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LIST OF ABBREVIATIONS

A.D.	Annual Digest of Public International Law Cases
Add.	Addendum
Adv.op.	Advisory opinion
A.D.I.	Annuaire de l'Institut de Droit International de la Haye
A.J.I.L.	American Journal of International Law
A.I.L.C.	American International Law Cases
A.L.I.	American Law Institute
Alb.	Albania
Apr.	April
Art[s].	Article[s]
A.V.R.	Archiv des Völkerrechts
Aug.	August
Austl.	Australia
B.C.I.C.L.R.	Boston College International and Comparative Law Review
Belg.	Belgium
B.I.L.C.	British International Law Cases
B.Y.I.L.	British Yearbook of International Law
Camb.	Cambodia
Can.	Canada
CCPR	International Covenant on Civil and Political Rights
CESCR	International Covenant on Economic, Social and Cultural Rights
cf.	compare
C.J.T.L.	Columbia Journal of Transnational Law
COE	Council of Europe
CSCE	Conference on Security and Cooperation in Europe
C.T.S.	Consolidated Treaty Series
C.Y.I.L.	Canadian Yearbook of International Law
Czech.	Czechoslovakia
Dec.	December
Den.	Denmark
D.I.L.	Digest of International Law

diss.op.	dissenting opinion
Doc.	Document[s]
E.C.H.R.	European Court of Human Rights
ed.	edition editor
eds.	editors
e.g.	*exemplum gratia*
E.P.I.L.	Encyclopedia of Public International Law
et al.	*et alia* *et alii*
ESPRI	Ercolan Standard Personnel Record Index
E.T.S.	European Treaty Series
F.A.	Foreign Affairs
Feb.	February
Fed.	Federal
FISC	Filovan Intelligence Service Center
fn.	footnote
Fr.	France
FRD	Friendly Relations Declaration
F.R.G.	Federal Republic of Germany
FS	Festschrift
F.Supp.	Federal Supplement
GA-Res.	General Assembly Resolution
GAOR	General Assembly Official Records
G.B.	Great Britain
Ger.	Germany German
Ger.F.Sup.Ct.	German Federal Supreme Court
G.J.I.C.L.	Georgia Journal of International Law and Comparative Law
G.Y.I.L.	German Yearbook of International Law
H.R.L.J.	Human Rights Law Journal
Hung.	Hungary
i.a.	*inter alia*
I.A.	International Affairs

I.C.J.	International Court of Justice
I.C.L.Q.	International and Comparative Law Quarterly
id.	*ibidem*
i.e.	*id est*
I.L.C.	International Law Commission
I.L.M.	International Legal Materials
I.L.R.	International Law Reports
ind.op.	individual opinion
In.J.I.L.	Indian Journal of International Law
I.O.	International Organizations
It.	Italy
It.Y.I.L.	Italian Yearbook of International Law
I.Y.H.R.	Israel Yearbook of Human Rights
J.	Judge
Jan.	January
J.H.R.	Journal of Human Rights
J.I.A.	Journal of International Affairs
J.I.L.P.	Journal of International Law and Policy
Judgm.	Judgment
Mag.	Magistrate
Mar.	March
Mex.	Mexico
Mich.L.R.	Michigan Law Review
N.D.Cal.	Northern District California
Neth.	The Netherlands
Nicar.	Nicaragua
N.I.L.R.	Netherlands International Law Review
No.	Number
Nov.	November
N.Q.H.R.	Netherlands Quarterly of Human Rights
N.Z.W.R.	Neue Zeitschrift für Wehrrecht
Oct.	October
O.E.C.D.	Organization for Economic Cooperation and Development
op.	opinion

para[s].	paragraph[s]
P.C.I.J.	Permanent Court of International Justice
Pol.	Poland Polish
Pol.Sup.Ct.	Polish Supreme Court
Port.	Portugal
prel.obj.	preliminary objections
pt[s].	part[s]
Q.B.	Queen's Bench
R.d.C.	Recueil des Cours de l'Académie de Droit International
R.D.I.	Revue de Droit International des Sciences diplomatiques et politiques
R.D.H.	Revue de Droits de l'Homme
repr.	reprinted
Res.	Resolution
Rev.	Review
R.G.D.I.P.	Revue Générale de Droit International Public
R.I.A.A.	Reports of International Arbitral Awards
s[s]	[sub]sequent
SALT	Strategic Arms Limitations Treaty
SAARC	South Asian Association for Regional Cooperation
S.D.Cal.	Southern District California
S.D.N.Y.	Southern District New York
Sec.	Section
sep.op.	separate opinion
Sept.	September
Ser.	Series
St.J.I.L.	Stanford Journal of International Law
Supp.	Supplement
Sw.	Switzerland Swiss
Telecom.Pol.	Telecommunications Policy
Thail.	Thailand
Turk.	Turkey

U.K.	United Kingdom
U.N.	United Nations
U.N.H.R.C.	United Nations Human Rights Committee
U.N.T.S.	United Nations Treaty Series
U.S.[A.]	United States [of America]
v.	*versus*
VCLT	Vienna Convention on the Law of Treaties
Venez.	Venezuela
V.J.I.L.	Virginia Journal of International Law
V.L.R.	Virginia Law Review
Vol.	Volume
Wis.I.L.J.	Wisconsin International Law Journal
W.V.R.	Wörterbuch des Völkerrechts
Y.I.L.C.	Yearbook of the International Law Commission
Y.L.S.A.	Yttic Liberation Solidarity Association
Yugo.	Yugoslavia
Z.a.ö.R.V.	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

JURISDICTION

The Government of Ercola and the Government of Filova have agreed to submit their dispute concerning the protection of The Military Personnel Database to the International Court of Justice pursuant to Article 36, para. 1 of the Statute of the Court. The jurisdiction of the Court has not been qualified or contested. There is no dispute as to the jurisdiction of the Court.

STATEMENT OF RELEVANT FACTS

Ercola is a former colony which has become independent in 1960. A civil war between the dominating Nicastrian and the numerically inferior Yttic ethnic group, representing 72% and 22% of the total population, was followed by systematic hostility.

The Yttics have a distinct culture, religion and language compared to the Nicastrians. They form a majority in several Ercolan provinces, including West Firland. Since independence, there have been regular claims of Yttics concerning religious intolerance. Yttics claimed that their freedom to worship according to their traditions has not been respected. For example Yttic religious holidays are not observed because public and most Nicastrian private employers refuse paid leave for such occasions. Even more frequently Yttics protested against provisions of the Ercolan statutory law that declare the Nicastrian language to be "the official language of Ercola" and moreover prohibit conduct of public business in any foreign language, including Yttic.

In February, 1993, the Yttic Liberation Solidarity Association (YLSA) submitted for the first time a slate of candidates for by-elections in the Province of West Firland, which is the Ercolan province with the highest concentration of Yttic inhabitants. YLSA's electoral platform *i.a.* called for the repeal of Ercola's official language law and the creation of a national Department of Yttic Affairs. However, the Ercolan National Electoral Commission found YLSA ineligible to field candidates for public offices and its candidates were rejected on grounds of their political aims. An unsuccessful judicial challenge against this decision was followed by street demonstrations in West Firland. Moreover, on April 25, 1993, invoking emergency powers, the President of Ercola declared YLSA illegal. This

declaration made membership to YLSA a punishable offense and permitted the police and military to seize property belonging to YLSA members without prior judicial authorization. The crackdown on YLSA was unwarranted as two major human rights organizations observed. Filova, whose population is of the same ethnic, linguistic and religious origin as the Yttics, sought an explanation concerning the rejection of YLSA's candidates and recalled its Ambassador to Filova for one month.

On August 20, 1993, during the traditional summer holidays when only few people were at work in the urban areas, there was an explosion outside the Stock Exchange in the capital city of Ercola. The explosion caused damage to the Stock Exchange and surrounding buildings. Several homeless people, who had established unnoticed makeshift in the Stock Exchange, lost their lives.

In the afternoon of the same day the Amalgamated Press in Ercola received a message containing the "YLSA Operational Communiqué No. 1" which was immediately handed over to the municipal police. In this Communiqué, YLSA called for democracy and justice, regretted the course of events in their struggle for freedom from the Nicastrian oppression and admitted that they were in possession of secrets of the Ercolan military. After having received a copy of the Communiqué the Filovan Ambassador prepared a diplomatic note, in which the Filovan Government declared that it abhorred the destruction caused by the explosion and that it did not condone violence in any form. At the same time the Filovan Government reminded the Ercolan Foreign Ministry of the legitimate aspirations of the Yttics to organize political parties of their own. Furthermore, Filova offered shelter and support to the Yttics and declared to have authorized FISC to support the Yttics' struggle for self-determination. Filova also encouraged the

representatives of the Yttics to defend their right to self-determination. The delivery of the diplomatic note was accepted by Ercola without comment or reaction.

During September and October, four additional "Communiqués" were received by Ercolan local police stations, containing early-warnings that explosions would take place at train stations. These warnings enabled the authorities to evacuate the stations. Although on each occasion the location of the explosive was exactly predicted, the first incendiary device detonated while being defused by a police bomb expert. This accident caused the life of four police officers. The second device resulted in minor property damage, the third was neutralized and the fourth turned out to be a hoax.

On November 4, the Amalgamated Press received "Communiqué No.6" which again was promptly delivered to the police as well as to the Foreign Ministry. The message was traced to a number of the Filovan Intelligence Service Center (FISC). In this communiqué YLSA criticized the Electoral Commission and claimed that the members of parliament elected in West Firland were not representative. It hence demanded new elections for a "free and independent government" and called for the right to vote for the legitimate aspirations of the Yttic people. YLSA affirmed that it had no intent at all to harm individuals and that the only decoded copy of the ESPRI database and encryption code will be delivered to Filova. The message included the personal data of four members of the Ercolan military contained in the ESPRI database. The ESPRI database is the collection of Standard Form 1812 files, containing personal data collected by the Ercolan military. This database was installed for the purpose of profiling and tracking every member of its forces.

On November 9, 1993, four Yttics who confessed to be responsible for manufacturing the bombs used at the Ercolan Stock Exchange handed over the ESPRI database and encryption code. The perpetrators were detained and charged for firearms offenses after unregistered weapons had been found. They claimed to be the "high command" of YLSA and that their actions were justified as "patriotic necessity".

On November 11, 1993, in response to the Ercolan demarche of November 10, 1993, the Filovan Foreign Minister refused to declare YLSA an illegal organization. The Government of Filova declared that a political organization cannot be illegal by virtue of the content of its speech alone or because of acts of revolution perpetrated by individuals. Furthermore it was stated that the four apprehended persons will be tried for the accused crimes in Filova and are not extraditable on grounds of the political offense exception set out in the extradition treaty between Filova and Ercola. Filova considered itself under no obligation to hand over the ESPRI database or materials requested by Ercola, as they have not been obtained in violation of international law. Finally, in Filova's opinion, there was no need to cooperate with agencies of the Ercolan Government with regard to the database.

Meanwhile, approximately 200 parents of Ercolan military officers have received packages, enclosing Standard Form 1812 and a political pamphlet espousing Yttics struggle for independence. They were allegedly sent from an address previously used by FISC.

Both Ercola and Filova are members of the United Nations and parties to the Vienna Convention on the Law of Treaties. Filova is a party to the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights. Ercola signed both Conventions in 1986, but has not yet

ratified them. There is an extradition treaty in force between Ercola and Filova ratified 1963, which has not been modified since that time, including both a double criminality rule and a standard political offense exception. The judicial systems of both countries provide for trial and appellate courts and for discretionary review of appellate decisions. Their courts are open to citizens of other states.

On May 10, 1995, the parties signed a compromis *ad hoc* to submit their dispute to the International Court of Justice.

QUESTIONS PRESENTED

Filova asks the Court

1. whether Ercola is estopped from claiming that Filova's involvement in YLSA's activities before Nov. 10, 1993, is illegal;
2. whether the Yttic people has the right to seek self-determination;
3. whether YLSA's actions and Filova's involvement in them are consistent with the right of the Yttic people to struggle for self-determination;
4. whether Filova's involvement in YLSA's activities is contrary to the principle of nonintervention;
5. whether Filova is under an obligation of customary international law to declare YLSA illegal;
6. whether Ercola's treatment of its Yttic minority violates binding international legal norms;
7. whether Filova is obliged to extradite those who confessed to the stock exchange bombing, and their accomplices;
8. whether any applicable rule of international law provides for a right to damages for invasion of privacy;
9. whether Ercolan citizens have been injured by Filova;
10. whether Filova is obliged to pay damages to Ercolan citizens; and
11. whether Filova is obliged to deliver the ESPRI database and code to Ercola or to pay compensation.

SUMMARY OF ARGUMENTS

Ercola is estopped from claiming that Filova has intervened, because it did not react to the diplomatic note.

The Yttics in Ercola are a people and have the right to self-determination under customary international law. They are oppressed by Ercola, which is possessed of a government not representing the whole people belonging to its territory and therefore the Yttics even have a right to secession.

YLSA is a liberation movement representing the Yttic people in their struggle for self-determination. After YLSA has exhausted all political remedies it is legitimized to promote their people's cause by any means which are in compliance with humanitarian standards.

Self-determination necessarily forms part of *international* law and thus is not a matter of internal affairs of a state in which intervention is prohibited. In the alternative, Filova's involvement in YLSA's struggle for Yttics right to self-determination is below the threshold of illegal intervention. Therefore, Filova's actions are in accordance with international law.

Acts attributable to liberation movements do not constitute terrorism. If there was a customary obligation to combat terrorism it would only concern *international* terrorism. However, the violent acts were committed by Ercolan nationals on Ercolan soil. Therefore, Filova has no obligation to declare YLSA illegal.

Based on the principle of good faith a signatory state is obliged to refrain from acts which would constitute irreversible violations of the terms of a treaty prior to ratification. As a signatory state of the CCPR Ercola has to refrain from acts which would cause irreversible violations of the rights granted to minorities in Art. 27

of the Covenant. In addition, the right of a minority to preserve its separate identity is also recognized under customary international law. Ercola's denial of religious and linguistic rights of the Yttics would cause irreversible loss of their separate identity as a minority. Therefore, Ercola violates both its obligation under the CCPR and under customary international law.

The extradition treaty between Filova and Ercola contains a double criminality rule and a standard political offense exception. Crimes of a political character are either purely political offenses or relatively political offenses. The acts committed in connection with the ESPRI database were of purely political character. Furthermore, disclosure of the database is no criminal offense in Filova. The bombings were committed for a political motive and formed a part of a political uprising and, hence, are of a relative political character. Finally, there are substantial reasons for believing that the apprehended Yttics will not receive a fair trial. Therefore, Filova has no obligation to extradite the apprehended Yttics on grounds of the political offense exception.

Ercola is not a party to the CCPR and, hence, cannot claim a breach of privacy under Art. 17. In addition, there is no right to privacy known under customary law. However, even if there existed such a customary right, it would not include a right to damages. Therefore, no rule of international law applicable to the present dispute provides for a right to damages for invasion of privacy.

In the alternative, no Ercolan citizens have been injured, because (1) local remedies in Filova have not been exhausted, and (2) the mere retention by definition does not cause disclosure of the data and therefore no breach of privacy of Ercolan citizens occurred.

Even if Ercolan citizens have been injured, Filova were not obliged to award damages because the interference into the private sphere of Ercolan citizens did not cause any severe suffering, but only inconvenience. In such cases, the judgment of the I.C.J. itself provides adequate satisfaction.

Finally, even if Filova violated international law, restitution is not possible because the knowledge Filova obtained in the form of the database cannot be restored. Therefore, Filova is not obliged to deliver the ESPRI database and code to Ercola.

I. FILOVA ASKS THE COURT TO DECLARE AND ORDER THAT FILOVA'S SUPPORT FOR YLSA'S ACTIVITIES AND ITS REFUSAL TO DECLARE YLSA ILLEGAL, ARE IN CONSISTENCE WITH INTERNATIONAL LAW.

A. ERCOLA IS ESTOPPED FROM CLAIMING THAT FILOVA'S INVOLVEMENT IN YLSA'S ACTIVITIES BEFORE NOV. 10, 1993 IS ILLEGAL.

Estoppel, based on the general principles of good faith and equity,[1] is applicable by virtue of Article 38, para.1(c), of the Statute of the Court. In its international relations, a state is required to be consistent in its attitude to a factual or legal situation, because the attitude gives rise to reliance and expectations among other states.[2] Estoppel by acquiescence results if a state does not protest against an act affecting it, even though the state's authorities obtained knowledge of the act and had ample opportunity to communicate complaints.[3] In this case the state is estopped from later claiming that it did not accept the legality of the act.

In its diplomatic note concerning the incident on August 20, 1993, Filova announced that it supported the Yttics' struggle for self-determination and that the Filovan Intelligence Agencies had the authority to pursue these ends. The Foreign Ministry of Ercola accepted this fact without comment or reaction. If Ercola had

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[1] Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. *v.* U.S.A.), 1984 I.C.J. 246, 305 (Judgm. of Oct. 12); *cf.* A.D.McNair, The Law of Treaties 485 (1961); B.Cheng, General Principles of Law 141 (1953); Schwarzenberger, The Fundamental Principles of International Law, 87 R.d.C. 195, 312 (1955 I).

[2] Case concerning the Temple of Preah Vihear (Camb. *v.* Thail.) [hereinafter Temple Case], 1962 I.C.J. 6, 42 (Alfaro, J., sep.op., June 15); *cf.* McGibbon, Estoppel in International Law, 7 I.C.L.Q. 468, 468 (1958).

[3] Thirlway, The Law and Procedure of the International Court of Justice 1960-1989 (Part One), 60 B.Y.I.L. 4, 38 (1989); *cf.* Temple Case, *supra* fn. 2, at 23; *id.* at 62 (Fitzmaurice, J., sep.op., June 15); Venezuelan Preferential Case, (Award of Feb. 22, 1904), 9 R.I.A.A. 103 (1959).

disagreed with Filova's assistance for YLSA, the Ercolan authorities would have had adequate time and opportunity to convey their protest. However, since Ercola did not react until Nov. 10, 1993, Filova was led to believe that Ercola did not object to Filova's support. Consequently, Ercola is now estopped from claiming that Filova's conduct before that date was illegal.

B. 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.

1. The Yttic people has the right to self-determination.

Self-determination of peoples is a fundamental principle of international law and has been enshrined in the U.N. Charter[4] and specified in several U.N. Resolutions, such as the 1970 Friendly Relations Declaration.[5] Based on this principle, a legal right to self-determination has emerged under international law,[6] which is incorporated in the U.N.-Covenants[7] and numerous international instruments[8] . The validity of this right has been repeatedly

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[4] U.N. Charter Art. 1, para. 2, Art. 55; *cf.* also Arts. 73, 76.

[5] U.N. GA-Res. 2625 (XXV) [hereinafter FRD], U.N. Doc. A/8028 (1970); see also: U.N. GA-Res. 637 A (VII), U.N. Doc. A/2361 (1952); U.N. GA-Res. 1541 (XV), U.N. Doc. A/4684 (1960).

[6] I.Brownlie, Principles of Public International Law 595s (4th ed. 1990); 1 Oppenheim's International Law [hereinafter Oppenheim] 285s (R.Jennings/A.Watts eds. 9th ed. 1992); Hannum, Rethinking Self-Determination, 34 V.J.I.L. 1, 12 (1993); A.Buchanan, Secession 48 (1991); R.Higgins, The Development of International Law through the Political Organs of the United Nations 104 (1963); M.Pomerance, Self-Determination in Law and Practice 72 (1982); Ofuatey-Kodjoe, Self-Determination, in 1 United Nation Legal Order 349, 349 (O.Schachter/C.Joyner eds. 1995).

[7] International Covenant on Civil and Political Rights [hereinafter CCPR], Dec. 19, 1966, Art. 1, 999 U.N.T.S. 171, 173 (1976); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, Art. 1, 993 U.N.T.S. 3, 5 (1976).

[8] *e.g.* CSCE Final Act Helsinki, Aug. 1, 1975, [hereinafter CSCE Final Act], principle VIII, repr. in 14 I.L.M. 1292, 1295 (1975); African Charter on Human and Peoples' Rights, Jan. 19, 1981, [hereinafter African Charter], Art. 20, repr. in 21 I.L.M. 59, 62 (1982).

confirmed by the I.C.J..[9]

The holders of the right to self-determination are all peoples and every segment of such a people in any state,[10] which constitutes a majority in a common territory, has distinct characteristics (*e.g.* common language, culture, ethnic origin) and a common consciousness and political will.[11] This will can be expressed through popular manifestations *e.g.* demonstrations and group petitions.[12]

The right to self-determination has a permanent character[13] and encompasses an internal and an external aspect.[14] Internal self-

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[9] Western Sahara, 1975 I.C.J. 12, 31ss (Adv.op. of Oct. 16); Legal Consequences for States of the continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 31ss (Adv.op. of June 21); East Timor (Port. *v.* Austl.), 1995 I.C.J. 90, 102 (Judgm. of June 30).

[10] Dinstein, Terrorism and War of Liberation: An Israeli Perspective of the Arab-Israeli Conflict, in International Terrorism and Political Crimes [hereinafter Dinstein, Terrorism] 155, 157 (M.C.Bassiouni ed. 1975); Klabbers/Lefeber, Africa: Lost between Self-Determination and *Uti Possidetis*, in Peoples and Minorities in International Law 37, 40 (C.Brölmann *et al.* eds. 1993); Krys, The Right of Peoples to Self-Determination, 63 R.D.I. 289, 302 (1985); Veiter, Recent Developments in the Field of Minority Groups' Rights, in FS Ermacora 415, 421 (M.Nowak *et al.* eds. 1988).

[11] Dinstein, Self-Determination Revisited [hereinafter Dinstein, Self-Determination], in International Law in an Evolving World, in Tribute to E.Jiménez de Aréchaga 241, 242 (M.Rama-Montaldo ed. 1994); H.Hannum, Autonomy, Sovereignty, and Self-Determination [hereinafter Hannum, Autonomy] 30s (1990); Z.Necatigil, The Cyprus Question and the Turkish Position in International Law 186 (1989); Berman, Sovereignty in Abeyance: Self-Determination and International Law, in International Law 389, 429 (M.Koskenniemi ed. 1992).

[12] Heraclides, Secession, Self-Determination and Nonintervention [hereinafter Heraclides, Secession], 45 J.I.A. 399, 412 (1991/92); M.Halperin/D.Scheffer/P.Small, Self-Determination in the New World Order 78 (1992).

[13] H.Gros Espiell, The Right to Self-Determination, at 8, para. 47, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, U.N. Sales No. E.79.XIV.5 (1980); Kiss, The People's Right to Self-Determination, 7 H.R.L.J. 165, 171 (1986); Nowak, CCPR Commentary 15ss (1993); Krys, *supra* fn. 10, 302; *cf.* Marie, Relations between Peoples' Rights and Human Rights: Semantic and Methodological Distinctions, 7 H.R.L.J. 195, 201 (1986).

[14] A.Cassese, Self-Determination of Peoples [hereinafter Cassese, Self-Determination], 70 (1995); Kiss, *supra* fn. 13, 170s.

determination entails a certain degree of autonomy and the right to self-government,[15] *i.e.* the right of a people to freely choose its own political regime, *e.g.* by freely elected representatives.[16] If a state is not "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour"[17] and basic rights of individuals[18] are discriminatorily repressed on grounds of ethnic origin or religion, this situation of "internal colonialism" constitutes a denial of internal self-determination and gives rise to "decolonization" even in a post colonial context.[19] Hence, the oppressed people is entitled to exercise its right to external self-determination, *i.e.* the establishment of a sovereign and independent state.[20] In this case the right to self-determination supersedes the principle of territorial

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[15] Nowak, *supra* fn. 13, 23; Cassese, Self-Determination, *supra* fn. 14, 101, 107; L.Buchheit, Secession 14 (1990); Chandrahasan, Minorities, Autonomy and the Intervention of Third States, 23 I.Y.H.R. 129, 136 (1994); Hannum, Autonomy, *supra* fn. 11, 467.

[16] Kiss, *supra* fn. 13, 171; *cf.* Cassese, Self-Determination, *supra* fn. 14, 101.

[17] FRD, *supra* fn. 5, principle V, para. 7.

[18] See, *e.g.* CCPR, *supra* fn. 7, Art. 9 [Liberty and Security of Person], Art. 21 [Freedom of Assembly], Art. 25 [Political Rights], *cf.* also U.N. GA-Res. 217 (III), U.N. Doc. A/810 (1948); Cassese, Self-Determination, *supra* fn. 14, 145s.

[19] Franck, Fairness in the International Legal and Institutional System, 240 R.d.C. 9, 137 (1993 III); Lloyd, The Southern Sudan: A Compelling Case for Secession, 32 C.J.T.L. 419, 437 (1994); *cf.* also Rao, Right of Self-Determination in the Post-Colonial Era, 28 Ind.J.I.L. 58, 69s (1988); Sornarajah, Internal Colonialism and Humanitarian Intervention, 11 G.J.I.C.L. 45, 47, 53 (1981).

[20] Buchanan, *supra* fn. 6, 11; Buchheit, *supra* fn. 15, 132ss; Przetacznik, The Basic Collective Human Right to Self-Determination of Peoples and Nations as a Prerequisite for Peace, 8 J.H.R. 49, 104 (1990); Klabbers/Lefeber, *supra* fn. 10, 48s; Lloyd, *supra* fn. 19, 438; A.Heraclides, The Self-Determination of Minorities in International Politics [hereinafter Heraclides, Self-Determination] 29 (1991); Wilson, International Law and the Use of Force by National Liberation Movements 84 (1988); Rao, *supra* fn. 19, 60.

integrity and unity of states.[21] This rule is evidenced by state practice, most recently, in the case of Eritrea. After the Ethiopian government systematically discriminated the Eritrean people *i.a.* by suppressing freedom of assembly and by banning political parties,[22] Eritrea fought for external self-determination and seceded in 1993. The independent state of Eritrea was recognized by the international community and admitted to the United Nations.[23]

As a segment of the Yttic people the Yttics in Ercola have the right to self-determination: They constitute a majority in several Ercolan provinces and have a distinct religion, language and culture. After Ercola's independence in 1960, the Yttics have consistently struggled to achieve self-determination. A three year civil war against Nicastrian domination was followed by organized violence until 1992. Yttics' common will was further expressed through regular protest against Ercolan repression, such as the discriminate laws infringing the Yttics' freedom of religion and prohibiting the use of the Yttic language for public business even in Yttic majority provinces. In 1993 Ercola rejected Yttic candidates for by-elections, making an equal political representation and access to public office impossible. By unconfirmed accusation YLSA, the political organization of the Yttics, was declared illegal, property of members was seized without prior judicial authorization and membership itself became a punishable

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[21] P.Thornberry, International Law and the Rights of Minorities 19 (1991); Jiménez de Aréchaga, International Law in the Past Third of a Century, 159 R.d.C. 1, 110 (1979 I); Akhawan, Lessons from Iragi Kurdistan, 1 N.Q.H.R. 41, 55 (1993); Necatigil, *supra* fn. 11, 187; *cf.* also Sornarajah, *supra* fn. 19, 54; Buchheit, *supra* fn. 15, 95s.

[22] Tesfagiorgis, Self-Determination: Its Evolution and Practice by the UN and its Application to the Case of Eritrea, 6 Wis.I.L.J. 75, 116 (1987); Cassese, Self-Determination, *supra* fn. 14, 218.

[23] Torelli, Chronique des faits internationaux, 97 R.G.D.I.P. 975, 1002 (1993).

offense. Thereby, Ercola - in discriminatory manner - violates the Yttics' right to peaceful assembly and the right to due process of law.

Altogether, this consistent repression and discrimination on grounds of Yttic origin amounts to a denial of the Yttics' right to internal self-determination. The Yttic people tried to obtain internal self-determination by all political means at their disposal, however to no avail. Consequently, the Yttics in Ercola can only achieve self-determination by establishing an independent state.

2. YLSA's actions and Filova's involvement in them are consistent with international law.

Liberation movements are the authentic representation of a people in its struggle for self-determination.[24] They are legitimized by elections or by broad based support in the form of group mobilization, public manifestations and demonstrations.[25] Liberation movements are entitled to promote their people's cause by any means[26], *i.e.* by political means, or, if necessary, through armed struggle against the government[27]. Restrictions arise only under humanitarian law.[28]

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[24] Cassese, Self-Determination, *supra* fn. 14, 166s; M.Shaw, Title to Territory in Africa 178 (1986); *cf.* U.N. GA-Res. 3295 (XXIX), U.N. Doc. A/9631 (1974).

[25] J.Nassar, The Palestine Liberation Organization 30 (1991); Heraclides, Self-Determination, *supra* fn. 20, 241.

[26] U.N. GA-Res. 2649 (XXV), U.N. Doc. A/8028 (1970); U.N. GA-Res. 2787 (XXVI), U.N. Doc. A/8429 (1971); *cf.* Przetacznik, *supra* fn. 20, 90; *cf.* J.Lambert, Terrorism and Hostages in International Law 31 (1990).

[27] Cassese, Self-Determination, *supra* fn. 14, 154, 166s; Ginther, Liberation Movements, 3 E.P.I.L. 245, 245 (R.Bernhardt ed. 1982); *cf.* Ronzitti, Wars of National Liberation - A Legal Definition, 1 It.Y.I.L. 192, 197 (1975).

[28] Frowein, Present State of Research, in The Legal Aspects of International Terrorism 55, 77 (A.D.I. ed. 1988); Tyagi, Political Terrorism: National and International Dimensions, 27 Ind.J.I.L. 160, 166s (1987); Nawaz, Legal Control of International Terrorism, 17 Ind.J.I.L. 66, 78 (1977).

In customary international law states not only have the right but even the duty to promote self-determination[29] and, hence, are allowed to render political, moral and material support[30] and even military assistance to peoples and liberation movements.[31] This right is affirmed in several U.N. Resolutions[32] and reflected in state practice[33] .

YLSA promotes the struggle of the Yttic people in Ercola for self-determination by calling for an increase in autonomy, the repeal of Ercola's official language law and the creation of a national Department of Yttic Affairs. Street demonstrations after the unsuccessful judicial challenge against the rejection of YLSA's candidates show the Yttics' support for YLSA. Therefore, YLSA is the liberation movement of the Yttic people in Ercola. After Ercola unwarrantedly declared YLSA illegal, all political means to achieve self-determination were exhausted. The bombings and the obtaining of the database were intended to weaken the Ercolan government. Innocent individuals were not YLSA's target and no humanitarian norms were infringed. For these reasons YLSA's actions were legal.

Since YLSA is the Yttics' liberation movement in their struggle for

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29 FRD, *supra* fn. 5, principle V, para. 2.

30 Jiménez de Aréchaga, *supra* fn. 21, 111; Cassese, Self-Determination, *supra* fn. 14, 176; *cf.* African Charter, *supra* fn. 8, Art. 20, para. 6, at 62; U.N. GA-Res. 2787 (XXV), *supra* fn. 26; U.N. GA-Res. 2621 (XXV) Art. 3, para. 2, U.N. Doc A/8028 (1970).

31 Cassese, Self-Determination, *supra* fn. 14, 152ss, 185; *cf.* Brownlie, *supra* fn. 6, 598; *cf.* also U.N. GA-Res. 3314 (XXIX), U.N. Doc. A/9631 (1974).

32 FRD, *supra* fn. 5, principle V, para. 2; U.N. GA-Res. 2621 (XXV), *supra* fn. 30, Art. 3, para. 2; U.N. GA-Res. 3314 (XXIX), *supra* fn. 31, Art.7; U.N. GA-Res. 2105 (XX), Art. 10, U.N. Doc. A/6014 (1965).

33 *Cf.* Belgium, France, Gabon, Zaire, Morocco, China, India, as cited in Heraclides, Secessionist Minorities and External Involvement, 44 I.O. 341, 365ss (1990).

self-determination, Filova is entitled to render any form of assistance. Nevertheless, as the diplomatic note expressed, Filova does not support violent means of YLSA. Therefore, Filova's support for YLSA's actions does not violate international law.

3. Filova's involvement in YLSA's activities is not contrary to the principle of nonintervention.

The principle of nonintervention prohibits states from interfering in matters which fall within the internal affairs of another state, *i.e.* an area of internal state authority that is beyond the reach of international law.[34] However, certain matters such as the right to self-determination which is regarded as international *ius cogens* imposing obligations *erga omnes*[35] and a breach of which amounts to an international crime[36] are necessarily of *international* character and, thus, outside the range of internal affairs protected by the principle of nonintervention.[37] Therefore, the exercise of the right to self-determination, comparable to human rights, is not an internal affair of a state into which intervention is prohibited.[38]

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[34] D'Amato, Domestic Jurisdiction, 1 E.P.I.L. 1090, 1090 (R. Bernhardt. ed. 1992); R.J.Vincent, Nonintervention and International Order 299 (1974); Brownlie, *supra* fn. 6, 291.

[35] Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), 1970 I.C.J. 3, 312 (Ammoun, J., sep.op., Feb. 5); Brownlie, *supra* fn. 6, 513; Buchheit, *supra* fn. 15, 32ss; Kiss, *supra* fn. 13, 174; Cassese, Self-Determination, *supra* fn. 14, 133ss; Shaw, *supra* fn. 24, 91; Ermacora, The Protection of Minorities before the United Nations, 182 R.d.C. 257, 325 (1983 IV); Fourth Report on State Responsibility, by the Special Rapporteur G.Arangio-Ruiz, 2 Y.I.L.C., pt.2, 1, 31s (1992); Gros Espiell, *supra* fn. 13, pt. 74, at 11s.

[36] Gros Espiell, supra fn. 13, pt. 80, at 12; Cassese, Self-Determination, *supra* fn. 14, 155; Draft Articles on State Responsibility Part I, in Report of the I.L.C. on the work on its 32nd session [hereinafter I.L.C. Draft pt. I], Art. 19, 2 Y.I.L.C., pt.2, 30, 32 (1980).

[37] Cassese, Self-Determination, *supra* fn. 14, 335.

[38] Nawaz, *supra* fn. 28, 225; Johnson, Towards Self-Determination - A Reappraisal as reflected in the Declaration on Friendly Relations, 3 G.J.I.C.L. 145, 160 (1973).

Even if the Yttics' struggle for self-determination were considered to be an internal affair of Ercola, no illegal intervention was committed by Filova. Due to persistent acts of intervention,[39] the broad concept of nonintervention, that "[n]o state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state",[40] has not become customary international law.[41] States are often engaged in transboundary political activities, *e.g.* by providing support and shelter to political organizations.[42] States are under no obligation to suppress propaganda originating from private parties ("*deeds not words*"),[43] not even revolutionary propaganda[44] . Political statements and diplomatic notes, which do not have a certain degree of publicity,[45] are acts of permissible intercession.[46] Finally, the

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[39] Damrosch, Politics across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs, 83 A.J.I.L. 1, 2s, 5 (1989); W.Levi, Contemporary International Law 84, 86s (1991); Hooglund, Iran, in Intervention in the 1980's 207 *passim* (P.J.Schraeder ed. 1989); A.Tanca, Foreign Armed Intervention in Internal Conflict 149 *passim* (1993); G.Treverton, Covert Action: The CIA And The Limits of Intervention in the Postwar World 3ss (1987).

[40] FRD, *supra* fn. 5, principle III, para. 1.

[41] Military and Paramilitary Activities in and against Nicaragua (Merits) (Nicar. *v.* U.S.A.) [hereinafter Nicaragua Case], 1986 I.C.J. 14, para. 98, at 305 (Schwebel, J., diss.op., June 27); *cf. id.*, para. 7, at 184 (Ago, J., sep.op., June 27); Damrosch, *supra* fn. 39, 2s.

[42] Damrosch, *supra* fn. 39, 12s, 16.

[43] Van Dyke, The Responsibility of States for International Propaganda, 34 A.J.I.L. 58, 73 (1940); Kimminich, Völkerrechtsfragen zur exilpolitischen Betätigung, 10 A.V.R. 133, 165 (1962); A.Verdross/B.Simma, Universelles Völkerrecht 278 (4th ed. 1984).

[44] Kimminich, *supra* fn. 43, 161.

[45] P.Kunig, Nichteinmischungsprinzip 253 (1981).

[46] Damrosch, *supra* fn. 39, 6; A.Verdross/B.Simma, *supra* fn. 43, 304; *cf.* Arangio-Ruiz, Human Rights and Non-Intervention in the Helsinki Final Act [hereinafter Arangio-Ruiz, Non-Intervention], 157 R.d.C. 195, 257s (1977 IV); Oppenheim *supra* fn. 6, 432; Kunig, *supra* fn. 45, 254; Wehser, Die Intervention nach gegenwärtigem Völkerrecht, in →

collection of information in peace-time - even of government secrets by means of espionage - is not contrary to international law.[47] In sum, the customary principle of nonintervention only prohibits coercive measures or dictatorial interference by one State in the affairs of another.[48]

Filova's assistance to political movements in Ercola corresponds in its extent to international practice and is below the threshold of illegal coercive intervention: The announcement of support to YLSA in a diplomatic note as well as the pamphlets sent to a small number of Ercolan citizens do not have the publicity to be unlawful. Placing the fax-number at the disposal of YLSA and cracking the ESPRI-code do not infringe Ercola's sovereign rights. Filova's possession of the ESPRI database is, in itself, no coercive act. Therefore, Filova's involvement in YLSA's activities is no coercive intervention and, as such, no violation of international law.

C. FILOVA HAS NO OBLIGATION UNDER INTERNATIONAL LAW TO DECLARE YLSA ILLEGAL.

Liberation movements fight for their peoples' right to self-determination against oppressive régimes.[49] Acts attributable to a

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Zwischen Intervention und Zusammenarbeit 23, 44, 52s (B.Simma/E.Blenk-Knocke eds. 1979).

47 Espionage Prosecution Case, Ger.F.Sup.Ct. (Judgm. of Jan. 30, 1991), 94 I.L.R. 69, 70 (1994); Cohen, Espionage and Immunity - Some Recent Problems and Developments, 25 B.Y.I.L. 404, 409 (1948); Hinz, Spionage, 3 W.V.R. 298, 300 (1962); Hollweg, Military Reconnaissance, 3 E.P.I.L. 279, 280 (R.Bernhardt ed. 1982); Gusy, Spionage im Völkerrecht, 5 N.Z.W.R. 187, 187 (1984); Rauch, Espionage, 2 E.P.I.L. 114, 116 (R.Bernhardt ed. 1995).

48 Nicaragua Case (Schwebel, J., diss.op.), *supra* fn. 41, 305, para. 98; *cf.* Oppenheim, *supra* fn. 6, 430; Jiménez de Aréchaga, *supra* fn. 21, 115; J.L.Brierly, The Law of Nations 402 (6th ed. 1963); A.Verdross, Völkerrecht 228 (5th ed. 1964).

49 *supra* claim I.B.2., at 6ss.

liberation movement do not constitute terrorism.[50] Since YLSA is a liberation movement struggling for self-determination of the Yttics in Ercola, Filova is not obliged to declare YLSA illegal.

Even if YLSA should not be regarded as a liberation movement, Filova has no obligation to ban YLSA. In the controversial field of international prevention of terrorism no customary rule has yet emerged.[51] While universal treaties only cover specific acts of terrorism, *e.g.* seizure of aircrafts or taking of hostages,[52] suppression of terrorism of any kind is only regulated in regional treaties.[53] Furthermore, these treaties and other non binding instruments[54] are solely concerned with cases of *international* terrorism, *i.e.* where perpetrator and target are of different states and the conduct is performed in more than one state.[55]

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[50] Buchheit, *supra* fn. 15, 37; Dugard, International Terrorism: Problems of Definition, 50 I.A. 67, 77 (1974); *cf.* U.N. GA-Res. 3034 (XXVII), Art. 3, U.N. Doc. A/8730 (1972); U.N. GA-Res. 31/102, U.N. Doc. A/31/39 (1976).

[51] A.C.Arend/R.J.Beck, International Law and the Use of Force 144 (1993); Dinstein, Terrorism, *supra* fn. 10, 166; Cassese, International Community's "Legal" Response to Terrorism, 38 I.C.L.Q. 589, 589 (1989); Sofaer, Terrorism and Law, 64 F.A. 901, 902 (1985/86).

[52] See, *e.g.* Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 860 U.N.T.S. 105 (1973); International Convention against the Taking of Hostages, Dec. 17, 1979, repr. in 18 I.L.M. 1456 (1979); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Dec. 14, 1973, repr. in 13 I.L.M. 41 (1974).

[53] COE Convention on the Suppression of Terrorism, Jan. 27, 1977, repr. in 15 I.L.M. 1272 (1976); SAARC Regional Convention on Suppression of Terrorism, Nov. 4, 1987, repr. in 27 Ind.J.I.L. 315 (1987).

[54] *E.g.* UN. GA-Res.49/60 , U.N Doc. A/49/743 (1994); U.N. GA-Res. 34/145, U.N. Doc. A/34/46 (1980); U.N. GA-Res. 40/61, U.N. Doc. A/40/53 (1986); U.N. GA-Res. 3034 (XXVII), *supra* fn. 50.

[55] Bassiouni, Methodological Options for International Legal Control of Terrorism, in International Terrorism and Political Crimes 485, 487 (M.C.Bassiouni ed. 1975); *cf.* also Franck/Lockwood, Preliminary Thoughts towards an International Convention on Terrorism, 68 A.J.I.L. 69, 78 (1974).

Filova is neither a party to any treaty on the prevention of terrorism nor obliged under customary international law to declare YLSA illegal. Even if there were a customary rule on prevention of terrorism, it would only concern international terrorism. The bombing at the Stock Exchange and the depositing of incendiary devices in Ercolan train stations were committed by Ercolan citizens in Ercola. Therefore, YLSA's actions do not constitute international terrorism and hence Filova has no obligation to declare YLSA illegal.

II. FILOVA ASKS THE COURT TO DECLARE AND ORDER THAT ERCOLA'S TREATMENT OF ITS YTTIC MINORITY VIOLATES BINDING INTERNATIONAL LEGAL NORMS.

A. THE YTTICS IN ERCOLA CONSTITUTE A MINORITY.

A segment of a people entitled to the right to self-determination may also constitute a minority in a state,[56] when it is a group numerically inferior to the rest of the population and if its members possess distinct ethnic, religious or linguistic characteristics and show a sense of solidarity directed towards preserving their culture, traditions, religion or language.[57]

The Yttics in Ercola represent 22% of the total population which is dominated by 72% Nicastrians. The former are of distinct ethnic origin and have their own language and religion. Regular claims for respect of their linguistic and religious characteristics show that they maintain a sense of solidarity to preserve their identity. Therefore, the Yttics constitute a minority in Ercola.

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[56] Dinstein, Self-Determination, *supra* fn. 11, 244; Crawford, The Rights of Peoples: "Peoples" or "Governments"?, in The Rights of Peoples 55, 60s (J.Crawford ed. 1988); Chandrahasan, *supra* fn. 15, 135.

[57] Study by the Special Rapporteur F.Capotorti, [hereinafter Capotorti, Study], in 30 U.N. ESCOR (384th mtg.) at 7, U.N. Doc. E/CN.4/Sub.2/384/Add.5 (1977).

B. ERCOLA'S TREATMENT OF ITS YTTIC MINORITY VIOLATES INTERNATIONAL LAW.

Pending ratification every signatory state is obliged under the principle of good faith to refrain from acts which would render performance of the treaty stipulations impossible or more difficult,[58] or which would constitute "*irreversible* violations of the terms of the treaty."[59] This customary principle has been confirmed in several judgments[60] and is embodied in Art. 18 VCLT[61] which obliges a state not to defeat the object and purpose of a treaty prior to its entry into force.[62] Accordingly, a signatory state of the CCPR has to refrain from acts which would render performance of the rights granted to minorities in Art. 27 impossible or more difficult or which would constitute irreversible violations of these rights. Acts which deprive a minority of its identity by means of assimilation[63] violate this

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[58] Harvard Draft Convention on the Law of Treaties [hereinafter Harvard Draft], Art. 9, repr. in 29 A.J.I.L.(Supp.) 657, 658 (1935); *cf.* also P.Fauchille, 1 Traité de Droit International Public 319s (1926); D.Anzilotti, 1 Corso di Diritto Internazionale 334 (1928); Cavaglieri, Règles générales du droit de la paix, 26 R.d.C. 313, 520 (1929 I); Cheng, *supra* fn. 1, 108s; *cf.* McNair, *supra* fn. 1, 199, 204.

[59] Turner, Legal Implications of Deferring Ratification of SALT II, 21 V.J.I.L. 747, 764, 769 (1981); *cf.* also Bernhardt, Völkerrechtliche Bindungen in den Vorstadien des Vertragsabschlusses, 18 Z.a.ö.R.V. 652, 666s (1957/58).

[60] Case concerning Certain German Interests in Upper Silesia 1926 P.C.I.J. Ser.A (No. 7), 30 (Judgm. of May 25); Megalidis *v.* Turkey, (Turk. *v.* Greece), (Award of July 26, 1928) 4 A.D. 395 (1927-28); Schrager *v.* Workmen's Accident Insurance Institute, Pol.Sup.Ct. (Judgm. of Mar. 2, 1927) 4 A.D. 396, 398s (1927-28); Kemeny *v.* Yugoslav State, (Hung. *v.* Yugo.), (Award of Sept. 13, 1928) *id.* at 549s; Iloilo Claims (G.B. *v.* U.S.), 3 A.D. 336 (1925-26).

[61] Vienna Convention on the Law of Treaties, May 23, 1969, Art. 18, repr. in 8 I.L.M 679, 686 (1969).

[62] Turner, *supra* fn. 59, 747, 765; Morvay, The Obligation of a State not to Frustrate the Object of a Treaty Prior to its Entry into Force, 27 Z.a.ö.R.V. 451, 458 (1967).

[63] Hailbronner, The Legal Status of Population Groups in a Multinational State under Public International Law, in The Protection of Minorities and Human Rights 117, 143 (Y.Dinstein ed. 1992); Thornberry, *supra* fn. 21, 183; Capotorti, Study, *supra* fn. 57, at 9, →

principle, since "when cultural and linguistic identity [...] is lost or degraded, the change tends to be irreversible"[64] . The right of a minority to preserve its separate identity is furthermore recognized under customary international law.[65] This is evidenced by several resolutions[66] expressing *opinio iuris* and state practice such as international instruments[67] and decisions,[68] as well as numerous provisions in national constitutions[69] .

21; *cf.* Dinstein, Collective Human Rights of Peoples and Minorities, [hereinafter Dinstein, Minorities], 25 I.C.L.Q 102, 116, 118 (1976).

[64] I.Brownlie, *Re* the Mackenzie Valley Pipeline Enquiry [hereinafter Brownlie, Mackenzie] (Op. of Mar. 1976), at 9, quoted in Thornberry, *supra* fn. 21, at 220 n. 7.

[65] Brownlie, Mackenzie, *supra* fn. 64; Kelly, National Minorities in International Law, 3 J.I.L.P. 253, 266 (1973); Eide, National Movements, Protection of Minorities and the Prevention of Discrimination, in The Future of Human Rights Protection in a Changing World 213, 225 (A.Eide/J.Helgesen eds. 1991); Hailbronner, *supra* fn. 63, 120; Capotorti, Study, *supra* fn. 57, at 15; Dinstein, Minorities, *supra* fn. 63, 118.

[66] U.N. GA-Res. 36/55 Declaration on the Elimination of all Forms of Intolerance, U.N. Doc. A/36/51 (1981); U.N. GA-Res 217 C (III), *supra* fn. 18, at 77s; U.N. GA-Res 47/135 [hereinafter Declaration on Minorities] Arts. 1s, 4, U.N. Doc. A/47/49 (1993); Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, repr. in 31 I.L.M. 1486s (1992).

[67] *E.g.* International Convention on the Elimination of all Forms of Racial Discrimination [hereinafter Racial Discrimination Convention], Dec. 21, 1965, Art.2, 660 U.N.T.S. 212, 216s (1969); Framework Convention for the Protection of National Minorities, Nov. 1994, E.T.S. No. 157; European Charter for Regional or Minority Languages, Oct. 2, 1992, 6 E.T.S 185 (1994); CSCE Final Act, *supra* fn. 8, principle VII; Provisions Agreed upon by the Austrian and Italian Government, Sept. 5, 1946, 49 U.N.T.S. 184, 184ss (1950); Agreement between Pakistan and India, Apr. 8, 1950, 131 U.N.T.S. 4s (1952).

[68] Minority Schools in Albania [hereinafter Minority Schools Case], 1935 P.C.I.J. (Ser. A/B) No. 64, 19 (Adv.op. of Apr. 6); Greco-Bulgarian "Communities", 1930 P.C.I.J. (Ser. B.) No. 17, 21 (Adv.op. of July 31).

[69] *Cf. i.a.* Constitutions of: Belarus, Arts. 31, 50; Belgium, Arts. 2, 115, 121; Congo, Arts. 26, 50; Estonia, Arts. 49s, 52; India, Arts. 29, 347; Iraq, Arts. 2, 3; New Zealand, Sects. 15, 20; Nicaragua, Arts. 11, 89ss, 128, 180; Sri Lanka, Arts. 14, 18, 22, 25; Taiwan, Arts. 5, 13; *Cf.* Austrian State Treaty, May 15, 1955, Art. 7, 217 U.N.T.S. 223, 229 (1955).

Therefore, international law obliges states to observe religious and linguistic rights to protect the separate identity of a minority.[70] This requires, in particular, that the language of a linguistic minority must be allowed for official dealings[71] at least in districts where the minority comprises a large segment of the population.[72] Granting official status only to the language spoken by the majority population would cause assimilation pressure on the minority.[73] The protection of cultural and religious minorities requires the preservation of their customs and traditions,[74] *e.g.* by observing religious holidays.[75] Furthermore, states not only have to prevent discrimination of a minority but also have to ensure equality in fact with the majority, because equality in law alone is not sufficient to preserve a minority's characteristics.[76] This presupposes safeguards

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[70] Tomuschat, Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights, in FS H.Mosler 949, 966 (R.Bernhardt *et al.* eds. 1983); Ermacora, *supra* fn. 35, 324; Alfredsson/De Zayas, Minority Rights: Protection by the United Nations, 14 H.R.L.J. 1, 2 (1993); *cf.* Sohn, The Rights of Minorities, in The International Bill of Rights 270, 275 (Henkin ed. 1981).

[71] Thornberry, *supra* fn. 21, 199s; Eide, *supra* fn. 65, 226; Tomuschat, *supra* fn. 70, 973; Sohn, *supra* fn. 70, 284; Vukas, General International Law and the Protection of Minorities, 8 R.D.H. 41, 42s (1975); Capotorti, Study, *supra* fn. 57, Add.5, at 20; *cf. i.a.* Constitutions of: Belarus, Art. 50; Belgium, Art. 30; Estonia, Arts. 51, 52; Finland, Sec. 14; Italy, Art. 6; Macedonia, Art. 7; Slowenia, Art. 62; Switzerland, Art. 116.

[72] Dinstein, Minorities, *supra* fn. 63, 120; *cf* Constitutions: Austria, Art. 8.; Estonia, Arts. 51, 52.

[73] Capotorti, Study, *supra* fn. 57, Add. 5, at 11; Thornberry, *supra* fn. 21, 199s.

[74] Capotorti, Study, *supra* fn. 57, Add.5, at 18; Ermacora, *supra* fn. 35, 280s; *cf. i.a.* Constitutions: Congo, Art. 50; Lithuania, Art. 37; Macedonia, Preamble, Arts. 7, 19; Netherlands, Art. 6.

[75] Thornberry, *supra* fn. 21, 195; *cf.* U.N. GA-Res. 36/55, *supra* fn. 66, Art. 6 (h).

[76] Minority Schools Case, *supra* fn. 68, 17, 19; Capotorti, Study, *supra* fn. 57, Add.5, at 14; Thornberry, Self-Determination, Minorities, Human Rights: A Review of International Instruments, →

against discrimination by other population groups.[77]

Since Ercola has signed the CCPR, it is obliged to refrain from actions which would render the performance of the obligations of Art. 27 impossible or more difficult. Hence, as a signatory to the CCPR as well as under customary law, Ercola has to abstain from measures resulting in assimilation and irreversible loss of the religious and linguistic identity of its Yttic minority. The Ercolan Language Law prohibiting the use of the Yttic language for public business even in Yttic majority provinces endangers the preservation of the linguistic identity and causes assimilation pressure on the minority. Furthermore, Ercola does not respect Yttic traditions to worship and both public and private employers refuse paid leave for Yttic religious holidays. The non-observance of Yttic religious customs constitutes a discriminatory treatment of the Yttic minority. Ercola not only fails to provide safeguards against discrimination by private employers, but even itself discriminates Yttic employees in public service. Consequently, the assimilation pressure on the Yttic minority would cause irreversible loss of its religious and linguistic identity and destroy the very essence of the Yttics' existence as a minority. Hence, Ercola's treatment of its Yttic minority violates both customary law and its obligations as a signatory to the CCPR.

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38 I.C.L.Q. 867, 881 (1989); Ermacora, *supra* fn. 35, 304; Alfredsson/De Zayas, *supra* fn. 70, 2; Sohn, *supra* fn. 70, 282s; see also Declaration on Minorities, *supra* fn. 66, Art. 4; Racial Discrimination Convention, *supra* fn. 67, Art. 1.

[77] Nowak, *supra* fn. 13, 503; Tomuschat, *supra* fn. 70, 974; Ramcharan, Equality and Nondiscrimination, in The International Bill of Rights 246, 261 (L.Henkin ed. 1981).

III.FILOVA ASKS THE COURT TO DECLARE AND ORDER THAT THERE IS NO OBLIGATION UNDER INTERNATIONAL LAW TO EXTRADITE THOSE WHO CONFESSED TO THE STOCK-EXCHANGE BOMBING, AND THEIR ACCOMPLICES.

The 1963 Extradition Treaty between Filova and Ercola, which has been in force since that time without any modification, contains both a double criminality rule (Art. 12) and a standard political offense exception (Art. 5(e)). Pursuant to the rules of interpretation codified[78] in Art. 31 (3) VCLT, especially to the "principle of contemporaneity"[79], the terms of a treaty must be interpreted according to the ordinary meaning which they possessed at the time when the treaty was originally concluded.[80] Furthermore, it is permissible to resort to "treaties *in pari materii*"[81], *i.e.* stipulations of treaties in relation to subjects similar to those in the treaty under consideration.[82]

The ordinary meaning of the term "crime [...] of a political character" in Art. 5(e) encompasses both purely political offenses against the political order, *e.g.* treason or espionage,[83] as well as

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[78] Golder Case, E.C.H.R., Feb. 21, 1975, 57 I.L.R. 201, 213s (1980); I.Sinclair, The Vienna Convention on the Law of Treaties 153 (1984).

[79] Fitzmaurice, The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and other Treaty Points, 33 B.Y.I.L. 203, 212, 225s (1957).

[80] Island of Palmas Case (Neth. *v.* U.S.A.), (Award of April 4, 1928), 2 R.I.A.A. 829, 845 (1949); The Minquiers and Ecrehos Case, (Fr. *v.* U.K.), 1953 I.C.J. 47, 91 (Levi Carneiro, J., ind.op. of Nov. 17); *cf.* Sinclair, *supra* fn. 78, 124s, 138s.

[81] D.P.O'Connell, 1 International Law 260 (2nd ed. 1970).

[82] Elton Case, Award of the Mexico/U.S.A. General Claims Commission of 1929, repr. in 5 D.I.L. 253 (M.Hackworth ed. 1943); *cf.* also Question of Jaworzina (Polish-Czechoslovakian Frontier) (Pol. *v.* Czech.), 1923 P.C.I.J. (Ser. B) No. 8, 6, 38 (Adv.op. of Dec. 6); Case concerning Rights of Nationals of the United States of America in Morocco (Fr. *v.* U.S.A.), 1952 I.C.J. 176, 189 (Judgm. of Aug. 27).

[83] G.Gilbert, Aspects of Extradition Law 118s (1991); I.A.Shearer, Extradition in International Law 181s (1971); Garcia-Mora, The Nature of Political Offenses: A Knotty Problem of Extradition Law, 48 V.L.R. 1226, 1234 (1962); Bassiouni, The Political Offense Exception in →

relative political offenses, *i.e.* common crimes committed for a political motive,[84] which were "incidental to and formed a part of political disturbances".[85] Such disturbances comprise emergency situations due to systematic political violence over a long period of time.[86] While in some cases the political offense exception has been recognized even in absence of a political uprising,[87] it is commonly required that the perpetrator is a member of a political organization engaged in an uprising.[88]

As to the determination of a political crime, virtually all extradition treaties provide that this is solely within the domestic jurisdiction of the requested state[89] and that the latter has the

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Extradition Law and Practice in International Terrorism and Political Crimes [hereinafter Bassiouni, Political Offense], 398, 405ss (M.C.Bassiouni ed. 1975).

[84] Bassiouni, Political Offense, *supra* fn. 83, 408; 1 A.L.I. Restatement (Third) of the Foreign Relations Law of the U.S., § 476, comment (g), at 571 (1987).

[85] *In re* Castioni, [1891] 1 Q.B. 149 (Judgm. of Nov. 11, 1890), repr. in 5 B.I.L.C. 556, 556 (1967); *In re* Ezeta, 62 Fed. 972 (N.D.Cal. 1894), repr. in 17 A.I.L.C. 63, 84s (1977); Ramoz *v.* Diaz, 179 F. Supp. 459 (S.D.Cal. 1959) (Judgm. of Dec. 18, 1959), 28 I.L.R. 351 (1963); *In re* McMullen, Mag. No. 3-78-1899 MG, (N.D.Cal. 1979) (Op. of May 11, 1979); *In re* Mackin, Mag. No. 80 Cr. Misc. 1 (S.D.N.Y. 1981) (Op. of Aug. 13, 1981); *cf.* also Garcia-Mora, *supra* fn. 83, 1240.

[86] *In re* McMullen, *supra* fn. 85, 295; *In re* Mackin, *supra* fn. 85, 217.

[87] Regina *v.* Governor of Brixton Prison *ex parte* Kolczynski and Others, [1955] 1 Q.B. 540 (Judgm. of Dec. 13, 1954), repr. in 7 B.I.L.C. 1098, 1100 (1969); *In re* Gonzales, 217 F.Supp. 717 (S.D.N.Y. 1963) (Judgm. of May 23, 1963), 34 I.L.R. 139, 141s (1967).

[88] *In re* McMullen, *supra* fn. 85, 294; *In re* Mackin, *supra* fn. 85; *In re* Gonzales, *supra* fn. 87; *cf.* Bassiouni, Political Offense, *supra* fn. 83, 411.

[89] See *e.g.* Extradition Treaty, June 8, 1972, U.K.-U.S.A., Art. V (1) para. (c)(i), repr. in 5 A.I.L.C. 405, 408 (2nd. Ser. 1992); Extradition Treaty, May 4, 1978, Mex.-U.S.A., Art. 5 para. 1, repr. in 17 I.L.M. 1058, 1061 (1978); Inter-American Convention on Extradition, Feb. 25, 1981, Art. 4 para. 4, repr. in 20 I.L.M. 723, 724 (1981); European Convention on Extradition, Dec. 13, 1957, Art. 3 para. 1, 359 U.N.T.S. 274, 278 (1960).

discretion to refuse extradition if there are substantial grounds for believing that the fugitive will be persecuted on account of race, religion or membership of a political organization and will not receive a fair trial in the requesting state.[90]

Ercola has formally requested extradition for the offenses of murder, destruction of property and violation of Ercolan Code § 1-040 by stealing Ercolan secrets. Theft of military secrets contained in the ESPRI database constitutes an act of treason, aimed directly against the Government of Ercola. Since treason is a purely political offense, Filova is not obliged to extradite the perpetrators. Furthermore, unauthorized disclosure and use of information of the ESPRI database is no criminal offense in Filova and, hence, the double criminality requirement is not met.

On the other hand, the common crimes of murder and destruction of property are relative political offenses. Since 1960 there have been political disturbances in Ercola due to ethnic conflicts between Nicastrians and Yttics. In 1993 the president of Ercola even invoked emergency powers to control the situation. The four apprehended Yttics are members of the "high command" of YLSA which is the Yttics' political organization struggling for self-determination. The explosions at the Stock Exchange, the heart of Ercolan financial life, and the train stations were committed in order to weaken the economic and political power of Ercola. The killing of people was not the

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[90] Inter-American Convention on Extradition, *supra* fn. 89, Art. 4 para. 5, at 724; European Convention on Extradition, *supra* fn. 89, Art. 3 para. 2, at 278; Brownlie, *supra* fn. 6, 316; Oppenheim, *supra* fn. 6, 966; Vogler, Perspectives on Extradition and Terrorism, in International Terrorism and Political Crimes 391, 395 (M.C.Bassiouni ed. 1975); 1 A.L.I. Restatement (Third) of the Foreign Relations Law of the U.S. § 475, comment (g), at 562, § 476, comment (h), at 571 (1987).

target of YLSA's actions. To avoid harm to civilians the bombing at the Stock Exchange was carried out on a holiday and there were early warnings before each attack against the train stations. Therefore, the destruction of property and the death of people are offenses of a political character and extradition must not be granted.

Even if some of the offenses were extraditable, Filova has the discretion to refuse extradition of the perpetrators. Considering past discrimination of Yttics by Ercola, Filova has substantial grounds for believing that the Yttics will be punished for political offenses like treason and membership to YLSA and will not receive a fair trial. Therefore, Filova's refusal to extradite is in accordance with international law.

IV. FILOVA ASKS THE COURT TO DECLARE AND ORDER THAT NO RIGHT TO DAMAGES FOR INVASION OF PRIVACY IS KNOWN IN INTERNATIONAL LAW, OR, IN THE ALTERNATIVE, TO DENY ERCOLA'S ALLEGATION THAT ITS CITIZENS HAVE BEEN INJURED BY THE RETENTION OF THE DISCS CONTAINING THE ESPRI DATABASE.

A. NO RULE OF INTERNATIONAL LAW APPLICABLE TO THE PRESENT DISPUTE PROVIDES FOR A RIGHT TO DAMAGES FOR INVASION OF PRIVACY.

A right to damages for invasion of privacy requires a substantive primary norm protecting privacy of individuals. Universally, the right to privacy is only protected under Art. 17 CCPR. While prior to ratification a signatory state is obliged not to frustrate the object and purpose of a treaty (Art. 18 VCLT), such a state, on the other hand, is not entitled to claim any rights under the treaty because it has not yet become a party. This distinction between rights and obligations of signatories was confirmed by the I.C.J. in the North Sea Continental Shelf Cases.[91] On the other hand, customary

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[91] North Sea Continental Shelf Cases (F.R.G. *v.* Den./F.R.G. *v.* Neth.) 1969 I.C.J. 3, 25s (Judgm. of Feb. 20); *cf.* Ambatielos Case (Greece *v.* U.K.), 1952 I.C.J. 28, 43 (Judgm. of July 1); Harvard Draft, *supra* fn. 58, Art. 9, 678s.

international law only protects basic human rights, such as the right not to be subjected to torture, prolonged arbitrary detention, racial discrimination, slavery or genocide.[92] In the new field of automatic processing of personal data a "right to data privacy" is only recognized in non-binding guidelines[93] and regional instruments[94] and there are fundamental differences with regard to data protection in national legal systems.[95] Consequently, a "right to data privacy" has not yet emerged under international law.[96]

Ercola has signed but not ratified the CCPR and, thus, cannot invoke a breach of privacy under Art. 17. Since privacy is not a basic human right and no customary rules of data privacy have yet evolved, Ercola cannot rely on customary international law as a basis for its claim.

Even if there were a customary right to privacy, it would not include a right to damages for invasion of privacy. The breach of an international engagement obliges the wrongdoing state to make reparation.[97] Pecuniary compensation is the adequate remedy to

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[92] 2 A.L.I. Restatement (Third) of the Foreign Relations Law of the U.S. § 702 at 161ss (1987); Schachter, International Law in Theory and Practice, 178 R.d.C. 9, 336 (1982 V); T.Meron, Human Rights and Humanitarian Norms as Customary Law 94s (1989).

[93] OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data, Sept. 23, 1980, [hereinafter OECD Guidelines] repr. in 20 I.L.M. 422ss, (1981); U.N. GA-Res. 44/132, Guidelines for the Regulation of Computerized Personal Data Files, U.N. Doc. A/44/49 (1989).

[94] *Cf. i.a.* COE Convention for the Protection of Individuals With Regard to Automatic Processing of Personal Data, Jan. 28, 1981, repr. in 20 I.L.M. 317ss (1981).

[95] OECD Guidelines, *supra* fn. 93, Art. 6, 430; Beling, Transborder Data Flows: International Privacy Protection and the Free Flow of Information, 6 B.C.I.C.L.R. 591, 621 (1983); De Sola Pool/Solomon, The Regulation of Transborder Data Flows, 3 Telecom.Pol. 176, 177 (1979).

[96] *Cf.* Hondius, A Decade of International Data Protection, 30 N.I.L.R. 103, 127s (1983).

[97] I.L.C. Draft pt.I, *supra* fn. 36, Arts. 1, 3; Draft Articles on State Responsibility of Part II, in Report of the I.L.C. on the work →

indemnify economically assessable damage caused by an internationally wrongful act.[98] State practice shows that this is also valid with regard to human rights, however, only in cases of gross human rights violations, such as unjustified detention, torture or other physical injuries and death.[99] Since invasion of privacy is not a gross human rights violation, no monetary compensation is due. This is also confirmed by the fact that the above mentioned data protection regulations do not provide for damages in cases of breach of privacy. Therefore, no right to damages for invasion of privacy is known in customary international law.

B. IN THE ALTERNATIVE, NO ERCOLAN CITIZENS HAVE BEEN INJURED BY FILOVA

1. Filova has not committed an internationally wrongful act, because local remedies have not been exhausted.

Under customary law a state may only raise a claim on behalf of its nationals after the effective local remedies available under the law of the accused state have been exhausted.[100] Prior to the exhaustion of local remedies a breach of international law does not occur.[101]

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of its 45th session [hereinafter I.L.C. Draft pt.II], Art. 6, 2 Y.I.L.C. pt.2, 53, 54 (1993).

98 I.L.C. Draft pt.II, *supra* fn. 97, Art.8 para. 2, 54; Annacker, Part Two of the International Law Commission's Draft Articles on State Responsibility, 37 G.Y.I.L. 206, 227 (1994).

99 Faulkner *v.* United Mexican States (U.S.A. *v.* Mex.), (Sep. Op. of Nov. 2, 1926) 4 R.I.A.A. 67, 71 (1951); Baboeram-Adhin and Others *v.* Suriname U.N.H.R.C. (Judgm. of Apr. 4, 1985), 94 I.L.R. 377, 399; *cf.* I.L.C. Draft pt.II, *supra* fn. 97, 72; Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms 17 (T. Van Boven *et al.* eds. 1992); Lillich, Damages awarded by the U.S., in *id.* 225, 237.

100 Mavrommatis Palestine Concessions (Greece *v.* G.B.), 1939 P.C.I.J. (Ser. A) No. 2, 6, 12 (Judgm. of Aug. 30, 1924); Interhandel Case (Prel.Obj.) (Sw. *v.* U.S.A.), 1959 I.C.J. 6, 27 (Judgm. of Mar. 21); *cf.* Brownlie, *supra* fn. 6, 494; Oppenheim, *supra* fn. 6, 522s; Optional Protocol to the CCPR, Art. 2, 999 U.N.T.S. 302, 302 (1976).

101 I.L.C. Draft pt.I, *supra* fn. 36, Art. 22, at 30; *cf.* Fawcett, The Exhaustion of Local Remedies: Substance or Procedure?, 31 B.Y.I.L. →

Filova has an effective judicial system and its courts are open to citizens of other states. Ercolan citizens did not bring any claim concerning an alleged breach of privacy before a Filovan court. Since local remedies within Filova have not been exhausted, Filova has not committed an internationally wrongful act.

2. The mere retention of the ESPRI database by Filova did not cause injury to Ercolan citizens.

Even if the Court held that there was a right to data privacy, this right would not be infringed by the retention of personal data. Data privacy can be defined as the individual's ability to control the *flow* of information relating to him.[102] The rules of data privacy, aiming at the limitation of the flow of personal data, would only prohibit the unauthorized disclosure of personal data.[103] Since the mere retention by definition neither causes flow nor disclosure of personal data, such conduct does not violate the right to privacy.

Filova did not obtain the ESPRI database and code in violation of international law. The mere possession and retention of the database without disclosure does not constitute an invasion of privacy and, hence, no Ercolan citizens have been injured.

C. EVEN IF FILOVA HAD INVADED THE PRIVACY OF ERCOLAN CITIZENS, IT IS NOT OBLIGED TO PAY DAMAGES.

Even if pecuniary compensation were due in cases of invasion of privacy, it would be restricted to damages for severe suffering, *e.g.*

452, 453 (1954); Doehring, Local Remedies, Exhaustion of, 1 E.P.I.L. 136, 139 (R.Bernhardt ed. 1981); E.M.Borchard, Diplomatic Protection of Citizens Abroad 817 (1922).

[102] *Cf.* Miller, Personal Privacy in the Computer Age: The Challenge of a New Technology in an Information-Oriented Society, 67 Mich.L.R. 1091, 1107s (1968-69).

[103] Kirby, Transborder Data Flows and the "Basic Rules" of Data Privacy, 16 St.J.I.L. 27, 38 (1980); *cf.* OECD Guidelines, *supra* fn. 93, 425.

distress and anxiety.[104] International decisions show that invasion of privacy causing mere inconvenience is not of such intensity to entail a duty to pay financial compensation.[105] Thus, the declaration of a violation in a judgment constitutes, in itself, appropriate satisfaction.[106]

The personal data contained in Communiqué No.6 were never brought to the attention of the general public. The data enclosed in the mailings were addressed solely to the officers' families. Therefore, the interference into the private sphere of Ercolan citizens did not cause severe suffering but merely inconvenience. Should the Court therefore hold that Filova had invaded the privacy of Ercolan citizens, this ruling would, in itself, be adequate satisfaction. Consequently, Filova is not obliged to compensate Ercolan citizens for invasion of privacy.

D. EVEN IF FILOVA ILLEGALLY OBTAINED THE DATABASE, IT IS NEITHER OBLIGED TO DELIVER THE ESPRI DATABASE AND CODE NOR TO PAY COMPENSATION.

State responsibility entails the duty of the wrongdoing state to make reparation, which includes restitution in kind, *i.e.* restoration of the situation prior to the violation, or compensation, if restitution is materially impossible.[107] In case of immaterial damage

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104 Eriksson Case, E.C.H.R. (Judgm. of June 22, 1989), 92 I.L.R. 320, 349s (1993).

105 Campbell and Fell Case, E.C.H.R. (Judgm. of June 28, 1984), 78 I.L.R. 293, 346 (1988); Silver and Others Case (Merits), E.C.H.R. (Judgm. of Mar. 25, 1983) 72 I.L.R. 335, 380 (1987).

106 Campbell and Fell Case, *supra* fn. 105, 347; Marckx Case, E.C.H.R. (Judgm. of June 13, 1979), 58 I.L.R. 561, 593 (1980); Johnston and Others Case, E.C.H.R. (Judgm. Dec. 18, 1986), 89 I.L.R. 154, 183 (1992); *cf.* Corfu Channel Case (U.K. *v.* Alb.) 1949 I.C.J. 4, 36 (Judgm. of Apr. 4).

107 Case Concerning the Factory at Chorzów (Ger. *v.* Pol.), 1928 P.C.I.J. (Ser. A) No. 17, 4, 47 (Judgm. of Sept. 13); I.L.C. Draft pt.II, *supra* fn. 97, Art. 8, 54; Schwarzenberger, 1 International Law 655s (1957).

to a state, *e.g.* violations of sovereignty or dignity, customary international law at present does not provide for monetary compensation and satisfaction is the appropriate form of reparation.[108]

Since Filova's ability to decrypt the code of the ESPRI database and its knowledge of private information about Ercolan citizens cannot be returned, restitution is materially impossible. Delivery of the ESPRI database would not restore the previous situation, because Ercola is still in possession of the data. Furthermore, the allegedly illegal obtaining of the database could only have caused immaterial damage to Ercola. Hence, satisfaction in the form of a judgment of this Court would constitute appropriate reparation.

FILOVA ASKS THE COURT TO DECLARE AND ORDER

1. THE REJECTION OF ERCOLA'S REQUESTS FOR RELIEF;

2. 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;

3. THAT ERCOLA'S TREATMENT OF ITS YTTIC MINORITY VIOLATES BINDING INTERNATIONAL LEGAL NORMS;

4. THAT THERE IS NO OBLIGATION UNDER INTERNATIONAL LAW TO EXTRADITE THOSE WHO CONFESSED TO THE STOCK-EXCHANGE BOMBING, AND THEIR ACCOMPLICES; AND

5. THAT NO RIGHT TO DAMAGES FOR INVASION OF PRIVACY IS KNOWN IN INTERNATIONAL LAW, OR, IN THE ALTERNATIVE, TO DENY ERCOLA'S ALLEGATION THAT ITS CITIZENS HAVE BEEN INJURED BY THE RETENTION OF THE DISCS CONTAINING THE ESPRI DATABASE.

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[108] Affaire Martini (It. *v.* Venez.), (Award of May 3, 1930), 2 R.I.A.A. 975, 1001s (1949); Corfu Channel Case, *supra* fn. 106, 36; Zemanek, Responsibility of States: General Principles, 10 E.P.I.L. 362, 369 (R.Bernhardt ed. 1987).