

INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE 2020 PHILIP C. JESSUP INTERNATIONAL LAW

MOOT COURT COMPETITION

THE CASE CONCERNING THE HELIAN HYACINTH

THE STATE OF ADAWA

(APPLICANT)

v.

THE REPUBLIC OF RASASA

(RESPONDENT)

MEMORIAL FOR THE APPLICANT

2020

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STATEMENT OF JURISDICTION

The State of Adawa has, by application pursuant to Article 31(1) of this Court's Statute, instituted proceedings against the Republic of Rasasa with regard the dispute concerning violations of international law by the Republic of Rasasa and invoked the compromissory clause of the 1929 Treaty of Botega. On 9 September 2019, the Parties have jointly notified to the Court a Statement of Agreed Facts.

QUESTIONS PRESENTED

The State of Adawa respectfully asks this Court:

- I.** Whether or not the Court lacks jurisdiction over Adawa's claims and if Adawa is a party to the 1929 Treaty of Botega;
- II.** Whether or not Rasasa's development and deployment of the WALL along the border between Adawa and Rasasa is consistent with international law;
- III.** Whether or not Adawa's claim that Rasasa's Helian tariffs violate the CHC Treaty falls outside the Court's jurisdiction or is inadmissible; and, in the alternative, if the imposition of the tariffs violates the CHC Treaty; and
- IV.** Whether or not Adawa's arrest and detention of Darian Grey constitute internationally wrongful acts, and if she must be immediately repatriated to Rasasa.

STATEMENT OF FACTS

The State of Adawa and the Republic of Rasasa are neighboring countries in the Crosinian Region, sharing a 201 kilometers long border. There are other four States in the Crosinian Region, being the only place on Earth where the Helian hyacinth is cultivated.

All six Crosinian States were provinces of the Kingdom of Crosinia until 1928, when they divided. Rasasa declared its independence, and the provinces of Adawa and Zeitounia united to form the Adawa-Zeitounia Union (“AZU”).

In 1929, Rasasa and AZU, signed the Treaty of Botega on Armistice and Pacification (the “Treaty of Botega”). On 1 January 1939, Adawa and Zeitounia amicably agreed to dissolve their Union, and each declared its independence as of that date.

On 20 June 1969 the six Member States signed a Treaty declaring the formation of the Crosinian Helian Community (“CHC”). The parties to the CHC agreed to impose no customs duties within the CHC on Helian spice or the equipment and materials used to harvest or process the Helian hyacinth.

For the next ten years, the Helian exports flourished in all CHC Member States. Until the 14 July 2012, when an unprecedented and catastrophic tropical cyclone, Hurricane Makan, struck the entire Region. A great amount of Helian hyacinths were destroyed. As a consequence, unemployment began to increase, and crime rates skyrocketed throughout the Region. Armed gangs roamed the countryside, stealing salvageable Helian plants and harvesting and processing equipment from the devastated farms.

In October 2012, the President of Rasasa, Beta Tihmar, convened a meeting of major Rasasan corporate executives to elicit ideas on how to address the increasingly serious crime wave that the police had been unable to staunch.

In that meeting, Ms. Grey, the chief executive officer of the Rasasan Robotics Corporation (“RRC”), proposed the development of a ground-breaking autonomous security system to suppress criminal activities in Rasasa and throughout the Region. She called it the “Weaponized Autonomous Limitation Line” (“WALL”), an autonomous weapon system that would deploy advanced technology to deter and apprehend criminals, while using force only when absolutely necessary. Moreover, the WALL featured an advanced form of “supervised learning,” in which the training data had been “tagged” by teams of software engineers from RRC working in cooperation with Rasasan police officers and military officials. The tagging highlighted aspects of the training data that indicated armed threats, as well as indicators of factors that would render an individual effectively *hors de combat*.

In January 2013 President Tihmar notified the other five CHC Member States that Rasasa had contracted with RRC to undertake research and development of the WALL and all six CHC Member States got involved with the research and development phase of the project.

By April 2013, police in the other four Crosinian States had gained the upper hand, and crime levels were restored to pre-Hurricane Makan levels. Each of these States gradually withdrew from the WALL project. By August 2013, only Rasasa and Adawa continued to participate in the development of the venture.

On 6 July 2015, Ms. Grey announced the completion of the project. Both Adawa and Rasasa stated that it was neither economically feasible nor politically desirable to go further with the project.

In August 2016, the Rasasan Border Police reported that “the small Adawan gangs that arose in the wake of Hurricane Makan have apparently organized themselves into larger

armed groups, and have turned the resources, personnel, and weapons they previously used for localized crimes towards cross-border crime into Rasasa.”

Mr. Pindro was elected president of Rasasa and took office in January 2017. He appointed Darian Grey as Minister of Foreign Affairs. Rasasan human rights groups protested Ms. Grey’s appointment as Foreign Minister, and the opposition party in parliament was unanimous in voting against it. It must be noted that in August 2009 the International Criminal Court had started an investigation concerning war crimes and crimes against humanity that were alleged to have occurred during the 2007-2009 civil war in the State of Garantia, and in the referral Ms. Grey was specifically cited as responsible for the RRC activities there.

Shortly after taking office, President Pindro submitted two bills for legislative approval. The first provided for the introduction of tariffs of 25% ad valorem on Helian bulbs, live plants, and pollen imported into Rasasa. The second called for expedited review of options for the hardening of the Adawa-Rasasa border.

On 25 June 2017, President Pindro authorized the deployment of the Rasasan Army against the militia camps within Rasasa, as well as the purchase of the WALL from RRC and its installation along the Rasasa-Adawa border. President Pindro announced the completed installation of the WALL on 10 January 2018.

In January 2018, Rasasa’s Parliament had, with little debate, adopted President Pindro’s proposal to impose tariffs on unprocessed Helian materials imported into Rasasa. Adawa protested the decision and reminded Rasasa of its obligations under article 3 of the CHC treaty.

In October 2018, Adawa formally requested consultations with Rasasa in the WTO. Government officials from both Adawa and Rasasa met, but were unable to resolve the dispute amicably.

In January 2019, the International League for the Support of Agriculture (ILSA) published a study that presented comprehensive and detailed evidence that, as a direct result of the tariffs imposed by Rasasa in January 2018, Adawan farmers were estimated to have lost more than €10 million in revenue through the end of the studied period in October 2018 as a result of declining sales to processors in Rasasa. It projected that the losses would increase in coming years.

In February 2019, Adawa requested the establishment of a panel pursuant to Article 6.2 of the DSU, alleging that Rasasa's tariffs on Helian products were an unjustifiable breach of its commitment to maintain the bound rate of zero on such items.

On 13 April 2019, the Prosecutor of the International Criminal Court announced that, pursuant to Article 58 of the Rome Statute, she was requesting the issuance of a warrant for the arrest of Minister Grey, assigning to her criminal responsibility for certain alleged activities of RRC in Garantia. The charged acts included war crimes, and "other serious violations of the laws and customs applicable to armed conflicts not of an international character," within Articles 8.2(c) and 8.2(e) of the Rome Statute. The indictment specifically cited the training and supervision of paramilitary forces that perpetrated such crimes, the sale and use of prohibited weapons systems, and the conduct of unauthorized surveillance of civilians that allegedly led to their becoming the targets of violent repression.

On 18 June 2019, the CHC held its annual meeting in Adawa. Minister Grey, representing Rasasa, arrived on the 18 June 2019. Two days later, a Pre-Trial Chamber of the ICC granted the Prosecutor's request and issued a warrant of arrest for Minister Grey under

Article 89 of the Rome Statute. Two days later, on 22 June 2019, officers of the Novazora police approached Minister Grey as she was leaving her hotel. After ascertaining her identity, they took her into custody.

On 1 July 2019, after negotiations between the parties, Adawa submitted an Application instituting proceedings against Rasasa before this Court

SUMMARY OF PLEADINGS

I

The State of Adawa submits that this High Court has jurisdiction over Adawa's claim since Adawa is a party to the 1929 Treaty of Botega. This is due to the fact that Adawa automatically succeeded to all of the Adawan-Zeitounia Union's treaties following its dissolution in 1939; or in any event, the Treaty of Botega automatically continued in force since it establishes a territorial regime. Notification of succession to Rasasa was not required under international law. Alternatively, Rasasa tacitly consented to the continuity of the Treaty of Botega.

II

With regards to the development of the WALL, it is submitted that it is attributable to Rasasa and that it violates the new weapons review customary obligation. Rasasa cannot allege Adawa has no clean hands since it is not a principle under international law. Regarding the deployment of the WALL along the shared border, Adawa submits that it violates international law. First, because it constitutes a prohibited threat of use of force against Adawa's territorial integrity and the demarcation lines established in the Treaty of Botega. Second, because it violates the human right to life and effective remedies of Adawan nationals under the ICCPR. Third, if the Court considers that there is a non-international armed conflict, the WALL violates the international humanitarian law. Consequently, the Court should the immediate dismantlement and removal of the WALL.

III

Regarding Rasasa's imposition of tariffs on Helian products, Adawa contends that this Court has jurisdiction since there is no normative conflict between the CHC Treaty and the GATT; and Adawa's claim is admissible either because there is no rule of *lis pendens* under international law or because its requirements are not met in the present case. Moreover, Adawa contends that the imposition of tariffs is inconsistent with article 3 of the CHC Treaty. Adawa further submits that the essential security interest clause enshrined in article 22(b) of the CHC Treaty is not self-judging and that Rasasa cannot rely on it to justify non-compliance. Alternatively, Rasasa cannot plea state of necessity as a circumstance precluding the wrongfulness. As a result, Adawa is entitled to compensatory damages derived from Rasasa's violation of its international obligations.

IV

Finally, Adawa submits that the arrest and detention of Darian Grey were consistent with Adawa's obligations under international law since Ms. Grey does not enjoy immunity under international law. First, because there is a there is an exception to immunities of public officials with respect to prosecution by international courts under customary law. Second, because Ms. Greys immunities are overridden by the *jus cogens* status of the prohibition of war crimes. Third, because her immunities were lifted under the abuse of rights doctrine. Furthermore, Adawa was obliged to prosecute or extradite Ms. Grey pursuant to the *aut dedere aut judicare* principle. Alternatively, Adawa argues that had to execute the arrest warrant notwithstanding conflicting obligations since the ICC is the sole authority to decide over its judicial functions. In the further alternative, Adawa acted as an agent of the ICC when arresting Ms. Grey. Therefore, Adawa may proceed to render Ms. Grey to the ICC.

PLEADINGS

I) THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION OVER ADAWA'S CLAIMS BECAUSE ADAWA IS A PARTY TO THE 1929 TREATY OF BOTEGA

A) Adawa automatically succeeded to the 1929 Treaty of Botega

1) In cases of dissolution, all bilateral treaties automatically succeed

Under customary international law, when States dissolve and cease to exist, leading to the creation of new States on their original territory,¹ bilateral treaties in force at the date of the succession automatically succeed.² This rule is supported by both State practice and *opinio juris*.³

State practice is evinced by the dissolution of the Union of Colombia,⁴ the Norway and Sweden Union,⁵ the Austro-Hungarian Empire,⁶ the Island-Denmark Real Union,⁷ the Federation of Mali,⁸ and the United Arab Republic.⁹

¹ Draft Articles on Succession of States in respect of Treaties with commentaries, Report of the ILC 26th sess., GAOF, 29^o Sess., Supp. No. 10 (A/29/10) 265; Legality of Use of Force (Serb. and Montenegro v. Can.) 2004 I.C.J. (Dec. 15) (Separate opinion of judge Elaraby) ["Use of Force, Elaraby"], 512; J. CRAWFORD, STATE PRACTICE AND INTERNATIONAL LAW IN RELATION TO SECESSION 92 (2014).

² Int'l Law Comm'n, Yearbook of the ILC (1974), UN.Doc. A/CN.4/SER.A/1974/Add.1 (Part 1) 265; J. Mervyn Jones, *State Succession in the Matter of Treaties*, 24 BRIT. Y.B. INT'L L. 360 (1947) ["Mervyn Jones"], 374.

³ Statute of the International Court of Justice, Oct. 24, 1945, 1 U.N.T.S. XVI, ["ICJ Statute"] Article 38 (1)(b); North Sea Continental Shelf (Ger. v. Neth.), 1968 I.C.J. 3 (Apr. 26), ¶¶74, 77.

⁴ Mervyn Jones, *supra* note 2, 368.

⁵ *Id.*

⁶ Int'l Law Comm'n, Yearbook of the ILC (1970), UN.Doc. A/CN.4/SER.A/1970Add.1 (vol. II) ["Yearbook 1970"]123.

⁷ Yearbook 1970 *supra* note 6,122; Mervyn Jones, *supra* note 2, 369.

⁸ Int'l Law Comm'n, Yearbook of the ILC (1971), UN.Doc. A/CN.4/SER.A/1971/Add.1 (vol. II) (Part 2) ["Yearbook 1971"]146.

⁹ Yearbook 1971, *supra* note 8, 142.

Evidence of *opinio juris*, arising from official publications, diplomatic correspondence and national legislation stating that a given practice is binding under customary international law,¹⁰ conforms the practice of automatic succession.¹¹

After the Adawa-Zeitounia Union [“AZU”] was dissolved into two independent States in 1939,¹² Adawa and Zeitounia automatically succeeded to all of the AZU’s treaties, including the Treaty of Botega.

2) In any event, automatic continuity applies to treaties establishing territorial regimes

Even if this Court considers that a successor State does not automatically succeed to all of its predecessor’s treaties,¹³ there is a customary exception of automatic continuity regarding treaties establishing territorial regimes, *inter alia*, boundary and demilitarization treaties. Therefore, Adawa automatically succeeded.

i. The Treaty of Botega is a boundary treaty

Treaties establishing boundaries and their respective ancillary provisions, such as dispute settlement mechanisms, remain in force notwithstanding any State succession.¹⁴ This

¹⁰ Int’l Law Comm’n, Draft conclusions on identification of customary international law with commentaries, A/73/10 (2018), 141.

¹¹ Syrian Arab Republic – Legislative Decree 25 of 13 June 1962, Article I; France – Journal Officiel de la République Française, Lois et Décrets, Paris 2 June 1961; Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information. Note of Czech Republic to the UN.

¹² Statement of Agreed Facts [SAF] ¶7.

¹³ P. Dumberry, *State Succession to Bilateral Treaties: A Few Observations on the Incoherent and Unjustifiable Solution Adopted for Secession and Dissolution of States under the 1978 Vienna Convention*, 28 LEIDEN JOURNAL OF INTERNATIONAL LAW, 13 (2014) 14.

¹⁴ Vienna Convention on Succession of States in Respect to Treaties, Aug. 23, 1978, 1946 U.N.T.S. 3 [“VCSST”], Article 11; Draft Articles on Succession of States in respect of Treaties with commentaries, Report of the ILC, 26^o sess., GAOF, 29^o Sess., Supp. No. 10 (A/29/10) [“VCSST commentaries”] 201; A. ZIMMERMANN, *Secession and the law of State succession* in M. KOHEN (ED), SECESSION: INTERNATIONAL LAW PERSPECTIVES, 215-216 (2006).

Court,¹⁵ the U.N. Security Council¹⁶ and scholars¹⁷ have recognized that armistice demarcation lines are tantamount to boundaries, since they delineate the territory, bind the parties indefinitely and can only be modified by mutual consent.¹⁸ The mere fact that armistice lines are established “without prejudice” to their ultimate settlement do not alter their permanent character.¹⁹

In the case at bar, the Treaty of Botega is a boundary treaty since it established an Armistice Demarcation Line between the contracting parties.²⁰

ii. The Treaty of Botega is a demilitarization treaty

As recognized by this Court, treaties creating obligations or restrictions upon the use of a territory for the benefit of a group of States are not affected by a State succession.²¹ Demilitarization treaties, which separate the armed forces of former belligerent parties,²² are typically regarded as treaties attaching obligations to a particular territory²³ and thus continuing *ipso jure* after a State succession.²⁴

¹⁵ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion 2004 I.C.J. (Jul. 9) [“Wall Advisory Opinion”] ¶¶72-76.

¹⁶ S.C. Res. 95, 10-11 (Sep. 1, 1951).

¹⁷ Y. DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 46 (2011); H. S. Levie, *The Nature and Scope of the Armistice Agreement*, 50 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 880 (1956), 890.

¹⁸ Y. DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 46 (2011)

¹⁹ Y. Dinstein, *Demarcation Line*, Max Planck Encyclopedia of Public International Law (2010), ¶14.

²⁰ Botega Treaty, Article I.

²¹ VCSST, *supra* note 14, Article 12; Gabčíkovo-Nagymaros Project (Hung. v. Slo) 1997 I.C.J. (Sep. 25) [“Gabčíkovo”] ¶152.

²² J. Von Bernstorff, *Demarcation Line*, Max Planck Encyclopedia of Public International Law (2010), ¶1.

²³ VCSST commentaries, *supra* note 14, 197; J. CRAWFORD, BROWNIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 439 (2012).

²⁴ M. CRAVEN, THE DECOLONIZATION OF INTERNATIONAL LAW: STATE SUCCESSION AND THE LAW OF TREATIES, 188-189 (2007).

The Treaty of Botega is a demilitarization treaty since its object and purpose is the cessation of armed conflict and the restoration of peace and security in the general interest of the peoples of Crosinia through the establishment of an armistice.²⁵ The treaty's text supports this interpretation, for it establishes Demarcation Lines to separate the armed forces of the parties,²⁶ thus imposing restrictions upon the use of the territory.

3) Notification of succession is not required

Respondent may allege that notification by a successor State expressing its consent to be bound by a bilateral treaty is required under international law. However, notifications, unilateral declarations, devolution agreements and other means to demonstrate that the successor State is obliged by its predecessor's obligations have a mere confirmatory character.²⁷ In cases of dissolution, the successor State automatically assumes the treaty obligations of its predecessor even in the absence of such notification.²⁸ Thus, Adawa's lack of notification does not bar the continuity of the Treaty of Botega.

B) Alternatively, Rasasa acquiesced to Adawa's claim of succession

According to the principle of acquiescence,²⁹ silence or inaction by a State after a reasonable period of time is interpreted as consent³⁰ when a response expressing objection in

²⁵ Botega Treaty, Preamble.

²⁶ Botega Treaty, Article I.

²⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.) 2008 I.C.J. 595 (Nov. 18) ¶109; B. Stern, *Questions choisies*, 262 R.C.A.D.I 233 (1996) 253.

²⁸ Use of Force, Elaraby, *supra* note 1, ¶511; International Law Association, *ILA Resolution on Aspects on the Law on State Succession*, 73 INTERNATIONAL ASSOCIATION CONFERENCE (2008) ¶4.

²⁹ Fisheries (U.K. v. Nor.), Judgment, 1951 I.C.J. (December 18) ¶138-139; Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.) 1984 ICJ (Oct. 12) ["Gulf of Maine"] ¶130; Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay. v. Sing.) 2008 ICJ (May 23) ¶121.

³⁰ Gulf of Maine, *supra* note 29, ¶130

relation to a declaration of another State would be called for.³¹ The need for a response is particularly required when such declaration specially affects the silent State's interests or rights.³²

Here, Rasasa was specially affected by President Moraga's declaration regarding the violation of the Treaty of Botega by the installation of the WALL.³³ This declaration was public and addressed to President Pindro, thus giving Rasasa ample opportunity to object to the continuity of the Treaty of Botega. Therefore, Rasasa consented to Adawa's claim of succession.

C) The Court has jurisdiction over Adawa's claims

As a successor State of the AZU, Adawa is a party to the Treaty of Botega. Pursuant to Article VI of such Treaty and Article 36(5) of this Court's Statute, this Court has jurisdiction over Adawa's claims.³⁴

**II) RASASA'S DEVELOPMENT AND DEPLOYMENT OF THE WALL ALONG
THE BORDER BETWEEN ADAWA AND RASASA IS IN VIOLATION OF
INTERNATIONAL LAW, AND THE WALL MUST BE DISMANTLED AND
REMOVED FORTHWITH**

A) The development of the WALL violates international law

³¹ J. CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 419 (2012) ["CRAWFORD"]; N. S. Marques Antunes, *Acquiescence*, Max Planck Encyclopedia of Public International Law, (2006) ¶21.

³² CRAWFORD, *supra* note 31, 419; P. DUMBERRY, A GUIDE TO STATE SUCCESSION IN INTERNATIONAL INVESTMENT LAW 85 (2018).

³³ SAF ¶38.

³⁴ ICJ Statute, *supra* note 3, Article 36(5).

1) The development of the WALL is attributable to Rasasa

The conduct of a private company is attributable to the State when it is performed under the State's instructions, directions or control.³⁵ The terms "instructions", "direction" and "control" are disjunctive, hence it is sufficient to establish one of them.³⁶

Here, Rasasa instructed the RCC to develop the WALL³⁷ and directed every other instance of the project, including the tagging of training data and the field tests. Hence, the development is attributable to Rasasa.

2) The development of the WALL violates the weapons review obligation

According to customary law, States are obliged to review the legality of new means and methods of warfare,³⁸ as evidenced by State practice³⁹ and *opinio juris*.⁴⁰ This review has to take into account the foreseeable use of the weapon.⁴¹

Rasasa's review considered the potential use of the WALL in an armed conflict –as evidenced by RCC's reference to individuals "*hors de combat*"⁴² when presenting the

³⁵ Armed Activities on the Territory of the Congo (Congo v. Uganda) 2005 I.C.J. 168 (Dec. 19) ["Armed Activities"], ¶¶175-176.

³⁶ Articles on Responsibility of States for Internationally Wrongful Act with commentaries, adopted by the ILC at its 53rd Sess., U.N. Doc. A/56/10 (2001) ["ARSIWA commentaries"], 48.

³⁷ SAF ¶19.

³⁸ W. BOOTHBY, WEAPONS AND THE LAW OF ARMED CONFLICTS 249 (2016) ["BOOTHBY"].

³⁹ I. Daoust, *New wars, new weapons? The obligation of States to assess the legality of means and methods of warfare*, 84 INTERNATIONAL REVIEW OF THE RED CROSS, 345 (2012), 354-357; ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977*, 88 INTERNATIONAL REVIEW OF THE RED CROSS, 931 (2006), 933, 934.

⁴⁰ Group of Governmental Experts of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Weapons Review Mechanisms Submitted by the Netherlands and Switzerland, CCW/GGE.1/2017/WP.5, ¶18 (Nov. 7, 2017).

⁴¹ BOOTHBY, *supra* note 38, 347.

⁴² SAF ¶20.

weapon— but not as border control system in a law enforcement situation. Therefore, Rasasa’s review does not meet the standard required by customary international law.

3) Rasasa cannot allege the clean hands principle

Rasasa cannot allege “clean hands”, as it is not a principle under international law⁴³ and this Court has declined to consider it on several opportunities.⁴⁴

B) The deployment of the WALL violates international law

1) The deployment of the WALL violates Article 2(4) of the U.N. Charter

Under Article 2(4) of the U.N. Charter, States shall refrain from the threat or use of force against the territorial integrity of other States.⁴⁵ Territorial integrity relates to the exclusive sovereignty of a State over its own territory.⁴⁶

A threat of force can consist in the possibility of cross–border use of weapons⁴⁷ and the concentrations of troops along borders,⁴⁸ as evidenced by the State practice of Turkey,⁴⁹

⁴³ Veteran Petroleum Limited (Cyprus) v. Russia, Final Award, P.C.A. Case No.2005-05/AA228, Jul. 18, 2014, ¶ 1358; James Crawford (Special Rapporteur) *2nd Report on State Responsibility*, UN Doc A/CN.4/498 and Add.1–4 (Jul. 19, 1999), 83; B. BOLLECKER-STERN, *LE PRÉJUDICE DANS LA THÉORIE DE LA RESPONSABILITÉ INTERNATIONALE* 312 (1973).

⁴⁴ Oil Platforms (Iran v. U.S.), 2003, I.C.J. 161 (Nov. 6), ¶100; Wall Advisory Opinion, *supra* note 15, ¶ 63.

⁴⁵ Charter of the United Nations, 1945, 1 U.N.T.S. XVI, [“U.N. Charter”], Article 2(4); G.A. Res. 2625 (XXV) (Oct. 24, 1970).

⁴⁶ Military and Paramilitary Activities (Nicar. v. U.S.) 1986 I.C.J. 14 (June 27) [“Nicaragua”] ¶209; S. Blay, Territorial Integrity and Political Independence, *Max Planck Encyclopedia of Public International Law* (2010), ¶8.

⁴⁷ G. NOLTE & A. RANDELZHOFFER, *Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 51*, in B. SIMMA *et al* (EDS), *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY, VOLUME II*, 1410 (2012).

⁴⁸ J. GREEN, F. GRIMAL, *The Threat of Force as an Action in Self-Defense Under International Law*, 44 *VAND. J. TRANSNAT'L L.* 285 (2011) 297.

⁴⁹ Repertoire of the Practice of the Security Council, Suppl. 1964-1965, XVI, 238 S. (Sales No. 1968. VII. 1). Doc. ST/PSCA/I/Add. 4., 202 (1968).

Yugoslavia,⁵⁰ Pakistan⁵¹, Iraq⁵² and the Soviet Union.⁵³ Furthermore, this Court has acknowledged that military maneuvers near a State border may amount to a threat of force.⁵⁴

Rasasa's deployment of hundreds of autonomous armed towers along the entire 201-kilometer shared border,⁵⁵ equipped and authorized to use force against Adawan territory and people,⁵⁶ constitutes a prohibited threat to use force in violation of Article 2(4) of the U.N. Charter.

2) The deployment of the WALL violates the Treaty of Botega

The Treaty of Botega establishes a general armistice with a view towards regional peace as well as demarcation lines to minimize the possibility of friction and incidents.⁵⁷ It is understood that an armistice consists of a suspension of military operations.⁵⁸ Accordingly, States must refrain from the threat of use of force to violate armistice demarcation lines.⁵⁹

Respondent placed in the Adawan-Rasasan border a weapon capable of deploying force beyond the demarcation lines. This constitutes a threat to use force⁶⁰ contrary to Article I of the Treaty of Botega.

⁵⁰ U.N.S.C., *Letter dated 1 February 1999 from the Chargé D'Affaires A.I. of the Permanent Mission of Yugoslavia to the United Nations addressed to the President of the Security Council*, U.N. Doc. S/1999/107 (Feb. 2, 1999); U.N.S.C., *Letter dated 5 February 1999 from the Chargé D'Affaires A.I. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General*, U.N. Doc. S/1999/118 (Feb. 4, 1999).

⁵¹ U.N.S.C., *Cablegram dated 15 July 1951 from the Permanent Representative of Pakistan to the President of the Security Council and the Secretary-General*, U.N. Doc. S/2245 (Jul. 15, 1951).

⁵² S.C. Res. 949, (Oct. 15, 1994).

⁵³ A. De Luca, *Soviet- American Politics and the Turkish Straits*, 92 POLITICAL SCI. Q. 503 (1977), 516–20.

⁵⁴ Nicaragua, *supra* note 46, ¶227.

⁵⁵ SAF ¶2.

⁵⁶ SAF ¶37.

⁵⁷ Botega Treaty, Article I.

⁵⁸ U.K. — Joint Service Manual of the Law of Armed Conflict, 263

⁵⁹ G.A. Res. 2625, (Oct. 24 1970).

⁶⁰ *Supra* §(II)(B)(1).

3) The deployment of the WALL violates international human rights law

i. Adawa has standing to bring this claim

Adawa complies with the requirements to exercise diplomatic protection⁶¹ since (i) the WALL affects Adawan nationals;⁶² and (ii) exhaustion of local remedies is not required when no relevant connection exists between the injured individuals and the responsible State.⁶³

ii. International human rights law is applicable

A non-international armed conflict [“NIAC”] exists when organized armed groups engage in protracted and intense armed violence with the State.⁶⁴ Banditry, unorganized and short-lived insurrections do not amount to a NIAC.⁶⁵ The isolated attacks to the Rasasan Border Police stations does not reach a NIAC’s threshold.

iii. ICCPR applies extraterritorially

States must protect human rights of individuals within their territory and under their jurisdiction.⁶⁶ Extraterritorial jurisdiction exists when a State’s actions produce effects

⁶¹ Draft Articles on Diplomatic Protection, Report of the ILC, 58th Sess. G.A. 63rd Sess. Supp. No. 10 A/61/10 [“Draft Articles on Diplomatic Protection”], Articles 1, 3, 14; Articles on Responsibility of States for Internationally Wrongful Act adopted by the ILC at its 53rd Sess., annexed to G.A. Res. 56/83, U.N. Doc. A/RES/56/83 (Dec. 12, 2001) [“ARSIWA”], Article 44 (b).

⁶² SAF ¶¶37-38.

⁶³ Draft Articles on Diplomatic Protection, *supra* note 61, Article 15(c); Trail smelter case, Award, (U.S v. Can.), 3 R.I.A.A. 1961

⁶⁴ International Law Association, *Final Report on The Meaning of Armed Conflict in International Law* (Aug. 2010), <http://www.ila-hq.org>, p.2; The Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction Appeal Chamber, I.C.T.Y. Case No. IT-94-1-AR72 Oct.2, 1995, ¶70.

⁶⁵ The Prosecutor v. Tadic, Judgment, Trial Chamber I.C.T.Y., Case No. IT-94-1-T, May 7, 1997 ¶562.

⁶⁶ International Covenant on Civil and Political Rights (Dec. 19, 1966) 999 U.N.T.S.171 [“ICCPR”], Article 2(1); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 1996 I.C.J. (July 11) [“Genocide”] ¶31.

outside its territory.⁶⁷ Here, the WALL has the potential to injure and even kill people in Adawan territory,⁶⁸ thus the ICCPR applies.

iv. Rasasa violated the right to life

Under Article 6(1) of the ICCPR, States cannot engage in conducts that may arbitrarily deprive life,⁶⁹ even if such conducts do not result in loss of life.⁷⁰ Potential use of force in law enforcement situations is only lawful when there is an imminent threat to life.⁷¹ Border control,⁷² disobeying a warning,⁷³ the suspected possession of a weapon⁷⁴ or wearing an “enemy” uniform⁷⁵ do not justify use of lethal force.

Moreover, the imminence requirement is extremely strict,⁷⁶ meaning “*a matter of seconds, not hours*”.⁷⁷ LAWS employed with algorithmic tagging to identify objectives and

⁶⁷ Drozd and Janousek v. France and Spain, No. 12747/87 E.Ct.H.R. (Jun. 26, 1992), ¶91.

⁶⁸ SAF ¶37.

⁶⁹ ICCPR, *supra* note 66, Article 6; Human Rights Committee, General comment No. 36, U.N. Doc CCPR/C/GC/36 (Oct. 30, 2018), ¶7.

⁷⁰ Benzer and others v. Turkey, No. 23502/06 E.Ct.H.R (Mar. 24, 2014), ¶163; Andreou v. Turkey, No. 45653/99 E.Ct.H.R. (Oct. 27, 2009), ¶46; D. MURRAY, *Conduct of Hostilities and Targeting* in E. WILMSHURT *et al* (ED.), PRACTITIONERS' GUIDE TO HUMAN RIGHTS LAW IN ARMED CONFLICT 119-120 (2016).

⁷¹ U.N. Office of the High Commissioner on Human Rights, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, (1990), ¶9; Landaeta Mejías Brothers *et al.* v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 281, (Aug. 24, 2014) ¶131; Christof Heyns (Special Rapporteur on extrajudicial, summary or arbitrary executions), *Twenty-fifth session of the Human Right Council*, UN Doc. A/HR/C/26/36 (April 1, 2014) [“Heyns”] ¶59.

⁷² Streletz, Kessler and Krenz v. Germany, Nos. 34044/96, 35532/97 and 44801/98 E.Ct.H.R. (Mar. 22, 2001), ¶73.

⁷³ Kakoulli v. Turkey, No 38595/97 E.Ct.H.R. (Nov. 22, 2005), ¶119.

⁷⁴ Kallis and Androulla Panayi v. Turkey, No 45388/99 E.Ct.H.R. (Oct.27, 2009), ¶60.

⁷⁵ *Id.*

⁷⁶ G. Gaggioli, “*The Use of Force in Armed Conflicts: Conduct of Hostilities, Law Enforcement and Self-Defense*” in C. FORD, W. WILLIAMS, COMPLEX BATTLESPACES: THE LAW OF ARMED CONFLICT AND THE DYNAMICS OF MODERN WARFARE 76 (2019).

⁷⁷ Heyns, *supra* note 71, ¶59

authorize use of force violate this requirement since threats are identified in advanced, when there is no “imminent” emergency to response.⁷⁸

The WALL uses algorithmic tagging to establish threats,⁷⁹ and forcibly prevent illegal border-crossings in either direction of the Adawan-Rasasan border.⁸⁰ Accordingly, individuals not presenting any imminent threat to life might be arbitrarily killed. The fact that the WALL deploys force as a last resort and guarantees that law-abiding citizens will not be harmed⁸¹ does not render it lawful since “*every human being*” has the inherent right to life, not just innocent civilians.⁸² Consequently, Rasasa violated the right to life.

v. Rasasa violated the right to remedy

Effective remedies⁸³ includes the State’s obligation to prosecute and punish those accountable for human rights violations.⁸⁴ In the case of LAWS, individual accountability for arbitrary deprivation of life is not possible,⁸⁵ since the weapon cannot be punished nor

⁷⁸ M. Brehm, *Defending the Boundary: Constraints and Requirements on the Use of Autonomous Weapon Systems Under International Humanitarian and Human Rights Law*, 9 GENEVA ACADEMY BRIEFING 3 (2017) [“Brehm”] 24.

⁷⁹ SAF ¶¶20

⁸⁰ SAF ¶¶37,39

⁸¹ SAF ¶37

⁸² ICCPR, *supra* note 66, Article 1.

⁸³ ICCPR, *supra* note 66, Article 2(3).

⁸⁴ B. Docherty, *Losing Humanity: The Case against Killer Robots*, HUMAN RIGHTS WATCH, 1 (2012) 42; D. Hammond, *Autonomous Weapons and the Problem of State Accountability*, 15 CHICAGO JOURNAL OF INTERNATIONAL LAW 652 (2015) 662; U. C. Jha, *Lethal Autonomous Weapon Systems and International Humanitarian Law*, 16 ISIL Y.B. INT’L HUMAN. & REFUGEE L. 112 (2016-2017) 125.

⁸⁵ Christof Heyns (Special Rapporteur on extrajudicial, summary or arbitrary executions), *Twenty-third session of the Human Right Council*, UN Doc. A/HR/C/23/47 (April 9, 2013), ¶76.

deterred.⁸⁶ Moreover, dismantlement of the weapon is not an effective remedy for victims seeking retribution.⁸⁷

The WALL's potential use of force together with lack of any human control violates the right to an effective remedy, since no actor would be directly criminally responsible for human right violations.

4) In any event, the deployment of the WALL violates IHL

i. The WALL violates principles of targeting

The distinction principle mandates that attacks may only be directed against military targets and objectives.⁸⁸ Weapons programmed to target on the basis of observable, behavioral or other "signatures" do not comply with this principle, since they do not map exactly onto the definitions of persons or objects that may be made the object of attack under IHL.⁸⁹

Moreover, under the principle of proportionality, civilian damage must not be excessive in relation to the concrete military advantage anticipated from the attack as a whole.⁹⁰ Such

⁸⁶ C. Heyns, *Human Rights and the use of Autonomous Weapons Systems During Domestic Law Enforcement*, 38 HUMAN RIGHTS QUARTERLY, 350 (2016) 373; B. Docherty, *Losing Humanity: The Case against Killer Robots*, HUMAN RIGHTS WATCH, 1 (2012) 44.

⁸⁷ B. Docherty, *Losing Humanity: The Case against Killer Robots*, HUMAN RIGHTS WATCH, 1 (2012) 45.

⁸⁸ J. HENCKAERTS, L. DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOL. I 3, 25; Legality of the threat or use of Nuclear Weapons, Advisory Opinion, ICJ 1996 ["Nuclear Weapons"] ¶78

⁸⁹ K. Benson, *'Kill 'em and Sort it Out Later:' Signature Drone Strikes and International Humanitarian Law*, 27 PACIFIC MCGEORGE GLOBAL BUSINESS & DEVELOPMENT LAW JOURNAL 17 (2014), 49.

⁹⁰ D. Thürer, *International Humanitarian Law: Theory, Practice, Context*, 338 R.C.A.D.I 9, 74 (2008); J. HENCKAERTS, L. DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOL I, 173, 175 (2009); S. Oeter, *Methods and Means of Combat*, in D. FLECK, (ED.) THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 119 (2009) 186; W. Fenrick, *Attacking the Enemy Civilian as a Punishable Offense*, 8 DUKE J. COMP. & INT'L L. 539 (1997) 548.

balance requires a subjective judgment between military advantage and humanitarian concerns.⁹¹

Finally, the precaution principle obliges States to do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not military.⁹² This requires human agents to retain sufficient control to identify changing circumstances and make adjustments in a timely manner.⁹³

The WALL cannot distinguish between civilian and military targets since it is programmed to target whatever its algorithm –based on tagged “signatures”–⁹⁴ interprets as an armed threat.⁹⁵ Further, the WALL lacks meaningful human control to strike the subjective balance to weight damages.⁹⁶

Consequently, the WALL violates the principles of necessity, proportionality and precaution.

ii. The WALL cannot determine the applicable body of law

During the conduct of hostilities, human control over LAWS is required to shift to a law enforcement model when the circumstances so require.⁹⁷ The WALL detects individual and isolated threats,⁹⁸ but it is unable to analyze social or political factors to determine whether the State is engaged in an armed conflict that would trigger the applicability of IHL or not.

C) The WALL must be dismantled and removed forthwith

⁹¹ The Prosecutor v. Galić, Judgment and Opinion, Trial Chamber I, I.C.T.Y., Case No. IT-98-29-T, Dec. 5, 2003, ¶58.

⁹² J.-M.HENCKAERTS & L.DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL.I, 60 (2009)

⁹³ Brehm, *supra* note 78, 40.

⁹⁴ SAF ¶20.

⁹⁵ SAF ¶20.

⁹⁶ SAF ¶24.

⁹⁷ Brehm, *supra* note 78, 40.

⁹⁸ SAF ¶24.

Under international law, the State responsible for an internationally wrongful act must fully repair the injury caused,⁹⁹ re-establishing the *status quo ante*.¹⁰⁰ Since the deployment of the WALL is attributable to Rasasa¹⁰¹ and constitutes an internationally wrongful act,¹⁰² it must be dismantled and removed forthwith.

**III) THE COURT MAY ADJUDICATE ADAWA’S CLAIM THAT RASASA’S
IMPOSITION OF TARIFFS ON HELIAN PRODUCTS FROM ADAWA
VIOLATES THE CHC TREATY, AND ADAWA IS ENTITLED TO
COMPENSATORY DAMAGES REFLECTING THE FINANCIAL HARM IT HAS
SUFFERED TO DATE.**

A) The Court may adjudicate Adawa’s claims

This Court may adjudicate Adawa’s claim because: (i) the Crosinian Helian Community Treaty [“CHC Treaty”] remains applicable as it has no normative conflict with the General Agreement on Tariffs and Trade [“GATT”]; and (ii) the Dispute Settlement Understanding [“DSU”] exclusive jurisdiction does not prevent this Court from adjudicating disputes arising from treaties other than the World Trade Organization [“WTO”] agreements.

⁹⁹ Factory at Chorzów (Ger. v. Pol.), Judgment, 1928, P.C.I.J. (Ser. A) No. 9 (Sept. 13), ¶29; Gabčíkovo, *supra* note 21, ¶152; ARSIWA, *supra* note 61, Article 31.

¹⁰⁰ ARSIWA, *supra* note 61, Article 31.

¹⁰¹ ARSIWA, *supra* note 61, Article 2; Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 I.C.J. 62 (Apr. 29), 87.

¹⁰² ARSIWA, *supra* note 61, Article 2.

1) There is no normative conflict between the GATT and the CHC Treaty

The same international law issue may be regulated by more than one treaty.¹⁰³ In this case, there is a presumption against normative conflict¹⁰⁴ and thus the interpretation which preserves the operation of the two treaties must be followed.¹⁰⁵ Indeed, there is a presumption that when creating new obligations, States do not to derogate from their previous ones.¹⁰⁶ Only if a normative conflict exists the principles of *lex posteriori*¹⁰⁷ and *lex specialis*¹⁰⁸ are applicable.¹⁰⁹

Under the CHC Treaty, Adawa and Rasasa agreed to impose no custom duties on Helian products or related goods. Subsequently, both States submitted zero bound rates for these same products under the GATT.¹¹⁰ The obligations assumed under both treaties are very similar to each other since they both regulate Helian tariffs, thus the presumption against

¹⁰³ The Mox Plant Case, (Ire. v. U.K.), Case No. 10, Request for Provisional Measures, I.T.L.O.S. (Dec. 3) 2000, (Separate opinion of Judge Wolfrum), [“Mox Plant”], 131; Southern Bluefin Tuna Case, Award on Jurisdiction and Admissibility, (Aus. N.Z. v. Jap.), 23 R.I.A.A. 1, 57, [“Southern Bluefin Tuna”] ¶41(h).

¹⁰⁴ Int’I Law Comm’n, Rep. of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, A/CN.4/L.682, (2006), 37; J. PAWELYN, CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW, HOW THE WTO LAW RELATES TO OTHER RULES OF INTERNATIONAL LAW 240-241 (2003) [“PAWELYN”]; Right of Passage over Indian Territory (Por. v. Ind.) Judgement on Preliminary Objections, 1957 I.C.J. (Nov. 26) ¶22.

¹⁰⁵ O. CORTEN & P. KLEIN, THE VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY. VOLUME I 789 (2011); Panel Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WTO Doc. WT/DS34/R, 31 May 1999 ¶9.92-9.96; Panel Report, *Indonesia - Certain Measures Affecting the Automobile Industry*, WTO Doc. WT/DS64/R, 2 Jul. 1998 ¶14.28.

¹⁰⁶ R. JENNINGS ET AL (EDS.), OPPENHEIM’S INTERNATIONAL LAW 1275 (1992).

¹⁰⁷ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [“VCLT”], Article 30(3).

¹⁰⁸ Int’I Law Comm’n, Rep. of the Study Group on Fragmentation of International Law, Finalized by Martti Koskenniemi, A/CN.4/L.682, (2006), 56; PAWELYN, *supra* note 104, 385; ARSIWA commentaries, *supra* note 36, 140; Nicaragua, *supra* note 46, ¶274; Gabčíkovo, *supra* note 21, ¶132; ARSIWA, *supra* note 61, Article 55.

¹⁰⁹ Int’I Law Comm’n, Rep. of the Study Group on Fragmentation of International Law, Finalized by Martti Koskenniemi, A/CN.4/L.682, (2006), 56, 230.

¹¹⁰ SAF ¶12.

normative conflict applies. This conclusion is further supported by Article XXIV of the GATT, which permits the existence of regional trade agreements with similar obligations,¹¹¹ such as the CHC Treaty.¹¹²

Since there is no normative conflict between the CHC Treaty and the GATT, both treaties are applicable over tariffs on Helian products.

2) This Court has jurisdiction over claims under the CHC Treaty

Respondent may argue that Article 23(1) of the DSU prevents this Court from adjudicating Adawa's claims. However, the WTO does not have the monopoly over the settlement of trade disputes.¹¹³

The Dispute Settlement Body ["DSB"] has exclusive jurisdiction only over disputes arising from the "*covered agreements*",¹¹⁴ *i.e.* the treaties set in Appendix 1 of the DSU.¹¹⁵ No claims for the violation of international law other than those set out in the *covered agreements* can be brought before a WTO panel. Moreover, breaches of free trade agreements are adjudicated by their own dispute settlement mechanisms.¹¹⁶

¹¹¹ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, Annex 1.A, General Agreement on Tariffs and Trade 1994, ["GATT"], Article XXIV.

¹¹² SAF Clarification 5.

¹¹³ Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WTO Doc. WT/DS241/R, Apr. 22, 2003, ¶7.38.

¹¹⁴ PAWELYN, *supra* note 104, 444.

¹¹⁵ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, Annex 2, Understanding on Rules and Procedures Governing the Settlement of Disputes ["DSU"].

¹¹⁶ Y. Lee, *Regional Trade Agreements in the WTO System: Potential Issues and Solutions*, 7 JOURNAL OF EAST ASIA AND INT'L LAW 353 (2015), 365; North American Free Trade Agreement, Jan. 1, 1994, 1869 U.N.T.S. 299, Chapter Twenty; Protocolo de Olivos para la Solución de controversias en el MERCOSUR, Feb. 18, 2002, 2251 U.N.T.S. 243; Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area, Jan. 28, 1992, 2672 U.N.T.S. I-47529, Article 30.

Here, Adawa's claims arise under the CHC Treaty,¹¹⁷ over which the DSB lacks jurisdiction. Thus, this Courts has jurisdiction over such claims under Article VI of the Treaty of Botega.¹¹⁸

B) Adawa's claim is admissible

1) There is no rule of *lis pendens* under international law

When the jurisdictions of two unrelated and independent tribunals extend to the same dispute, there is no rule of international law preventing them from exercising their jurisdiction.¹¹⁹ International tribunals have only refused to exercise jurisdiction pending a decision by another tribunal based on comity¹²⁰ which has discretionary nature.¹²¹ Accordingly, the fact that a similar proceeding is taking place before the WTO¹²² does not render Adawa's claim inadmissible.

2) Alternatively, there is no *lis pendens* in the present case

Even if this Court considers *lis pendens* is binding under international law, this rule is only applicable where there are identical parties, legal basis and relief sought before tribunals of the same character.¹²³ Here, these requirements are not cumulatively met.

¹¹⁷ SAF ¶61.C

¹¹⁸ Botega Treaty, Article VI.

¹¹⁹ Southern Pacific Properties (Middle East) Limited V. Arab Republic of Egypt (Pyramids Case), Decision on preliminary objections to jurisdiction, ICSID Case No. ARB/84/3 (Nov. 27) 1985 ["Southern Pacific Properties"], ¶84

¹²⁰ Southern Pacific Properties, *supra* note 119, ¶84; Mox Plant, *supra* note 103, ¶28.

¹²¹ J. CRAWFORD, CHANCE, ORDER, CHANGE: THE COURSE OF INTERNATIONAL LAW, GENERAL COURSE ON PUBLIC INTERNATIONAL LAW 299 (2014); Y. SHANY, THE COMPETING JURISDICTIONS OF INTERNATIONAL COURTS AND TRIBUNALS 261 (2003).

¹²² SAF ¶47.

¹²³ Application of the International Convention on the Elimination of All Forms of Racial Discrimination, (Qatar v. U.A.E) 2019 I.C.J (June 14) (Dissenting opinion of Judge ad-hoc Cot) ¶5; Certain German Interests in Polish Upper Silesia (Ger. v. Pol.), 1925 P.C.I.J. (ser. A) No. 6 (Aug. 25) 20; S.A.R.L Benvenuti & Bonfant v. People's Republic of the Congo, Award, ICSID Case No. ARB/77/2 (Dec. 15) 1977 ¶1.14.

First, the actions do not have the same legal basis. A single State act may violate more than one treaty¹²⁴ since rights and obligations from different conventional sources have a separate existence.¹²⁵ Consequently, actions arising from two different treaties have different causes of action.¹²⁶ Here, the WTO Panel will deal with violations under GATT, while the ICJ will address violations of the CHC Treaty.

Second, the relief sought is different. The relief before a WTO Panel is, primarily, to put the measure in conformity with WTO law.¹²⁷ Exceptionally, the DSB may authorize suspension of concessions or a compensation (which is temporary, voluntary and proactive).¹²⁸ Conversely, the relief sought before this Court under the CHC Treaty concerns financial and retroactive compensation under customary law.¹²⁹

Finally, the tribunals have a different character. The DSB is a quasi-judicial or quasi-adjudicative body¹³⁰ while the ICJ is a judicial organ.¹³¹

Consequently, Adawa's claim is admissible.

C) Rasasa's imposition of tariffs on Helian products is inconsistent with the CHC Treaty

¹²⁴ Southern Bluefin Tuna, *supra* note 103, ¶52; Mox Plant, *supra* note 103, 131.

¹²⁵ Mox Plant, *supra* note 103, ¶50.

¹²⁶ J. Pawelyn, et. al, *Forum Shopping before International Tribunals: Real Concerns, Impossible Solutions*, 42 CORNELL INTERNATIONAL LAW JOURNAL 77 (2009), 110.

¹²⁷ C. AMERASINGHE, JURISDICTION OF SPECIFIC INTERNATIONAL TRIBUNALS 507 (2009); DSU, *supra* note 115, Article 22 (1).

¹²⁸ DSU, *supra* note 155, Article 22 (1).

¹²⁹ ARSIWA, *supra* note 61, Article 36(1).

¹³⁰ E. Ramirez Robles, *political & quasi-adjudicative dispute settlement models in european union free trade agreements Is the quasi-adjudicative model a trend or is it just another model?*, ERSD-2006-09, World Trade Organization Economic Research and Statistics Division Working Paper (2006) 3.

¹³¹ ICJ Statute, *supra* note 3, Article 1.

1) The imposition of tariffs violates Article 3 of the CHC Treaty

Pursuant to Article 3 of the CHC Treaty, members of the Community agreed to impose no custom duties on Helian products and related goods. Accordingly, Rasasa's imposition of tariffs violates this Article.

2) Article 22(b) is not self-judging

When States intend to exclude judicial revision from measures importing non-compliance with a treaty, they do so expressly.¹³² For this purpose, they specifically include the wording "it considers" or "the State considers".¹³³

Article 22(b) cannot be interpreted as being self-judging because it lacks the words "it considers". Thus, Rasasa's actions are susceptible of judicial revision by this Court.

3) Rasasa cannot rely on Article 22(b) as a justification for non-compliance

Rasasa cannot invoke Article 22(b) of the CHC Treaty in order to justify the imposition of tariffs given that (i) its essential security interests were not threatened or, alternatively (ii) the measures taken were not necessary.

i. Rasasa's economic crisis does not fulfill the threshold of Article 22(b)

The concept of essential security interests refers to the quintessential functions of the State, namely the protection of its territory and population, and the maintenance of public order.¹³⁴ Economic crisis have only been deemed as threatening essential security interests

¹³² CMS Gas Transmission Company v. Argentine Republic, ICSID Case No. ARB/01/8, May. 12, 2005, ¶370, LG&E Energy Corp., LG&E Capital Corp., LG&E International INC. v. Argentine Republic, ICSID Case No. ARB/02/1, Decision on liability, Oct. 3 2006, ¶213 ["LG&E"]; CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited., and Telcom Devas Mauritius Limited v. The Republic of India, Award on Jurisdiction and Merits, UNCITRAL PCA Case No. 2013-09, (Jul. 25, 2016), ¶219.

¹³³ Nicaragua, *supra* note 46, ¶222.

¹³⁴ Panel Report, *Russia – Measures concerning traffic in transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019) ¶7.130.

in situations where the State endures large portion of the population below the poverty line, widespread unrest, disturbances with risk of insurrection, breakdown of government and political institutions,¹³⁵ which would cause the whole State's economic foundation to be under siege.¹³⁶

Here, the decline in the Helian production, and the mere prospect of a future economic crisis,¹³⁷ are not menaces to Rasasa's essential security interests. Contrarily, the tariffs were driven by a protectionist intent, since mere sectorial difficulties¹³⁸ cannot reach the threshold of a threat to an essential security interest.

ii. In any event, the measures taken were not necessary

Measures are "necessary" if they are objectively required in order to achieve the protection of an essential security interest and States do not have any other reasonable alternatives less in conflict or more compliant with its international obligations.¹³⁹

Rasasa's justification for the measure was the prospect of economic collapse in five or ten years.¹⁴⁰ For such a long period of time, unilateral imposition of tariff seems hardly the only alternative. Contrary, rather a more progressive approach with the inclusion of all the Helian community and in compliance with the mere purpose of the CHC Treaty would have been preferred.

D) Additionally, Rasasa cannot allege a state of necessity

¹³⁵ Continental Casualty Company v. Argentine Republic, ICSID Case No. ARB/03/9 Sep. 5 2008 ¶180.

¹³⁶ LG&E, *supra* note 132, ¶238.

¹³⁷ SAF ¶30, ¶44.

¹³⁸ SAF ¶30.

¹³⁹ Deutsche Telekom AG v. The Republic of India, Interim Award, UNCITRAL PCA Case No. 2014-10 (Dec. 13) 2017 ¶239.

¹⁴⁰ SAF ¶30.

States may not allege state of necessity as a circumstance precluding wrongfulness if it seriously impairs an essential interest of another State.¹⁴¹

By imposing tariffs on the Helian hyacinth, Rasasa seriously impaired Adawa's essential interests. Rasasa caused grave damages to Adawan farmers, with estimated losses of more than €10 million in revenue.¹⁴² that will only continue to increase in the upcoming years.¹⁴³ Therefore, Rasasa cannot plea necessity.

E) Adawa is entitled to compensatory damages derived from Rasasa's violation of its obligations

States must compensate for any material loss caused by their breaches of international law.¹⁴⁴ By imposing tariffs on Helian products, Rasasa has committed an internationally wrongful act¹⁴⁵ and owes compensation to Adawa on behalf of the Adawan farmers that suffered direct financial losses estimated in €10 million.¹⁴⁶

IV) THE ARREST AND DETENTION OF DARIAN GREY WERE CONSISTENT WITH ADAWA'S OBLIGATIONS UNDER INTERNATIONAL LAW, AND ADAWA MAY PROCEED TO RENDER HER TO THE INTERNATIONAL CRIMINAL COURT

A) Ms. Grey does not enjoy immunity under international law

¹⁴¹ ARSIWA, *supra* note 61, Article 25(b); Wall Advisory Opinion, *supra* note 15, ¶140; J. CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART, 313-314 (2013).

¹⁴² SAF ¶43.

¹⁴³ SAF ¶43.

¹⁴⁴ Factory at Chorzów (Ger. v. Pol.), Judgment on Jurisdiction, 1927 P.C.I.J (Ser. A) N° 8 (Jul. 26), ¶21; Genocide, *supra* note 66, ¶460. Gabčíkovo, *supra* note 21, ¶15; ARSIWA, *supra* note 61, Article 34.

¹⁴⁵ *Supra* §(III)(C).

¹⁴⁶ SAF ¶46.

Respondent may argue that Ms. Grey enjoys personal immunity under the CHC Treaty or customary law. However, such alleged immunities are not applicable since (i) there is a customary exception with respect to prosecution by international courts, (ii) the *jus cogens* nature of the prohibition of war crimes overrides immunity, and, alternatively (iii) her appointment constituted an abuse of rights.

1) Immunities are unavailable with respect to prosecution by international courts

Under international customary law, there is an exception to immunities of public officials with respect to prosecution by international courts.¹⁴⁷ State practice is evidenced by the adherence to the Charter of the Nuremberg¹⁴⁸ and Tokyo¹⁴⁹ Tribunals, the Nuremberg Principles,¹⁵⁰ the International Criminal Tribunal for the former Yugoslavia [“ICTY”] Statute,¹⁵¹ the International Criminal Tribunal for Rwanda Statute¹⁵² and the Draft Code of

¹⁴⁷ The Prosecutor v. Al-Bashir, Judgment in the Jordan Referral re Al-Bashir Appeal, I.C.C. The Appeals Chamber, May. 6, 2019 [“Al-Bashir AC”] ICC-02/05-01/09 OA2 ¶¶103-113; The Prosecutor v. Al-Bashir, Judgment in the Jordan Referral re Al-Bashir Appeal, Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmański and Bossa, I.C.C. The Appeals Chamber, May. 6, 2019, ICC-02/05-01/09 OA2 ¶¶65-174.

¹⁴⁸ Charter of the International Military Tribunal at Nuremberg, Aug. 8, 1945, Article 7.

¹⁴⁹ International Military Tribunal for the Far East Charter, Jan. 19, 1946, Article 6.

¹⁵⁰ Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal adopted by the ILC at its second Sess., annexed to G.A. Res. 488, U.N. Doc. A/RES/488 (Dec. 12, 1950), Principle III.

¹⁵¹ Statute of the International Criminal Tribunal for the Former Yugoslavia, May. 25, 1993, Article 7(2).

¹⁵² **Statute of the International Criminal Tribunal for Rwanda, Nov. 8, 1994 (UN Doc**

S/RES/955(1994), Annex, (1994), Article 6(2).

Crimes against the Peace and Security of Mankind.¹⁵³ *Opinio juris* can be found in Security Council resolutions¹⁵⁴ and submissions to the United Nations Secretary-General.¹⁵⁵

This customary exception is recognized in judicial decisions issued by the International Military Tribunal of Nuremberg,¹⁵⁶ the ICTY,¹⁵⁷ the Special Court for Sierra Leone¹⁵⁸ and the International Criminal Court [“ICC”].¹⁵⁹ Further, in the *Arrest warrant* case, this Court expressly identified prosecution by the ICC as an exception to personal immunity.¹⁶⁰ Scholars also confirm the existence of this rule.¹⁶¹

¹⁵³ Draft Code of Crimes against the Peace and Security of Mankind with commentaries, Report of the ILC 48th sess., GAOF, 51^o Sess., Supp. No. 10 (A/51/10) 17, Article 7.

¹⁵⁴ S.C. Res. 1315 (Aug. 14, 2000); S.C. Res. 1564 (Sep. 18, 2004); S.C. Res. 1593 (Mar. 31, 2005); S.C. Res. 827 (May. 25, 1993); S.C. Res. 955 (Nov. 8, 1994).

¹⁵⁵ S.C. Report of the Secretary-General Pursuant to paragraph 2 of Security Council Resolutions 808 (May. 3, 1993), S/25704, ¶53; United Nations Security Council, ‘Report of the Secretary-General, pursuant to paragraph 2 of Security Council Resolution 808 (1993)’, S/25704, May. 3, 1993, 14; S.C., Final report of the Independent Commission of Experts established in accordance with Security Council resolution 935 (1994), Doc. No S/1994/1405, ¶¶171-173; GA. Res. 596, Memorandum by the Secretariat, U.N. Doc. A/CN.4/596 (Mar. 31, 2008), ¶¶141-142, 150.

¹⁵⁶ The Trial of German Major War Criminals, Proceedings of the International Military Tribunal sitting at Nuremberg, Oct. 1, 1946 ¶56.

¹⁵⁷ The Prosecutor v. Milosevic, Decision on Preliminary Motions, I.C.T.Y. The Trial Chamber, Nov. 8, 2001 ¶28; The Prosecutor v. Blaskic, Decision on the objection of the Republic of Croatia to the issuance of *subpoenae duces tecum*, I.C.T.Y. The Trial Chamber, Jul. 17, 1997 ¶89.

¹⁵⁸ The Prosecutor v. Taylor, Decision on Immunity from Jurisdiction, S.C.S.L. The Appeals Chamber, May. 31, 2004, SCSL-03-01-I-059 ¶52.

¹⁵⁹ Al-Bashir AC, *supra* note 147, ¶¶113,115,117; The Prosecutor v. Al-Bashir, Corrigendum to the Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, I.C.C. The Pre-Trial Chamber I, Dec. 13, 2011, ICC-02/05-01/09 [“Al-Bashir Malawi”] ¶43.

¹⁶⁰ Arrest Warrant of Arp. 11, 2000 (Dem. Rep. Congo v. Bel) 2002 I.C.J. 3 (14 Feb) [“Arrest Warrant”] ¶61.

¹⁶¹ The Prosecutor v. Al-Bashir, Observations by Professor Paola Gaeta as amicus curiae on the merits of the legal questions presented in the Hashemite Kingdom of Jordan’s appeal against the ‘Decision under Article 87 (7) of the Rome Statute on the non- compliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir’ of Mar. 12, 2018, The Appeals Chamber I.C.C., Jun. 18, 2018, ICC-02/05-01/09 OA2, ¶10/6;

In the present case, Adawa executed an arrest warrant issued by the ICC.¹⁶² Hence, Ms. Grey cannot invoke immunities and her arrest¹⁶³ was consistent with international law.

2) Immunities are overridden by the *jus cogens* status of war crimes

The prohibition of war crimes is a *jus cogens* norm.¹⁶⁴ To give proper effect to this hierarchically higher status, not only contrary substantive rules but also rules which prevent its enforcement are overridden,¹⁶⁵ including rules on immunity.¹⁶⁶ This is justified by the

The Prosecutor v. Al-Bashir, Observations by Professor Claus Kreß as amicus curiae on the merits of the legal questions presented in the Hashemite Kingdom of Jordan's appeal against the 'Decision under Article 87 (7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir' of Mar. 12, 2018, The Appeals Chamber I.C.C., Jun. 18, 2018, ICC-02/05-01/09 OA2, ["Claus Kreß"] ¶15; Concepción Escobar Hernández (Special Rapporteur on immunity of State officials from foreign criminal jurisdiction), *Fifth report on immunity of State officials from foreign criminal jurisdiction*, U.N. Doc. A/CN.4/701 (Jun. 14, 2016) ¶189; The Prosecutor v. Taylor, Observations by Professor Philippe Sands as amicus curiae on the merits of the legal questions presented in the SCSL The Appeals Chamber, Oct. 23, 2003, CASE SCSL-2003-01-1, ¶2.

¹⁶² SAF ¶48, 50.

¹⁶³ SAF ¶51.

¹⁶⁴ M. CHERIF BASSIOUNI, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 LAW & CONTEMP. PROBS. 63 (1996) 63; Al-Bashir AC, *supra* note 147, ¶123; D. Tladi (Special Rapporteur on peremptory norms of general international law (*jus cogens*)), *Third report on peremptory norms of general international law (jus cogens)*, U.N. Doc. A/CN.4/714 (Feb. 12, 2018), ¶114; The Prosecutor v. Kupreškić et al., Judgment, I.C.T.Y. The Trial Chamber, Jan. 8, 2000 ¶520; Nuclear Weapons, *supra* note 88, ¶79.

¹⁶⁵ S. I. Strong, *General Principles of Procedural Law and Procedural Jus Cogens*, 122 PENN ST. L. REV. 347 (2018) 394, 404.

¹⁶⁶ Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.) 2002 I.C.J. 3 (Feb. 14) (Dissenting opinion of Al-Khasawneh), ¶7; K. PARLETT, *Immunity in civil proceedings for torture: the emerging exception*, in R. A. Kolodkin (Special Rapporteur on immunity of State officials from foreign criminal jurisdiction), *Second report on immunity of State officials from foreign criminal jurisdiction*, U.N. Doc. A/CN.4/631 (Jun. 10, 2010), ¶63; Case of Al-Adsani v. The United Kingdom, Joint Dissenting Opinion of Judges Rozakis And Caflisch Joined by Judges Wildhaber, Costa, Cabral Barreto And Vajić, No. 35763/97 E.Ct.H.R. (Nov. 21, 2001), ¶3; Case of Al-Adsani v. The United Kingdom, Dissenting Opinion Judge Ferrari Bravo, No. 35763/97 E.Ct.H.R. (Nov. 21, 2001) 33; Case of Al-Adsani v. The United Kingdom, Dissenting Opinion of Judge Loucaides, No. 35763/97 E.Ct.H.R. (Nov. 21, 2001), 34.

need to combat impunity for international crimes.¹⁶⁷ Respondent could not argue that the findings in *Germany v. Italy*¹⁶⁸ are applicable, since that case did not deal with immunities of public officials.¹⁶⁹

Ms. Grey is accused of having committed war crimes.¹⁷⁰ The higher status of the prohibition of such crimes overrides any immunity she may otherwise enjoy. Accordingly, her arrest was consistent with international law.

3) Immunities are lifted under the abuse of rights principle

The principle of abuse of rights prohibits the exercise of a prerogative for a purpose it was not intended, such as the obtention of an undue advantage.¹⁷¹ It is a general principle of law recognized by civil law¹⁷² and common law jurisdictions.¹⁷³ It is corollary to the principle of good faith and *pacta sunt servanda*, enshrined in the VCLT¹⁷⁴ and recognized by this Court.¹⁷⁵

¹⁶⁷ R. A. Kolodkin (Special Rapporteur on immunity of State officials from foreign criminal jurisdiction), *Second report on immunity of State officials from foreign criminal jurisdiction*, U.N. Doc. A/CN.4/631 (Jun. 10, 2010), ¶56; Concepción Escobar Hernández (Special Rapporteur on immunity of State officials from foreign criminal jurisdiction), *Fifth report on immunity of State officials from foreign criminal jurisdiction*, U.N. Doc. A/CN.4/701 (Jun. 14, 2016) ¶193; G.A. Res. 67, U.N. Doc. A/RES/67/1, (Nov. 30, 2012), ¶22.

¹⁶⁸ Jurisdictional immunities of the State (Ger. v. Ita.), 2012 I.C.J (Feb. 3)

¹⁶⁹ Jurisdictional immunities of the State (Ger. v. Ita.), 2012 I.C.J (Feb. 3) ¶91.

¹⁷⁰ SAF Correction 1.

¹⁷¹ Case concerning Immunities and Criminal Proceedings (Eq. Guinea v. Fr.), Preliminary Objections of France I.C.J., Mar. 30, 2017 ¶76.

¹⁷² Netherlands – Civil Code, Articles 1-2; Switzerland – Code Civil, Article 2, Dec. 10, 1907, SR 210, RS 210; Argentina – Código Civil y Comercial, Article 10; Germany – Civil Code, § 226, 242; Israel – Contract Law (General Part), Article 12; Turkey – Civil Code, Article 18; Greece – Civil Code, Article 281; Japan – Constitution, Article 12.

¹⁷³ M. Byers, *Abuse of rights: An old Principle, a new age*, 47 MCGILL L.J. 389 (2002) 396-397.

¹⁷⁴ VCLT, *supra* note 107, Article 26.

¹⁷⁵ Certain German Interests in Polish Upper Silesia (Ger. v. Pol.), 1925 P.C.I.J. (ser. A) No. 6 (Aug. 25) ¶30; Fisheries (U.K. v. Nor.), Judgment, 1951 I.C.J. (Dec. 18) ¶142; Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belg. v. Spain),

Particularly, public officials are vested with immunities to guarantee an efficient performance of their public prerogatives. However, an abusive exercise of immunities would allow officials to obtain an undue advantage by eluding their responsibility.¹⁷⁶

The ICC Prosecutor opened an investigation in 2009¹⁷⁷ and expressly cited Ms. Grey as responsible for RRC's unlawful activities in Garantia.¹⁷⁸ Rasasa was aware of this ongoing investigation and the serious allegations against Ms. Grey¹⁷⁹ but nonetheless appointed her as Minister of Foreign Affairs¹⁸⁰ with the purpose of preventing her arrest. Hence, her appointment constitutes an abuse of rights which cannot be upheld by this Court.

B) Adawa acted under the *aut dedere aut judicare* principle

Under the Geneva Conventions, States are obliged to prosecute or extradite alleged perpetrators of grave breaches of the Conventions.¹⁸¹ According to the VCLT, treaties shall be interpreted considering the subsequent practice in their application, as it reflects the

Second Phase, Judgment, 1970 I.C.J. 3 (Feb. 5) ¶56; Nuclear Tests (Austr. v. Fr.), Judgment, 1974 I.C.J. (Dec. 20), ¶46; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. and Herz. v. Yug.), Preliminary Objections, Judgment, 1996 I.C.J. (Jul. 11), ¶46.

¹⁷⁶ Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.) 2002 I.C.J. (Feb. 14) (Dissenting opinion of Judge Van Den Wyngaert) ¶21; Case concerning Immunities and Criminal Proceedings (Eq. Guinea v. Fr.), Preliminary Objections of France, 2017 I.C.J. (Mar. 30) ¶78.

¹⁷⁷ SAF ¶15.

¹⁷⁸ SAF ¶15.

¹⁷⁹ SAF ¶32.

¹⁸⁰ SAF ¶32.

¹⁸¹ Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field, 1949, 75 U.N.T.S. 31, Article 49; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 1949, 75 U.N.T.S. 85, Article 50; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135, Article 129; Geneva Convention relative to the protection of civilian persons in time of war 1949, 75 U.N.T.S. 287, Article 146; J. M. HENCKAERTS & L. DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I, 608 (2009).

agreement of the parties regarding its interpretation.¹⁸² States have applied this provision from the Geneva Conventions to all serious violations of humanitarian law, including war crimes committed in NIACs.¹⁸³

The obligation to extradite arises when the State in custody of the alleged offender evades its duty to prosecute¹⁸⁴ and it can be discharged by surrendering the alleged violators to a competent international criminal court.¹⁸⁵

Here, both Adawa and Rasasa are parties to the Geneva Conventions of 1949.¹⁸⁶ Ms. Grey is suspected of having committed serious violations of international humanitarian law, and Rasasa expressed its unwillingness to prosecute her.¹⁸⁷ Hence, her arrest for the purpose

¹⁸² VCLT, *supra* note 107, Article 31(3)(b).

¹⁸³ The Prosecutor v. Tadic, Separate Opinion of Judge Abi-Saab on the Defence Motion for Interlocutory Appeal on Jurisdiction, Oct. 2, 1995, (Case No. IT-94-1-T); The Prosecutor v. Tadic, Submission of the Government of the United States of America Concerning Certain Arguments Made by Counsel for the Accused in the Case of The Prosecutor of the Tribunal v. Tadic, Jul. 17, 1995, (Case No. IT-94-1-T) ¶¶35-36; The Prosecutor v. Tadic, Separate Opinion of Judge Abi-Saab on the Defence Motion for Interlocutory Appeal on Jurisdiction, Oct. 2, 1995, (Case No. IT-94-1-T); S.C. Res. 978 (Feb. 27, 1995); S.C. Res. 1193 (Aug. 28, 1998); S.C. Res. 1199 (Sep. 23, 1998); Commission on Human Rights Res. 1991/1, U.N. Doc. E/CN.4/1999/167 ¶2; A. CASSESE, *INTERNATIONAL CRIMINAL LAW* 88 (2008); J. M. HENCKAERTS, *Customary International Humanitarian Law: a response to US Comments*, 89 *INTERNATIONAL REVIEW OF THE RED CROSS* 473 (2007) 476; J. M. HENCKAERTS & L. DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I*, 609 (2009); Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067 (1992), Section 1209; Belgium, *Loi relative à la répression des violations graves du droit international humanitaire* of Jun. 16, 1993, *Moniteur Belge, Official Gazette of Belgium*; Switzerland – *Code Pénal Militaire*, Jun. 13, 1927, RS 321.0, Article 111; United Nations, 18 U.S. Code § 2441 – War crimes; J. M. HENCKAERTS & L. DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I*, 609 (2009).

¹⁸⁴ K. KITTICHAISAREE, *THE OBLIGATION TO EXTRADITE OR PROSECUTE*, 3 (2018).

¹⁸⁵ K. KITTICHAISAREE, *THE OBLIGATION TO EXTRADITE OR PROSECUTE*, 5 (2018); *Int'l Law Comm'*, Rep. of its Sixty-Sixth Session, U.N. Doc. A/69/10, (2014), 153-154; J. M. HENCKAERTS & L. DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I*, 610 (2009).

¹⁸⁶ SAF ¶60.

¹⁸⁷ SAF ¶53.

of surrendering her to the ICC was consistent with Adawa's *aut dedere aut judicare* obligation.

C) Alternatively, Adawa had to execute the arrest warrant notwithstanding conflicting obligations

Even if this Court considers that Adawa was under an obligation to respect Ms. Grey's immunity, Adawa's obligation to execute the arrest warrant must prevail. The ICC is the sole authority to decide over its judicial functions,¹⁸⁸ including questions concerning cooperation and assistance.¹⁸⁹ It has exclusive competence to determine whether a request to cooperate could place a State in a situation of conflicting obligations.¹⁹⁰ States do not have the discretion to dispense with such request nor to refuse to execute an arrest warrant.¹⁹¹

Respondent may argue that Adawa should have informed the ICC of an impediment to the execution of the arrest warrant.¹⁹² However, consultations have no suspensive effect¹⁹³

¹⁸⁸ The Prosecutor v. Al-Bashir, Decision on the Cooperation of the Democratic Republic of the Congo Regarding Omar Al Bashir's Arrest and Surrender to the Court, I.C.C. The Pre-Trial Chamber II, April. 9, 2014, ICC-02/05-01/09 ¶16; Al-Bashir Malawi, *supra* note 159, ¶11.

¹⁸⁹ O. TRIFFTERER & K. AMBOS, THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT. A COMMENTARY 2277 (2015).

¹⁹⁰ M. BERGSMO & L. YAN, STATE SOVEREIGNTY AND INTERNATIONAL CRIMINAL LAW 234 (2012).

¹⁹¹ The Prosecutor v. Al-Bashir, Decision under Article 87(7) of the Rome Statute on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir, I.C.C. The Pre-Trial Chamber II, Jul. 6, 2017, ICC-02/05-01/09 ¶104, 106; Al-Bashir AC, *supra* note 147, ¶152.

¹⁹² Rome Statute of the International Criminal Court (last amended 2010), Jul. 17, 1998, U.N. General Assembly ["Rome Statute"], Article 97.

¹⁹³ The Prosecutor v. Al-Bashir, Decision under Article 87(7) of the Rome Statute on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir, I.C.C. The Pre-Trial Chamber II, Jul. 6, 2017, ICC-02/05-01/09 ["Al-Bashir South Africa"] ¶119; The Prosecutor v. Al-Bashir, Decision under Article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir, I.C.C. The Pre-Trial Chamber II, Dec. 11, 2017, ICC-02/05-01/09 ["Al-Bashir Jordan"] ¶48.

and arrest warrants remain valid until they are explicitly withdrawn or suspended by the ICC.¹⁹⁴ Therefore, States cannot reject its obligation of cooperation on the grounds of a disagreement with the ICC,¹⁹⁵ especially in cases where its execution could succeed only in a narrow window of time.¹⁹⁶

In this case, Adawa was obliged to comply with the arrest warrant issued by the ICC, especially considering that Ms. Grey was expected to be in Adawan territory for only two days.¹⁹⁷

D) In the further alternative, Adawa acted as an agent of the ICC

International criminal jurisdictions rely on the cooperation of the States to enforce their decisions,¹⁹⁸ since States are instruments for the enforcement of the international community's *jus puniendi*.¹⁹⁹ Therefore, when the ICC issues an arrest warrant, the requested States are not exercising its own jurisdiction over a suspect but acting as a mere agent of the Court.²⁰⁰

Here, Adawa was acting as a mere agent of the ICC complying with an arrest warrant and not under its own national criminal jurisdiction. Therefore, no responsibility can be attributed to Adawa over Ms. Grey's arrest.

E) Adawa may proceed to render Ms. Grey to the ICC

¹⁹⁴ Al-Bashir South Africa, *supra* note 193, ¶120.

¹⁹⁵ Al-Bashir South Africa, *supra* note 193, ¶104.

¹⁹⁶ Al-Bashir Jordan, *supra* note 193, ¶48.

¹⁹⁷ SAF ¶49.

¹⁹⁸ Claus Kreß, *supra* note 161, ¶17.

¹⁹⁹ Al-Bashir Malawi, *supra* note 159, ¶46.

²⁰⁰ The Prosecutor v. Al-Bashir, Prosecution Response to the Observations of the African Union and the League of Arab States, I.C.C. The Appeals Chamber, Aug. 14, 2018, ICC-02/05-01/09 OA2 ¶11,12.

Since the arrest and detention of Ms. Grey was consistent with international law,²⁰¹ Adawa may proceed to render her to the ICC.

V) PRAYER OF RELIEF

Therefore, it may please the Court to adjudge and declare that:

I) It has jurisdiction over Adawa's claims because Adawa is a party to the 1929 Treaty of Botega;

II) Rasasa's development and deployment of the WALL along the border between Adawa and Rasasa is in violation of international law, and order that the WALL be dismantled and removed forthwith;

III) It may adjudicate Adawa's claim that Rasasa's imposition of tariffs on Helian products from Adawa violates the CHC Treaty, and that Adawa is entitled to compensatory damages reflecting the financial harm it has suffered to date, such amount to be determined in subsequent proceedings; and

IV) The arrest and detention of Darian Grey were consistent with Adawa's obligations under international law, and that Adawa may proceed to render her to the International Criminal Court.

²⁰¹ *Supra* §(IV)(A)-(B)-(C)&(D)