contributions and cyber operations in connection with the Suthan referendum were consistent with international law;
3. Antara's order suspending Prof. Hunland's Pano account was in violation of international law, and Antara must therefore rescind the order; and
4. Antara's interference with computers and devices operating on Ravarian soil, resulting from the decision to take down the Lunar Botnet, was in violation of international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT