142A

IN THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS

THE CASE CONCERNING THE SECESSION AND ANNEXATION OF EAST AGNOSTICA

THE FEDERAL REPUBLIC OF AGNOSTICA
APPLICANT

v.

THE REPUBLIC OF REVERENTIA
RESPONDENT

MEMORIAL FOR THE APPLICANT

THE 2015 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

TABLE OF CONTENTS

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

UNITED NATIONS DOCUMENTS

NATIONAL LEGISLATION

BOOKS AND TREATISES

ARTICLES

47, No. 3, (2012)

Wilmshurt, E., *The Chantam House Principles of International Law on the Use of Force by States in Self-Defense,* Int'l & Comp. L.Q., Vol. 55, No. 4, (2006) 3

MISCELLANEOUS

Kasikili/Sedudu Island (Botswana v. Namibia), Judgment,1999 I.C.J.,Declaration of Judge Higgins 27

Kasikili/Sedudu Island (Botswana v. Namibia), Judgment,1999 I.C.J., Judge Fleischhauer Dissenting Opinion 27

Åaland Island, Report by the Commission of Rapporteurs, League of Nations Council Document B7 21/68/106, 318 (1921) 11

The position of States as Indonesia, India, Pakistan, Sri Lanka and Thailand, ratifying the ICCPR available at https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en 11

United States—Import Measures on Certain Products From the European Communities, WTO Panel Report, WT/DS165/R, (2000) 37

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Written Statement, Serbia. 3

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Statement by the Permanent Representative of the Republic of Azerbaijan to the United Nations, Oral Proceedings. 10

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Written Statement, Argentina 17

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Written Statement, United Kingdom 17

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Written Statement, Republic of Azerbaijan 17

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Written Statement, Republic of Cyprus 17

Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J., Written 17

STATEMENT OF JURISDICTION

The Federal Republic of Agnostica ["Agnostica/Applicant"] and the State of Reverentia ["Reverentia/Respondent"] hereby submit the present dispute concerning the secession and annexation of East Agnostica to the International Court of Justice ["The Court"] by a Special Agreement, signed in the Hague on the second day of September in the year two thousand and fourteen, pursuant to Article 40(1) of the Statute of the International Court of Justice. The parties have accepted the jurisdiction of the Court in accordance with Article 36(1) of the Statute of the Court. Each party shall accept the judgment of the Court as final and binding and shall execute it in good faith.

QUESTIONS PRESENTED

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

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

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

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

STATEMENT OF FACTS

BACKGROUND

The Reverentians and the Agnosticans were two ethnic groups. In 18th century, their lands are administered into two colonies, based on the linguistic, cultural and religious differences. In 1925 those colonies gained independence and formed the Federal Republic of Agnostica and the State of Reverentia. Reverentia is a unitary state, while Agnostica has two provinces, which have sovereignty over cultural affairs and education. Agnostica`s Constitution allows dissolutionby a three-quarters vote of the federal parliament.

Nearly 30% of Agnostica's are ethnic Reverentians, called Agnorevs. Despite the continuous attempts of the Reverentia to encouragethem to return over 85 % of them **decided** to remain citizens of Agnostica.

According to official statistics, the average Agnorevs household in Agnostica earned 157% of the income of the average ethnic Agnostican family.

THE MARTHITE CONVENTION

Marthite is a mineral salt, located in East Agnostica, which is essential for the Reverentian traditional medicine. In 1938 the two States conclude the Marthite Convention. Its main purpose, as enshrined in the Preamble is to ensure reliable supply of Marthite to the traditional practitioners. It recognizes that Marthite is without significant commercial value outside its traditional uses. Under the Convention Reverentia is to construct mining-support facilities and to provide engineers and technology for its maintenance. Agnostica gains ownership over the facilities upon payment. The distribution of Marthite is assigned to RMT, a state-owned Reverentian undertaking. RMT is to sell only to traditional practitioners located in the territory of the State Parties at fixed price. RMT may not sold production outside Agnostica and Reverentia unless the yearly supply exceeds demand from traditional

practitioners by 25%. If the demand is exceeded by 125% the salt may be sold without restriction on price, purchaser, or intended use.

Until 2011, RMT complied with the restrictions while the production varied within 5% between supply and demand.

The mineral has been almost unknown outside Agnostica and Reverentia, until the ILSA scientific report in 2011 which reported that high doses of Marthite were over 90% effective in treating previously untreatable infant and early-childhood diseases, afflicting tens of thousands of children worldwide.

Shortly thereafter RMT started selling some 75% of the total quantity of mined Marthite to pharmaceutical companies, for price, ten times higher than the permitted. The conduct of RMT causes serious doubts that shortages and price increases were inevitable.

On 1 February 2012, Agnostica proposed Reverentia to terminate the Marthite Convention, due to the "fundamental change in the science," offering reimbursement and compensation. Reverentia rejected.

On 2 April 2012in light of Reverentia's refusal to accept a mutually-beneficial settlement Agnostica declared the Convention terminated and leased all rights to the existing facilities to Baxter Enterprises.

THE SOFTWARE REMOVAL AND MARTHITE RESTRICTIONS

After the declaration for termination the Reverentian President ordered the return of Reverentian engineers and removal of the software installed at the facilities.

However RMT continued to tender the agreed annual royalties until March 2013. Agnostica declined to accept them.

According to Baxter engineers, the withdrawal of personnel and software had crippled the mining operations. They reported that it may take months to restore extraction on any meaningful scale. Agnostica decided to resume operation, albeit relying on the manual labour.

As of 31 August 2012, Baxter had not yet been able to restore the software and the extraction produced roughly 100 kilograms Marthite per day. Most of it was sold to pharmaceutical companies and the rest was sold to traditional users, at higher prices than those before 1 April 2012.

As the software restoration was expected to take years, on 1 October 2012, the Agnostican Parliament passed the Marthite Control Act (MCA), a law banning the sale or transfer of Marthite into Reverentia, as well as the unauthorized sale and possession of Marthite within Agnostica. The main reason was providing this life-saving product to suffering children of the world.

In mid-November, an Agnorev worker at the Marthite facilities, Gohandas Sugdy, was and was arrested and charge for d possessing Marthite. He explained that according to a local folk-medicine practitioner, his ill grandfather needed daily doses of the remedy. On 24 November 2012, Sugdy committed suicide in his cell. Shortly after, his grandfather died of heart failure.

THE PROTEST

After the Sugdy`s dead, a peaceful gathering was held by the Agnorevs in East Agnostica. Within weeks the crowd increased in its size.

With the passing time the demonstrators increased dramatically in number, frequency and intensity. They protested against the unavailability of Marthite and the perceived mistreatment of Gohandas Sugdy. As a result, the Prime Minister of Agnostica sent military troops to maintain order.

REVERENTIA SUPPORT OF PROTEST

In the light of these events, the President of Reverentia expressed “deep concern for the safety of our Reverentian brethren abroad,” and offered “any assistance that Reverentia

might provide to protect them". He also contacted Mr. Bien, an Agnorev politician and MP to propose assistance.

On 2 January 2013, with clashes between the authorities and protesters continuing, Mr. Bien proposed a resolution before the Agnostican Parliament, calling upon de-escalation of the military presence in East Agnostica. The resolution failed by a slight majority.

THE RESOLUTION FOR DISSOLUTION

On 5 January 2013, Mr. Bien presented a resolution to the Agnostican Parliament proposing dissolution. The resolution was defeated. Four of 33 Agnorev delegates voted against.

On 9 January 2013, the Reverentian President publicly stated that he commits himself to the cause of 'our Reverentians who live in Agnostica'. He added that the Agnostican Parliament's wrongful decision cannot defeat the inevitable progress of history. If Agnorevs wish to be free, Reverentia will do everything to ensure that.

THE RESOLUTION "ON THE CRISIS IN EAST AGNOSTICA"

On 10 January 2013, the Reverentian Parliament adopted a resolution proclaiming that the referendum reflects the will of the Agnorevs to separate from Agnostica. By a later resolution the President is authorized by the Government to recognize such referendum at any means at his disposal in order to support the independency of East Agnostica and to enter into negotiations to ensure Reventian interests and to take all measures necessary to ensure the security and integrity of East Agnostica. The resolution was denounced by Agnostica as unlawful interference in Agnostica's internal affairs and an act of aggression against its territorial integrity.

THE REFERENDUM

On 16 January 2013 a plebiscite on the question of secession was voted. On 18 January 2013, Reverentia ordered several hundred soldiers to the border with East Agnostica.

On 29 January 2013 , the plebiscite was held, and 73 % of voters in favour of secession. Agnostican Prime Minister denied the legality of the referendum.

East Agnostica's secession was ratified by "Agnorev People's Parliament" (APP). At the same time Agnostica pleaded for help from the international community against the occupation.

The President of the Security Council expressed concern stating that recent events might constitute "an unjustifiable and illegal interference in Agnostican domestic affairs."

Agnostica received support from EU, ASEAN, and several other regional, proclaiming it as "a threat to international peace and stability."

ANNEXATION

On 22 February 2013 an Agreement that would make East Agnostica a province of Reverentia, was ratified. Reverentian Army promptly moved into the region.

Prime Minister Moritz denounced the annexation, but did not send troops into East Agnostica.

SUMMARY OF PLEADINGS

Reverentia`s conducts with respect to East Agnostica violated treaty and customary international law. Firstly, Reverentia`s support for the referendum transgress against the principle of territorial integrity. Both the adoption of the resolution „On the Crisis of East Agnostica" and the amassment of military troops near Agnostica`s border constituted a threat of force and infringed the territorial integrity of Agnostica.

Secondly, Reverentia`s actions in support of the plebiscite imperils the principle of non-intervention. Reverentia supported the secession movement in East Agnostica and intervened in the domestic affairs of Agnostica. Moreover, by the contravening the purpose and the object of the United Nations Charter ,in particular sustaining of the peace and security, Reverentia violated also the United Nations Charter in general.

East Agnostica remains part of the territory of Agnostica since its secession is illegal under international law. In this vain, the principle of self-determination cannot justify the act of secession since the Agnorevs in Agnostica do not fall under the definition of a „people". Even if the Court qualify them as a „people" the Agnorevs have only the right of internal self-determination. In any event, the Agnorevs do not have the right of external self-determination since the principle is applicable only to peoples under colonial and alien domination. Furthermore, the purported attempt is to be proclaimed illegal because of the actions of Reverentia encouraging the secession as between state relations there is an obligation not to recognize situations created by a breach of international law.

Even if Respondent argues the notion of remedial secession justify the conducted unilateral secession the latter doctrine is not part of customary international law since the state practice is far from consistent. Alternatively, if the Court finds that remedial secession has emerged as customary norm, the prerequisite requirements of the rule are not met in the present dispute.

Under international law annexation with regard of the territory of another sovereign State is illegal. Thus, Reverentia's conduct with respect to East Agnostica is not in conformity with the international legal order. What is more, it is a general principle of law that an illegal act cannot give birth to a right in law. Hence, resulting from the unlawful secession, the annexation of East Agnostica violates international law. Further, the decision of the so-called Agnorev's Parliament has no legal force since this is not an organ having the capacity to adopt such an effect and measures. In any event, the *uti possidetis* principle renders East Agnostica's secession and annexation prohibited under international law. Conclusively, the secession attempt and subsequent annexation of East Agnostica by Reverentia are illegal and without effect.

The Marthite Convention has been lawfully terminated, as two possible grounds for its termination under customary international law are at present in the case at hand. Firstly, Reverentia actions against the Marthite Convention regulations constitute a material breach. Secondly, the recently discovered Marthite qualities constitutes a fundamental change of circumstances which changes the extend of parties obligations and forms an essential basis of the parties consent to be bound by the treaty. Moreover, Agnostica has grounds for invoking invalidity of its consent to be bound by the treaty, based on error concerning the Marthite medical use. Agnostica fulfills all of the customary international law requirements for invoking the Convention out of effect after April 2012. Therefore, the convention is considered out of effect.

Even if the Marthite Convention was still in effect after that date, it has not been breached by Agnostica. The ban on the free movement of Marthite has been put under the conditions of necessity, which precludes its wrongfulness under customary law.

The removal of the software by Reverentia constitutes deprivation of Agnostican sovereign property. Under the Marthite Convention Agnostica gained property rights over the software and the software removal contradicts them.

Moreover, the wrongfulness of the removal is not precluded. There are no opportunities for the preclusion of the acts` wrongfulness, because the law of state responsibility is not applicable in the case at hand. In the alternative, Reverentia`s actions do not meet the requirements for countermeasures under customary international law. The actions of Reverentia are neither proportionate, nor they comply with the procedural requirements for invoking countermeasures.

PLEADINGS

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

A. Reverentia`s support for the referendum violated the principle of territorial integrity

The principle of territorial integrity is an essentially important part of the international legal order. It is enshrined in Article 2(4) of the UN Charter.[1] This basic rule is further reiterated in numerous international instruments[2] and especially in the Friendly Relations Declaration which underlines the inviolability of the territorial integrity and political independence of States.[3] In *Kosovo*[4] and *Nicaragua*[5] the Court has found that the latter resolution reflects customary international law. In this vein, Reverentia`s encouragement of the referendum (1) by the adoption of the Resolution "On the Crisis in East Agnostica" (Crisis

[1] Charter of the United Nations, 1 U.N.T.S. XVI (1945); Randelzhofer, A. and O. Dörr, *Article 2(4)* in SIMMA, B. (ED) THE CARTER OF THE UNITED NATIONS: A COMMENTARY, 200, 223 (3rd ed. 2012) ['SIMMA'].

[2] The Final Act of the Conference on Security and Cooperation in Europe, 14 I.L.M. 1292 (1975) ['Helsinki Final Act']; European Commission for Democracy, CDL-AD (2014) 004, Opinion no. 763/2014, 98th Plenary Session, ¶15.

[3] Article 6(2)(d) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc. A/8028 (1970) ['Friendly Relations Declaration'].

[4] *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, Advisory Opinion, 2010 I.C.J.¶80 ['*Kosovo'*].

[5] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)*, Merits, 1986 I.C.J. 14, ¶191-193 ['*Nicaragua'*].

Resolution); and (2) by the deployment of military troops near the border, breached the principle of territorial integrity.

1. The adoption of the Crisis Resolution by Reverentia imperils the territorial integrity of Agnostica

The right of national liberation movements to seek outside support has been recognized only in the context of colonial and alien domination.[6] In all other cases States are required to strictly observe the territorial integrity of the parent State.[7] Hence, in situations in which third States support or encourage the actions of secessionist movements, this would amount to a violation of the territorial integrity of the parent State as affirmed by multiple Security Council Resolutions[8] and other documents.[9] The Crisis Resolution recognizes the conducted referendum "as lawful and valid" and expresses Reverentia's readiness "to take all measures necessary to ensure the security and the integrity of East Agnostica."[10] Therefore, by giving its support for the referendum, Reverentia violated its duty to respect the

[6] Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. U.N. Doc. A/RES/2105 (XX) (1965); G.A. Res. 3236, U.N. Doc. A/RES/3236 (XXIX) (1974); G.A. Res. 31/61, U.N. Doc. A/RES/31/61 (1976); G.A. Res. 34/44, U.N. Doc. A/RES/34/44 (1979).

[7] Friendly Relations Declaration.

[8] S.C. Res. 937, U.N. Doc. S/RES/937 (1994); S.C. Res. 934, U.N. Doc. S/RES/934 (1994); S.C. Res. 906, U.N. Doc. S/RES/906 (1994); S.C. Res. 896, U.N. Doc. S/RES/896 (1994).

[9] *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923 P.C.I.J., Ser. B, No. 4, 27-28 ['*Nationality Decrees'*]; *Report of the Secretary-General on the Situation in the Federal Islamic Republic of the Comoros*, Decisions and Resolutions of 68th Ordinary Session, O.A.U. CM/Dec.405, Doc. CM/2062 (LXVIII) (1998).

[10] Compromis, ¶35.

inviolability of every State and to positively protect the territorial composition of States,[11] in particular the territorial integrity of Agnostica.

2. Reverentia`s amassment of troops near Agnostica`s border constitutes a threat of force and therefore infringes the territorial integrity of Agnostica

As emphasized in the consistent practice of this Court, territorial integrity relates to the "complete and exclusive sovereignty of a State over its territory."[12] Furthermore, this principle, understood together with the principles of non-intervention and political independence, entitles States to choose and implement their own political, economic and social systems without outside interference and in particular free from threats or use of force by other States.[13]

On the day of the referendum, Reverentia sent several hundred soldiers near Agnostica`s border.[14] These actions should be regarded as an inseparable part of the referendum`s support and comprise a threat to use force against the territorial integrity of Agnostica.[15] For instance, the USSR's amassment of troops near the Turkish border in 1946

---

[11] *Kosovo*, Written Statements, Serbia, ¶423-424.

[12] *Nicaragua*, ¶209; *Armed Activities on the Territory of the Congo (Demovratic Republic of the Congo v. Uganda)*, Judgment, 2005 I.C.J., ¶164 ['*Congo v. Uganda'*].

[13] *Nicaragua*, ¶¶258, 212.

[14] Compromis, ¶37.

[15] S.C. Res. 949, U.N. Doc. S/RES/949 (1994); STÜRCHLER, N., THE THREAT OF FORCE IN INTERNATIONAL LAW, 209, 216 (2007); *Guyana v Suriname Arbitration*, Award, 47 I.L.M. 166 ¶¶439, 445; Wilmshurt, E., *The Chantam House Principles of International Law on the Use of Force by States in Self-Defense*, Int'l & Comp. L.Q., Vol. 55, No. 4, 963 (2006); Roscini, M., *Threats of Armed Force and Contemporary International Law*, 54 Neth. Int'L L. Rev. 229, 242 (2007).

was accepted as e credible threat[16] as well as the movements of Turkish troopships in the vicinity of Cyprus in 1964[17] and also Iraq's troop build-up near the border with Kuwait in 1994.[18] Moreover, in *Nicaragua* the Court recognized that military manoeuvres near a State border may amount to a threat of force.[19] Likewise, as the Court held in *Corfu Channel* "a demonstration of force for the purpose of exercising political pressure" violates Article 2(4) of the Charter.[20]

As stated in *Nuclear weapons*, "if the envisaged use of force is itself unlawful, the stated readiness to use it would be a threat prohibited under the Charter."[21] In the present case, the manoeuvres in question are intended to serve Reverentia's policy objectives such as "to secure territory from another State, or to cause it to follow or not follow certain political or economic paths"[22] materialized in the unlawful support of East Agnostica's referendum. The threat or use of force is permissible only in a limited number of cases - in situations of self-

---

[16] de Luca, A., *Soviet- American Politics and the Turkish Straits*, 92 Political Sci. Q., Vol. 92, 503, 516–20 (1977).

[17] Repertoire of the Practice of the Security Council, Suppl. 1964-1965, XVI, 238 S. (Sales No. 1968. VII. 1). Doc. ST/PSCA/l/Add. 4., 202 (1968).

[18] S.C. Res. 661, U.N. Doc. S/RES/661 (1990); U.N. S.C.O.R., 49th Sess., 3438th Meeting, U.N. Doc. S/PV.3438, 4-5, 8-11, 13 - statements of Argentina, Djibouti, Kuwait, New Zealand, Pakistan, Spain, UK, US (1994).

[19] *Nicaragua*, ¶227.

[20] *Corfu Channel (Great Britain v. Albania)*, Merits, Judgment, 1949, I.C.J. 4, 35.

[21] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J., ¶47 ['*Nuclear weapons'*].

[22] *Ibid.*

defense[23] or with the authorization of the Security Council.[24] Since the deployment of patrols near Agnostica's borders could not be justified on the abovementioned grounds, it constitutes a prohibited threat against the territorial integrity of Agnostica.

3. The right to self-determination could not justify the encouragement of the referendum

Respondent may rely on the *erga omnes* character of self-determination in order to justify its support for the referendum. However, the context of this principle is only limited to situations of colonial and alien domination.[25] In any event, under the Friendly Relations Declaration and other GA Resolutions[26] the right of self-determination can only be exercised within the confines prescribed by the other principles, including territorial integrity.[27] Hence, self-determination does not prevail over the principle of territorial integrity of States and cannot justify Reverentia's actions.

B. Reverentia`s encouragement of the referendum violates the principle of non-intervention

[23] Art. 51, Charter.

[24] Art. 50, Charter.

[25] Art. 2 Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. Doc. A/4684, 66 (1960) [Declaration on the Granting of Independence]; Thürer, D & T. Burri, *Self-determination*, Oxford Publ. I`tnl L., MPEPIL, ¶¶6, 15 (2008).

[26] G.A. Res. 37/42, U.N. Doc. A/Res/37/42 (1982); G.A. Res. 38/16, U.N. Doc. A/38/47 (1983); G.A. Res. 61/150, U.N. Doc. A/Res/61/150 (2006); G.A. Res. 62/144, U.N. Doc. A/Res/62/144 (2007); G.A. Res.,U.N. Doc. A/Res/63/163 (2009).

[27] The Arbitration Commission of the European on the former Yugoslavia, Opinion No. 2, 31 I.L.M. 1497 (1992) ['Badinter Commission']; MUSGRAVE, T., SELF-DETERMINATION AND NATIONAL MINORITIES, 247 (2000).

The principle of non-intervention is generally accepted as one of the fundaments of international law.[28] It is recognized as a part of customary international law.[29]

Notably, the Friendly Relations Declaration prohibits intervention in any forms – be it economic, *political* or other, directly or indirectly manifested.[30] This Court has emphasized the importance of the non-intervention principle in *Nicaragua* finding that intervention is permissible only upon the invitation of the government of the State, while intervention in support of the opposition and secessionist movements threatens not only the sanctity of the principle of non-intervention but the international legal order at large.[31]

1. The support of the secession movement in East Agnostica violates the principle of non-intervention

Indirect interference in civil strife in another State, including actions that incite or tolerate subversive actions has been widely condemned.[32] Similarly, in *Congo v. Uganda* the

---

[28] JENNINGS AND WATTS (EDS), OPPENHEIM'S INTERNATIONAL LAW, VOL. 1, 535 (9TH ED.) (2008) ['OPPENHEIM'S']; BROWNLIE, I., PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 447 (7TH ED. 2008); SHAW, M., INTERNATIONAL LAW, 1148 (6TH ED. 2008) [SHAW].

[29] Friendly Relations Declaration; Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131 (XX), U.N. Doc. A/RES/20/2131, ¶1 (1965) [Declaration on the Inadmissibility]; Helsinki Final Act, VI; Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, G.A. Res. 36/103, U.N. Doc. A/RES/36/103, Annex, ¶ 2 (II)(a) (1981); Peaceful and Neighbourly Relations among States, G.A. Res. 1236 (XII), U.N. Doc. A/RES/12/1236 (1957); *Nicaragua*, ¶205.

[30] Friendly Relations Declaration.

[31] *Nicaragua*, ¶246.

[32] Friendly Relations Declaration; Declaration on the Inadmissibility, ¶2; Helsinki Final Act, VI.

Court expressly concluded that the prohibition on intervention encompasses also subtle forms of interference such as to "*foment… incite or tolerate*" subversive activities in another State.[33]

The Agnostican Parliament expressly rejected the dissolution proposal. On the other hand, Reverentia by the actions of its officials including President Nuvallus' speech and the Parliament`s Crisis Resolution expressed its full support for the secession movement in East Agnostica.[34] Reverentia's actions, which are a matter of public knowledge, constitute indirect interference in civil strife in Agnostica.[35]

2. Reverentia intervened in the domestic affairs of another State

The principle of non-intervention is a fundamental right of every State to choose and implement its sovereign policy.[36] As observed by the Court, this rule "forbids all States or groups of States to intervene *directly* or *indirectly* in *internal* or *external* affairs of other States."[37] In particular, direct or indirect support for subversive groups in another State are prohibited.[38]

---

[33] *Congo* v. *Uganda*, ¶¶¶162, 300-301; *Nicaragua*, ¶191.

[34] Compromis ¶¶34; 35.

[35] *Ibid.*

[36] *Nicaragua* ¶¶202,258; *Nationality Decrees*, 23-24; Friendly Relations Declaration; S.C. Res. 1271, U.N. Doc. S/RES/1271 (1999); G.A. Res. 58/189, U.N. Doc. S/RES/58/189 (2003)*;* G.A. Res. 52/119, U.N. Doc. S/RES/52/119 (1997); SIMMA, 790.

[37] *Nicaragua*, ¶205; *Congo* v. *Uganda*, ¶164.

[38] *Ibid.*

Additionally, the inviolable right of political integrity is enshrined in the Montevideo Convention[39] which applies in the present case as treaty law.[40] Hence, the intervention of a State against the political integrity of another State is prohibited when it is executed by "methods of coercion in regard to such choices, which must remain free ones".[41]

The organization and execution of the referendum are exclusively regulated by the sovereign State of Agnostica through its governmental authorities. Reverentia`s readiness to recognize and extend diplomatic recognition as well as the given insurance to take all measures necessary to ensure the integrity of East Agnostica constitute an interference in the domestic affairs of Agnostica.[42]

C. Reverentia`s encouragement of the referendum violates the Charter in general

1. The violation of the abovementioned principles entails the violation of the Charter

As was proven *supra*, Reverentia has violated the principles of territorial integrity, non-intervention, as well as the prohibition of threat to use of force. Article 2(4) of the Charter prohibits the threat or use of force against the territorial integrity of States.[43] This rule is considered as the "crucial normative foundation" of the Charter.[44] Similarly, Article 2(7) of the Charter emphasizes the importance of the non-intervention principle.

---

[39] Article 8, Convention on Rights and Duties of States, Montevideo, 165 L.N.T.S. 19 (1933).

[40] Compromis, ¶44.

[41] *Nicaragua*, ¶205.

[42] Compromis, ¶35.

[43] Article 2(4), Charter.

[44] Comment, *The Use of Nonviolent Coercion: A Study in Legality under Article 2(4) of the Charter of the United Nations*, 122 U. PA.L. Rev., 983, 986 (1974).

If the Court accepts that Reverentia has violated the abovementioned principles, then it should consider that Respondent has violated the Charter in general.

2. Reverentia's actions contravene the purpose and the object of the Charter

The purpose of the Charter is enshrined in Article 1, namely to maintain international peace and security.[45] This effect is to be achieved through "peaceful means," "friendly relations among nations" and "co-operation" in solving international problems.[46]

By encouraging the referendum, Reverentia raised the pressure in the region of East Agnostica. Respondent did not make any effort to co-operate or to initiate negotiations with Agnostica in order to solve the issue by peaceful means. The European Union, ASEAN, and other regional bodies qualified the possible annexation of East Agnostica as "a threat to international peace and stability."[47]

With its actions, Reverentia infringes the main object of the Charter, in particular to sustain peace and security. Therefore, Respondent violated the very purpose of the Charter.

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

A. The secession of East Agnostica is illegal under international law

1. The principle of self-determination cannot justify the secession of East Agnostica

[45] Wolfrum, R, *Ch.I Purposes and Principles, Article 1*, in SIMMA, 93, ¶7.

[46] *Ibid.*, 216, ¶38.

[47] Compromis, ¶40.

Applicant submits that (1) the Agnorevs cannot be qualified as "peoples" for the purposes of self-determination; and that (2) their right to self-determination is limited to its internal aspect and (3) in any event, they do not have the right to external self-determination.

i) The Agnorevs in Agnostica do not fall under the definition of a "people"

The Charter,[48] the Friendly Relation Declaration and the International Covenant on Civil and Political Rights[49] provide for a right to self-determination of "peoples". This term is not defined in the abovementioned instruments, but there is wide consensus that "people" encompasses the whole population of a given State or non-self-governing territory and does not, in particular, include ethnic groups or minorities.[50] Thus, this Court has described the right to self-determination as one embracing "all peoples and territories which have not yet attained independence,"[51] thereby referring to the whole population, not to its constituent

[48] Article 1(2) Charter.

[49] Article 1, International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171 [ICCPR].

[50] *Kosovo,* Statement by the Permanent Representative of the Republic of Azerbaijan to the United Nations, Oral Proceedings, 3 December 2009, ¶36, available at <http://www.icjcij.org/docket/files/141/15716.pdf>; ICCPR, Third Periodic Reports of States Parties due in 1991, Addendum, Report Submitted by Shri Lanka, 17 July 1944, CCRP/C/70/Add.6, (1944).

[51] *Western Sahara*, Advisory Opinion, 1975 I.C.J. 1, ¶162 ['*Western Sahara'*]; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276,* Advisory Opinion, 1971 I.C.J. 16, ¶52-53 ['*Namibia'*]; *East Timor (Portugal* v. *Australia),* Judgment, 1995 I.C.J. 90 ¶29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, 2004 I.C.J. 136, ¶88 ['*Wall'*].

ethnic groups. In its Declaration on Inadmissibility, the GA used the terms "nations" and "peoples" as synonyms.[52]

Similarly, in the *Åaland Island* was noted that international law does not permit "separation of a minority from the State of which it forms part."[53] This is supported both by the position of eminent scholars[54] of international law and vast state practice.[55] Moreover, the Inter-American Commission on Human Rights declared self-determination to be the right of a people to choose their form of political organization and to pursue their economic, social and cultural development, but "this does not mean, however, that it recognizes the right to self-determination of any ethnic group as such."[56] In *Kosovo,* the most recent occasion on this question before the Court, many States submitted in their oral or written pleadings that "people" does not include minority or ethnic groups on the territory of an existing State.[57]

---

[52] Declaration on the Inadmissibility, ¶6.

[53] Åaland Island, Report by the Commission of Rapporteurs, League of Nations Council Document B7 21/68/106, 318 (1921).

[54]CRAWFORD, J., THE CREATION OF STATES IN INTERNATIONAL LAW, 415 (2nd Ed. 2006) ['CRAWFORD']; HIGGINS, R., PROBLEMS AND PROCESS, INTERNATIONAL LAW AND HOW WE USE IT, 124 (1994); *Kosovo*, ¶10 (Separate Opinion of Judge Yusuf).

[55] The position of States as Indonesia, India, Pakistan, Sri Lanka and Thailand, ratifying the ICCPR available at https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en; Badinter Commission, Opinion No 2.

[56] Report on the Situation of a Segment of the Nicaraguan Population of Miskito Origin, I.A.C.H.R., OAS, OEA/Ser.L/V.II.62, Doc. 10, Eev. 3, ¶9 (1983).

[57] *Kosovo*, Written statement of Argentina, ¶59.

In the present case, the Agnorevs share the same history, culture and ethnical identity, as well as common economic background.[58] Hence, they form an ethnic group.

ii) The Agnorevs may exercise internal self-determination

Outside the colonial context, self-determination only applies in its internal aspect and provides for the people's right to be equally represented within the sovereign State.[59] This is evidences by a line of UN resolutions[60] and consistent State practice.[61]

In *Quebec* case the Canadian Supreme Court took the position that "[s]elf-determination of a people is normally fulfilled through internal self-determination".[62] Similarly, the African Commission on Human Rights' observations in the case of *Katangese Peoples' Congress v. Zaire* lend support to the proposition that ethnic subgroups are entitled

[58] Compromis, ¶¶¶ 4,5,6.

[59] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 2008/901/CFSP, Vol. II, 147 (2009); CRAWFORD, 415; SHAW, 293; Hilpold, P., *The Kosovo Case and International Law: Looking for Applicable Theories*, CHINESE J. INT`L L.,Vol. 8, 46, 55 (2009) [Hilpold].

[60] S.C. Res. 724, U.N. Doc. S/Res/724 ¶7 (1991); G.A. Res. 441 (V), U.N. Doc. A/Res/441/5 (1950); G.A. Res. 1723 (XVI), U.N. Doc. A/Res/1723/16 (1961); General Recommendation 21, The right to self-determination, U.N. Doc. A/51/18, annex VIII, 125 (1996).

[61] Declaration on the Situation in Yugoslavia, Extraordinary European Political Cooperation Ministerial Meeting, EC Press Release 61/91 (1991); Resolution 233, Council of Europe, 22 April 1997; Vienna Declaration of the CSCE Parliamentary Assemble, PA(94)7, ¶21 (1994).

[62] *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, ¶138.

to internal self-determination[63] as well as the *Tartastan* decision issued by the Constitutional Court of the Russian Federation.[64]

The Agnorevs are granted with the full capacity of their right of internal self-determination as they can pursue their own economic, social, and cultural development.[65] Agnorev's rights pertaining to their ethnic origin are well preserved from violations by the widely developed human rights system of Agnostica.[66] They are represented by almost half of the members at the Agnostican Parliament[67] and have the highest life standard in Agnostica.[68] Hence, their right of internal self-determination is preserved.

iii) In any event, the Agnorevs do not have a right of external self-determination

The right to external self-determination consisting in the right to form an independent State is related exclusively to peoples under colonial and alien domination.[69] Likewise, in *Namibia*, this Court observed that the principle of self-determination embraces all peoples and

[63] *Katangese Peoples' Congress v. Zaire*, A.C.H.P.R., Comm. No. 75/92, 256 (1995).

[64] *Tartastan Sovereignty case*, [1992] Constitutional Court of the Russian Federation, P-R3-1, (1992).

[65] Compromis, ¶6.

[66] Clarification ¶4.

[67] Compromis, ¶¶31,33.

[68] Compromis, ¶7.

[69] United Nations Millennium Declaration, U.N. Doc. A/RES/55/2, ¶4 (2000); *Western Sahara*, ¶56; *Kosovo*, ¶82. Quane, H., *The United Nations and the Evolving Right to Self-determination*, 47 Int'L & Comp. L.Q. 537, 558 (1998); Hilpold, 55.

territories which have not yet attained independence, in particular territories under colonial regime.[70]

Consequently, even if the Agnorevs qualify as a "people", the principle of self-determination does not automatically entail their right to secession.[71]

In the present case, both Agnostica and Reverentia have already gained there independence from Credera in.[72] Moreover, despite the Reverentia encouragement to return over 85% of Agnorevs resident in Agnostica elected to remain Agnostican citizens.[73] Therefore, the principle of external self-determination is not applicable to the present dispute and.East Agnostican does not have the right to secede.

2. The secession was conducted with the help of Reverentia

Admittedly, in the *Kosovo,* the Court has held that international law does not regulate and hence does not prohibit unilateral declarations of independence.[74] This finding of the Court must be read strictly within the context of the relations between a State and a seceding entity on its territory – the latter not being a subject of international law. However, in State-to-State relations there is an obligation not to recognize situations created by a breach of international law.[75]

---

[70] *Namibia,* ¶52; *Western Sahara*, ¶56.

[71] Declaration on the Granting of Independence.

[72] Compromis, ¶5.

[73] Ibid., ¶6.

[74] *Kosovo*, ¶84.

[75] Article 41, Articles on Responsibility of States for Internationally Wrongful Acts, Y.B.I.L.C., vol. II (Part Two) (2001) ['ARSIWA']; *Namibia*, ¶119.

As noted *supra*, by its actions Reverentia threatened to use force which laid further encouragement to the Agnorev's claims and facilitated their attempted secession. The Court has recognized that in such situations the secession is unlawful.[76] There are many other examples of entities which made attempts to secede by violating general international law. Those attempts were proclaimed illegal because of the actions of third States encouraging the secession.[77]

Similarly, Reverentia encouraged the secession movement in East Agnostica.[78] Moreover, it sent military patrols along Agnostica's borders[79] and promoted the recognition of East Agnostica.[80] With those actions the Respondent indirectly initiated and safeguard the secession of East Agnostica by violating principles of general international law. Hence, the secession should be condemned as inconsistent with international law.

3. Remedial secession cannot justify the conducted unilateral secession

i) The doctrine of remedial secession is not part of customary international law

Respondent may try to argue that remedial secession has become part of customary law. This argument cannot be accepted since in order for a customary rule to emerge, there

[76] *Kosovo*, ¶81; S.C. Res. 216, U.N. Doc. S/RES/216 (1965); S.C. Res. 217, U.N. Doc. S/RES/217 (1965); S.C. Res. 787, U.N. Doc. S/RES/787 (1992).

[77] S.C. Res. 1023, U.N. Doc. S/Res/1023, preamble (1995); S.C. Res. 815, U.N. Doc. S/Res/815, ¶5 (1993); CRAWFORD, 408; Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", European Community, 31 I.L.M. 1485 (1992).

[78] Compromis, ¶35.

[79] Compromis, ¶37.

[80] Compromis, ¶¶ 35,41.

should be constant State practice[81] and *opinio juris.*[82] In particular, where the practice is fraught with "uncertainty and contradiction… fluctuation and discrepancy"[83] the formation of a customary rule is obstructed.

There is no State practice in respect of remedial secession. Crawford identifies only the case of Bangladesh as a possible example of remedial secession,[84] but no State recognized Bangladesh and it was denied admission into the UN until Pakistan granted its consent. In the case of Chechnya – despite the fact that grave violations of human rights law were perpetrated –its claim to independence was not recognized and the SC has issued resolutions affirming the territorial integrity of the Russian Federation.[85] Similarly, in the case of Abkhazia the SC again affirmed the territorial integrity of Georgia[86]. Thus, there is no State practice and *opinio juris* on the question of remedial secession.

More recently, in *Kosovo*, the Court emphasized in relation to the concept of remedial secession that States hold "radically different views".[87] For instance, in their written statements many States explicitly rejected this doctrine.[88]

---

[81] *North Sea Continental Shelf cases (Federal Republic of Germany/Denmark*, Judgment, 1969 I.C.J. 3, 44, ¶ 77 ['*North Sea'*]; *Asylum (Colombia/Peru),* Judgment, 1950 I.C.J. 266, 276-277 ['*Asylum'*].

[82] *Continental Shelf (Libyan Arab Jamahiriya/Malta*), Judgment, 1985 I.C.J. 13, ¶27.); *Nicaragua*, ¶183; *Jurisdictional Immunities of the State* (*Germany* v. *Italy: Greece intervining),* Judgment, 2012 I.C.J. ¶55 ['Germany v. Italy']; *Nuclear weapons*, ¶64.

[83] *Asylum*, 277; *North Sea*, ¶74.

[84] CRAWFORD, 393.

[85] *Ibid*, 408.

[86] S.C. Res. 1808, U.N. Doc. S/RES/1808 (2008).

[87] *Kosovo*, ¶82.

In view of the fact that the elements for the existence of custom are not met, remedial secession does not form part of *lex lata*. Therefore, the Respondent could not justify the legality of East Agnostica's secession upon the theory of remedial secession.

ii) Alternatively, the requirements for remedial secession are not met

Even if the Court recognizes the right of remedial secession as part of customary international law, the threshold for its application is not met in the present case. Scholars addressing remedial secession have observed that it is only permitted in the case of gross violations of individual human rights[89] such as "ethic cleaning, mass killings and genocide."[90]

For instance, in the cases of Bangladesh and Bosnia and Herzegovina the circumstances involved acts of repression and genocide.[91] Notably, in the case of Kosovo there were mass killings and the Kosovar Albanians have been systematically repressed. Nevertheless, in Resolution 1244 the SC again reaffirmed the territorial integrity of Serbia[92] showing that the threshold regarding remedial secession is exceptionally high.

---

[88] *Kosovo,* Written Statements, Argentina, Republic of Azerbaijan, Republic of Cyprus, State of Bolivia, United Kingdom.

[89] RAIČ, D., STATEHOOD AND THE LAW OF SELF-DETERMINATION, 415-416 (2002).

[90] Anderson G, *Secession in International Law and Relations: What Are We Talking About?*, Loy. L.A. Int'l & Comp. L. Rev. 343, 351-352 (2013).

[91] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro),* Judgment, 2007 I.C.J. 128, ¶ 190; Vidmar, J., *South Sudan and the International Legal Framework Governing the Emergence and Delimitation of New States*, TEXAS J. INT'L L., Vol. 47, No. 3, 541, 545 (2012).

[92] S.C. Res. 1244, U.N. Doc. S/RES/1244 (1999).

In addition, remedial secession may be exercised only as a last resort, when no other alternatives are available.[93]

There is no indication in the present case of such a grave and massive violation of the internal right of self-determination or the human rights of the Agnorevs. On the contrary, the Agnorev's rights are well preserved due to the fact that they are represented in the National Parliament[94] and Agnostica has a developed civil law system.[95] Hence, the preconditions for exercising the right of remedial secession are not present in the situation at hand.

B. Reverentia's annexation of East Agnostica violates international law

1. Annexation is illegal under international law

This Court has observed in the *Wall AO* that "no territorial acquisition resulting from the threat or use of force shall be recognized as legal."[96] As was discussed *supra*, Reverentia threatened Agnostica with force thereby illegally supporting the aspirations of the Agnorevs. Consequently, the annexation is illegal.[97] This was the stance of the community of States in the situation with Crimea – many States, condemned the Russian Federation's annexation.[98]

2. Resulting from the illegality of the secession, the annexation is also illegal

[93] BUCHANAN, A., JUSTICE, LEGITIMACY, AND SELF-DETERMINATION, 355 (2007); COPPIETERS, B. & RICHARD SAKWA, CONTEXTUALIZING SECESSION: NORMATIVE STUDIES IN COMPARATIVE PERSPECTIVE, 7 (2003); Scharf, M., *Earned Sovereignty: Juridical Underpinnings*, DENV. J. INT'L L. & POL'Y 373, 381 (2003).

[94] Compromis, ¶31.

[95] Clarification, ¶4.

[96] *Wall*, ¶87.

[97] *Cyprus* v. *Turkey*, Judgment, E.Ct.H.R., 25781/94, ¶60–1 (2001); S.C. Res. 662, U.N. Doc. S/RES/662 (1990).

[98] Statement on the reported holding of local elections in Crimea, EU Doc. No. 140915/01.

It is a general principal of law that an "illegal act cannot give birth to a right in law".[99] Consequently, if the Court finds that the secession of East Agnostica is illegal, then the annexation is also illegal.

3. The decision of the so-called Agnorev's Parliament has no legal force

The decision for East Agnostica's integration into Reverentia was given by the Agnorev People`s Parliament. This is not however an organ having "the capacity of an institution created by and empowered to adopt a measure of [such] significance and effects."[100]

In any event, the option to integrate with an independent State is set forth in the Declaration on the Granting of Independence. However, this resolution is strictly limited to colonial peoples.[101] Hence, the APP`s decision to send an invitation for integration of East Agnostica into Reverentia does not entail any legal consequences.

4. In any event, the *uti possidetis* principle renders East Agnostica's secession and annexation illegal

Under the *uti possidetis* principle boundaries are to follow the colonial administrative boundaries.[102] In the case at hand, both Agnostica and Reverentia are ex-colonies of Credera.

---

[99] SHAW, 361; OPPENHEIM'S, 699.

[100] *Kosovo*, ¶105.

[101] *Western Sahara*, ¶57.

[102] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, 1992 I.C.J., ¶¶28,40. ['*El Salvador'*].

Consequently, the principle applies *in casu* rendering the boundaries as inherited intangible.[103] The purpose of this principle "is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power."[104] In order to prevent further struggles the *uti possidetis* principle renders the principle of self-determination inoperable.[105] Since the principle of *uti possidetis* is violated, the annexation is not in conformity with international law.

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

Both States are parties to the Vienna Convention on the Law of Treaties ('VCLT'). However, according to Article 4 thereof and the principle of non-retroactivity, it is not applicable to treaties concluded before its entry into force, The Marthite Convention was concluded in 1938[106], therefore the provisions of the VCLT apply only in so far as they reflect customary international law.

---

[103] *Frontier Dispute (Benin/Niger)*, Judgment, 2005 I.C.J. 90, ¶45.

[104] *Frontier Dispute (Burkina Faso/Republic of Mali*), Judgment, 1986 I.C.J. 554 ¶19, ¶¶21-22 ['*Burkina Faso/ Mali'*]; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, 2007 I.C.J. 659, ¶151; *Frontier Dispute (Burkina Faso/Niger)*, Judgment, 2013 I.C.J. 44, ¶63.

[105] *Burkina Faso/Mali*, ¶25.

[106] *Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session,* Document A/6309/Rev.l*:,* ILC Law of the Treaties Final Draft with Commenataries, Commentary to Art 45, 244 ¶4; Y.B.I. L.C., vol. II, U.N. Doc. A/CN.4/SER.A/Add.l (1966).

Customary law regulating the law of treaties provides that a convention is no longer in effect under certain set of conditions. These conditions are discussed in the next sections..

A. Agnostica has lawfully terminated the Marthite Convention based on the general rules for termination

The *parta sunt servanda* rule is a customary law rule, but it also has a number of exceptions[107], in which a treaty ceases to be in force.[108] Treaties which do not include specific termination provisions, such as the Marthite Convention, may be terminated only on the grounds listed in Part V of the VCLT[109], which represent customary international law.[110] As well settled in the practice of this Court[111], the foregoing provisions are directly applicable as law under art. 38(1)(b) of the Court's Statute.[112]

1. Agnostica was entitled to terminate the Convention on the basis of a material breach

[107] Special Rapporteur Sir Humphrey Waldock, *Second Report on Law of Treaties*, Y.B.I.L.C., vol.II (Part One) (1963), 39['Waldock II Report'];VILLIGER, M., COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF THE TREATIES 545 (2009).

[108] OPPENHEIM'S, 1296.

[109] Article 42, Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 33 (1969),; *Gabčíkovo,* ¶100.

[110] OPPENHEIM'S, 1300; DÖRR, O., SCHMALENBACH, K., VIENNA CONVENTION ON THE LAW OF TREATIES, A COMMENTARY 737(2012).

[111] *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia*), Judgment, 1997 I.C.J., ¶46 ['*Gabčíkovo'*]; *PCIJ Diversion of Water from the Meuse, Judge Anzilotti Dissenting Opinion P.C.I.J. Ser A/B No 70, 50* (1937) [*Diversion, Anzilloti*]; *Namibia*, ¶96, 98;

[112] Statute of the International Court of Justice, 59 Stat.1055, 33 U.N.T.S. 993 (1945).

Art. 60 (1), VCLT outlines that a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty. A material breach is "the violation of a provision essential to the accomplishment of the object or purpose of the treaty."[113] As the Court stressed in *Namibia AO*, article 60, VCLT is also considered a codification of customary law.[114] This is confirmed also by the fact that during the Vienna Conference, Article 60 was adopted without any negative vote or objection.[115]

Determining what a 'material breach' is depends on the precise facts and circumstances of each case.[116] But as this Court confirmed, it presents a deliberate violation of obligations which destroys the very object and purpose of the treaty.[117]

The object and purpose of a treaty are to be interpreted in conformity with the general rules of interpretation established in international law.[118] This Court has always accepted the preamble of a given treaty as guidance for its object and purpose.[119]

---

[113] Article 60(3) VCLT; OPPENHEIM'S, 1300; *Namibia*, ¶96, 98.

[114] *Namibia*, ¶94.

[115] DÖRR, 1027.

[116] Aust, A., *Treaties, Termination,* M.P.E.P.I.L. ¶31 (2006).

[117] VCLT, art 60 (3).

[118] *Nuclear weapons*, ¶19; *LaGrand (Germany v. United States of America)* 2001, I.C.J., ¶99; *Avena and other Mexican nationals (Mexico v. United States of America)*, Judgment, 2009 I.C.J., ¶83; *Case Concerning the Arbitral Award of 31 July 1989, (Guinea-Bissau v. Senegal)* 1991, ¶48; *Kasikili/Sedudu Island (Botswana v. Namibia),* Judgment,1999 I.C.J., ¶18 ["*Kasikili/Sedudu"*]*; Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)* 2008 I.C.J., ¶123; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay),* Judgment, 2010 I.C.J, ¶91 ['*Pulp Mills'*].

As for the Preamble of the Marthite Convention, its main purpose is to "ensure reliable supply of Marthite to those for whom it holds cultural significance". This stipulation is guaranteed by prohibiting Marthite sales outside Reverentia and Agnostica, unless supply in any given calendar year is 25% higher than local demand.[120] RMT is allowed to sell Marthite without any restrictions only if the mined Marthite is in excess of 125% of demand from traditional practitioners.[121]

In breach of the Convention's provisions, within weeks after the ILSA Report, RMT sold 75% of the total quantity of mined Marthite to pharmaceutical companies for as much as ten times its maximum permitted sale price, while traditional users suffered shortages and price increases.[122] This is in grave contrast to the object and purpose of the convention, therefore, Agnostica was entitled to invoke the breach as a ground for termination.

2. Alternatively, Agnostica terminated the treaty in the light of fundamentally changed circumstances

---

[119] *Gabčíkovo* ¶15; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v.*Rwanda),* Jurisdiction and Admissibility, I.C.J. 2006, 67 [*Congo v. Rwanda*]; *Reservations to the Convention on Genocide*, Advisory Opinion, I.C.J. Reports 1951, 23 [*Convention on Genocide*]; ILC, *Guide to Practice on Reservations to Treaties (2011),* Y.B.I.L.C., 2011, vol. II, Part Two. Draft Guideline 3.1.5.1.

[120] Marthite Convention, art. 4 (d).

[121] Corrections, ¶2.

[122]Compromis, ¶13.

This Court has observed in *Fisheries Jurisdiction* that article 61 VCLT is declaratory of customary international law.[123] Article 61 strictly defines the cumulative conditions[124] under which a change of circumstances may be invoked:

i) it must affect circumstances existing at the time of the conclusion of the treaty which have not been foreseen by the parties at the moment of conclusion;

In casu, at the time of the conclusion of the Convention, Marthite was virtually unknown outside the Thantonian Plate and it had significance only for the traditional users.[125] Therefore, its medical use outside of the scope of traditional medicine had been unknown and unpredictable for the parties.

ii) The change must be 'fundamental' and the effect of the change must radically transform the extent of the obligations to be performed

In order for a change to be considered 'fundamental',[126] it would suffice if "the value to be gained by further performance is diminished"[127] or if it results from changes in "the availability of natural resources".[128]

---

[123] *Fisheries Jurisdiction Case (United Kingdom v. Iceland)*, Merits, 1974 I.C.J., ¶40, ¶49 [*Fisheries Jurisdiction*].

[124] *Gabčíkovo,* ¶104.

[125] Marthite Convention, Preamble; *Fisheries Jurisdiction*, ¶3, ¶19; *Gabčíkovo,* ¶104.

[126] *Fisheries Jurisdiction*, ¶3, 19; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland)*, Merits, 1974 I.C.J., 49; *Gabčíkovo* ¶104.

[127] DÖRR, 1089.

[128] *Ibid*, 1081.

The newly discovered medical use of the Marthite does constitute a fundamental change, because it radically transforms the extent of the obligations still to be performed. The new medical use of the mineral changes its application and the main purpose of the cooperation between Agnostica and Reverentia, namely respecting and honouring Reverentia`s ancient traditions. If the Convention remains applicable Agnostica would be obliged to provide its natural resource to RMT for limited distribution amongst traditional practitioner with price restriction clauses of the Convention instead providing it in help of the child saving activities. In the light of the newly discovered fact that high doses of Marthite were reported to be over 90% effective in treating a broad range of previously untreatable infant and early-childhood diseases, afflicted tens of thousands of children worldwide[129] the extent of the obligations of the Parties are certainly radically transformed.

iii) the circumstances' existence must have constituted "an essential basis of the parties consent to be bound by the treaty"

As *the Travaux of Article 62* make clear, the rule exists to allow States to adjust their treaty relations, when, what they have become obliged to do in the new circumstances is "something essentially different from that originally undertaken", without essential fault on their part.[130] The P.C.I.J. has suggested that a particular matter could only be a "circumstance" for this purpose if it was "in view of and because of the existence of a particular state of facts that the treaty was originally concluded".[131]

[129] Compromis, ¶12.

[130] Waldock II Report,18.

[131] *Free Zones of Upper Savoy and the District of Gex,* Merits, 1932, P.C.I.J., Series A/B, No. 46, 156.

Similarly, the Court has recognized in *Gabčíkovo* that the expectations of the parties, e.g. concerning the profitability of an agreed project, can form an essential basis of their consent as well.[132]

According to the Preamble of the Marthite Convention, both parties recognized that "Marthite is without significant commercial value outside its traditional uses".[133] Moreover, the main purpose for the conclusion of the treaty was "out of respect for traditional Reverentian medicine and its users."[134] Taken in their entirety, the foregoing circumstances form the essential basis of the consent of the Parties, therefore, their change makes article 26 operative.

In sum, all of the requirements for the existence of fundamental change of circumstances are present in the case at hand. It is submitted that the fundamental change of circumstances is due to: "fundamental change in the science underlying the treaty"[135] and the the newly discovered medical uses of Marthite. As a consequence, the Marthite Convention was lawfully terminated by Agnostica.

B. Alternatively, the Marthite Convention ceased to be in effect by 2 April 2012 since Reverentia's consent is invalidated on the ground of error

[132] *Gabčíkovo*, ¶104.

[133] Marthite Convention, Preamble, (e).

[134] Compromis, ¶26.

[135] *Ibid*, ¶14.

As was recognized in *Mavrommatis* , error affecting the essential basis of consent applies to treaties.[136] As further recognized by this Court in the *Temple* case[137] Article 48 of the VCLT codifies customary law.[138] It entitles a State to invalidate its consent to be bound by a treaty on the basis of an error relating "to a fact or situation", which has been assumed to exist at the time of conclusion and formed an essential basis of the State's consent to be bound by the treaty".[139] The fact or situation must appear objectively essential to both states[140] and the error must be closely related to the "the substance" or "roots" of the treaty.[141] The assessment of the sufficient proximity of the error is a matter of treaty interpretation.[142]

In casu, Agnostica concluded the Marthite Convention under the consideration that the Marthite is virtually unknown outside the Thanatosian Plains[143] and that it is without significant value outside its traditional uses. This is clear from the Convention's Preamble[144],

---

[136] *Mavrommatis Jerusalem Concessions*, 1925, P.C.I.J., Series A -No 5,,*30–31* [*'Mavrommatis'*].

[137] *Temple of Preah Vihear (Cambodia v. Thailand)*, I.C.J. 1962, 25.

[138] DÖRR, O., 833, *Kasikili/Sedudu,* Declaration of Judge Higgins, ¶1114; Judge Fleischhauer Dissenting Opinion, ¶1196, ¶1203.

[139] Art.48 VCLT; DÖRR, 815.

[140] VILLIGER, M., 608-609; *Mavrommatis*, ¶30-3.

[141] DÖRR, 820.

[142] *Ibid*.

[143] Compromis, ¶9.

[144] Marthite Convention, Preamble (e).

which serves as an indication of the decisive factors for the consent of both parties.[145] Therefore, the medical use of marthite constituted an essential condition for the conclusion of the Convention. Consequently, the newly discovered medical use of the mineral[146] provides a ground for Agnostica to invoke Article 48 VCLT.

C. Agnotica lawfully declared the Marthite Convention to be out of effect

Under customary international law there are no specific procedural obligations pertaining to the termination of treaties on the abovementioned grounds.[147] In any event, the Party which seeks to rely on a custom bears the burden of proving it[148] therefore the burden is on the Respondent to prove that Applicant failed to observe any procedural requirements.

For the sake of argument, it should be noted that the rule of *pacta sunt servanda* is founded on the general principle of good faith.[149] As stated in doctrine, this principle permits

[145]*Gabčíkovo* ¶15; *Congo v. Rwanda*, Jurisdiction and Admissibility, ¶67; *Convention on Genocid,e* 23.

[145] Compromis, ¶9.

[146]*Ibid*, ¶12.

[147] DÖRR, 1133, *Racke GmbH & Co. v. Hauptzollamt Mainz*, E.C.R., I-3655, Case C-162/96 (1998) ¶58-60, [‘*Racke’*].

[148] *Asylum*, 276.

[149] *Nuclear Tests (New Zealand* v. *France)* 1974, ¶49; *Nuclear Tests (Australia* v. *France)* 1974, I.C.J., ¶46; *Nuclear weapons*, ¶102; *Nicaragua*, Preliminary objections 1984, ¶60; *Border and Transborder Armed Actions* 1988, ¶94; *Pulp Mills* 2010, ¶ 145; *Request for interpretation of the Judgment of 11 June 1998 in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections 1998, I.C.J., ¶ 38.

"unilateral suspension or termination of treaties" in exceptional situations.[150] Similarly, the European Court of Justice has concluded that the suspension of the cooperation agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia without prior notification or a waiting period was consistent with international law.[151]

Moreover, As Judge Jessup pointed out in his separate opinion in the *North See Continental Case Shelf Cases*[152], when a notification is made, it is essential to consider the response of the other party to a bilateral treaty in such situations, in view of the principle of international cooperation in the exploitation of a natural resources.

Applicant has invoked the above grounds in good faith by first offering a mutually beneficial settlement, reimbursement and compensation for Reverentia.[153] Agnostica made all efforts to bring the grounds enumerated above to the knowledge of Reverentia, while the latter refused to cooperate. Consequently, Agnostica has lawfully invoked the termination of the Marthite Convention.[154]

D. In any event, Agnostica did not breach that Convention

---

[151] *Racke*, ¶58-60.

[152] *North Sea Continental Shelf (Federal Republic of Germany/Netherlands)*, Judge Jessup Separate Opinion *1969, I.C.J., 83.*

[153] Compromis, ¶14.

[154]*Congo v. Rwanda* ¶244, G.A. Res 1803, U.N. Doc. A/RES/1803 (1962); G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/S-6/3201 (1974); G.A. Res. 3281, U.N. Doc. A/RES/29/3281 (1974).

Even if this Court finds that there are no grounds justifying the termination of the Marthite Convention and it is still in force, Agnostica did not breach the Convention. The Respondent may argue that the ban on transfer and sale of Marthite from Agnostica to Reverentia incorporated in the Marthite Control Act[155] violates article 6 of that Convention which ensures the free movement of Marthite from Agnostica to Reverentia.

Contrariwise, it is submitted that a possible breach is justified due to a state of necessity.

As stated in *Gabčíkovo*, the principle of necessity is part of customary international law under the condition that it can be invoked only "on an exceptional basis."[156]

In order for a State to invoke necessity on a valid legal basis certain conditions should be met. First, it should be the only way for the State to safeguard its essential interest against a grave and imminent peril[157] which should not be "merely apprehended or contingent".[158] Second, the act should not seriously impair an essential interest of another State towards which the obligation exists.[159] The first condition extends to particular interests of the State and its people, as well as of the international community as a whole.[160] The peril has to be

[155] Compromis, ¶22.

[156] *Gabčíkovo,* ¶51.

[157]*Commentary to Art. 25 of the ILC Draft ASR*, Y.B.I.L.C., 1975, II, ¶1(a) [*Art. 25 Commentary*].

[158] *Ibid*, ¶16-17.

[159] Art. 25, ¶1 (b), Art. 52 ARSIWA.

[160] *Art. 25 Commentary*, ¶16-17.

objectively established and proximately imminent.[161] However, the peril might appear in the long term, if at the relevant time it is established that its occurrence is inevitable.[162]

Agnostica's Parliament passed the MCA, banning the transfer of Marthite from Agnostica to Reverentia as well as the unauthorized purchase, sale, or possession of Marthite.[163] Those measures were taken in the light of shortages in Marthite supply,[164] crippled mining operations due to Reverentia's removal of software and interrupted extraction activities for week if not months.[165] Those circumstances constitute grave and imminent peril since they flagrantly endangered the supply of Marthite. In the context of its newly discovered uses, in high doses the mineral is 90 % effective for the treatment of previously untreated infant and early-childhood diseases. These disorders affect tens of thousands of children worldwide.[166] Consequently, the peril will affect an essential interest of the international community as a whole. It should also be taken into account that the mining facilities are built in the only areas in the world containing deposits of Marthite.[167]

Secondly, the ban did not seriously impair an essential interest of the other State. The interest relied on must outweigh all other considerations, not merely from the point of view of

---

[161] *Ibid.*

[162] *Gabčíkovo* ¶54.

[163] Compromis, ¶22.

[164] *Ibid.*, ¶13.

[165] *Ibid.*, ¶18.

[166] *Ibid.*, ¶13.

[167] *Ibid.*, ¶9.

the acting State but on a reasonable assessment of the competing interests.[168] The foregoing medical interests of the international community are in no way outweighed by the interest of the traditional practitioners from Reverentia.

Overall, the wrongfulness Agnostica's actions barring the free movement of Marthite to Reverentia is precluded by necessity.

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

Reverentia's conduct with respect to the software removal is not in conformity with international law and therefore it entails its international responsibility. Reverentia has acted in violation of both its treaty obligations as well the rules arising from customary international law.

A. Reverentia deprived Agnostica of its property.

States enjoy immunity with respect to its sovereign property and no other State should take action that would affect its sovereign immunity.[169] In the case at hand, the title to the software installed at the mining facilities has been transferred.

1. Agnostica is the exclusive owner of the facilities under the Marthite Convention

International agreements between states can serve as a valid ground for transfer of property. It is a general principle of law that treaty termination operates *ex nunc*[170], therefore even if it ceases to be in effect, the transfer of property remains valid.

---

[168] *Art. 25 Commentary*, ¶17.

[169] *Germany v. Italy*, ¶118 ;Convention on the Jurisdictional Immunities of States and Their Property, U.N. Doc. A/RES/59/38 Annex (2004), article 5; SHAW, 709.

Under the Marthite Convention Agnostica owns the Marthite mining and mining-support facilities within the territory of East Agnostica.[171] This results into a valid transfer of title to property, although there is no transfer of direct possession.[172]

2. The title to the software has been lawfully transferred to Agnostica as well

The software used for the Marthite extraction is considered part of the facilities. This is grounded in the principle that when software is "pre-loaded", it is transferred along with the installation of which it forms part.[173] If the transfer of property over the hardware is valid, it is sufficient to justify the right to use the software as well.[174] This renders the buyer the superior possessory and proprietary right over the transferred software copy.[175]

---

[170]DÖRR, 167, 735.

[171]Art.1, 2, Marthite Convention.

[172] § 428 Austrian Civil Code; Art 924, Czech Republic Civil Code; German Civil Code § 930; Greek Civil Code Art 977; Netherlands Civil Code Art 3.115; Turkey Art 979 Civil Code; SCHWENZER, IN., HACHEM, P., KEE, CH., GLOBAL SALES AND CONTRACT LAW, PART X TRANSFER OF TITLE, 39 (2012).

[173] *Advent Systems Ltd v Unisys Corp*, 925 F. 2d 670 at II; and *St Albans DC v International Computers* [1997] F.S.R. 251 at 265 per Sir Iain Glidewell.

[174] *Eng St Albans City and District Council v International Computers Ltd* [1996] 4 All ER 481 (QB); BENJAMIN'S SALE OF GOODS, FIRST SUPPLEMENT TO THE 8TH EDITION, BRIDGE M., 14 (2012); *Southwark LBC v IBM UK Ltd* (2011) E.W.H.C., 549, (TCC) ¶97, The Hong Kong Law Reform Commission Report, Contracts For The Supply Of Goods, LC Paper No. CB(2)222/09-10 (2009)¶ 2.92, (http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj1123cb2-222-e.pdf), SCHWENZER, IN., HACHEM, P., KEE, CH., GLOBAL SALES AND CONTRACT LAW, PART II AMBIT OF SALES LAW, 7 THE CONCEPT OF GOODS, ¶7.24 (2012); *South Central Bell Telephone Co v Sidney J Barthelemy*, Supreme Court of Louisiana , 643 So. 2d 1240 at 1246 (La. 10/17/94), [hereinafter "*South Central Bell"*]; Federal Court of Justice/Bundesgerichtshof, Germany, (8 ZR 306/95) (1996).

Additionally, when the software is designed for the specific needs of the customer, it is considered part of the facilities, if its removal causes material damage to the host object.[176] Agnostica was owner of the carrier of the software which has been created for the specific purposes of those facilities, therefore, by removing the software, Reverentia has violated Agnostica`s property rights.

B. Reverentia has no right to take countermeasures because the Marthite Convention was not in effect after April 2012

Under international law countermeasures cannot be taken against a breach of obligations arising under a treaty which is not in force.[177]

As argued above, the Marthite Convention was not in effect after April 2012. The removal of the software occurred after this date, therefore it cannot be considered a lawful countermeasure against Agnostica`s actions.

C. Countermeasures are not applicable since the conduct of Agnostica falls under the regime of Treaty Law, not the Law of State responsibility

Doctrine and customary international law[178] provide that the two regimes of a material breach and state responsibility exist in parallel. Under the ARSIWA state responsibility does not deal with the right of an injured state to terminate or suspend a treaty for a material

---

[175] *Princen Automatisering Oss B.V. v. Internationale Container Transport GmbH*, [1996] Court of Appeal, (770/95/HE), 72(The Netherlands); Green S., Saidov D., Software as Goods, J. Bus. L. 161-181 (2007).

[176] GOODE R. M., COMMERCIAL LAW 197 (3RD ED. 2004); *South Central Bell* ¶1246.

[177] SHAW, 794.

[178] DÖRR, 1242; VERHOEVEN J., THE LAW OF RESPONSIBILITY AND THE LAW OF TREATIES IN JAMES CRAWFORD ET AL. (EDS.), THE LAW OF INTERNATIONAL RESPONSIBILITY 112 (2010).

breach, as reflected in Art. 60 of the VCLT.[179] The Special Rapporteur of ILC Mr. James Crawford confirmed that it is impossible to apply circumstances precluding wrongfulness, such as countermeasures, to state actions which concern the validity, termination or suspension of the operation of a treaty.[180]

Reverentia removed the software, stating that this is only "until such time as Agnostica agrees to respect its treaty obligations."[181] However, the actions of Agnostica concern the termination of the treaty. The reason for its non-compliance is that Agnostica considers its obligations under the Marthite Convention without any legal value. Since this concerns more the general question of the validity and effect of those treaty obligations, the law of the circumstances precluding wrongfulness of State acts is not applicable in the case at hand.

D. Alternatively, even if Reverentia can rely on countermeasures, its conditions are not satisfied

If the Court finds that countermeasures apply within a treaty relationship, certain pre-conditions must be met.[182] Reverentia fails to fulfill these requirements.

---

[179] EVANS M. INTERNATIONAL LAW 197 (2010), 197; *Commentary to Art. 56 of the ILC Draft ASR,* Y.B.I.L.C., 1975, II, (3), at 141.

[180] Special Rapporteur James Crawford, *Third report on State responsibility* A/CN.4/SER.A/2000/Add.1 (Part 1), 3; *Commentary to Art. 56 of the ILC Draft ASR,* YBILC, 1975, II, ¶3, at 141; Crawford, J., Olleson, S., The *Exception of Non-Performance: Links between the Law of Treaties and the Law of State Responsibility* (2001) 21 A.Y.I.L., 60.

[181] Compromis, ¶17.

[182] *Gabčíkovo* ¶83; *Nicaragua*, ¶249; *Case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France, United Nations,* R.I.A.A., vol. XVIII, (1978) [*'Air Service Agreement']*¶443; Art 47-50, ARSIWA,; ELAGAB O. Y.THE LEGALITY OF NON-FORCIBLE COUNTER-MEASURES IN INTERNATIONAL LAW 227–241 (1988); *Mexico – Tax*

1. The procedural requirements were not observed

Under customary international law[183], countermeasures must be "preceded by a demand by the State that the responsible State comply with its obligations" and "an offer to negotiate."[184] *In casu*, Reverentia did not inform Agnostica prior to the software removal. The President instructed the Reverentian engineers "also to remove any software installed by RMT at the Marthite mining facilities"[185], without informing Agnostica.[186] Moreover, Reverentia rejected Agnostica`s offer for negotiations[187], showing lack of intention to cooperate. Therefore, Reverentia fails to meet the procedural requirement under Art. 52 ARSIWA, which renders its actions unlawful.

2. The countermeasure was not proportionate

Proportionality is concerned with the relationship between the internationally wrongful act and the countermeasure.[188] Both case law[189] and customary law[190] emphasize that

---

Measures on Soft Drinks and Other Beverages, Report of the Panel, WTO Doc. WT/DS308/R, (2005), ¶5.54–55.

[183] *Air Service Agreement*, ¶85-87; *Gabčíkovo* ¶84, ¶47; *Rainbow Warrior case* (*New Zealand, France)*, Award of 30 April 1990, U.N.R.I.A.A. vol. XX 217 (1990).

[184] Art 52, ARSIWA;

[185] Compromis, ¶17.

[186] Compromis, ¶18.

[187]Compromis, ¶17.

[188] *ILC Report on the work of its thirty-first session 14 May-3 August 1979,* Y.B.I.L.C. vol.II (Part Two) (1979), p. 118, fn. 595; *United States—Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WTO Appellate Body, WT/DS192/AB/R, (2001), ¶120; *Agreement of 27 March 1946 (United States v. France)* Case 54 I. L. R., 304 (1946).

countermeasures must be equal to the injury suffered, be assessed not only in quantitive terms, but considering also the gravity of the internationally wrongful act and the importance of the rights in question.[191]

The measure should be "necessary and reasonably connected" with the purpose of countermeasures[192] and should be sufficient to induce the responsible state to comply with its obligations, without having a punitive effect.[193] However, proportionality requires not only

---

[189] *Naulilaa (Responsibility of Germany for damage caused in the Portuguese colonies in the south of Africa), UNRIAA*, vol. II, 1011 (1928); *Air Services Agreement* ¶83*; Gabčíkovo* ¶85, ¶87; *United States—Import Measures on Certain Products From the European Communities, WTO Panel Report*, WT/DS165/R, ¶ 6.23, (2000); *United States—Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, WTO Appellate Body,* WT/DS192/AB/R, ¶120 (2001).

[190] Art. 51, ARSIWA.

[191] *Gabčíkovo*¶83, 85, 87; *United States—Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WTO Appellate Body Report, WT/DS202/AB/R, .¶259 (2002); *Air Service Agreement* ¶83.

[192]*Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. the United Mexican States*, Judgment, ICSID Tribunal, Case No. ARB(AF)/04/05, 21 (2007). ¶153; ARSIWA, Art. 49; Materials on the responsibility of states for internationally wrongful acts, U. N. L.S., ST/LEG/SER B/25, 326 (2012).

[193] Materials on the responsibility of states for internationally wrongful acts, U. N. L.S., ST/LEG/SER B/25, 326 (2012); *ILC Report on the work* of its fifty-third session (23 April–1 June and 2 July–10 August 2001), U.N. Doc. A/56/10, Y.B.I.L.C, Volume II (Part Two) (2001), p. 135.; *United States—Subsidies on Upland Cotton, Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WTO, Case No. WT/DS267/ARB/1, (2009) ¶4.113.

employing the means appropriate to the aim chosen, but implies an assessment of the appropriateness of the aim itself, considering the structure and content of the breached rule.[194]

Reverentia explained that the reason behind the software removal has been mainly not to allow Agnostica "be able to profit from that breach".[195] However, in reality, the sabotage`s effects go well beyond this, since they also affect the rights of the people with medical needs for Marthite, namely the traditional users and the suffering children.[196] The significantly decreased Marthite levels have caused difficulties for Agnostica to provide life-saving Marthite "to suffering children of the world", making it necessary to impose restrictive measures on the use and possession of the mineral.[197]

Reverentia`s actions do not meet the proportionality requirement for the validity of countermeasures under customary international law and thus its wrongfulness is not precluded.

[194] *Gabčíkovo,* ¶7.

[195] Compromis, ¶18.

[196] *Ibid.*, ¶12.

[197] *Ibid.*, ¶22.

PRAYER FOR RELIEF

The Federal Republic of Agnostica respectfully requests the Honourable Court to adjudge and declare that:

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

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

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

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

Respectfully submitted,

Agents for the Applicant