

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 RESPONDENT

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TABLE 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. Comm'n	United Nations Human Rights 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 Disputes

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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

Socialist Democracy of Shravasti follows a single party democracy. It is a developed country and is ranked number one in the ‘Digital Governance’ segment and has successfully implemented ‘Internet of Things’ in all aspects of governance. The Republic of Karnawati has a robust electoral democracy, its legal system provides for a Supreme Judicial Council which has declared right to privacy as a fundamental right. The Right to Privacy Act, 2017 was passed by the Karnawati Parliament.

Newsroom Information Corporation incorporated in Shravasti has gone through several rounds of disinvestment and the government now holds only 50.5% of shares in Newsroom. It does not have any direct media operations. Shravasti created an autonomous body called Media Investment Business Holdings Inc. and the entire government shareholding in Newsroom was transferred to MIB. Newsroom acquired controlling stake in Cableway Networks Inc. in Karnawati. Plainspeak.com a crowd funded web portal in Karnawati is not registered with the Registrar of Media Organizations as a media organization. Plainspeak receives 65% of its advertisement revenue from the Karnawati Government and 70% donations from Karnawati government affiliated entities. Plainspeak claims its ranking service called the ‘World Index’ to be completely automated with no human interference at all. Karnawati and Shravasti enjoy cordial relations and maintain full diplomatic missions But Karnawati has consistently voted against Shravasti in United Nations and WTO on various occasions.

THE PLAINSPEAK REPORTS

Plainspeak.com published a report titled ‘The Spying Socialist, the report claimed that Shravasti was using Newsroom to profile individuals across the globe. Newsroom supplied customers with set top boxes pre-installed with automated content recognition (ARC) software, which collates data pertaining to content watched by the users. The consent of the users for the collection of data was obtained through click-wrap agreements. The users were to mandatorily accept the terms and conditions contained in the click-wrap agreement in order to enjoy the services. The report also disclosed the names and personal details of Shravasti citizens and alleged their involvement in the operation.

Shravasti has denied the report as malicious. Plainspeak published another report titled ‘The Advent of Socialist Imperialism’ where it claimed that Shravasti had used Cableway to carry

out psychographic profiling of users in Karnawati, it stated that it was unclear if the data and profiling was used to manipulate any elections in Karnawati. It also published 72 diplomatic emails of Shravasti diplomats intercepted in Karnawati, it contained personal details of Shravasti citizens. It also had access to certain additional diplomatic cables which were not published. The ratings of the Index were downgraded with retrospective effect. Shravasti denied all the allegations and issued a diplomatic demarche to the Ambassador of Karnawati. The demarche did not elicit any response from Karnawati and notably no action was initiated against Plainspeak by Karnawati, Plainspeak continued without disruption.

THE AFTERMATH OF THE REPORTS

The citizens of Karnawati received telephonic notifications that the Karnawati Stock Exchange shall be closed due to unexpected software issues. Karnawati government's Cyber Monitoring and Research Agency investigated and reported that the notifications came from three vessels where two of the vessels belonged to a shipping company in Shravasti. Cableway's subscribers of 'Invest Now' plug-in which used to give live updates about the Karnawati Stock Exchange, gave inconsistent witness statements that they received notifications in their accounts.

Plainspeak for the first time disclosed the name of its editor-in-chief Ms. Mao Blackwater who was the Minister of Diplomatic Relations and Minister of Information and Broadcasting in Karnawati. No response was received from the Karnawati Government and thus Shravasti filed an application before the Council and asserted its Right to be Forgotten on behalf of Shravasti citizens and directed Plainspeak to remove all content related to the two reports. The Council of Karnawati refused to admit the Application stated that we do not see any merit in the assertion of Shravasti that it has a right to be forgotten. No interim relief was granted. 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 waging of war by Shravasti and for unlawful gathering, transmitting, storing and using the data of Karnawati citizens without their express permission and whether Shravasti is entitled to damages on account of failure by Karnawati to recognize Right to be forgotten of Shravasti.

SUMMARY OF ARGUMENTS

A. SHARAVASTI, ON BEHALF OF THE PERSONS RESIDENT AND/OR INCORPORATED IN SHRAVASTI, HAS THE RIGHT TO BE FORGOTTEN UNDER INTERNATIONAL LAW AND KARNAWATI HAS BREACHED INTERNATIONAL LAW BY FAILING TO RECOGNIZE THE SAME.

The Right to be forgotten (**'RTBF'**) is granted under Article 17 of EUGDPR. The restriction on the Right to be Forgotten is legitimate only if it is prescribed by law, pursues a legitimate aim and is necessary in a democratic society. *First*, Right to Privacy Act (**'RTPA'**) of Karnawati is vague, unclear, excessively overbroad and lacks adequate safeguards. *Secondly*, the restriction on the RTBF claim does not pursue any legitimate aim. *Thirdly*, the restriction is not necessary in a democratic society as it does not fulfill a pressing social need because the information published by Plainspeak Reports is false and the publication of private information of Shravasti citizens does not pursue any social need. Additionally, the restriction is not proportionate to the legitimate aim pursued. Thus, the restriction is illegitimate.

B. SHRAVASTI HAS NOT WAGED WAR AGAINST KARNAWATI BY USING ITS GOVERNMENTAL AGENCIES TO ATTACK NATIONAL CRITICAL INFRASTRUCTURE OF KARNAWATI.

Shravasti has not waged war against Karnawati by using its governmental agencies for three reasons. *First*, the cyber-attacks cannot be attributed to the government of Shravasti, because neither Newsroom or its subsidiaries are the organs of Shravasti Government nor are they effectively controlled by the Shravasti government. Even the cyber operations are not carried out by Newsroom as claimed by the CMRA Report because the report is not authentic and is based on indirect, circumstantial and inconsistent evidence. *Secondly*, the cyber operations do not constitute use of force or waging of war under article 2(4) of the UN Charter, because economic coercion does not amount to threat or use of force and Distributed Denial of Service Attacks do not constitute waging of war, in the present case also there is no substantive damage to the property of Karnawati. *Thirdly*, the cyber-operations are lawful counter-measures.

C. KARNAWATI HAS BREACHED INTERNATIONAL LAW BY FAILING TO PROTECT THE PRIVACY OF DIPLOMATIC CABLES OF SHRAVASTI.

Karnawati has breached international law by failing to protect the privacy of diplomatic cables of Shravasti for three reasons. *First*, failure to protect the privacy of diplomatic cables is

attributable to Karnawati government, Karnawati is responsible for its omission to prevent the internationally wrongful act and it is responsible for violating the principle of due diligence. *Secondly*, leakage and publication of diplomatic cables of Shravasti constitutes violation of Vienna Convention on Diplomatic Relations(‘VCDR’) because Shravasti diplomats are entitled to diplomatic immunity under VCDR and the leakage and publication of the cables constitute violation of Article 22 and Article 27 of VCDR. *Thirdly*, Plainspeak has exceeded the remedies available to it under VCDR, breaching international law.

D. SHRAVASTI HAS NOT BREACHED INTERNATIONAL LAW BY UNLAWFULLY GATHERING, TRANSMITTING, STORING AND USING THE DATA OF THE CITIZENS OF KARNAWATI AND IN VIOLATION OF THE LAWS OF KARNAWATI.

Shravasti has not breached international law by unlawfully gathering, transmitting, storing and using the data of the citizens of Karnawati for four reasons. *First*, Shravasti has not breached international privacy conventions because the area in which the data is gathered is not effectively controlled by Shravasti. *Secondly*, the interference with the privacy of Karnawati citizens by Shravasti is legitimate, because the interference is in accordance with law, pursues a legitimate aim and is necessary in a democratic society as it is proportionate to the aim pursued. *Thirdly*, Shravasti has not breached the principle of non-intervention because its actions are consistent with customary international law. *Fourthly*, Shravasti has not violated the laws of Karnawati, as it has lawfully gathered the data of Karnawati citizens.

E. SHRAVASTI IS ENTITLED TO DAMAGES ON ACCOUNT OF (A) AND KARNAWATI IS NOT ENTITLED TO DAMAGES ON ACCOUNT OF (B) AND (D).

Shravasti is entitled to damages on account of (A) in the form of cessation and non-repetition of publication of personal details of Shravasti citizens and is liable to compensate for injury to the reputation and intrusion into the personal life of the individuals. Karnawati is not entitled to any order on damages from Shravasti on account of (B) and (D) because Shravasti has not committed any internationally wrongful act.

ARGUMENTS ADVANCED

A. SHARAVASTI, ON BEHALF OF THE PERSONS RESIDENT AND/OR INCORPORATED IN SHRAVASTI, HAS THE RIGHT TO BE FORGOTTEN UNDER INTERNATIONAL LAW AND KARNAWATI HAS BREACHED INTERNATIONAL LAW BY FAILING TO RECOGNIZE THE SAME.

I. SHRAVASTI, ON BEHALF OF THE PERSONS RESIDENT AND/OR INCORPORATED IN SHRAVASTI, HAS RIGHT TO BE FORGOTTEN.

¶ 1. It is submitted that Shravasti, on behalf of the persons resident and/or incorporated in Shravasti, has right to be forgotten(‘RTBF’) under international law because the restriction on RTBF of Shravasti is not prescribed by law [a]; it does not pursue any legitimate aim [b] and it is not necessary in a democratic society [c].¹

a. The Restriction is not prescribed by law.

¶ 2. Any restriction on a right is prescribed by law only if the law is sufficiently clear and precise² and foreseeable so as to enable the subjects of the law to foresee the consequences of their conduct.³ In the present case, the restriction on RTBF is not prescribed by law since RTPA is vague, unclear [i] and it is excessively overbroad and lacks adequate safeguards [ii].

i. RTPA is vague and unclear.

It is submitted that RTPA is vague and unclear for three reasons. *First*, although it defines ‘person’ as including a body corporate, individual and registered society⁴ but does not specify whether the definition will apply to online portals and entities like Plainspeak. *Secondly*, it illustrates the purposes for which the data can be processed such as historical, statistical or research purposes⁵ but fails to clarify whether the data can also be processed in public interest or for the preservation of the rights of others. *Thirdly*, the object of RTPA is the protection privacy of the citizens but it fails to clarify how it seeks to achieve that object. Therefore, RTPA is vague and unclear.

¹ M.G.N Ltd. v. United Kingdom, App. No. 39401/04 66 Eur. Ct. H. R. ¶136 (2011) [hereinafter *M.G.N. Ltd.*]; Kobenter v. Austria, App. No. 60899/00 66 Eur. Ct. H. R. ¶24 (2006).

² Sunday Times v. United Kingdom, App. No. 6538/74 30 Eur. Ct. H. R. ¶49 (1979) [hereinafter *Sunday Times*].

³ Chauvy v. France, App No 64915/01 2004-VI Eur. Ct. H. R. ¶43 (2004)[hereinafter *Chauvy*].

⁴ Right to Privacy Act, 2017, art. 2(1a), Annexure F, Compromis 27 [hereinafter *R.T.P.A.*].

⁵ Compromis, R.T.P.A., art. 21(3)(c)(ii).

ii. RTPA is excessively overbroad and lacks adequate safeguards.

¶ 3. A statute is excessively overbroad if it does not have sufficient safeguards against its misuse⁶ in which case there is a high risk of misuse of its provisions.⁷ RTPA is overbroad and highly prone to misuse for two reasons. *First*, an unfettered discretion is given to the Information technology regulator of Karnawati to refuse any request of deletion of information and no parameters governing such refusals are laid down.⁸ *Secondly*, the act empowers the government to store sensitive personal data even after achievement of the purpose for which the data was stored and no governing measures are provided for the same.⁹ Therefore, RTPA clearly lacks adequate safeguards against misuse.

b. The Restriction on RTBF does not pursue any legitimate aim.

¶ 4. Any restriction on RTBF of Shravasti can be imposed only if the processing is carried out for an activity in public interest¹⁰ or in pursuance of a legitimate purpose. Legitimate purpose includes protection of fundamental rights of the data subject¹¹ and other journalistic purposes.¹² The restriction on RTBF of Shravasti does not pursue a legitimate aim for three reasons. *First*, the information published by Plainspeak reports are not credible¹³ and Shravasti has not involved in any of the acts claimed by it. *Secondly*, publication of private information of any individual does not serve any general¹⁴ or public interest¹⁵ and a greater protection of privacy should be given to private individuals who have no public impact.¹⁶ The publication of personal details of the persons incorporated in Shravasti, thus, does not pursue any legitimate purpose.

¶ 5. *Thirdly*, the concept of journalism does not include every activity of conveying information¹⁷ and excludes online processing of data for commercial purposes.¹⁸ Plainspeak,

⁶ United States v. Stevens, 559 U.S. 460 (2010).

⁷ Broadrick v. Oklahoma, 413 U.S. 601 (1973); *Id.*

⁸ Compromis, R.T.P.A., art. 22A(1) provisio.

⁹ Compromis, R.T.P.A., art. 22(2) provisio.

¹⁰ Commission Regulation 2016/679, General Data Protection Regulation, art. 6(1)(e), 2016 O.J. (L 119) [hereinafter *E.U.G.D.P.R.*];

¹¹ *Id.* art. 6(1)(f).

¹² E.U.G.D.P.R., *supra* note 10, art. 85.

¹³ Memorial, ¶25.

¹⁴ Von Hannover v. Germany, App. No. 59320/00 2012 Eur. Ct. H. R. ¶65 (2004)[hereinafter *Hannover*]; Mosley v. United Kingdom, App. No. 48009/08 Eur. Ct. H. R. ¶114 (2011) [hereinafter *Mosley*].

¹⁵ Mosley, *supra* note 14, ¶131.

¹⁶ Axel v. Germany, App. No. 39954/08 Eur. Ct. H.R. ¶91 (2012) [hereinafter *Axel Case*]; Minelli v. Switzerland, App. No. 14991/02 62 Eur. Ct. H.R. (2005).

¹⁷ NT1 & NT2 v. Google LLC, [2018] EWHC (QB) 799.

¹⁸ *Id.* ¶100.

being a web portal¹⁹ and a non-media organization,²⁰ processes online data for commercial purposes²¹ and does not carry out any journalistic functions. Therefore, Karnawati's act of publishing the Plainspeak reports does not pursue journalistic purpose or any other legitimate aim.

c. The Restriction is not necessary in a democratic society.

¶ 6. The restriction on right to be forgotten in the present case is not necessary in a democratic society because it does not fulfill a pressing social need²²[i] and it is not proportionate to the legitimate aim being pursued²³[ii].

i. The restriction does not have a pressing social need.

¶ 7. For establishing pressing social need, reasons must be relevant and sufficient,²⁴ which depends upon the consideration of public interest.²⁵ The restriction in the present case does not pursue any pressing social need for two reasons. *First*, the information published by Plainspeak reports is false [1] and *secondly*, the publication of private information does not fulfill any pressing social need [2].

1. The information published by the Plainspeak reports is false.

¶ 8. The documents are not relevant if they cannot be authenticated²⁶ and they consequently become inadmissible before this court.²⁷ According to the ethics of journalism, the published information should be reliable, precise and accurate.²⁸ In the present case, Plainspeak downgraded the ratings of Shravasti and other events from 2010²⁹ with the retrospective effect, i.e., from 2013, even when it claims that the ratings are real time and is

¹⁹ Compromis, ¶6.

²⁰ *Id.*

²¹ Compromis, ¶6.

²² M.G.N. Ltd., *supra* note 1, ¶139; Cumpana v. Romania, App. No 33348/06 2004-XI Eur. Ct. H.R. ¶88 (2004)[hereinafter Cumpana]; Standard Verlags v. Austria (No. 2), App. No. 21277/05 Eur. Ct. H.R. ¶29 (2009); Sunday Times, *supra* note 2, ¶62; Pedersen & Baadsgaard v. Denmark, App. No. 49017/99 2004-XI Eur. Ct. H.R. ¶63 (2003) [hereinafter Pedersen]; Chauvy, *supra* note 3, ¶64; Herrera v. Costa Rica, Case No. 12.367 Judgement, Inter-Am. Ct. H.R. ¶122 (2004) [hereinafter Herrera].

²³ Sunday Times, *supra* note 2, ¶62; Ojala v. Finland, App. No. 69939/10 Eur. Ct. H. R. ¶64 (2014); Ruokanen v Finland, App. No. 45130/06 Eur. Ct. H. R. ¶38 (2010); Kasabova v. Bulgaria, App. No. 22385/03 Eur. Ct. H. R. ¶54, (2011); Herrera, *supra* note 22, ¶122.

²⁴ 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); Pedersen, *supra* note 22, ¶63; Chauvy, *supra* note 3, ¶ 65; Cumpana, *supra* note 22, ¶90.

²⁵ Sunday Times, *supra* note 2, ¶65.

²⁶ Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶225-227 (Feb. 27) [hereinafter *Genocide Case*].

²⁷ *Id.*

²⁸ Pedersen, *supra* note 22, ¶78; Times Newspapers Ltd v. United Kingdom (nos. 1 and 2), App. No. 3002/03 & 23676/03 Eur. Ct. H.R. ¶42(2009) [hereinafter *Times Newspapers*]; M.G.N. Ltd., *supra* note 1, ¶141.

²⁹ Compromis, ¶6.

completely automated with no human interference at all.³⁰ Additionally, Plainspeak's editor-in-chief, Ms. Mao Blackwater, is an ex-minister of Diplomatic Relations and Information and Broadcasting Department in the Government of Karnawati.³¹ These events raise justifiable doubts over the reliability and transparency of Plainspeak. Therefore, the information published by it is false and thus, does not pursue any pressing social need.

2. Publication of private Information of Shravasti citizens does not pursue any pressing social need.

¶ 9. Privacy is an inherent right which must be protected for the development of the personality of the individual concerned.³² Personal data can be processed only when it is absolutely necessary.³³ Private details of private individuals who do not have any public impact must be accorded a greater protection³⁴ or else it constitutes an unjustified interference with their fundamental right to privacy.³⁵ The publication of personal details, particularly of private individuals, in the present case does not pursue any legitimate aim³⁶ and was not absolutely necessary and thus does not pursue any pressing social need.

ii. The restriction is not proportionate to the legitimate aim pursued.

¶ 10. The processing is unlawful when the right of protection of personal data of the data subject overrides the interests of the controller.³⁷ Freedom of speech and expression of the press must not overstep the protection of privacy of individuals³⁸ and must be balanced against the right to reputation,³⁹ which is an inherent part of right to privacy.⁴⁰ Dissemination of personal data without any public interest violates the privacy of individuals.⁴¹ Plainspeak reports, being inaccurate, have no public interest and they harmed the privacy as well as

³⁰ Compromis, ¶7.

³¹ Compromis, ¶28.

³² Hannover, *supra* note 14, ¶49.

³³ E.U.G.D.P.R., *supra* note 10, art. 5(1)(c).

³⁴ Axel, *supra* note 16, ¶91.

³⁵ Volker und Markus ScheckeGbR & Hartmut Eifert v. Land Hessen, Case No. C-92/09 & C-93/09 Eur. Ct. H. R. (2010).

³⁶ Memorial, ¶10.

³⁷ E.U.G.D.P.R., *supra* note 10, art. 6(1)(f); Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data art.1, Jan. 28, 1981, E.T.S No. 108.

³⁸ Pedersen, *supra* note 22, ¶78; Times Newspapers, *supra* note 28, ¶41; Mosley, *supra* note 14; Arab Charter on Human Rights art. 21(1), Sept. 15, 1994, 18 Hum. R. L. J. 151 (1997).

³⁹ Universal Declaration of Human Rights, G.A. Res 217(III) A, U.N. Doc. A/RES/217(III), art. 12 (Dec. 10, 1948); European Convention on Human Rights art. 8, Nov. 4, 1950 213 U.N.T.S. 221 [hereinafter *E.C.H.R.*]; International Covenant on Civil and Political Rights art. 17(1), Dec. 16, 1966, 999 U.N.T.S. 171; American Convention on Human Rights art. 11(2), July 18, 1978, 1144 U.N.T.S. 123; African Charter on Human and Peoples Rights art. 5, Oct. 10, 1986, 1520 U.N.T.S. 217.

⁴⁰ E.C.H.R., *supra* note 39, art. 8; Chauvy, *supra* note 3, ¶70; Pfeifer v. Austria, App. No.12556/03 Eur. Ct. H. R. ¶ 35 (2007).

⁴¹ Satakunnan v. Finland, App No. 931/13 Eur. Ct. H. R. ¶175 (2017).

reputation of Shravasti citizens at a very large scale since Plainspeak shares content with several third party websites⁴² and has a global reach of 3 million individuals and corporate subscribers.⁴³

¶ 11. While restricting right to freedom of speech and expression under Article 10(2) of ECHR, states have a wide margin of appreciation⁴⁴ as the States are better informed to determine and seek remedy depending on the social conditions in their country.⁴⁵ In the present case, Shravasti has a wide margin of appreciation as it has a better understanding of real socio-economic conditions of itself and is in a better position to determine the balancing of the two rights involved. Accordingly, Shravasti's right to reputation and privacy overrides freedom of expression of Plainspeak and Karnawati's actions of not granting Right to be forgotten is not proportionate to the aim pursued by it.

II. KARNAWATI HAS BREACHED INTERNATIONAL LAW BY FAILING TO RECOGNIZE THE RIGHT TO BE FORGOTTEN OF SHRAVASTI.

¶ 12. It is submitted that Shravasti, on behalf of the persons resident and/or incorporated in Shravasti, has the right to be forgotten under article 17⁴⁶ of EUGDPR.⁴⁷ Therefore, Karnawati has breached article 17 of EUGDPR by refusing to recognize the same.

B. SHRAVASTI HAS NOT WAGED WAR AGAINST KARNAWATI BY USING ITS GOVERNMENTAL AGENCIES TO ATTACK NATIONAL CRITICAL INFRASTRUCTURE OF KARNAWATI.

¶ 13. Shravasti has not waged war against Karnawati by using its governmental agencies to attack national critical infrastructure of Karnawati because *first*, the cyber operations cannot be attributed to the government of Shravasti [I]; *secondly*, the cyber operations do not constitute use of force or waging of war under article 2(4) of the UN Charter [II] and *thirdly*, the attacks constitute valid countermeasures against Karnawati [III].

I. THE ATTACKS CANNOT BE ATTRIBUTED TO THE GOVERNMENT OF SHRAVASTI.

¶ 14. The cyber operations cannot be attributed to Shravasti because neither are Newsroom or its subsidiaries the organs of Shravasti government [a] nor are they effectively controlled

⁴² Compromis, ¶8.

⁴³ Compromis, ¶14.

⁴⁴ E.C.H.R., *supra* note 39, art. 10(2).

⁴⁵ ANDREW LEGG, THE MARGIN OF APPRECIATION IN INTERNATIONAL HUMAN RIGHTS LAW 153 (Oxford University Press, 2012).

⁴⁶ E.U.G.D.P.R., *supra* note 10, art. 17.

⁴⁷ Memorial, ¶35.

by it [b]. Additionally, the operations are not carried out by newsroom as claimed by CMRA[c].

a. Newsroom or its subsidiaries are not the organs of Shravasti government.

¶ 15. A state is responsible for the actions of its organs.⁴⁸ ARSIWA Article 4⁴⁹ clarifies that an entity to be a state organ, must have that status under internal law of the state.⁵⁰ The entity must perform a function of either executive or legislative nature⁵¹; i.e., the elements of governmental authority.⁵² The organ should be a functionary vested with the authority to represent the state⁵³ and must be “*completely dependent*” upon the state.⁵⁴

¶ 16. Newsroom, established by an executive decision of a government department,⁵⁵ does not enjoy the status of an organ under any law of Shravasti. Another company, MIB was established by an act of the parliament, which only nominates retired governmental officers as its representatives on the board of Newsroom and apart from that, it has no relation to Newsroom.⁵⁶ Moreover, Newsroom only invests in media organizations having no direct operations in media sector in Shravasti.⁵⁷ Thus, Newsroom carries out private operations having no relation with the government. Also, Newsroom has no governmental share in it, thus, is totally independent of the Shravasti government.⁵⁸

b. The Government of Shravasti does not have effective control over Newsroom or its subsidiaries.

¶ 17. Acts of an entity are attributable to the state if the entity is controlled by the state.⁵⁹ This court has held in its *Genocide* judgment⁶⁰ that in order to establish “control”, there must

⁴⁸ 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.*].

⁴⁹ *Id.*

⁵⁰ *A.R.S.I.W.A.*, *supra* note 48, art. 4(2).

⁵¹ ROSENNE & SHABTAI, ACTS OF THE CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW BY THE LEAGUE OF NATIONS 90 (1975).

⁵² *A.R.S.I.W.A.*, *supra* note 48, art. 5.

⁵³ *Id.*

⁵⁴ Military and Paramilitary Activities in and Against Nicaragua (*Nicar. v. U.S.*), Judgment, 1984 I.C.J. 14, ¶110 (Nov. 26) [hereinafter *Nicaragua*].

⁵⁵ *Compromis*, ¶3.

⁵⁶ *Compromis*, ¶4.

⁵⁷ *Compromis*, ¶3.

⁵⁸ *Id.*

⁵⁹ *A.R.S.I.W.A.*, *supra* note 48, art. 8; GEORG KERSCHENSCHNIG, CYBERTHREATS AND INTERNATIONAL LAW 149-151 (2012).

⁶⁰ *Genocide*, *supra* note 26, ¶¶403-405.

be an effective control of the state at the time of the wrongful act.⁶¹ ‘Specific instructions’ or ‘control over the particular act’ must be proved to attribute an act of an entity to the state.⁶²

¶ 18. CEO of Newsroom is the director who is nominated by a private shareholder.⁶³ The facts that certain retired governmental ministers are representatives on the board of Newsroom⁶⁴ or it being registered with the registrar of companies in Shravasti⁶⁵ are not sufficient to establish any general or specific control of Shravasti over Newsroom. Therefore, Shravasti government does not effectively control Newsroom or its subsidiaries.

c. The cyber operations are not carried out by Newsroom as claimed by the CMRA Report.

¶ 19. The authenticity of a document determines its admissibility and relevance.⁶⁶ This court weighs evidence based on its reliability and probative value⁶⁷ and unreliable evidence is inadmissible before this court.⁶⁸ Any indirect or circumstantial evidence should “leave no room for reasonable doubt”,⁶⁹ should present a clear and precise picture of facts⁷⁰ and requires a heightened burden of proof.⁷¹ It is submitted that CMRA Report is not credible because it is not authentic [*i*] and is based on indirect, circumstantial and inconsistent evidence [*ii*].

i. The CMRA Report is not authentic.

¶ 20. While weighing authenticity, this court considers factors such as personal or direct confirmation,⁷² multiplicity of the sources,⁷³ degree of independence⁷⁴ and directness of

⁶¹ Nicaragua, *supra* note 54, ¶115.

⁶² MICHAEL N. SCHMITT, TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS 38 ¶11 (2nd ed. 2017) [hereinafter *Tallinn Manual*].

⁶³ Compromis, ¶4.

⁶⁴ *Id.*

⁶⁵ Compromis, ¶3.

⁶⁶ Genocide, *supra* note 26, ¶¶225-227.

⁶⁷ Armed Activities on Territory of Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶58 (Dec. 19) [hereinafter *Armed Activities*].

⁶⁸ JOAN CHURCH ET. AL., HUMAN RIGHTS FROM A COMPARATIVE AND INTERNATIONAL LAW PERSPECTIVE 96 (2007).

⁶⁹ Corfu Channel Case (U.K. v. Alb.), Judgment, 1948 I.C.J. 15, ¶18 (Mar. 15) [hereinafter *Corfu Channel*].

⁷⁰ Request for Interpretation of Judgment of 11 June 1998 in case concerning land and maritime boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objection, 1999 I.C.J. 31, ¶¶232- 234 (Mar. 25).

⁷¹ Michael P. Scharf & Margaux Day, *The International Court of Justice's Treatment of Circumstantial Evidence and Adverse Inferences*, 13 CHI. J. INT'L L. 149 (2012); Nicaragua, *supra* note 54, ¶¶109-16; PulauLigitan and PulauSipadon Islands (Indon. v. Malay), Judgment, 2002 I.C.J. 666, ¶85, ¶90 (Dec. 17); Oil Platforms (Iran v. U.S.), Judgment, 2003 I.C.J. 161, ¶60 (Nov. 6) [hereinafter *Oil Platforms*]; BROWNLIE, *STATE RESPONSIBILITY AND THE INTERNATIONAL COURT OF JUSTICE* IN ISSUES OF STATE RESPONSIBILITY BEFORE INTERNATIONAL JUDICIAL INSTITUTIONS 13, 17 (Fitzmaurice & Sarooshi, eds., 2004).

⁷² Corfu Channel, *supra* note 69, at 17.

⁷³ Oil Platforms, *supra* note 71, ¶52; Armed Activities, *supra* note 67, ¶61.

⁷⁴ Nicaragua, *supra* note 54, ¶¶65, 68.

knowledge.⁷⁵ The CMRA Report has not been verified, is based on indirect knowledge, is not confirmed personally from the purported author or any independent body and emanates from a source which has never been disclosed.⁷⁶ Karnawati government has vested interests in defaming Shravasti⁷⁷ and has hostilities against it which is evident from the fact that it voted against Shravasti in UN and WTO on multiple occasions⁷⁸ and *thus*, CMRA is not sufficiently impartial and independent. The report cannot be authenticated, is prone to manipulation and thus, is not credible.

ii. The report is based on indirect, circumstantial and inconsistent evidence.

¶ 21. In *Nicaragua*, this court rejected the indirect evidence of involvement of U.S. in *Contra* activities absent a direct evidence.⁷⁹ Higher degree of proof of attribution is required from circumstantial evidence where the charge is more serious.⁸⁰ Evidence of CMRA report presented by the applicant is based on purely circumstantial and indirect evidences such as the emergence of messages from a location, tracing a merchant vessel of Shravasti along with two vessels of Karnawati,⁸¹ false market advisories and manipulated trends on social media.⁸² The instance of cableway and Invest Now subscribers receiving notifications has nothing to be substantiated apart from some inconsistent witnesses.⁸³ *Additionally*, the cyber attackers can easily mask their true identity⁸⁴ through proxy servers,⁸⁵ “zombie” networks⁸⁶ and electronically falsifying data.⁸⁷ Thus, the evidence of the applicant is highly inconsistent and indirect and *thus* cannot fulfill the heightened burden of proof required for the attribution of cyber-attacks.⁸⁸

II. THE CYBER OPERATIONS DO NOT CONSTITUTE USE OF FORCE OR WAGING OF WAR.

⁷⁵ *Nicaragua*, *supra* note 54, ¶¶62, 65.

⁷⁶ *Compromis*, ¶24.

⁷⁷ *Compromis*, ¶18.

⁷⁸ *Compromis*, ¶9.

⁷⁹ *Nicaragua*, *supra* note 54, ¶111.

⁸⁰ *Genocide*, *supra* note 26, ¶¶209-210; *Island of Palmas (U.S. v. Neth.)*, 2 R.I.A.A. 829, 852 (Perm. Ct. Arb. 1928); MALCOLM SHAW, *INTERNATIONAL LAW*, 567 (7th ed., 2014).

⁸¹ *Compromis*, ¶24.

⁸² *Id.*

⁸³ *Compromis*, ¶24.

⁸⁴ Tallinn Manual, *supra* note 62, at 38, ¶11; Evan Cooke, *The Zombie Roundup: Understanding, Detecting, and Disrupting Botnets*, TECHNICAL PAPER, UNIV. OF MICH. 39, 36(2005).

⁸⁵ MAUNOPIHELGAS, *PEACETIME REGIME FOR STATE ACTIVITIES IN CYBERSPACE* 42-46 (Katharina Ziolkowski, ed. 2013) [hereinafter *Pihelgas*].

⁸⁶ *Id.* at 46-47.

⁸⁷ Tallinn Manual, *supra* note 62, at 39 ¶4; Christopher C. Joyner & Catherine Lotrionte, *Information Warfare as International Coercion*, 12 Eur. J. Int'l L. 825, 839 (2001); Pihelgas, *supra* note 85, at 42-49.

⁸⁸ *Compromis*, ¶¶24- 25.

¶ 22. The cyber operations in the present case do not amount to use of force or waging of war as economic coercion does not amount to threat or use of force [a], DDOS attacks do not constitute waging of war [b] and there is no physical or property damage [c].

a. Economic coercion does not amount to threat or use of force.

¶ 23. An economic coercion does not amount to threat or use of force against a state.⁸⁹ The proposition is also evident by the UN Charter's legislative and drafting history as all the proposals⁹⁰ and attempts⁹¹ of including economic force under article 2(4) of the UN charter have been out rightly rejected by the UN.⁹² This non-inclusion of economic force is also supported by the state practice.⁹³ Therefore, it is submitted before this court that, in any event, the telephonic messages,⁹⁴ notifications,⁹⁵ malware⁹⁶ or any other infiltration into Shravasti's economic systems does not amount to use of force.

b. Distributed Denial of Service attacks do not constitute waging of war

¶ 24. It is an established proposition that a cyber operation must have effects similar to that of "traditional weapons"⁹⁷ causing physical damage⁹⁸ or a "kinetic effect" comparable to a conventional attack in order to constitute an armed attack.⁹⁹ The denial of service attacks, which may have the effect of clogging the target networks¹⁰⁰ have *so far* failed and will continue to fail to cause any physical destruction resulting in the conventional armed attack.¹⁰¹ Thus, a precedent has been set that these attacks do not constitute armed attacks.¹⁰²

⁸⁹ 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, 892 (1999).

⁹⁰ Documents of the United Nations Conference on International Organization San Francisco, U.N. Doc. G/7(e)(4), 251, 252-53 (May 13, 1945).

⁹¹ *Id.*; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 25/2625, U.N. Doc. A/RES/25/2625, Preamble (Oct. 24, 1970); Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from Threat or Use of Force in International Relations, G.A. Res. 42/22, U.N. Doc. A/RES/42/22, Annexure (Nov. 18, 1987).

⁹² Daniel B. Silver, *Computer Network Attack as a Use of Force Under Article 2(4) of the United Nations Charter*, 76 INT'L L. STUD. 73, 80-82(2004) [hereinafter *Silver*].

⁹³ J. FARER, *POLITICAL AND ECONOMIC AGGRESSION IN CONTEMPORARY INTERNATIONAL LAW* IN THE CURRENT LEGAL REGULATION OF THE USE OF FORCE 121, 126 (1986).

⁹⁴ Compromis, ¶23.

⁹⁵ Compromis, ¶24.

⁹⁶ Compromis, ¶25.

⁹⁷ YORAM DINSTEIN, WAR, AGGRESSION, AND SELF-DEFENCE 88 (2010); Tallinn Manual, *supra* note 62, at 47.

⁹⁸ 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, 917 (1999).

⁹⁹ Oona Hathaway, *The Law of Cyber Attack*, 100 CAL. L. REV. 817 818 (2012)[hereinafter *Hathaway*].

¹⁰⁰ Scott J. Shackelford, *From Nuclear War to Net Attacks in International Law*, 27 BERKELEY J. INT'L L. 192, 251 (2009).

¹⁰¹ Ryan J. Hayward, *Evaluating the "Imminence" of a Cyber Attack for Purposes of Anticipatory Self-defense*, 117 COLUM. L. REV. 399, 434 (2017).

¹⁰² *Id.*

Even the Estonian attacks, the largest DDOS attacks till date, resulted in no physical injury or property damage and have not been equated to an armed attack.¹⁰³ Various ministers of NATO have also asserted to the precedent of non-equitability of any cyber operations to cyber warfare or waging of war.¹⁰⁴ Thus, DDOS attacks, in the case at hand, do not constitute cyber-attacks or waging of war.

c. There is no substantial damage to the property in the present case.

¶ 25. *Scale and physical effects of an attack*¹⁰⁵ and *extent of damage to the property* determines whether the cyber operations affecting financial systems amount to cyber-attacks or not.¹⁰⁶ It is submitted that in the present case, the only damage that can be accounted for is the stocks getting plummeted by 1282 points, direct losses of USD 17 billion¹⁰⁷, certain delay in online trading transactions¹⁰⁸ and financial losses to certain investors.¹⁰⁹ Thus, there is no physical damage to any property of Shravasti and the effects of the attacks are not at a scale so as to enable them to constitute an armed attack.

III. THE CYBER OPERATIONS ARE LAWFUL COUNTERMEASURES.

¶ 26. It is a well-established principle of International law that a state may resort to proportional¹¹⁰ countermeasures against an internationally wrongful act of another state.¹¹¹ This court has enumerated three requirements of resorting to countermeasures.¹¹² *First*, there must be an internationally wrongful act by the responsible state.¹¹³ In the present case, Karnawati has previously harmed the reputation of Shravasti,¹¹⁴ has violated its right to

¹⁰³ Reese Nguyen, *Navigating "Jus Ad Bellum" in the Age of Cyber Warfare*, 101 CALIF. L. REV. 1079, 1129 (2013).

¹⁰⁴ ENEKENTIKK, KADRI KASKA&LIISVIHUL, INTERNATIONAL CYBER INCIDENTS 79(Cooperative Cyber Defence Centre of Excellence, 2010).

¹⁰⁵ Nicaragua, *supra* note 54, ¶195; Silver, *supra* note 92; MICHAEL N. SCHMITT & BRIAN T. O'DONNELL, COMPUTER NETWORK ATTACK AND INTERNATIONAL LAW 73, 80-82 (2002).

¹⁰⁶ Hathaway, *supra* note 99.

¹⁰⁷ Compromis, ¶23.

¹⁰⁸ *Id.*

¹⁰⁹ Compromis, ¶25.

¹¹⁰ A.R.S.I.W.A., *supra* note 48, art. 51; Gabcikovo-Nagymaros Project (Hung. v. Slov.), Judgment, 1997 I.C.J. 7, ¶85, ¶87 (Sep. 25) [hereinafter *Gabcikovo-Nagymaros Project*].

¹¹¹ Tallinn Manual, *supra* note 62, at 41; A.R.S.I.W.A., *supra* note 48, art. 49(1).

¹¹² Gabcikovo-Nagymaros Project, *supra* note 110, at 55, 56.

¹¹³ *Id.*; John Lawrence Hargrove, *The "Nicaragua" Judgment and the Future of the Law of Force and Self-Defense*, 81 AM. J. INT'L L. 135, 138 (1987) [hereinafter *Hargrove*].

¹¹⁴ Compromis, ¶18.

privacy,¹¹⁵ has denied its right to be forgotten¹¹⁶ and has breached international law by publishing Shravasti's privileged diplomatic communications.¹¹⁷

¶ 27. *Secondly*, the injured state must call upon the responsible state to cease and discontinue the wrongful act¹¹⁸ and make reparations for it before resorting to countermeasures.¹¹⁹ Third, the countermeasure must be commensurate with the injury suffered, taking into account the rights in question.¹²⁰ Shravasti has requested Karnawati to take actions against Plainspeak for publishing its privileged diplomatic communications,¹²¹ has filed applications before Karnawati's judicial council to immediately remove the reports defaming Shravasti,¹²² restore its ranking, withdraw special edition of index plus and has also sought injunction against Plainspeak from publishing further reports.¹²³ Though there is a requirement of notifying the responsible state before resorting to countermeasures,¹²⁴ this requirement is flexible when a state has to act urgently to prevent injury,¹²⁵ as is the case with Shravasti. *Thus*, the cyber operations, even if done by Shravasti, are lawful countermeasures.

C. KARNAWATI HAS BREACHED INTERNATIONAL LAW BY FAILING TO PROTECT THE PRIVACY OF DIPLOMATIC CABLES OF SHRAVASTI.

¶ 28. Karnawati has breached international law by failing to protect the privacy of diplomatic cables of Shravasti because *first*, failure to protect the privacy of diplomatic cables is attributable to Karnawati government [I] and *secondly*, Karnawati has violated VCDR by failing to protect the privacy of diplomatic cables of Shravasti [II].

I. FAILURE TO PREVENT THE LEAKAGE OF DIPLOMATIC CABLES IS ATTRIBUTABLE TO KARNAWATI.

¶ 29. Failure to prevent the privacy of diplomatic cables of Shravasti is attributable to the Karnawati government as it has omitted to prevent the internationally wrongful act [a] and Karnawati government is responsible for violating the principle of due diligence[b].

¹¹⁵ Memorial, ¶20.

¹¹⁶ Memorial, ¶12.

¹¹⁷ Memorial, ¶35.

¹¹⁸ Hathaway, *supra* note 99.

¹¹⁹ *Id.*

¹²⁰ Hargrove, *supra* note 113.

¹²¹ Compromis, ¶16.

¹²² Compromis, ¶18.

¹²³ Compromis, ¶17.

¹²⁴ A.R.S.I.W.A., *supra* note 48, art. 52(1).

¹²⁵ A.R.S.I.W.A., *supra* note 48, art. 52(2).

a. Karnawati is responsible for its omission to prevent the internationally wrongful act.

¶ 30. A state which fails to punish the offender and has a passive attitude towards the action of individuals¹²⁶ becomes responsible for it.¹²⁷ States need to refrain from internationally harmful omissions which may result in damage.¹²⁸ Responsibility can thus result from the omission on part of the State to prevent any internationally wrongful act.¹²⁹ Acknowledgement and adoption of conduct by a State might be inferred from the conduct of the State.¹³⁰ It is submitted that Karnawati Government failed to prevent private agency within its territory to commit any internationally wrongful act. Also, it failed to take any action against the actions of Plainspeak or to punish the officials of Plainspeak for leaking and publishing the privileged diplomatic communications of Shravasti, which resulted in an internationally wrongful act.¹³¹ Thus, Karnawati government is internationally responsible for its omission to take appropriate measures.

b. Karnawati is responsible for violating the principle of due diligence.

¶ 31. Under the principle of due diligence,¹³² a state party is bound to exercise due diligence—to take all reasonable measures expected of it—to prevent wrongful acts of private individuals¹³³ and to punish the offenders.¹³⁴ Any lack of due diligence on the part of the state results in state responsibility.¹³⁵ Any such lack implies that the state has given its consent for the damage and can be considered to be an accomplice¹³⁶ and a catalyst for the wrong-doer.¹³⁷ Every state has a positive obligation not to allow its territory to be used for wrongful acts, breach of which results in state responsibility.¹³⁸

¹²⁶ JAMES CRAWFORD, *LAW OF INTERNATIONAL RESPONSIBILITY* 358 (2010) [hereinafter *Crawford*].

¹²⁷ EMMERICH DE Vattel, *THE LAW OF NATIONS OR, PRINCIPLES OF THE LAW OF NATURE APPLIED TO THE CONDUCT AND AFFAIRS AND NATIONS AND SOVEREIGN* 312 (1798).

¹²⁸ JOANNA KULEZA, *DUE DILIGENCE IN INTERNATIONAL LAW* 300 (2016).

¹²⁹ Crawford, *supra* note 126, at 356.

¹³⁰ Crawford, *supra* note 126, at 275.

¹³¹ Memorial, ¶

¹³² Crawford, *supra* note 126, at 359.

¹³³ A.R.S.I.W.A., *supra* note 46, art. 2.

¹³⁴ Genocide, *supra* note 26, ¶430.

¹³⁵ Scott M. Malzahn, *State Sponsorship and Support of International Terrorism: Customary norms of State Responsibility*, 83 HASTINGS INT'L & COMP. L. REV. 83,114 (2003).

¹³⁶ Special Rapporteur on International Responsibility, *Third report on International Responsibility*, Int'l L. Comm'n, U.N. Doc. A/CN.4/111 (Jan. 2, 1958) (by F. V. Garcia Amador).

¹³⁷ Special Rapporteur on State Responsibility, *Third report on State Responsibility*, Int'l L. Comm'n, U.N. Doc. A/CN.4/246, 1-3 (May 18, 1971) (by Roberto Ago).

¹³⁸ Corfu Channel, *supra* note 69.

¶ 32. Karnawati Government, having a positive obligation, not to allow its territory to be used in a manner that violates rights of Shravasti diplomats¹³⁹ to have privileged diplomatic communications,¹⁴⁰ has violated the principle of due diligence by failing to prevent and punish plain speak from leaking and publishing Shravasti's privileged diplomatic communications, even after repeated requests by Shravasti.¹⁴¹

II. LEAKAGE AND PUBLICATION OF DIPLOMATIC CABLES OF SHRAVASTI CONSTITUTES VIOLATION OF VCDR.

¶ 33. Leakage and publication of diplomatic cables of Shravasti constitutes violation of VCDR because Shravasti diplomats are entitled to diplomatic immunity under VCDR [a]; Leakage of diplomatic cables constitutes a violation of article 27 and 22 of VCDR [b] and plain speak has exceeded the remedies available to it under article 9 of VCDR [c].

a. Shravasti diplomats are entitled to diplomatic immunity under VCDR.

¶ 34. Article 3(1)(d) of VCDR enunciates that diplomats have a duty to report to the sending State, the conditions and developments in the receiving State in a lawful manner.¹⁴² Although the diplomatic immunity is functional in nature,¹⁴³ Shravasti diplomats by communicating about the political conditions in Karnawati, have acted very well within the functions entrusted to them under VCDR, making them entitled to their diplomatic immunity. Since 2012, Karnawati has consistently voted against Shravasti in United Nations and WTO on multiple occasions despite of full diplomatic missions and modest trade relations between the countries.¹⁴⁴ This evidences the ever increasing hostile intentions of Karnawati towards Shravasti, thus, Karnawati has manipulated the diplomatic emails leaked and published by it.

¶ 35. Privileged information which is unlawfully obtained is not admissible as evidence before this court¹⁴⁵ as fair trial will be severely affected¹⁴⁶ and the judicial proceedings will be prejudiced.¹⁴⁷ Disputed and unverifiable documents are unreliable.¹⁴⁸ The diplomatic

¹³⁹ *Id.*

¹⁴⁰ Memorial, ¶28.

¹⁴¹ Compromis, ¶13.

¹⁴² Vienna Convention on Diplomatic Relations art. 3(1)(d), Apr. 16 1961, 23 U.S.T. 3227. [hereinafter *V.C.D.R.*].

¹⁴³ EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 14 (4th ed. 1976)[hereinafter *Denza*].

¹⁴⁴ Compromis, ¶9.

¹⁴⁵ *Methanex Corp. v. U.S.*, 44 I.L.M 1345, ¶¶53-57 (2005).

¹⁴⁶ MARKUS BENZING, *EVIDENTIARY ISSUES IN THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY* (Zimmermann et al. eds., 2012).

¹⁴⁷ Questions Relating to Seizure and Detention of Certain Documents and Data (*Leste v. Australia*), Provisional Measures, I.C.J. Reports 2014 I.C.J. ¶160, ¶161(Mar. 3); *Prosecutor v. Brdanin* Case No. IT-99-36-T, Int'l

cables leaked and published by Karnawati are unlawfully procured, cannot be verified, disputed and thus, cannot be admitted as evidence before this court. *Thus*, it is submitted that no information regarding any need to deploy Newsroom was communicated by Shravasti diplomats as alleged by Karnawati and thus, the diplomats have acted well within their functions and within international law.

b. Leakage and publication of the cables constitute violation of Art. 22 and Art. 27 of VCDR.

¶ 36. Free and secret communication between the sending government and the diplomatic mission is the most important privilege granted to the diplomats by VCDR.¹⁴⁹ Under section 27 of VCDR, it is the obligation on part of the receiving State to protect free communications of the mission¹⁵⁰ and not to attempt to and to prevent others¹⁵¹ from eavesdropping on the contents of the communications with the Government of the sending State.¹⁵² The receiving State is under a special duty to take all appropriate steps to protect the premises¹⁵³ of the mission against any intrusion or damage and to prevent any disturbance of peace of the mission or impairment of its dignity¹⁵⁴ before it reaches its completion¹⁵⁵ under VCDR.¹⁵⁶ It is unlawful to invade the mission even through the electronic means.¹⁵⁷

¶ 37. It is submitted that 72 diplomatic emails originating from the embassy of Shravasti were intercepted in Karnawati by Plainspeak and it had access to certain additional diplomatic cables.¹⁵⁸ This conduct leads to a flagrant violation of article 27 of VCDR and the fact that Karnawati did not protect this leakage of diplomatic cables and did not permit free diplomatic communication make the Karnawati government liable for violating the same.

c. Plainspeak has overreached the remedies available to it under VCDR.

Crim. Trib. for the Former Yugoslavia (2003).

¹⁴⁸ Prosecutor v. Ayyash Case No. STL-11-01, Special Trib. of Lebanon ¶40, ¶42 (2016).

¹⁴⁹ Denza, *supra* note 143, at 211.

¹⁵⁰ V.C.D.R., *supra* note 142, art. 27; Vienna Convention on Consular Relations art. 36, Apr. 24, 1963, 596 U.N.T.S. 26.

¹⁵¹ United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 4 (May 24) [hereinafter *Tehran case*].

¹⁵² Draft Articles on Diplomatic Intercourse and Immunities with commentaries, I.L.C., U.N. Doc. AN/LEG/GR A/32 (Mar. 15, 1958).

¹⁵³ *Tehran case*, *supra* note 151.

¹⁵⁴ V.C.D.R., *supra* note 142, art. 22(2).

¹⁵⁵ *Tehran case*, *supra* note 151.

¹⁵⁶ *Tehran case*, *supra* note 151. ¶67; V.C.D.R., *supra* note 142, art. 22(2) & 27.

¹⁵⁷ Ashley Deeks, *An International Legal Framework for Surveillance*, 55 VA. J. INT'L L. 291, 368 (2015) [hereinafter *Deeks*].

¹⁵⁸ *Compromis*, ¶13.

¶ 38. Article 9 of VCDR is a key provision which provides necessary means to the receiving state to defend any illicit activities or abuse by the members of the diplomatic mission and provides a remedy to counter any such abuse.¹⁵⁹ Karnawati has exercised the remedies provided by article 9 by declaring the Ambassador of Shravasti as *persona non grata*¹⁶⁰ and by expelling all of the staff of the Shravasti embassy.¹⁶¹ Since the aforementioned remedy is the only recourse available to the receiving State to ensure safe diplomatic mission,¹⁶² Karnawati exceeded the remedies by illegally intercepting the privileged diplomatic communications. Thus, Karnawati cannot be entitled to intercept privileged diplomatic communications in the garb of exercising further remedies to prevent illicit activities by the Shravasti diplomats.

D. SHARVASTI HAS NOT BREACHED INTERNATIONAL LAW BY UNLAWFULLY GATHERING, TRANSMITTING, STORING AND USING THE DATA OF THE CITIZENS OF KARNAWATI AND IN VIOLATION OF THE LAWS OF KARNAWATI.

¶ 39. Shravasti has not breached international law by unlawfully gathering, transmitting, storing and using the data of the citizens of Karnawati because Shravasti has not breached international privacy conventions [I]; Shravasti has not violated the principle of non-intervention [II]; acts of Shravasti are consistent with customary international law [III] and Shravasti has not violated the laws of Karnawati [IV].

I. SHRAVASTI HAS NOT BREACHED INTERNATIONAL PRIVACY CONVENTIONS.

¶ 40. Shravasti has not violated right to privacy of Karnawati citizens under International conventions as the area in which the data was collected is not effectively controlled by Shravasti [a] and the interference by Shravasti, if any, was legitimate [b].

a. Area in which the data is gathered is not effectively controlled by Shravasti.

¶ 41. A state can be held liable for the acts affecting other states only if the affected territory is physically and effectively controlled¹⁶³ by the responsible state.¹⁶⁴ The jurisdiction is essentially “territorial” which becomes extraterritorial only in absolutely exceptional

¹⁵⁹ Tehran case, *supra* note 151, ¶81.

¹⁶⁰ Compromis, ¶22.

¹⁶¹ Compromis, ¶27.

¹⁶² Dr. Amer Fakhoury, *Persona Non Grata: The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State*, 57J. L. POL’Y & GLOBALISATION 110,121 (2017).

¹⁶³ *Bankovi’c v. Belgium*, App. No. 52207/99 2001-XII Eur. Ct. H. R. ¶75 (2001) [hereinafter *Bankovi’c*].

¹⁶⁴ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. 1971 16, ¶118 (June 21).

circumstances.¹⁶⁵ No jurisdiction exists until the perpetrator is “physically present on the ground” of the victim state.¹⁶⁶ Thus, effective control exists when there is physical or legal control of a state over a person. Extraterritorial jurisdiction exists only in the cases of physical arrest of a person, confiscation of a consular property,¹⁶⁷ military occupation or use of force by state organs or agencies.¹⁶⁸

¶ 42. Gathering, transmission and usage of the data of Karnawati citizens occurred within the territory and control of Karnawati¹⁶⁹ and there was no physical injury involved.¹⁷⁰ Shravasti has no legal relationship or control over the citizens of Karnawati and thus has no legal responsibility for the processing of data that occurred within the territory of Karnawati.

b. Any interference with privacy of Karnawati citizens by Shravasti is legitimate.

¶ 43. Right to privacy, private life and correspondence of Karnawati citizens was lawfully interfered with because the interference, if any, is prescribed by law[i], it is necessary for achieving a legitimate aim [ii] and the interference is proportionate to the aim pursued [iii].¹⁷¹

i. The interference is in accordance with law.

¶ 44. Any interference with the privacy of individuals is legitimate if it is prescribed by law.¹⁷² The authorizing law must be precise,¹⁷³ clear, detailed¹⁷⁴ and must have minimum safeguards to ensure that there is no abuse.¹⁷⁵ Any interference by Shravasti was done only after taking the consent of Karnawati citizens¹⁷⁶ in accordance with Article 22 of The RTPA of Karnawati.¹⁷⁷ The act is clear, detailed and has proper safeguards such as purpose limitation,¹⁷⁸ time limitation,¹⁷⁹ timely destruction,¹⁸⁰ deletion¹⁸¹ and erasure of data,¹⁸² data

¹⁶⁵ Bankovi´c, *supra* note 163, ¶67.

¹⁶⁶ Bankovi´c, *supra* note 163.

¹⁶⁷ Montero v. Uruguay, Comm. No. 106/1981, U.N. Doc. CCPR/C/18/D/106/1981(1983).

¹⁶⁸ Al-Skein v. United Kingdom, App. No. 55721/07 Eur. Ct. H.R. ¶¶27-32 (2011).

¹⁶⁹ Compromis, ¶11.

¹⁷⁰ *Id.*

¹⁷¹ E.C.H.R., *supra* note 39, art. 8; Kennedy v. United Kingdom, App. No. 26839/05397 Eur. Ct. H.R. (2010) [hereinafter *Kennedy*].

¹⁷² Klass v. Germany, App No. 5029/71 28 Eur. Ct. H. R. (1978); Feldek v. Slovakia, App No. 29032/95 Eur. Ct. H. R. (2001).

¹⁷³ Ekimdzhiev v. Bulgaria, App. No. 62540/00 Eur. Ct. H.R. (2007) [hereinafter *Ekimdzhiev*].

¹⁷⁴ Kruslin v. France, App. No. 11801/85 176 Eur. Ct. H. R. (1990); Huvig v. France, App No. 11105/84, 176-A Eur. Ct. H. R. (1990).

¹⁷⁵ Shimovolos v. Russia, App No. 30194/09 Eur. Ct. H.R. ¶57 (2011) [hereinafter *Shimovolos*].

¹⁷⁶ Compromis, ¶11.

¹⁷⁷ Compromis, Annexure F.

¹⁷⁸ Compromis, R.T.P.A., art. 21(2).

¹⁷⁹ Compromis, R.T.P.A., art. 21(3)(a).

¹⁸⁰ Compromis, R.T.P.A., art. 21(3)(b).

minimization,¹⁸³ requirement of written authorization¹⁸⁴ and consent of the data subject before processing.¹⁸⁵

ii. The interference with privacy pursues a legitimate aim.

¶ 45. The increasing threat to democratic societies by highly sophisticated forms of necessitates the practice of secret surveillance of subversive elements.¹⁸⁶ Additionally, states use surveillance regime in order to preserve their national security interests.¹⁸⁷ As informed by the diplomats, the interests of Shravasti have been threatened by the political environment of Karnawati¹⁸⁸ and thus, Shravasti has legitimate aim of protecting its own national security from Karnawati in deploying minimal surveillance system in Karnawati.

iii. The interference is necessary in a democratic society as it is proportionate to the aim pursued.

¶ 46. Any interference by Shravasti was proportionate to the aim pursued for two reasons. First, surveillance regime is necessary in a democratic society to tackle the threat of terrorism,¹⁸⁹ for national security and for the prevention of crime,¹⁹⁰ particularly when there are no shortcomings of the surveillance regime.¹⁹¹ A threatened state has a “wide margin of discretion” for setting up a system of bulk interception.¹⁹² Interests of Shravasti are threatened by Karnawati¹⁹³ and thus, it having wide margin of appreciation, has proportionately interfered with any right of Karnawati citizens.

¶ 47. Secondly, Adequate guarantees against arbitrariness,¹⁹⁴ such as clear definition of scope of intelligence measures and the treatment of intercepted data, must be there in law to ensure proportionate interference.¹⁹⁵ The procedures related to interception, processing and

¹⁸¹ Compromis, R.T.P.A., art. 22(2).

¹⁸² Compromis, R.T.P.A., art. 21(3)(c)(ii).

¹⁸³ Compromis, R.T.P.A., art. 21(3)(c)(ii) proviso.

¹⁸⁴ Compromis, R.T.P.A., art. 22(1).

¹⁸⁵ Compromis, R.T.P.A., art. 21(3)(c)(i).

¹⁸⁶ *Christie v. United Kingdom*, App No. 21482/93Eur. Ct. H.R (1994) [hereinafter *Christie*].

¹⁸⁷ *Ekimdzhiiev, supra* note 173; *The Right to Privacy in the Digital Age*, G.A. Res. 68/167, U.N. Doc. A/RES/68/167, Preamble (Dec. 18 2003).

¹⁸⁸ Compromis, ¶13.

¹⁸⁹ *Christie, supra* note 186.

¹⁹⁰ *Shimovolos, supra* note 175.

¹⁹¹ *Kennedy, supra* note 171.

¹⁹² *Chassagnou and Others v. France*, App. No. 25088/94, 28331/95 &28443/95, 1999-III Eur. Ct. H. R. ¶113 (1999); *Fretté v. France*, App. No. 36515/97 2002-I Eur. Ct. H. R. ¶41(2002); *Sürek v. Turkey* (No. 1), App. No. 26682/95Eur. Ct. H. R. ¶61 (1999); *Jerusalem v. Austria*, App. No. 26958/95Eur. Ct. H. R. ¶33 (2001).

¹⁹³ Compromis, ¶13.

¹⁹⁴ *Figueiredo v. Andorra*, App. No. 72384/14 Eur. Ct. H. R. (2016).

¹⁹⁵ *Centrum v. Sweden*, App. No. 35252/08 Eur.Ct. H. R.(2003).

destruction of data must be clearly defined in the authorizing act.¹⁹⁶ The RTPA of Karnawati provides adequate safeguards enumerated above¹⁹⁷ which are totally complied with by Shravasti and thus any interference by Shravasti was proportional to the aim pursued.

II. SHRAVASTI HAS NOT BREACHED THE PRINCIPLE OF NON-INTERVENTION.

¶ 48. The principle of non-intervention is violated when a state uses coercion¹⁹⁸ to interfere in such matters of another state which the latter is entitled to determine freely.¹⁹⁹ The interference should lead to subordination of “sovereign will” of the victim state depriving it of the decisions which it is rightfully entitled to decide.²⁰⁰ Most of the extraterritorial actions of a state are unable to reach the very high threshold of the principle of non-intervention.²⁰¹

¶ 49. It is submitted that mere collection, transmission, storage and usage of the data of Karnawati citizens by Shravasti,²⁰² does not reach the threshold of coercion or subordination of sovereign will of Karnawati. Therefore, Shravasti cannot be held liable for violating the principle of non-intervention.

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

¶ 50. Where there exists a situation of “*non-liquet*”,²⁰³ i.e., when no law or limits are imposed by law,²⁰⁴ a state can act as it thinks fit.²⁰⁵ There exists no legal or customary restriction on the act of surveillance in international law,²⁰⁶ neither based on the claim of territorial sovereignty nor on privacy.²⁰⁷ Thus, espionage is unregulated in international

¹⁹⁶ Kennedy, *supra* note 171.

¹⁹⁷ Memorial, ¶38.

¹⁹⁸ Nicaragua, *supra* note 54, ¶205; HANS Kelsen, PRINCIPLES OF INTERNATIONAL LAW 64 (Robert W. Tucker ed., 2nd ed. 1966) [hereinafter *Hans Kelsen*].

¹⁹⁹ Russell Buchan, *Cyber Attacks: Unlawful Uses of Force or Prohibited Interventions?*, 2 J. CONFLICT SEC. L. 211, 224-225 (2012).

²⁰⁰ Declaration on the Inadmissibility of Intervention, G.A. Res. 2131 (XX), U.N. Doc. A/Res/20/2131, ¶2 (Dec. 21, 1965); MaziarJamnejad & Michael Wood, *The Principle of Non-Intervention*, 22 LEIDEN J. INT’L L. 345, 348 (2009).

²⁰¹ Lori F. Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs*, 83 AM. J. INT’L L. 10, 14-17 (1989).

²⁰² Compromis, ¶11.

²⁰³ Michael J. Glennon, *The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter*, 25 HARV. J. L. & PUB. POL’Y 539, 555 (2002); Prosper Weil, “*The Court Cannot Conclude Definitely...*”: *Non Liquet Revisited*, 36 COLUM. J. TRANSNAT’LL. 109, 109 (1997).

²⁰⁴ Michael Glennon, *The Road Ahead: Gaps, Leaks and Drips*, 89 INT’L L. STUD. 362, 374 (2013).

²⁰⁵ Hans Kelsen, *supra* note 198, at 553-88.

²⁰⁶ Afsheen Radsan, *The Unresolved Equation of Espionage and International Law*, 28 MICH. J. INT’L L. 595, 596 (2007); Roger Scott, *Territorially Intrusive Intelligence Collection and International Law*, 46 A.F.L. REV. 217, 217 (1999) [hereinafter *Scott*].

²⁰⁷ *An Assessment of International Legal Issues in Information Operations*, OFFICE OF GEN. COUNSEL, DEP’T OF DEF. (1999) [hereinafter *Legal Issues in Information Operators*]; Scott, *supra* note 206.

law²⁰⁸ and is legal in customary international law.²⁰⁹ States voluntarily acknowledge the long standing²¹⁰ practice of surveillance,²¹¹ which is evident from the agreements between the states to limit surveillance²¹² and their statements about the same.²¹³ In fact, surveillance forms an inherent part of a state's right to self-protection.²¹⁴ Therefore, acts of mere collection, transmission, storage or usage of data, even if done by Shravasti, are not prohibited by international law and in fact, form a part of customary international law.

IV. SHRAVASTI HAS NOT VIOLATED THE LAWS OF KARNAWATI.

¶ 51. Shravasti processed the data of Karnawati citizens for the purpose of its national security. The threat to Shravasti from the current regime in Karnawati continues and thus the processing of data of Karnawati citizens is in accordance with art. 21(3)(a) of RTPA.²¹⁵ Even if the purpose of processing ceased to exist, the data can still be processed since the consent of Karnawati citizens for such storage²¹⁶ and transmission of data was obtained through the click wrap agreement²¹⁷ according to RTPA.²¹⁸ Thus, Shravasti has not violated the domestic laws of Karnawati.

E. SHRAVASTI IS ENTITLED TO DAMAGES ON ACCOUNT OF FAILURE BY KARNAWATI TO RECOGNISE THE RTBF OF SHRAVASTI AND KARNAWATI IS NOT ENTITLED TO DAMAGES AS SHRAVASTI HAS NOT WAGED WAR AGAINST KARNAWATI AND IT HAS LAWFULLY GATHERED, TRANSMITTED, STORED AND USED THE DATA OF KARNAWATI CITIZENS WITH THEIR EXPRESS PERMISSION.

²⁰⁸ Legal Issues in Information Operators, *supra* note 207; DANIEL B. SILVER, *INTELLIGENCE AND COUNTER INTELLIGENCE IN NATIONAL SECURITY LAW* 935, 965 (John Norton Moore & Robert F. Turner eds., 2005).

²⁰⁹ Silver, *supra* note 92.

²¹⁰ Deeks, *supra* note 157.

²¹¹ WALTER GARY SHARP, *CYBERSPACE AND THE USE OF FORCE* 123 (1999); QUINCY WRIGHT, *ESPIONAGE AND THE DOCTRINE OF NON-INTERVENTION IN INTERNAL AFFAIRS IN ESSAYS ON ESPIONAGE AND INTERNATIONAL LAW* 3, 16–17 (Roland J. Stanger ed., 1962).

²¹² Paul Farrell, *History of 5-Eyes*, THE GUARDIAN (Dec. 2, 2013) <https://www.theguardian.com/world/2013/dec/02/history-of-5-eyes-explainer>; W. Michael Reisman, *Covert Action*, 20 YALE J. INT'L L. 419, 421 (1995).

²¹³ Der Spiegel, *Embassy Espionage: The NSA's Secret Spy Hub in Berlin*, TRANSCEND MEDIA SERVICE (Nov. 4, 2013) <https://www.transcend.org/tms/2013/11/embassy-espionage-the-nasas-secret-spy-hub-in-berlin/>; Tony Abbott, *Comments Before Australian Parliament*, THE GUARDIAN (Nov. 18, 2013) <https://www.theguardian.com/world/2013/nov/18/tony-abbott-parliament-chogm>.

²¹⁴ Craig Forcese, *Spies without Borders: International Law and Intelligence Collection*, 5 J. NAT'L SECURITY L. & POL'Y 179, 198–99 (2011); Christopher Baker, *Tolerance of International Espionage*, 19 AM. U. INT'L L. REV. 1091, 1092 (2004).

²¹⁵ Compromis, Annexure E.

²¹⁶ Compromis, Annexure F, R.T.P.A., art. 21(3)(c)(ii).

²¹⁷ Compromis, ¶11.

²¹⁸ Compromis, Annexure F, R.T.P.A., art. 22(1) provisio.

¶ 52. A responsible state is liable for compensation for injury to the reputation²¹⁹ and intrusion into the personal life of the individuals of the victim state.²²⁰ It is submitted that Karnawati is liable to compensate Shravasti as it has harmed the reputation and refused to recognize the right to be forgotten of the persons incorporated in Shravasti.²²¹ The state who has committed an internationally wrongful act shall cease and undo the wrongful act and guarantee its non-repetition to the victim state if the act is of a continuing nature and the violated rule is still in force.²²² In the present case, Karnawati is liable to remove all the plainspeak reports which damaged the reputation of Shravasti²²³ and guarantee that the act will not be repeated by it because the publication of reports continues till date and violated Article 17 of EUGDPR is still in force.

¶ 53. Karnawati is not entitled to any order on damages from Shravasti on account of (B) because the cyber operations cannot be attributed to the government of Shravasti²²⁴ and in any case, the operations do not constitute waging of war.²²⁵ Additionally, Shravasti is not liable to provide damages to Karnawati on account of (D) because Shravasti has not violated international law by gathering, transmitting, storing and using the data of Karnawati citizens or in violation of laws of Karnawati.²²⁶

²¹⁹ Reports of International Arbitral Awards, Opinions in Lusitania cases, 40 (1932).

²²⁰ North Sea Continental Shelf cases, Judgment, 1969 I.C.J. 4, ¶88 (Feb. 20); Materials on the Responsibility of States for Internationally Wrongful Acts, U.N. Legislative Series ST/LEG/SER B/25, 232 (Feb. 2, 2012).

²²¹ Memorial

²²² Rainbow Warrior Case (Fr. v. N.Z.), 82 I.L.C. 499, ¶114 (1990); Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, 2004 I.C.J. 121 ¶¶150-153 (Mar. 31).

²²³ Compromis, ¶18.

²²⁴ Memorial, ¶25.

²²⁵ Memorial, ¶27.

²²⁶ Memorial, ¶51.

PRAYER

The Democracy of Shravasti respectfully requests the Hon'ble Court to adjudge and declare that:

- A. Shravasti has the right to be forgotten under international law and Karnawati has breached the international law by failing to recognize the same.
- B. Shravasti has not waged war against the Karnawati by using its governmental agencies to attack national critical infrastructure of Karnawati.
- C. Karnawati has breached international law by failing to protect the privacy of Sharavasti's diplomatic cables.
- D. Shravasti has not 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. Shravasti is entitled to damages on account of (A) above and Karnawati is not entitled to any order on damages on account of (B) & (D) above.

All of which is respectfully submitted.

Sd/-

On behalf of the Socialist Democracy of Shravasti