

Faculté de droit et de criminologie

Philip C. Jessup International Law Moot Court Competition 2022

The Case concerning the Suthan Referendum

Auteur : Elisaveta BAJENOVA
Promoteur : Pierre D'ARGENT
Année académique 2021-2022
Master de spécialisation en droit européen et international

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INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE
THE HAGUE, THE NETHERLANDS



THE CASE CONCERNING THE SUTHAN REFERENDUM

THE DEMOCRATIC REPUBLIC OF ANTARA
(APPLICANT)

v.

THE VELAN KINGDOM OF RAVARIA
(RESPONDENT)

MEMORIAL FOR APPLICANT

2022

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STATEMENT OF JURISDICTION

Pursuant to the Special Agreement [**“Compromis”**], which includes the Corrections and Clarifications [**“Clarifications”**], concluded on 13 September 2021 and to the Joint Notification between the Democratic Republic of Antara [**“Antara”**] and the Velan Kingdom of Ravaria [**“Ravaria”**], the Parties hereby submit to this Court [**“the Court”**] their dispute concerning the Suthan Referendum, in accordance with Article 40(1) of the Statue of the International Court of Justice [**“Statute”**].

Antara and Ravaria have referred the dispute to the Court, granting it jurisdiction under Article 36(1) of the Statute.

QUESTIONS PRESENTED

- A. Whether the documents obtained in the search of the vehicle driven by Ms. Walters and the recording from the conciliation meeting of 30 May 2021 are admissible as evidence in these proceedings;
- B. Whether Ravaria's campaign of financial contributions and the dissemination of misinformation intending to influence the outcome of the Suthan referendum were in violation of international law;
- C. Whether Antara's claim relating to the suspension order of Prof. Hunland's Pano account is inadmissible and, in any event, whether that order was consistent with international law; and
- D. Whether Ravaria's claim concerning the takedown of the Lunar Botnet is inadmissible, and, in any event, whether Antara's actions in taking down the botnet, and the effects on devices in Ravaria, were consistent with international law.

STATEMENT OF FACTS

BACKGROUND

Antara and Ravaria are neighboring countries located in the Benthamian Peninsula [**“the Peninsula”**]. They have a population of 21 million and 12 million respectively. Ravaria shares a border with the Suthan province of Antara.

Zemin colonized the Peninsula in the 18th century and divided it into three administrative districts: Antara in the North, Ravaria in the South, and Sutha in between. When Antara and Ravaria became independent, Sutha was not self-sufficient and remained under the colonial control of Zemin. Ravaria supported the independence of Sutha, while Antara suggested the annexation of Sutha to its territory. In 1962, Antara, Ravaria and Zemin concluded the Treaty of Singapore [**“the Treaty”**]. Sutha thereby became a province of Antara, with a Legislative Council, just like the other Antaran provinces. The Treaty provides the possibility to organize a referendum every 25 years on whether Sutha should become independent. In this context, the Suthan Independence Party [**“SIP”**] was created by a minority.

TECHNOLOGICAL DEVELOPMENT AND PACA

By the late 2010s, the quasi totality of the Antaran and Ravarian population had Internet access. By 2018, Pano [**“the Platform”**] became the most famous social media in the Peninsula, with four million daily active users in Antara. The Platform is owned by a Zemin public company.

In 2017, Antaran police departments and hospitals were hit by cyberattacks causing damage. As a response, the national Parliament enacted the Protect Antaran Cyberspace Act [**“PACA”**] and created the Data Protection and Cybersecurity Agency [**“the DPCA”**].

PROFESSOR HUNLAND

Professor Liam Hunland [**“Prof. Hunland”**] has been a legal permanent resident of the Suthan province of Antara since the 1980s, with Ravarian nationality. He is a strong supporter of Suthan independence. Prof. Hunland had over nine million followers on Pano and was one of the most influential personalities on this social media in the Peninsula. Since his admission to SIP in 2009, the popularity of the party has increased. He also established in 2020 the Suthans Against

Domination [**“SAD”**], a non-profit foundation dedicated to promoting the Velan culture and the Suthan independence.

CREATION OF FAKE PANO ACCOUNTS

In May 2020, over 180,000 suspicious Pano accounts had been created in two weeks, forty-five times the average. These accounts lacked typical characteristics of authentic accounts. They were used to generate and amplify misinformation against the Antaran government, more specifically on the COVID-19 measures in the Suthan province of Antara.

THE REFERENDUM AND PROFESSOR HUNLAND

In October 2020, a resolution to organize the referendum was adopted by the national Antaran Parliament. Since then, Prof. Hunland began to persuade citizens in Sutha to vote in favor of the referendum by posting over 800 messages, many of which proved to be false. His posts contained not only misinformation but also violent and incendiary messages. As a consequence, and upon request of Pano users, the Platform decided to flag the posts containing such messages. Between 11 January and 1 February, 63% of his posts were flagged. The users had to click on an additional screen with a warning to see them.

On 31 January 2021, Prof. Hunland organized in the Suthan province a rally gathering 7,500 people, in violation of the COVID-19 restrictions. The police attempted to disperse the crowd. However, violence broke out, injuring 225 people and causing three deaths.

On 15 February 2021, the Federal Court of Lower Antara ordered the suspension of Prof. Hunland’s Pano account for one year. The decision was motivated on the ground that Prof. Hunland “created a serious risk of violence”, that he was “spreading lies” and “threatening the public order”. Prof. Hunland challenged the order before an Antaran federal court and took legal action against Pano in Zemin, but all these applications remained unsuccessful.

In March 2021, 52% of the voters voted for the independence of Sutha from Antara. The two-year process of transition to the separation of Sutha from Antara began.

LUNAR BOTNET AND OPERATION MOONSTROKE

One week before the referendum of March 2021, the DPCA’s cybercrime prevention unit took down the “Lunar Botnet” [**“the Botnet”**] on the basis of a court order taken under Section 8

of PACA. The Botnet had infected 30,000 devices over the three months prior to the election, in order to spread misinformation. The DPCA found and hacked the command-and-control server of the Botnet, situated in Antara. From this server, it launched the “Operation Moonstroke” [“**the Operation**”]. The Operation aimed at disabling the Botnet by removing the segments of script permitting the remote control by the botmaster from the affected devices. No harm was caused to any device. Afterwards, the DPCA discovered that 20,000 devices were located in Antara and 5,000 in Ravaria. The DPCA subsequently notified the affected internet service providers of the Operation.

THE SEIZURE OF THE BRIEFCASE

In the early hours of 25 April 2021, Ms. Emma Walters [“**Ms. Walters**”], the wife of the Ravarian Ambassador Benny Walters, ran over a pedestrian, while driving a rented vehicle in Antara. She was heavily intoxicated, and the police officers arrested her. She gave them a briefcase where they found her diplomatic passport. They handed her passport back and seized the briefcase. She did not oppose her arrest. A duty sergeant, not aware of Ms. Walters’ diplomatic status, put her in custody and she fell asleep. When she woke up and identified herself as the wife of the Ravarian Ambassador, she was released from custody.

Meanwhile, the duty sergeant found records of financial transactions and meetings over a five-years period revealing a program led by the Ravarian Ambassador to fund SIP and later SAD [“**the Documents**”] in the briefcase. He immediately delivered the briefcase to the Antaran National Intelligence Agency [“**ANIA**”]. The content of the briefcase revealed crucial elements. First, the Ravarian government approved the Embassy plan to fund SIP and SAD. The amount of donations to SAD between April 2020 and March 2021 was triple the amount raised by any other organization involved in the referendum. Second, the Ravarian External Affairs Ministry authorized the launching of the Lunar Botnet by SAD. Third, it provided information to the Ravarian Ambassador on how to spread pro-independence posts through fake accounts. Lastly, the Ravarian Intelligence Service had initiated a “top secret” propaganda plan to persuade the citizens of Sutha to join Ravaria.

The Ravarian Embassy demanded the return of the briefcase. ANIA immediately returned it and informed the Embassy that it kept photocopies of the Documents for reasons of national security.

CONCILIATION MEETING AND PRESENT PROCEEDING

As the dispute escalated, an *ad hoc* conciliation was organized between Antara and Ravaria. The participants agreed to record the meeting to facilitate the preparation of a transcript. The recording revealed that the Ravarian Attorney-General did not deny the content of the Documents and conceded that Ambassador Walters made a mistake by leaving the briefcase in the rented car of his wife.

Diplomats from both States kept negotiating before notifying the Special Agreement to the Court on 13 September 2021.

SUMMARY OF PLEADINGS

-A-

The Documents are admissible as evidence in these proceedings because they were obtained legally. Alternatively, unlawfully acquired evidence is always admissible and, even if it was not, the Court should admit them after balancing the various interests and circumstances at stake. The Recording is admissible as evidence in these proceedings because the rule, according to which the Court should not take account of statements made during previous negotiations, is not a rule of inadmissibility. Alternatively, this rule is not applicable in the present case.

-B-

The campaign of financial contributions is attributable to Ravaria because it was operated by Ravarian States organs. The dissemination of misinformation was operated by a private actor under the instruction and effective control of Ravaria. Those acts violated the non-intervention principle because Ravaria intervened in Antara's internal affairs by influencing the Suthan referendum and used methods of coercion. Additionally, they violated the right of self-determination of the residents of Sutha recognized in the Treaty of Singapore.

-C-

Ravaria's claim relating to the Order is inadmissible as diplomatic protection cannot be exercised in the present case. Second, Antara respected Prof. Hunland's procedural rights protected by Article 14(1) of the International Covenant on Civil and Political rights [**"ICCPR"**]. Third, Antara lawfully restricted his freedom of speech because the Order met the legality criterion, was necessary and was proportionate. In any event, Prof. Hunland's freedom of speech cannot be protected because it is contrary to the essence of the ICCPR.

-D-

Antara acted in conformity with international law. Ravaria cannot bring their claim because it is inadmissible under the clean hands doctrine. In any event, the Operation and its effects were legal under international law. First, Antara respected its due diligence obligation by launching the Operation because it prevented further harm from the Botnet and acted as a good neighbor. Second,

Antara did not violate the prohibition to use force because the Operation had no specific target and its effects did not cause material damage. Third, Antara lawfully limited Ravarians' right to privacy protected by Article 17 ICCPR because the measure was provided by law, pursued a legitimate aim, and was necessary and proportionate. In the alternative, the Operation constitutes a countermeasure as it induces compliance with international law, complies with procedural requirements and is proportionate and necessary.

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

The documents obtained in the search of the briefcase found in the vehicle driven by Ms. Walters [**“the Documents”**] (1) and the recording from the conciliation meeting of 30 May 2021 [**“the Recording”**] are admissible as evidence in these proceedings (2).

1. The Documents are admissible as evidence before the Court

The Documents are admissible as evidence before the Court because they were obtained legally (a). In the alternative, the illegal character of their collection does not make them inadmissible (b).

a. Antara legally obtained the Documents

Antara collected the Documents legally because they were not inviolable under the Vienna Convention on Diplomatic Relations of 18 April 1961 [**“VCDR”**],¹ to which both Antara and Ravaria are parties.²

First, diplomatic bags are inviolable under Article 27(3) VCDR if they “bear visible external marks of their character”,³ such as the seal of the sending government.⁴ The briefcase in which the Documents were found did not meet this requirement.⁵

¹ Vienna Convention on Diplomatic Relations, 1961, 500 UNTS 95 [**“VCDR”**].

² Compromis, ¶46.

³ VCDR, Article 27(4).

⁴ Bhagevatula Satyanarayana Murty, ‘The International Law of Diplomacy’ (Martinus Nijhoff Publishers 1989) [**“Murty”**], p. 389.

⁵ Compromis, ¶36.

Second, archives and documents found outside of the mission are inviolable under Article 24 VCDR, “if they bear marks of identification which indicate their character”.⁶ The seized Documents did not bear such marks.⁷

For these reasons, they did not enjoy inviolability and Antara could legally seize them. Since Antara produced them in full compliance⁸ with the Court’s Rules,⁹ they are admissible.

b. In the alternative, the unlawful procurement by Antara of the Document does not render them inadmissible

If the Court finds that Antara acquired the Documents unlawfully,¹⁰ they must be admitted because unlawfully procured pieces of evidence are always admissible (i). In the alternative, the Court should admit the Documents after balancing the various interests and circumstances at stake (ii).

i. Unlawfully procured documents are always admissible as evidence before the Court

The principle of admissibility of evidence is prevalent in inter-state litigation¹¹ and before the Court.¹² This entails that it must “admit everything proffered by the parties”.¹³ “On the basis

⁶ Murty, p. 382.

⁷ Compromis, ¶36.

⁸ Clarifications, ¶9.

⁹ ICJ Rules of Court, *ICJ Acts and Documents No 6* (2007) [“**ICJ Rules**”], Article 52(1).

¹⁰ This is without prejudice to the fact that the seizure is legal.

¹¹ Shabtai Rosenne and Yaël Ronen, ‘The Law and Practice of the International Court, 1920-2005’ (4th edn, Martinus Nijhoff 2006), p. 557; Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal, 1945, 82 UNTC 280, Article 19; Convention Between Great Britain and the United States of America for the Adjustment of the Boundary between the Dominion of Canada and the Territory of Alaska, 1903, Article 2(5).

¹² Anna Riddell and Brendan Plant, ‘Evidence Before the International Court of Justice’ (British Institute of International and Comparative Law, 2009) [“**Riddell/Plant**”], pp. 153 and 158.

¹³ Riddell/Plant, p. 159.

of the totality of the evidence presented to it”,¹⁴ the Court will determine the facts of the case by assigning weight to each piece of evidence.¹⁵ Illegally collected evidence is thus admissible and the Court will assign weight to it.¹⁶

The principle of free admissibility of evidence relieves “the party which adduces the evidence of having to prove admissibility”.¹⁷ Thus, Ravaria bears the burden of proof as to the inadmissibility of the Documents.

The Statute and the Rules of the Court do not provide for a limitation to the admissibility of evidence, except when it is untimely submitted¹⁸ or when it is irrelevant.¹⁹ In the present case, Antara produced the Documents in compliance with the Statute and Rules of the Court.²⁰

Contrary to the majority of international criminal tribunals,²¹ the Statute and the Rules of the Court do not provide for a ground of exclusion of unlawfully obtained evidence.²² Besides,

¹⁴ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Rep 2015, ¶176.

¹⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Rep 2010 [“**Pulp Mills**”], ¶168.

¹⁶ Peter Tomka and Vincent-Joël Proulx, ‘The Evidentiary Practice of the World Court’ in Juan Carlos Sainz-Borgo et al., *Liber Amicorum in Honour of a Modern Renaissance Man: His Excellency Gudmundur Eiriksson* (LexisNexis 2017), p. 371; Hugh Thirlway, ‘Dilemma or Chimera? - Admissibility of Illegally Obtained Evidence in International Adjudication’ (1984) Vol 78 No 3 Am. J. Int. Law [“**Thirlway**”], p. 641.

¹⁷ Chittharanjan F. Amerasinghe, ‘Evidence in International Litigation’ (Martinus Nijhoff Publishers 2005) [“**Amerasinghe**”], p. 167; Mojtaba Kazazi, ‘Burden of Proof and Related Issues’ (Kluwer International Law 1996) [“**Kazazi**”], p. 185.

¹⁸ ICJ Rules, Article 52(1).

¹⁹ ICJ Rules, Article 50(1); *Pulp Mills*, ¶163.

²⁰ Clarifications, ¶9.

²¹ ICTY Rules of Procedure and Evidence, U.N.Doc.IT/32/Rev.50 (11 February 1994), Rule 89(c)(d); ICTR Rules of Procedure and Evidence, U.N. Doc. ITR/3/REV.1 (29 June 1995), Rule 95; Special Court for Sierra Leone Rules of Procedure and Evidence (7 March 2003), Rule 95; Special Tribunal for Lebanon, STL-BD-2009-01-Rev.11 (20 March 2009), Rule 162; Rome Statute of the International Criminal Court, 1998, 2187 UNTS 3, Article 69(7).

²² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, Merits, ICJ Rep 1986 [“**Nicaragua**”], ¶59; Amerasinghe, p. 164.

there is no general principle²³ of inadmissibility of unlawfully obtained evidence applicable in international litigation, as such principle is not recognized by a majority of domestic systems.²⁴ Accordingly, the Court has never excluded unlawfully obtained evidence.²⁵ In the *Corfu Channel* case, the Court treated the evidence as admissible²⁶ and based its decision on evidence collected by the United Kingdom through a violation of Albania's territorial sovereignty.²⁷

For those reasons, the Documents seized by Antara, during the search of Ms. Walters' vehicle, even if in violation of Article 24 VCDR, are admissible as evidence.

- ii. Alternatively, the Court should admit the Documents after balancing the various interests and circumstances at stake

If the Court considers that it may exclude evidence due to unlawful procurement, it may only do so after having balanced the various interests and circumstances at stake.²⁸ Many domestic legal systems admit evidence after a balance of interests.²⁹ In the present case, the Court should

²³ Statute of the International Court of Justice (1945), 59 STAT 1055 [**“ICJ Statute”**], Article 38(1)(c).

²⁴ Sara Mansour Fallah, 'The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals' (2020) 19 Law Pract Int [**“Mansour”**], p. 174.

²⁵ Kazazi, p. 206.

²⁶ Rüdiger Wolfrum and Mirka Möldner, 'International Courts and Tribunals, Evidence', The Max Planck Encyclopedia of Public International Law, 2013, ¶60.

²⁷ *Corfu Channel case (United Kingdom v. Albania)*, Judgment, ICJ Rep 1949 [**“Corfu Channel”**], pp. 13-15 and 133; Nasim Hasan Shah, 'Discovery by Intervention: The Right of a State to Seize Evidence Located within the Territory of the Respondent State' (1959) Vol 53 No3 Am. J. Int. Law, pp. 595-612 [**“Shah”**], p. 606.

²⁸ Mansour, pp. 174-176; Siyuan Chen, 'Re-assessing the Evidentiary Regime of the International Court of Justice: A case for codifying its discretion to exclude evidence' (2015) 13(1) International Commentary on Evidence [**“Chen”**], pp. 32-39; W. Michael Reisman and Eric E. Freedman, 'The Plaintiff's Dilemma: Illegally Obtained Evidence and Admissibility in International Adjudication' (1982) 76 Am. J. Int'l L [**“Reisman/Freedman”**], p. 738.

²⁹ Australia's Uniform Evidence Act, Section 138; Switzerland's Civil Procedure Code, Article 152(2); South Africa's Constitution, 35(5); Nigeria's Evidence Act of 2011, Section 14; Kenya's Constitution, Article 50(4); Belgium's Supreme Court (3d ch.) decision of 14 June 2021, *Journal des Tribunaux*, (2020) n°28, p. 551.

find that the Documents are crucial for the proceedings (a) and that the violation of the VCDR was incidental (b). Therefore, the interest in admitting the Documents outweighs their illegal collection (c).

a) The Documents are crucial in the proceedings

The Court's task "is to co-operate in the objective ascertainment of the truth".³⁰ In this perspective, it should admit evidence that "change[s] the situation radically in dimension and seriousness"³¹ or that would "shed light on the central questions of [...] attributability".³²

The Documents are essential to establish beyond reasonable doubt the attribution of certain conducts to Ravaria.³³ Declaring them inadmissible will make it more difficult to prove that the Ravarian Embassy funded the SAD and SIP³⁴ and that the mission was at the origin of the creation of 180,000 fake Pano accounts.³⁵ Likewise, it would be more difficult to establish that the Lunar Botnet was controlled by SAD with the approval of Ravaria.³⁶

b) The Documents were seized incidentally

The Court must take into consideration the adventitious character of the breach of Article 24 VCDR when assessing the admissibility of the Documents. Although not being part of the

³⁰ *Customs Regime between Germany and Austria*, Advisory opinion, PCIJ Series A/B, No 63 (1931), Separate Opinion of Judge Van Eysinga, p. 146.

³¹ *ConocoPhillips et al. v. Bolivarian Republic of Venezuela*, ICSID, ARB/07/30, Decision on Jurisdiction and Merits 3 September 2013, Dissenting opinion of George Abi-Saab, p. 23.

³² *Application of the Convention in the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment ICJ Rep 2007 [**"Bosnian Genocide"**], Dissenting opinion of Vice-President Al-Khasawneh, ¶35 and Dissenting Opinion of Judge Mahiou, ¶58.

³³ Pleadings, (B)(1).

³⁴ Compromis, ¶¶22 and 37(a).

³⁵ Compromis, ¶¶17 and 37(b).

³⁶ Compromis, ¶¶31, 32 and 37(c).

conditions to trigger their responsibility,³⁷ the intention of the State violating an international obligation is taken into account in certain cases.³⁸ Accordingly, when ruling on the admissibility of the Documents, the Court should consider Antara's intention.³⁹

In the present case, the procurement of the Documents was unintentional. The arresting officers did not arrest Ms. Walters with the intention to seize the Documents because they did not know that she was transporting them in the Briefcase their possession.⁴⁰ Nor had the duty sergeant who found the Documents knowledge of Ms. Walters' diplomatic status.⁴¹

c) Consequently, the Documents are admissible because the incidental breach of the VCDR is outweighed by their crucial character

The Court must find that the interest of admitting the Documents outweighs the incidental breach of the VCDR by Antara and admit the seized Documents accordingly. In the *Corfu Channel* case, the Court condemned the United Kingdom for a purposeful violation of the territorial sovereignty of Albania to collect evidence for judicial proceedings.⁴² However, the decision relied on unlawfully procured evidence.⁴³

³⁷ ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts with commentaries, Yearbook of the International Law Commission 2001, Vol II Part Two, A/56/10 [“**ARSIWA Commentaries**”], p. 36.

³⁸ Giuseppe Palmisano, ‘Fault’, The Max Planck Encyclopedia of Public International Law, 2007, ¶¶34-38; ARSIWA Commentaries, p. 107.

³⁹ Mansour, p. 176.

⁴⁰ Compromis, ¶35.

⁴¹ Compromis, ¶36; VCDR, Article 37.

⁴² Corfu Channel, pp. 32-35.

⁴³ Corfu Channel, Annex I, 18 and 19, p. 133 and pp. 13-15; Shah, p. 606.

2. The recording is admissible as evidence before the Court

The Recording contains statements made by the Attorneys-General of Antara and Ravaria. The PCIJ⁴⁴ and the Court⁴⁵ have reiterated that it “cannot take into account declarations, admissions or proposals which the Parties may have made during direct negotiations between themselves, when such negotiations have not led to a complete agreement”.⁴⁶

However, the Recording is admissible as evidence in the present proceedings because this rule is not a rule of inadmissibility **(a)**. In the alternative, it is inapplicable **(b)**.

a. The rule according to which the Court should not take account of statements made during previous negotiations is not a rule of inadmissibility

In accordance with the principle of admissibility of evidence,⁴⁷ the wording “cannot take account”⁴⁸ means that, while evidence originating from previous settlement negotiations is admissible, the Court “would place no reliance on it”⁴⁹ when determining its probative value.

⁴⁴ *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Jurisdiction, PCIJ Series A No 8 (1927) [**“Chorzów Factory Jurisdiction”**], p. 19.

⁴⁵ *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Jurisdiction and Admissibility, ICJ Rep 1994, ¶40; *Nuclear Tests (Australia v. France)*, Judgment, ICJ Rep 1974, ¶54; *Land, Island and Maritime Frontier dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, ICJ Rep 1992 [**“El Salvador”**], ¶¶73 and 204; *The Minquiers and Ecrehos case (France/United Kingdom)*, Judgment, ICJ Rep 1953 [**“Minquiers”**], p. 71; *Case concerning Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, ICJ Rep 1952 [**“Morocco”**], pp. 200-201.

⁴⁶ *Frontier dispute (Burkina Faso/Republic of Mali)*, Judgment ICJ Rep 1986 [**“Burkina”**], ¶179;

⁴⁷ Pleadings, (A)(1)(b)(i).

⁴⁸ Chorzów Factory Jurisdiction, p. 19.

⁴⁹ Thirlway, p. 625. This interpretation is corroborated by the French version of the judgment: “*La Cour ne saurait faire état des déclarations*” (Chorzów Factory Jurisdiction, p. 19).

This interpretation is supported by the fact that the Court can take note of “certain facts which emerge from a document submitted”,⁵⁰ of the “general tenor of the correspondence”,⁵¹ and of the “shared view [...] of the Parties”.⁵²

Therefore, the Court should assign more or less weight to the Recording rather than excluding it.

b. In any event, the rule is not applicable in the present case

If the Court considers that the rule constitutes an exception to the principle of admissibility of evidence,⁵³ such a rule is, nevertheless, inapplicable in the present case.

Indeed, it should not be given an extensive interpretation, “being primarily intended to ensure that legal rights are not prejudiced by offers of compromise”.⁵⁴ Accordingly, the Court can take into account Statements made by Ravaria “of its view of a question of fact”.⁵⁵ In the present case, the statements made by the Attorneys-General in the Recording relate to the acknowledgement of facts and of the content of the Documents.⁵⁶

Therefore, the Recording is admissible.

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

⁵⁰ Burkina, ¶179.

⁵¹ Morocco, pp. 200-201.

⁵² El Salvador, ¶73.

⁵³ Pleadings, (A)(1)(b)(i).

⁵⁴ El Salvador, ¶206.

⁵⁵ El Salvador, ¶206; Minquiers, p. 71.

⁵⁶ Compromis, ¶44.

The campaign of financial contributions and the dissemination of misinformation⁵⁷ are attributable to Ravaria (1) and violated international law (2).

1. The campaign of financial contributions and the dissemination of misinformation are attributable to Ravaria

The campaign of financial contributions was authorized and operated by Ravarian State organs (a) and the dissemination of misinformation was made under the effective control of Ravaria (b).

a. The campaign of financial contributions was operated by Ravarian State organs

The financial contributions campaign was authorized by senior members of the government of Ravaria and was operated by the Ravarian Ambassador in Antara.⁵⁸ Organs of the central government – such as Ministers – and persons with responsibility for the external relations of the State – such as Ambassadors – are State organs.⁵⁹ According to Article 4 ARSIWA, the conduct of any State organ is attributable to that State.⁶⁰ Therefore, the campaign of financial contributions is attributable to Ravaria on the basis of Article 4 ARSIWA.

⁵⁷ “Misinformation” here is any “false information [...] knowingly shared to cause harm” (see Tomoko Nagasako, ‘Global disinformation campaigns and legal challenges’ (2020) 1 Int. Cybersecur. Law Rev., pp. 127-128). “Disinformation” will be used as a synonym of “misinformation”.

⁵⁸ Compromis, ¶37(a).

⁵⁹ ARSIWA Commentaries, p. 40.

⁶⁰ ILC, Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission 2001, vol II Part Two, A/RES/56/83 [“ARSIWA”], Article 4; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Rep 1999; *Certain German Interests in Polish Upper Silesia*, Merits, P.C.I.J. Series A No 7 1926.

b. The dissemination of misinformation operated by SAD were made under the instructions and the effective control of Ravaria

The dissemination of misinformation was operated by SAD through the Lunar Botnet from its headquarters in Antara.⁶¹ According to Article 8 ARSIWA, the conduct of a group of persons - such as SAD - performed under the instructions, the direction or control of a State is attributable to that State.⁶² As the terms “instructions”, “direction” and “control” are disjunctive, it is sufficient to establish one of them.⁶³

In the present case, SAD acted under the instructions of Ravaria. Indeed, the misinformation operations operated by SAD were first authorized by the Ravarian External Affairs Ministry.⁶⁴ It is widely accepted in international law that a conduct in fact authorized by a State is attributable to that State.⁶⁵

Moreover, Ravaria controlled the conduct of SAD. To demonstrate the degree of control and dependence, the Court found that it may be inferred from, notably, “the organization, [...] the planning of operations, the choosing of targets and the operational support provided”.⁶⁶ SAD’s operation of the Lunar Botnet was dependent on Ravaria’s approval.⁶⁷ Ravaria chose the residents of Sutha as the target of the misinformation operations, with the intention to “make Suthans understand that they can never be assured of freedom so long as they remain in Antara” and to “guide the hearts and minds of those voters towards secession”.⁶⁸ Ravaria provided SAD with operational and financial support, such as the donations of Embassy funds.⁶⁹ Accordingly, SAD acted under the effective control of Ravaria.

⁶¹ Compromis, ¶37(c).

⁶² ARSIWA, Article 8; Nicaragua, ¶¶109-116.

⁶³ ARSIWA Commentaries, p. 48.

⁶⁴ Compromis, ¶37(c).

⁶⁵ ARSIWA Commentaries, p. 47.

⁶⁶ Nicaragua, ¶112.

⁶⁷ Compromis, ¶37(c).

⁶⁸ Compromis, ¶37(c).

⁶⁹ Compromis, ¶37(a).

Hence, the dissemination of misinformation operated by SAD is attributable to Ravaria on the basis of Article 8 ARSIWA.

2. The campaign of financial contributions and the dissemination of misinformation were in violation of international law

The campaign of financial contributions and the dissemination of misinformation violated the non-intervention principle protected under customary international law **(a)**. In addition, they violated the right of external self-determination of the residents of Sutha, as recognized under the Treaty of Singapore **(b)**.

a. The campaign of financial contributions and the dissemination of misinformation violated the non-intervention principle protected under customary international law

Ravaria carried out a campaign of financial contributions and a dissemination of misinformation in order to influence the outcome of the Suthan referendum held in Antara.⁷⁰ It is of customary international law that every sovereign State has the right “to conduct its affairs without outside interference”.⁷¹ The non-intervention principle prohibits “all States or groups of States to intervene directly or indirectly in internal or external affairs of other States”.⁷² As such, Ravaria violated the principle of non-intervention because it intervened in Antara’s internal affairs (i) with methods of coercion (ii).⁷³

i. Ravaria intervened in Antara’s internal affairs

Ravaria influenced the outcome of the Suthan referendum by making financial contributions and by disseminating misinformation.⁷⁴ The Court stated that the choice of a political, economic, social and cultural system – such as a referendum – falls within the “*domaine*

⁷⁰ Compromis, ¶37.

⁷¹ Nicaragua, ¶202.

⁷² Nicaragua, ¶205; Charter of the United Nations, 1945, 1 UNTS XVI Articles 2(4) and 2(7).

⁷³ Nicaragua, ¶205.

⁷⁴ Pleadings, (B)(2)(a)(ii).

réserve”⁷⁵ of a sovereign State.⁷⁶ By channeling €25 million in Embassy funds to SAD⁷⁷ and by disseminating misinformation through the Lunar Botnet,⁷⁸ Ravaria influenced the Suthan referendum held in Antara and, thus, intervened in Antara’s internal affairs.⁷⁹

ii. Ravaria used methods of coercion

There is coercion by a foreign power when the latter wants the targeted State to do something and, to this aim, engages “in the coercive manipulation of the target’s decision-making-process”.⁸⁰ The Court confirmed that the use of force is not required to constitute coercion.⁸¹ Ravaria’s campaign of financial contributions (*a*) and dissemination of misinformation (*b*) are, together, a method of coercion interfering in Antara’s internal affairs (*c*).

a) The campaign of financial contributions in support of the Suthan independence is a wrongful interference under customary international law

Ravaria channeled €25 million in Embassy funds to SIP and SAD in order to support the Suthan independence during the referendum in Antara.⁸² Such a campaign of financial contributions made by foreign powers is a wrongful interference under customary international

⁷⁵ “Reserved domain”. It describes “the areas of State activity that are internal or domestic affairs of a State and are therefore within its domestic jurisdiction or competence” (see Katja S Ziegler, ‘Domaine Réserve’, Max Planck Encyclopedia of Public International Law, 2013).

⁷⁶ Nicaragua, ¶205.

⁷⁷ Compromis, ¶37(a).

⁷⁸ Compromis, ¶37(c); Pleadings, (B)(1)(b).

⁷⁹ Compromis, ¶¶30, 37(b) and 37(c).

⁸⁰ Steven Wheatley, ‘Foreign Interference in Elections under the Non-intervention Principle: We Need to Talk about “Coercion”’, (2020) 31 Duke Journal of Comparative & International Law [“Wheatley”], p. 161.

⁸¹ Nicaragua, ¶205.

⁸² Compromis, ¶¶36 and 37.

law.⁸³ The Declaration on Friendly Relations and Co-operation states that “armed intervention and *all other forms of interference* (...) against the personality of the State or against its *political*, economic and cultural elements, are in violation of international law”.⁸⁴ This Declaration is an authoritative interpretation of the UN Charter⁸⁵ and is thus evidence of *opinio juris*. State practice reveals that around 70% of States have a domestic legislation banning foreign financial contributions to political parties.⁸⁶ This percentage is the result of an increasing tendency of States to strengthen their laws against foreign campaigns of financial contributions during elections.⁸⁷ Accordingly, foreign financial contributions made during the elections of a State to support a campaign are condemned under international law.

In the present case, the Ravarian Embassy made indirect, thus covert, financial contributions to SIP and SAD through Velan religious organizations in Sutha.⁸⁸ Covert campaigns of financial contributions are evidence of the unlawful intent and character of such activities.⁸⁹ In addition, Ravaria’s intent to unlawfully influence the Suthan referendum is demonstrated by the

⁸³ ICJ Statute, Article 38(1)(b); *North Sea Continental Shelf case (Germany v. Denmark, Germany v. Netherlands)*, Judgment, ICJ Rep 1969, ¶¶74 and 77.

⁸⁴ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA A/Res/2625(XXV) (24 October 1970) [“**Declaration on Friendly Relations and Co-operation**”], p. 123 (emphasis added).

⁸⁵ Nicaragua, ¶¶202 and 203; Lori Fisler Damrosch, ‘Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs’ (1989) 83 No 1 The American Journal of International Law [“**Damrosch**”], p. 9.

⁸⁶ United States Code, Title 2, The Congress, ¶ 441e; Federal Law on Political Parties of the Russian Federation, 2001 (as of December 5, 2017) (*Федеральный закон "О политических партиях" от 11.07.2001 N 95-ФЗ*), Article 30(3); France’s *Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique*, Article 11-4; United Kingdom’s Political Parties and Referendums Act, 2000, Article 54; South-Africa’s Political Party Funding Act (PPFA), 2018, Article 8; Australia’s Commonwealth Electoral Act 1918 (Compilation 63), Section 302; Brazil’s *Lei dos partidos políticos* Law 9.096, 1995; For more examples, see IDEA Database, “1. Is there a Ban on Donations from Foreign Interests to Political Parties”, <https://www.idea.int/data-tools/question-view/527> (consulted the 01/08/2022).

⁸⁷ Damrosch, p. 28.

⁸⁸ Compromis, ¶36.

⁸⁹ Damrosch, p. 17.

amount of the financial contributions made to SAD which was triple the average raised by other organizations involved in the referendum.⁹⁰ Given the surrounding circumstances, there is also no doubt that Ravaria knew SAD would use the Embassy funds to operate the Lunar Botnet to spread misinformation.⁹¹

The fact that Ravaria's funding scheme was in compliance with Antaran domestic campaign finance laws does not render it legal under international law.⁹² In addition, acts from foreign actors which can amount to wrongful interference are, if taken by a citizen of the targeted State, permissible under the laws of this State and are accepted.⁹³

In conclusion, Ravaria's campaign of financial contributions in support of Suthan independence is a wrongful interference under customary international law.

b) The dissemination of misinformation subordinated the will of the residents of Sutha to that of Ravaria

Ravaria held a sustained disinformation campaign⁹⁴ through cyber means in the months leading up to the referendum with the view to persuade the residents of Sutha to join Ravaria after separation from Antara.⁹⁵ It is widely accepted among scholars⁹⁶ that manipulation based on misinformation is coercive.⁹⁷ Indeed, the influenced people - the residents of Sutha - base their decision on misinformation and, as a consequence, make a decision they would not otherwise.⁹⁸

⁹⁰ Compromis, ¶¶22 and 37(a).

⁹¹ Pleadings, (B)(2)(a)(ii)(b).

⁹² ARSIWA, Article 3; Ian Brownlie, 'Principles of public international law' (7th edn, OUP 2008), p. 48.

⁹³ Eileen Denza, 'Diplomatic law: Commentary on the Vienna Convention on Diplomatic Relations' (4th edn, Oxford Commentaries on International Law 2016), p. 378.

⁹⁴ Compromis, ¶¶17, 22, 23, 25, 31 and 37.

⁹⁵ Compromis, ¶¶31 and 37(d).

⁹⁶ Wheatley, pp. 161; Michael N. Schmitt, 'Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations' (CUP 2017) [**"Tallinn Manual 2.0"**], p. 318.

⁹⁷ Wheatley, pp. 179 and 192.

⁹⁸ Tallinn Manual 2.0, p. 319; Wheatley, pp. 180 and 181.

In the present case, Ravaria replaced the free will of the residents of Sutha by its own preferences, *i.e.* secession from Antara.⁹⁹

Ravaria's misinformation operations made "the Suthans understand that they can never be assured of freedom so long as they remain in Antara"¹⁰⁰ and that the Antaran government would eliminate the Province's local autonomy if the referendum failed.¹⁰¹ The vast majority of those messages were proven to be false and,¹⁰² thus, altered the residents of Sutha's capability to "deliberate and make a decision in their own interests".¹⁰³

To this end, Ravaria used several important cyber means to disseminate misinformation. It used the most popular social network in the Peninsula, Pano, having an average of four million daily active users in Antara.¹⁰⁴ Given the surrounding circumstances, there is no doubt that Ravaria used at least 180,000 fake accounts on Pano¹⁰⁵ and operated the Lunar Botnet which has infected 30,000 devices.¹⁰⁶ As 80% of the Antaran population has smartphones and access to high-speed internet,¹⁰⁷ Ravaria's misinformation operations were not only "merely influential or persuasive"¹⁰⁸ but clearly influenced the outcome of the referendum. In this vein, the residents of

⁹⁹ Compromis, ¶37(c).

¹⁰⁰ Compromis, ¶ 37(c).

¹⁰¹ Compromis, ¶22.

¹⁰² Compromis, ¶¶17, 22, 23, 24, 25, 27 and 31.

¹⁰³ Wheatley, p. 192.

¹⁰⁴ Compromis, ¶11.

¹⁰⁵ Compromis, ¶¶17 and 37(b).

¹⁰⁶ Compromis, ¶31. The 30,000 infected devices are a "network of compromised machines that can be coordinated remotely by" the botmaster "to fulfill a malicious directive", such as the dissemination of misinformation (see Christopher C Elisan, Julio Canto and Roberto Perdisci, 'Malware, Rootkits & Botnets a Beginner's Guide' (McGraw-Hill 2013) [**"Malware, Rootkits & Botnets a Beginner's Guide"**], pp. 56-57).

¹⁰⁷ Compromis, ¶10.

¹⁰⁸ Michael Schmitt, 'Foreign Cyber Interference in Elections: An International Law Primer, Part I', [2020] EJIL, <https://www.ejiltalk.org/foreign-cyber-interference-in-elections-an-international-law-primer-part-i/> (consulted 12/17/2021).

Sutha made a decision – secession – that they would otherwise not have taken, and which is in alignment with Ravaria’s interests.¹⁰⁹

Moreover, as stated above,¹¹⁰ covert interferences are evidence of the unlawful character and intent of such activities. Here, Ravaria’s dissemination of misinformation was operated through fake Pano accounts masked as indigenous Suthan or Antaran sources and through the Lunar Botnet operated by SAD.¹¹¹ The use of sock puppets¹¹² in such operations clearly demonstrates a State’s will to intervene in the domestic debate of another State, without the local population being aware of such external intervention, in order to align it with its own interests.¹¹³

Accordingly, Ravaria’s dissemination of misinformation through cyber means was coercive.

c) Ravaria’s campaign of financial contributions and the dissemination of misinformation are a method of coercion interfering in Antara’s internal affairs

As a result, Ravaria’s financial contributions campaign and the dissemination of misinformation are, together, a method of coercion used to wrongfully interfere in Antara’s internal affairs by having influenced the Suthan referendum.

¹⁰⁹ Tallinn Manual 2.0, p. 319; Wheatley, pp. 192-195.

¹¹⁰ Pleadings, (B)(2)(a)(ii)(a).

¹¹¹ Compromis, ¶¶37(b) and 37(c).

¹¹² Sock puppet is defined as a person whose actions are controlled by another (see Sock, ‘Oxford English Dictionary’ (No 1, OUP 2020)). In the context of the Internet, sock puppet is defined as “pseudonym adopted by someone who has made a posting to some social media forum and then follows it up with a supportive posting using the pseudonym.” (see Darrel Ince, ‘A Dictionary of the Internet’ (4th edn, OUP 2019)). Cited by Wheatley, p. 194.

¹¹³ Wheatley, pp. 192-195.

b. In addition, the campaign of financial contributions and the dissemination of misinformation violated the right of self-determination of the residents of Sutha contained in the 1962 Treaty of Singapore

Ravaria violated the right of self-determination of the residents of Sutha recognized in the Treaty. The Treaty provides them with the right to hold a referendum in order to decide whether or not Sutha should remain a province of Antara or become an independent State.¹¹⁴ Such right implies the recognition of the right of external self-determination for the Suthans as it gives the possibility for the province of Sutha to secede from Antara.¹¹⁵ “By virtue of that right [they] freely determine their political status”.¹¹⁶ The Court held that the exercise of self-determination must be “the expression of the free and genuine will of the people concerned”.¹¹⁷ However, Ravaria made the residents of Sutha believe that “they can never be assured of freedom as long as they remain in Antara”¹¹⁸ through a sustained misinformation campaign. Consequently, the residents of Sutha could not express their free and genuine will as their decision was based on misinformation. Indeed, the result of the referendum was in favor of independence, as planned by Ravaria¹¹⁹. Hence, Ravaria violated the expression of the free and genuine will of the residents of Sutha and, thus, their right of self-determination.

C. ANTARA’S CLAIM RELATING TO THE SUSPENSION ORDER OF PROF. HUNLAND’S PANO ACCOUNT IS INADMISSIBLE AND, IN ANY EVENT, THAT ORDER WAS CONSISTENT WITH INTERNATIONAL LAW

¹¹⁴ Compromis, ¶6.

¹¹⁵ Marc Weller, ‘Escaping the self-determination trap’ (Martinus Nijhoff Publishers 2009), p. 58.

¹¹⁶ International Covenant on Civil and Political Rights, 1966, 999 UNTS 171 [“ICCPR”], Article 1; International Covenant on Economic, Social and Cultural Rights, 1976, 993 UNTS 3, Article 1.

¹¹⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Rep 2019, ¶157.

¹¹⁸ Compromis, ¶37(c).

¹¹⁹ Compromis, ¶30.

Ravaria's claim is inadmissible (1) because Prof. Hunland's cannot benefit from diplomatic protection. In any event, Antara's order suspending Prof. Hunland's Pano account [“**the Order**”] was consistent with international law (2).

1. Ravaria's claim is inadmissible because the conditions for the exercise of diplomatic protection are not met

Ravaria's claim is inadmissible because the Ravarian nationality of Prof. Hunland is not effective. Three conditions must be met to exercise diplomatic protection: the nationality of the injured person,¹²⁰ an internationally wrongful act¹²¹ and the exhaustion of local remedies.¹²²

Nationality must be effective.¹²³ This entails that nationality must be based on a genuine link between the injured person and the State having granted nationality, reflecting a “legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties”.¹²⁴ If the nationality does not reflect a genuine link, it cannot be opposed to third States for the purpose of exercising diplomatic protection. Prof. Hunland is a permanent legal resident of roughly 40 years and has strong social and professional ties to Antara where he is a tenured professor at the University of Sutha and contributes to local media.¹²⁵ As a result, it cannot be considered that Prof. Hunland has a genuine link with his Ravarian nationality. Therefore, Ravaria's diplomatic protection claim is inadmissible.

¹²⁰ ILC, Draft Articles on Diplomatic Protection, 58th Session 2006, A/61/10 [“**Diplomatic Protection**”], Article 3; Oliver Dörr, ‘Nationality’, Max Planck Encyclopedia of International Law, 2019 [“**Dörr**”], ¶19.

¹²¹ Dörr, ¶18.

¹²² *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, ICJ Rep 2010, ¶42; *Interhandel (Switzerland v. United States of America)*, Judgment, ICJ Rep 1959, p. 27.

¹²³ *Nottebohm Case (Liechtenstein v. Guatemala)*, Merits, Judgment, ICJ Rep 1955 [“**Nottebohm**”], p. 4.

¹²⁴ Nottebohm, p. 23.

¹²⁵ Compromis, ¶13.

2. In any event, the Order suspending Prof. Hunland’s Pano account was consistent with the International Covenant on Civil and Political Rights

Antara did not violate its obligations under the ICCPR.¹²⁶ The Order respects Prof. Hunland’s procedural rights under Article 14(1) ICCPR **(a)** and constituted a lawful restriction of his freedom of speech under Article 19(3) ICCPR **(b)**. Additionally, considering the nature of the posts, the demand of Ravaria to rescind the Order is equivalent to a misuse of its right under Article 5(1) ICCPR **(c)**.

a. The Order did not violate Prof. Hunland’s procedural rights under Article 14(1) ICCPR

The Order did not violate Article 14(1) ICCPR which provides the right to have access to court.¹²⁷ The parties to the judicial procedure, set out in Section 5 PACA, were the DPCA, appearing as applicant, and the Online Platform Operator, Pano, appearing as defendant. Prof. Hunland was not party to the suspension proceedings and was thus not protected by the guarantees of fair trial, as “Article 14 does not provide a general right of access to courts in the absence of rights and jurisdiction recognized by law”.¹²⁸ National laws usually do not provide the account-owner with a right to be heard, when Online Platform Operators are bound by law to remove their posts¹²⁹ or when a court¹³⁰ or an authority¹³¹ orders the deletion of them. Moreover, under Section 5(2) of PACA, Prof. Hunland could have been heard by the judge and presented his view because

¹²⁶ Compromis, ¶46.

¹²⁷ HRC, General Comment 32, UN Doc CCPR/C/GC/32 (26 May 2004) [“GC32”], ¶¶2 and 9.

¹²⁸ HRC, *Apirana Mahuika et al. v. New Zealand*, Communication 547/1993, ¶7.7.

¹²⁹ Australia’s Criminal Code Amendment; Germany’s Network Enforcement Act (NetzDG) of 2017, Section 3.

¹³⁰ Argentina: Alexandre de Streel et al., ‘Online Platforms’ Moderation of Illegal Content Online: Law, Practices and Options for Reform’, European Parliament Luxembourg 2020 [“de Streel”], p. 72.

¹³¹ China: de Streel, p. 74; Singapore’s Protection from Online Falsehoods and Manipulation Bill of 2019, Section 22.

he requested it.¹³² The arguments that he submitted were explicitly considered by the presiding judge in the Order.¹³³ For these reasons, Antara's Order does not violate Prof. Hunland's procedural rights as protected by Article 14(1) ICCPR.

b. Antara lawfully restricted Prof. Hunland's freedom of speech under Article 19(3) ICCPR

Under Article 19(2) ICCPR, Antara has a negative obligation not to interfere with the right of freedom of speech of people under its jurisdiction.¹³⁴ However, Article 19(3) ICCPR provides for limitative instances in which a limitation can be imposed by a State on the freedom of speech of an individual.¹³⁵

The Order was legal (i), necessary to protect Antaran public order (ii) and proportionate (iii).

i. The Order meets the legality criterion as it is issued under PACA

Article 19(3) ICCPR requires limitations of freedom of speech to be provided by law.¹³⁶ The Human Rights Committee ["HRC"] characterizes law on several grounds. It must be public, it must provide for predictability through a precise wording¹³⁷ and, it must provide for sufficient

¹³² Compromis, ¶27; PACA, Section 5(2).

¹³³ Compromis, ¶27.

¹³⁴ ICCPR, Article 2(1); HRC, General Comment 31, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), ¶¶2, 3, 4 and 6.

¹³⁵ HRC, General Comment 34, UN Doc CCPR/C/GC/34 (12 September 2011) ["GC34"], ¶¶21 and 23 ; UN Commission on Human Rights, 'Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights', UN Doc E/CN.4/1985/4 (28 September 1984) ["Siracusa"], ¶¶15-18.

¹³⁶ ICCPR, Article 19(3).

¹³⁷ GC34, ¶25; David Kaye, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UNGA A/71/373 (6 September 2016), ¶13; David Kaye, Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OL CHN 7/2015, pp. 4-6.

protection from abuses¹³⁸ and overall compatibility with the ICCPR.¹³⁹ Section 5 of PACA fulfills all those conditions.¹⁴⁰

a) PACA was made public in 2017

PACA was enacted in 2017 in the aftermath of the cyberattacks on police and health infrastructures.¹⁴¹ Prof. Hunland cannot invoke his ignorance of PACA as he lives in Antara where he is active both politically and in local media.¹⁴²

b) PACA is sufficiently precise and predictable

The material, temporal, and spatial scope of the limitation are clearly established in the wording of PACA. It limitedly covers “statements of facts likely to alter or otherwise impact the outcome of an election, or to incite imminent lawless action in connection with such election” and “Online Platform Operator [...] accessible in Antara whose activity exceeds two million Antaran users”.¹⁴³ Therefore, by limitedly applying PACA during election times, only to big social media platforms and, only to “speech impacting the outcome of an election or inciting to imminent violence”,¹⁴⁴ it provides for foreseeability in its application by Antaran courts against potential litigants.

In any event, Ravaria cannot qualify the wording of “election misinformation” as “broad” or imprecise. Indeed, no consensus exists internationally for the notions of “misinformation” and

¹³⁸ HRC, *Pinkney v. Canada*, Communication 27/1978, ¶34.

¹³⁹ GC34, ¶26; HRC, General Comment 16, UN Doc CCPR/C/GC/16 (8 April 1988) [“GC16”], ¶4.

¹⁴⁰ GC34, ¶¶24-25; Raija Hanski and Scheinin Martin, ‘Leading case of the Human Rights Committee’ (Turku Institute for Human Rights, 2nd edn, 2007), p. 4; HRC, *Faurisson v. France*, Communication 550/1993 [“Faurisson”], ¶9.5; HRC, *Keun-Tae Kim v. The Republic of Korea*, Communication 574/1994, ¶12.3; Olivier De Schutter, ‘International Human Rights Law: Cases, Materials, Commentary’ (1st edn Cambridge University Press 2010), p. 293.

¹⁴¹ Compromis, ¶12.

¹⁴² Compromis, ¶13.

¹⁴³ PACA, Section 5(1)(c).

¹⁴⁴ PACA, Section 5(1)(b).

“disinformation”.¹⁴⁵ As the ECHR stated, the absolute precision in the framing of laws cannot be attained in fields such as misinformation.¹⁴⁶

c) PACA prevents abuses by setting judicial remedies and ensuring the compatibility of the Order taken upon it with ICCPR

PACA prevents abuses by setting judicial remedies and ensuring the compatibility of the Order taken upon it with ICCPR.¹⁴⁷ Firstly, PACA guarantees a “right to be heard”¹⁴⁸ upon request of the responsible of the posts.¹⁴⁹ Secondly, the judge is subject to finding “preponderance of evidence” that the suspension of the account must be “necessary to prevent or counter a threat to the national security, public order, or public safety of Antara”. Those strict conditions limit the power of the judge by requiring a suspension order upon finding evidence that it is necessary to “prevent or counter a threat to the national security, public order, or public safety of Antara”.¹⁵⁰ Thirdly, PACA respects the conditions set out in the ICCPR,¹⁵¹ namely the necessity and proportionality of restrictions.¹⁵²

ii. The Order was necessary for the protection of public order

States can restrict freedom of speech only if it is necessary to achieve a specific aim.¹⁵³ In the present case, the Order justifies the restriction on the basis of threat to public order and

¹⁴⁵ Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ‘Disinformation and Freedom of Opinion and Expression’, UN Doc A/HRC/47/25 (13 April 2021) [“**SR disinformation**”], ¶¶9-10.

¹⁴⁶ ECtHR, *Perinçek v. Switzerland*, No 27510/08 [“**Perinçek**”], ¶133.

¹⁴⁷ *Siracusa*, ¶18.

¹⁴⁸ ICCPR, Article 14; GC32, ¶25.

¹⁴⁹ PACA, Section 5(2).

¹⁵⁰ PACA, Section 5(3).

¹⁵¹ ICCPR, Article 19(3); GC34, ¶22.

¹⁵² PACA, Section 5(4).

¹⁵³ GC34, ¶33; HRC, *Jong-Kyu Sohn v. Republic of Korea*, Communication 518/1992, ¶10.4; ECtHR, *Stoll v. Switzerland*, No 69698/01, ¶101(ii)(iii).

incitements to violence. Prof. Hunland's misinformation led to violence¹⁵⁴ and their continuous massive dissemination on Pano constitutes a threat to public order.

The Special Rapporteur for freedom of expression stated that misinformation is an urging matter that should be dealt with by States.¹⁵⁵ Its negative impact in recent State practice undermines people's trust in democratic institutions,¹⁵⁶ affects human rights, electoral system and foments hatred and violence.¹⁵⁷

Prof. Hunland's posts constituted misinformation as they were discredited at numerous occasions and flagged by Pano as suspicious.¹⁵⁸ Considering the leverage of Prof. Hunland on Pano,¹⁵⁹ by depriving him of his largest platform, the Order effectively avoids future calls to violence similar to the outdoor rally where three people have died and hundreds were injured.¹⁶⁰ Therefore, the suspension of the account is legitimate in light of the situation surrounding the Suthan referendum as it would prevent further threats of public order based on Prof. Hunland's misinformation.¹⁶¹

¹⁵⁴ Compromis, ¶25.

¹⁵⁵ Freedom of opinion and expression, UN Doc A/HRC/RES/44/12 (24 July 2020), pp. 1-3; 'Joint Declaration on freedom of expression and "Fake news", Disinformation and Propaganda', OSCE Doc FOM.GAL/3/17 (3 March 2017), pp. 1-4; 'Joint Declaration on challenges to Freedom of Expression in the Next Decade from the UN and regional experts on freedom of expression, 2020', OSCE, (10 July 2019), p. 1.

¹⁵⁶ SR disinformation, ¶84.

¹⁵⁷ SR disinformation, ¶¶22, 24 and 29.

¹⁵⁸ Compromis, ¶24.

¹⁵⁹ Compromis, ¶13.

¹⁶⁰ Compromis, ¶25.

¹⁶¹ *Mutandis mutandis*: Faurisson, ¶9.7.

iii. The Order was proportionate

The proportionality criterion requires the measure to be the least intrusive to achieve the legitimate purpose of the restriction¹⁶² in light of the context and surrounding circumstances.¹⁶³

The Order was the least intrusive means for preventing further threat of Antaran public order. The suspension is limited to Prof. Hunland's Pano account. It applies only during a specific period of time (a year and a half) surrounding the referendum and the current proceedings.¹⁶⁴ Lastly, the suspension is reversible because Prof. Hunland will have access to his account again. Moreover, the essence of Prof. Hunland's freedom of expression is not impaired¹⁶⁵ as he can still access traditional media and other social media available in Antara to express his views and opinions.¹⁶⁶

In addition, the Order was the best suited means considering Prof. Hunland's large reputation and influence on Pano.¹⁶⁷ Neither the systematic criticism of his posts by users,¹⁶⁸ officials,¹⁶⁹ and independent observers¹⁷⁰ towards nor the warnings and flagging of Pano¹⁷¹ could prevent the rally events from happening. Therefore, considering the inefficacy of the previous measures and the possibility for Prof. Hunland to enjoy the essence of his right to freedom of speech, the limitation issued by Antara is proportionate in preventing threats to its public order.

¹⁶² GC34, ¶34; HRC, General Comment 27, UN Doc CCPR/C/21.Rev.1/Add.9 (2 November 1999), ¶14.

¹⁶³ ECtHR, *Handyside v. United Kingdom*, No 5493/72 (1976), ¶50.

¹⁶⁴ Compromis, ¶26; Clarifications, ¶3.

¹⁶⁵ *Kieslev v. Council*, Court of Justice of the European Union, T-262/15, Award 15 June 2017 [**"Kieslev"**], ¶123.

¹⁶⁶ *Kieslev*, ¶124; 'Article 10 Expression and advertising of political positions through the media/Internet in the context of elections/referendums', Research and Library division, ECtHR 2018, ¶¶23 and 24.

¹⁶⁷ Compromis, ¶13.

¹⁶⁸ Compromis, ¶24.

¹⁶⁹ Compromis, ¶¶22, 23(a)(b) and 24.

¹⁷⁰ Compromis, ¶23.

¹⁷¹ Compromis, ¶24.

c. In any event, Prof. Hunland’s freedom of speech does not deserve protection pursuant to Article 5(1) ICCPR.

Article 5(1) ICCPR establishes that no individual can use a right of the Covenant to destroy or limit those same rights.¹⁷² Article 5(1) ICCPR covers “activities aimed at the destruction of rights of the Covenant” such as a use of freedom of expression¹⁷³ in contradiction with democracy or other fundamental values of the Covenant.¹⁷⁴

The Court should not grant protection over Prof. Hunland’s right of freedom of speech, since using this right to spread misinformation goes against the spirit of the ICCPR. Misinformation negatively affects trust in democratic institutions and impairs the individual’s autonomy to enjoy their right of freedom to information and expression¹⁷⁵ which are at the core of the ICCPR’s values.¹⁷⁶ Considering the nature of the posts in the higher context of the Ravarian misinformation campaign surrounding the referendum,¹⁷⁷ Prof. Hunland’s expression cannot be protected without, at the same time, impairing the very right on which it is based.

Therefore, Ravaria is invoking Article 19(2) ICCPR to destroy the essence of the ICCPR’s values, which is prohibited by Article 5(1) in conjunction with the merits of this claim.

¹⁷² HRC, *M.A. v. Italy*, Communication 117/1981, ¶13.3; Faurisson, ¶7.4; Sarah Joseph and Melissa Castan, ‘The International Covenant on Civil and Political Rights: Cases, Materials and Commentary’ (3rd edn, 2013) [“**Joseph**”], p. 10; Manfred Nowak, ‘UN Covenant on Civil and Political Rights: CCPR Commentary’ (2nd edition, 2005) [“**Nowak**”], pp. 112-113.

¹⁷³ Nowak, p. 115.

¹⁷⁴ Perinçek, ¶114; ECtHR, Rules of the Court 2021, Rule 62(2), Article 17.

¹⁷⁵ SR disinformation, ¶24.

¹⁷⁶ Joseph, p. 10; Aston Philip and Ryan Goodman, ‘International Human Rights’ (OUP, 2013), pp. 157-161, 895-896, 978-979 and 1025.

¹⁷⁷ Pleadings, (C)(2)(b)(ii); Pleadings, (B)(2)(a)(ii)(b).

D. RAVARIA’S CLAIM CONCERNING THE TAKEDOWN OF THE LUNAR BOTNET IS INADMISSIBLE, AND IN ANY EVENT, ANTARA’S ACTIONS IN TAKING DOWN THE BOTNET, AND THE EFFECTS ON DEVICES IN RAVARIA, WERE CONSISTENT WITH INTERNATIONAL LAW

Ravaria’s claim is inadmissible under the clean hands doctrine **(1)**. In any event, Antara’s actions in taking down the Lunar Botnet, and the effects of those actions on computers and devices in Ravaria were consistent with international law **(2)**. In the alternative, Antara’s actions were lawful countermeasures **(3)**.

1. Ravaria’s claim is inadmissible under the clean hands doctrine

Ravaria cannot claim the illegality of the Operation Moonstroke, as it came to the Court with unclean hands. The Court¹⁷⁸ and scholars¹⁷⁹ agree that a State, author of an illegal act, in the present case, Ravaria,¹⁸⁰ may not claim illegalities committed by another State, which arise as a consequence.¹⁸¹

Ravaria financed,¹⁸² approved¹⁸³ and acknowledged¹⁸⁴ the Operation of the Lunar Botnet¹⁸⁵ infecting 30,000 devices. Antara took action to neutralize the Botnet whose command-and-control

¹⁷⁸ *The Diversion of Water from the Meuse (Netherlands v. Belgium)*, PCIJ Series A/B No 70 (1937); *Nicaragua*, Dissenting Opinion of Judge Schwebel, ¶268; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, ICJ Rep 2002, Dissenting Opinion of Judge Van den Wyngaert, ¶35.

¹⁷⁹ Gerald Fitzmaurice, ‘The General Principles of International Law, Considered from the Standpoint of the Rule of Law’ (Sijthoff. 1957), p. 119; Stephen Schwebel, ‘Clean Hands, Principle’, Max Planck Encyclopedia, 2013, ¶12.

¹⁸⁰ Pleadings, (B)(1)(b) and (B)(1)(c).

¹⁸¹ *Jurisdiction of the Courts of Danzig*, Advisory Opinion, PCIJ Series B No 15 (1928), pp. 26-27.

¹⁸² Compromis, ¶37(a).

¹⁸³ Compromis, ¶37(c).

¹⁸⁴ Compromis, ¶¶37 and 41.

¹⁸⁵ Compromis, ¶¶37(c) and 39.

server was located on its territory.¹⁸⁶ Ravaria is barred from claiming the illegality of the Operation and of its effects on Ravarian devices because of its implication in the launching of the Botnet.

2. In any event, Antara's actions in taking the Lunar Botnet, and the effects of those actions on computers and devices in Ravaria, were consistent with international law

Antara respected its due diligence obligation **(a)**. In addition, Operation Moonstroke and its effects did not violate the prohibition to use force **(b)** nor the international human right to privacy of Ravaria's citizens **(c)**.

a. Antara respected the obligation of due diligence as Operation Moonstroke prevented further harm and acted as a good neighbor

Antara respected the obligation of due diligence because Operation Moonstroke prevented further damage and was proportionate to the risk (i). Antara also acted as a good neighbor by notifying the internet service providers (ii).

i. Antara respected the obligation of due diligence by preventing further damage and responding in a proportionate manner *vis-à-vis* the risk

Due diligence is an obligation of conduct, whereby States should employ "all means reasonably available"¹⁸⁷ to prevent a breach of international law. This entails that if a State has knowledge of a given cyber operation, they must endeavor to prevent its consequences.¹⁸⁸ Antara knew that the Lunar Botnet was operating on its territory,¹⁸⁹ so Antara had to act to prevent possibly irreparable harm from being caused.¹⁹⁰ Moreover, the DPCA acted appropriately by

¹⁸⁶ Compromis, ¶32.

¹⁸⁷ Bosnian Genocide, ¶430.

¹⁸⁸ Corfu Channel, pp. 18-19; Bosnian Genocide, ¶432; Tallinn Manual 2.0, p. 41; Karine Bannelier, 'Obligations de diligence dans le cyberspace: Qui a peur de la cyber-diligence?' (2017) 2 Revue Belge de droit international, pp. 630-631.

¹⁸⁹ Compromis, ¶31.

¹⁹⁰ Compromis, ¶33.

removing the bot agent¹⁹¹ from the infected devices without causing any damage to the users.¹⁹² Therefore, Operation Moonstroke to take down the Lunar Botnet is justified.

Consequently, Antara acted out of due diligence by launching Operation Moonstroke to prevent further harm¹⁹³ and using hacking techniques to remove the bot agents in the infected devices.¹⁹⁴

ii. Antara acted out due diligence and as a good neighbor by notifying the internet service providers after Operation Moonstroke

After Operation Moonstroke, Antara acted diligently by subsequently notifying the affected internet service providers,¹⁹⁵ as required under domestic law.¹⁹⁶ Neighbors have an obligation of notification if the conduct is likely to cause extraterritorial damages.¹⁹⁷ Thus, Antara fulfilled its obligations under the law of neighborliness and due diligence by informing those affected by Operation Moonstroke.

b. Antara did not violate the prohibition to use force by launching Operation Moonstroke

To be qualified as a use of force, Operation Moonstroke should have had a specific target (i) and should have caused material damage (ii).

i. The Operation Moonstroke had no specific target

¹⁹¹ Segment of script enabling remote administration by the botmaster of the infected device. See Compromis, ¶32; Malware, Rootkits & Botnets a Beginner's Guide, p. 58.

¹⁹² Clarifications, ¶4.

¹⁹³ Compromis, ¶33.

¹⁹⁴ Compromis, ¶32.

¹⁹⁵ Compromis, ¶32.

¹⁹⁶ PACA, Section 8(6).

¹⁹⁷ Laurence Boisson de Chazournes and Danio Campanelli, 'Neighbour States', Max Planck Encyclopedia of Public International Law, 2006; Jason Healey and Hannah Pitts, 'Applying International Environmental Legal Norms to Cyber Statecraft' (2012) 8 ISJLP, p. 356.

Antara did not specifically target Ravaria when taking down the Lunar Botnet. The element of intent is crucial to determine the existence of an unlawful use of force.¹⁹⁸ As the DPCA did not know that devices were infected beyond its territorial border when issuing the Order¹⁹⁹ and deploying Operation Moonstroke,²⁰⁰ Antara did not intentionally target Ravarian devices. Thus, Operation Moonstroke does not violate the prohibition of the non-use of force.

ii. The Operation Moonstroke did not cause material damage

Operation Moonstroke does not qualify as a use of force as there was no damage.²⁰¹ For Article 2(4) of the UN Charter to be validly invoked, physical damage must be caused.²⁰² The UN General Assembly has often adopted a restrictive view to the prohibition of the use of force.²⁰³ In the absence of destruction, Operation Moonstroke can therefore not amount to an international armed conflict as the effects cannot be considered as similar to a kinetic attack.²⁰⁴ Only 5,000 devices located in Ravaria were affected by the DPCA's operation, and no physical damage was caused on Ravarian territory.²⁰⁵

Consequently, Operation Moonstroke is not an unlawful use of force and Antara did not breach its obligations.

¹⁹⁸ Oliver Corten, 'The Law against War: The Prohibition on the Use of Force in Contemporary International Law' (Oxford: Hart 2010), p. 74.

¹⁹⁹ Compromis, ¶32

²⁰⁰ Clarifications, ¶5.

²⁰¹ Clarifications, ¶4.

²⁰² Russell Buchan, 'Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions' (2012) 17 J Conflict & Sec L 211, p. 212.

²⁰³ Declaration on Friendly Relations and Co-operation; Definition of Aggression, UNGA A/Res/3314 (XXIX) (14 December 1974), Article 3(a).

²⁰⁴ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949, 75 UNTS 31, Article 2, Commentary, 2016, ¶255.

²⁰⁵ Clarifications, ¶5.

c. Antara lawfully limited Ravarian device-users’ right to privacy when deploying Operation Moonstroke

Article 17 ICCPR provides for the right to privacy, proscribing “unlawful and arbitrary interference”²⁰⁶ in this right. Hacking by law enforcement can be considered to be intrusive.²⁰⁷ For Operation Moonstroke to be a lawful interference under the Article 17 ICCPR, it must be provided for by law (i), pursue a legitimate aim (ii), and be proportionate and necessary (iii).

i. The DPCA is entitled to act as provided for by law

To ensure compliance of Article 17 ICCPR, any interference must be envisaged by law and in accordance with the ICCPR’s aims and objectives.²⁰⁸ PACA contains specific legal provisions authorizing the takedown of botnets²⁰⁹ by using hacking techniques, including if the affected servers are located outside Antaran territory.²¹⁰

ii. Operation Moonstroke pursued a legitimate aim of national security and third parties

Inferences with the right to privacy, such as provided for by Article 17 ICCPR, must pursue legitimate aims.²¹¹ This includes the legitimate interests of third parties²¹² and national security.²¹³ The former is fulfilled as it can be considered a legitimate interest of the users to have the botnet

²⁰⁶ ICCPR, Article 17.

²⁰⁷ Kristiina Milt, et al., ‘Legal Framework for Hacking by Law Enforcement: Identification, Evaluation and Comparison of Practices’ (Directorate General for Internal Affairs) [“**Hacking by Law Enforcement**”], p. 21.

²⁰⁸ GC16, ¶¶3-4.

²⁰⁹ PACA, Section 8.

²¹⁰ PACA, Section 8(5).

²¹¹ The Right to Privacy in a Digital Age, UNGA A/RES/71/199 (19 December 2016), Preamble, ¶22.

²¹² Convention on Cybercrime, 2001, 2296 UNTS 167, Article 15(3); Compromis, ¶46.

²¹³ Hacking by Law Enforcement p. 21.

removed from their devices.²¹⁴ The latter can be ensured in the context of the referendum,²¹⁵ violence,²¹⁶ and to avoid a repetition of the cyberattacks that took place in 2017.²¹⁷ Thus, Operation Moonstroke pursued a legitimate aim in safeguarding the interests of third parties and national security.

iii. The effect of the DPCA's Operation was proportionate and necessary

First, Operation Moonstroke was necessary to achieve the legitimate aim, *i.e.* the protection of national security.²¹⁸ In the present case, the Lunar Botnet was spreading misinformation about the referendum, so taking down the Lunar Botnet before further damage was a “necessary act of cyber defense”²¹⁹ and it was successful in doing so.²²⁰ As such, hacking techniques employed by law enforcement are necessary when they pursue this objective.²²¹

Second, the proportionality of Operation Moonstroke is ensured by the requirement of prior judicial authorization.²²² This indicates that such hacking techniques can only be authorized when it is proportionate, *i.e.* to crimes of substantial gravity.²²³ Moreover, the Operation was limited to devices having previously been infected²²⁴ and the DPCA promptly notified the affected internet service providers.²²⁵

²¹⁴ Compromis, ¶¶32-33.

²¹⁵ Compromis, ¶31.

²¹⁶ Compromis, ¶25.

²¹⁷ Compromis, ¶12.

²¹⁸ Hacking by Law Enforcement, p. 21.

²¹⁹ Compromis, ¶33.

²²⁰ Compromis, ¶32.

²²¹ Hacking by Law Enforcement, p. 22.

²²² Hacking by Law Enforcement, p. 55.

²²³ PACA, Sections 8(2) and 8(3).

²²⁴ Clarifications, ¶4.

²²⁵ Compromis, ¶32.

Therefore, when the DPCA was granted its Court order²²⁶ to remotely hack into the command-and-control server,²²⁷ with no negative impact caused to users or their network experience,²²⁸ it did so in a proportionate and necessary manner.

3. In the alternative, Operation Moonstroke constitutes a countermeasure

If the Court finds Operation Moonstroke to be in violation of Antara's international obligations, then Antara cannot be held responsible as the takedown is a countermeasure,²²⁹ according to Article 22 ARSIWA. As the Lunar Botnet was financed by Ravaria to impact the outcome of the referendum,²³⁰ Operation Moonstroke is a reaction to a previous internationally wrongful act. Antara complied with the condition of compelling lawful behavior **(a)**, with the procedural conditions **(b)** and with the conditions of necessity and proportionality **(c)**.

a. Antara intended to compel lawful behavior

The objective of a countermeasure is to induce a State to comply with its international obligations²³¹ with acts that would otherwise be unlawful.²³² Traditionally, it is considered that States must be the object of countermeasures, carried out by the injured State *versus* the responsible State.²³³ However, it is possible to take countermeasures in the context of cyber-attacks where no State initially seems responsible if there has been a breach of an obligation that is purportedly

²²⁶ Compromis, ¶31.

²²⁷ Compromis, ¶32.

²²⁸ Clarifications, ¶4.

²²⁹ *Air Service Agreement of 27 March 1946 (United States/France)*, UNRIAA, Vol XVIII 417 [“**Air Service Agreement**”], ¶¶85-87; *Hostage*, ¶68; *Nicaragua*; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Rep 1997 [“**Gabčíkovo-Nagymaros**”], ¶84.

²³⁰ Compromis, ¶37.

²³¹ ARSIWA Commentaries, p. 130; Tallinn Manual 2.0, Rules 20 and 21.

²³² ARSIWA Commentaries, p. 128.

²³³ ARSIWA Commentaries, p. 128.

owed to the State.²³⁴ In the present case, Ravaria's operation of the Botnet violated the prohibition to not intervene in internal affairs and Suthans' right to self-determination and.²³⁵

b. Antara complied with the procedural requirement of notification

The procedural conditions call upon the responsible State to fulfill its obligations,²³⁶ to notify the responsible State and offer to negotiate with them.²³⁷ However, in the event of cyber-countermeasures, it may render the countermeasures futile to enter into prior negotiations²³⁸ and the State may take urgent countermeasures.²³⁹ In the present case, Antara did not know who was operating the Lunar Botnet and where they were located.²⁴⁰ Therefore, Antara did not know who to notify and it was appropriate to put an end to the threat caused by the Lunar Botnet.

c. Operation Moonstroke was necessary and proportionate

Operation Moonstroke respected the conditions of proportionality and necessity. Operation Moonstroke was a necessary countermeasure to preserve Antara's rights²⁴¹ as it put an end to the Lunar Botnet²⁴² and the threat that it posed on Antaran devices and computers.²⁴³

The Operation was also a proportional countermeasure.²⁴⁴ "Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally

²³⁴ Tallinn Manual 2.0, Rule 20.

²³⁵ Pleadings, (B)(2).

²³⁶ ARSIWA, Article 52(1)(a).

²³⁷ ARSIWA, Article 52(1)(b); Gabčíkovo-Nagymaros, ¶84; Air Service Agreement, ¶¶85-87.

²³⁸ Tallinn Manual 2.0, p. 120.

²³⁹ ARSIWA Commentaries, p. 136.

²⁴⁰ Compromis, ¶31.

²⁴¹ ARSIWA, Article 52(2).

²⁴² Compromis, ¶32.

²⁴³ Compromis, ¶33.

²⁴⁴ ARSIWA, Article 51.

wrongful act and the rights in question.”²⁴⁵ Through the hacking techniques used by the DPCA,²⁴⁶ only the previously infected devices were subject to Operation Moonstroke. As a result, the Operation was proportionate to the injury suffered and the gravity of the Lunar Botnet.

²⁴⁵ Gabčíkovo-Nagymaros, ¶85; Air Service Agreement, ¶83, “countermeasures must (...) have some degree of equivalence with the breach”; ARSIWA, Article 51.

²⁴⁶ Compromis, ¶32.

PRAYER FOR RELIEF

Antara respectfully requests this Court to adjudge and declare that:

- A. The documents obtained in the search of the vehicle driven by Ms. Walters and the recording from the conciliation meeting of 30 May 2021 are admissible as evidence in these proceedings;
- B. Ravaria's campaign of financial contributions and the dissemination of misinformation intending to influence the outcome of the Suthan referendum were in violation of international law;
- C. Antara's claim relating to the suspension order of Prof. Hunland's Pano account is inadmissible and, in any event, that order was consistent with international law; and
- D. Ravaria's claim concerning the takedown of the Lunar Botnet is inadmissible, and in any event, Antara's actions in taking down the botnet, and the effects on devices in Ravaria, were consistent with international law.

Respectfully submitted,
AGENTS FOR THE APPLICANT

