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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 RESPONDENT

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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 illegal search of Ms. Walters's vehicle and the 30 May 2021 recording are inadmissible as evidence in these proceedings;

B. Whether Antara's claim concerning Ravaria's alleged financial contributions and cyber operations in connection with the Suthan referendum is inadmissible and, in any event, whether both conducts were consistent with international law.

C. Whether Antara's order suspending Prof. Hunland's Pano account was in violation of international law, and whether Antara must therefore rescind the order; and

D. Whether Antara's interference with computers and devices operating on Ravarian soil, resulting from the decision to take down the Lunar Botnet, was consistent with international law.

BACKGROUND

Antara and Ravaria are two countries situated in the Benthamian Peninsula. They were formerly administrative districts of the Zemin colonial Empire. Sutha is located between Antara and Ravaria. The Velan Religion is predominant in Sutha and is also the main religion in Ravaria. The Kuvil Shrine is located in Sutha which is one of the five temples sacred to the practice of the religion. The collapse of the Empire in 1949 led to the signing of the Treaty of Singapore in 1962 [“**the Treaty**”] under which Sutha was granted the status of province of Antara. However, in the years leading up to the signing of the treaty, Ravaria promoted Suthan independence.

TECHNOLOGICAL DEVELOPMENT

Antara and Ravaria are technologically advanced nations with 80% of their populations having smartphones and high-speed internet access. Pano, which is owned by a Zemin public company, is the most popular social media on the Peninsula, with approximately 12 million active daily users.

PROFESSOR HUNLAND

Professor Hunland [“**Prof. Hunland**”] is a Ravarian national, living in Antara since the 1980’s, where he is a tenured professor of Velan Theology at the University of Sutha. His main activities consist of his advocacy for Suthan autonomy and an active participation in public media. He established the “Suthans against domination” [“**SAD**”] non-profit foundation, dedicated to the promotion of Velan culture and Suthan autonomy.

His presence in the media is reinforced by his popularity on Pano. He gathers over nine million followers with whom he shares his political opinions against the Antaran government and in favor of Suthan independence.

THE SUTHAN REFERENDUM

The Treaty provides that the Suthan Legislative Council and national Antaran Parliament can jointly decide to authorize a referendum for Sutha to become independent. The rising support for

Suthan independence over the years following the adoption of the Treaty, shifted the political landscape of Antara towards the Suthan Independence Party [“**SIP**”]. On 13 October 2020, with the support from the newly elected Prime Minister Lubinsky, the Suthan Legislative Council and the national Parliament adopted a resolution for referendum, scheduled on 1 March 2021.

After the announcement of the referendum, SAD’s campaign for the Suthan independence was supported on Pano by Prof. Hunland. On 31 January 2021, Prof. Hunland staged an outdoor rally in favor of the vote with a massive attendance in Antara. The police arrived to put an end to the event and violence broke out. Three people were killed and hundreds were injured.

On 1 March 2021, a majority of Suthan residents voted in favor of the independence of Sutha. The two-year transition period at the end of which Sutha would be fully independent started.

CONTENT TAKEDOWN AND USER SUSPENSION ORDER

The Antaran Data Protection and Cybersecurity Agency [“**the DPCA**”] launched proceedings for a content takedown and user suspension order against Pano with respect Prof. Hunland’s posts. The federal lower court of Antara filed its application on 5 February 2021. Ten days later, the order suspending the account [“**the Order**”] was rendered on the basis of the Protect Antaran Cyberspace Act [“**PACA**”]. Prof. Hunland’s action in Zemin against the Order was dismissed. He challenged the Order before an Antaran federal court, but his application was rejected for lack of standing. The decision was confirmed in appeal without opinion. No other appeals are available under Antaran law.

In October 2021, the same judge extended the account-suspension for six additional months. This extension cannot be reviewed under Antaran law.

LUNAR BOTNET AND OPERATION MOONSTROKE

On 22 February 2021, the DPCA sought and received a court order, in an *ex parte* closed-door hearing, to takedown the Lunar Botnet. At the time, the DPCA only produced evidence of 30,000 infected devices, yet the identity of the botmaster, and its location were both unknown. The DPCA found that the command-and-control server, used to control the Botnet, was physically located in Antara.

On the 26th of February 2021, the DPCA hacked the command-and-control server remotely through Operation Moonstroke [“**the Operation**”] and disabled the Lunar Botnet by removing the

segment of script which enabled remote administration of the devices. As a result, the DPCA hacked 20,000 devices and computers in Antara, 5,000 in Ravaria, and an additional 5,000 whose location cannot be determined. The DPCA contacted the Internet service providers of the devices hacked in Antara.

On 4 April 2021, *The Sydney Morning Herald* reported that the DPCA acted upon Court authorization. The next day, on 5 April, the DPCA issued a public statement claiming that they acted to prevent possibly more, irreparable harm. The Ravarian Ministry of External Affairs quickly responded in a *note verbale* criticizing the DPCA's extraterritorial enforcement operation.

THE SEIZURE OF THE BRIEFCASE

While leaving the SAD gala, held on 24 April 2021, Ms. Emma Walters ["**Ms. Walters**"], wife of Ravarian Ambassador Benny Walters, hit a pedestrian and Anataran citizen, Carlos Francis. She was driving a rented vehicle and was intoxicated. The police arrived and asked for her license and registration. Ms. Walters handed over a briefcase, containing her driving license, diplomatic passport, and various documents which the officers seized. They handed her passport back, after taking note of her identity Ms. Walters was arrested, charged with homicide, and delivered to a duty sergeant

The arresting officers did not mention to the duty sergeant that she was connected with a foreign embassy. She was placed in custody. When the sergeant opened the briefcase, he found several documents ["**the Documents**"], including, the plan for the use of the Ravarian Embassy funds for SIP and SAD as well as records of financial contributions to Velan organizations. Instead of handing the briefcase back to Ms. Walters, the sergeant delivered the briefcase and its contents to the Antaran National Intelligence Agency ["**ANIA**"]. ANIA revealed that the embassy funds were channeled to SIP and SAD and that SAD controlled the Lunar Botnet. An Antaran criminal investigation confirmed these findings.

A few hours later, Ms. Walters was released, with the criminal charges against her remaining. The Ravarian Embassy protested her arrest and demanded the return of the briefcase. Later that morning, ANIA eventually returned the briefcase and the Documents, after having photocopied their contents but never publicly disclosed them.

CONCILIATION MEETING

Attorney-Generals of Antara and Ravaria entered into *ad hoc* conciliation under the auspices of the Foreign Minister of Zemin with the aim of trying to settle the dispute. The participants agreed to make an audio recording [“**the Recording**”] of the meeting to facilitate accurate transcripts. The conciliation started on 29 May and ended on 1 June 2021. An agreement was signed stipulating that the Ambassador and his wife would return to Ravaria and that Ravaria would pay a compensation sum to the family of the car accident victim. It was also agreed that Antara would apologize for the arrest of Ms. Walter. Ravarian and Antaran diplomats continued to meet to resolve the dispute.

The parties submitted their dispute to the Court on 13 September 2021.

-A-

The Documents are inadmissible as evidence in these proceedings because they were obtained illegally. Consequently, the Documents are inadmissible under the *ex injuria jus non oritur* principle. In any event, the Court should exclude them after balancing the various interests and circumstances at stake. The interest of protecting the confidentiality of the Document and the good judicial order outweighs the interest of admitting them. The Recording is inadmissible as evidence in these proceedings because Antara is bound by an obligation to not submit statements originating from previous settlement negotiations as evidence. In any event, the Court should not admit the Recording as evidence because statements originating from prior negotiations are never admissible.

-B-

Antara's claim relating to the financial contributions is inadmissible by application of the principle of estoppel. In addition, Antara's claim relating to the cyber operations is inadmissible because its allegations do not meet the heightened standard of proof. In any event, this conduct is not attributable to Ravaria because they were conducted by non-State actors not controlled by Ravaria. In the alternative, the conduct was consistent with international law because they did not violate the principle of non-intervention, as the referendum was not part of Antara's *domaine réservé* and because, in any case, Ravaria did not use methods of coercion.

-C-

The claim is admissible because Ravaria can protect Prof. Hunland's rights by exercising diplomatic protection. In the alternative, the *erga omnes partes* character of the International Covenant for Civil and Political Rights ["**ICCPR**"] obligations permits Ravaria to bring the claim to the Court. Moreover, by issuing the suspension Order, Antara violated rights it owes under the ICCPR. First, the Order was issued upon a violation of Prof. Hunland's right to have access to courts protected by Article 14(1) ICCPR and failed to provide an effective remedy to challenge the Order pursuant to Article 2(3) ICCPR. Second, the Order violated Article 19(3) ICCPR through

an unlawful limitation of Prof. Hunland's right to freedom of expression. The Order did not comply with the requirements of legality, necessity and proportionality. As a consequence, Antara must rescind the illegal Order.

-D-

The interference with computers and devices operating on Ravarian soil, resulting from the decision to take down the Lunar Botnet, was in violation of international law. First, Antara violated the Budapest Convention because it failed to consult with Ravaria to determine the jurisdiction and to obtain the consent of the Ravarian users to access their device. Second, Antara violated the obligations owed to Ravaria under the principle of good neighborliness because Antara breached the prohibition to use its territory to cause harm to another State, the obligation to give prior information or notification to the Operation, and the obligation of surveillance over ICT infrastructures. Third, Antara violated the Ravarians' right to privacy under Article 17 ICCPR as Operation Moonstroke is an arbitrary and unlawful interference to this right.

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

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

1. The Documents are inadmissible as evidence in these proceedings

Antara breached Article 24 of the Vienna Convention on Diplomatic Relations of 18 April 1961 [“**VCDR**”][1] by seizing the Documents **(a)**. Consequently, the principle *ex injuria jus non oritur* prevents the Court from admitting the Documents in the present proceedings **(b)**. In any event, the Court should exercise its discretionary power to declare the Documents as inadmissible **(c)**.

a. Antara breached its Article 24 VCDR by seizing the Documents

Article 24 VCDR confers to “archives and documents of the [diplomatic] mission” a large[2] and “absolute”[3] inviolability. Those archives and documents are generally accepted to be any document which emanates from the diplomatic mission.[4] The notion encompasses negotiating

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[1] Vienna Convention on Diplomatic Relations, 1961, 500 UNTS 95 [“**VCDR**”]; Compromis, ¶46.

[2] Eileen Denza, ‘Diplomatic law: Commentary on the Vienna Convention on Diplomatic Relations’ (4th edn, Oxford Commentaries on International Law 2016) [“**Denza**”], p. 160; ILC, Draft Articles on diplomatic intercourse and immunities, Yearbook of the International Law Commission 1958, vol II, A/CN.4/116/Add.l-2, p. 96.

[3] *United States Diplomatic and Consular Staff in Tehran, Judgment (USA v. Iran)*, Judgment, ICJ Rep 1980 [“**Hostage**”], ¶77.

[4] Denza, p. 156.

documents and memoranda in draft.[5] The Documents found in Ms. Walters' briefcase are related to Ravaria's mission to Antara.[6] They meet the definition of "documents of the diplomatic mission" in that they contain records of financial transactions and meetings between Ravaria and its Embassy to Antara.[7] As they fall within the ambit of Article 24 VCDR, each of them enjoys inviolability "at any time and wherever they may be".[8] The fact that they were contained in an unmarked briefcase has no bearing on their inviolability, as the Eritrea-Ethiopia Claims Commission has already ruled in its 2004 Partial Award.[9]

Antara's seizure of the records constitutes a violation of Antara's obligation to respect the inviolability of the Documents.[10]

b. Consequently, the Documents illegally obtained are not admissible before the Court by application of application of the principle *ex injuria jus non oritur*

Although the admissibility of evidence is free before the Court, the latter remains bound by "general principles of judicial procedure".[11]

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[5] ILC, Draft Articles on diplomatic intercourse and immunities, Yearbook of the International Law Commission 1958, vol I, A/CN.4/116/Add.1-2, pp. 135-136.

[6] Compromis, ¶36.

[7] Compromis, ¶36.

[8] VCDR, Article 24.

[9] *Diplomatic Claim - Ethiopia's Claim 8*, Eritrea-Ethiopia Claims Commission, No 2001-02, PCA, Partial Award 28 April 2004, ¶44; Statute of the International Court of Justice, 1945, 59 STAT 1055 ["**ICJ Statute**"], Article 38(1)(d).

[10] Denza, p. 160; Hostage, ¶61.

[11] ICJ Statute, Article 38(1)(c); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, Merits, ICJ Rep 1986 ["**Nicaragua**"], ¶59.

The principle of good faith existing under international law[12] entails the obligation to refrain from benefiting from one's own wrongdoing,[13] commonly called the "*ex injuria jus non oritur*" principle.[14] The submission of illegally obtained evidence is contrary to the principle *ex injuria jus non oritur*.[15]

In the present case, Antara was fully engaged in the illegal collection of the evidence,[16] thereby violating Article 24 VCDR.[17] However, instead of complying with its obligation to cease the wrongful act,[18] Antara photocopied[19] the documents and submitted[20] them as evidence in the present proceedings, thereby seeking to obtain an advantage stemming from its violation of Article 24 VCDR and of its obligation to cease the act.

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[12] *Nuclear Tests (Australia v. France)*, Judgment, ICJ Rep 1974 ["**Nuclear Tests**"], ¶46; *Methanex Corporation v. United States of America*, ICSID, 44 ILM 1345, Award 3 August 2005, Part(II)Chapter(1), ¶54; *EDF (Services) Limited v. Romania*, ICSID, ARB/05/13, Procedural Order n°3 29 August 2008, ¶38.

[13] *Jurisdiction of the Courts of Danzig*, Advisory Opinion, PCIJ Rep Series B No 15 (1928), p. 26-27; *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Jurisdiction, PCIJ Series A No 8 (1927) ["**Chorzów Factory Jurisdiction**"], p. 31; *Tippets, Abbett, McCarthy, Stratton v. TAMS-AFFA*, Iran-United States Claims Tribunal, No 141-7-2, Award 29 June 1984, ¶28; Bin Cheng, 'General Principles Of Law: As Applied by International Courts and Tribunals' (London Stevens 1953), p. 240; Sara Mansour Fallah, 'The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals' (2020) 19 Law Pract. Int ["**Mansour**"], p. 164.

[14] *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, ICJ Rep 1997 ["**Gabčíkovo-Nagymaros**"], ¶133.

[15] Mojtaba Kazazi, *Burden of Proof and Related Issues* (Kluwer International Law 1996) ["**Kazazi**"], p. 206; Chittharanjan Amerasinghe, *Evidence in International Litigation* (Martinus Nijhoff Publishers 2005) ["**Amerasinghe**"], p. 179; William Thomas Worster, 'The Effect of Leaked Information on the Rules of International Law' (2013) 28 Am. U. Int'l L. Rev., pp. 447-449.

[16] Compromis, ¶35.

[17] Pleadings, (A)(1)(a).

[18] 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 30; Hostage, ¶95(3)(c).

[19] Compromis, ¶38.

[20] Compromis, ¶47(a).

This stands in direct violation of the *ex injuria jus non oritur* principle and the Court must declare the Documents inadmissible.

c. In any event, the Court should exclude the Documents after balancing the various interests and circumstances at stake

If the Court does not consider that the Documents are inadmissible on the basis of the principles exposed above, it should still use its discretionary power to reject the Documents.[21] The need to protect the confidential character of the Documents (i) and the good judiciary order (ii) override the interest of admitting the evidence in the present proceedings.

i. <u>The interest of protecting the confidential character of the Documents outweighs the interest of admitting the Documents</u>

The confidential character of the documents must be considered in the balance of interests.[22] The benefit of preserving the confidentiality of the Documents outweighs the benefit of declaring them admissible.

In the *Bosnian Genocide* case, Bosnia and Herzegovina requested the Court under Article 49 of the Statute to call upon Serbia and Montenegro to release documents which were in their sole possession. The Court refused to do so.[23] The refusal was implicitly grounded on the respect for the confidentiality of the documents detained by Bosnia and Herzegovina.[24]

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[21] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Rep 2005 ["**Armed activities**"], ¶59; 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; Mansour, p. 176; Robert Kolb, 'The International Court of Justice' (Oxford: Hart Publishing, 2013), p. 957.

[22] 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**"], p. 38.

[23] *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**"], ¶¶205-206.

[24] Bosnian Genocide, Dissenting opinion of Judge Mahiou, ¶58; Chen, pp. 19-20.

In casu, the confidential character of the Documents is proved by the fact that Ravaria objected to their admissibility as evidence,[25] that its Embassy immediately requested Antara to return them after the seizure,[26] and that they were not disclosed to the public.[27] Relying on its previous case-law,[28] the Court should respect the confidential character of the Documents and, therefore, should declare them inadmissible.

ii. The interest of ensuring good judicial order outweighs the interest of admitting the Documents

As "principal judicial organ of the United Nations",[29] the Court must refrain from admitting the unlawfully seized Documents because "retroactive validation of illegal seizures of evidence could encourage many more interventions"[30] and should protect the good judicial order.[31]

The Court must also ensure that States will "continue to consent to [its] jurisdiction".[32] A State harmed by a flagrant violation of its rights under the VCDR will lose its confidence in the Court if the illegally obtained Documents are admitted.

For this reason, the Court must declare them inadmissible.

2. The Recording is inadmissible as evidence in these proceedings

The Recording of the conciliation meeting of 31 May 2021 contains statements made by the Attorneys-General of Antara and Ravaria. Evidence of statements, admissions, positions, or concessions of the other party expressed during previous settlement negotiations is not admissible

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[25] Compromis, ¶48.

[26] Compromis, ¶38.

[27] Clarifications, ¶7.

[28] ICJ Statute, Article 38(1)(d).

[29] Charter of the United Nations, 1945, 1 UNTS XVI ["**UN Charter**"], Article 92.

[30] Reisman/Freedman, p. 752.

[31] Reisman/Freedman, pp. 738, 741 and 744.

[32] Chen, p. 38.

as evidence before the Court.[33] The rationale of the rule is not to discourage States to have recourse to extra-judicial settlement of disputes. If the statements and concessions made by a party during negotiations are opposed to it during a subsequent proceeding, this party would be deterred from having recourse to pacific settlement of dispute.[34]

The Court must exclude the Recording because a customary rule prohibits Antara to submit such evidence (**a**). In the alternative, even if the evidence can be introduced, it must be declared inadmissible because statements originating from previous settlement are not admissible (**b**).

a. A customary rule prohibits Antara to submit the Recording

A rule of customary international law prohibits States to submit statements originating from previous negotiations as evidence. The customary nature of the rule is demonstrated by extensive State practice (i) and *opinio juris* (ii).[35] Consequently, the Court must declare the Recording inadmissible (iii).

i. The principle is supported by extensive state practice

The vast majority of States engaging in conciliation agreements systematically agree, through a negotiation treaty or a special agreement, not to submit evidence of statements, admissions, positions, or concessions made during prior negotiations in subsequent proceedings.[36] Evidence of

[33] Chen, pp. 12-13.

[34] Kazazi, pp. 196-199.

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

[36] Treaty for Conciliation, Judicial Settlement and Arbitration between the United Kingdom of Great Britain and Northern Ireland and Switzerland, 1965, 605 UNTS 205, Article 13(5); Special Agreement of 19 March 1988 between Qatar and Bahrain, Article 5, cited in *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Jurisdiction and admissibility, ICJ Rep 1994 ["**Qatar**"], Rejoinder submitted by the State of Bahrain, p. 65; Special Agreement to submit to a Chamber of the International Court of Justice the Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1979, 1288 UNTS 33, Article 5.

state practice in that regard can also be found in the model rules for conciliation proposed by the United Nations,[37] optional conciliation rules,[38] and in the ICSID convention.[39]

ii. <u>The principle is supported by extensive *opinio juris*</u>

In the *Maritime Delimitation (Qatar v. Bahrain)* case, the Court stressed on the customary nature of this rule.[40] The *Institut de droit international* also recognized the existence of this rule in its 1961 Resolution.[41] The European Court of Human Rights ["**ECtHR**"] recognizes it as well.[42] This rule is applicable in many domestic legal systems in the field of commercial conciliation and mediation.[43]

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[37] United Nations Model Rules for the Conciliation of Disputes between States, UNGA A/RES/50/50 (29 January 1995), Article 28.

[38] Permanent Court of Arbitration, Optional Conciliation Rules, Basic Documents 1996, p. 147, Article 20; Permanent Court of Arbitration, Optional Rules for Conciliation of Disputes Relating to Natural Resources and the Environment, Basic Documents 2002, p. 209, Article 20; International Chamber of Commerce, Mediation Rules, Publication DRS892 2014, p. 84, Article 9(2); International Centre for Dispute Resolution, International Mediation Rules 2021, p. 11, M-12(3); Conciliation Rules of the United Nations Commission on International Trade Law, UNGA A/RES/35/52 (4 December 1980), Article 20.

[39] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (International Centre for Settlement of Investment Disputes), 575 UNTS 159, Article 35.

[40] Qatar, ¶40.

[41] Institut de Droit International, Session of Salzburg 1961, 'International Conciliation', Rapporteur: Henri Rolin, Articles 10 and 13, Preamble ¶8.

[42] ECtHR, Rules of the Court 2021, Rule 62(2).

[43] Australia's Uniform Evidence Acts, section 131; Belgium's Act of 21 February 2005 concerning mediation, Article 12; France's Civil Procedure Code, Article 131-14; Ivory Coast's Act of 20 June 2014 concerning mediation, Article 15(2); Luxembourg's Civil Procedure Code, Article 1251-6; New Zealand's Evidence Act of 4 December 2006, section 57; Senegal's Decree of 24 December 2014 concerning mediation and conciliation, Article 5; Singapore's Evidence Act of 1 July 1893, section 23; Switzerland's Civil Procedure Code, Article 202; United-Kingdom's decision, Ofulue v. Boosert [2009] UKHL 16, ¶12 ; United-States' Federal rules of Evidence, rule 408; UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, UNGA A/73/17 (2018) pp. 56-62, Article 11; Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law, A/RES/57/18 (19 November 2002), Article 10 and comments ¶64.

iii. As a consequence, the Court must exclude the Recording by applying the customary rule

Antara is bound by the customary obligation not to submit any evidence of statements made during the Conciliation meeting of 31 May 2021. Therefore, the Court must exclude the Recording.[44]

b. In the alternative, statements originating from previous settlement are never admissible

Even if Antara is not bound by any obligation, it has been largely recognized by the Court,[45] the PCIJ,[46] other international tribunals,[47] and by the legal authors[48] that evidence of statements made during previous settlement negotiations are not admissible before the Court. For this reason, the Court must exclude the Recording because it contains evidence of statements made by the Attorneys-General in the context of dispute settlement negotiations.[49] Any other decision would greatly discourage States to settle their differences amicably.

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[44] ICJ Statute, Article 38(1)(b).

[45] *Frontier dispute (Burkina Faso/Republic of Mali)*, Judgment, ICJ Rep 1986, ¶179; Nuclear Test, ¶54; *Land, Island and Maritime Frontier dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, ICJ Rep 1992, ¶¶73 and 204; *The Minquiers and Ecrehos case (France/United Kingdom)*, Judgment, ICJ Rep 1953, 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, pp. 200-201.

[46] Chorzów Factory Jurisdiction, p. 19; *Factory at Chorzów (Germany v. Poland)*, Merits, PCIJ Series A No 17 (1928) ["**Chorzów Factory Merits**"], pp. 51 and 62.

[47] *Lac Lanoux Arbitration (France v. Spain)*, International Law Reports 1957 vol. 24, p. 311; *Mobil Oil Iran Inc. v. Iran*, Iran-United States Claims Tribunal, No 74, No 311-74/76/81/150-3, Partial Award 14 July 1987, ¶162; *PepsiCo, Inc. v. Iran (Zamzam Bottling Company Azerbaijan, et al.)*, Iran-United States Claims Tribunal, No 260-18-1, Award 13 October 1986, ¶84, footnote 4.

[48] Reisman/Freedman, pp. 142-143; Anna Riddell and Brendan Plant, 'Evidence Before the International Court of Justice' (British Institute of International and Comparative Law, 2009), pp. 154-155; Kazazi, pp. 196-199; Amerasinghe, pp. 174-177; Chen, pp. 12-13.

[49] Compromis, ¶44.

B. ANTARA'S CLAIM CONCERNING RAVARIA'S ALLEGED FINANCIAL CONTRIBUTIONS AND CYBER OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM IS INADMISSIBLE AND, IN ANY EVENT, BOTH CONDUCTS WERE CONSISTENT WITH INTERNATIONAL LAW

Antara's claim is inadmissible **(1)**. In any event, the alleged financial contributions and cyber operations are not attributable to Ravaria **(2)**. In the alternative, Ravaria's alleged financial contributions and cyber operations in connection with the Suthan referendum did not violate the non-intervention principle **(3)**.

1. Antara's claim is inadmissible

On the one hand, Antara is estopped from claiming that Ravaria's alleged financial contributions in connection to the Suthan referendum were illegal **(a)**. On the other hand, Antara's evidence of Ravaria's implication in the cyber operations does not meet a heightened standard of proof **(b)**.

a. Antara is estopped from claiming that the alleged financial contributions were illegal

A criminal investigation undertaken by Antara revealed that Ravaria's alleged financial contributions did not violate Antaran domestic campaign finance laws ["**the Laws**"].[50] The principle of estoppel "operates to prevent a State contesting before the Court a situation contrary to a clear and unequivocal representation previously made by it to another State, either expressly or impliedly, on which [...] the other State [...] did rely, and as a result that other State has been prejudiced or the State making it has secured some benefit or advantage for itself".[51] The Laws provide for a clear and unequivocal representation made by Antara.[52] This created legitimate expectations for Ravaria as to the regulation of foreign financial contributions in Antara.[53] In

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[50] Compromis, ¶39.

[51] *Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, ICJ Rep 1962 ["**Temple of Preah Vihear**"], Dissenting Opinion of Sir Percy Spender, pp. 143-144.

[52] Temple of Preah Vihear, Dissenting Opinion of Sir Percy Spender, pp. 143-144.

[53] Thomas Cottier and Jörg Paul Müller, 'Estoppel', The Max Planck Encyclopedia of Public International Law, 2007, ¶1.

addition, Antara publicly stated that Ravaria's alleged financial contributions did not violate the Laws.[54] Thus, Ravaria could legitimately expect that Antara would not challenge the legality of the financial contributions. Accordingly, Antara's claim relating to the alleged illegality of the financial contributions under international law is contrary to the representation created by Antara on which Ravaria relied.[55]

The Court, as other international bodies and tribunals,[56] has already applied the principle of estoppel to situations where there was neither detriment nor prejudice.[57] The Court cannot tolerate that a "State [adopts] inconsistent positions in respect of the same state of facts".[58]

Hence, Antara is estopped from claiming that the alleged financial contributions were illegal.

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[54] Compromis, ¶39.

[55] Temple of Preah Vihear, Dissenting Opinion of Sir Percy Spender, pp. 143-144.

[56] *European Communities — Export Subsidies on Sugar (Australia and ors v. European Communities)*, WT/DS265, AB-2005-2, Report of the Appellate Body 28 April 2005, ¶¶309-318; *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (I)*, ICSID, ARB/03/25, Award 16 August 2007 ["**Fraport AG Frankfurt Airport Services Worldwide**"] and Dissenting Opinion of Bernardo M. Cremades; *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID, ARB/05/16, Award 29 July 2008.

[57] Gavin Dingley, 'Estoppel', Jus Mundi, 2021, https://jusmundi.com/en/document/wiki/en-estoppel?su=%2Fen%2Fsearch%3Fquery%3Dwaiver%26page%3D2%26lang%3Den%26document-types%5B0%5D%3Dwiki&contents[0]=en (consulted 01/07/2022), ¶19; Chorzów Factory Jurisdiction, p. 31; *Legal Status of Eastern Greenland (Norway v. Denmark)*, Judgment, PCIJ Series A/B No 53, pp. 69-71; *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Judgment, ICJ Rep 1960, p. 213.

[58] Fraport AG Frankfurt Airport Services Worldwide, Dissenting Opinion of Bernardo M. Cremades, ¶ 28.

b. The evidence of Ravaria's implication in the cyber operations does not meet a heightened standard of proof

Antara asserts that Ravaria's alleged cyber operations in connection with the Suthan referendum were in violation of international law. "He who asserts must prove".[59] Therefore, the burden of proof lies on Antara.

Antara can only base its claim on circumstantial evidence, *i.e.* a declaration from the Ravarian Minister of External Affairs,[60] a criminal investigation undertaken by Antara[61] and reports from ILSA[62] and the *Sydney Morning Herald*.[63] The Court has already found that inferences of fact from indirect evidence, as opposed to direct evidence, must "leave *no room* for reasonable doubt"[64] and must meet a heightened degree of proof.[65] The Antaran criminal investigation shows no link between the Lunar Botnet and Ravaria.[66] In the *Nicaragua* case, the Court found that reports and public sources are secondary evidence.[67] Reports from ILSA and the *Sydney Morning Herald* can thus not establish Ravaria's responsibility alone. The Court also stated that it should treat statements by representatives of States with caution.[68] The declaration from the Ravarian Minister of External Affairs does not acknowledge the unfavorable conduct to Ravaria, as asserted by

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[59] *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID, ARB/10/3, Award 4 October 2013; ICJ Statute, Article 38(1)(c); Andreas Desyllas, 'Burden of proof', Jus Mundi, 2017, https://jusmundi.com/en/document/wiki/en-burden-of-proof (consulted 01/07/2022), ¶1.

[60] Compromis, ¶41.

[61] Compromis, ¶39.

[62] Compromis, ¶17.

[63] Compromis, ¶31.

[64] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits, ICJ Rep 1949 ["**Corfu Channel**"], p. 18.

[65] Nicaragua, ¶¶109-116; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Merits, ICJ Rep 2003 ["**Oil Platforms**"], ¶60.

[66] Compromis, ¶39.

[67] Nicaragua, ¶63; Oil platforms, ¶60; Armed activities, ¶61.

[68] Nicaragua, ¶65.

Antara.[69] Accordingly, Ravaria's implication in the cyber operations in connection with the Suthan referendum cannot be demonstrated.

The Court declares claims inadmissible when indirect evidence does not provide a clear and precise picture of the facts.[70] Consequently, Antara's claim is inadmissible.

2. In any event, the alleged financial contributions and cyber operations are not attributable to Ravaria

The financial contributions to SIP and SAD were made by Velan religious organizations ["**the Organizations**"] in Antara. The cyber operations, *i.e.* the Lunar Botnet, were operated by SAD from its headquarters in Antara.[71] The conduct of private persons or entities, such as the Organizations and SAD, which are "neither agents nor organs of a State, nor members of its apparatus even in the broadest acceptation of that term",[72] cannot be attributable to that State.[73] According to Article 8 ARSIWA, such conduct can only be attributable to that State if there are instructions, direction or control over the acts.[74]

Ravaria did not give any instruction, nor did it direct or control the financial contributions made by the Organizations and the cyber operations operated by SAD. *Firstly*, Ravaria only authorized a plan for the use of Embassy funds to support Suthan independence.[75] *Secondly*, Ravaria gave its approval only for SAD to operate the cyber operations from SAD's headquarters in Antara.[76] The Court found that the *overall control* test – as developed in the *Tadic* case[77] – is not sufficient to

[69] Nicaragua, ¶64.

[70] Corfu Channel, p. 18.

[71] Compromis, ¶37(c).

[72] Nicaragua, ¶16.

[73] 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. 47.

[74] ARSIWA, Article 8; ARSIWA Commentaries, pp. 47-48.

[75] Compromis, ¶37(a).

[76] Compromis, ¶37(c).

[77] *Prosecutor v. Dusko Tadic*, ICTY, Case IT-94-1-A, 1999, ¶1117.

demonstrate attribution of a conduct of a private actor to a State.[78] According to the Court, only *effective control* of the conduct can give rise to a State's legal responsibility.[79] In addition, in the *Nicaragua* case, the Court held that, even if "the various forms of assistance provided to the *contras* by the United States was crucial to the pursuit of their activities, [...] it is insufficient to demonstrate"[80] an effective control. Therefore, mere support from Ravaria is not sufficient to constitute effective control on the Organizations and SAD. Accordingly, the Organizations and SAD had a margin of independence in their actions and were not under the complete dependence of Ravaria.[81]

Hence, the financial contributions and cyber operations are not attributable to Ravaria on the basis of Article 8 ARSIWA.

3. In the alternative, Ravaria's alleged financial contributions and cyber operations in connection with the Suthan referendum did not violate the non-intervention principle

The non-intervention principle is violated when a State intervenes in another State's internal affairs, using methods of coercion.[82] Ravaria did not intervene in Antara's internal affairs **(a)** and, in any case, Ravaria's alleged financial contributions and cyber operations were not methods of coercion **(b)**.

78 Bosnian Genocide, ¶¶402-406.

79 Nicaragua, ¶¶109 and 115.

80 Nicaragua, ¶110.

81 Bosnian Genocide, ¶¶391-394.

82 Nicaragua, ¶205.

a. Ravaria did not intervene in Antara's internal affairs

The Court found that the choice of a political, economic, social and cultural system falls within the "*domaine réservé*"[83] of a sovereign State.[84] However, in the present case, Antara's right of discretion in the organization of the Suthan referendum within its jurisdiction is restricted by international obligations undertaken towards Ravaria under the 1962 Treaty of Singapore ["**the Treaty**"].[85]

Antara and Ravaria ratified the Treaty by which they agreed on the organization of the Suthan referendum pursuant to the right of self-determination of the Suthans, and to respect the result of such referendum.[86] Such international obligations cannot be "avoided by pleas of domestic jurisdiction and non-intervention".[87] Thus, Ravaria is not intervening in the internal affairs of Antara when it induces Antara to respect its international obligations. In addition, the Court made clear that self-determination is "an obligation *erga omnes*" and that "all States have a legal interest in protecting that right".[88] Hence, Ravaria has a legal interest in protecting the right of self-determination of the Suthans.

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[83] "Reserved domain". This notion describes "the areas of State activity that are internal or domestic affairs of a State and are therefore within its domestic jurisdiction or competence" (Katja S Ziegler, 'Domaine Réservé', Max Planck Encyclopedia of Public International Law, 2013).

[84] Nicaragua, ¶205.

[85] *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, PCIJ Series B No 4. The P.C.I.J. held that the right of a State to use discretion in its domestic jurisdiction could be restricted by international obligations undertaken by that State towards other States.

[86] Compromis, ¶¶6, 8 and 9.

[87] Nicaragua, Dissenting opinion of Judge Schwebel, ¶245; 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. 39.

[88] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Rep 2019, ¶180; *East Timor (Portugal v. Australia)*, Judgment, ICJ Rep 1995, ¶2; 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**"], Preamble.

b. In any case, Ravaria did not use methods of coercion

The Court held that "the element of coercion [...] defines, and indeed forms *the very essence* of prohibited intervention".[89] Measures are coercive when taken to subordinate the exercise of the sovereign rights of the target State and "to secure from it advantages in any kind".[90] The Court found that the element of coercion "is particularly obvious in the case of an intervention which uses force".[91] Ravaria's alleged financial contributions (i) and cyber operations (ii) are non-forcible measures which did not subordinate Antara's will. Accordingly, Ravaria did not use methods of coercion.

i. <u>The financial contributions were permissible under Antaran law and did not subordinate Antara's will</u>

The Ravarian Embassy made financial contributions to Velan religious organizations in Sutha.[92] A total of €25 million in Ravarian Embassy funds were then channeled to SAD and SIP by the Organizations, in support of the Suthan independence.[93] There is a wide practice of such foreign campaign fundings in which many States engage,[94] while they still recognize the non-

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[89] Nicaragua, ¶205, emphasis added.

[90] Declaration on the Inadmissibility of Intervention, UNGA A/RES/20/2131 (21 December 1965), ¶2; Declaration on Friendly Relations and Co-operation, Preamble.

[91] Nicaragua, ¶205.

[92] Compromis, ¶36.

[93] Compromis, ¶¶36 and 37(a).

[94] For example, the U.S. funded a candidate and a party in the 1982 Mauritian election (Dov H. Levin, 'Partisan electoral interventions by the great powers: Introducing the PEIG Dataset' (2016) 36 SAGE journals, pp. 88-106); political campaigns of its preferred candidates in the 2005 Iraqi election (Seymour M. Hersh, 'Get Out the Vote - Did Washington try to manipulate Iraq's election?', (2005) The New Yorker, https://www.newyorker.com/magazine/2005/07/25/get-out-the-vote (consulted 01/10/2022)); $350,000 to a NPO to support preferred candidates in the 2016 Israelian election (Stephan Dinan, 'Obama admin. sent taxpayer money to campaign to oust Netanyahu' (2016) The Washington Times, https://www.washingtontimes.com/news/2016/jul/12/obama-admin-sent-taxpayer-money-oust-netanyahu/ (consulted 01/10/2022)). France's national close to the then-French president gave financial support to presidential candidates during the 2010 Guinean and Togolese elections (David Chazan, 'French tycoon accused of bribery and interfering in African elections' (2018) The Telegraph, https://www.telegraph.co.uk/news/2018/04/24/french-tycoon-accused-bribery-

intervention principle.[95] In addition, the campaign finance laws of States are not unanimous[96] and there is no international consensus as to the illegality of foreign financial contributions in elections.[97] Thus, domestic laws reflect a State's opinion on the legality of foreign financial contributions.[98] In the present case, Ravaria's alleged financial contributions were permissible under Antaran Laws.[99] As a consequence, Antara's practice does not consider foreign financial contributions as a subversion of its own will. A method is coercive when it replaces the will of the people of the targeted State with the will of the interfering State.[100] Therefore, Ravaria's alleged financial contributions did not subordinate Antara's will.

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interfering-african-elections/ (consulted 01/10/2022)). Libyan leader channeled €50 million to N. Sarkozy's presidential campaign during the 2007 election (Fabrice Arfi et Karl Laske, 'Nicolas Sarkozy a bien servi les intérêts de Kadhafi. Voici les preuves' (2018) Mediapart, https://www.mediapart.fr/journal/france/040418/nicolas-sarkozy-bien-servi-les-interets-de-kadhafi-voici-les-preuves (consulted 01/10/2022)). Due to the covert character foreign financial contributions usually have, there is no doubt that there are many more examples than that publicly known.

[95] The U.S., France, Russia and Libya were members of the United Nations when the Declaration on Friendly Relations and Co-operation was taken with the view to give expression to principles of a legal character. The non-intervention principle was embodied by this Declaration.

[96] Damrosch, p. 21; For example, the U.S., France, Russia and Libya ban foreign financial contributions to political parties. For example, Belgium, Austria, Switzerland, Denmark, Germany do not. Around 30% of States do not ban financial contributions to political parties. Among States banning such conduct, many of them nonetheless engage in campaign funding (see footnote 94). See IDEA Database, https://www.idea.int/data-tools/world-view/55 (consulted 01/08/2022).

[97] Damrosch, p. 28.

[98] Damrosch, p. 21.

[99] Compromis, ¶39.

[100] Michael N. Schmitt, 'Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations' (CUP 2017) ["**Tallinn Manual 2.0**"], p. 319; 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, pp. 192-195.

ii. The cyber operations did not deprive Antara of its ability to control, decide, or govern its internal affairs

Coercive cyber operations have to be distinguished from "cyber operations that are merely influential or persuasive".[101] In the present case, the cyber operations resulted in the creation of approximately 180,000 accounts on Pano[102] and the infection of 30,000 devices by the Lunar Botnet.[103] Such cyber operations cannot be considered as coercive due to their minimal impact on Sutha's population. Indeed, Pano has four million daily active users in Antara; the 180,000 suspicious accounts do not even represent 1% of the daily active users.[104] Antara has a population of 21 million citizens. Here again, the 30,000 affected devices do not represent 1% of the population.[105] Therefore, the cyber operations could materially not deprive Antara of its "ability to control, decide, or govern matters of an inherently sovereign nature".[106]

Moreover, "a rule of reason should apply. Operations that result in only a very limited number of voters voting improperly [...] would be unlikely to qualify as coercive".[107] In the present case, 52% of the voters voted for secession. Such a result demonstrates that there is only a little majority in favor of separation from Antara. The cyber operations are thus not coercive as their influence - if any - could only result in a small number of voters voting for secession.[108] Additionally, the

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

[102] Compromis, ¶17.

[103] Compromis, ¶31.

[104] Compromis, ¶11.

[105] Compromis, ¶1.

[106] Australian Government, 'Australia's International Cyber Engagement Strategy', https://www.internationalcybertech.gov.au/sites/default/files/2020-11/The%20Strategy.pdf (consulted 12/17/2021), p. 5; cited by Schmitt.

[107] Schmitt.

[108] Compromis, ¶ 30.

result of the referendum corresponds to the increasing popularity of SIP having already more than 42% of the seats in the Suthan Legislative Council in 2016.[109]

For those reasons, Ravaria's alleged cyber operations did not deprive Antara of its ability to control, decide, or govern its internal affairs and are, thus, not coercive.

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

Ravaria's Claim is admissible **(1)** and the Order is in violation of the ICCPR to which Antara and Ravaria are parties **(2)**. Therefore, Antara must rescind the Order **(3)**.

1. Ravaria's Claim is admissible

Ravaria is entitled to seek the protection of Prof. Hunland's right before the Court (**a**); and, in any event, Ravaria can bring this claim before the Court because of the *erga omnes partes* character of the obligations of the ICCPR **(b)**.

a. Ravaria is entitled to diplomatically protect Prof. Hunland

Diplomatic protection as a legal institution under customary international law[110] has been upheld by the Court for individual human rights violations.[111] This right enjoyed by States[112]

[109] Compromis, ¶14 and 18.

[110] *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)*, Judgment, ICJ Rep 1989, ¶50; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, ICJ Rep 2007 ["**Ahmadou Sadio Diallo**"], ¶39.

[111] Ahmadou Sadio Diallo, ¶39 and Separate Opinion of Judge Cançado Trindade, ¶215.

[112] *Barcelona Traction, Light and Power Company, Limited* (*Belgium v. Spain*), Judgment, ICJ Rep 1970, ¶78.

entitles Ravaria to secure protection of Prof. Hunland and to obtain reparation[113] for the internationally wrongful act inflicted by Antara.[114]

According to the Draft Articles for Diplomatic Protection[115] largely reflecting customary international law and the jurisprudence of the Courts,[116] three conditions must be met for the exercise of diplomatic protection.[117] First, an internationally wrongful act must be attributable to Antara. The Order taken by the Federal Court of Lower Antara is indeed a violation of international law.[118] Second, this act must be committed against a Ravarian national. The Order was taken against Prof. Hunland, a Ravarian national.[119] Finally, Prof. Hunland must have exhausted all local remedies. The Antaran appeal court dismissed Prof. Hunland's challenge, and no further judicial review of the case is possible at the national level.[120]

Since the *Nottebohm* case,[121] the nationality of individuals needs to be appreciated less in light of its effectiveness rather than its sheer existence for the purpose of the exercise of diplomatic protection, as made clear by the International Law Commission's **["ILC"]** draft on Diplomatic Protection.[122] Therefore, the reliance by Antara on a genuine nationality link for admissibility purposes does not reflect the current status of international law.

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[113] ILC, First report on diplomatic protection: addendum by John R. Dugard Special Rapporteur, 52nd session 2000, A/CN.4/506/Add.1, pp. 25-26.

[114] ILC, Draft Articles on Diplomatic Protection, 58th Session 2006, A/61/10 ["**Diplomatic Protection**"], Article 1; ARSIWA Commentaries, pp 32-34 and 91; John Dugard, 'Diplomatic Protection', Max Planck Encyclopedia of Public International Law 2021 ["**Dugard**"], ¶1.

[115] Diplomatic Protection, Article 1.

[116] Ahmadou Sadio Diallo, ¶¶39-48.

[117] Dugard, ¶¶18, 19 and 53.

[118] Compromis, ¶¶26 and 27; Pleadings, (C)(2).

[119] Compromis ¶¶13, 26 and 27.

[120] Clarifications, ¶2.

[121] *Nottebohm Case (Liechtenstein v. Guatemala)*, Merits, Judgment, ICJ Rep 1955 ["**Nottebohm"]**, pp. 23 and 24.

[122] ILC, Draft Articles on Diplomatic Protection with commentaries, Yearbook of the International Law Commission 2006, vol II Part Two, A/61/10, pp. 29-30.

Accordingly, Ravaria is entitled to represent Prof. Hunland before the Court, and its claim is admissible.

b. In any event, Ravaria can bring this claim before the Court because obligations under the ICCPR have an *erga omnes partes* character

The obligations contained in the ICCPR are of *erga omnes partes* nature.[123] It follows that Ravaria has a legal interest under Article 42(b)(ii) ARSIWA in the compliance by Antara of its obligations.[124] As signatory States of the ICCPR,[125] Ravaria and Antara both have a duty to comply with their treaty obligations affecting the community of States.[126] Therefore, Ravaria has an interest in the compliance by Antara of its treaty obligations regarding Prof. Hunland's rights under the ICCPR.

2. Antara's Order violated International Human Rights Law

Antara's Order violated Articles 14 and 2(3) ICCPR **(a)**. Additionally, it constituted an illegal restriction of Prof. Hunland's freedom of speech under Article 19(2) ICCPR **(b)**.

a. Antara's Order breached Articles 14(1) and 2(3) ICCPR

The Order suspending the account was taken upon a violation of Prof. Hunland's procedural rights protected by Article 14(1) ICCPR (i). Moreover, Antara violated Article 2(3) ICCPR because it did not provide for an effective remedy (ii).

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[123] HRC, General Comment 34, UN Doc CCPR/C/GC/34 (12 September 2011) ["**GC34**"], ¶2.

[124] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal),* Judgment, ICJ Rep 2012, ¶¶68-70; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar),* Provisional Measures, Order, ICJ Rep 1993, ¶¶39-42.

[125] Compromis, ¶46.

[126] International Covenant on Civil and Political Rights (19 Dec 1966) 999 UNTS 171 ["**ICCPR**"], Article 2(1); HRC, General Comment 31, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), ¶3.

i. Antara's Order violated Article 14(1) ICCPR

Antara violated Prof. Huland's right to have access to the courts enshrined in Article 14(1) ICCPR.[127] When the rights of a person are determined in a proceeding, this person should have access to the Courts.[128] In the present case, this right was denied to Prof. Hunland. Section 5(2) PACA did not grant him the possibility to be party to the suspension civil proceedings[129] relating to the potential restriction of his right to freedom of speech and his right to use his Pano account.

Prof. Hunland only had the possibility to submit a written statement to present his view after having been informally notified of the application of the DPCA by a public Pano post five days before the issuance of the Order.[130] The HRC recognized the right to have adequate time to prepare a defense,[131] which is applicable in civil proceedings.[132] Prof. Hunland had insufficient time to prepare his view on the DPCA's 74-page petition.[133] Additionally, it is not established that Prof. Hunland received and could read this petition. Prof. Hunland could not challenge the arguments and evidence advanced by the DPCA. Accordingly, the "right to be heard" provided by PACA is not sufficient to establish a right to access to courts.

[127] *Judgment No 2867 of the Administrative Tribunal of the International Labor Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Advisory Opinion, ICJ Rep 2012 ["**International Labor Organization**"], ¶39; HRC, General Comment 32, UN Doc CCPR/C/GC/32 (26 May 2004) ["**GC32**"], ¶9.

[128] International Labor Organization, ¶39; GC32, ¶9; *LNP v. Argentina*, Communication 1610/2007, ¶9.60.

[129] PACA, section 5(2); GC34, ¶9.

[130] PACA, section 5(2); Compromis, ¶27.

[131] HRC, *Hibbert v. Jamaica*, Communication 293/1988, ¶7.4; HRC, *Desmond Williams v. Jamaica*, Communication 561/1993, ¶9.3.

[132] 'Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism', The Basic Human Rights Reference Guide series, CTITF Working Group, United Nations, 2014, ¶74.

[133] Compromis, ¶26.

As PACA did not grant Prof. Hunland the right to be party to the proceedings, he was deprived of his right to have access to courts.[134] For this reason, the Order taken on the basis of PACA breaches Article 14(1) ICCPR.

ii. Antara's Order violated Article 2(3) ICCPR

The Order created a situation where Prof. Hunland had no possibility to seek an effective remedy to the infringement of his rights, whereas Article 2(3)(a) ICCPR provides that States should "ensure that any person whose rights or freedoms [...] are violated shall have an effective remedy".

Prof. Hunland could not challenge the suspension Order in front of the Antaran federal court "for lack of standing".[135] The decision was confirmed on appeal.[136] Moreover, no judicial review was possible to challenge the six-month-extension of the Order.[137]

Therefore, by not allowing Prof. Hunland to seek effective remedy to the violation of his right to freedom of speech, Antara breached Article 2(3) ICCPR.

b. Antara's Order violated Article 19(3) ICCPR

The right of freedom of expression enshrined in Article 19(2) ICCPR can be restricted under the conditions of Article 19(3) ICCPR. However, the suspension order issued by Antara fails to comply with requirements of legality (i), necessity (ii) and proportionality with the alleged aim (iii).

i. The Order did not meet the legality criterion

Antara did issue the Order on the basis of the PACA which fails to comply with the legality requirement of Article 19(3) ICCPR.[138]

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[134] GC32, ¶9.

[135] Compromis, ¶28.

[136] Clarifications, ¶2.

[137] Clarifications, ¶3.

[138] GC34, ¶25.

The legality test of Article 19(3) ICCPR entails that the limitation must be provided by law,[139] which must ensure predictability through precise wording to promote transparency and avoid arbitrary application by State authorities.[140]

The definition of "election misinformation" contained in Article Section 5(1)(b) PACA is broad and ambiguous.[141] The "statements likely to alter or otherwise impact the outcome of an election"[142] cannot safely be distinguished from dissident and critical political discourses.

Those are heavily protected under the ICCPR[143] and constitute the core of Prof. Hunland's speech.[144] Therefore, PACA does not allow for sufficient predictability in which types of behavior are condemnable and leaves a disproportionate margin of arbitrary application by Antara.

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[139] GC34, ¶25.

[140] Raija Hanski and Martin Scheinin, 'Leading case of the Human Rights Committee' (2nd edn, Turku Institute for Human Rights, 2007), p. 4; GC34, ¶¶24-25; HRC, *Faurisson v. France*, Communication 550/1993, ¶9.5; HRC, *Keun-Tae Kim v. The Republic of Korea*, Communication 574/1994, ¶12.3; ECtHR, *Handyside v. United Kingdom,* No 5493/72 (1976), ¶49.

[141] SR Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'Mission to the Republic of Korea', UN Doc A/HRC/17/27/Add.2 (21 March 2011) ["**SR Korea**"], ¶91; Irene Khan, Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OL MYS 5/2021, p. 3.

[142] PACA, Section 5(1)(b).

[143] GC34 ¶47-49; 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**"], ¶42; 'Article 10 Expression and advertising of political positions through the media/Internet in the context of elections/referendums', Research and Library division, ECtHR 2018 ["**Article 10 Elections**"], ¶135; ECtHR, *Castells v. Spain*, No 11798/85 (1992) , ¶43.

[144] Compromis, ¶¶16, 17, 22 and 23.

ii. The Antaran Court Order failed to demonstrate the necessity of the suspension under Article 19(3) ICCPR

A restriction must be necessary to pursue one of the legitimate purposes listed in Article 19(3) ICCPR.[145] Antara's Order was allegedly taken for the protection of public order.[146] Therefore, Antara must demonstrate the existence of a threat on public order, as well as its precise nature "by establishing a direct and immediate connection between [Prof. Hunland's speech] and the threat".[147] However, Antara failed to establish the existence of the threat and its connection with Prof. Hunland's speech, when issuing the Order.

First, no clear link can be established between Prof. Hunland's posts and the threat to public order. There is no substantial evidence that Prof. Hunland caused any public disorder by his activity on Pano. The disturbances at the rally were caused by unknown events and actors[148] over which Prof. Hunland does not have any control.[149] Those are independent from the person of Prof. Hunland and his posts.

Second, PACA aims at the protection of public order "likely to alter the outcome of elections".[150] Since the referendum has passed, it cannot be reasonably conceived that Prof. Huland's posts would cause any disruption to Antaran public order. As a consequence, the Order is not necessary anymore because the threat disappeared.[151] Its extension is even less justifiable,[152] as it has been decided eight months after the referendum.

Therefore, Antara's justification of the Order fails to prove its necessity for the alleged threat posed by Hunland's Pano account.

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[145] GC34, ¶22; Hellen Keller and Walther Reto, 'Balancing test: United Nations Human Rights Bodies', Max Planck Encyclopedia of International Law, 2018, ¶33.

[146] Compromis, ¶27.

[147] GC34 ¶35; HRC, *Shin v. Republic of Korea,* Communication 926/2000, ¶¶7.2 and 7.3.

[148] Compromis, ¶25.

[149] Compromis, ¶25.

[150] PACA, Section 5(1)(b).

[151] Compromis, ¶27.

[152] Clarifications, ¶3.

iii. The Order and its extension were not proportionate

Restrictive measures must be proportionate and the least intrusive to perform their function.[153] In its appreciation of the proportionality of the measure, the Court must take into account all relevant circumstances, namely the form and means of its application.[154] The total suspension of Prof. Hunland's account for a period of one year issued by the Antaran federal Court, and its extension for six more months[155] stands out as an extreme measure in pursuing the aims of public security discussed by Antara.[156]

First, the measure is unnecessarily intrusive as it is not geographically limited. Its effects go beyond the borders of the Benthamian Peninsula, the posts having been rendered inaccessible from anywhere in the world.[157]

Second, Antara did not try lighter and more adequate restrictions that were available before ordering the suspension. States must find the least intrusive means in pursuit of their aim.[158] *In casu*, Antara could have adopted notice and takedown practice, as carried out in

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[153] GC34, ¶34, HRC, General Comment 27, UN Doc CCPR/C/21.Rev.1/Add.9 (2 November 1999), ¶14; HRC, *Marques v. Angola,* Communication 1128/2002 ["**Marques**"], ¶6.8; HRC, *Coleman v. Australia*, Communication 1157/2003 ["**Coleman**"], Concurring Opinion Ando, O'Flaherty and Kälin, ¶2.

[154] GC34, ¶34; Marques ¶6.8; Coleman, Concurring Opinion of Ando, O'Flaherty and Kälin, ¶2.

[155] Clarifications, ¶3.

[156] Compromis, ¶27.

[157] Clarifications, ¶10.

[158] GC34, ¶34; GC27, ¶14; Marques, ¶6.8, Coleman, ¶2.

France,[159]Germany,[160] and the European Union to counter hate speech.[161] The account's suspension in its entirety is a far reaching and unadvised[162] limitation equivalent to censorship,[163] requiring a higher threshold of scrutiny in its analysis. Although previous measures had indeed been taken by Pano on Prof. Hunland's account, such as warning messages and the flagging of his posts,[164] only one month had elapsed between the measure and the Order.[165] Antara could not have the time to assess the efficacy of the effects of the Pano-measure before issuing the Order.

Third, States must demonstrate the highest scrutiny when interfering with political discourse,[166] specifically during election times.[167] Prof. Hunland is a politician, leader of the opposition,[168] active in the political life of the Region.[169] It does not take into account the role and the significance of Prof. Hunland's Pano account in terms of reach and user engagement on the platform. On the

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[159] Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc A/HRC/17/27 (16 May 2011) ["**SR Frank La Rue**"], ¶41; France's loi n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet, Article 4.

[160] Germany's Network Enforcement Act (NetzDG) of 2017, Section 3; Google transparency report on the application of NetzDG, https://transparencyreport.google.com/netzdg/youtube (consulted 10/01/2021).

[161] SR Disinformation, ¶59; European Parliament and of the Council 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (2000) OJ L 178, Article 14; United States' Digital Millennium Copyright Act of 1998, Section 512.

[162] SR Frank La Rue, ¶43

[163] SR Frank La Rue, ¶29.

[164] Compromis, ¶24.

[165] Compromis, ¶¶24 and 26.

[166] GC34, ¶38; ECtHR, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland*, No 32772/02 (2009), ¶92; Article 10 Elections, ¶23;

[167] SR Frank La Rue, ¶30.

[168] Compromis, ¶¶14 and 16.

[169] Compromis, ¶¶13 and 14.

top of it, such Order sets a severe chilling effect on any other users of the platform, which is likely to endanger the plurality of opinions necessary in any democracy.[170]

Fourth, the unlawful limitation on Prof. Hunland's freedom of speech affects the exercise of other rights of the Covenant because they are interconnected.[171] The suspension Order acts as an enabler for the exercise of the right of peaceful assembly[172], of information[173] and the right to vote[174], which need an unrestricted freedom of speech to be enjoyed.

For those reasons, the suspension Order is disproportionate taking into account the protection of public order pursued by Antara.

3. Therefore, Antara must rescind the Order

Antara continues to violate international law[175] by having taken and expended the suspending of Prof. Hunland's Pano account for a period of one year and six months, which is still running.[176] Thus, Antara is under the obligation to cease the ongoing violation.[177] Antara must rescind the Order to stop the breach of its obligations.[178]

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[170] SR Frank La Rue, ¶26 and 28; SR Korea, ¶91.

[171] GC34 ¶4; Freedom of opinion and expression, UN Doc A/HRC/RES/44/12 (24 July 2020), p. 1; SR Frank La Rue, ¶22.

[172] HRC, *Praded v.Belarus,* Communication 2029/2011, ¶7.4.

[173] HRC, *Aduayom et al v. Togo*, Communication 422-424/1990, ¶7.4.

[174] GC34, ¶20; Adrienne Stone and Frederick Schauer, 'Oxford Handbook on Freedom of Speech' (1st edn, OUP Oxford, 2021), p. 93.

[175] ARSIWA, Article 14(2); *Case concerning the Rainbow Warrior (New Zealand v. France)*, UNRIAA 1990 vol. XX, Sales No E/F.93.V.3, ¶105.

[176] Compromis, ¶27; Clarifications, ¶2.

[177] ARSIWA, Article 30(a); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, ICJ Rep 2004, ¶151; Nicaragua, ¶292(12); Hostage, ¶95(3)(A); *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012 ["**Jurisdictional Immunities**"], ¶137.

[178] ILC, Second report on the content, forms and degrees of State responsibility (Part 2 of the draft articles) by Mr. Willem Riphagen Special Rapporteur, Yearbook of the International Law Commission 1981, A/CN.4/344, p 87.

In the alternative, the Order constituted an instantaneous act[179] for which Antara must make full reparation.[180] Here, Ravaria seeks restitution as the form of reparation, "that is, to re-establish the situation which existed before the wrongful act was committed".[181] Hence, and *mutatis mutandis* to what the Court ordered in the *Arrest Warrant case,*[182] Antara is under the obligation to rescind the Order by means of its own choosing.

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

Antara's decision to take down the Lunar Botnet ["**Operation Moonstroke"**] resulted in the infection of 5,000 devices on Ravarian soil.[183] Accordingly, Antara violated the Convention on Cybercrime[184] ["**the Budapest Convention**"] **(1)**, the principles of good neighborliness **(2)**, and Ravarians' Rights to privacy **(3)**.

1. Antara violated the Budapest Convention

Antara's actions were in violation of the obligation of consultation with Ravaria to determine jurisdiction contained in Article 22(5) Budapest Convention **(a)**. In addition, Antara failed to obtain the consent of Ravarian users for the trans-border access of their devices as requested under Article 32(b) **(b)**.

[179] ARSIWA, Article 14(1).

[180] ARSIWA, Article 31; Chorzów Factory Merits, p. 47.

[181] ARSIWA, Article 35; *Arrest Warrant Case (Democratic Republic of the Congo v.Belgium)*, Judgment, ICJ Rep 2002 ["**Arrest Warrant**"], ¶¶ 76 and 78(3); Jurisdictional Immunities, ¶137.

[182] Arrest Warrant, ¶¶76 and 78(3).

[183] Compromis, ¶32.

[184] Convention on Cybercrime, 2001, 2296 UNTS 167 ["**Budapest Convention**"]; Compromis, ¶46.

a. Antara violated Article 22(5) of the Budapest Convention

Antara did not fulfill its obligations under the Budapest Convention pertaining to jurisdiction. According to its Article 22(5), if more than one State can claim jurisdiction over a given case, because the criminal offense is committed on its territory, they must consult to determine which country may act.[185] Consequently, Antara should have contacted Ravaria to decide which State may exercise jurisdiction to take down the Lunar Botnet.[186]

b. Antara violated Article 32(b) of the Budapest Convention

Article 32(b) on transborder access to data requires voluntary and lawful consent of the person who may lawfully disclose the data, before accessing it. Access is qualified as transborder when data, located on the territory of another party, is accessed unilaterally without seeking mutual assistance.[187] PACA does not require the DPCA to ask for consent prior to the takedown.[188] Thus, Operation Moonstroke violated both Antara's treaty obligations and the rights of Ravarian citizens.[189]

2. Antara violated the obligations that it owes to Ravaria under the Principles of Good Neighborliness

Antara violated both its obligation not to cause harm to another State **(a)** and to inform prior causing harm beyond its borders **(b)**. Antara should have monitored internet activity to prevent having to resort to Operation Moonstroke **(c)**.

[185] Budapest Convention, Article 22(5).

[186] Compromis, ¶34.

[187] Explanatory Report to the Convention on Cybercrime, 2001, ¶293.

[188] Compromis, ¶34.

[189] Compromis, ¶34.

a. Antara used its territory to cause harm to another State

The effects of Operation Moonstroke surpassed the national borders of Antara.[190] Yet it is a principle of international law that States may not use their territory to cause harm to another State.[191] States should adopt the same behavior in cyberspace.[192] Operation Moonstroke hindered Ravaria from exercising jurisdiction on its territory.[193] Therefore, Antara did not act out of due diligence by deploying Operation Moonstroke without knowing that the rights of other States would be compromised.

b. Antara did not give prior information or notification to Ravaria of Operation Moonstroke

Antara did not act diligently because it failed to act as a good neighbor by not informing Ravaria before the Operation took place.[194] Under the customary law of neighborliness,[195] neighbor States, or States of the same region,[196] should continuously cooperate[197] and exchange information of

[190] Compromis, ¶32.

[191] *Alabama claims (The United States of America v. Great Britain)*, UNRIAA vol XXIX 1872, Award 14 September 1872, pp. 129-131; *Island of Palmas (or Miangas) (The Netherlands/The United States)*, PCA, No 1925-01, Award 4 May 1928, ¶839; Corfu Channel, ¶22; Bosnian Genocide, ¶430; Karine Bannelier, 'Obligations de diligence dans le cyberespace : Qui a peur de la cyber-diligence ?' (2017) 2 Revue Belge de droit international, p. 640.

[192] Report of Governmental Experts, 'Developments in the Field of Information and Telecommunications in the Context of International Security', UN Doc A/70/174 (22 July 2015) ["**UN GGE 2015**"], ¶13(c); Tallinn Manual 2.0, Rule 6.

[193] Compromis, ¶34.

[194] Compromis, ¶34.

[195] UN Charter, Preamble and Article 74; Declaration on Friendly Relations and Co-operation, Preamble ¶3.

[196] Development and Strengthening of Good-Neighborliness between States, UNGA A/Res/46/62 (9 December 1991); Jean Salmon, 'Dictionnaire de droit international public' (Brussels, Bruylant 2001), p. 1138; Compromis, ¶3.

[197] *Filleting within the Gulf of St. Lawrence (Canada/France)*, UNRIAA vol. XIX 1986, Decision 17 July 1986, ¶27.

potential issues,[198] when taking preventive measures to avoid damage.[199] Antara should have sought the prior notification and consent from Ravaria before launching Operation Moonstroke.[200] Consequently, Antara did not fulfill its obligations as a good neighbor.

c. Antara did not act of due diligence because it exercised insufficient surveillance over ICT infrastructure

Antara did not act out of due diligence because Antara should have acted sooner to prevent the Lunar Botnet from infecting 30,000 devices.[201] Due diligence in cyberspace entails an obligation to protect the Information and Communication Technology ["**ICT**"] infrastructure.[202] Antara should have surveilled[203] their internet to detect the Botnet sooner. Antara should have known[204] sooner that the Botnet was present in Antaran cyberspace. Due diligence in cyberspace requires acting quickly to put an end to the cyber threat.[205] In the present case, the DPCA presented the court with evidence of the Botnet having infected 30,000 devices over three months.[206] As such, Antara had knowledge of the Botnet in January 2021 and could have limited the number of devices infected by the Botnet and hacked by Operation Moonstroke.

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[198] Jason Healey and Hannah Pitts, 'Applying International Environmental Legal Norms to Cyber Statecraft' (2012) 8 ISJLP, p. 374.

[199] Laurence Boisson de Chazournes and Danio Campanelli, 'Neighbour States', Max Planck Encyclopedia of Public International Law, 2006.

[200] Compromis, ¶34.

[201] Compromis, ¶¶31-32.

[202] UN GGE 2015, ¶13(c).

[203] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Rep 2010, ¶191.

[204] Corfu Channel, Separate Opinion of Judge Alvarez, pp. 44-45; Tallinn Manual 2.0, Rule 6.

[205] Karine Bannelier and Théodore Christakis, 'Cyber-Attacks Prevention-Reactions: The Role of States and Private Actors' [2017] Les Cahiers de la Revue Défense Nationale, p. 83.

[206] Compromis, ¶31.

3. Antara violated Ravarians' Human Rights to privacy contained in Article 17 ICCPR

Antara's interference with computers and devices operating on Ravarian soil was not necessary **(a)** and had disproportionate effects on Ravarians' right to privacy **(b)**.

a. Operation Moonstroke did not constitute a necessary measure

Hacking into Antaran and Ravarian devices was not a necessary act to dismantle the Lunar Botnet. The DPCA could have limited its Operation to dismantling the command and control server which would *de facto* taken down the botnet.[207] Instead, the DPCA hacked into Ravarian devices without seeking users' consent[208] to employ means which do not ensure that other - potentially sensitive - data on the devices was not gathered.[209] Therefore, this method would not have infringed privacy rights under Article 17 ICCPR.

b. Operation Moonstroke did not have proportionate effects

Operation Moonstroke is a disproportionate interference as less restrictive means are possible, *first*, by ensuring transparency, and, *second*, by offering effective remedies.

First, Operation Moonstroke is disproportionate as it does not ensure sufficient transparency.[210] Hacking is an intrusive means of law enforcement as there is a risk of collecting more data than what sought.[211] In the aftermath of Operation Moonstroke, Ravarian citizens cannot know what has happened to their personal data. Therefore, the DPCA should have adopted a more transparent approach to taking down the Lunar Botnet.

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[207] Christopher C Elisan, Julio Canto and Roberto Perdisci, 'Malware, Rootkits & Botnets a Beginner's Guide' (McGraw-Hill 2013), p. 59.

[208] Compromis, ¶32.

[209] 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**"], pp. 21-22; Grant Gerard, 'Botnet Mitigation and International Law' (2019) 58 Colum J Transnat'l L 189 ["**Gerard**"], p. 204.

[210] The Right to Privacy in a Digital Age, UNGA A/RES/71/199 (19 December 2016) ["**The Right to Privacy in a Digital Age**"], ¶5(d).

[211] Hacking by Law Enforcement, pp. 21-22; Gerard, pp. 203-204.

Second, Ravarian citizens are not offered effective remedy.[212] PACA does not guarantee the deletion of non-relevant data,[213] and instead only requires the DPCA to "take *reasonable* steps"[214] to notify the media owners. As such, Operation Moonstroke is disproportionate as the victims of the hack have no remedy.

Consequently, Antara's interference with Ravarian devices through Operation Moonstroke was in violation with international law.

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[212] The Right to Privacy in a Digital Age, ¶5(e).

[213] Hacking by Law Enforcement, p. 51.

[214] PACA, Section 8(6) (emphasis added).

PRAYER FOR RELIEF

Ravaria respectfully requests this Court to adjudge and declare that:

A. The documents obtained in the illegal search of Ms. Walters's vehicle and the 30 May 2021 recording are inadmissible as evidence in these proceedings;

B. Antara's claim concerning Ravaria's alleged financial contributions and cyber operations in connection with the Suthan referendum is inadmissible and, in any event, both conducts were consistent with international law;

C. Antara's order suspending Prof. Hunland's Pano account was in violation of international law, and Antara must therefore rescind the order; and,

D. Antara's interference with computers and devices operating on Ravarian soil, resulting from the decision to take down the Lunar Botnet, was in violation of international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT

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