

TEAM CODE – T29

7th RMLNLU – SCC ONLINE INTERNATIONAL MEDIA LAW MOOT COURT
COMPETITION, 2019



BEFORE

THE INTERNATIONAL COURT OF JUSTICE

THE HAGUE, NETHERLANDS

(Under Article 40 (1) of the Statute of the ICJ)

IN THE CASE OF-

THE REPUBLIC OF KARNAWATI

(Applicant)

v.

THE SOCIALIST DEMOCRACY OF SHRAVASTI

(Respondent)

“Case Concerning the Newsroom and Plainspeak”.

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

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LIST OF ABBREVIATIONS

¶	Paragraph
¶¶	Paragraphs
Alb.	Albania
App.	Application
Am.	American
Bosn.	Bosnia
Art.	Article
Cal.	California
Ct.	Court
Colum.	Columbia
Comp.	Comparative
Comm'n	Commission
Doc.	Document
Dem.	Democratic
D.D.O.S.	Disturbed Denial of Service
E.C.H.R	European Convention on Human Rights
ed.	edition
et. al.	Et alia
Eu.	European
EWHC	High Court of England and Wales

G.A.	General Assembly
H.	Human
Herz.	Herzegovina
Hung.	Hungary
I.C.J.	International Court of Justice
Int-Am.	Inter American
Indon.	Indonesia
Int'l	International
I.C.C.	International Criminal Court
J.	Journal
L.	Law
Ltd.	Limited
Neth.	Netherlands
Nicar.	Nicaragua
No.	Number
p.	page no.
Poly	Policy
QB	Queen's Bench Division
R.	Rights
Rep.	Republic
Res.	Resolution

Rev.	Review
S.C.C.	Supreme Court Cases
Sec.	Security
Sec'y	Secretary
Serb.	Serbia
Slovk.	Slovakia
Stud.	Studies
Transnat'l	Transnational
U.	University
U.D.H.R	Universal Declaration of Human Rights
U.N.H.R.	United Nations Human Rights
Comm'n	Commission
U.K.	United Kingdom
U.N.	United Nations
U.S.	United States Reporter
U.S.A.	United States of America
v.	versus
Va.	Virginia
V.C.D.R	Vienna Convention on Diplomatic Relations
V.C.C.R	Vienna Convention on Consular Relations
I.C.S.I.D.	International Centre for Settlement of Investment Dispute

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STATEMENT OF JURISDICTION

The State of Shravasti and the state of Karnawati appear before the International Court of Justice in accordance with Article 40(1) of its Statute through submission of a compromis for resolution of all the differences between them concerning the case of Newsroom and Plainspeak. This Court has jurisdiction over the dispute pursuant to Article 36(1) of its Statute, as both parties have agreed that this Court will adjudicate the dispute under its jurisdiction. The parties concluded this Compromis in The Hague, The Netherlands and jointly notified this Court of their special agreement on 29th December, 2018.

STATEMENT OF FACTS

INTRODUCTION

The Republic of Karnawati has a robust electoral democracy. The laws of Karnawati grants and protects absolute freedom of speech. The news media in the country is free and there have been only two instances of censorship. Right to Privacy is a Fundamental right in Karnawati. Right to Privacy Act, 2017 was passed by the Karnawati Parliament. Plainspeak.com is a crowdfunded web portal which publishes investigative stories whose journalists have been accredited by Karnawati Government, it has gained popularity and credibility due to its exclusive investigative stories. Shravasti is a developed country was ranked number one in the ‘Digital Governance segment, and has been hailed by Shravasti for its successful implementation of Internet of Things in all aspects of governance.

Newsroom Information Corporation is one of the largest media organizations in Shravasti. Newsroom acquired controlling stake in Cableway Networks Inc, the largest cable TV Service provider in Karnawati and owned 71% of its shares, and in a venture capital fund Futureplant Inc. in Vertland Islands, which makes investments in tech start-ups in the field of software and most of its start-ups have been involved in development of cutting-edge privacy software and psychometric and psychographic profiling. Karnawati and Shravasti maintain cordial relations and maintain full diplomatic missions

THE PLAINSPEAK REPORTS

Plainspeak.com published an investigative report titled ‘The Spying Socialist’, to show that Newsroom has been using its start-ups, to spy and profile individuals across the globe, through Newsroom’s cable companies which supplied customers with set top boxes pre-installed with automated content recognition software which collected and transmitted data pertaining to content watched by the user for psychometric and psychographic profiling of its users. Such data was used by Newsroom to change to alter the course of elections in Vijaynagar kingdom in South America. Post election a Shravasti company was allotted exclusive mining rights in Vijaynagar. There was no specific consent sought for extra-territorial transmission and use of data through the click-wrap agreements accepted by the users, Plainspeak also disclosed details of citizens of Shravasti behind the entire operation. Plainspeak published another report titled the ‘The Advent of Socialist Imperialism’ to show that Shravasti had used Cableway to carry out psychometric profiling of Cableway users in Karnawati. Futureplant had collected substantial amount of personal data of Karnawati

citizens through the ARC Software. Plainspeak also published 72 diplomatic emails of Shravasti diplomats which talked about how interests of Shravasti were being harmed by the political environment in Karnawati and the need to employ Newsroom resources and package in Karnawati were revealed in the diplomatic communication.

THE AFTERMATH OF THE REPORTS

The press release of Shravasti did not counter the contents and allegations in the Report. The defamation and libel actions against Plainspeak was rejected by the Supreme Judicial Council in Karnawati that the acts of Plainspeak did not meet the ‘threshold’ to restrict the freedom of speech. Plainspeak was made unavailable in Shravasti with immediate effect. Karnawati declared the Ambassador of Shravasti as ‘persona non grata’.

The population of Karnawati received telephonic message notifications stating that the Karnawati Stock Exchange will be closed due to software issues which caused a panic with shares plummeting 1100 points and the market was affected by an ‘undue delay’ in the execution of the online trading transactions. When markets closed the stocks plummeted by 1282 points and the direct losses were estimated around USD 17 billion in Karnawati. Karnawati Government’s Cyber Monitoring and Research Agency (CMRA) investigated the matter and reported that the telephonic messages originated from a location in High Seas and the satellite imagery indicated the presence of a merchant vessel under the flag of Shravasti. The Report pointed out that Hackatheme, a Futureplant subsidiary had marketed TradeNow, a software which was used to clog the systems. The Reports published by Plainspeak.com have been found to be accurate by an independent judicial commission. The Supreme Judicial Council refused to admit the application filed by Shravasti where it asserted the Right to be forgotten on behalf of the persons resident in Shravasti as it found no merit in the assertion of Shravasti that it had a Right to be Forgotten. Shravasti and Karnawati’s ministerial level talks failed to end the dispute and the parties have decided to approach ICJ through a special agreement under Article 40(1) of the Statute of the International Court of Justice.

STATEMENT OF ISSUES

THE FOLLOWING QUESTIONS ARE PRESENTED BEFORE THE HON'BLE INTERNATIONAL COURT OF JUSTICE FOR ITS CONSIDERATION:

- A. WHETHER SHRAVASTI, ON BEHALF OF THE PERSONS RESIDENT AND/OR INCORPORATED IN SHRAVASTI, HAS A RIGHT TO BE FORGOTTEN UNDER INTERNATIONAL LAW AND WHETHER KARNAWATI HAS BREACHED THE INTERNATIONAL LAW BY REFUSING TO RECOGNIZE THE SAME.
- B. WHETHER SHRAVASTI HAS WAGED WAR AGAINST KARNAWATI BY USING ITS GOVERNMENTAL AGENCIES TO ATTACK NATIONAL CRITICAL INFRASTRUCTURE OF KARNAWATI.
- C. WHETHER KARNAWATI HAS BREACHED INTERNATIONAL LAW BY FAILING TO SECURE THE PRIVACY OF THE DIPLOMATIC CABLES OF SHRAVASTI.
- D. WHETHER SHRAVASTI HAS BREACHED INTERNATIONAL LAW BY UNLAWFULLY GATHERING, TRANSMITTING, STORING AND USING THE DATA OF THE CITIZENS OF KARNAWATI WITHOUT THE EXPRESS PERMISSION OF THE CITIZENS OF KARNAWATI AND IN VIOLATION OF LAWS OF KARNAWATI.
- E. WHETHER KARNAWATI IS ENTITLED TO DAMAGES ON ACCOUNT OF (B) AND (D) AND WHETHER SHRAVASTI IS ENTITLED TO DAMAGES ON ACCOUNT OF (A).

SUMMARY OF ARGUMENTS

A. Shravasti, on behalf of the persons resident and/or incorporated in sharavasti, has no right to be forgotten under international law and karnawati has not breached the international law by refusing to recognize the same.

The Right to be Forgotten (‘RTBF’) under art. 17 of EUGDPR is not absolutely guaranteed. The restriction on the RTBF claim of Shravasti is legitimate when it is prescribed by law, pursues a legitimate aim and is necessary in a democratic society. A restriction is prescribed by law if the law is clear, precise, foreseeable and contains adequate safeguards against any misuse. *First*, The Right to Privacy Act (‘RTPA’) of Karnawati, which prescribes the restriction, is clear, precise and the restriction under it is foreseeable by its subjects. Moreover, RTPA has adequate safeguards against any misuse.

Secondly, the restriction pursues legitimate aims of protecting public’s right to receive information on the matters of public importance and protecting the freedom of expression of plain speak and pursues journalistic purposes. *Thirdly*, the restriction is necessary in a democratic society because it fulfills the pressing social need and the restriction is proportionate to the legitimate aim pursued. Thus, Shravasti has no RTBF and Karnawati has not breached International law by failing to recognize the RTBF of Shravasti.

B. Shravasti has waged war against karnawati by using its governmental agencies to attack national critical infrastructure of karnawati.

Shravasti has waged war against Karnawati by attacking national critical infrastructure of Karnawati for three reasons. *First*, a state is responsible for the act of an entity only when it is attributable to the state. The cyber attacks carried out by Newsroom is attributable to Shravasti because Newsroom is an organ of Shravasti and it is acting under the control of Shravasti under ARSIWA. *Secondly*, the operations constitute waging of war under The UN Charter because the attacks damaged critical infrastructure of Shravasti and the DDOS attacks constitute waging of war. *Thirdly*, the attacks are not lawful exercise of right to self-defense of Shravasti.

C. Karnawati has not breached international law by failing to secure the privacy of the diplomatic cables of Shravasti.

Karnawati has not violated International law by failing to secure the privacy of the diplomatic cables of Shravasti for three reasons. *First*, the immunity under Vienna Convention on

Diplomatic Relations ('VCDR') is functional and is not granted if diplomats violate provisions of VCDR. Shravasti diplomats have violated VCDR as they have violated the laws of Karnawati and they have acted contrary to the functions accorded to them under VCDR.

Secondly, as per the principle of equity, a party cannot take the benefit from any non-performance of a statute which it itself has violated. The acts of Karnawati are thus, justified according to the principle of equity *Thirdly*, the acts of Karnawati are totally consistent with the customary international law because the act of surveillance is unregulated in International law and has been affirmatively backed by the state practice. Therefore, Karnawati has not violated international law by failing to secure the diplomatic cables of Shravasti.

D. Shravasti has breached international law by unlawfully gathering, transmitting, storing and using the data of the citizens of Karnawati without the express permission of the citizens of Karnawati and in violation of the laws of Karnawati.

Shravasti has breached international law by the aforesaid acts for four reasons. *First*, Shravasti has violated international privacy conventions, which apply to the acts of Shravasti as the conventions are extraterritorial in nature and Shravasti citizens are under the control of Karnawati. Shravasti has illegitimately interfered with right to privacy of Shravasti citizens as it has interfered with their private information. Additionally, the restriction on the right to privacy of Shravasti citizens is not prescribed by law and does not pursue any legitimate aim.

Secondly, Shravasti has breached the territorial sovereignty of Karnawati because it has engaged in extensive cyber espionage of the millions of Karnawati citizens inside the territory of Karnawati through its agencies. *Thirdly*, it has violated the principle of non-intervention by storing and transmitting the TV watching content of Karnawati citizens, thereby manipulating their political opinions and attempting to affect the whole elections in Karnawati. *Forthly*, Shravasti has violated RTPA and has thus violated its domestic laws.

E. Karnawati is entitled to damages on account of (b) and (d) and Shravasti is not entitled to damages on account of (a) above.

Karnawati is entitled to damages on account of (B) in the form of financially assessable damage of USD 17 billion and other indirect losses. Karnawati is entitled to restitution on account of (D) by uninstalling the ARC software and destroying profiles of Karnawati citizens. Shravasti is also liable to guarantee non-repetition and cessation of all the wrongful acts done by it. Additionally, Shravasti is not entitled to any damages on account of (A) because Karnawati has not committed any internationally wrongful act.

ARGUMENTS ADVANCED

A. SHRAVASTI, ON BEHALF OF THE PERSONS RESIDENT AND/OR INCORPORATED IN SHARAVASTI, HAS NO RIGHT TO BE FORGOTTEN UNDER INTERNATIONAL LAW AND KARNAWATI HAS NOT BREACHED THE INTERNATIONAL LAW BY REFUSING TO RECOGNIZE THE SAME.

I. SHRAVASTI, ON BEHALF OF PERSONS RESIDENT AND/OR INCORPORATED IN SHRAVASTI, HAS NO RIGHT TO BE FORGOTTEN.

¶ 1. It is submitted that Shravasti, on behalf of the persons incorporated in Shravasti, has no right to be forgotten because the restriction on Shravasti's Right to be Forgotten is legitimate since it is prescribed by law [a]; it pursues a legitimate aim [b] and is necessary in a democratic society [c].¹

a. The restriction is prescribed by law.

¶ 2. The restriction on the Right to be Forgotten ('RTBF') of Shravasti is prescribed by law since Right to Privacy Act ('RTPA') is clear and precise [i];² the restriction is sufficiently foreseeable under RTPA [ii]³ and it has adequate safeguards against any misuse or abuse [iii].⁴

i. RTPA is clear and precise.

¶ 3. The wordings of the legislation which prescribes the restriction should be clear and precise to regulate the conduct of the concerned persons.⁵R.T.P.A. is clear as it coherently defines the terms such as 'persons' and 'territory'⁶ and specifies the purposes for the storage of data such as historical, statistical, research⁷ and governmental storage purposes.⁸ It further

¹ Commission Regulation 2016/679, General Data Protection Regulation, art. 17(1)(c), 2016 O.J. (L 119) [hereinafter *E.U.G.D.P.R.*]; Gaweda v. Poland, App. No. 26229/95 2002-II Eur. Ct. H. R. ¶39 (2002); Feldek v. Slovakia, App. No. 29032/95 Eur. Ct. H. R. (2001) [hereinafter *Feldek*]; Lohe Issa Konate v. Burkina Faso, App. No. 004/2013 Afr. Ct. H. People's R. ¶125 (2014).

² Centro Europa v. Italy, App. No. 38433/09 Eur. Ct. H. R. ¶141 (2012); Wingrove v. United Kingdom, App. No. 17419/90Eur. Ct. H.R.¶40(1996).

³ Delfi v. Estonia, App. No. 64669/09 Eur. Ct. H.R. ¶120 (2015).

⁴ S. v. United Kingdom, App. No. 30566/04 Eur. Ct. H. R. ¶103 (2008); Satakunnan v. Finland, App. No. 931/13 Eur. Ct. H.R. ¶355 (2017) [hereinafter *Satakunnan*].

⁵ Sunday Times v. United Kingdom, App No. 6538/74 30 Eur. Ct. H. R. ¶49 (1979) [hereinafter *Sunday Times*]; Müller v. Switzerland, App. No. 10737/84 Eur. Ct. H. R. ¶29 (1988); Kokkinakis v. Greece, App. No. 14307/88 Eur. Ct. H. R. ¶40 (1993) [hereinafter *Kokkinakis*].

⁶ Compromis, Annexure F, Right to Privacy Act, 2017, art. 2(1aa) & 2(1b) [hereinafter *R.T.P.A.*].

⁷ Compromis, Annexure F, R.T.P.A., art. 22(3)(c)(ii).

⁸ Compromis, Annexure F, R.T.P.A., art. 22(2) provisio.

clarifies that the processing can only be done on the basis of consent⁹ and data shall be destroyed¹⁰ and deleted¹¹ after the fulfillment of purpose¹² for which it was stored.¹³ Thus, RTPA is sufficiently clear and precise.

ii. The restriction is foreseeable under RTPA.

¶ 4. The prescribing legislation must enable the individuals to foresee the consequences of their acts.¹⁴ The number and status of persons to whom the law applies determines the foreseeability of the law.¹⁵ R.T.P.A. clearly specifies that it applies to the ‘persons’ including an individual and association of individuals.¹⁶ Additionally, the language of the law being clear and precise,¹⁷ the citizens and other persons incorporated in Shravasti could have easily foreseen the applicability of the restriction on their right to be forgotten under the act, and thus, the restriction was sufficiently foreseeable.

iii. RTPA has adequate safeguards against misuse.

¶ 5. RTPA has sufficient provisions to limit and control the processing of personal data of individuals as it provides for purpose limitation,¹⁸ time limitation.¹⁹ It further provides for timely destruction,²⁰ deletion²¹ and erasure of data²² after fulfillment of the purpose for which it was collected. Additionally, it is characterized by data minimization²³ and strictly requires written authorization²⁴ and consent of the data subject before the processing of data.²⁵ Thus, RTPA is provisioned with adequate safeguards against any misuse.

b. The restriction pursues a legitimate aim.

⁹ Compromis, Annexure F, R.T.P.A., art. 22(3)(c)(ii) & art. 22A (i) proviso.

¹⁰ Compromis, Annexure F, R.T.P.A., art. 22(3)(b).

¹¹ Compromis, Annexure F, R.T.P.A., art. 22A (2).

¹² Compromis, Annexure F, R.T.P.A., art. 22(3)(a).

¹³ Compromis, Annexure F, R.T.P.A., art. 22(2) & art. 22(3)(b).

¹⁴ Olafsson v. Iceland, App. No.58493/13 Eur. Ct. H. R. ¶36 (2017); Chauvy v. France, App. No. 64915/01 2004-VI Eur. Ct. H. R. ¶43 (2004)[hereinafter *Chauvy*]; Lindon, Otchakovsky-Laurens & July v. France, App. No. 21279/02 & 36448/02 Eur. Ct. H. R. ¶41 (2007); Kokkinakis, *supra* note 5, ¶40; Ramirez v. Venezuela, Case No. 207 Inter-Am. Ct. H. R. ¶56-57 (2009); Kimel v. Argentina, Case No. 177 Inter-Am. Ct. H. R. ¶63 (2008); Chicago v. Morales, 527 U.S. 41 (1999); Kartar Singh v. State of Punjab, (1994) 3 S.C.C. 569 (India); Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1 (India).

¹⁵ Cantoni v. France, App. No. 17862/91 Eur. Ct. H. R. ¶35 (1996); Chauvy, *supra* note 14.

¹⁶ Compromis, Annexure F, R.T.P.A., art. 2(1a).

¹⁷ Memorial, ¶3.

¹⁸ Compromis, Annexure F, R.T.P.A., art. 21(2).

¹⁹ Compromis, Annexure F, R.T.P.A., art. 21(3)(a).

²⁰ Compromis, Annexure F, R.T.P.A., art. 21(3)(b).

²¹ Compromis, Annexure F, R.T.P.A., art. 22(2).

²² Compromis, Annexure F, R.T.P.A., art. 21(3)(c)(ii).

²³ Compromis, Annexure F, R.T.P.A., art. 21(3)(c)(ii) proviso.

²⁴ Compromis, Annexure F, R.T.P.A., art. 22(1).

²⁵ Compromis, Annexure F, R.T.P.A., art. 21(3)(c)(i).

¶ 6. The restriction on RTBF of Shravasti pursues legitimate aim because it protects public's right to receive information on the matters of public importance [i] and protects freedom of expression of Plainspeak and pursues journalistic purposes [ii].

i. The restriction protects public's right to receive information on matters of public importance.

¶ 7. Right of the public to seek and receive²⁶ information on the matters of public importance is an important part of right to freedom of speech and expression.²⁷ This right embraces the public's need to seek truth, its right to participate in the debates of general interest,²⁸ social change and decision making.²⁹ Matters of public importance include the well-being of the citizens or welfare of a community.³⁰ Plainspeak reports reveal the large scale surveillance of millions of Karnawati citizens done by the agencies of Shravasti.³¹ The surveillance not only violated fundamental rights of the citizens³² and the laws of Karnawati,³³ but also seeks to manipulate citizens' political views,³⁴ affect the elections in Karnawati³⁵ and overthrow the democratic government of Karnawati.³⁶ Therefore, publication of Plainspeak reports protects the right of Shravasti citizens to receive the information of public importance.

²⁶ Magyar v. Hungary, App. No. 18030/11 Eur. Ct. H. R. ¶142 (2016)[hereinafter *Magyar*]; Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Rep. on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, H.R.C., U.N. Doc.A/HRC/23/40, (Jan. 11, 2011) (by Frank La Rue); International Covenant on Civil and Political Rights art. 19(2), Dec. 16, 1966, 999 U.N.T.S. 171; African Charter on Human and Peoples Rights art 9(1), Oct. 10, 1986, 1520 U.N.T.S. 217.

²⁷ Axel Springer v. Germany, App. No. 39954/08 Eur. Ct. H. R. ¶79 (2012) [hereinafter *Axel*]; Bladet Tromsø v. Norway, App. No. 21980/931999-III Eur. Ct. H. R. ¶59, ¶62 (1999) [hereinafter *Bladet*]; Pedersen & Baadsgaard v. Denmark, App. No. 49017/99 2004-XI Eur. Ct. H.R. ¶71 (2003) [hereinafter *Pederson*]; Financial Times Ltd. v. United Kingdom, App. No. 821/03 Eur. Ct. H.R. ¶59 (2009) [hereinafter *Financial Times*], M.G.N Ltd. v. United Kingdom, App. No. 39401/04 66 Eur. Ct. H. R. ¶141 (2011)[hereinafter *M.G.N.*]; De Haes v. Belgium, App. No. 19983/92 Eur. Ct. H. R. ¶37(1997)[hereinafter *De Haes*].

²⁸ Von Hannover v. Germany, App. No. 59320/00 2012 Eur. Ct. H. R. ¶60 (2004) [hereinafter *Hannover*]; Leempoel v. Belgium, App. No. 64772/01 Eur. Ct. H. R. ¶68 (2006); Standard Verlags v. Austria (no. 2), App. No. 21277/05 Eur. Ct. H. R. ¶46 (2009).

²⁹ Michael G. Doherty, *Politicians as a species of "public figure" and the right to privacy*, 1 U. K. HUMANITAS J. EUR. STUD. 35 (2007); *The Representative on Freedom of the Media*, RECOMMENDATIONS ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (June 14, 2003)<https://www.osce.org/fom/41903?download=true>.

³⁰ *Id.* ¶162.

³¹ Compromis, ¶11.

³² Memorial, ¶36.

³³ Memorial, ¶45.

³⁴ Memorial, ¶47.

³⁵ *Id.*

³⁶ Compromis, ¶20.

ii. Restriction protects freedom of expression of Plainspeak and pursues journalistic purposes.

¶ 8. Processing of data is necessary for the exercise of right to freedom of speech and expression of the data processor.³⁷ This right is essential in a democratic society and extends to the information that may offend, shock or disturb.³⁸ Additionally, right to protection of personal data must be balanced with right to freedom of expression, when exercised for journalistic purposes.³⁹ In the present case, Plainspeak has right to freedom of speech and expression and it carries out investigative journalism⁴⁰ as it inspected and published the details of the surveillance operations⁴¹ and has seven journalists accredited by the Karnawati government.⁴² Thus, the restriction has legitimate aim of protecting freedom of expression of Plainspeak and is in pursuance of journalistic purposes.

c. The restriction is necessary in a democratic society.

¶ 9. The restriction on RTBF of Shravasti is necessary in a democratic society because the restriction fulfils a pressing social need[i] and the restriction is proportionate to the legitimate aim pursued. [ii]⁴³

i. The Restriction fulfils a pressing social need.

¶ 10. The restriction on RTBF of Shravasti fulfils a pressing social need for two reasons. *First*, for establishing pressing social need, the reasons must be sufficient⁴⁴ and must relate to the public interest involved.⁴⁵ The press, being a public watchdog,⁴⁶ is obliged to impart information on the matters of public interest⁴⁷ eliciting general debate in a democratic

³⁷ E.U.G.D.P.R, *supra* note 1, art. 17(3)(A).

³⁸ Axel, *supra* note 27, ¶78; Coudrec v. France, App. No. 40454/07 Eur. Ct. H. R. ¶188 (2015) [hereinafter *Coudrec*]; Magyar, *supra* note 26, ¶187; American Convention on Human Rights art. 13(1), July 18, 1978, 1144 U.N.T.S. 123.

³⁹ E.U.G.D.P.R, *supra* note 1, art. 85.

⁴⁰ Compromis, ¶6.

⁴¹ Compromis, ¶11.

⁴² Compromis, ¶6.

⁴³ Sunday Times, *supra* note 5, ¶62.

⁴⁴ Tonsberg v. Norway, App. No.510/04 Eur. Ct. H.R. ¶54(2007); Handyside v. United Kingdom, App. No. 5493/72 Eur. Ct. H. R. ¶50 (1976) [hereinafter *Handyside*]; Pedersen v Denmark, App. No. 68693/01 Eur. Ct. H. R. ¶63(2005); Chauvy, *supra* note 14, ¶65; Cumpuna v Romania, App. No. 33348/96 Eur. Ct. H. R. ¶90 (2004).

⁴⁵ Sunday Times, *supra* note 5, ¶65.

⁴⁶ Magyar Helsinki Bizottság v. Hungary, App. No. 18030/11 Eur. Ct. H. R. ¶165(2016).

⁴⁷ Axel, *supra* note 27, ¶79; Bladet, *supra* note 27, ¶59, ¶62; Pedersen, *supra* note 27, ¶71; Financial Times Ltd. v. United Kingdom, App. No. 821/03 Eur. Ct. H. R. ¶59 (2009); M.G.N., *supra* note 27, ¶141; De Haes, *supra* note 27, ¶37.

society.⁴⁸The persons of Shravasti surveilled millions of Karnawati citizens, violated their privacy⁴⁹ and affected the elections of Karnawati.⁵⁰ Therefore, publication of their information concerns public interest⁵¹ and thus pursues a pressing social need.

¶ 11. *Second*, private details can be published when it is necessary in public interest⁵² and pursues a pressing social need. Private information of public officials, having substantial public impact,⁵³ has a greater need to be published if the officials abuse their power.⁵⁴ Shravasti Government and its employees were engaged in violation of the rights of millions of Karnawaticitizens, abusing their official power.⁵⁵Therefore, publication of personal details of persons incorporated in Shravasti, especially of the public officials, pursues a pressing social need.

ii. *The restriction is proportionate to the legitimate aim pursued.*

¶ 12. The right to protection of personal data must be balanced against other fundamental rights in accordance with the principle of proportionality.⁵⁶ For balancing of competing rights, factors such as reasonable expectation of privacy, margin of appreciation, involvement of public interest, subject of the news report,⁵⁷ and veracity of the information⁵⁸ are to be examined. In the present case, the restriction is proportionate to the aim pursued for three reasons. *First*, the government employees of Shravasti, who have a public impact, abused their power⁵⁹ and thus, they do not have a reasonable expectation of privacy.⁶⁰

¶ 13. *Second*, a state which seeks to restrict right to freedom of speech and expression has a narrow “margin of appreciation” where there are compelling public interests.⁶¹In the present

⁴⁸ Coudrec, *supra* note 38, ¶114.

⁴⁹ Memorial, ¶36.

⁵⁰Compromis, ¶11.

⁵¹Compromis, ¶11.

⁵² Hachette v. France, App. No. 71111/01 Eur. Ct. H.R. (2007).

⁵³ Parliamentary Assembly, *Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy*, COUNCIL OF EUROPE (Jun. 26, 1998) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16641&lang%20=en>.

⁵⁴ Dalban v. Romania, App. No. 28114/95 Eur. Ct. H. R. (1999).

⁵⁵ Compromis, ¶11.

⁵⁶ E.U.G.D.P.R, *supra* note 1, recital4.

⁵⁷ Satakunnan, *supra* note 4, ¶165.

⁵⁸ Coudrec, *supra* note 38, ¶93; Hannover, *supra* note 28, ¶¶109-113; Axel, *supra* note 27, ¶¶90-95.

⁵⁹ Memorial, ¶45.

⁶⁰ Katz v. United States, 389 U.S. 347 (1967).

⁶¹ Coudrec, *supra* note 38; Éditions Plon v. France, App. No. 58148/00 Eur. Ct. H. R. ¶44 (2004); Ceylan v. Turkey, App. No. 23556/94 Eur. Ct. H. R. ¶34 (1999); Perincek v. Switzerland, App. No. 27510/08 Eur. Ct. H. R. ¶197(2015).

case, Plainspeak reports involve compelling public interest⁶² and reveal violation of the rights of millions of Karnawati citizens.⁶³ Therefore, Karnawati should have a very narrow margin of appreciation and right to freedom of expression of plainspeak and the right to freedom of information of public overrides any other right of the data subject in the present case.

¶ 14. *Third*, personal data can be processed if it is accurate⁶⁴ and reliable.⁶⁵ An evidence is reliable if its information can be confirmed.⁶⁶ Plainspeak, the most read website after Wikipedia, has gained credibility because of its exclusive stories on blood diamonds and biological weapons in South Eurasia.⁶⁷ Its Index is automated and is real time with no human interference at all, making it sufficiently credible.⁶⁸ Moreover, the leaked diplomatic cables confirm that Shravasti diplomats sent personal details of Shravasti citizens to Shravasti government, as alleged by the Plainspeak report.⁶⁹ The accuracy of Plainspeak reports has also been confirmed by an independent judicial commission⁷⁰ and hence the reports are accurate and reliable.

II. KARNAWATI HAS NOT BREACHED INTERNATIONAL LAW BY FAILING TO RECOGNIZE RTBF OF SHRAVASTI.

¶ 15. It is submitted that Shravasti, on behalf of the persons resident and/or incorporated in Shravasti, has no right to be forgotten under article 17 of EUGDPR.⁷¹ Therefore, Karnawati has not breached international law by refusing to recognize right to be forgotten of Shravasti.

B. SHRAVASTI HAS WAGED WAR AGAINST KARNAWATI BY USING ITS GOVERNMENTAL AGENCIES TO ATTACK NATIONAL CRITICAL INFRASTRUCTURE OF KARNAWATI.

¶ 16. Shravasti has waged war against Karnawati by attacking its national critical infrastructure because the cyber-attacks are attributable to Shravasti government[I]; they constitute use of force and waging of war u/a 2(4) of the UN Charter [II] and the attacks are not justifiable under international law [III].

⁶² Memorial, ¶40.

⁶³ Memorial, ¶45.

⁶⁴ E.U.G.D.P.R, *supra* note 1, art. 5(1)(d).

⁶⁵ *Fressoz v. France*, App. No. 29183/951999-I Eur. Ct. H. R. ¶54 (1999); *Pedersen*, *supra* note27,¶78; *Stoll v. Switzerland*, App. No. 69698/01 2007-VEur. Ct. H. R. ¶103 (2007).

⁶⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-1171, ¶4, ¶5(2011).

⁶⁷ *Compromis*, ¶6.

⁶⁸ *Compromis*, ¶7.

⁶⁹ *Compromis*, ¶11.

⁷⁰ *Compromis*, ¶27.

⁷¹ Memorial, ¶3.

I. THE CYBER-ATTACKS ARE ATTRIBUTABLE TO SHRAVASTI.

¶ 17. When the additional evidence is under the exclusive control of another state, as in the present case,⁷² the court shall adopt a more liberal recourse for the circumstantial evidence”.⁷³ Moreover, the standard of proof in cyber cases shall be relaxed, due to scarcity of evidence in such cases.⁷⁴ The cyber-attacks in the present case are attributable to Shravasti because they are carried out by an organ of Shravasti government[a] and at the least, they are carried out by the entity under the control of Shravasti[b].

a. The attacks are carried out by an organ of Shravasti government.

¶ 18. Acts of an organ of a state are attributable to that state.⁷⁵ An entity which does not have the status of an organ under internal law of the state, can still be an organ if it has very close relationship with the state.⁷⁶ Newsroom is established by the Department of Communication of Shravasti, is registered with its Registrar of Companies of Shravasti⁷⁷ and is audited by the Comptroller and Auditor General of Shravasti.⁷⁸ Retired civil servants from various governmental ministries are nominated as representatives on the board of Newsroom by the organs of Shravasti.⁷⁹ Newsroom is thus closely connected with the Shravasti government making it an organ of Shravasti government.⁸⁰ The false notifications were sent to the past and present subscribers of cableway and Invest Now,⁸¹ both of which are directly or indirectly controlled by Newsroom.⁸² Additionally, a subsidiary of Newsroom controlled Futureplant marketed a software similar to the one which was used to clog the systems of Karnawati.⁸³ Thus, Shravasti, through Newsroom, used its world-renowned digitization and internet of things technology⁸⁴ to carry out the cyber-attacks against Karnawati.

⁷² Compromis, ¶27.

⁷³ Corfu Channel Case (U.K. v. Alb.), Judgment, 1948 I.C.J. 18 (Mar. 15) [hereinafter *Corfu Channel*].

⁷⁴ Nicholas Tsagourias, *Cyber Attacks, Self-Defence, and the Problem of Attribution*, 17 J. CONFLICT SEC. L. 229, 235 (2012) [hereinafter *Tsagourias*].

⁷⁵ Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res 56/83, U.N. Doc. A/RES/56/83, art. 4 (Jan. 28, 2002) [hereinafter *A.R.S.I.W.A.*].

⁷⁶ Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶392 (Feb. 27).

⁷⁷ Compromis, ¶3.

⁷⁸ Compromis, ¶4.

⁷⁹ *Id.*

⁸⁰ Tsagourias, *supra* note 74.

⁸¹ Compromis, ¶24.

⁸² Compromis, ¶5.

⁸³ Compromis, ¶25.

⁸⁴ Compromis, ¶2.

b. The attacks are carried out by an entity acting under the control of Shravasti.

¶ 19. Acts of an entity which is controlled by a state are attributable to that state.⁸⁵ Act of an entity is attributable to its state when the state supplies general organizational support to the entity even if there is no specific involvement of the state.⁸⁶ Newsroom is closely related to the Shravasti government⁸⁷ and therefore, Shravasti has overall control over Newsroom and its subsidiaries, which ultimately carried out the cyber-attacks. Thus, the attacks were carried out by an entity acting under the control of Shravasti.

II. THE ATTACKS CONSTITUTE WAGING OF WAR U/A 2(4) OF THE UN CHARTER.

¶ 20. An act amounts to unlawful use of force and waging of war depending upon its scale and effects.⁸⁸ Destruction of human life is not a pre-requisite for equating an operation to an armed attack.⁸⁹ The attacks carried out by Shravasti constitute use of force and waging of war as they damaged Karnawati's national critical infrastructure [a] and the DDOS attacks carried out by it constitute waging of war and armed attack[b].

a. The attacks damaged the national critical infrastructure of Karnawati.

¶ 21. Cyber operations constitute use of force if they result in substantial material damage.⁹⁰ Substantial material damage includes the "loss of usability" of functional infrastructure of a state⁹¹ and causation of any kinetic force is not essential.⁹² A cyber attack, which paralyzes and destructs a state's apparatus⁹³ and damages its critical assets,⁹⁴ qualifies as an armed attack against that particular state.⁹⁵ The national critical infrastructure of a state includes banking and finance,⁹⁶ damaging which amounts to use of force against that state.⁹⁷

⁸⁵ A.R.S.I.W.A., *supra* note 75, art. 8.

⁸⁶ Prosecutor v. Dusko Tadic, 38 I.L.M. 1518 (1999) ¶117; Tsagourias, *supra* note 74.

⁸⁷ Memorial, ¶18.

⁸⁸ MICHAEL N. SCHMITT, TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS 47 (2nd ed. 2017) [hereinafter *Tallinn Manual*].

⁸⁹ Y Dinstein, *Computer Network Attack and Self-Defence*, 76 INT'L. STUD. 99, 102 (2002).

⁹⁰ *Id.*

⁹¹ Tallinn Manual, *supra* note 88, at 94; Tsagourias, *supra* note 74.

⁹² Tallinn Manual, *supra* note 88, at 92.

⁹³ Eric Talbot Jensen, *Computer Attacks on Critical National Infrastructure: A Use of Force Invoking the Right of Self-Defense*, BYU LAW DIGITAL COMMONS (Dec. 31, 2002), https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1212&context=faculty_scholarship [hereinafter *Jensen*].

⁹⁴ Ryan J. Hayward, *Evaluating the "Imminence" of a Cyber Attack for Purposes of Anticipatory Self-Defense*, 117 COLUM. L. REV. 399, 434 (2017) [hereinafter *Hayward*].

⁹⁵ Tallinn Manual, *supra* note 88, at 57.

⁹⁶ Exec. Order No. 13,010, 61 Fed. Reg. 37, 347 (July 17, 1996); Exec. Order No. 13,231, 66 Fed. Reg. 53,063

¶ 22. As per the CMRA report, a high-expertise, independent and reliable agency receiving information from detailed, multiple⁹⁸ and primary sources,⁹⁹ the attacks resulted in plummeting of stocks by 1282 points, mammoth losses of around USD 17 billion¹⁰⁰ and self-defeating transactions clogging and disrupting the systems which controlled the finance of Shravasti, causing huge financial harm to hundreds of investors.¹⁰¹ Additionally, the stock market was severely affected by the undue delay¹⁰² caused by the malware which infiltrated in KSE.¹⁰³ The disruptive damages to financial infrastructure of Shravasti, thus results in use of force and waging of war against Karnawati.

b. DDOS attacks carried out by Shravasti constitute armed attack against Karnawati.

¶ 23. Denial-of-service attacks are severe in nature and are equitable to an armed attack.¹⁰⁴ They have effect of diminishing the functionality and accessibility of a computer system.¹⁰⁵ The DDOS attacks of Estonia, similar to the attacks in Karnawati, qualify the six-tier criteria of an armed attack.¹⁰⁶ These attacks had severe impact on governmental functions, the damage was direct and immediate, the attacks invaded the secured critical systems, the quantification of consequences is difficult and the attacks are illegitimate as they frustrate the government and economic functions of Karnawati.¹⁰⁷

¶ 24. Additionally, DDOS attacks,¹⁰⁸ which are inspired by the posts on internet, affecting thousands of computer systems instantly,¹⁰⁹ are “target agnostic” and are more analogous to conventional bombs and weapons.¹¹⁰ The DDOS attacks in Karnawati are triggered by the telephonic messages,¹¹¹ social media notifications and changing of trends on the Twitter,¹¹²

(Oct. 18, 2001); Jensen, *supra* note 93.

⁹⁷ Jensen, *supra* note 93.

⁹⁸ Compromis, ¶24.

⁹⁹ *Id.*

¹⁰⁰ Compromis, ¶23.

¹⁰¹ Compromis, ¶25.

¹⁰² Compromis, ¶23.

¹⁰³ Compromis, ¶25.

¹⁰⁴ Sheng Li, *When Does Internet Denial Trigger the Right of Armed Self- Defense?*, 38 YALE J. INT’L L. 179, 180-81 (2013).

¹⁰⁵ JOSEPH MIGGA KIZZA, *COMPUTER NETWORK SECURITY AND CYBER ETHICS* 96 (3rd ed. 2002).

¹⁰⁶ Tallinn Manual, *supra* note 88, at 90.

¹⁰⁷ Michael N. Schmitt, *Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework*, 37 COLUM. J. TRANSNAT’L L. 885, 914-15 (1999).

¹⁰⁸ PAULO SHAKARIAN ET AL., *INTRODUCTION TO CYBER-WARFARE: A MULTI-DISCIPLINARY APPROACH* 12 (2013).

¹⁰⁹ *Id.*

¹¹⁰ Hayward, *supra* note 94.

¹¹¹ Compromis, ¶23.

which make them target agnostic and equivalent to the conventional armed weapons. Therefore, the DDOS attacks carried out by Shravasti constitute use of force and waging of war against Karnawati.

III. THE ATTACKS ARE NOT LAWFUL EXERCISE OF SELF-DEFENSE.

¶ 25. Exercise of right of self-defence of a state must be preceded by some infliction of material damage to the victim state.¹¹³ The right can only be exercised when there is a necessity¹¹⁴ arising out of imminent danger of an armed attack.¹¹⁵ The requirement includes any critical infrastructure penetration, demonstrating hostile intent, leaving no time for deliberation.¹¹⁶ Shravasti has not been a victim of any armed attack, penetration of critical infrastructure or any other imminent danger and thus, cannot legitimately exercise the right to self-defense.

C. KARNAWATI HAS NOT BREACHED INTERNATIONAL LAW BY FAILING TO SECURE THE PRIVACY OF DIPLOMATIC CABLES OF SHRAVASTI.

¶ 26. It is submitted that the acts of Karnawati are not in violation of international law because Karnawati's non-performance of Vienna Convention on Diplomatic Relations ('VCDR') is justified under international law [I], principle of equity [II] and the acts of Karnawati are consistent with the customary international law [III].

I. KARNAWATI'S NON-PERFORMANCE OF VCDR IS JUSTIFIED UNDER INTERNATIONAL LAW.

¶ 27. The VCDR is characterized by 'functional necessity' which grants immunity to the diplomats only to the extent of fulfilling their diplomatic functions effectively.¹¹⁷ All diplomatic privileges are subject to abuse and shall not be granted whenever diplomats act contrary to the functions accorded to them under VCDR¹¹⁸ or abuse their privileged

¹¹² Compromis, ¶24.

¹¹³ AVRA CONSTANTINOU, THE RIGHT OF SELF-DEFENCE UNDER CUSTOMARY INTERNATIONAL LAW AND ARTICLE 51 OF THE UNITED NATIONS CHARTER 64 (2000).

¹¹⁴ Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), Judgment, 1984 I.C.J. 392 (Nov. 26) [hereinafter *Nicaragua*].

¹¹⁵ Richard J. Grunawalt, *The JCS Standing Rules of Engagement: A Judge Advocate's Primer*, 42 A.F. L. REV. 245, 251 (1997).

¹¹⁶ JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW 412 (1906).

¹¹⁷ EILEEN DENZA, DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 14 (4th ed. 1976).

¹¹⁸ Nathaniel P. Ward, *Espionage and the Forfeiture of Diplomatic Immunity*, 11 INT'L LAWYER 657-671(1977).

position.¹¹⁹ Karnawati has not violated VCDR since Shravasti diplomats are not entitled to the immunity of their diplomatic communications as, *first*, they have violated the internal laws of Karnawati[a]; *secondly*, they have acted contrary to the functions entrusted to them under VCDR[b] and *thirdly*, actions of Karnawati are justified according to the principle of equity[c].

a. Shravasti diplomats have violated internal laws of Karnawati.

¶ 28. Diplomats cannot invoke their immunity if they violate internal laws of the receiving state¹²⁰ and interfere in the internal affairs of the receiving state.¹²¹ The leaked emails published by Plainspeak, which are admissible before this court,¹²² reveal that the diplomats have repeatedly mentioned the need to employ Newsroom resources and package in Karnawati.¹²³ Newsroom was actually employed by the Shravasti government in Karnawati, as alleged by the Plainspeak reports,¹²⁴ which ultimately violated The Right to Privacy Act ('RTPA') of Karnawati.¹²⁵ Therefore, Shravasti diplomats, having been violated the laws of Karnawati and interfered with the internal affairs of Karnawati by carrying out surveillance of millions of Karnawati citizens, cannot claim diplomatic immunity for their diplomatic communications.

b. Shravasti diplomats have acted contrary to the diplomatic functions accorded to them under VCDR.

¶ 29. The diplomats cannot be granted immunity if they act contrary to the functions of the mission accorded to them.¹²⁶ Any direct or indirect interference of diplomatic agents in the internal affairs of the state is contrary to their functions, and justifies any act of the government in preventing such an illegitimate interference.¹²⁷ Promotion of friendly relations and development of economic, cultural and scientific relations between the sending state and

¹¹⁹ *Id.* at 645.

¹²⁰ Vienna Convention on Diplomatic Relations art. 41(1), Apr. 16, 1961, 500 U.N.T.S. 95 [hereinafter *V.C.D.R.*]; DRAFT ARTICLES ON DIPLOMATIC INTERCOURSE AND IMMUNITIES WITH COMMENTARIES IN YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 104 (1958).

¹²¹ *V.C.D.R.*, *supra* note 120, art. 41(1).

¹²² William Thomas Worster, *The Effect of Leaked Information on the Rules of International Law*, 28 AM. U. INT'L L. REV. 443, 449 (2013); Corfu Channel, *supra* note 73, at 18; MARKUS BENZING, EVIDENTIARY ISSUES IN THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY 1254 (Zimmermann et al. eds., 2012).

¹²³ Compromis, ¶13.

¹²⁴ Compromis, ¶11.

¹²⁵ Memorial, ¶45.

¹²⁶ *V.C.D.R.*, *supra* note 120, art. 3(1)(d).

¹²⁷ Clifton E. Wilson, *Diplomatic Privileges and Immunities: The Retinue and Families of the Diplomatic Staff*, 14 INT'L & COMP. L. Q. 1265, 1269 (1965).

the receiving state is another inherent function accorded to the diplomats under article 3(1)(e) of the VCDR.¹²⁸

¶ 30. The diplomatic emails originating from Shravasti embassy talked about the political environment of Karnawati and how the interests of Shravasti are being harmed by Karnawati.¹²⁹ In spite of the absence of any such conditions in Karnawati, the diplomats communicated such information, which persuaded the Shravasti government to employ Newsroom for surveillance of millions of Karnawati citizens,¹³⁰ leading to hostile relations between the two states. Thus, Shravasti diplomats are not entitled to diplomatic immunity since they have triggered unfriendly relations between the two nations, clearly abusing the diplomatic functions entrusted to them under VCDR.

II. ACTIONS OF KARNAWATI ARE JUSTIFIED UNDER THE PRINCIPLE OF EQUITY.

¶ 31. As per the principle of “*exceptio non adimpleticontractus*”, where two parties have reciprocal obligations and one party disobeys its obligations, it cannot take any benefit from the non-performance of that obligation by another party.¹³¹ The contractual treaties,¹³² such as VCDR, which impose reciprocal obligations, contain the rule of “*exceptio*”.¹³³ Additionally, there exists reciprocal obligations between the sending state and the receiving State in establishing a diplomatic mission between them.¹³⁴ Karnawati’s non-performance of VCDR is justified under the principle of equity to the extent that Shravasti diplomats have abused their functions and other provisions of VCDR¹³⁵ and thus Shravasti cannot be allowed to take benefit from any such non-performance of VCDR by Karnawati.

III. ACTS OF KARNAWATI ARE CONSISTENT WITH CUSTOMARY INTERNATIONAL LAW.

¶ 32. In absence of a positive rule, States have volition to follow the principles which they consider as best suitable.¹³⁶ Spying is an act which is totally unregulated in international

¹²⁸ V.C.D.R., *supra* note 120, art. 3(1)(e).

¹²⁹ Compromis, ¶13.

¹³⁰ Compromis, ¶11.

¹³¹ Diversion of Water from Meuse (Neth. v. Belg.), 1937 P.C.I.J. (ser. A/B) No. 70 ¶323 (June 28).

¹³² Appeal Relating to the Jurisdiction of the ICAO Council (Ind.v. Pakistan.), Judgment, 1972 I.C.J. 46 ¶2 (Aug. 18).

¹³³ ELISABETH ZOLLER, PEACETIME UNILATERAL REMEDIES: AN ANALYSIS OF COUNTERMEASURES 15 (1984); Application of Interim Accord of 13 September 1995 (Macedon. v. Greece), Judgment, 2011 I.C.J. 644, ¶8 (Dec. 5).

¹³⁴ Denza, *supra* note 117, at 7.

¹³⁵ Memorial, ¶30.

¹³⁶ S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, 18-19 (Sept. 7) [hereinafter *Lotus*].

law.¹³⁷ States have affirmatively recognized and accepted the practice of surveillance. Diplomats around the world have not protested even to the routine interception of their communications.¹³⁸ No sanctions are imposed upon the acts of espionage¹³⁹ and are not considered by states as violation of international law.¹⁴⁰ As evidenced by longstanding state practice and by public statements by government officials, limited and vigilant espionage has been accepted as a legal practice.¹⁴¹ Espionage, thus is legally validated because a "custom" serves as an authoritative source of international law.¹⁴²

D. SHARAVASTI HAS BREACHED INTERNATIONAL LAW BY UNLAWFULLY GATHERING, TRANSMITTING, STORING AND USING THE DATA OF KARNAWATI CITIZENS WITHOUT THE EXPRESS PERMISSION OF THE CITIZENS OF KARNAWATI AND IN VIOLATION OF LAWS OF KARNAWATI.

¶ 33. Shravasti has breached international law by gathering, transmitting, storing and using the data of Karnawati citizens without their express permission because Shravasti has breached international privacy conventions[I]; it has breached the territorial integrity of Karnawati [II]; it has violated the principle of non-intervention [III] and the acts of Shravasti are in violation of the laws of Karnawati [IV].

I. SHRAVASTI HAS BREACHED INTERNATIONAL PRIVACY CONVENTIONS.

¶ 34. ECHR Article 8 and UDHR Article 12 protect individuals from any illegitimate interference with their right to private life.¹⁴³ Shravasti has breached International privacy conventions because *first*, the conventions apply to the acts of Shravasti [a] and *secondly*, Shravasti has illegally interfered with the privacy of Karnawati citizens [b].

a. International privacy conventions apply to the acts of Shravasti.

¹³⁷ Gary D. Brown, *The Fourteenth Annual Sommerfeld Lecture: The Wrong Questions About Cyberspace*, 217 MIL. L. REV. 214, 233 (2013).

¹³⁸ Simon Chesterman, *The Spy Who Came in From the Cold War: Intelligence and International Law*, 27 MICH. J. INT'L L. 1071,1086-87 (2006).

¹³⁹ Department of Defense Office of General Counsel, *An assessment of International Legal Issues in information Operations*, DEPARTMENT OF DEFENSE(May 1999),<http://www.au.af.mil/au/awc/awcgate/dod-io-legal/dod-io-legal.pdf>; Christopher D. Baker, *Tolerance of International Espionage: A Functional Approach*, 19 AM. UNIV. INT'L L. REV. 109 (2003).

¹⁴⁰ QUINCY WRIGHT ET. AL., ESSAYS ON ESPIONAGE AND INTERNATIONAL LAW 3 (1932).

¹⁴¹ Ashley Deeks, *An International Legal Framework for Surveillance*, 55 VA. J. INT'L L. 291,368 (2015) [hereinafter *Deeks*].

¹⁴² Beth M. Polebaum, *National Self-Defense in International Law: An Emerging Standard for a Nuclear Age*, 59 N.Y.C UNIV. L. REV. 187,194 (1984).

¹⁴³ European Convention on Human Rights art. 8, Nov. 4, 1950, 213 U.N.T.S. 221[hereinafter *E.C.H.R.*]; Universal Declaration of Human Rights, G.A. Res 217(III)A, U.N. Doc. A/RES/217(III), art.12 (Dec. 10, 1948) [hereinafter *U.D.H.R.*].

¶ 35. State agent authority¹⁴⁴ defines jurisdiction of a state as the state's control over the individuals¹⁴⁵ through its agents.¹⁴⁶ States shall protect the rights of individuals under international conventions regardless of their territory¹⁴⁷ or nationality.¹⁴⁸ Jurisdiction has a non-spatial nature¹⁴⁹ and is extraterritorial in the cases of cyber interferences.¹⁵⁰ Extraterritorial jurisdiction of a state exists¹⁵¹ whenever the state acts beyond its territory.¹⁵² Shravasti has affected and controlled Karnawati citizens through Newsroom doing cyber surveillance over them.¹⁵³ Therefore, Shravasti has a juridical relationship with Karnawati citizens and is thus responsible for protecting the rights of Karnawati citizens enshrined under various international conventions.

b. Sharavasti has illegally interfered with the privacy of Karnawati citizens.

¶ 36. Shravasti has violated right to privacy of Karnawati citizens because the information collected, transmitted and used by Shravasti is private [*i*];¹⁵⁴ the interference is not prescribed by law [*ii*]¹⁵⁵ and the interference does not pursue any legitimate aim [*iii*].¹⁵⁶

i. The information collected, transmitted and used by Shravasti is private.

¶ 37. Right to private life, protected by the international privacy conventions, is characterized by an individual's physical and psychological integrity.¹⁵⁷ It includes multiple

¹⁴⁴ Lilian Celiberti de Casariego v. Uruguay, Comm. No. 56/1979, U.N. Doc. CCPR/C/13/D/56/1979, ¶10.3 (1981); Lopez Burgos v. Uruguay, Comm. No. R.12/52 176, U.N. Doc. A/36/40, ¶3 (1981) [hereinafter *Lopez*].

¹⁴⁵ Cyprus v. Turkey, App. No. 6780/74 & 6950/75 2 Eur. Comm'n H.R. 125, ¶8 (1975).

¹⁴⁶ Al-Skein v. United Kingdom, App No. 55721/07 Eur. Ct. H. R. ¶137 (2011)[hereinafter *Al-Skein*].

¹⁴⁷ Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶111 (July 9); Armed Activities on the Territory of Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶220 (Dec. 5); The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, H.R.C General Comment No.31, U.N.Doc.CCPR/C/21/Rev.1/Add.13, ¶10 (Mar. 29, 2004).

¹⁴⁸ Lopez, *supra* note 144, ¶¶12.1–12.3; Montero v. Uruguay, Comm. No. 106/1981, U.N. Doc. CCPR/C/OP/2, ¶5 (1990)[hereinafter *Montero*].

¹⁴⁹ Montero, *supra* note 148, ¶5; Al-Skein, *supra* note 146, ¶¶133-137.

¹⁵⁰ Temporary Committee on the E.C.H.E.L.O.N Interception System, Parl. Eur. Doc. SEC DT\437638EN 1, ¶8.3.2 (2001); Tallinn Manual, *supra* note 88, at 27.

¹⁵¹ Drozd v. France & Spain, App. No. 12747/87 A240 Eur. Ct. H.R. ¶91 (1992); Salas v. U.S.No.10.573, Inter-Am. Comm'n H. R. ¶2 (1994).

¹⁵² Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ.), Judgment, 2008 I.C.J. 353, ¶109 (Oct. 15); Andrejeva v. Latvia, App. No. 55707/00 Eur. Ct. H.R. (2009).

¹⁵³ Compromis, ¶11.

¹⁵⁴ E.C.H.R., *supra* note 143, art. 8 & U.D.H.R., *supra* note 143, art. 12; Douglas v. Hello, [2001] QB 967.

¹⁵⁵ Gaweda v. Pol., App. No 26229/95 2002-II Eur. Ct. H. R. ¶39 (2002); Feldek, *supra* note 1.

¹⁵⁶ Handyside, *supra* note 44, ¶49.

¹⁵⁷ Pretty v. the U.K., App. No. 2346/02, 2002-III Eur. Ct. H. R. ¶61 (2002); Y.F. v. Turkey, App. No. 24209/94 Eur. Ct. H. R. ¶33 (2003).

aspects of their identity¹⁵⁸ such as activities of everyday life, daily movements, social relationships and sexual preferences.¹⁵⁹

¶ 38. While TV viewing habits of individuals can reveal their browsing habits, personal preferences and political views,¹⁶⁰ their social media blogs can predict their age, gender, personality,¹⁶¹ social relationships and even sexual preferences accurately.¹⁶² Sharavasti, through Cableway, has provided Karnawati citizens with the set-top boxes pre-installed with ARC software, which collates data of the citizens pertaining to TV content watched by them by linking their social media profiles to set top boxes and transmits it to Futureplant agencies for psychometric and psychographic profiling.¹⁶³ Thus, the information which was gathered, transmitted, stored and used by Shravasti was private in nature.

ii. The interference with right to privacy is not in accordance with law.

¶ 39. Any interference with an individual's right to privacy is illegitimate if it is not prescribed by law.¹⁶⁴ As required by article 22A(1) of RTPA,¹⁶⁵ Shravasti has not obtained the prior consent of Karnawati citizens before the "transmission" of their data to Futureplant for their psychometric and psychographic profiling.¹⁶⁶ Since Shravasti has failed to abide by the authorizing law, its interference with the privacy of Karnawati citizens is not in accordance with law.

iii. The interference does not pursue any legitimate aim.

¶ 40. Any interference with privacy is legitimate only when it is strictly necessary for a legitimate aim of safeguarding the democratic institutions of the country.¹⁶⁷ Interference cannot be justified by any vague economic or political interests.¹⁶⁸ National security purposes

¹⁵⁸ Axel, *supra* note 27, ¶83.

¹⁵⁹ Case C-293/12 & C-594/12, Digital Rights Ireland Ltd. v. Minister for Communications, 127 E.C.J. 137 (2015).

¹⁶⁰ Chips in TV set-top boxes infringement on people's privacy: Experts, TELECOM (Dec. 29, 2018) <https://telecom.economictimes.indiatimes.com/news/chips-in-tv-set-top-boxes-infringement-on-peoples-privacy-experts/63792776>.

¹⁶¹ MURRAY D & DURRELL K, *INFERRING DEMOGRAPHIC ATTRIBUTES OF ANONYMOUS INTERNET USER* IN REVISED PAPERS FROM THE INT'L WORKSHOP ON WEB USAGE ANALYSIS AND USER PROFILING 7-20 (1999); Michal Kosinski, David Stillwell & Thore Graepel, *Private traits and attributes are predictable from digital records of human behavior*, 110 NAT'L ACAD. SCI. 1 (2013).

¹⁶² Daniele Quercia, Renaud Lambiotte, David Stillwell, Michal Kosinski & Jon Crowcroft, *The Personality of Popular Facebook Users*, 12 ASS'N COMPUTING MACHINERY 955 958-960 (2012).

¹⁶³ Compromis, ¶11.

¹⁶⁴ E.C.H.R., *supra* note 143, art. 8.

¹⁶⁵ Compromis, Annexure F, R.T.P.A., art. 22A(1).

¹⁶⁶ Compromis, ¶11.

¹⁶⁷ Klass v. Germany, App. No. 5029/71 A28 Eur. Ct. H.R. (1978).

¹⁶⁸ The Right to Privacy in the Digital Age at Office of the U.N. High Commissioner for Human Rights,

can validate interference only when there is a threat to territorial integrity, political independence or existence of a state.¹⁶⁹ Since there are no major threats to security, territorial integrity or political independence of Shravasti, it has no legitimate aim in interfering with the privacy of Karnawati citizens. Therefore, the interference with right to privacy of Shravasti citizens does not pursue any legitimate aim.

II. SHRAVASTI HAS VIOLATED THE TERRITORIAL INTEGRITY OF KARNAWATI.

¶ 41. The fundamental principle of territorial integrity¹⁷⁰ mandates that no state shall exercise authority in the territory of another state in any form.¹⁷¹ A state's territory encompasses its cyber infrastructure¹⁷² and it should not be targeted by any form of espionage, exploitation or strategic observation.¹⁷³ Any such act violates territorial¹⁷⁴ and political¹⁷⁵ integrity of that state. By exploiting social media profiles of Karnawati citizens, observing the content watched by them through ARC installed set top boxes and transmitting them for their psychometric and psychographic analysis,¹⁷⁶ Shravasti has indulged in extensive cyber espionage and strategic observation in the territory of Karnawati. Additionally, extensive espionage in the territory of another state, as done by Shravasti, is illegal.¹⁷⁷ Therefore, Shravasti has violated territorial integrity of Karnawati.

III. SHRAVASTI HAS BREACHED THE PRINCIPLE OF NON-INTERVENTION.

¶ 42. An act of espionage results in diplomatic coercion,¹⁷⁸ which constitutes violation of the principle of non-intervention. Doctrine of non-intervention postulates that no state shall

U.N.Doc. A/HRC/27/37, ¶22 (June 30,2014).

¹⁶⁹ Siracusa Principles, U.N. Doc. E/CN.4/1985/4 (Aug. 24, 1985).

¹⁷⁰ Charter of the United Nations art. 2, Dec. 26, 1945, 1 U.N.T.S. 16.

¹⁷¹ Lotus, *supra* note 136, at 18; Declaration on Principles of International Law Concerning Friendly Relations, G.A. Res. 2625 (XXV), U.N.Doc.A/Res/25/2625, art. 1 (Oct. 24 1970)[hereinafter *Declaration*].

¹⁷² Tallinn Manual, *supra* note 88, at 25.

¹⁷³ JOHN KISH, INTERNATIONAL LAW AND ESPIONAGE 83 (David Turns ed., 1995).

¹⁷⁴ MICHAEL SCHMITT, *CYBER ACTIVITIES AND THE LAW OF COUNTERMEASURES IN RIGHTS AND OBLIGATIONS OF STATES IN CYBERSPACE IN PEACETIME REGIME FOR STATE ACTIVITIES IN CYBERSPACE* 665-666(Ziolkowski ed. 2013); Deeks, *supra* note 144; WOLFF HEINEGG, *LEGAL IMPLICATIONS OF TERRITORIAL SOVEREIGNTY IN CYBERSPACE IN PROCEEDINGS OF THE 4TH INTERNATIONAL CONFERENCE ON CYBER CONFLICT* 14-15 (Czosseck et al. eds., 2012).

¹⁷⁵ Corfu Channel, *supra* note 73, ¶35.

¹⁷⁶ Compromis, ¶11.

¹⁷⁷ TERRY GILL, PEACETIME REGIME 225-26 (Katharina Ziolkowsk ed. 2013).

¹⁷⁸ RESEARCH HANDBOOK ON INTERNATIONAL LAW AND CYBERSPACE 168,183 (Nicholas Tsagourias & Russell Buchan eds., 2015).

interfere with political, economic or social affairs of another state¹⁷⁹ directly or indirectly¹⁸⁰ so as to affect free political choice of the citizens of that state.¹⁸¹

¶ 43. Profiling of an individual, as done by Shravasti,¹⁸² can be used for personalizing political messaging, micro targeting, persuading and manipulating individuals, which can be a threat to the democracy and political structure of a state.¹⁸³ The whole object of profiling individuals is to manipulate their behavior and thinking patterns.¹⁸⁴ Additionally, by observing and analyzing TV watching habits of an individual, his voting habits can be manipulated¹⁸⁵ through well-targeted advertisement, training and reward strategies.¹⁸⁶ A similar election campaign in USA used a third party company which matched TV viewing data of the citizens and list of voters.¹⁸⁷

¶ 44. Extensive psychometric and psychological profiling as done by Shravasti is targeted towards mass manipulation of political opinions of Karnawati citizens, which can ultimately affect the whole election in Karnawati, as alleged by the Plainspeak report.¹⁸⁸ Shravasti has previously manipulated the elections in Vijaynagar, post which a company of Shravasti was given exclusive mining rights in Vijaynagar.¹⁸⁹ Shravasti has thus breached the principle of non-intervention by interfering into political affairs of Karnawati, affecting political opinions of millions of its citizens and by attempting to affect the elections of Karnawati.

IV. ACTS OF SHRAVASTI ARE IN VIOLATION OF THE LAWS OF KARNAWATI.

¶ 45. It is the duty of each state to respect and abide by any exercise of domestic jurisdiction of another state.¹⁹⁰ If a state commits an act through its agents in the territory of

¹⁷⁹ Nicaragua, *supra* note 114.

¹⁸⁰ *Id.* ¶¶61-62.

¹⁸¹ Declaration, *supra* note 171.

¹⁸² Compromis, ¶11.

¹⁸³ Kevin Granville, *Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens*, THE NEW YORK TIMES (Nov. 14, 2018) <https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html> [hereinafter *Granville*].

¹⁸⁴ *Id.*

¹⁸⁵ Lois Beckett, *Everything We Know (So Far) About Obama's Big Data Tactics A new look at what the Obama campaign did with its much-heralded data operation*, PRO PUBLICA (Nov. 14, 2018) <https://www.propublica.org/article/everything-we-know-so-far-about-obamas-big-data-operation>.

¹⁸⁶ Charles Duhigg, *Campaigns Mine Personal Lives to Get Out Vote*, THE NEW YORK TIMES (Nov. 14, 2018) <https://www.nytimes.com/2012/10/14/us/politics/campaigns-mine-personal-lives-to-get-out-vote.html>.

¹⁸⁷ T.W. Farnam, *The Influence Industry: Obama campaign took unorthodox approach to ad buying*, WASHINGTON POST (Nov. 14, 2018) https://www.washingtonpost.com/politics/the-influence-industry-obama-campaign-took-unorthodox-approach-to-ad-buying/2012/11/14/c3477e8c-2e87-11e2-beb24b4cf5087636_story.html?utm_term=.dc4ed3573c81.

¹⁸⁸ Compromis, ¶11.

¹⁸⁹ *Id.*

¹⁹⁰ Wright, *supra* note 140.

another state which is contrary to the latter's domestic laws, it constitutes an internationally wrongful act.¹⁹¹ Shravasti has violated Article 22(1) of RTPA, by not taking the consent of Karnawati citizens before transmitting their data to third parties.¹⁹² Shravasti also intentionally accessed the computer data without right¹⁹³ and hindered the set top boxes of Karnawati citizens¹⁹⁴ violating articles 2 and article 5 of the Budapest convention,¹⁹⁵ which are incorporated into the domestic laws of Karnawati.¹⁹⁶

E. KARNAWATI IS ENTITLED TO DAMAGES ON ACCOUNT OF WAGING OF WAR BY SHRAVASTI AND FOR UNLAWFUL GATHERING, TRANSMITTING, STORING AND USING THE DATA OF KARNAWATI CITIZENS WITHOUT THEIR EXPRESS PERMISSION AND SHRAVASTI IS NOT ENTITLED TO DAMAGES ON ACCOUNT OF FAILURE BY KARNAWATI TO RECOGNIZE RTBF OF SHRAVASTI.

¶ 46. States engaged in internationally wrongful acts are responsible to make full reparation for the injuries suffered by the victim state.¹⁹⁷ A responsible state is liable to compensate a financially assessable damage,¹⁹⁸ such as the loss of USD 17 billion, plummeting of stocks by 1282 points and other indirect losses, as suffered by Karnawati.¹⁹⁹ Shravasti is also liable for restitution²⁰⁰ by uninstalling the ARC software which collected the personal details of Karnawati citizens²⁰¹ and destroying all the psychographic profiles of Karnawati citizens which were made by the entities under the control of Shravasti.²⁰²

¶ 47. Additionally, it was held in *Lusitania*²⁰³ that a non-material damage, which includes an intrusion into private life, can also be financially assessable.²⁰⁴ Therefore, violation of

¹⁹¹ *Id.* at 13.

¹⁹² Compromis, R.T.P.A., art. 22(3)(b)(i).

¹⁹³ Convention on Cybercrime art.2, Nov. 23, 2001, E.T.S. 185 [hereinafter *Convention on Cybercrimes*].

¹⁹⁴ *Id.* art.5.

¹⁹⁵ Convention on Cybercrime, *supra* note 193, art.6.

¹⁹⁶ Clarification No. 12, Annexure G.

¹⁹⁷ A.R.S.I.W.A., *supra* note 75, art. 31; *Factory at Chorzów* (Ger. v. Pol.), Judgment, 1927 P.C.I.J. (ser. A) No. 947 (July 26) [hereinafter *Factory at Chorzów*].

¹⁹⁸ Materials on the Responsibility of States for Internationally Wrongful Acts, U.N. Legislative Series ST/LEG/SER B/25, 232 (Feb. 2, 2012) [hereinafter *Materials on Responsibility*]; Reports of International Arbitral Awards, *Lusitania* 40 (1923) [hereinafter *Lusitania*].

¹⁹⁹ Compromis, ¶23.

²⁰⁰ A.R.S.I.W.A., *supra* note 75, art. 35; *CMS Gas Transmission Company v. Argentine Republic*, Case No. ARB/01/8, I.C.S.I.D., ¶400 (2005).

²⁰¹ Compromis, ¶11.

²⁰² Compromis, ¶11.

²⁰³ *Lusitania*, *supra* note 198.

²⁰⁴ Materials on the Responsibility, *supra* note 198, at 236.

privacy of Karnawati citizens by Shravasti shall also be indemnified²⁰⁵ and compensated by Shravasti. Karnawati is also entitled to obtain cessation and guarantee of non-repetition of collection of personal data of millions of Karnawati citizens from Shravasti²⁰⁶ since the act is of continuing nature.²⁰⁷ Moreover, Shravasti isn't entitled to any damages from Karnawati because no internationally wrongful act has been committed by Karnawati by failing to recognize RTBF of Shravasti as established above.²⁰⁸

²⁰⁵ Factory at Chorzów,*supra* note 197, at 48; Gabčíkovo-Nagymaros Project (Hung. v. Slov.), Judgment, 1997 I.C.J. 7, 81, ¶152 (Sept. 25); Corfu Channel,*supra* note 73, at 249.

²⁰⁶ A.R.S.I.W.A, *supra* note 75, art. 30.

²⁰⁷ Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, 2004 I.C.J. 121, ¶150 (Mar. 31).

²⁰⁸ Memorial, ¶7.

PRAYER

Wherefore in light of the issues presented, arguments advanced and authorities cited, the Republic of Karnawati respectfully requests the Hon'ble Court to adjudge and declare that:

- A. Shravasti has no right to be forgotten under international law and Karnawati has not breached the international law by refusing to recognize the same.
- B. Shravasti has waged war against Karnawati by using its governmental agencies to attack national critical infrastructure of Karnawati.
- C. Karnawati has not breached the international law by failing to secure the privacy of the diplomatic cables of Shravasti.
- D. Shravasti has breached international law by unlawfully gathering, transmitting, storing and using the data of the citizens of Karnawati without the express permission of the citizens of Karnawati and in violation of laws of Shravasti.
- E. Karnawati is entitled to damages on account of (B) & (D) above and Shravasti is not entitled to any order on damages on account of (A) above.

All of which is respectfully submitted.

Sd/-

On behalf of The Republic of Karnawati