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STATEMENT OF JURISDICTION

By Special Agreement, the Governments of Ercola and Filova have submitted this dispute to the jurisdiction of the International Court of Justice pursuant to Article 40, paragraph 1, of the Statute of the International Court of Justice. Neither Party has entered any reservations.

STATEMENT OF THE FACTS

Ercola's multi-ethnic society

Ercola is a multi-ethnic nation which gained independence in 1960 after decolonisation. The last incident of ethnic tension was in 1963, between the majority Nicastrians and the Yttics, the largest minority group. Since then, there has been peace among all ethnic groups in Ercola for almost 30 years. However, Ercola faces many constraints as a young, multi-ethnic nation. For example, its territorial integrity is threatened by border problems with Salutia.

Separatist ideology is unconstitutional

As a young nation, Ercola seeks to preserve its social, political and territorial integrity from destabilising forces. While the Ercolan political process is mature and involves full participation by all Ercolan citizens, Ercola guards against the fragmentary effects of separatism by outlawing separatist ideology in Article 19 of its Constitution.

The separatist YLSA

West Firland is a province in Ercola where the Yttics are a majority. When a new organisation was formed to stand in the West Firland by-elections in February 1993, Art 19 was called into effect. The thrust of the Yttic Liberation Solidarity Association (YLSA) was clearly separatist, demanding the drafting of a constitution for an independent Yttic republic. Such an extremist manifesto violated Article 19 and was accordingly refused electoral status. When YLSA lost its judicial challenge against this order, sporadic but bloody street demonstrations were sparked off in the principal cities of West Firland. Ercola responded to the unrest by invoking emergency powers granted by the Constitution to declare YLSA "an illegal militia".

Yttic rights in Ercola

In fact, there is no evidence that the Yttic minority in Ercola ever endorsed YLSA as the representative of its ethnic minority rights. As a minority group, the Yttics enjoy freedom of religion, speech and association. These minority rights are protected in the Ercolan Constitution. The Yttics, however, do have two grouses: 1) few employers allow paid leave on Yttic religious holidays and 2) the official language of Ercola is Nicastrian. But apart from these, there have been no substantiated allegations that any group of people within Ercola have been denied their basic freedoms.

YLSA's terrorist acts

On 20 August, 1993, YLSA commenced its terrorist campaign by bombing the Stock Exchange in the capital city of Ercola. It claimed responsibility in its first official communiqué to the Amalgamated Press the same day. Several people were killed in the massive explosion which destroyed the Stock Exchange building as well as surrounding property. Had it been a work day, the death toll would have been in the thousands.

Through the months of September and October, Ercola was wracked with more YLSA terrorist acts. Four more communiqués predicting explosions at train stations were received. Four police officers were killed by the first incendiary device, while the second caused property damage.

Filova's support and intervention

Filova is a state in the same general geographical region as Ercola, where Yttic culture and language are centred. From its first communiqué, YLSA declared its affiliation with Filova. It named their "comrades in Filova" as "our brothers in revolution". In fact, YLSA called Filova its "homeland" in the sixth communiqué and boasted that their Filovan brothers "have welcomed us and promised us the help we need."

Filova has not refuted its close affiliation with YLSA. Despite YLSA's acts of violence, Filova has refused to declare YLSA illegal. In fact, Filova endorsed YLSA's actions in a diplomatic note after the Stock Exchange bombing by stating, "We encourage the representatives of the Yttic minority in defence of their right of self-determination." In its prayer of relief to this Court, Filova has acknowledged its involvement in YLSA activities.

These activities include Filova's assistance in cracking the ESPRI database and disclosing the information therein. ESPRI contains confidential information, including details of medical and psychological reports, of former and active members of the Ercolan military forces. It is a facility of the highest security with a computer encryption code restricting access only to authorised personnel. In its first communiqué, YLSA asserted that the ESPRI code was decrypted with the help of the Filovan Intelligence Service. This claim was not denied by Filova. YLSA's sixth communiqué revealed the personal details of four Ercolan military personnel, which was then published by the Amalgamated Press. This communiqué was sent from a Filovan government agency, the Filovan Intelligence Service Center (FISC).

The YLSA prisoners

On 9 November, four Yttic Ercolans claiming to be the YLSA high command surrendered to Filovan police and took responsibility for the bombing of the Stock Exchange, having manufactured the bombs used at the Stock Exchange. They also delivered computer software containing YLSA's only copy of the ESPRI Database and encryption code to Filova. Filova has refused to return these to Ercola, despite requests.

Subsequently, the parents of 200 Ercolan military officers received the contents of their children's private military information from the ESPRI database, along with political pamphlets on Yttic independence. These were

sent from a Filovan source, with some evidence that the address was previously used by the FISC.

Extradition

The Ercolan government sought to extradite the Yttic prisoners for the bomb attacks, in accordance with the bilateral extradition treaty with Filova. Ercola has sent a demarche and formal extradition request to Filova. The Filovan Government has responded by stating that YLSA is not an illegal organisation in Filova and has refused the extradition request by invoking the political offence exception. This is despite Filova's official recognition of the individuals involved as those "responsible for the explosions at the Stock Exchange and other locations in Ercola."

Ercola and Filova have since agreed ad hoc to submit their dispute to the International Court of Justice.

QUESTIONS PRESENTED

1. Whether Filova's recognition and support of the YLSA terrorists, and refusal to declare YLSA illegal, are acts of intervention in the internal affairs of Ercola and therefore violate international law.

2. Whether Filova can justify its intervention by claiming a right of self-determination on behalf of an ethnic minority whose rights have not been violated.

3. Whether Filova can refuse to extradite the YLSA terrorists, whom it has recognised as those responsible for the Stock Exchange bombing, by invoking the political offense exception.

4. Whether Filova is obliged to make reparations in the form of restitution and damages for violating international law obligations.

SUMMARY OF THE PLEADINGS

I. Filova has intervened in Ercola's internal affairs.

The international order is only as strong as the relationship between individual states. A pillar of this relationship is the principle of sovereign equality. All sovereign states are equal and each should respect the other's right to freely determine their own political, social and economic policies.

The duty of non-intervention, which is a part of customary international law, is a crucial application of this principle. It forbids a state from unlawfully interfering, whether directly or indirectly, in the internal or external affairs of another state. Therefore, how much respect nations accord this duty of non-intervention will greatly influence the strength of world order.

YLSA is an extremist organization whose avowed aim is secession for the Yttic minority, although the Yttics themselves have never endorsed YLSA as representative of their legitimate interests. Since such separatist ideology violates Ercola's Constitution, any support of YLSA is an unlawful interference in Ercola's social and political structure, and therefore constitutes intervention.

There is no doubt that Filova has intervened in Ercola's internal affairs since Filova has already acknowledged its involvement in YLSA's activities. Filova has refused to declare YLSA illegal, and given diplomatic as well as logistical support. Worse, Filova has tried to justify these serious violations of its duty of non-intervention.

The duty of non-intervention must be observed strictly if it is to have any meaning in international law. Therefore Filova's intervention is no less culpable because the unlawful acts are omissions or non-forcible.

As the *Nicaragua* case illustrates, an intervention is not measured by form, but by its effects. In this case, Filova is involved in an organization that has taken lives and destroyed property on Ercolan soil. As such, Filova's mere tolerance of YLSA operations from its territory is as much an intervention as its Intelligence Service's tangible assistance in cracking the ESPRI code.

Neither can Filova diminish its responsibility by claiming that intervention was not by its hands but YLSA's. YLSA's subversive acts are clearly attributable to Filova since the *Corfu Channel* approach allows circumstantial evidence and reasonable inferences for imputing knowledge. The fact that the sixth YLSA communiqué was sent from the Filovan Intelligence Service Center may like an isolated example of intervention. But Filova also gave YLSA diplomatic support, assisted it in cracking the ESPRI database and refused to return it, and refused to extradite the YLSA bombers. This series of facts linked together leads logically to one conclusion: Filova has allowed YLSA to operate from its territory and supported and assisted it, and in so doing, breached the duty of non-intervention.

Ultimately, Filova has failed to appreciate that YLSA is a *terrorist* organization, which places on Filova an even greater obligation not to support YLSA. Filova owed an even higher duty to the international community not to intervene in light of YLSA's extremist tactics of fear and violence used to destabilize Ercola. Terrorism is one of the greatest threats to international peace and order today, and there lies an obligation in international law to suppress it. Filova has blatantly ignored this obligation; worse, it has chosen to encourage this inhumane practice by involving itself in YLSA's actions.

II. Filova's intervention is not justified.

Filova has openly admitted its involvement in YLSA's activities and this dispute really hinges on whether Filova is *justified* in its intervention. Filova has based its right to assist YLSA on the Yttics' right of self-determination, but this contention is clearly fraught with three fallacies.

The first fallacy is that the Yttics themselves have not endorsed YLSA as their political representative. There is nothing to indicate that the Yttics are oppressed and want a separate state. More importantly, there is nothing to indicate that the Yttics support YLSA and its extremist tactics. Only two minor grouses about paid leave on religious holidays and Nicastrian being the official language have ever been made by the Yttics. Apart from these, there have been no substantiated allegations of denial of basic freedoms to any group in Ercola.

Secondly, the Yttics do not have a right of self-determination as this right today is limited to peoples under colonial or alien domination, or foreign occupation. The international community does not recognizes a right of self-determination for minorities. In this case, the Yttics are a minority group in an independent sovereign state, not a 'peoples' linked to a distinct territory seeking decolonisation. They are not under the domination of an external alien power. Neither is the Ercolan government unrepresentative or racist.

Outside these specific categories, no right of self-determination accrues. To allow the right would allow the secession of any ethnic minority, regardless of territorial integrity and international stability. This would give rise to the specter of postmodern tribalism, creating politically and economically unviable entities that would collapse international order. Thus, while claims of unfair treatment by minority

groups are rightly of concern, the solution cannot be an international right to secede in every case. It must lie in peaceful dialogue and negotiation between factions in the state, and in international understanding and cooperation.

Finally, even if the Yttics did have a right of self-determination, Filova is not entitled to intervene since the conditions for assistance under Principle 5 of the 1970 Friendly Relations Declaration have not been satisfied. There is no evidence that Ercola has taken forcible action against the Yttics. In fact, Ercola's treatment of the Yttics is completely consistent with international law.

III. Filova is obliged to extradite the YLSA prisoners.

The terms of the extradition treaty require Filova to extradite the YLSA prisoners, since Filova itself believes that they are responsible for the bombings. As such, Filova's invocation of the political offence exception perverts the very principle of political freedom which the exception was created to uphold. In the 18th century, the exception was born from the spirit of the American and French Revolutions to allow greater political expression within tyrannical regimes. The exception was never conceived to protect acts of terrorism such as those perpetrated by the YLSA prisoners.

The rise of terrorism is a modern phenomenon never intended to be protected as a legitimate form of political expression. Terrorism is simply the use of criminal acts to incite fear amongst the civilian populace. It involves socially and politically unacceptable violence aimed at innocent symbolic targets to create change. It uses fear to blackmail, and can never constitute political freedom because terrorism itself is a threat to the enjoyment of democracy and freedom.

The bombing of the Stock Exchange was an act calculated to destroy a crucial financial institution. It resulted in the mass destruction of

property and four deaths, not forgetting the thousands more it put at risk. The fact that the perpetrators are the YLSA high command claiming a political motive does not whitewash the bombing. It was clearly an act of terrorism, and terrorism can never be justified. Filova's refusal to extradite the prisoners sends a clear signal to terrorists around the world that their acts of wanton violence can go unpunished. This seriously undermines international peace and security as terrorists are *hosti humani generis*.

Therefore such acts should not be protected by the exception. Indeed, there is growing international conviction that it is necessary to restrict the breadth of the political offence exception as a means of combating terrorism. The judicial practice of many states also lend weight to this conviction, by construing the exception narrowly to promote the extradition of terrorists. The international community is realising that common criminal acts which result in death and the destruction of property cannot be justified on political grounds. In the true spirit of political freedom, the courts are now limiting the scope of the political offense exception. Filova's invocation of the political offense exception in this case was thus made in bad faith.

IV. Filova is under a duty to make restitution and pay compensation.

International law requires Filova to make reparations for its violations of international law. Filova has incurred state responsibility by breaching the international law duties of non-intervention, of returning stolen property, and of respecting the privacy of Ercolan citizens.

The principle of reparations is to wipe out all the consequences of the illegal acts. In this case, full reparation for Filova's violations entail restitution in kind by returning its copies of the ESPRI database, paying compensation for creating a new encryption code and for the direct and indirect injuries suffered by Ercola and its citizens.

Restitution in kind by returning ESPRI

Filova's continued possession of the database is a refusal to return stolen property and is legally unjustified under the international legal principle of unjust enrichment. It is also a potential threat to the peace and security of Ercola. The confidentiality of the database is of vital importance to Ercola's security, considering that Ercola faces border tensions with Salutia. This can only be redressed by the return of the database to Ercola.

Compensation for a new code

In the same light, as Filova has assisted in cracking the encryption code of the database, it is required to compensate the cost of having to create a new one to maintain the confidentiality of the information therein. It is only with such restitution and compensation that Filova can restore Ercola into the position it was in before Filova's illegal acts, when Filova had no access to Ercola's military secrets.

Compensation for direct injury to Ercola

By assisting in the cracking of the code, Filova has also undermined the effectiveness of the Ercolan armed forces. It has rendered the strengths and, more importantly, the weaknesses, of the Ercolan forces highly vulnerable to unauthorized access and usage. This is a form of recognized direct damage which is compensable at international law since it constitutes direct injury to the State.

Compensation for injury to Ercolan citizens

Filova's disclosure of the personal information of 204 Ercolan military personnel has also caused mental suffering and anguish. Such injuries are also recognized as compensable. They result from Filova's dissemination of private information, which is an unlawful act of intervention, as it was in aid of YLSA's unlawful quest of secession.

Such an act is also a breach of the right of privacy which has been

established under customary international law. Privacy is recognized as a basic human right. To have any meaning at all, such a right must be protected for every individual, regardless of nationality. Instead, Filova flagrantly chose to breach this duty to support an unlawful goal. This breach independently gives rise to Filova's obligation to compensate the 204 injured Ercolan citizens.

PLEADINGS AND AUTHORITIES

I. Filova's support of and involvement in YLSA's activities violate the duty of non-intervention in international law.

A. *The duty of non-intervention is entrenched in international law.*

The duty of non-intervention is an established principle of international law. It has been consistently upheld by the General Assembly, in the 1965 Declaration on Non-Intervention[1] and the 1970 Friendly Relations Declaration[2] . In fact, the duty of non-intervention is now "part and parcel of customary international law", as declared by this Court in the *Nicaragua* case (Merits)[3] .

The basis of non-intervention is that all states are sovereign equals and so have a right to freely decide matters within their domestic jurisdiction. Therefore, no state has a right to intervene, directly or indirectly, in the internal or external affairs of any other state[4] . This duty of non-intervention condemns "any form of interference" against the personality of the state or its political, economic or cultural elements[5] . Specifically, no state shall assist, finance or tolerate subversive activities directed towards destabilizing another state[6] .

Thus, customary international law prohibits the intervention by one

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1 UN GA Res 2131 (XX) (1965).

2 UN GA Res 2625 (XXV) (1970).

3 *Military and Paramilitary Activities in and against Nicaragua (Merits)* (Nicar. v. U.S.) 1986 I.C.J. 14 at 106.

4 *Id.*, at 108.

5 Para 1 of the 1965 Declaration on Non-Intervention, *supra* note 1; Principle 3, para 1 of the 1970 Friendly Relations Declaration, *supra* note 2.

6 Principle 3 para 2 of the 1970 Friendly Relations Declaration, *id.*; Cassese A., INTERNATIONAL LAW IN A DIVIDED WORLD 144-145 (1986).

state into the sovereign affairs of another state[7].

B. Filova has breached this duty by supporting and assisting YLSA, which seeks to subvert Ercola's political and social system.

Filova has intervened in the internal affairs of Ercola by involving itself in the activities of YLSA, an extremist group. YLSA is seeking secession for the Yttic minority from Ercola, as is apparent from its electoral platform that called for the drafting of "the constitution of a future independent Yttic republic"[8]. Subsequently, YLSA repeated this demand by calling for a "Yttic state" and "Yttic liberation"[9] in several communiqués.

Filova's involvement in YLSA's actions cannot be disputed. From its first communiqué, YLSA declared its close affiliation with Filova. It named their "comrades in Filova" as "our brothers in revolution"[10]. In fact, YLSA called Filova its "homeland" in the sixth communiqué, and boasted that its Filovan brothers "have welcomed us and promised us the help we need"[11]. Filova has never denied its affiliation; indeed, it is attempting to justify it[12].

Filova's actions evince a determination to assist YLSA to bring about changes in the political, territorial and social make-up of Ercola. For example, Filova officially endorsed YLSA as "representatives of the Yttic

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7 Jackamo, T.J., *From the Cold War to the New Multilateral World Order: The Evolution of Covert Operations and the Customary Law of Non-Intervention*, 32 V.J.I.L. 929 at 953 (1992).

8 Compromis at 4.

9 Compromis at 6 and 8.

10 Compromis at 6.

11 Compromis at 8.

12 Compromis at 11.

minority"[13] in a diplomatic statement, and encouraged its actions in that respect. Such a statement is significant as it was made in the wake of YLSA's bombing of the Stock Exchange, an act perpetrated in the name of Yttic liberation.

Filova's support of the secessionist and subversive YLSA is clearly intervention in Ercolan affairs, which is specifically prohibited. Principle 2(f) of the 1981 Declaration Against Intervention[14] proscribes a state from directly or indirectly encouraging or supporting secessionist activities within other states. This principle is supported by the pronouncement by this Court, in the *Nicaragua*, case that there is no general right of intervention in support of an opposition within another state in contemporary international law[15] .

In the *Nicaragua* case, non-forcible support given by the United States to the *contra* rebels constituted clear intervention. These acts included "financial support...intelligence and logistical support"[16] . In fact, this Court held that even mere funding amounted to intervention[17] . *A fortiori*, more intrusive acts of providing logistical support and shelter on one's territory would also breach the duty of non-intervention.

Indeed, Filova's actions went beyond diplomatic and financial support for YLSA. Filova accompanied such support with actual involvement in YLSA's subversive activities. In its first communiqué, YLSA clearly stated that it had decrypted the ESPRI code "with the help of our friends in the Filovan

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13 Compromis at 7.

14 Declaration on the Inadmissibility of Intervention and Interference, UN GA Res 36/103 (1981).

15 *Nicaragua* case, *supra* note 3, at 109.

16 Id., at 124.

17 *Id.*, at 119.

Intelligence Service"[18]. This was repeated in the sixth communiqué[19] which was traced to the Filovan Intelligence Service Center (FISC)[20]

Filovan Intelligence aid in cracking the ESPRI code enabled secret information from ESPRI to be published in the sixth communiqué. In fact, after Filova received ESPRI from YLSA, information from ESPRI was released from Filova to the parents of 200 Ercolan officers, of Nicastrian ethnicity, with pamphlets espousing Yttic independence.

Irrespective of whether FISC allowed YLSA to use its premises to send communiqués, or actively aided YLSA in decrypting the high-security ESPRI code, it can be inferred that these acts could not have been accomplished without the knowledge of the Filovan government. Such inferences are held to be proper by this Court. The principle in the *Corfu Channel* case (Merits) is that the victim State "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence."[21] This series of facts linked together leads logically to a single conclusion: Filova knew that YLSA was operating from its territory and aided its activities. Filova has not denied such involvement. In fact, Filova is seeking an order of this Court that its "involvement in" YLSA's actions can be justified[22].

C. *Filova's refusal to assist in suppressing YLSA terrorism is also an act of intervention.*

YLSA's activities are terrorist in nature as they employ violence and fear as means of promoting change. Terrorism generally encompasses criminal acts intended or calculated to promote change by creating a state

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[18] Correction 1 to Compromis.

[19] Compromis at 8.

[20] Compromis at 7.

[21] (U.K. v. Albania) 1949 I.C.J. 4 at 18.

[22] Compromis at 11.

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18 Correction 1 to Compromis.

19 Compromis at 8.

20 Compromis at 7.

21 (U.K. v. Albania) 1949 I.C.J. 4 at 18.

22 Compromis at 11.

of terror in the public[23] . The international community has expressed its unequivocal abhorrence of terrorism.

In 1985, the General Assembly adopted the Resolution Against Terrorism[24] without a vote, calling for measures to prevent terrorism which "endangers or takes innocent human lives or jeopardizes fundamental freedoms." These measures include, at para 5, the prevention of the preparation of acts directed against other states in their respective territories. Thus, there is a positive duty on countries to take "necessary steps to enhance cooperation to prevent and combat terrorism."[25] The Vienna Declaration and Programme for Action[26] adopted at the 1993 World Conference on Human Rights decried terrorism as a threat to the territorial integrity and security of states which destabilizes legitimately constituted governments.

YLSA's bomb attacks on the Ercolan Stock Exchange and train stations are terrorist acts. They took lives, endangered many more, and destroyed property on a large scale. These violent crimes were calculated to inflict fear on Ercola as a form of political blackmail.

A distinction must be made between terrorism and the legitimate struggle of peoples under colonial or foreign occupation[27] . YLSA is a terrorist group, and has never been endorsed by the Yttic people as the

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23 White J.R., TERRORISM: AN INTRODUCTION 5-8 (1991); Title 22 of the United States Code, § 2656f(d), cited in US Department of State, PATTERNS OF GLOBAL TERRORISM *1992* v (1993).

24 UN GA Res 40/61 (1985).

25 *Id.*, para 6.

26 Part 1, para 17, UN Doc. A/CONF. 157/24 (Part 1) (Oct 13, 1993).

27 Para 21 of the 1993 Bangkok Declaration, adopted by the Ministers and Representatives of Asian States, reprinted in Appendix 1, HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC 204-207 (Tang J.T.H. ed., 1995).

legitimate representative of their aspirations. YLSA's acts of violence cannot be condoned as legitimate.

Given its international obligations of non-intervention and suppression of terrorism, Filova was duty-bound in this case to declare YLSA an illegal organization and immediately cease its support. However, Filova has breached its obligations and intervened in Ercola's internal affairs by refusing to outlaw YLSA, and worse, by allowing subversive YLSA to operate from Filovan territory.

II. Filova is not justified in its intervention.

Filova has maintained that its intervention is justified as the Yttics have a right of self-determination. Filova's only claim to justification is that "YLSA's actions and Filova's involvement in them are consistent with the right of the Yttic people to seek self-determination and with the right of Filova to assist in that struggle"[28]. Filova is mistaken on several counts.

A. *YLSA does not represent the Yttics.*

Firstly, at no point did the Yttic people endorse YLSA as their political mouthpiece. There is no evidence at all of widespread support for YLSA, or any consensus as to YLSA's representation of Yttic aspirations.

B. *The Yttic minority in Ercola do not have a right of self-determination.*

i. The Yttics do not qualify as peoples who have a right to self-determination.

Filova has no right in international law to intervene because the

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[28] Compromis at 11.

Yttic minority does not have a right of self-determination. The principle of self-determination endows a peoples[29] with the right to freely determine their political status and freely pursue their economic, social and cultural development[30]. Above all, it is an entitlement to political control[31], whereby the peoples may choose to be independent or align themselves in any way.

Although the term 'peoples' is not explicitly defined, the view of the international community is that 'peoples' is to be defined on the premise of territory and not ethnicity[32]. As Prof Higgins has put it, 'peoples' refers not to minority groups but a "majority within a generally accepted political unit"[33]. This means "no more and no less than the entire population of a sovereign state"[34]. During the discussion on the 1966 Human Rights Covenants, participating states refused to recognize that minorities have any right to self-determination; the right of 'all peoples' to self-determination in Art 1(1) was viewed as one for whole peoples, not sections of them[35].

As such, the right of self-determination accrues only to colonies, territories under occupation and to those subject to institutionalized

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29 UN Charter, Arts 1(2) and 55.

30 Art 1(1), 1966 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171.

31 Thornberry P., *Self-Determination, Minorities, Human Rights: A Review of International Documents*, 34 I.C.L.Q. 867 at 880 (1989).

32 Heraclides A., THE SELF-DETERMINATION OF MINORITIES IN INTERNATIONAL POLITICS 22 (1991).

33 *Id.*, at 24.

34 Former Canadian Prime Minister Pierre Trudeau, quoted in Carey T.C., *Self-Determination in the Post-Colonial Era: The Case of Quebec*, A.S.I.L.S. Int'l L.J. 47 at 50 (1977).

35 Thornberry P., *supra* note 31.

racism, but not to minorities[36]. In this case, the Yttics in Ercola are clearly an ethnic minority. They form only 22% of the Ercolan population, scattered throughout Ercola. They do not have a link with any distinct and exclusive piece of territory. West Firland is only a province with a majority of ethnic Yttics, not a Yttic territory separate from Ercola. The Yttics are thus not a 'peoples' with a right to self-determination; they are but a minority ethnic group in an independent state.

In any case, self-determination developed as a principle to facilitate the liberation of peoples in the era of decolonisation[37]. Even postcolonial statements on the right of self-determination restrict the principle to "peoples under alien or colonial domination or foreign occupation"[38]. The Yttics do not fall within these categories. The peoples of Ercola exercised their right of self-determination when Ercola gained independence in 1960 through decolonisation. The Ercolan government does not qualify as "alien domination", which generally refers to hostile influence and domination by an *external* power.

ii. The Ercolan government is representative and non-discriminatory.

Apart from colonial or alien domination, self-determination is applicable only to peoples under racist regimes. Para 7 of Principle 5 of the 1970 Friendly Relations Declaration forbids self-determination where there is representative government. There is no evidence that the Government of Ercola is unrepresentative or racist. Ercola represents the whole people belonging to the territory without distinction as to race,

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[36] Heraclides A., *Secession, Self-Determination and Non-Intervention: In Quest of A Normative Symbiosis*, 45 J. Int'l Affairs 399 at 404-405 (1992).

[37] Para 6 of 1960 Declaration on Decolonisation, UN GA Res 1514 (XV).

[38] Para 13 of 1993 Bangkok Declaration, *supra* note 27.

creed or colour, which thus prevents the Yttics from claiming a right of self-determination under the banner of institutionalized racism.

To allow minorities *per se* the right to self-determination would mean allowing them to secede from within the existing boundaries of a sovereign independent state. This is contrary to international law as the right of self-determination is subject to the established principle of *uti possidetis*[39]. Minority rights and self-determination are not to impair "territorial integrity or political unity of sovereign and independent states"[40]. In 1961, the Security Council affirmed the principle of *uti possidetis* by assisting the government of Congo (now Zaire) to crush Katanga's attempted secession[41]. In fact, this Court held in the 1986 *Frontier Dispute* case that the principle of *uti possidetis* "has kept its place among the most important legal principles"[42], and that there is a general rule of international law to respect pre-existing international frontiers.

iii. State practice prohibits minorities from seceding under the guise of self-determination.

The right of self-determination has not been recognized by the international community as accruing to every secession-minded people anywhere to secede territorially at will from established states[43].

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39 Simpson G.J., *Judging the East Timor Dispute: Self-Determination at the International Court of Justice*, 17 Hastings Int'l & Comp L.Rev. 323 at 340 (1994).

40 1970 Friendly Relations Declaration, *supra* note 2.

41 Franck T.M., *Postmodern Tribalism and the Right to Secession*, in PEOPLE AND MINORITIES IN INTERNATIONAL LAW 3 at 9 (Brölmann C. *et al.* ed., 1993).

42 *Frontier Dispute* case (Burkina Faso v. Republic of Mali) 1986 I.C.J. 554 at 567.

43 Franck T.M., *supra* note 41, at 16; Thornberry, P., *supra* note 31, at 874.

This right would invoke the specter of infinite divisibility and lead to the proliferation of micro-states, an unstable, unthinkable and unsustainable scenario in international law[44] . States recognize that it would be too disruptive of international stability to allow self-determination within existing boundaries for minorities[45] . The maintenance of territorial *status quo* in both South America and Africa has been seen as necessary to avoid disruption which would deprive the people of gains achieved by much sacrifice[46] . Allowing a minority to separate itself from an existing state would open an era of great political instability, "with no guarantee that the resultant frontiers would represent any substantial improvement over the previous ones."[47]

To date, short of consent from the parent state, states have been united in their battle against the splintering of sovereign states by secessionist minorities claiming a right of self-determination. Indeed, the then UN Secretary-General U Thant asserted the international position unequivocally: "The UN has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State."[48]

Even today, the United Nations continues to condemn secessionist movements in the north of Cyprus and the island of Mayotte which broke away from the Comoro republic after its independence from France[49] . While the threat of postmodern tribalism looms large, few groups have actually

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[44] Heraclides A., *Secession, supra* note 36, at 408.

[45] Harris D.J., CASES AND MATERIALS ON INTERNATIONAL LAW (4th ed.) 118 (1991).

[46] *Frontier Dispute* case, *supra* note 42.

[47] Carey T.C., *supra* note 34, at 55.

[48] 7 UN Monthly Chronicle 36 (February, 1970).

[49] Franck T.M., *supra* note 41, at 9.

seceded successfully, and none with the blessings or assistance of the international community.

The Bangladesh secession, for instance, sets no precedent in international law because the people of East Pakistan formed the majority of the population on a distinct territory, separated from West Pakistan by a thousand miles[50]. The secession of Eritrea is also distinguishable because Ethiopia, the parent state, accepted the scheduling of a plebiscite under UN auspices without recourse to international law[51]. In our case, Ercola is not a consenting parent state.

Outbreaks of violence and international tension directly attributable to ethnic conflict are a recent phenomena which must be curtailed. It is clear that the solution does not lie in a unilateral claim to self-determination for all minority groups. A global call has been made for stability to states and peace to the international community to counter the specter of postmodern tribalism[52].

C. ***Even if the Yttics have a right of self-determination, Filova's intervention is still not justified as Ercola has not used 'forcible action' on the Yttics.***

Principle 5 of the 1970 Friendly Relations Declaration requires that the Yttic minority be subject to 'forcible action' by Ercola before they are entitled to receive support from other states.

Thus, even if the Yttics did have a right to self-determination, no forcible action was ever taken at any time by Ercola against the Yttics.

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50 Nanda, V.P., *Self-Determination in International Law: The Tragic Tale of Two Cities*, 66 Am. J. Int'l L. 321 at 336 (1972).

51 Franck T.M., *supra* note 41, at 16.

52 Alfredsson, G. and de Zayas A., *Minority Rights: Protection by the United Nations*, 14 Human Rights L.J. 1 (1993)

The Ercolan government only invoked constitutional emergency powers to declare YLSA "an illegal militia" after bloody street demonstrations broke out in West Firland[53]. This was necessary to maintain peace and order. No other action, and certainly no physical force, was used. Also, YLSA does not represent the Yttics. So any action taken against YLSA cannot be equated to action against the Yttics. As such, the right of Filova to provide assistance does not and cannot arise.

D. The Yttics' minority rights in international law do not include self-determination.

i Minority rights do not encompass the right of self-determination.

Persons belonging to ethnic, religious and linguistic minorities have certain rights in international law. These rights pertain specifically to their unique features as a minority, and protect their right to enjoy their own culture, practise their own religion, use their own language and participate in their country's political process. The international standards of minority rights are fairly well-advanced. Nevertheless, they explicitly exclude the right of self-determination[54]. It is thus clear that minority rights and self-determination are mutually exclusive.

More importantly, minority rights cannot develop "in violation of national law and contrary to international standards"[55]. The international community recognizes that minority rights cannot undermine the "sovereign equality, territorial integrity and political independence of states"[56]. It

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53 Compromis at 5.

54 Art 27, 1966 International Covenant on Civil and Political Rights, *supra* note 30; 1992 Declaration on Minority Rights, UN GA Res 47/135 (1992).

55 Art 4(2) of the 1992 Declaration on Minority Rights, *id.*.

56 Art 8(4) of the 1992 Declaration on Minority Rights, *id.*; UN Human Rights Committee, *General Comment No. 23 (50) on Art 27/Minority Rights*, 15 Human Rights L.J. 234 at 235 (1994).

is therefore appropriate for the Ercolan Constitution to balance the rights of its minorities against the rights of other groups and the stability of the state as a whole.

ii. Ercola's treatment of Yttic minority rights is consistent with international law.

Ercola has respected and upheld the Yttics' minority rights by safeguarding their rights of religion, speech and association in the Ercolan Constitution[57]. Indeed, Ercola has not denied the Yttics their political rights. They, like any other Ercolan citizens, have the right to vote and form their own political parties. The only restriction on political participation in Ercola is that separatist ideology is outlawed by Art 19 of the Ercolan Constitution[58]. This is not targetted at the Yttics in particular, but at *any* separatist ideology by *any* group. This restriction is consistent with state practice. The preamble to the Australian Constitution describes the Australian union as "indissoluble"[59]. And in America, the US Supreme Court has declared that "the Constitution, in all its provisions, looks to an indestructible union."[60]

The two minor grouses that the Yttics do have are that they do not get paid leave on their religious holidays and that Nicastrian is the official language. These do not amount to repression. In particular, the Clarification to the Compromis[61] has stated that no basic freedoms have been denied to any group of people within Ercola. There must be give-

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[57] Compromis at 1.

[58] Compromis at 4.

[59] Hogg P.W., CONSTITUTIONAL LAW OF CANADA (2nd Ed.) 102 (1985).

[60] *Texas* v. *White* (1868) 74 US (7 Wall.) 700 at 725.

[61] Clarification 6 to Compromis.

and-take in any multi-ethnic society. Ercola's language policy is reasonable in view of administrative expediency and national unity; the Yttics, in fact, are free to teach and speak their language. This is consistent with state practice. In many states, one language is accorded official status, even though there are peopl of other ethnic descent. For example, Malay is the national and sole official language of Malaysia, although the Chinese form about a third of the population[62].

Neither is there an international law obligation for states to grant public holiday status to *all* religious holidays. In the United States, where Christianity is the majority religion, several religious holidays including Good Friday are not public holidays. If a public holiday has to be declared for the religious festivals of *each* ethnic group represented in a state, most countries may never see a working day! Surely the essence of the freedom to worship does not lie in receiving paid leave, but in the fact that the Yttics can practise, teach and propagate their beliefs without persecution.

III. Filova has an obligation to extradite the YLSA terrorists under its extradition treaty with Ercola.

A. *The political offense exception was never conceived to protect acts of terrorism.*

Applying the political offense exception to acts of terrorism, to prevent the extradition of the YLSA offenders, perverts the noble objectives behind the exception.

Extradition was first employed for the surrender of political offenders[63]. It was only during the fervor of the French and American

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[62] Mauzy D.K., *Language and Language Policy in Malaysia*, in LANGUAGE POLICY AND NATIONAL UNITY, 151 at 156-162 (Beer W.R. *et al.* ed., 1985).

[63] Bassiouni M.C., INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 383 (1987).

revolutions that the political offense exception was developed, reflecting the values the new democracies placed on political freedom[64] .

The political offense exception thus seeks to protect the right to resort to political activism to foster political change. It is rooted in the concept that citizens possess the right to rebel against tyrannical regimes, a protective response to the liberal revolts against authoritarian regimes in the 19th century[65] .

International political and social order has since undergone dramatic change. A hundred years ago, violent insurrection served frequently as the only method registering dissent as the individual had few, if any, means to influence government decisions[66] . Today, most states have developed sophisticated political processes by which citizens can participate in government. Ercolan citizens, including Yttics, for example, have the right to participate in the political process. Terrorism is unjustifiable as a form of political expression, given other means available in this day and age; it is simply the perpetration of violent crimes to blackmail legitimately constituted governments.

The context in which the political offense exception initially developed has changed, and it must be interpreted in light of these changes. Terrorism forms one of the greatest threats to human life, democracy and world peace today[67] . By allowing the political offense

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[64] Sapiro M.E., *Extradition in an Era of Terrorism: The Need to Abolish the Political Offense Exception*, 61 N.Y.U.L.R. 654 at 661 (1986).

[65] *Id.*

[66] Taulbee J.L., *Terrorism: The Right to Rebel and Political Asylum*, in TERRORISM AND POLITICAL VIOLENCE: LIMITS AND POSSIBILITIES OF LEGAL CONTROL 335 at 339 (Han H.H. ed. 1993).

[67] Part I, para 17 of the 1993 Vienna Declaration and Programme for Action, *supra* note 26.

exception to become a loophole for terrorists to escape unpunished, international commitment to fight terrorism is undermined[68]. This is because *any* terrorist act can easily be founded on some political objective. Thus, clothing perpetrators of violent crimes, such as the YLSA offenders, with the protection of the political offense exception only emboldens other political agitators to employ the same tactics.

The political offense doctrine, born to reflect the belief in freedom, should not be permitted to conveniently serve the interests of those seeking to impose undemocratic views through force[69]. Terrorism promotes the use of force as a means to effect change, and therefore cannot and must not be protected by the political offense exception.

B. State practice rejects the application of the political offense exception to terrorism.

Today, there is growing international conviction that it is necessary to restrict the breadth of the political offense exception as a means of combating terrorism. The 1976 European Convention on the Suppression of Terrorism[70] and the 1981 Inter-American Convention on Extradition[71] call for enhancing the prosecution of terrorists and depriving them of sanctuary[72]. More recently, para 8 of the 1985 UN Declaration Against Terrorism urged all members to cooperate in extraditing terrorists. At the Tokyo Economic Summit Conference of May 1986, the leaders of the seven major industrial democracies called for improved extradition procedures for

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[68] Sapiro M.E., *supra* note 64, at 702.

[69] Vetter H.J. and Perlstein G.R., PERSPECTIVES ON TERRORISM 193-194 (1991).

[70] Reprinted in 15 I.L.M. 1272 (1976).

[71] O.A.S. Document OEA/Ser.A/36 (SEPF), reprinted in 20 I.L.M. 723 (1981).

[72] Schlagheck D.M., INTERNATIONAL TERRORISM: AN INTRODUCTION TO CONCEPTS AND ACTORS 127-128 (1988).

terrorists[73] .

State practice as evidenced by domestic courts also supports a refusal to apply the political offense exception to terrorists. In the United States, *Eains* v. *Wilkes*[74] , for example, established that indiscriminate bombing of a civilian population is not recognized as a protected political act. Also, the case of *In re Extradition of Atta*[75] states that not all politically motivated acts, particularly those of a violent nature, should be protected by the political offense exception.

The facts of the present case also fail the tests developed by courts to interpret the political offense exception. The political incidence test developed in *In re Castioni*[76] focuses on whether there was a political uprising when the act was committed, and whether the offense committed was incidental to it. In *In re Extradition of Atta*[77], it was held that the acts of violence at the time of the attack on a passenger bus were of neither sufficient frequency nor magnitude to constitute an uprising.

Ercola was not in a state of violent political turmoil at the time of the Stock Exchange bombing. The bombing, in fact, occurred six months *after* the sporadic street demonstrations in only one province, West Firland. There was no mass agitation for change, or widespread public dissatisfaction with the present political system when the bombing occurred. Therefore the common crimes of murder and mass destruction do not qualify for protection as being incidental to a mass political revolt.

Neither are the YLSA offenders' acts proportionate to their purpose

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[73] Sapiro M.E., *supra* note 64, at 680.

[74] 641 F.2d 504 at 521 (7th Cir 1981), *cert denied* 102 S.Ct. 390 (1981).

[75] 706 F. Supp. 1032 at 1042-50 (E.D.N.Y. 1989).

[76] [1891] 1 Q.B. 149.

[77] *Supra* note 75, at 1049.

or the only effective means left to attain their political object. Their acts of violence were purely symbolic. This test was applied by the Federal Tribunal of Switzerland in the 1961 *Ktir* case[78] . By no stretch of the imagination could YLSA's threat to and taking of civilian lives, and destruction of a civilian target qualify as an effective means of obtaining Yttic secession.

Other courts have also adopted a narrower view of the political offense exception. The Chilean Supreme Court, in *In the Matter of Extradition of Hector Jose Campora*[79] , stated that an ordinary crime is not converted into a political one solely because of its ultimate objective. And in the 1976 extradition of Rolf Pohle[80] , the Supreme Court of Greece stated that a political crime covered only actions aimed directly at overthrowing the existing system, not all those prompted by political motives. YLSA's crimes do note qualify as political acts coming under the exception simply because they can be traced to a political objective. YLSA cannot justify its crimes against humanity under a political guise simply because it claims to uphold Yttic rights.

C. Filova has invoked the political offense exception in bad faith.

The views and practices of nations with regard to political offenders today must be seen in light of the modern threat of international terrorism. The political offense exception is being interpreted strictly, in accordance with the international obligation to suppress terrorism.

As such, Filova's invocation of the exception to shield the YLSA

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78 34 I.L.R. 143

79 Bassiouni M.C., *supra* note 63, at 400.

80 Cited in Lillich R.B. and Paxman J.M., *State Responsibility for Injuries to Aliens Occasioned by Terrorist Activities*, 26 Am.U.L.R. 217 at 302-303 (1977).

bombers goes against state practice and international principles of cooperation and peace. Indeed, it was made in bad faith.

Filova may have the right to interpret the scope of the political offense exception, but must exercise it in good faith. This principle was unequivocally affirmed by Sir Hersh Lauterpacht in the *Norwegian Loans* case where he said that, "the obligation to act in accordance with good faith, being a general principle of law, is also part of international law"[81]. A state is required to exercise its right in good faith with a sense of responsibility, and not in such a manner as to constitute an abuse of it[82].

IV. Filova's violations of international law invoke a duty to make restitution in kind and compensation in costs.

A. *Filova must make reparation to Ercola for violating the international law duty of non-intervention.*

The PCIJ stated in the *Chorzów Factory* Case (Indemnity) (Jurisdiction) that "It is a principle of international law that the breach of an engagement involves an obligation to make reparations in an adequate form."[83]. Art 6(1), Part II of the ILC's Draft Articles on State Responsibility (hereafter ILC Draft Articles) entitles the injured state to "full reparation in the form of restitution in kind, compensation . . . either singly or in combination."[84] This accords with the principle, in the *Chorzów Factory* case (Indemnity) (Merits), that "reparation must, as far as possible, wipe out all the consequences of the illegal act".[85]

In this case, Filova's acts of intervention have caused injury to

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81 *Case of Certain Norwegian Loans* (France v. Norway) 1957 I.C.J. 9 at 53.

82 Fitzmaurice G., 1 THE LAW AND PROCEDURE OF THE INTERNATIONAL COURT OF JUSTICE 12 (1986).

83 (Germany v. Poland) 1927 P.C.I.J. Series A No 9 at 21.

84 1993 Y.B.I.L.C. Vol II Part 2, A/CN.4/SER.A/1993/Add.1(Part 2) at 54.

85 (Germany v. Poland) 1928 P.C.I.J. Series A No 17 at 47.

Ercola and its citizens. As such, Filova must make full reparation, including restitution in kind and compensation in costs.

B. *Under international law, Filova must return the ESPRI database as well as compensate the cost of a new encryption code.*

i. Restitution in kind is an appropriate remedy for Filova's unlawful possession of the ESPRI database.

Art 7, Part II of the ILC's Draft Articles provides that the injured state is entitled to obtain restitution in kind to re-establish "the situation that existed before the wrongful act was committed"[86]. The ILC also noted that restitution in kind is reparation *par excellence*[87].

YLSA offenders gave the stolen ESPRI database to Filova, who assisted in cracking the ESPRI code and in disseminating the confidential information therein. To prevent further breaches, Filova must return the ESPRI database to the Ercolan government. This would restore Ercola to its position before Filova's breaches, when Filova had no access to Ercola's military secrets.

ii. In any case, Filova has breached the international obligation to return stolen property.

The doctrine of unjust enrichment is a principle of international law as practically every system of law has developed it to great importance[88].

§1 of the American Restatement of the Law of Restitution (1936) asserts that "a person who has been unjustly enriched at the expense of another is required to make restitution to the other". In common law, there is the tort of conversion[89], while recently, the English House of

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[86] 1993 Y.B.I.L.C., *supra* note 84, at 54.

[87] *Id.*, at 62-63.

[88] Friedmann W., *The Principle of Unjust Enrichment in English Law*, 16 Can Bar Rev 243 and 365, at 244 (1938).

[89] HALSBURY'S LAWS OF ENGLAND (4th Ed) vol 45, para 1422-30 (L Hailsham of St. Marylebone ed. 1985).

Lords has accepted the principle of unjust enrichment in *Lipkin Gorman* v *Karpnale Ltd*[90] . Civil law systems also recognize a right to restitution on the basis of unjust enrichment[91] . Such a right is espoused in, for example, Art 6-212 of the Dutch Civil Code, Art 2041 of the Italian Civil Code of 1942 and para 812(1) of the German Bûgerliches Gesetzbuch (BGB)[92] .

Thus, the principle of unjust enrichment, embraced by the civilized nations of the world, has entered into the corpus of international law under Art 38(1)(c) of the Statute of this Court. Indeed, this principle has been applied by the Anglo-German Mixed Arbitrary Tribunal as a principle of international law[93] .

The facts of this case strongly support the application of the principle of unjust enrichment. Filova has received a benefit, since its unlawful possession of ESPRI gives it access to intimate knowledge of Ercola's military capability. Such a benefit was obtained at Ercola's expense, since Ercola's security and very existence has been rendered vulnerable. It is unjust for Filova to retain the benefit, as it was obtained through Filova's unlawful assistance to YLSA.

Filova has been unjustly enriched by its possession of ESPRI, which it knows to be stolen. As such, Filova's refusal to return the database as requested by Ercola on 10 November 1993[94] is in itself a breach of international law. Filova must therefore be required to disgorge its unjust benefit by returning ESPRI.

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90 [1991] 3 W.L.R. 10.

91 Dickson B., *Unjust Enrichment Claims: A Comparative Overview*, 54 C.L.J. 100 at 112 (1995).

92 *Id.*, at 117-120.

93 Friedmann W., *supra* note 88, at 244.

94 Compromis at 10.

iii. Compensation in costs is an appropriate remedy, as the need to create a new encryption code flows directly from Filova's unlawful act.

Ercola also requires compensation for the cost of creating a new encryption code. Filova's unauthorized access and usage of the ESPRI database has rendered the information therein vulnerable to abuse. A new encryption code is essential, given that preserving confidentiality is imperative to Ercola's security. As such, mere restitution of the ESPRI in itself would not amount to full reparation for Filova's injury.

Compensation for such injury is recoverable, as made clear by Art 8(1), Part II of the ILC's Draft Articles. It provides for "compensation . . . to the extent that the damage is not made good by restitution in kind."[95] Also, Filova's act is the exclusive cause of this injury, and "Damages must be fully paid in respect of injuries for which the wrongful act is the exclusive cause."[96]

C. Filova must also compensate Ercola for the direct and indirect injuries it has caused to Ercola and its citizens.

i. Filova's intervention has undermined Ercola's security.

The cracking of the ESPRI code and dissemination of information therein have impaired the integrity and effectiveness of one of the most important instruments of State, Ercola's defense forces, as well as damaged its morale. Ercola has constant border tensions with the neighboring State of Salutia[97], and the cracking of the ESPRI code has put Ercola in a vulnerable and dangerous position. Such direct injury must be compensated.

The ILC recognized that compensation is the appropriate remedy for damage caused, *inter alia*, to a State's organization and its military

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[95] Y.B.I.L.C, *supra* note 84, at 54.

[96] *Id.*, at 70.

[97] Compromis at 1.

installations[98] . The tribunal in the *Rainbow Warrior* case stated that unlawful acts affecting the honor or dignity of a state entitle the victim state to receive adequate monetary compensation, even if those acts have not resulted in pecuniary or material loss[99] .

ii. The Ercolan citizens' mental suffering flows directly from Filova's unlawful dissemination of confidential information.

Filova's unlawful disclosure of confidential personal information from the ESPRI database has caused acute embarrassment and mental suffering to the individuals concerned. These personal injuries flow directly from Filova's breach and must be compensated adequately.

The US-German Mixed Claims Commission in the 1923 *Lusitania* case held that international law provides compensation for mental suffering, injury to one's feelings, humiliation and shame, even though such injuries are difficult to measure[100] . Indeed, international tribunals have always granted pecuniary compensation whenever necessary for moral injuries to private parties, which are considered indirect damage to the state[101] .

iii. Filova has also breached the Ercolan citizens' right of privacy.

The Ercolan citizens' right of privacy has been flagrantly breached by Filova. The right to privacy is clearly and unambiguously established in the international law of human rights[102] . This is a basic human right, which is universally recognized and owed by every State to every

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98 1993 Y.B.I.L.C., *supra* note 84, at 71-72.

99 (New Zealand v. France Arbitration) 82 I.L.R. 500 at 575 (1990).

100 (U.K. v. Germany) Decision of 1 November 1923, UNRIAA vol VII (Sales No 1956 v.5) at 40.

101 1993 Y.B.I.L.C., *supra* note 84, at 71.

102 Michael J., PRIVACY AND HUMAN RIGHTS 1 (1994).

individual[103] . As such, Filova's abuse of confidential information must be remedied by monetary compensation.

Art 12 of the 1948 Universal Declaration of Human Rights[104] provides that "No one shall be subject to arbitrary interference with his privacy". The 1948 Declaration provides an authoritative guide to the interpretation of the provisions of the UN Charter and is regarded as part of the law of the United Nations[105] . Thus the human rights which the UN Charter requires states to protect in Arts 55 and 56 include the right of privacy.

In addition, numerous states have recognized both the importance and the legal nature of a right to privacy. The Nordic and Scandinavian states, as well as Japan, for example, have enacted municipal legislation protecting the privacy of information provided by their nationals[106] .

As such, Filova was obligated to respect the right of privacy of Ercolan citizens when it received the ESPRI database. This right protects every individual on every occasion and in every context in which he requires secrecy, even from close friends and family[107] . Instead, Filova unlawfully disclosed the confidential, personal information of 200 individuals. This is a privacy violation, as stated in the 1967 Nordic Conference in Stockholm[108] .

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103 OPPENHEIM'S INTERNATIONAL LAW (9th Ed.), § 433 at 988-993 (1992); Part I, paras 1 and 5 of 1993 Vienna Declaration and Programme for Action, *supra* note 26; para 1 of 1993 Bangkok Declaration, *supra* note 27.

104 UN GA Res 217A (III) (1948).

105 Brownlie I., PRINCIPLES OF PUBLIC INTERNATIONAL LAW (4th Ed) at 570-571 (1990).

106 Michael J., *supra* note 102, at 13-17, and 53 *ff*..

107 Volio F., *Legal Personality, Privacy, and the Family*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 185 at 195 (Henkin L. ed. 1981).

108 *Id.*, at 193.

Filova's breach of the right of privacy has caused mental suffering and anguish to Ercolan citizens, injuries which are compensable. A 1976 report by the UN Secretary General, at para 177(3)(f) provides that a person should be allowed to recover damages for non-pecuniary injury where acts have violated his privacy[109]. Therefore, Filova's violation of the Ercolan citizens' right of privacy must be remedied by monetary compensation.

V. Prayer for Relief

Considering that Filova has breached the duty of non-intervention by encouraging and supporting YLSA terrorist activities which have caused harm to Ercola and Ercolan citizens;

Considering that Filova has no justification for its intervention as the Yttics in Ercola have no right of self-determination;

Considering that the political offense exception does not apply in this case; and

Taking into Account that Filova has an obligation to make reparation to Ercola for its breaches of international law;

Ercola respectfully prays that this Court:

1) ***declare*** that Filova's intervention and refusal to declare YLSA illegal are violations of international law;
2) ***declare*** that Filova is required to immediately extradite the YLSA prisoners to Ercola; and
3) ***declare*** that Filova is required to make restitution in kind by delivering all copies of ESPRI to Ercola, and to compensate the cost of a new encryption code and injuries suffered by Ercola and its citizens.

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[109] Michael J., *supra* note 102, at 25.