

TEAM 186A

**THE 2022 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION**

THE CASE CONCERNING THE SUTHAN REFERENDUM



THE DEMOCRATIC REPUBLIC OF ANTARA

APPLICANT

v.

THE VELAN KINGDOM OF RAVARIA

RESPONDENT

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

MEMORIAL FOR THE APPLICANT

2022

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STATEMENT OF JURISDICTION

The Democratic Republic of Antara (“Antara”) and the Velan Kingdom of Ravaria (“Ravaria”) hereby submit the present dispute to the International Court of Justice (“ICJ”) pursuant to Article 40(1) of the Court’s Statute, in accordance with the Special Agreement for submission to the ICJ of the differences concerning the Suthan Referendum, signed in The Hague, The Netherlands, on the thirteenth day of September in the year two thousand and twenty-one. Pursuant to article 36(1) of the Statute, the Court has jurisdiction to decide all matters referred to it for decision. Both parties accept the Court’s decision as final and binding and shall execute it in good faith in its entirety.

QUESTIONS PRESENTED

The Democratic Republic of Antara respectfully requests the Court to adjudge:

I.

Whether the documents obtained in the search of the briefcase found in the vehicle driven by Ms. Walters and the recording from the conciliation meeting of 30 May 2021 are admissible as evidence before the Court;

II.

Whether the campaign of financial contributions and the dissemination of misinformation intending to influence the outcome of the Suthan referendum are attributable to Ravaria and whether these acts constitute an internationally wrongful act;

III.

Whether the suspension order of Prof. Liam Hunland's Pano account under Section 5 of PACA was consistent with international law and whether Antara should uphold the order; and

IV.

Whether Antara's actions in taking down the Lunar Botnet, and the effects of those actions on computers and devices in Ravaria, breached international law and, if so, whether Antara nevertheless acted lawfully under a state of necessity as a circumstance precluding wrongfulness.

STATEMENT OF FACTS

BACKGROUND

The Democratic Republic of Antara ('Antara') and the Velan Kingdom of Ravaria ('Ravaria') are neighbouring States located in the Benthamic Peninsula. Antara is a developed democracy with a population of 21 million. Ravaria is a developed monarchy with a population of 12 million. Vela has been the dominant religion in the southern Peninsula and is now the State religion of Ravaria. Prior to independence, the two nations were administrative districts of the Zemin Empire. They maintain friendly ties.

SUTHA

Sutha was also an administrative district under the Zemin Empire. Its population has unremittingly increased because of the discovery of large deposits of natural resources. Sutha remained under Zemin's colonial control until 1962. Zemin considered that Sutha lacked essential conditions to become a State. Antara and Ravaria disagreed on Sutha's status: Antara favoured Sutha's incorporation into its territory, while Ravaria, on the contrary, appealed for its independence. In a joint effort to find a viable solution, the two nations resorted to the help of the UN Secretary-General.

THE TREATY OF SINGAPORE

To resolve the dispute, Zemin, Antara and Ravaria concluded the Treaty of Singapore on 29 October 1962. According to the treaty, Sutha would become an Antaran province for the next 25 years. The treaty stipulated that in 1987 or after the Suthan Legislative Council and national Antaran Parliament, by a 2/3 vote of both bodies, could authorise a referendum in Sutha to determine whether it wished to remain an Antaran province or become an independent State. If voters did not choose independence, no further votes could be conducted for 25 years. To this end, Antara amended its Constitution. The Suthan Independence Party (SIP) was founded in 1963 and became popular.

PANO

The Panoptest Corporation, a public corporation registered in Zemin, owns Pano. It is a social networking platform allowing users to chat, publish messages on their feed and share content. Pano was the Peninsula's most popular social network by 2018. It currently has 12 million daily active users on average, 4 million of which are in Antara.

PROFESSOR HUNLAND

Prof. Hunland is a pious Velan and tenured Professor of Velan Theology at the University of Sutha. He wrote for local and international media for years. His Pano page had over 9 million followers, the third largest contingent on the Peninsula by 2019. He is a Ravarian citizen and has been a permanent resident of Antara since relocating to Sutha Province in the 1980s.

He is a fervent defender of Sutha's autonomy and unhesitatingly uses all available means to express his views. He is affiliated with the SIP and even authored their new manifesto. He is also actively writing and sharing posts on his Pano page. Between April and June 2020, he repeatedly shared his critical opinions on the Antaran administration on Pano. Meanwhile, he created Suthans Against Domination ("SAD"), a Sutha-based non-profit foundation.

During November and December 2020, Prof. Hunland posted and shared disinformation about the Antaran government and the situation regarding Sutha. His statements were proven to be incorrect by independent observers.

Pano received numerous complaints from users and political groups demanding the removal of his inflammatory and violent content. As a warning, Pano flagged 240 of his posts and re-posts (63% of his total) between 11 January and 1 February 2021.

SUTHAN REFERENDUM

The question of Suthan independence first appeared in August 2020 when Prime Minister Goldman's party lost its majority in the Antaran parliamentary elections.

A month later, the SIP introduced motions in both the Suthan Legislative Council and the Antaran Parliament advocating, in line with the Singapore Treaty, for a referendum on Suthan independence. A popular vote on the latter was subsequently promised by the new Prime Minister, Michaela Lubinsky.

The referendum proposal was approved by the Suthan Legislative Council by a vote of 100 to 25 on 13 October 2020 and the vote was scheduled for 1 March 2021.

The referendum took place and the results were later revealed on 2 March 2021. With 67% of eligible voters casting ballots, 52% voted for independence and 48% chose to stay a part of Antara.

OUTDOOR RALLY VIOLENCE

On 31 January 2021, Prof. Hunland held an outdoor rally in Sutha to encourage citizens to vote. In spite of the COVID-19 restrictions in Antara and early promises of the organisers to hold the event online, 7,500 people attended. When Antaran police arrived to disband the demonstration, there were violent clashes. This resulted in 225 injuries and the deaths of 3 people.

In line with Section 5 of PACA, on 5 February 2021, the content moderation unit of the Antaran Data Protection and Cybersecurity Agency (DPCA) filed an application for content removal and a user suspension order against Pano with regard to Prof. Hunland's posts.

The presiding judge granted a suspension order against Pano on 15 February 2021, which was immediately executed.

“OPERATION MOONSTROKE”

On 4 April 2021, *The Sydney Morning Herald* published an article about the ‘Lunar Botnet’ takedown by the DPCA one week before the referendum. During the 3 months preceding the referendum, the malware aimed to spread misinformation linked to the vote and affected more than 30,000 devices.

On 26 February 2021, following a court order under Section 8 of PACA, the DPCA proceeded to remotely hack the command-and-control servers located in Antara. Without knowing the true identity of the botmaster, Antara succeeded in erasing segments of the script enabling remote administration.

MS. WALTERS’ ARREST AND BRIEFCASE SEIZURE

In the early hours of 25 April 2021, Emma Walters, the wife of Ravarian Ambassador, drove away from a SAD Gala inebriated. While driving intoxicated, she hit a pedestrian who died on the spot. The police apprehended her without knowing her status. Before taking the briefcase, which

contained her driver's license and diplomatic passport, officers handed the passport back. Ms. Walters was arrested and charged with vehicular homicide.

The duty sergeant later opened the briefcase with no prior information of her connection to the Embassy; compromising documents were contained therein. The information revealed money transfers from the Ravarian Embassy to the SIP and SAD as well as SAD's involvement with the "Lunar Botnet". SAD was the botmaster controlling the operations and affected devices within its headquarters and aimed to spread separatist messages online.

On 26 April 2021, after having finally identified herself, Ms. Walters was released. The Ravarian Embassy protested her detention right away and requested the return of the briefcase. The documents were sent to the Embassy by the Antaran National Intelligence Agency but the Ambassador was informed that they had been photocopied for national security reasons.

On 27 April 2021, the evidence found was confirmed by a criminal investigation.

THE RECORDING OF THE CONCILIATION MEETING

As relations deteriorated between both states, the foreign minister of Zemin convinced both parties to conduct an *ad hoc* conciliation meeting of 30 May 2021. Both parties agreed to the creation of an audio recording of the meetings. No resolution of the dispute was achieved.

APPLICATION TO THE COURT

To settle the dispute, both parties agreed to submit the matter to the International Court of Justice. Ravaria, however, objects to the admission of the briefcase documents and the conciliation meeting recording as evidence in the proceedings.

SUMMARY OF PLEADINGS

ADMISSIBILITY OF THE DOCUMENTS AND THE RECORDING OF THE CONCILIATION MEETING

This Court shall admit the documents found in Ms. Walters' briefcase and the recording from the conciliation meeting as it is not bound by a generally binding rule regarding inadmissibility of evidence. This Court is free to make its own determination of the facts and assess the probative value of all evidence, the documents and recording alike. Regardless, admissibility of unlawfully obtained evidence is not excluded by this Court's procedural rules and jurisdiction extends to any fact which, if established, would constitute a breach of an international obligation.

In any event, the procurement of the evidence found in Ms. Walters' briefcase did not violate international law as diplomatic immunity of the latter does not extend to either the documents or the briefcase. The content of the documents goes beyond the scope of the functions of the diplomatic mission and the briefcase is not a diplomatic bag, inviolability thereof cannot be invoked.

Confidentiality was not stipulated before the conciliation meeting and neither party is bound by any such rule, whether by treaties or customary international law. Should a rule on confidentiality apply, public interest and the principle of good faith support the use of the recording as evidence.

RAVARIA'S CAMPAIGN OF FINANCIAL CONTRIBUTIONS AND DISSEMINATION OF MISINFORMATION VIOLATED INTERNATIONAL LAW

Irrespective of the evidence used and the control test applied, the financial contributions and dissemination of misinformation are attributable to Ravaria and evidence a violation of international law. The conduct of SAD was controlled by Ravaria who funded and approved the operating of the Lunar Botnet. In any event, the Respondent acknowledged and adopted SAD's behaviour as its own. Given the secrecy of the operations, inaccessibility to the dark web and limited availability of evidence, a low standard of proof should be applied and special weight assigned to circumstantial evidence.

The influence operations coercively intervened in Antara's internal affairs, thus violating the non-intervention principle. Such operations and support of the secessionist movement, which

influenced the referendum result, amount to a violation of territorial integrity. Consequently, Antara's sovereignty has been violated.

HUNLAND'S CASE

This Court shall not see Prof. Hunland's online content as protected by the freedom of expression since it seemed to encourage and lead to actual violence. This Court is free to use this occasion to safeguard other rights at stake. In any event, under international law, Antara's restriction on his right to freedom of expression was lawful. The order was provided for by law, pursued a legitimate aim and was proportionate and necessary. Regardless, the "chilling effect" argument is irrelevant in this case.

Prof. Hunland's freedom of thought, conscience and religion was not infringed. Even if this was the case, such action would be lawful. Additionally, the extraterritorial scope of human rights does not apply here. Even so, no international human rights owed to Prof. Hunland's Ravarian followers were violated by Antara. Antara neither infringed religious rights or beliefs, nor rights to assemble. The suspension order and content moderation must not be rescinded by Antara. In any case, Antara is materially unable to revoke the order.

THE ANTARAN TAKEDOWN OF THE LUNAR BOTNET AND ITS EFFECTS WERE CONSISTENT WITH INTERNATIONAL LAW

As Ravaria breached Antara's sovereignty, it should be barred from bringing any claims before this Court. Nevertheless, should this Court consider that Ravaria has standing, Antara did not violate international law. Antara acted in accordance with the Budapest Convention's objectives and in good faith. Furthermore, Antara did not intend to violate Ravaria's sovereignty, unlike Ravaria's influence operations on Antaran soil. Regardless, Antara had an obligation to remove the "web shells" from the affected devices.

Antara's conduct was consistent with international human rights law; it had no jurisdiction over the Ravarian devices' owners. Even so, there were no infringements of their privacy and property rights.

Moreover, Antara acted under the state of necessity for which it fulfilled all the requested conditions under international law. In light of the current circumstances, should Antara be required to pay compensation, the amount should be reduced.

PLEADINGS

I. THE DOCUMENTS OBTAINED IN THE SEARCH OF THE BRIEFCASE FOUND IN THE VEHICLE DRIVEN BY MS. WALTERS AND THE RECORDING FROM THE CONCILIATION MEETING OF 30 MAY 2021 ARE ADMISSIBLE AS EVIDENCE IN THESE PROCEEDINGS

A. This Court has a flexible approach to the admissibility of evidence and should consider the documents and recording admissible

A general, binding rule on inadmissibility of evidence does not exist.¹ In contrast to domestic tribunals, no formalised procedural rules impose any restrictions on this Court regarding the evidentiary material.² All evidence is considered admissible and this Court is free to evaluate its probative value.³ This Court makes its own determination of the facts⁴ and its decisions should primarily be based on substance, not points of procedure.⁵ The authenticity and reliability of the documents and recording, although important,⁶ are not questioned here. No violation occurs in admitting this evidence; therefore, the documents and recording should be considered admissible.

In any case, this Court's procedural framework does not preclude the admission of unlawfully obtained evidence. While such evidence may be excluded in criminal proceedings,⁷ fact-finding before this Court is inherently different as no human rights of an accused, or individual criminal responsibility, are involved.⁸ This Court may exercise jurisdiction over "any fact which,

¹ Sara Mansour Fallah, *The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals*, 19 *The Law and Practice of International Courts and Tribunals* (2020) 147 ["Fallah"], 147.

² Peter Tomka and Vincent-Joël Proulx, *The Evidentiary Practice of the World Court*, NUS Law Working Paper No. 2015/010 (2015), 3.

³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua/U.S.)*, Merits, Judgment of 27 June 1986 ICJ ["*Nicaragua*"], ¶60.

⁴ *Armed Activities on the Territory of the Congo (D.R.C./Uganda)*, Judgment of 19 December 2005 ICJ, ¶57.

⁵ *Case of the Free Zones of Upper Savoy and the District of Gex*, Judgment of 7 June 1932 PCIJ (ser. A/B) No. 46, 155.

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina/Serbia and Montenegro)*, Judgment of 26 February 2007 ICJ ["*Genocide*"], ¶¶225-226.

⁷ Fallah, 151-152.

⁸ Rosalyn Higgins, Speech, General Assembly Sixth Committee (2 November 2007).

if established, would constitute a breach of an international obligation.”⁹ Unlawfully procured evidence is not *ipso facto* inadmissible.¹⁰ Indeed, evidence before this Court has never been excluded if procured unlawfully¹¹ hence the documents and recording should be admitted.

B. In any event, the procurement of the documents obtained in Ms. Walters’ briefcase did not violate international law

1. Ms. Walters did not invoke diplomatic immunity

Families of diplomatic agents enjoy certain privileges and immunities.¹² However a diplomatic passport is insufficient for attributing immunity. Circumstances surrounding fortuitous events can preclude the international wrongfulness of certain conduct, *e.g.* the search of a diplomat’s baggage when bearing no indication of the name and status of the owner.¹³ Ms. Walters neither protested her arrest nor invoked inviolability of the briefcase or the documents.¹⁴ She drove a rented vehicle, which gives no sign of diplomatic status, and reached for the briefcase on her own initiative.¹⁵ Consequently, diplomatic immunity does not apply in the absence of any such indication.

2. The scope of diplomatic inviolability does not extend to the bag or documents as Ms. Walters’ personal property

a) The notion of property for the purpose of diplomatic inviolability has a limited application

Inviolability of a diplomatic agent’s (or family members’) ¹⁶ personal property is not absolute.¹⁷ Such inviolability “primarily refers to goods in the diplomatic agent's private residence” essential

⁹ Statute of the International Court of Justice, 59 Stat. 1055 (1945), Article 36(2)(c).

¹⁰ W. Michael Reisman and Eric E. Freedman, *The Plaintiff’s Dilemma: Illegally Obtained Evidence and Admissibility in International Adjudication*, 76 *The American Journal of International Law* (1982) 737, 748.

¹¹ Hugh Thirlway, *Dilemma or Chimera?—Admissibility of Illegally Obtained Evidence in International Adjudication*, 78 *American Journal of International Law* (1984) 622, 624.

¹² Vienna Convention on Diplomatic Relations, 500 UNTS 95 (1964) [“VCDR”], Article 37(1).

¹³ Roberto Ago, Special Rapporteur, *Eighth Report on State Responsibility*, U.N.Doc.A/CN.4/318/Add.1-4 (1979), 62.

¹⁴ Compromis, ¶35.

¹⁵ Compromis, ¶35.

¹⁶ VCDR, Articles 30, 37.

¹⁷ Eileen Denza, *Diplomatic Law: Commentary on The Vienna Convention on Diplomatic Relations*, OUP (2016) [“Denza”], 229.

to their livelihood or intended for personal use.¹⁸ The word “primarily” implies a limited application of Article 30(2) VCDR which should not extend to Ms. Walters’ briefcase. The briefcase does not constitute an item essential for personal use or livelihood and contains information that does not concern the Ambassador’s wife.¹⁹ The briefcase was located in a car,²⁰ viz. outside the residence, and is subsequently not covered by inviolability as Ms. Walters’ personal property.

b) The documents do not constitute Ms. Walters’ private papers or correspondence

Diplomatic inviolability extends to the private papers and correspondence of a diplomatic agent.²¹ This includes correspondence that does not contain identifying marks and is sent through public postal services.²² The documents in the briefcase contain correspondence and financial transactions effectuated by SAD and the Bavarian Embassy²³ that had no personal connection to Ms. Walters. Hence protection thereof should not be attributed on these grounds.

3. The inviolability of the documents does not apply as their content goes beyond scope of the functions of the diplomatic mission

Archives and documents²⁴ and official correspondence²⁵ are covered by inviolability only when relating to the diplomatic mission. Such inviolability is not absolute. Firstly, matters unconnected to the service, such as the documents, incur a loss of immunity; this includes issues that are extraneous to the mission’s functions.²⁶ Such functions are clearly defined.²⁷ Secondly, persons enjoying diplomatic protection violate international law when interfering in the internal affairs of

¹⁸ Report of the International Law Commission Covering the Work of its Tenth Session, U.N.Doc.A/CN.4/117 (1958), 98.

¹⁹ *Infra*, §I(B)(2)(b).

²⁰ *Compromis*, ¶35.

²¹ VCDR, Article 30(2).

²² *Denza*, 228.

²³ *Compromis*, ¶37.

²⁴ VCDR, Article 24.

²⁵ VCDR, Article 27(2).

²⁶ J. Mervyn Jones, *Immunities of Servants of Diplomatic Agents and the Statute of Anne 7, C. 12*, 22 *Journal of Comparative Legislation and International Law* (1940) 19, 25-26.

²⁷ VCDR, Article 3.

another State in abuse of their role.²⁸ Thirdly, rules regarding immunity can be bypassed when the receiving State's national security is threatened²⁹ as State security takes precedence.³⁰

The activities identified in the documents do not fall within the functions of the diplomatic mission: the financial transactions and correspondence evidence violations of international law³¹ while interference in Antara's internal affairs³² constitutes an abuse of the positions held by diplomatic agents. Moreover, the documents reveal a threat to Antara's national security and citizen's rights,³³ therefore, they should not benefit from inviolability.

4. The briefcase is not a diplomatic bag and is not protected by diplomatic inviolability

Diplomatic inviolability extends to the diplomatic bag³⁴ which must contain visible, external marks of a diplomatic nature and only contain items intended for official use.³⁵ Parcels not meeting the necessary requirements are not included.³⁶ Nothing indicates that the briefcase had any external, diplomatic marks and the documents were not intended for official use.³⁷ The briefcase is therefore not a diplomatic bag and is not covered by inviolability.

²⁸ VCDR, Article 41; *United States Diplomatic and Consular Staff in Tehran (U.S./Iran)*, Judgment of 24 May 1980 ICJ [“*Tehran*”], ¶84.

²⁹ Richard C. Kay, *United States v. Deaver: Implied and Express Waivers of Diplomatic Immunity*, 12 *Maryland Journal of International Law* (1988) 259, 274.

³⁰ Robert A. Wilson, *Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations*, 7 *Loyola of Los Angeles International and Comparative Law Review* (1984) 113, 136.

³¹ *Infra*, §II(B).

³² *Infra*, §II(B)(1)(a)(i) and §II(B)(1)(b)(i).

³³ *Idem.*; *Infra*, §III(C)(b).

³⁴ VCDR, Article 27(3).

³⁵ VCDR, Article 27(4).

³⁶ Denza, 196.

³⁷ *Supra*, §I(B)(3).

C. The use of the recording from the 30 May 2021 meeting does not violate international law

1. No rule of international law binding on Antara provides for confidentiality of conciliation meetings

a) The parties did not specifically agree on the confidentiality of the conciliation meeting

Norms binding on States “emanate from their own free will” and any restrictions regarding State independence cannot be presumed.³⁸ Only rules accepted by States can impose limitations; this applies without exception and is valid for all States.³⁹ Secrecy aims to ensure that States obtain the guarantees of discretion they desire⁴⁰ and should be decided on a case-by-case basis.⁴¹ The recording of the meeting was agreed upon,⁴² however, neither Antara nor Ravaria gave any indication that the meeting was confidential. Therefore, in the absence of such agreement, neither party is bound by confidentiality.

b) No treaty rules binding on Antara provide for confidentiality of conciliation meetings

Firstly, while the UN Charter mentions conciliation,⁴³ no provisions require confidentiality of such meetings. Treaty interpretation must be done in good faith⁴⁴ and be primarily based on the text itself.⁴⁵ Therefore, the absence of any confidentiality obligation in treaties binding upon Antara does not limit the admissibility of the recording.

Secondly, certain international legal instruments,⁴⁶ although providing for confidentiality of conciliation meetings, do not impose legal obligations on States; while legal instruments

³⁸ *S.S. Lotus (Fr./Turk.)*, Judgment of 7 September 1927 PCIJ (ser. A) No. 10 [“*S.S. Lotus*”], 18.

³⁹ *Nicaragua*, ¶269.

⁴⁰ Paul Reuter, *Le Droit au Secret et les Institutions Internationales*, 2 *Annuaire Français de Droit International* (1956) 46, 47.

⁴¹ Sven Koopmans, *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation*, Asser Press (2008) [“Koopmans”], 154.

⁴² *Compromis*, ¶43.

⁴³ Charter of the United Nations, 1 UNTS XVI (1945) [“UN Charter”], Article 33.

⁴⁴ Vienna Convention on the Law of Treaties, 1155 UNTS 331 (1969), Article 31.

⁴⁵ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment of 3 February 1994 ICJ, ¶41.

⁴⁶ *Annuaire de l'Institut de Droit International* (1961-II), 390-391; UNGA Resolution 50/50, *The United Nations Model Rules for the Conciliation of Disputes between States*, U.N.Doc.A/RES/50/50 (1995) [“Model Rules”], Articles 25-26.

imposing such obligations⁴⁷ are not binding upon Antara. Consequently, no provisions on confidentiality bind Antara.

c) No customary rule binding on Antara provides for confidentiality of conciliation meetings

Diverging and inconsistent State practice does not give rise to customary international law rules.⁴⁸ Despite several States adhering to non-binding international instruments providing for confidentiality, this is insufficient to establish practice.⁴⁹ Indeed, as the number of treaty signatories increases, practice is more difficult to establish outside this framework.⁵⁰ Regardless, confidentiality provisions do not constitute customary international law as they lack the necessary *opinio juris* element.⁵¹ This Court previously used content from conciliation meetings as evidence⁵² which opposes the notion of a generally binding rule and consistent practice. Consequently, no customary rule providing for the confidentiality of conciliation meetings binds the parties.

2. Should a rule providing for confidentiality of conciliation meetings apply, it is not absolute

a) Public interest takes precedence

Public interest can necessitate the need for publicity.⁵³ Irrespective of the outcome, the specific circumstances of the case determine whether publicity is desirable.⁵⁴ The recording demonstrates Ravaria's interference in Antara's internal affairs with more than 20,000 Antaran citizens' property

⁴⁷ League of Nations Assembly, General Act for the Pacific Settlement of International Disputes (1928), Article 10; European Convention for the Peaceful Settlement of Disputes 320 UNTS 243 (1957), Article 11.

⁴⁸ Malcolm N. Shaw, *International Law*, CUP (2008) ["Shaw"], 76-77.

⁴⁹ *North Sea Continental Shelf (Federal Republic of Germany/Denmark)*, Judgment of 20 February 1969 ICJ ["*Continental Shelf*"], ¶76.

⁵⁰ *Idem.*; Richard Baxter, *Treaties and Custom*, 129 Recueil des Cours (1970) 27, 64.

⁵¹ *Continental Shelf*, ¶77.

⁵² *Temple of Preah Vihear (Cambodia/Thailand)*, Merits, Judgment of 15 June 1962 ICJ ["*Temple*"], 31; Koopmans, 158.

⁵³ Koopmans, 154.

⁵⁴ *Annuaire de l'Institut de Droit International* (1961-II), 211.

and rights affected.⁵⁵ This information is of high public interest, the recording should therefore be used as evidence in these proceedings.

b) The principle of good faith supports the use of the recording as evidence

Parties must cooperate in good faith during conciliation meetings.⁵⁶ Confidentiality may cover correspondence between counsels and States in the context of dispute settlement⁵⁷ but not the discussions themselves. Considering that such meetings aspire to resolve disputes, the same principle applies to litigation. Moreover, recapitulating previously discussed matters can render renewed dialogue superfluous.⁵⁸

The Parties implicitly agreed to cooperate in good faith during the conciliation meeting. This principle also applies to these proceedings given that the content of both procedures is the same and that the evidence before this Court does not concern correspondence between Ravaria and its counsel but discussions between the parties. Accordingly, the principle of good faith supports using the recording as evidence.

D. Even if the Court finds that the documents and recording were acquired unlawfully, they are still admissible

1. The history of evidence procurement does not preclude admissibility

a) The inviolability of documents does not preclude admissibility

Unlawfully obtained diplomatic documents can still be used as evidence in proceedings.⁵⁹ Inviolability seeks to ensure the efficient functioning of the mission,⁶⁰ not to preclude the admissibility of documents.⁶¹ Unlawfully obtained evidence is not *ipso facto* excluded,⁶² therefore, even if the documents are covered by inviolability, they should still be admitted.

⁵⁵ Compromis, ¶32.

⁵⁶ Model Rules, Article 12.

⁵⁷ *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste/Australia)*, Provisional Measures, Order of 3 March 2014 ICJ, ¶27.

⁵⁸ *Mavrommatis Palestine Concessions (Greece/Britain)*, Judgment of 30 August 1924 PCIJ (ser. A) No. 2, 13.

⁵⁹ *Bancoult, R./Secretary of State for Foreign & Commonwealth Affairs*, EWCA Civ 708, England and Wales Court of Appeal (2014) [“*Bancoult*”], ¶49.

⁶⁰ Denza, 165.

⁶¹ *Bancoult*, ¶47.

⁶² *Supra*, §I(A).

b) The purported confidentiality of the conciliation meeting does not preclude admissibility

This Court alone decides the admissibility of evidence⁶³ and has previously referred to content of conciliation meetings.⁶⁴ Statements and admissions of high-ranking political figures are of particular probative value when confirming facts or conduct unfavourable to a State.⁶⁵ The Ravarian Attorney General's statements are of notable value as they do not deny the veracity of the documents;⁶⁶ the contents thereof evidence violations of international law.⁶⁷ Accordingly, the recording should be considered admissible.

2. No general principle of law precludes the use of unlawfully obtained evidence in international proceedings

General principles of law resolve *non liquet* claims and emanate from a majority of municipal law systems.⁶⁸ The “fruit of the poisonous tree” doctrine,⁶⁹ whereby evidence derived from an initial illegal act is considered inadmissible, is generally only applied in domestic criminal proceedings in common law countries.⁷⁰ According to the good faith exception, such evidence is admissible when officers reasonably believed to be acting in compliance with legal authority.⁷¹ The documents are not covered by the aforementioned exclusionary rule and, in any event, the Sergeant acted in good faith as he did not know the identity of Ms. Walters or the provenance of the documents when delivering the briefcase to the Antaran National Intelligence Agency.⁷² Consequently, this general principle, even if it existed, cannot preclude the admissibility of evidence.

⁶³ *Nicaragua*, ¶60.

⁶⁴ *Temple*, 31.

⁶⁵ *Nicaragua*, ¶64.

⁶⁶ *Compromis*, ¶44.

⁶⁷ *Infra*, §IIB.

⁶⁸ *Shaw*, 98.

⁶⁹ *Nardone/United States*, 308 U.S. 338, US Supreme Court (1939), 341.

⁷⁰ Stephen C. Thaman, “*Fruits of the Poisonous Tree*” in *Comparative Law*, 16 *Southwestern Journal of International Law* (2010) 333, 382-383.

⁷¹ *Herring/United States*, 555 U.S. 135, US Supreme Court (2009), 8-9, 12-13.

⁷² *Compromis*, ¶¶36-37.

II. RAVARIA’S CAMPAIGN OF FINANCIAL CONTRIBUTIONS AND THE DISSEMINATION OF MISINFORMATION INTENDING TO INFLUENCE THE OUTCOME OF THE SUTHAN REFERENDUM WERE IN VIOLATION OF INTERNATIONAL LAW

A. The financial contributions and dissemination of misinformation are attributable to Ravaria

1. The documents and recording prove attribution

a) The conduct of SAD was controlled by Ravaria

Conduct of non-State actors, including cyber operations,⁷³ is attributable to a State when acts are committed under its control.⁷⁴ The effective control test⁷⁵ requires a specific order from a State to a non-State entity, or effective control, in respect of each operation in which the unlawful conduct occurred.⁷⁶ This includes *inter alia* planning operations, organisation and operational support.⁷⁷ “Complete dependence” is not necessary.⁷⁸ The location from which these activities emanate is not relevant; what matters is that the private person is acting under the authority of the State.⁷⁹

The Ravarian government “authorized” the channelling of almost €25 million in Ravarian Embassy funds to SIP/SAD since 2020.⁸⁰ The word “authorisation” indicates an element of granting permission, thus implying initial and integral control over the operations. Furthermore, the Ravarian External Affairs Ministry approved SAD operating the Lunar Botnet⁸¹ which constitutes a specific order. Correspondence exchanges between the Ambassador and the Ravarian External Affairs Ministry regarding Pano accounts, viral pro-independence information and masking content online⁸² directly implicates the Ravarian government in the planning and

⁷³ Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Warfare*, CUP (2017) [“Tallinn 2.0”], Rule 17(a).

⁷⁴ Articles on the Responsibility of States for Internationally Wrongful Acts, (ILC Yearbook 2001-I) Pt. II [“ARSIWA”], Article 8.

⁷⁵ *Nicaragua*, ¶115.

⁷⁶ *Genocide*, ¶¶400-401.

⁷⁷ *Nicaragua*, ¶112.

⁷⁸ *Genocide*, ¶¶392-393.

⁷⁹ Tallinn 2.0, Chapter 4, Section 1, ¶14.

⁸⁰ *Compromis*, ¶37(a).

⁸¹ *Compromis*, ¶37(c).

⁸² *Compromis*, ¶37(b).

organisation of the operations. Such involvement was not denied.⁸³ Ravaria exercised effective control over the conduct of SAD, its actions are therefore attributable to the Respondent.

b) In any event, the dissemination of misinformation by SAD was acknowledged and adopted by Ravaria

Under customary international law, conduct of non-State entities is translated into acts of the State⁸⁴ if the actions are subsequently acknowledged and adopted by the latter.⁸⁵ This requires an identification of factual situations that the State makes its own.⁸⁶ Clear and unequivocal acknowledgment and adoption of actions, inferred or express, can take the form of words or conduct.⁸⁷

The Ravarian Minister of External Affairs expressly acknowledged and adopted SAD's conduct.⁸⁸ The personal pronoun "we", used when referring to the financial contributions and dissemination of misinformation in his speech on 7 May 2021, indicates a clear adoption of the acts, whilst an express reference to the Ravarian government entails imputability of the Respondent. SAD's conduct is thus attributable to Ravaria.

2. In the alternative, should the documents and recording be deemed inadmissible, uncontested evidence is sufficient in proving attribution

a) Given the evidentiary difficulties in cyberspace, overall control is the appropriate test and shows that Ravaria controlled SAD

According to the factual circumstances, the degree of control needed for attribution varies.⁸⁹ The International Law Commission neither completely rejected the overall control test, nor insisted on the effective control test without exception.⁹⁰ Accountability can easily be evaded under the latter

⁸³ Compromis, ¶44.

⁸⁴ *Tehran*, ¶74.

⁸⁵ ARSIWA, Article 11.

⁸⁶ Tallinn 2.0, Rule 17, ¶16.

⁸⁷ Commentaries to the Draft Articles on State Responsibility (ILC Yearbook 2001-II) Pt. II ["ARSIWA Commentaries"], Article 11, ¶¶8-9.

⁸⁸ Compromis, ¶41.

⁸⁹ *Prosecutor/Tadić*, Case No. IT-94-1-A, Appeal Judgment, 1999, *ILM* 38 (1999) ["*Tadić*"], ¶117.

⁹⁰ ARSIWA Commentaries, Article 8, ¶¶1-9.

test which is context specific and encounters challenges in cyberspace.⁹¹ Advances in modern technology were unforeseeable when this test was established and its applicability should be assessed accordingly.⁹² The “overall control” test broadens the scope of State responsibility⁹³ and should be applied to enhance cybersecurity.⁹⁴ The dissemination of misinformation by SAD was effectuated online⁹⁵ which gives rise to concealment. Therefore, given the prevalence of cyberspace operations and evidentiary difficulties thereof,⁹⁶ the overall control test should be applied.

Overall control implies a wielding of general authority over a group.⁹⁷ This occurs when States provide “technical or other support” and organised activities, even if no involvement in the specific act can be demonstrated.⁹⁸ Such control must be assessed holistically and includes financing and helping the group’s activities.⁹⁹ The Ravarian government funded SAD thereby providing financial means and operational support to carry out the cyber operations.¹⁰⁰ This was endorsed and condoned by the Respondent.¹⁰¹ Ravaria wielded overall control over SAD through this support and funding, hence their conduct is attributable to the Respondent.

⁹¹ Kubo Mačák, *Decoding Article 8 of the International Law Commission’s Articles on State Responsibility: Attribution of Cyber Operations by Non-State Actors*, 21 *Journal of Conflict and Security Law* (2016) 405 [“Mačák”], 423.

⁹² Mačák, 425.

⁹³ *Genocide*, ¶406.

⁹⁴ Mačák, 425.

⁹⁵ *Compromis*, ¶39.

⁹⁶ Mačák, 410.

⁹⁷ *Tadić*, ¶131.

⁹⁸ Nicholas Tsagourias, *Cyber Attacks, Self-Defence and the Problem of Attribution*, 17 *Journal of Conflict and Security Law* (2012) 229 [“Tsagourias”], 238.

⁹⁹ *Tadić*, ¶131.

¹⁰⁰ *Compromis*, ¶¶39, 41.

¹⁰¹ *Compromis*, ¶41.

b) Alternatively, should the effective control test be applied, the attributability of SAD's conduct to Ravaria can still be proven by using a low standard of proof and circumstantial evidence

The requisite standard of proof varies¹⁰² and evidence is evaluated according to the circumstances surrounding the case.¹⁰³ Due to obstacles regarding software and evidentiary difficulties in cyberspace,¹⁰⁴ a relaxed standard of proof should be required.¹⁰⁵ The command-and-control server of the Lunar Botnet operated through the dark web and was located in SAD headquarters.¹⁰⁶ On account of the secrecy of the operations, limited availability of evidence and inaccessibility to the dark web, a low standard of proof should subsequently be applied.

Inability to provide direct proof of facts should lead to a liberal recourse to circumstantial evidence.¹⁰⁷ Indirect evidence has special weight when inferences of fact logically lead to a single conclusion.¹⁰⁸ The location of the Lunar Botnet and infection of devices,¹⁰⁹ as well as adoption and acknowledgement of the influence operations by Ravaria,¹¹⁰ logically lead to the conclusion that Ravaria controlled SAD's actions. Furthermore, the uncontested criminal investigation confirms that Ravaria funded SIP/SAD.¹¹¹ The very nature of this extensive funding¹¹² indicates a certain leverage, thus control, that Ravaria exerted over SAD. The acts can hence be imputed to the Respondent.

¹⁰² Tallinn 2.0, Chapter 4, Section 1, ¶8.

¹⁰³ *Oil Platforms (Iran/U.S.)*, Merits, Judgment of 6 November 2003 ICJ, Separate Opinion of Judge Higgins, ¶31.

¹⁰⁴ Mačák, 410.

¹⁰⁵ Tsagourias, 235.

¹⁰⁶ *Compromis*, ¶¶32, 39.

¹⁰⁷ *Corfu Channel Case (U.K./Albania)*, Merits, Judgment of 9 April 1949 ICJ, 18.

¹⁰⁸ *Idem*.

¹⁰⁹ *Compromis*, ¶¶31-33.

¹¹⁰ *Supra*, §II(A)(1)(b).

¹¹¹ *Compromis*, ¶39.

¹¹² *Compromis*, ¶¶22, 37(a).

B. Ravaria’s campaign of financial contributions and dissemination of misinformation violated its international obligations vis-à-vis Antara

1. Ravaria violated the principle of non-intervention

An internationally wrongful act occurs when actions attributable to a State violate an international obligation.¹¹³ The non-intervention principle¹¹⁴ forbids direct and coercive intervention in the internal affairs of other States¹¹⁵ and applies to cyber operations.¹¹⁶

a) The documents and recording evidence a violation by Ravaria

i) Ravaria intervened in Antara’s domestic affairs

The *domaine réservé* concerns matters upon which States decide freely,¹¹⁷ specifically internal affairs falling within their jurisdiction.¹¹⁸ This encompasses the political independence of States, notably the functioning of referendums, which is inviolable: every State has a right to choose its political system without any interference by another State.¹¹⁹ Moreover, this Court accepted that cyber disinformation campaigns could violate rights.¹²⁰

€25 million Ravarian Embassy funds were channelled to SIP/SAD,¹²¹ two political entities advancing independence campaigns. Ravaria’s dissemination of misinformation was carried out on Antaran territory by the Lunar Botnet¹²² and influenced the referendum by diffusing masked,

¹¹³ ARSIWA, Article 2.

¹¹⁴ UN Charter, Article 2(7).

¹¹⁵ *Nicaragua*, ¶205.

¹¹⁶ Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, U.N.Doc.A/70/174 (2015) [“Report ITCs 2015”], ¶28(b).

¹¹⁷ *Nicaragua*, ¶205.

¹¹⁸ *Nationality Decrees Issued in Tunis and Morocco (Great Britain/France)*, Advisory Opinion of 7 February 1923 PCIJ (ser. B) No. 4 [“*Nationality Decrees*”], 22.

¹¹⁹ The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, U.N.Doc.A/RES/25/2625 (1970) [“*Friendly Relations Declaration*”], Article 1.

¹²⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan/Armenia)*, Provisional Measures, Order of 7 December 2021 ICJ, ¶¶45, 52.

¹²¹ *Compromis*, ¶37(a).

¹²² *Compromis*, ¶37(c).

pro-independence content.¹²³ This impeded the Suthan people's political right to vote without interference. Thus, Ravaria intervened in Antara's internal affairs.

ii) The support of the independence referendum was coercive

Coercive acts seek to influence the target State's behaviour,¹²⁴ obtain subordination of its sovereign rights to secure an advantage¹²⁵ or compel a victim State to engage in an action that it would not otherwise take.¹²⁶ This determining factor distinguishes prohibited intervention from other forms of influence.¹²⁷

Ravaria's dissemination of misinformation clearly influenced the outcome of the vote, thus Antara's behaviour, as demonstrated by the tight referendum result.¹²⁸ Without this intervention, designed to guide the hearts and minds of voters towards secession,¹²⁹ the Suthan people may never have voted for independence. Furthermore, the Ravarian Intelligence Service planned to persuade an independent Suthan State to "join the Velan Kingdom of Ravaria".¹³⁰ Irrespective of whether this initiative came to fruition, the very fact that this underlying intention existed at the time of the events shows the coercive nature of Ravaria's acts.

b) In any event, uncontested evidence is sufficient in showing a violation

i) Ravaria intervened in Antara's domestic affairs

The aforementioned conclusion is sustained even without the documents and recording.¹³¹ The Lunar Botnet, which infected more than 20,000 Antaran citizen's computers,¹³² was found in SAD headquarters and advanced separatist messages online.¹³³ The dissemination of misinformation impacted the independence referendum, a key component of Antara's internal affairs, and the

¹²³ Compromis, ¶37(b).

¹²⁴ Tallinn 2.0, Rule 66, ¶19.

¹²⁵ Friendly Relations Declaration, Article 1.

¹²⁶ Tallinn 2.0, Rule 66, ¶21.

¹²⁷ Michael N. Schmitt, "Virtual" Disenfranchisement: Cyber Election Meddling in the Grey Zones of International Law, 19 Chicago Journal of International Law (2018) 30, 49.

¹²⁸ Compromis, ¶30.

¹²⁹ Compromis, ¶37(c).

¹³⁰ Compromis, ¶37(d).

¹³¹ *Supra*, §II(B)(1)(a)(i).

¹³² Compromis, ¶32.

¹³³ Compromis, ¶39.

Suthan people's voting rights, thus constituting a prohibited intervention in the Applicant's *domaine réservé*.

ii) The support of the independence referendum was coercive

Coercion seeks to change the behaviour of a State, notably to obtain an advantage.¹³⁴ Since 1962, Sutha has been a part of Antara,¹³⁵ only after the dissemination of misinformation did this otherwise peaceful arrangement falter.¹³⁶ The elusive cyberoperations intended to change Antara's behaviour, as shown by the narrow result of the vote,¹³⁷ and consequently show Ravaria's coercive intervention.

2. Ravaria violated the principle of territorial integrity

Under the principle of territorial integrity,¹³⁸ which is of customary character,¹³⁹ States must positively protect the territorial composition of other States by respecting and recognising their geographical delineation.¹⁴⁰ Accordingly, encouragement or support of secessionist movements by third States would impair the territorial integrity of the parent State and constitute a violation.¹⁴¹

a) The documents and recording evidence a violation by Ravaria

i) Ravaria's financial contributions and dissemination of misinformation influenced the referendum result which affected the composition of Antara's territory

Ravaria's influence operations induced the Suthan people to vote for independence and break off their relations with Antara, therefore, the purpose of these operations was to encourage

¹³⁴ *Supra*, §II(B)(1)(a)(ii).

¹³⁵ Compromis, ¶6.

¹³⁶ Compromis, ¶¶16-19.

¹³⁷ Compromis, ¶30.

¹³⁸ UN Charter, Article 2(4).

¹³⁹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010 ICJ, ¶80.

¹⁴⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Written Statement of Serbia of 17 April 2009 ICJ, ¶¶423-424.

¹⁴¹ *Idem.*, ¶441; UNGA Resolution 61/295, United Nations Declaration on the Rights of Indigenous Peoples, U.N.Doc.A/RES/61/295 (2007) [Rights of Indigenous Peoples Declaration], Article 46(1).

secession.¹⁴² The result of the independence referendum diminished Antara's territory. Ravaria's support of this secessionist movement thus constitutes a violation of its obligation to respect Antara's territorial integrity.

ii) The right to self-determination is not applicable and does not justify Ravaria's influencing of the referendum

Self-determination can only be exercised within the limits prescribed by other international law principles.¹⁴³ This right is limited to matters of colonial and alien domination,¹⁴⁴ or to racist regimes, where the right to self-determination is impeded internally.¹⁴⁵ None of these circumstances apply in these proceedings: the Suthan people are legitimately represented by the Suthan Legislative Council¹⁴⁶ and are not subject to any form of colonial or alien domination. Ravaria's encouragement of the referendum on the grounds of self-determination is hence unfounded and cannot justify violating Antara's territorial integrity.

b) In any event, uncontested evidence is sufficient in showing a violation

The above-mentioned conclusion is sustained with uncontested evidence. Territorial integrity is an international obligation incumbent upon States.¹⁴⁷ Ravaria encouraged the secessionist movement of the Suthan people and financially supported pro-independence political groups.¹⁴⁸ Furthermore, the Ravarian Head of State, in failing to admonish such separatist movements,

¹⁴² Compromis, ¶37(c).

¹⁴³ Friendly Relations Declaration, Article 1; Rights of Indigenous Peoples Declaration, Article 46(2).

¹⁴⁴ UNGA Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, U.N.Doc.A/4684 (1960), Article 1; Daniel Thürer and Thomas Burri, *Self-determination*, Max Planck Encyclopedias of Public International Law (2008), ¶15.

¹⁴⁵ UNGA Resolution 45/130, Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, U.N.Doc.A/RES/45/130 (1990), Article 35.

¹⁴⁶ Compromis, ¶6.

¹⁴⁷ *Supra*, §II(B)(2).

¹⁴⁸ Compromis, ¶¶39, 41.

condoned secession.¹⁴⁹ Thus, Ravaria’s encouragement of Suthan independence violated Antara’s territorial integrity.

3. Consequently, Ravaria violated Antara’s sovereignty

Sovereignty signifies independence and grants States the right to exercise State functions on their territory to the exclusion of all others.¹⁵⁰ By virtue of this principle, States independently decide on their social, cultural, economic and political order.¹⁵¹ Sovereignty also applies in cyberspace¹⁵² and prohibits States from exercising their power in any form in the territory of another State.¹⁵³ The violations of non-intervention and territorial integrity by Ravaria have encroached on Antara’s sovereignty: unwarranted intervention in its political affairs and usurpation of the Applicant’s cyber infrastructure amount to an infringement. Having failed to uphold its obligations, Ravaria must subsequently incur responsibility for violating Antara’s sovereignty.

III. ANTARA’S ORDER SUSPENDING PROF. HUNLAND’S PANO ACCOUNT WAS CONSISTENT WITH INTERNATIONAL LAW

A. The cyber activity of Prof. Hunland is not covered by the freedom of expression

While freedom of expression takes many forms, including through the Internet,¹⁵⁴ not everything falls under its protection. Despite claiming freedom of expression, content inciting violence was treated by various courts with vigilance.¹⁵⁵ Deliberate and direct use of language that promotes

¹⁴⁹ Compromis, ¶20.

¹⁵⁰ *Island of Palmas Case (U.S./Netherlands)*, 2 RIAA 829 PCA (1928), 838.

¹⁵¹ *Nicaragua*, ¶263.

¹⁵² Tallinn 2.0, Rule 1.

¹⁵³ *S.S. Lotus*, 18.

¹⁵⁴ HRCtee, General Comment 34, Article 19: Freedoms of opinion and expression, U.N.Doc.CCPR/C/GC/34 (2011) [“General Comment 34”], ¶12; HRC, The promotion, protection and enjoyment of human rights on the Internet, U.N.Doc.A/HRC/RES/20/8 (2012), ¶1.

¹⁵⁵ Dominika Bychawska-Siniarska, *Protecting the Right to Freedom of Expression under the European Convention on Human Rights*, A handbook for legal practitioners (2017), 23; *Sürek/Turkey*, (No. 1) [ECtHR] No. 26682/95 (1999) [“*Sürek*, (No.1)”], ¶62; *Case of Romanov/Ukraine*, [ECtHR] No. 63782/11 (2020) [“*Romanov*”], ¶¶158-159, 163-164, 166; *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea)/Guinea*, Merits [ACPHR] No. 249/02 (2004), ¶¶56-60, 73-74.

violence and has serious prospects of being implemented leads to detrimental outcomes,¹⁵⁶ and should not be protected.¹⁵⁷ Incitement speech necessitates the existence of audiences ready to act against a target group and its proliferation would ultimately facilitate violations of other human rights.¹⁵⁸

Prof. Hunland's statements went beyond the mere expression of offensive ideas¹⁵⁹ since he compared Sutha's alleged oppression to a national struggle.¹⁶⁰ Through his frequent posts and shares,¹⁶¹ he legitimised the use of violence,¹⁶² to obtain Sutha's independence. This resulted in numerous injuries and deaths in Antara.¹⁶³ Moreover, he acted in the context of a tense political situation and had an audience of over 9 million people.¹⁶⁴ Since the Professor's assertions were accompanied by threatening conduct, they are not covered by freedom of expression.

B. Antara had an obligation to restrict Prof. Hunland's freedom of expression

Voters are free to vote without violence, undue influence or coercion hindering the free expression of their choice.¹⁶⁵ Disinformation constitutes a threat and undermines electoral integrity.¹⁶⁶ This

¹⁵⁶ Twitter Inc., "Permanent suspension of @realDonaldTrump" (January 8, 2021); Katie Rogers, "Biden's Speech on the Jan. 6 Riot, Annotated", *The New York Times*, (January 7, 2022); Sheera Frenkel, "Facebook to Remove Misinformation that Leads to Violence", *The New York Times* (July 18, 2018).

¹⁵⁷ International Covenant on Civil and Political Rights, 999 UNTS 171 (1966) ["ICCPR"], Article 20(2); General Comment 34, ¶¶51-52; Manfred Nowak, *U.N. covenant on civil and political rights: CCPR Commentary* (2005), 445; The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, U.N.Doc.A/HRC/22/17/Add.4 (2013) ["Rabat Plan of Action"], ¶¶9, 29 (a)-(f).

¹⁵⁸ *Romanov*, ¶158.

¹⁵⁹ *Vona/Hungary*, [ECtHR] No. 35943/10 (2013), ¶¶63, 66.

¹⁶⁰ *Compromis*, ¶¶17, 22, 23.

¹⁶¹ *Compromis*, ¶¶17, 22, 23.

¹⁶² *Leroy/France*, [ECtHR] No. 36109/03 (2008), ¶¶42-43.

¹⁶³ *Compromis*, ¶25.

¹⁶⁴ *Compromis*, ¶13.

¹⁶⁵ HRCttee, General Comment 25, Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, U.N.Doc.CCPR/C/21/Rev.1/Add.7 (1996) ["General Comment 25"], ¶19; ICCPR, Article 25(b).

¹⁶⁶ Irene Kahn, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Disinformation and freedom of opinion and expression, U.N.Doc.A/HRC/47/25 (2021) ["Kahn Report"], ¶¶2, 24, 29.

can amount *inter alia* to incitement to violence,¹⁶⁷ which is prohibited under international human rights law.¹⁶⁸ The right to freedom from incitement,¹⁶⁹ and protection from religious hatred,¹⁷⁰ must be respected.

Prof. Hunland, a Ravarian citizen,¹⁷¹ interfered with voters' opinions and attempted to abusively coerce the referendum result,¹⁷² which is prohibited by the PACA.¹⁷³ He glorified the use of violence against Antara;¹⁷⁴ such messages reached all parts of society. The Professor misled his audience making them believe that violence was necessary for Sutha's independence. Therefore, Antara had an obligation to safeguard the secure conduct of the referendum.¹⁷⁵

C. Even if Prof. Hunland's cyber-activity was covered by the freedom of expression, his right was lawfully restricted

The right to freedom of expression may be restricted if such restriction is provided by law, pursues a legitimate aim and is necessary to achieve such aim.¹⁷⁶

a) The restriction of the freedom of expression was provided by law

Lawful restrictions of the freedom of expression must be provided by law.¹⁷⁷ Such law must be sufficiently precise to enable individuals to regulate their conduct accordingly.¹⁷⁸ These norms should also be publicly accessible and compatible with the purposes of the ICCPR;¹⁷⁹ they must not violate the non-discrimination provisions of this legal instrument.¹⁸⁰ Lastly, laws should include protections against misuse through effective judicial review of the restriction's legality by

¹⁶⁷ Kahn Report, ¶¶10, 15, 43.

¹⁶⁸ ICCPR, Article 20(2).

¹⁶⁹ *Faurisson/France*, U.N.Doc.CCPR/C/58/D/550/1993 (1996), Concurring Opinion of Evatt, Kretzmer and Klein ¶4.

¹⁷⁰ *Ross/Canada*, U.N.Doc.CCPR/C/70/D/736/1997 (2000) [*"Ross"*], ¶11.5.

¹⁷¹ Compromis, ¶13.

¹⁷² Compromis, ¶¶17, 22, 23.

¹⁷³ Compromis, Annex 1, Section 5, ¶1(b).

¹⁷⁴ Compromis, ¶23(c).

¹⁷⁵ General Comment 25, ¶¶2, 11.

¹⁷⁶ ICCPR, Article 19(3).

¹⁷⁷ General Comment 34, ¶24.

¹⁷⁸ General Comment 34, ¶25.

¹⁷⁹ General Comment 34, ¶25-26.

¹⁸⁰ General Comment 34, ¶26.

an impartial court or tribunal.¹⁸¹

The restriction is provided for under Section 5 of PACA, enacted by Antara's Parliament,¹⁸² which prohibits making false statements of facts that result in illegal actions or alterations of election outcomes.¹⁸³ This legislation applies universally. Prof. Hunland was aware of this regulation, thus able to analyse the risks associated with his actions and predict their legal consequences, as PACA is publicly accessible.¹⁸⁴ Indeed, the Professor challenged the decision before an Antaran federal court.¹⁸⁵ Thus, the restriction was provided by law.

b) The restriction pursued a legitimate aim

The freedom of expression can be restricted to protect, *inter alia*, national security or public order.¹⁸⁶

National security justifies intervention when a State's survival, territorial integrity, or political independence are jeopardised.¹⁸⁷ The DPCA aims to prevent a “threat to the national security, public order, or public safety of Antara”.¹⁸⁸ Through choosing a violent narrative,¹⁸⁹ Prof. Hunland put Antara's national unity at stake when advocating for Suthan secession. Such advocacy resulted in deadly violence.¹⁹⁰

Public order entails the preservation of physical order and effective functioning of democratic institutions.¹⁹¹ Prof. Hunland's mistrust of Antara's democratic institutions was

¹⁸¹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, U.N.Doc.E/CN.4/1996/39 (1996) [“Johannesburg Principles”], Principle 1.1(b).

¹⁸² Compromis, ¶12 and Annex 1, Section 5.

¹⁸³ Compromis, Annex 1, Section 5, ¶1(b).

¹⁸⁴ Compromis, ¶13.

¹⁸⁵ Compromis, ¶28.

¹⁸⁶ ICCPR, Article 19(3).

¹⁸⁷ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N.Doc.E/CN.4/1985/4 (1985), ¶¶29-32; UN Charter, Article 2(4); The Final Act of the Conference on Security and Cooperation in Europe 14 I.L.M. 1292 (1975), 4; Marcelo Kohen, *Secession, International Law Perspectives*, CUP (2006), 6.

¹⁸⁸ Compromis, Annex 1, Section 5, ¶3.

¹⁸⁹ Compromis, ¶¶22, 23(a)-(c).

¹⁹⁰ Compromis, ¶25.

¹⁹¹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion, [IACtHR] (Ser. A) No. OC-5/85 (1985), ¶64; *Engel and others/Netherlands*, [ECtHR] No. 5370/72 (1976), ¶98.

violently expressed offline and most of his online messages were false.¹⁹² Such acts undermined Antara's democratic process.

Protection of national security or public order justifies restrictions of content that promote criminal activity or are part of larger disinformation campaigns aimed at destabilising elections. A direct and immediate link exists between Prof. Hunland's online activity and the violence committed during the rally he staged.¹⁹³ His cyber activity represented a danger for Antara's public order and national security. Hence, the restriction pursued a legitimate aim.

c) The restriction was necessary and proportionate to attain the legitimate aim

Restrictions to the right to freedom of expression must be necessary and proportionate.¹⁹⁴ Such measures must be appropriate to fulfil the protective aim and cannot be broadly applied.¹⁹⁵ A State must choose the least intrusive instruments.¹⁹⁶ Proportionality must be observed in the legislation defining the constraints and by the authorities enforcing it.¹⁹⁷ Ultimately, a State must demonstrate a clear and immediate link between the expression and the threat.¹⁹⁸

Although the freedom of expression is essential for democratic societies, the restriction was necessary: it averted possible harm to more people and addressed the ongoing threat to national security and public order. The measure was proportionate for several reasons. The Antaran DPCA abided by Section 5 limitations,¹⁹⁹ which prevented them from exceeding the framework of their objective. While PACA provides for a two-year suspension, Prof. Hunland's account was suspended for only one year.²⁰⁰ This action was taken after several warnings through flagged messages by Pano.²⁰¹ With regard to the referendum, the Professor's posts could incite further violence in the region, *e.g.* sending a message to his followers that resorting to violence was

¹⁹² Compromis, ¶23.

¹⁹³ Johannesburg Principles, Principle 6(a)-(c).

¹⁹⁴ General Comment 34, ¶¶33-34.

¹⁹⁵ General Comment 34, ¶34.

¹⁹⁶ HRCtee, General Comment 27, Article 12 (Freedom of Movement), U.N.Doc.CCPR/C/21/Rev.1/Add.9 (1999) ["General Comment 27"], ¶14.

¹⁹⁷ General Comment 27, ¶14.

¹⁹⁸ General Comment 34, ¶35.

¹⁹⁹ Compromis, Annex 1, Section 5, ¶¶3, 4 (a)-(d).

²⁰⁰ Compromis, Annex 1, Section 5, ¶1(d).

²⁰¹ Compromis, ¶24.

necessary and justifiable.²⁰² This proves that he abused his right. Moreover, the effects of his conduct are comparable to big newspapers putting similar statements on their front page. When exercising such an influence, one must bear significant responsibilities and stricter measures are justified.²⁰³ Furthermore, on 15 February 2022 the Professor can exercise his right once more on Pano,²⁰⁴ since his account was not deleted. Meanwhile, he can still express his views elsewhere, whether online or offline. The restriction was consequently necessary and proportionate.

d) In any event, the chilling effect argument cannot be invoked in this case

The “chilling effect” relates to State action dissuading people from expressing their opinion for fear of being subject to sanctions.²⁰⁵ Such dissuasion should be systematic.²⁰⁶ This concept, developed by the ECtHR, is not relevant in this case. The restriction occurred as a consequence of Prof. Hunland’s illegal actions which posed a threat to national security and public order. Such measure was neither centralised nor systematic as it only affected one person, who did not respect domestic or international law, in a specific context.

D. Additionally, Antara’s order suspending Prof. Hunland’s Pano account complied with international human rights law obligations owed to Prof. Hunland’s followers

Ravaria has no standing to bring the related claims since it would act on behalf of an unidentified group of unlimited individuals. However, should the Court recognise Ravaria’s standing on this matter, the Applicant raises the following arguments.

1. While Antara owes obligations to Prof. Hunland’s followers located in its territory, it has no obligation to ensure the rights of his followers in Ravaria as it does not exercise jurisdiction or have effective control over the Respondent’s territory or population

The ICCPR requires governments to protect the recognised rights of “all individuals within its

²⁰² *Süretek/Turkey*, (No. 1), ¶62; *Süretek/Turkey*, (No. 3), [ECtHR] No. 24735/94 (1999), ¶40.

²⁰³ *Ross*, ¶¶11.3, 11.6.

²⁰⁴ *Compromis*, ¶27.

²⁰⁵ Laurent Pech, *The Concept of Chilling Effect: Its Untapped Potential to Better Protect Democracy, the Rule of Law, and Fundamental Rights in the EU*, Open Society European Policy Institute (2021), 2, 4.

²⁰⁶ Rabat Plan of Action, ¶¶11, 18.

territory and subject to its jurisdiction”.²⁰⁷ The extraterritorial scope of human rights is limited to certain circumstances.²⁰⁸ Typically, States exercise extraterritorial jurisdiction when exerting jurisdiction over another territory through effective control, or when exercising power and authority over an individual.²⁰⁹ While the HRC interpreted the jurisdictional provision of the ICCPR as covering situations where a State “exercises authority or effective control” over people’s “enjoyment of the right”,²¹⁰ it did so only in relation to the rights to life.

Antara has a duty to respect, protect and fulfil the rights of Prof. Hunland’s followers on its soil and under its jurisdiction. Antara exercised no power or authority over individuals outside its territory. Hence, Antara had no jurisdiction over the followers located outside its territory.

2. Regardless, should this Court find that Antara exercised such jurisdiction or control, human rights obligations owed to Prof. Hunland’s followers were not violated

The lawfulness of the primary restriction of Prof. Hunland’s freedom of expression implies that the restriction of his followers’ ability to receive such information is lawful too. Antara legitimately deleted the Professor’s Pano page which rapidly disseminated false claims and lead to illegal activities. Apart from that, followers located in Ravaria or elsewhere all retained an ability to seek, receive and impart information outside Prof. Hunland’s Pano page.

E. In any case, Antara could not rescind the suspension order and content moderation

Antara cannot restore the *status quo ante*,²¹¹ by recovering Prof. Hunland’s account as Pano is incorporated under Zemin law.²¹² Since the posts have already been deleted,²¹³ restoring the content is materially impossible,²¹⁴ although nothing prohibits Prof. Hunland creating a new

²⁰⁷ ICCPR, Article 2(1).

²⁰⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004 ICJ [“*Wall Opinion*”], ¶¶107-111.

²⁰⁹ HRCttee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N.Doc.CCPR/C/21/Rev.1/Add.13 (2004), ¶10.

²¹⁰ HRCttee, General Comment 36, Article 6: (right to life), U.N.Doc.CCPR/C/GC/36 (2019), ¶63.

²¹¹ ARSIWA Commentaries, Article 35 ¶2.

²¹² Compromis, ¶¶11, 28.

²¹³ Compromis, ¶27.

²¹⁴ ARSIWA, Article 35(a); ARSIWA Commentaries, Article 35 ¶¶4, 7-8.

account. In any event, rescinding the order would be clearly disproportionate for Antara.²¹⁵

IV. ANTARA’S ACTIONS IN TAKING DOWN THE LUNAR BOTNET, AND THE EFFECTS OF THOSE ACTIONS ON COMPUTERS AND DEVICES IN RAVARIA, WERE CONSISTENT WITH INTERNATIONAL LAW

The Applicant does not refute attribution and admits taking down the “Lunar Botnet”. However, it contests that this violated international law.

A. The Clean Hands doctrine precludes Ravaria from making claims

The Clean Hands doctrine is a general principle of law,²¹⁶ under which States cannot have *locus standi* to file a claim before a court if they themselves were guilty of illicit conduct.²¹⁷ States shall avoid exercising authority in another State's territory,²¹⁸ including its cyber-infrastructure.²¹⁹ The botnet,²²⁰ located in Antara’s territory,²²¹ caused unlawful cyber interference,²²² and is attributable to Ravaria.²²³ Consequently, Ravaria has no standing to claim the alleged violations resulting from the botnet’s removal.

B. In any event, Antara’s interference with computers and devices located in Ravaria’s territory did not violate international law

1. Antara fulfilled its obligations under the Budapest Convention

Antara and Ravaria are parties to the Budapest Convention;²²⁴ botnet mitigation falls within the scope of the latter.²²⁵ When faced with cyber-criminal offences, a State should, under normal or

²¹⁵ ARSIWA, Article 35(b); ARSIWA Commentaries, Article 35 ¶11.

²¹⁶ *Nicaragua*, Dissenting Opinion of Judge Schwebel, ¶¶268-272.

²¹⁷ *Idem*.

²¹⁸ *S.S. Lotus*, 18-19; Friendly Relations Declaration, Article 1.

²¹⁹ Tallinn 2.0, Rule 1, ¶1.

²²⁰ Compromis, ¶37 (c), Annex 1 Section 8, ¶1(b).

²²¹ Compromis, ¶32.

²²² *Supra*, §II(B)(1).

²²³ *Supra*, §II(A).

²²⁴ Compromis, ¶46.

²²⁵ Council of Europe Convention on Cybercrime (2001) [“Budapest Convention”], Articles 2-13; Council of Europe, Guidance Note #2: Provisions of the Budapest Convention Covering Botnets, T-CY 6 E (2013) [“Guidance Note #2”], 3-4.

urgent circumstances,²²⁶ request the assistance of the other members. This obligation, of limited effectiveness,²²⁷ requires cooperation to improve proceedings against *individuals*.²²⁸ It does not cover violations committed by another State where such cooperation would be futile and counterproductive. The “Lunar Botnet” acted covertly on Antaran territory.²²⁹ Antara could not be reasonably expected to have requested the assistance of another State without knowing who was operating the botnet.²³⁰ Moreover, requesting assistance from Ravaria or other States was not feasible one week prior to the referendum.²³¹

Since the botmaster’s location could not be verified,²³² Antara was unable to ask for Ravaria’s consent to access data stored on its territory.²³³ Consent is insufficient compensation for the unknown location and application of Article 32 lit. b of the Convention in an inquiry may even be considered a procedural mistake.²³⁴ Accordingly, the Applicant needed to act quickly so as to not lose the perpetrators’ trace or decisive proof of guilt.²³⁵ Antara has a duty to prosecute cybercrime,²³⁶ and ensured that these criminal offences are punishable by effective and proportionate²³⁷ sanctions.²³⁸ Antara thus applied the Convention in good faith and according to its purposes.

²²⁶ Budapest Convention, Article 25(1), (3).

²²⁷ Council of Europe, The Budapest Convention on Cybercrime: Benefits and Impact in Practice, T-CY (2020), 13.

²²⁸ Budapest Convention, Article 25.

²²⁹ Compromis, ¶32.

²³⁰ Compromis, ¶32.

²³¹ Compromis, ¶31.

²³² Compromis, ¶32.

²³³ Budapest Convention, Article 31(1).

²³⁴ Council of Europe, Cloud Computing and Cybercrime Investigations: Territoriality vs. the Power of Disposal (2010) [“Cloud Computing”], 8.

²³⁵ Explanatory Report, Convention on Cybercrime (2001), ¶256.

²³⁶ Cloud Computing, 7.

²³⁷ Compromis, Annex 1 Section 8, ¶¶3-5.

²³⁸ Budapest Convention, Article 13.

2. Antara did not violate Ravaria's sovereignty

a) *The takedown of the "Lunar Botnet" constituted a sovereign act*

Sovereignty, a cornerstone of international law,²³⁹ is recognised as international customary law,²⁴⁰ and applies in cyberspace.²⁴¹ Antara enjoys sovereignty over any cyber infrastructure located on its territory and actions related to it.²⁴² The command-and-control servers of the botnet were physically located on Antara's territory, the taking down thereof thus constituted a sovereign act.

b) *The interference did not constitute a violation of Ravaria's sovereignty since Antara did not intervene in Ravaria's territory*

In relation to the sovereignty principle, a violation of international law only exists when the principle of non-intervention is violated.²⁴³ Non-intervention, a rule of customary international law,²⁴⁴ applicable in cyberspace,²⁴⁵ prohibits States from coercively interfering in another States' *domaine réservé*.²⁴⁶

i) *Antara did not interfere in Ravaria's domaine réservé*

The *domaine réservé* of a State concerns matters that are not, in principle, regulated by international law.²⁴⁷ Cybercrime and, specifically, botnet mitigation are regulated by international law.²⁴⁸ States enjoy discretion to make their own choices regarding inherently governmental functions, however, they cannot decide upon matters they are unaware of. Botnets often expand without the target's knowledge,²⁴⁹ and neither Antara nor Ravaria had information on the malware spreading within the Respondent's territory. Therefore, this does not constitute a *domaine réservé* interference.

²³⁹ UN Charter, Article 2(1), (4); Tallinn 2.0, Rule 1, ¶¶1-2.

²⁴⁰ *Nicaragua*, ¶212.

²⁴¹ Tallinn 2.0, Rule 1, ¶1; Report ITCs 2015, ¶26.

²⁴² Tallinn 2.0, Rule 1, ¶1.

²⁴³ "Application of International Law to States' Conduct in Cyberspace: UK Statement", GOV.UK (June 3, 2021); Tallinn 2.0, Rule 4 ¶16.

²⁴⁴ Ian Brownlie, *Principles of Public International Law*, OUP (2008), 6-7.

²⁴⁵ Tallinn 2.0, Rule 66, ¶¶1-2.

²⁴⁶ *Nicaragua*, ¶205; Friendly Relations Declaration, Article 1.

²⁴⁷ *Nationality Decrees*, 24.

²⁴⁸ Guidance Note #2, 3-4.

²⁴⁹ *Idem.*, 3.

ii) There was no coercion exercised by Antara

Coercion is the very essence of prohibited intervention.²⁵⁰ The coercive endeavour must aim to affect outcomes or State actions.²⁵¹ A cyber operation not seeking any change in behaviour lacks the necessary coercive element.²⁵² Antara disabled the botnet without any intention of influencing the Ravarian device owners' conduct, especially given the unknown identity of the person controlling it.²⁵³ Hence, the scale of these actions does not amount to coercion.

c) In any event the cyber operation was not intended to result in consequences that violate the sovereignty of Ravaria

Individuals' basic rights, the rule of law, and democratic communities are all threatened by cybercrime,²⁵⁴ since it may be carried out from afar, the electronic traces may be concealed and it may go undetected for a long time.²⁵⁵ Cyber offences are global and occur in several jurisdictions simultaneously.²⁵⁶ In any event, the territoriality of criminal law is not absolute.²⁵⁷ Most legal systems apply to crimes committed beyond their territory,²⁵⁸ in particular if they have effects on their territory, which is particularly important given the low number of cybercrime prosecutions.²⁵⁹

The intrusion of malware into the computer system of a target State violates its territorial sovereignty.²⁶⁰ Antara could freely take down the "Lunar Botnet"²⁶¹ inside its own territorial

²⁵⁰ *Nicaragua*, ¶205.

²⁵¹ Tallinn 2.0, Rule 66, ¶19.

²⁵² Tallinn 2.0, Rule 66, ¶20.

²⁵³ *Compromis*, ¶31.

²⁵⁴ Council of Europe's Committee of Experts on the Operation of European Conventions on Cooperation in Criminal Matters, *Mutual Legal Assistance in the Treaties of the Council of Europe: Note for Practitioners*, PC-OC (2015), 4.

²⁵⁵ Jan Kleijssen and Perri Pierluigi, *Cybercrime, Evidence and Territoriality: Issues and Options*, *Netherlands Yearbook of International Law* (2017) 147 ["Kleijssen"], 148.

²⁵⁶ Adel Azzam Saqf Al Hait, *Jurisdiction in Cybercrimes: A Comparative Study*, 22 *Journal of Law, Policy and Globalization* (2014) 75, 76.

²⁵⁷ *S.S. Lotus*, 20.

²⁵⁸ *S.S. Lotus*, 20.

²⁵⁹ Kleijssen, 149.

²⁶⁰ François Delerue, *Cyber Operations and International Law*, CUP (2020), 386.

²⁶¹ *Compromis*, ¶32, Annex 1 Section 8, ¶4(c); Tallinn 2.0, Rule 2, ¶¶1-2.

limits,²⁶² as long as the DPCA complied with Section 8 of PACA.²⁶³ Antara did not conduct extraterritorial enforcement operations since the command-and-control servers were physically located on its territory.²⁶⁴ Moreover, Antara’s goal was to quickly remove the malicious malware from the affected devices, not to undermine Ravaria’s sovereignty; a violation thereof was not intended. The subsequent effects outside Antara’s borders were incidental while the election manipulations were not.²⁶⁵ As a result, Antara cannot possibly have violated Ravaria’s sovereignty having acted lawfully on its own territory.

3. Antara fulfilled its obligation under human rights law

a) Antara fulfilled its duty to protect its own citizens and did not exercise its jurisdiction over people in Ravaria

The ICCPR, to which Antara and Ravaria are parties,²⁶⁶ requires that States protect the rights of those within their territory and jurisdiction.²⁶⁷ Regardless, they must “protect the human rights of individuals from abuse by third parties”.²⁶⁸ By lawfully taking down the botnet, Antara fulfilled these requirements regarding its citizens. In the absence of physical control,²⁶⁹ power and authority of Antara over individuals in Ravaria, the former did not have effective control for the purposes of extraterritorial jurisdiction.²⁷⁰ Hence, Antara had no obligation to protect the right to privacy and property rights of the devices’ owners located in Ravaria.

²⁶² *S.S. Lotus*, 19.

²⁶³ Compromis, ¶¶31-32, Annex 1, Section 8.

²⁶⁴ Compromis, ¶31.

²⁶⁵ *Supra*, §II(A).

²⁶⁶ Compromis, ¶46.

²⁶⁷ ICCPR, Article 2(1).

²⁶⁸ Tallinn 2.0, Rule 36(b).

²⁶⁹ Tallinn 2.0, Rule 34, ¶¶8-9.

²⁷⁰ Tallinn 2.0, Rule 34, ¶6.

b) Even if human rights applied extraterritorially, Antara did not violate the rights to privacy or property

i) The interference did not violate Ravarian citizens' right to privacy

The ICCPR safeguards privacy;²⁷¹ it covers *inter alia* the protection of all data in electronic form.²⁷² The botnet takedown decision did not pursue aims of data interference or theft but aimed to remove “web shells” from affected devices.²⁷³ There is no evidence that Antara monitored behavioural patterns or collected users’ data. Consequently, Antara’s decision to takedown the botnet did not infringe the devices owners’ right to privacy.

ii) The interference did not violate Ravarian citizens' property rights with regard to their devices and data

Firstly, the right to property is not protected under the ICCPR and is not of customary character. However, even if such right is protected under human rights law, Antara did not destroy the compromised devices and data contained therein since the botnet was merely disabled.²⁷⁴ Exposing data to the risk of deletion does not amount to a violation and Antara took all the required precautions. There is no evidence of property harm allegedly suffered by the devices Ravarian owners. In any event, Ravarian citizens could not possibly own a segment of script enabling remote administration,²⁷⁵ unknowingly. Therefore, Antara did not violate Ravarian citizens’ property rights,²⁷⁶ by unilaterally removing “web shells”.

²⁷¹ ICCPR, Article 17.

²⁷² Paolo Balboni and Enrico Pelino, *Law Enforcement Agencies' Activities in the Cloud Environment: A European Legal Perspective*, 22/2 *Information & Communications Technology Law* (2013) 165, 168.

²⁷³ Compromis, ¶32.

²⁷⁴ Compromis, ¶32.

²⁷⁵ Compromis, ¶32.

²⁷⁶ UNGA Resolution 217, *Universal Declaration of Human Rights* (1948), Article 17.

C. Even if Antara breached its international obligations, the wrongfulness is precluded since it acted lawfully under a state of necessity

Prime facie, human rights treaties do not exclude the invocation of necessity.²⁷⁷ Derogation clauses acknowledge that unusual situations may necessitate temporary limits on human rights that would otherwise be unacceptable.²⁷⁸ This is the case for necessity, *i.e.* emergency.²⁷⁹

The state of necessity is a customary rule,²⁸⁰ applicable in cyber contexts.²⁸¹ Necessity may not be invoked unless the act in question is the only way for the State to protect an essential interest from a grave and imminent peril; such invocation must not seriously jeopardize an essential interest of the State to which the obligation is owed.²⁸²

1. The botnet takedown was the only way for Antara to protect an essential interest against a grave and imminent peril

a) The political independence and territorial integrity of Antara represent an essential interest

The Suthan independence referendum represents an essential interest since Antara's political independence and territorial integrity were at stake.

b) The location of the "Lunar Botnet" on Antara's territory constitutes a grave and imminent peril

Botnets, due to their size, have the potential to exacerbate other destructive assaults.²⁸³ Antara faced ongoing cyber influence operations designed to spread misinformation regarding the referendum. By means of compromised computers, the botnet affected more than 30'000 devices

²⁷⁷ Cedric Ryngaert, *State Responsibility, Necessity and Human Rights*, Institute for International Law KU Leuven (2009) 79, 86.

²⁷⁸ Laurence R. Helfer, *Rethinking Derogation from Human Rights Treaties*, 115 *American Journal of International Law* (2021) 20, 23.

²⁷⁹ ICCPR, Article 4(1)-(2).

²⁸⁰ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997 ICJ ["*Gabčíkovo-Nagymaros*"], ¶51; *Wall Opinion*, ¶140.

²⁸¹ Tallinn 2.0, Rule 26, ¶1.

²⁸² ARSIWA Commentaries, Article 25, ¶1.

²⁸³ "Zero Botnets: An Observe-Pursue-Counter Approach", Belfer Center for Science and International Affairs (June 2021).

during the 3 months preceding the referendum.²⁸⁴ The Antaran counter-hacking was justified,²⁸⁵ as it prevented further devices becoming infected with the malware.

c) The takedown of the “Lunar Botnet” was the only way to protect Antara’s political independence and territorial integrity

There was no other way to stop the botnet’s activities other than the takedown as it acted undercover. Antara could neither resort to mutual assistance, nor ask for consent of any parties to the Budapest Convention. One week before the vote, Antara had no choice but to act unilaterally to preserve the effective conduct of its elections and territorial integrity.²⁸⁶ In a democracy like Antara, which draws its legitimacy from the citizens’ belief that voting results truly represent their desire, inaction would undermine Antaran citizens’ trust in their electoral processes.

2. The botnet takedown does not seriously impair an essential interest of Ravaria

The interest relied on must exceed all other factors, whether individual or collective.²⁸⁷ Antara’s essential interest was more seriously impaired than the theoretical sovereignty interest of Ravaria. Despite potentially impacting Ravaria, Antara’s efforts to avoid election manipulations and protect its territorial unity have greater value. The purported violation of sovereignty was merely incidental whilst the election intervention was intentional. Therefore, no essential interest of Ravaria was impaired.

D. In any case, should Antara be required to pay compensation, the amount should be lowered given Ravaria’s contribution to the injury

When harm is caused by internationally unlawful conduct of a State, contributions to the injury should be considered when the injured State contributed to the damage via some intentional act.²⁸⁸ Ravaria’s initial actions, namely operating the botnet, were causal to its purported injury.²⁸⁹ Any compensation imposed on Antara should therefore be lowered given Ravaria’s contribution.

²⁸⁴ Compromis, ¶31.

²⁸⁵ Tallinn 2.0, Rule 26, ¶11.

²⁸⁶ Compromis, ¶32; *Supra*, §II(B)(2).

²⁸⁷ *Gabčíkovo-Nagymaros*, ¶¶53, 58.

²⁸⁸ ARSIWA, Article 39.

²⁸⁹ *Supra*, §II(B).

PRAYER FOR RELIEF

For the foregoing reasons, the Democratic Republic of Antara, the Applicant, respectfully requests this Honorable Court to adjudge and declare that:

- I. The documents obtained in the search of the briefcase found in the vehicle driven by Ms. Walters and the recording from the conciliation meeting of 30 May 2021 are admissible as evidence in these proceedings;
- II. Ravaria's campaign of financial contributions and the dissemination of misinformation intending to influence the outcome of the Suthan referendum were in violation of international law;
- III. Antara's order suspending Prof. Liam Hunland's Pano account was consistent with international law; and
- IV. Antara's actions in taking down the Lunar Botnet, and the effects of those actions on computers and devices in Ravaria, were consistent with international law.

Respectfully submitted,
AGENTS FOR ANTARA