INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE DEMOCRATIC REPUBLIC OF ARDENIA (APPLICANT)
AND THE MASINTON KINGDOM OF RIGALIA (RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE PARTIES
CONCERNING THE ADAWAN REFERENDUM**

jointly notified to the Court on 07 September 2022

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE LA RÉPUBLIQUE DÉMOCRATIQUE D'ARDENIA (REQUERANTE) ET LE ROYAUME MASINTON DE RIGALIA (DÉFENDEUR) A SOUMETTRE A LA COUR INTERNATIONALE DE JUSTICE LES DIFFÉRENCES ENTRE LES PARTIES CONCERNANT LE REFERENDUM ADAWAN

notifié conjointement à la Cour le 07 septembre 2022

JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:

The Hague, 07 September 20212

On behalf of Applicant, the Democratic Republic of Ardenia, and Respondent, the Masinton Kingdom of Rigalia, and in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you for submission to the International Court of Justice an original of the Special Agreement of the Differences between the Applicant and the Respondent concerning the Adawan Referendum, signed in The Hague, The Netherlands, on the thirteenth day of September in the year two thousand twenty-one.

(*Signed*)
His Excellency Handog
Ambassador of the Democratic Republic of Ardenia
to the Kingdom of the Netherlands

(*Signed*)

Her Excellency Jelles Kelf
Ambassador of the Masinton Kingdom of Rigalia to
the Kingdom of the Netherlands

SPECIAL AGREEMENT

**SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE
BY THE DEMOCRATIC REPUBLIC OF ARDENIA
AND THE MASINTON KINGDOM OF RIGALIA
ON THE DIFFERENCES BETWEEN THEM
CONCERNING THE ADAWAN REFERENDUM**

The Democratic Republic of Ardenia ("Applicant") and the Masinton Kingdom of Rigalia ("Respondent") (hereinafter "the Parties");

Considering that differences have arisen between them concerning the Adawan Referendum and other matters;

Recognizing that the Parties have been unable to resolve these differences by direct negotiations;

Desiring further to define the issues to be submitted to the International Court of Justice ("the Court") for resolution;

In furtherance thereof the Parties have concluded this Special Agreement:

Article 1

The Parties submit the questions contained in the Special Agreement (together with Corrections and Clarifications to follow) ("the Case") to the Court pursuant to Article 40(1) of the Court's Statute.

Article 2

(a) It is agreed by the Parties that the Democratic Republic of Ardenia shall appear as Applicant and the Masinton Kingdom of Rigalia as Respondent, but such agreement is without prejudice to any question of the burden of proof.

Article 3

(a) The rules and principles of international law applicable to the dispute, on the basis of which the Court is requested to decide the Case, are those referred to in Article 38, paragraph 1, of the Statute of the Court.

(b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its judgement on the questions presented in the Case.

Article 4

(a) The Parties request the Court to order that the written proceedings should consist of one round of written Memorials presented by each of the Parties.

Article 5

(a) The Parties shall accept any judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

(b) Immediately after the transmission of any judgement, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorised, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this twenty-seventh day of August in the year two thousand twenty-two, in triplicate in the English language.

(*Signed*)
DR. ISABEL JOSHUA
Minister of Foreign Affairs
Democratic Republic of Ardenia

(*Signed*)
PROF. ANDREW KIRTON
Minister of External Affairs
Masinton Kingdom of Rigalia

SPECIAL AGREEMENT

CASE CONCERNING THE ADAWAN REFERENDUM

(DEMOCRATIC REPUBLIC OF ARDENIA
v. MASINTON KINGDOM OF RIGALIA)

1. The Democratic Republic of Ardenia ("Ardenia") and the Masinton Kingdom of Rigalia ("Rigalia") are two developed countries located in the Helian Peninsula. Ardenia has a population of 21 million across 152,000 square kilometres. Rigalia lies immediately to the south of Ardenia. Its population is 12 million, and its area 121,000 square kilometres.

2. Since the early Middle Ages, Masinto has been the prevalent religion in the southern part of the Helian Peninsula, including present-day Rigalia. The Masinton faith has roots in antiquity. It is a monotheistic religion, which venerates those believed to have authored its canonical texts. Its liturgical landmarks include five ancient temples. One of those, the Herotoma Shrine, said to have been built over 1,500 years ago, is in a remote area near the geographic centre of the Peninsula. Observant Masintons dedicate their sabbath to reading, study, and attendance at community meetings for worship, and consider it their religious obligation to visit and to pray at each of the sacred temples at least once during their lifetimes.

3. The entirety of the Helian Peninsula was colonised by the Zeitounia Empire in the 18th century. During the colonial period, Zeitounia divided the Peninsula into three administrative districts, with Ardenia to the north, Rigalia to the south, and Adawa between the two. All of the significant population centres were in Ardenia and Rigalia; Adawa was sparsely populated. Unlike the other two, Adawa had no natural harbour and few available natural resources, although the Herotoma Shrine was located in Adawa and generated some economic activity. The population of Adawa began to grow steadily only in the 1920s, when large deposits of gold, copper, and natural gas were discovered in the region.

4. In 1949, after the Second World War and the collapse of the Zeitounia Empire, both Ardenia and Rigalia became independent States, with territories corresponding to their colonial district boundaries: Ardenia a republic and Rigalia a monarchy. Zeitounia took the position that Adawa did not have adequate prospects of self-sufficiency to follow its neighbours into full statehood. Rigalia disagreed, urging that Adawa be granted independence; Ardenia proposed that Adawa be incorporated into its territory. Although Zeitounia announced its desire to remove itself from the Helian Peninsula altogether, the dispute between the two States was unresolved, and Adawa remained under Zeitounia's colonial control until 1962.

5. According to census reports from 1955, Masintons were a minority in Ardenia, representing 24% of the

population, while 47% of Adawans and 85% of Rigalians identified as Masinton. Those percentages have not substantially changed to the present day. On 1 February 1957, Masinto was proclaimed the State religion of Rigalia, which renamed itself the Masinton Kingdom of Rigalia. Over the next two years, both Ardenia and Rigalia escalated their diplomatic efforts: Ardenia to annex Adawa into its territory, and Rigalia to promote the cause of Adawan independence. In 1959, the two nations approached the Secretary-General of the United Nations for help in resolving what both regarded as an "intractable" dispute.

6. The U.N. Secretary-General appointed the respected diplomat Aqeel Noorali to devise a peaceful solution to what he called "the vexing situation on the Helian Peninsula." On 29 October 1962, Ambassador Noorali announced a breakthrough: an agreement among Zeitounia, Ardenia, and Rigalia, signed in Singapore, according to which Adawa would become a province of Ardenia for at least the next 25 years. Like all of the Ardenian provinces, Adawa would have its own locally-elected Legislative Council. The Treaty of Singapore provided that, in 1987 or at any time thereafter, the Adawan Legislative Council and the national Ardenian Parliament, by a 2/3 vote of both bodies, could authorise a referendum in Adawa to determine whether it wished to remain a province of Ardenia or become an independent State (with the proviso that if the voters did not opt for independence, no subsequent vote could be held until 25 more years elapsed). All parties to the Treaty agreed that they would respect the result of such a referendum, and Ardenia undertook to make the necessary amendments to its Constitution. At the signing ceremony, Ambassador Noorali described the Treaty as "a testament to the parties' respect for the rule of law, and a lantern that may light the way for the peaceful resolution of other disputes around the world." All three parties ratified the Treaty, and it was duly registered with and published by the U.N. Secretariat.

7. Although the Treaty of Singapore was widely hailed as a brilliant diplomatic achievement, it was not universally embraced by the inhabitants of Adawa. According to surveys taken at the time, a small but vocal minority of Adawan adults supported full and immediate independence. The Adawan Independence Party (AIP) was formed in 1963, and over the next 45 years its supporters represented between 10 and 20% of the electorate in local and national ballots.

8. The Treaty of Singapore also provided that Rigalian pilgrims wishing to visit the Herotoma Shrine would be free to do so. Ardenia agreed to provide security in the area of the Shrine and on its grounds, but to "abstain from any restriction on freedom of worship for those participating in peaceful religious activities" there.

9. As required by the Treaty of Singapore, Ardenia amended Article 119 of its Constitution to provide for the referendum. Under the amendment, if a majority of Adawan residents voted for separation, a two-year transition period would commence, at the end of which Adawa would become independent. Rigalia accepted that provision as consistent with the Treaty.

10. Since 1962, relations between Ardenia and Rigalia have remained friendly. Both nations became centres of technological innovation and entrepreneurship. By the late 2010s, Ardenia and Rigalia were both technologically advanced, with over 80% of the populations of the two countries having smartphones and access to high-speed internet.

11. Natter is an online social media platform that allows internet users to message one another, post and share content on their feed, livestream videos, and create private groups of up to 10,000 users. By 2018, Natter was the most popular social network in the Peninsula. It currently has an average of approximately 12 million daily active users, including four million in Ardenia. No other social media platform has achieved this level of market penetration in Ardenia or the broader Peninsula. Natter is owned by the Natter Corporation, a public company incorporated in Zeitounia, which has a market capitalization of €54 billion.

12. In April 2017, a series of cyberattacks hit police departments and hospitals across Ardenia, resulting in significant losses, delays, and interruptions. Although there was no lasting damage, the national Parliament enacted the Protect Ardenian Cyberspace Act ("PACA"), which among other things established the Data Protection and Cybersecurity Agency ("DPCA"). Excerpts from PACA are attached as Annex 1.

13. Professor Darian Grey is a citizen of Rigalia and a devout Masinton, who has been a legal permanent resident of Ardenia since he moved to Adawa Province in the 1980s. A tenured Professor of Masinton Theology at the University of Adawa, Prof. Hunland has for years been a regular contributor to local and international media. By 2019, Prof. Hunland's personal Natter page acquired over nine million followers, the third largest contingent in the Peninsula.

14. Prof. Hunland has long been an advocate for Adawan autonomy. In 2009, he became affiliated with the AIP, and later that year, authored a new manifesto for the Party. Over the next decade the popularity of the Party rapidly increased: in 2008, it had 10 of the 130 seats in the Adawan Legislative Council, and 12 of the 250 seats in the national Parliament. By 2016, it had 55 seats in the Legislative Council, and 41 in the Parliament.

15. In April 2020, in response to the COVID-19 pandemic, Prime Minister Irene Goldman of Ardenia by Decree No. 20-32 introduced national mask mandates in all public venues, including places of worship, and prohibited the gathering of groups of more than five people, even for religious purposes. The government also took steps to close its land borders, including the border with Rigalia, to non-essential travel, denying Rigalian Masintons access to the Herotoma Shrine. The Rigalian Ambassador to Ardenia, Benny Walters, immediately delivered a note of protest to the Foreign Ministry, contending that the border restrictions were a violation of the Treaty of Singapore. When some Rigalians attempted to evade the border closure, and local Adawans gathered at the Shrine in groups of prohibited size, there were several arrests, but no serious injuries were reported.

16. Between April and June 2020, Prof. Hunland posted over 600 public messages on his Natter page. Rather than stressing the cause of Adawan independence, he focused on dissatisfaction with the Ardenian government generally, claiming that the COVID restrictions were an unjust infringement of the freedoms of religion and assembly. And he signed some of these posts, "Darian Grey, Intellectual Leader of the Opposition." Prof. Hunland also established a Adawa-based non-profit foundation called Adawans Against Domination ("AAD"), which he described as "a think tank and research institution dedicated to the promotion of Masinton culture and Adawan autonomy." Between June 2020 and August 2021, AAD published a number of monographs and scholarly articles about the history of the Masinton religion and the demographics of Adawa Province. It also presented four widely-attended webinars on those topics, endowed an essay competition for college students, and funded the salary of Prof. Hunland's research assistant at the University of Adawa.

17. On 12 May 2020, the Internet Law and Security Organisation ("ILSO", a global non-governmental organization, issued an urgent report citing unusual activity on Natter. The paper, authored by a team of cybersecurity experts, reported that over 180,000 new accounts had been registered in Ardenia in the first two weeks of May, far more than the previous average of about 2,000 per week. ILSO further noted that those accounts (many of which lacked characteristics typical of authentic users, such as profile pictures or personal details) had been utilized to generate and amplify misinformation concerning Ardenia's pandemic-related measures, specifically those concerning Adawa Province. One viral post described purported plans by Prime Minister Goldman to declare martial law in Adawa. The claims in that post were denied by the government and various media organisations established that they were false. The post was nonetheless shared by Prof. Hunland with the caption: "Military law??? How far is this regime prepared to go? Is a massacre in the planning stage?"

18. In August 2020, Ardenia held regularly-scheduled parliamentary elections, in which Prime Minister Goldman's party lost its majority. AIP's vote increased nationally, with the party capturing 52 seats. In his election-night speech, Prof. Hunland remarked that the vote was "the first step toward true democracy; next comes the vote for a free Adawa!"

19. A month later, the AIP put forward resolutions in both the Adawan Legislative Council and the Ardenian Parliament, proposing for the first time a referendum on Adawan independence in accordance with the Singapore Treaty and Article 119 of the Constitution. When Parliament reconvened, no party had an absolute majority. The new Prime Minister, Michaela Lubinsky, formed a coalition, including the AIP, and promised a popular vote on Adawan independence. She said, on the floor of Parliament:

> This administration is committed to freedom for all, all religions, all backgrounds, and all areas of the country. If our sisters and brothers in Adawa wish to be heard on whether to continue to share in Ardenian prosperity or to leap into the risks and dangers that independence would bring, we will not stand in their way. But I am sure that wiser heads will prevail, and our union will survive.

20. The votes on whether to go forward with the referendum were scheduled for the week of 11 October 2020. A few days before that, Queen Sonia of Rigalia attended the dedication of a new Masinton house of worship in the Rigalian capital. In her brief televised remarks, she said, "Let this magnificent building remind all who enter it of the ideals of our great Masinton legacy, handed down from the sages. And let us resolve to protect those who seek to uphold those traditions, as they throw off their political shackles and overcome the impediments in their path." The following day, *The Rigalia Times* ran a banner headline on its front page: "Her Majesty Supports the Masinton Separatists in Adawa!" Asked for comment, the Palace spokesman declined to respond.

21. On 13 October 2020, the Adawan Legislative Council passed the referendum proposal by a vote of 100 to 25. Early in the morning of 22 October, at the conclusion of an unusual all-night session, the national Parliament also adopted it, by 191-59. Prime Minister Lubinsky, again expressing her "confidence that the future of Adawa is secure with us," voted "aye." The referendum was scheduled for 1 March 2022.

22. Shortly after the resolution was passed, AAD launched a grassroots campaign to mobilize and register voters. The campaign included public posts to Natter, some of which portrayed the referendum as a religious fight, calling on all Masintons to vote to "shed the yoke of oppression by those who would desecrate our Shrine and deny our traditions." Prof. Hunland shared that post with the caption: "This is what is at stake!" He also criticized the restrictions on social gathering imposed by Decree 20-32, claiming that they were motivated by the government's desire to repress Masinton worship services. Yet other Natter posts were not directed at Masintons but sought to persuade non-Masinton citizens of Adawa that were the referendum to fail, the government would eliminate the Province's local autonomy, subjecting it to direct rule from the national Parliament. The spokeswoman for the Prime Minister denied that claim as "total nonsense." AAD's financial reporting for its fiscal year 1 April 2021 through 31 March 2022 showed income from donations of around €32.5 million, triple the amount raised by any other organization involved in the referendum.

23. In November and December 2021, Prof. Hunland publicly posted or shared over 800 messages on Natter, many of which were shown by independent observers to be false. Among them were the following:

a. [4 November] "The plans are already in place: if Adawa does not become independent, the Herotoma Shrine will be turned into an amusement park! I have seen the contract with the developers, already signed by the Interior Minister in a secret meeting in his office on 20 July!"

   The next day, the Minister posted a picture of his passport on Natter: the stamps on its pages showed that he was not in the country on that day.

b. [22 November] "The government's claims that large numbers of people in Adawa have been dying of COVID are totally debunked! There have been no COVID deaths in the Province since June, and I have proof! They are just trying to justify the erosion of our

freedoms! Independence is the only answer!"

Health Ministry records, reproduced in the national media, demonstrated that there were over 2,500 COVID deaths in Adawa between April and November 2020.

c. [8 December: a re-post, from an unidentified source] "It is time to fight back! If the government will not back down, we have to take the situation into our own hands! We have been sheep for too long: we need to be lions! We did not end the tyranny of Zeitounia colonial rule to be subjected to oppression by Ardenia. Fellow Adawans, do you really think the vote will be free? The fix is in! Ardenia will not give up our beautiful land without a fight, and we will give them one!"

24. On 11 January 2022, following repeated calls by users and political groups to remove a number of Prof. Hunland's posts because they were "spreading misinformation," "incendiary," "inflammatory," or "incitements to violence," Natter released the following statement:

> We are aware that certain Natter accounts, including some that seem to be inauthentic, have been posting false or malicious content on our platform, concerning the upcoming referendum in Adawa. Some posts shared by political leaders and other high-profile users violate our terms of service and policies. Starting immediately, relying on user-generated reporting and algorithmic analysis, our Civic Integrity and Election Team will flag these posts, requiring users to click on an additional screen to see them. The notice will read: "The Natter rules about abusive behaviour and deceptive content apply to this post. While it may be in the public interest for the post to remain available, we advise users to act with caution before clicking this screen."

Between 11 January and 1 February 2022, 240 of Prof. Hunland's posts and re-posts (63% of his total), were flagged by Natter.

25. On 31 January 2022 Prof. Hunland staged an outdoor rally in Adawa to encourage voters to go to the polls. Despite early commitments by the organisers to hold the event online in compliance with COVID-related restrictions, 7,500 people attended. Ardenian police arrived to break up the rally, and there were violent altercations. While it is unclear how the violence broke out, 225 people were injured, and three people later died of their injuries. The police response to the rally was broadly condemned in both Ardenia and Rigalia. Natter pages were filled with tributes to the injured and deceased, many including calls for Adawan independence. On his Natter page, Prof. Hunland denounced what he called "another Ardenian campaign to silence the voices of Masintons." He also reposted a photograph alleged to be of a police officer beating a woman who seemed to be kneeling to pray at the rally, with the caption "This is the fate that awaits us all. Freedom now!" Natter flagged the photograph as inauthentic.

26. On 5 February 2022, the content moderation unit within the Ardenian DPCA filed an application for a content takedown and user suspension order to be issued against Natter with respect to Prof. Hunland's posts, in accordance with Section 5 of PACA. The 74-page petition was submitted to the Federal Court of Lower Ardenia and included detailed examples of what the DPCA alleged were inaccurate and misleading statements of fact,

both directly and by sharing the posts of others, on Prof. Hunland's Natter account. In the petition, the DPCA argued that Prof. Hunland had continued to make these statements despite repeated warnings. It claimed that they were "likely to undermine the inviolability of the referendum and to incite imminent violence in connection with it."

27. Having been informed of the application, in a public Natter post on 10 February 2022, Prof. Hunland submitted a written statement arguing that his use of social media represented an exercise of free speech protected by international law. On 15 February 2022, the presiding judge issued a suspension order against Natter. The ruling read, in relevant part:

> In disseminating false statements concerning the referendum, and in his persistent calls to action based on those statements, Prof. Hunland has created a serious risk of violence. While freedom of expression is an important right in a democracy, it is not absolute. Our laws protect our electoral system, defend the integrity of our political structure, and promote security in our land. I specifically reject the Professor's argument that he was merely exercising his right to free speech: there is no right to spread lies or to incite bloodshed, putting lives at risk and threatening public order. I hereby order the removal of Prof. Hunland's social media posts, and the suspension of his account for a period of one year and six, beginning today.

The legal representative of Natter in Ardenia immediately confirmed that the company would comply with the order. Prof. Hunland's account was suspended, and all of his posts were removed from the platform. They were no longer accessible from anywhere in the world.

28. On 20 February 2022 Prof. Hunland gave a televised interview from his vacation home in Rigalia, in which he said:

> My right to free speech has been snatched from me, but that is not what is important. What is important is that the Ardenian government has again aligned itself with repression, not democracy. It cannot win the electoral battle without cheating, and that is what is now happening. With its friends from Natter and its fixers disgracing the judicial robes they wear, the government is stacking the deck. When Adawa is independent, these corrupt social media companies will never again be allowed to infect our electoral process, and our judges will be free from political interference. That I promise, and I invite the people of this land to hold me to that promise.

Prof. Hunland filed suit against Natter in Zeitounia, seeking to have the restrictions set aside, but the action was summarily dismissed, as under Zeitounia law social media platforms are not liable for content moderation decisions. He also applied to an Ardenian federal court for an injunction against the suspension order, but the court rejected the application for lack of standing. This dismissal was affirmed by the Appellate Court without opinion. No further appeal is available under Antaran law.

29. When asked to comment on the DPCA action in a news conference on 22 February 2022, Rigalian Minister

of External Affairs Prof. Andrew Kirton responded: “What is happening in Ardenia is troubling. Silencing any of our nationals, let alone a respected religious scholar, in the lead-up to a referendum when tensions are already running high, is unworthy of a democracy.”

30. The referendum took place as scheduled on 1 March 2022, and the results were announced the following morning. With 67% of those eligible going to the polls, 52% voted for secession, and 48% voted to remain. On 2 March 2022, Prime Minister Lubinsky solemnly acknowledged the result, and stated that her government would begin the two-year process of transition to the separation of Adawa from Ardenia.

31. On 4 April 2022, *The Sydney Morning Herald* reported that one week before the referendum, DPCA’s cybercrime prevention unit had sought and received a court order under Section 8 of PACA for the takedown of what it codenamed “Lunar Botnet.” During a closed-door *ex parte* hearing, DPCA provided evidence to a judge in the Federal Court of Upper Ardenia that Lunar Botnet had infected over 30,000 devices over the three months immediately preceding the referendum. While the identity of the person or persons running the botnet was unknown, the patterns of behaviour of the botnet and the IP addresses of the infected devices all indicated a connection to the growing spread of misinformation online in the weeks and months leading up to the vote in Adawa.

32. Acting on the court order, DPCA discovered that the command-and-control server at the centre of the Lunar Botnet was physically located in Ardenian territory and was masking its identity by operating through the “dark web.” The DPCA proceeded to hack the server remotely, and to launch what it called “Operation Moonstroke” from the server on 26 February 2022. Operation Moonstroke disabled the botnet, removing thousands of “web shells” – segments of script enabling remote administration – from the affected devices. DPCA subsequently notified the affected internet service providers and confirmed that, although it still could not verify the exact location of the botmaster, roughly 20,000 of the hacked devices were situated in Ardenian territory, 5,000 in Rigalia, and the rest in other countries (or their location could not be determined). The DPCA was not aware, until after the deployment of Operation Moonstroke, that there were any infected devices outside the territory of Antara.

33. On 5 April 2022 DPCA issued a public statement:

> This Agency commenced a criminal investigation in February 2022 to determine the facts and to purge a persistent botnet used to maintain and escalate unauthorized access to Ardenian computers and networks. With court authorization, Operation Moonstroke has allowed us to take down the Lunar Botnet, preventing possibly irreparable harm. While it now appears that many of the infected devices were located outside of our territory, this was not an act of government overreach: it was a necessary act of cyber defence. As the Lunar Botnet exemplifies, territory is irrelevant on the internet highways. The court order and our response demonstrate Ardenia’s resolve to fight cybercrime wherever it takes

> place, and to disrupt hacking activity using all legal tools at our disposal. The unauthorized access to computers and networks in our country and the installation of malware are also violations of our criminal code. We will vigorously pursue the criminal investigation we have begun, and we will bring the perpetrators behind this botnet to justice.

34. That day, Rigalia's Ministry of External Affairs issued a *note verbale* to its Ardenian counterpart, expressing "dismay at what can only be described as a brazen act of extraterritorial enforcement in clear violation of international law." Such an operation, the note continued, "without prior notification and consent from us, or from the thousands of private owners of the computers you knowingly hacked, is an infringement of our sovereignty, the property rights of our citizens, and your obligations under the Budapest Convention."

35. In the early hours of 25 April 2022, Emma Walters, wife of Rigalian Ambassador Benny Walters, left a AAD Gala in Ardenia, driving a rented vehicle. Sixty kilometres from her home, she hit a pedestrian, 19-year-old student Carlos Francis, an Ardenian citizen. Police arrived at the scene within minutes and found Mr. Francis dead and Ms. Walters apparently heavily intoxicated. When they asked to see her license and registration, she reached into a briefcase beneath the passenger seat. The officers seized the case and found in it her license and her diplomatic passport. Ms. Walters was arrested and charged with vehicular homicide. She offered no statement and made no protest against her arrest.

36. The arresting officers delivered Ms. Walters and the briefcase to the duty sergeant when they returned to the station but did not mention that Ms. Walters was connected with a foreign embassy. She was placed in a holding cell, where she promptly fell asleep. The sergeant opened the briefcase and found what appeared to be records of financial transactions and records of meetings going back five years, outlining a program led by the Rigalian Ambassador to fund AIP and later AAD. According to the records, Ambassador Walters had arranged for the Embassy to make financial contributions to Masinton religious organizations across Adawa, knowing that the money would be funnelled to the political party and the foundation, in support of the cause of Adawan independence.

37. The sergeant promptly delivered the briefcase and its contents to the Ardenian National Intelligence Agency which reviewed them, revealing the following:

a. The plan to use Embassy funds to support the pro-independence campaign had been authorized by senior members of the Rigalian government. Since 2020, a total of close to €25 million in Rigalian Embassy funds had been channelled to AAD and AIP.

b. The Ambassador had received emails from the Rigalian External Affairs Ministry, describing how to automate registration for a Natter account working around the normal identity verification process (which required a unique email address and telephone number for each account and the use of two-factor authentication). The emails also contained information on what types of pro-independence content had gone viral in Adawa in the past and offered various suggestions on how

to "mask" content to make it appear as if it had come from indigenous Adawan or other Ardenian sources.

c. With the approval of the Rigalian External Affairs Ministry, AAD was operating the Lunar Botnet from a server within its headquarters. The misinformation operation was intended, according to emails quoted in meeting minutes, to "make Adawans understand that they can never be assured of freedom so long as they remain in Ardenia," and to "guide the hearts and minds of those voters towards secession."

d. The Rigalian Intelligence Service had formulated a plan, marked "TOP SECRET," for the initiation of a propaganda campaign to persuade citizens of Adawa, once separated from Ardenia, to "join the Masinton Kingdom of Rigalia, uniting the communities of believers and bringing the Herotoma Shrine to our land." One element of the plan was to promote the candidacy of Prof. Darian Grey to become president of the independent Adawan State.

38. A criminal investigation was opened the following day, which revealed that the AAD had controlled the Lunar Botnet from servers at its headquarters and used it to advance separatist messages online. The investigation was also able to confirm the financial transactions mentioned in the original documents, in which Rigalian Embassy money was channelled to the AIP and AAD. The investigators concluded that the funding scheme did not violate Ardenian domestic campaign finance laws.

39. On 5 May 2022 Prime Minister Lubinsky made a televised speech, in which she said:

> We now know what we have long suspected. Rigalian agents have engaged in coercive and illegal intervention in our domestic affairs. The disinformation campaign that was carried on during the run-up to the recent referendum was a deliberate effort by a foreign power to interfere with an election on our territory. The result was a pre-planned and orchestrated denial of the right of our citizens to exercise free political choice. That fundamental human right was violated by Rigalia, not through physical force, but by insidious financial and cyber manipulation. We will continue to negotiate with the representatives of Adawa as our Constitution dictates, but I promise the people of Ardenia today: we will not permit any country to engage in this dangerous game of cyberwarfare, and we will make sure that nothing like this ever happens again.

40. The Rigalian Minister of External Affairs responded in a speech of his own two days later:

> A country that sends cyber constables into Rigalia's domestic computer networks has no right to educate us on information warfare. A country that silences one of our nationals should not presume to lecture us about human rights. Her Majesty's government makes no apology for its investment of resources in the promotion of Masinton ideals globally. We do this with pride, in accordance with the tenets of our religion. But the bottom line is simple: we have done nothing wrong. The exercise of political influence, by assisting political candidates and causes, enhancing and amplifying political speech, and providing aid to parties and foundations, is not illegal. Indeed, these are widespread practices, in which we will continue to engage. We reject Minister Lubinsky's charges against us, and we intend to ignore the threats that they seem to imply.

41. At the invitation of the Zeitounia Foreign Minister, diplomats from Rigalia and Ardenia continued to meet

for month in an attempt to resolve their remaining differences. Those discussions led to an agreement that the parties would refer all matters in dispute to the International Court of Justice, and for that purpose they drafted and signed this Special Agreement.

42. Ardenia and Rigalia have at all relevant times been parties to the Charter of the United Nations, the Statute of the International Court of Justice, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Council of Europe Convention on Cybercrime, and the Vienna Convention on the Law of Treaties. They are not parties to any other treaty or convention of potential relevance in this Case.

43. Ardenia respectfully requests that the Court adjudge and declare that:

a. Rigalia's campaign of financial contributions and the dissemination of misinformation intending to influence the outcome of the Adawan referendum were in violation of international law;

b. Ardenia's order suspending Prof. Darian Grey's Natter account was consistent with international law; and

c. Ardenia's actions in taking down the Lunar Botnet, and the effects of those actions on computers and devices in Rigalia, were consistent with international law.

44. Rigalia respectfully requests that the Court adjudge and declare that:

a. Rigalia's alleged financial contributions and cyber operations in connection with the Adawan referendum were consistent with international law;

b. Ardenia's order suspending Prof. Hunland's Natter account was in violation of international law, and Ardenia must therefore rescind the order; and

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

Annex 1

Protect Ardenian Cyberspace Act of 2017

[excerpts]

[. . .]

PART III: RESPONSES TO CYBERSECURITY THREATS

[. . .]

Section 5: Content Moderation

1. In this and the following sections of this Act, unless the context otherwise requires –
    a. "DPCA" means the Data Protection and Cybersecurity Agency established under this Act.
    b. "Election Misinformation" means false or misleading allegations or statements of fact likely to alter or otherwise impact the outcome of an election, or to incite imminent lawless action in connection with such election.
    c. "Online Platform Operator" means a supplier of services, advertisements, or other content within a digital environment, which makes this platform accessible in Ardenia and whose activity exceeds two million Ardenian users;
    d. "Content Takedown and User Suspension Order" means an order by a federal court directing that messages constituting Election Misinformation posted on an online platform be deleted, and/or that a certain user posting such messages not be permitted to continue to do so. Such a suspension may be ordered for a period not to exceed two calendar years.

2. An application by the DPCA for a Content Takedown and Suspension Order directed against an Online Platform Operator shall be treated as a civil proceeding. The person(s) responsible for the posting of the alleged Election Misinformation that is the subject matter of the petition shall have the right to be heard by the court upon his, her, or their request.

3. A federal court may issue a Content Takedown and User Suspension Order under subsection (1) only if the court finds by a preponderance of the evidence that the Order is necessary to prevent or counter a threat to the national security, public order, or public safety of Ardenia.

4. In determining whether the requirement under subsection (3) is met, the federal court shall take into account the following considerations:
    a. the threat of irreparable harm if the court denies the order;
    b. the balance between the threatened harm and the harm that would result were the order granted;
    c. other reasonable measures that might be available to the DPCA to achieve its legitimate aims; and
    d. the effects of the court's decision on the public interest.

5. Any failure of an Online Platform Operator to give effect to a Content Takedown and User Suspension Order issued pursuant to this Act may result in an administrative fine of up to €500,000, or one-tenth of the reported profit of the Online Platform Operator in the previous year, whichever is higher.

[. . .]

Section 8: Botnet Takedown

1. In this section of this Act, unless the context otherwise requires –

    a. "Malware" means a malicious software program that performs repetitive and predefined tasks and is installed on a private computer without the owner's knowledge or consent.

    b. "Botnet" means a network of private computers each of which is infected with Malware and is remotely controlled as a group by a hacker (or Botmaster).

    c. "Botnet Takedown Order" means an order by a federal judge to search, seize, copy, or delete electronically stored information from a Botnet, or from the servers used to manage the Botnet's infected devices.

2. The DPCA shall have the authority, when it has probable cause to believe that a Botnet has infected devices in the territory of Ardenia with Malware, to initiate a criminal investigation. Based on the results of that investigation, the DPCA may seek a Botnet Takedown Order from a federal court; and/or it may refer the matter to the Public Prosecutor for further action.

3. A federal court may issue a Botnet Takedown Order *ex parte* if, upon application by the DPCA, the court concludes that an internet-connected device within the territory of Ardenia has been infected with Malware as part of a Botnet, and the Order is necessary to prevent or counter a threat to the national security, public order, or public safety of Ardenia.

4. In determining whether the requirement under subsection (3) is met, the federal court shall take into account the considerations set out in Section 5(4) of this Act.

5. The authority of the court to issue a Botnet Takedown Order under subsection (3) may be exercised even if that Order also affects servers or devices outside the national territory.

6. A Botnet Takedown Order must include an instruction that the DPCA take reasonable steps to notify all owners of media subject to the Order once their identities are known to the DPCA.

Study Guide

Case Concerning the Adawan Referendum

Introduction

Dear delegates welcome to the simulation of the International Court of Justice ("ICJ") at the Blue Bells MUN 2022. The purpose of this document is to provide you with an outline of the arguments you are supposed to present during the course of the committee. Given the problem's complexity, we thought it best to introduce the legal claims to you. As these are only broad outlines you are expected to turn these into well-researched comprehensive legal claims. This document does not serve as an exhaustive guide thus feel free to add additional legal claims, but this document does cover almost all legitimate claims that can be forwarded.

Issue 2: Election Interference

This issue concerns the legality of the Respondent's financial contributions and cyber operations in connection with the Suthan referendum. This section is structured as follows: attribution, due diligence obligation, the principle of non-intervention, and the principle of sovereignty. The potential arguments for Applicant and Respondent are included in each subsection.

Attribution

The first requirement is to show that the acts of election interference by Adawans Against Domination ("AAD")/the Respondent Embassy are attributable to the Respondent under customary international law ("CIL") rules of attribution as codified in Arts 4 – 11 Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA").

Applicant Arguments

First, the Applicant can argue that the acts of the Ravarian Embassy are attributable to Ravaria as it is an organ of State per Art 4 ARSIWA.

Second, the Applicant may argue that the acts of the AAD were attributable to Ravaria per Art 8 ARSIWA as it was under the direction and control of Ravaria. These are cumulative requirements, but per *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* decisions of the ICJ, there is a high threshold required to establish direction and control.

Third, the Applicant may argue that the acts of AAD were acknowledged and adopted by Ravaria per Art 11 ARSIWA. An example is the *United States Diplomatic and Consular Staff in Tehran (United States of America*

v. Iran), where the Court found that Iran's act of approving and maintaining the situation rendered the acts attributable to the government of Iran

Respondent Arguments

First, the Respondent will argue that AAD was not under the direction or control of Ravaria per Art 8 ARSIWA. The respondent will have two routes either to take up and try to satisfy the high burden placed as per the ICJ jurisprudence or take up other less onerous standards (such as the *Tadić* test of the ICTY) which the ICJ is less welcoming of. However, an important question is whether the standard laid down by the ICJ in Nicaragua and Bosnia in traditional military contexts should apply to cyber-space.

Second, Respondent will argue that there was no acknowledgement and adoption of the conduct per Art 11 ARSIWA.

Due Diligence Obligation

In the Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. People's Republic of Albania) case, the ICJ observed that a State must not "allow knowingly its territory to be used for acts contrary to the rights of other states". Similarly, it was noted in the Island of Palmas arbitration that a State has a duty "to protect within [its] territory the rights of other States". Earlier, Judge Moore of the PCIJ had observed in the Lotus Case (France v Turkey, PCIJ 1927) that "It is well settled that a State is bound to use due diligence to prevent the commission within its dominions of criminal acts against another nation or its people." Also see the ICJ decisions regarding the principle of transboundary harm. The key issue, in this case, is whether or not the same standards apply in the cyber context.

Assuming the principle of due diligence applies in the context of cyberspace, the principle is breached when the following three requirements are met:

1. The act must be "contrary to the rights" of the affected State, in the sense that the act would have been a breach of international law if it had been directly taken against the target State by the territorial State itself.
2. The cyber operation must result in "serious adverse consequences", a threshold adopted by analogy from the context of international environmental law, in which the harm must be "significant" or "substantial". Thus, not every cyber operation which produces negative effects would implicate the obligation.
3. The State fails to take all feasible steps to end the operations that it knew or ought to have known were ongoing. It is unclear if there is a positive obligation on the State to take preventative measures. The obligation is one of conduct and not the outcome.

Applicant Arguments

The applicant will argue that there is no reason in principle why this obligation cannot apply to the cyber context, having been applied in a variety of forms. (Delegates should research the context in which this principle has been applied.)

About the requirements for a breach of a due diligence obligation listed above, the Applicant may argue the following:

1. Severe Adverse Consequences: The applicant would argue that this is satisfactory because the Adawan people had successfully seceded from the Applicant.

2. State Obligation to end operations: Respondent knew about at least: (i) the financing of the pro-independence movement; (ii) the creation and use of inauthentic Natter accounts to spread misinformation; and (iii) the operation of the Lunar Botnet.

Respondent Arguments

The respondent may argue that there is insufficient State practice to establish that the principle of due diligence extends to the cyber context.

Alternatively, the respondent may argue on merits also focusing on the question of harm. Two questions arise regarding harm if intangible harm is covered under the principle and second if is there a direct causal nexus.

Customary International Law Duty of Non-Intervention

It is a well-accepted principle of customary international law that States are prohibited from interfering in the internal affairs of another State. In the Nicaragua decision, the ICJ set out the two requirements which must be satisfied before a breach exists (at [205]):

1. First, the act in question must affect another State's internal affairs.

2. Second, the act must amount to coercion, which is defined as effectively depriving the target State of the ability to control, decide upon or govern affairs that a State would otherwise be able to decide freely. Applicant Arguments Application to Cyberspace Strong Applicant teams will state that this principle of non-intervention applies to acts conducted in cyberspace. To support this claim, the Applicant will cite State practice and opinio juris to this effect.

Applicant Arguments

Breach of Duty of Non-Intervention

In the first element, Applicant teams must demonstrate that the act in question, the decision to conduct a secession referendum, affected the State's internal affairs.

In the second element, Applicants must demonstrate that acts attributable to Respondent had a coercive effect. There is presently no definitive threshold of what constitutes coercive interference in the election context. Delegates must based on state practice or judicial practice try to demonstrate that the actions of the applicants were coercive.

Causation

Even assuming that there was a coercive effect, an additional issue is whether the acts attributable to Respondent caused the coercive effect. Applicant can argue that it is sufficient that Respondent's act was one of the causes of the coercive effect and that it need not be the only or primary cause.

Respondent Arguments

First, the Respondent can argue that there is an antecedent issue of whether the acts can be considered cumulatively. The respondent will point to this Court's approach in *Nicaragua* where this Court approached the acts of funding, training, supplying weapons and intelligence, and other acts as discrete acts and analysed their legality individually. There is at present no judicial decision of this Court which has analysed alleged acts of coercion collectively.

Respondent can argue that this Court should also do the same. Second, and applying the above approach, Respondent will argue that its acts at most amount to influencing rather than coercing any acts of the Applicant. The respondent will argue that this is consistent with State practice.

Causation

Even assuming that there was a coercive effect, an additional issue is whether the acts attributable to Respondent caused the coercive effect. Respondent should attempt to argue that there is an additional requirement that the action "directly cause the effect".

Obligation to Respect the Sovereignty of Other States

Article 2(1) of the UN Charter guarantees all member states' sovereign equality.

Sovereignty Defined

The concept of 'sovereignty' comprises the two aspects of 'territorial integrity and other functions which, although unrelated to territory, are 'inherently governmental functions.

Island of Palmas Arbitration: "Sovereignty in the relations between States signifies independence. Independence regarding a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State"42

Tallinn Manual 2.0: an alleged breach of sovereignty could be assessed on two levels: "the degree of infringement upon the target State's territorial integrity" and "whether there has been an interference with or usurpation of inherently governmental functions".

Article 2(4) of the UN Charter: Contains the prohibition against the threat or use of force against the "territorial integrity or political independence" of any State.

Applicant Arguments

The applicant will argue that the Respondent's acts constitute a breach of the obligation to respect its sovereignty which is independent of the principle of non-intervention. In the Applicant's position, this obligation arises both under the UN Charter and customary international law. Sovereignty & Cyber Activities Applicant needs to establish that the obligation arises in the context of cyber activities.

We expect the Applicant to focus its arguments on political independence and/or inherently governmental functions as it is more relevant to the present facts. Unlike prohibited intervention, there is no requirement of coercion, nor any requirement of physical or functional effects – the mere fact of interference suffices

The applicant will argue that, because coercion is not required (unlike prohibited intervention), the very fact that the disinformation campaign took place constituted an interference into matters which were inherently governmental functions of the Applicant.

Respondent Arguments

The respondent will argue that, if Applicant's position is to be accepted, this would impose liability in almost every instance of an election where one State supports a particular political group or cause in another State. The respondent will argue that State practice does not support this.

Again, the arguments of good Applicant and Respondent teams are expected to be fundamentally rooted in State practice rather than technical legal arguments. The same arguments on causation above would apply.

Principle of Self-Determination

The principle of self-determination provides, at a minimum, that people must be able to determine their political status and freely pursue their own economic, social and cultural development (Art 1(1) ICCPR). The importance of this principle is enshrined in the UN Charter: Art 1(2) provides that one of the purposes of the UN is to develop friendly relations among nations "based on respect for the principle of equal rights and self-determination of peoples"; Art 55(1) provides that the UN shall promote international economic and social cooperation "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". The principle is well-established. The challenge which teams seeking to employ the principle of self-determination will face is how to use this principle to either show a breach of international law or that there was no such breach.

Applicant Arguments

The applicant will argue that Respondent violated the principle of self-determination in that its actions meant that the Suthan people could not "determine" their political status nor could they "freely" pursue the development of their own culture as expressed through the electoral results.

Respondent Arguments

The respondent will argue that the principle of self-determination is not capable of being independently breached but rather finds expression in several other different doctrines under international law, e.g. the other Articles of the ICCPR about human rights, and the existing principles of international law such as the obligation of non-interference about State rights.

In any event, even if the obligation is capable of the independent breach, Respondent will argue that there has been no breach because it did not deprive the people of their right to vote or choose their political status in that they were still able to freely vote.

Issue 3: SUSPENSION OF HUNLAND'S NATTER ACCOUNT

The primary issue in issue is whether Applicant's order to suspend Prof. Hunland's Natter account was by international human rights law, specifically the freedom of speech under Article 19 of the ICCPR. It is not disputed that the order was obtained in compliance with domestic law.

Preliminarily, there is no issue of extraterritorial application of Art 19 ICCPR because Prof. Hunland is physically located within Applicant. However, there may be an issue with the Respondent's standing to bring the claim.

Standing: Diplomatic Protection

It is expected that delegates will address whether or not the Respondent has the standing to assert diplomatic protection. Under customary international law, there are two requirements for the valid exercise of diplomatic protection: (i) nationality and (ii) exhaustion of local remedies. The argument should focus on the question of nationality and not the exhaustion of local remedies as it is unlikely to be met.

Applicant Arguments

The applicant should rely on the ICJ decision in Nottebohm to argue that the Respondent cannot exercise diplomatic protection on behalf of Prof. Hunland.

Respondent Arguments

The respondent will rely on Article 4 of the Draft Articles on Diplomatic Protection and they would need to rebut the Nottebohm based argument forwarded by the Applicant. Respondent should also rely on the Diallo Judgement of the ICJ.

Freedom of Speech: Art 19 of the ICCPR

Applicant Argument

The suspension of Prof. Hunland's Natter account and the removal of the posts are justified under Article 19(3) of the ICCPR, as there is a valid law and it was required, for the protection of national security and/or public order. Further, the measure was necessary and proportionate in that before the takedown order, Natter had tried other means to ensure that Prof. Hunland's posts did not incite violence, and the suspension order was only for a limited period.

Respondent Arguments

The applicant's suspension and takedown order violated Article 19(2) ICCPR in that it prevented Prof. Hunland from exercising his freedom to impart information and ideas. The applicant's suspension and takedown order cannot be justified under Article 19(3) ICCPR. Prof. Hunland's posts were legitimate political discourse which ought not to be restricted on the grounds of national security, public order or public health. In any event, the suspension and takedown order was neither necessary nor proportionate as it was not the least intrusive measure available to the Applicant to achieve its aims.

Issue 4: LEGALITY OF APPLICANT'S BOTNET TAKEDOWN ORDER

The issue is whether Applicant's order to take down the Lunar Botnet violated international law. Specifically, whether Applicant was impermissibly exercising extra-territorial enforcement jurisdiction given that roughly 5,000 of the hacked devices were located in Respondent's territory (this fact is not disputed). It is also undisputed that the order was obtained in compliance with Applicant's domestic law

Prohibition Against Extraterritorial Law Enforcement

Applicant Arguments

Under the *Lotus* decision, the Applicant will have to justify its exercise of extraterritorial enforcement jurisdiction "by a permissive rule derived from international custom or a convention". Applicant's best bet would be to argue that there is an exception under CIL which has developed that allows states to take extraterritorial law enforcement operations in cyberspace when the location of the device cannot be determined even after reasonable efforts.

Respondent Argument

Applicant violated the principle of sovereignty by exercising extraterritorial enforcement jurisdiction over the devices located within Respondent's territory. Applicant cannot show that there is widespread and uniform State practice and opinion Juris sufficient to establish a permissive customary international law rule permitting the extraterritorial exercise of jurisdiction.

Budapest Convention

Parties should explore arguments based on Articles 15 and 32.

Right to Privacy

Preliminary, respondents would need to argue that human rights are guaranteed under the ICCPR and apply extraterritorially, and therefore, the Applicant's actions Moonstroke can implicate the right to privacy under the ICCPR. The applicant should argue that the scope of the jurisdiction under the ICCPR does not cover their actions.

Clean Hands

Applicant

The applicant may argue that, if Respondent is found in breach of international law in issue one based on its support and/or housing of the operation of the Lunar Botnet, its claim under issue should be barred as Respondent comes to the Court with unclean hands.

Respondent

The respondent may argue that this doctrine has never been conclusively accepted and applied by any ICJ case. On the contrary, the doctrine has been rejected by some international tribunals.

On merit, the Respondent can argue that the cause of action in issues two and four is different and hence clean hands are inapplicable.

Other Circumstances Precluding Wrongfulness

The applicant may rely on other circumstances precluding wrongfulness such as the doctrine of necessity under customary international law.

The doctrine of necessity requires, among other things, that the act which would otherwise be internationally wrongful be the "only way for the State to safeguard an essential interest against a grave and imminent peril" (Article 25(1)(a) ARSIWA).

The respondent will attempt to argue that the high standard set by the principle of necessity is not met in this case.