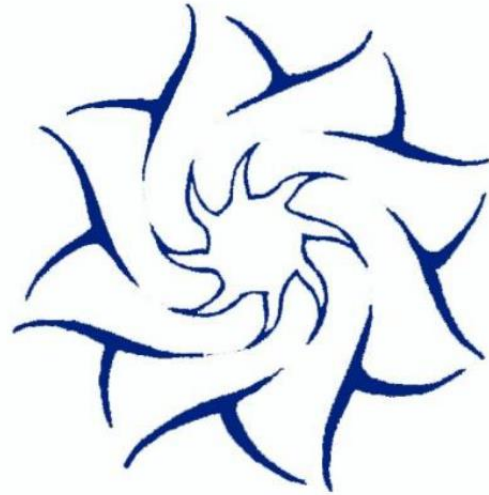


23RD D. M. HARISH MEMORIAL GOVERNMENT LAW COLLEGE

INTERNATIONAL ONLINE MOOT COURT COMPETITION

12TH-13TH FEBRUARY, 2022



HOSTED BY:

Government Law College

IN ASSOCIATION WITH:

D. M. HARISH FOUNDATION

INTERNATIONAL COURT OF JUSTICE
THE STATE OF AHYADRI (APPLICANT)
AND
THE PEOPLE'S REPUBLIC OF RIANSHAN (RESPONDENT)
CASE CONCERNING THE PANDA PAPERS
ORDER OF 15 SEPTEMBER 2021

COUR INTERNATIONALE DE JUSTICE
L'ÉTAT D'AHYADRI (DEMANDEUR)
ET
LES GENS DE LA RÉPUBLIQUE DE RIANSHAN (DÉFENDEUR)
AFFAIRE CONCERNANT LES PAPIERS PANDA
COMMANDE DU 15 SEPTEMBRE 2021

INTERNATIONAL COURT OF JUSTICE
15 September 2021
CASE CONCERNING THE PANDA PAPERS
(STATE OF AHYADRI
v.
PEOPLE’S REPUBLIC OF RIANSHAN)
ORDER

The International Court of Justice,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45(1), 48 and 49 of the Rules of Court,

Having regard to the Application filed in the Registry of the Court on 26 July 2021, whereby the Government of the State of Ahyadri (“Ahyadri”) instituted proceedings against the People’s Republic of Rianshan (“Rianshan”) (collectively, “the Parties”) with regard to a dispute concerning alleged violations by Rianshan of the Agreement on the Maintenance of Peace between the State of Ahyadri and the People’s Republic of Rianshan, 1972 (“the Application”);

Whereas, on 26 July 2021, Ahyadri also submitted a request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73 to 75 of the Rules of Court (“the Request”);

Whereas, the Application and the Request were communicated to Rianshan on the same day they were filed; and whereas, the Parties have appointed their respective Agents;

Whereas, on 2 August 2021, Rianshan informed the Registrar and the Agent of Ahyadri of its intention to contest Ahyadri’s claims and the Request;

Whereas, at a meeting with the Vice-President of the Court, exercising the functions of the Presidency, on 9 August 2021, the Agents of the Parties agreed to prepare jointly a Statement of Agreed Facts, including a formulation of the issues to be adjudicated by the Court;

Whereas, after negotiations, the Agents of the Parties jointly communicated the attached Statement of Agreed Facts to the Court on 23 August 2021;

Whereas, on the same day, Ahyadri filed in the Registry of the Court a list of information regarding evidence which it intends to produce, pursuant to Article 43 of the Statute of the Court and Article 57 of the Rules of Court, including the inclusion of an *ex parte* expert, Ms. Daisy Katanya;

Whereas, by a letter dated 1 September 2021, Rianshan presented its observations on the expert identified by the Ahyadri, stating that it objected to the introduction of Ms. Daisy Katanya on the ground that she posed a conflict with a sitting judge of this Court;

Whereas the Agents have agreed to revise the Statement of Agreed Facts to include the latest developments, and to each submit one written Memorial and make oral pleadings solely on the claims presented in the Statement of Agreed Facts (as amended);

Taking into account the agreement of the Parties,

Calls upon Rianshan to act in such a way as will enable any order the Court may make on the Request to have its appropriate effects, and in particular, to refrain from disclosing the Panda Papers and the contents thereof in any manner, or using them in the ongoing arbitration the Parties under the Agreement between the State of Ahyadri and the People's Republic of Rianshan for the Promotion and Protection of Investments, 1994;

Fixes the dates for the filing of the written Memorials and for the oral pleadings as the dates set forth in the Official Schedule of the D. M. Harish Memorial Government Law College International Online Moot Court Competition, 2022; and

Adopts the Official Rules of the D. M. Harish Memorial Government Law College International Online Moot Court Competition, 2022.

Done, in English, at the Peace Palace, The Hague, this 15 day of September, two thousand and twenty-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Governments of Ahyadri and Rianshan.

Registrar

Vice – President

STATEMENT OF AGREED FACTS

CASE CONCERNING THE PANDA PAPERS

23 August 2021 (as amended on 9 September 2021)

1. Rianshan is the largest state in the continent of Kamar-taj, with a population of approximately 1.5 billion. It is a one-party dictatorship, led by the Supreme Party of Rianshan, with a centrally planned economy and heavy protectionist policies. After emerging as a global leader of manufacturing in several sectors since the 1970s, Rianshan is now focused on dominating the information technology and communications sector. The Rianshanian People's Liberation Army ("the RPLA") is the world's largest military force, and has the second largest defence budget. It is also one of the fastest modernising militaries in the world, and has been termed as a potential military superpower, with significant regional defence and rising global power projection capabilities.
2. Ahyadri is a developing state to the east of Rianshan, with a population of approximately 1 billion. Ahyadri is a parliamentary democracy. Even though Ahyadri's economic and military prowess is comparatively less advanced than Rianshan's, it has emerged as a force to be reckoned with not only in Kamar-taj, but also the world. While previously Ahyadri was predominantly an agrarian export economy, in the 1990s it liberalised its economy, opening its doors to foreign companies, and emerging as a world leader in the tertiary economic sector due to its young, highly-educated demography.
3. The two states have had robust trade and cultural relations, especially since the 1980s. Their increased global influence has been largely credited to their cooperation. However, this has not always been the case. The relationship between the two states has historically been plagued by a long-standing boundary dispute. The two states share a long, unmarked border, running through the Kailasa mountain range. Due to the nature of the terrain in this region, the local population lives in isolated pockets of civilisation heavily influenced by cultures of both States. As a result, both States claim vast swathes of each other's territory. Rianshan claims the western end as a part of its Sichou Autonomous Province, whereas the eastern end was claimed by Ahyadri as a part of Pashmina Pradesh.
4. From around 1958 to 1960, a series of aggressive stand-offs and skirmishes took place along the border in the Kailasa region. This hostile situation resulted in politically charged propaganda from the ruling governments of both States, aiming to capitalise on the conflict.

Both states made tall claims as to the historical association of the Kailasa region and its communities with their own country, justifying the escalation of the conflict. Thereafter on 19 February 1960, each state declared war against the other.

5. The war drew out for nearly 10 years. Both sides suffered innumerable casualties, from both enemy action and the harsh conditions in the region. This persisting, now exacerbated, situation greatly burdened the economies of the two states, which were underdeveloped at the time. Given the combined geographical and demographic strength of the two countries, the situation extracted a heavy toll on growth and development of Kamar-taj, and in turn, the world. The entire global community began taking sides and forming factions. Notably, the United Kingdom of Appalachia (“Appalachia”), a highly developed democratic state, saw Rianshan as an ideological threat to democratic values and extended support to Ahyadri.

6. The global impact of the hostilities prompted the United Nations to form the United Nations Commission for Ahyadri and Rianshan (“UNCAR”), which after examining the situation, addressed a letter dated 2 July 1970 to the heads of the two States, which noted, in relevant part:

We invite the Governments of Ahyadri and Rianshan to send fully-authorized military representatives to meet jointly under the auspices of the Commission’s Truce Sub-Committee to establish a cease-fire line in the Kailasa region, mutually agreed upon by the Governments of Ahyadri and Rianshan and to suspend the ongoing hostilities and restore peace.

7. The military representatives of the two States met together from 18 to 27 December 1970. On 8 April 1972, Ahyadri and Rianshan signed the “Treaty of Maintenance of Peace Between the State of Ahyadri and the People’s Republic of Rianshan” (“the Peace Treaty,” Annex). Consequently, the Line of Factual Control (“LFC”) was demarcated, and limited troops were stationed in the Kailasa region as per the terms of the Peace Treaty.

8. The peace that followed boosted the economic progress of the entire region of Kamar-taj. Shortly after, through cultural and economic cooperation, the two States became the fastest growing economies in the world. Private companies from each of the two States began setting up shop in the other, and direct investment flows began to increase.

9. In keeping with the global trend of providing investment protection through treaties, on 10 November 1994, Ahyadri and Rianshan signed the historic Agreement between the State of

Ahyadri and the People's Republic of Rianshan for the Promotion and Protection of Investments ("the ARBIT"). On the occasion of the signing of the treaty, the Ahyadrian Prime Minister made the following statement:

This step marks the beginning of the "Kamar-taj century". With this step, the economies of Ahyadri and Rianshan become integrated even further. As neighbouring states who are leading the economic growth in the region, we need to be working together and not against each other. This economic cooperation will not only give impetus to the development of our countries, but will also bring us closer on cultural, social, geographic and strategic issues.

10. Needless to say, trade and investment between the two States grew exponentially. Backed by a one-party dictatorship aggressively oriented towards economic growth, Rianshanian business had access to a lot of government support, including efficient and quick policy-making, subsidies for key sectors of export and foreign investment, as well as the development of critical trade infrastructure.

11. Rianshan's leadership began publicly proclaiming the commencement of the "Rianshan century". Consequently, Rianshan's uninhibited progress began to rustle up feathers of major global players, like Appalachia, which had so far been dominating on all parameters, including economic, technological and military power.

12. Around 2000, Rianshanian business made a decisive shift towards capturing the information technology market, by increasing training and education, and incorporating companies. A number of globally popular websites and mobile applications began to crop up out of Rianshan, with their largest consumer base being Ahyadri.

13. The tech savvy youth of Rianshan also began to gain international notoriety for their hacking expertise. What began as pranks, practical jokes and random acts of vandalism, slowly took on a more sophisticated and sinister form with reported acts of thefts of money and information. Alongside this, even more sophisticated acts of political sabotage emerged, like defacing or temporarily shutting down government websites, as messages of resistance and protest. Multiple such self-proclaimed "hactivist" groups started cropping up all across Rianshan. One such organisations, "Pandas for Peace", predominantly comprised of college students and former Rianshanian government intelligence analysts who call themselves the Pandas, gained prominence for using their skills in targeted cyber operations purportedly for noble purposes. They considered themselves "digital Robin Hoods", bringing about justice.

They shot to international fame in 2014 when they exposed a mass surveillance programme by the Appalachian government, and have since been active.

14. In 2016, the Pandas uncovered a sophisticated, international child trafficking racket wherein children from underdeveloped countries like Bangalla and Xanadu were being sold to people in developed countries over the dark web. This resulted in the rescue of hundreds of children that had been kidnapped and separated from their families. This action was lauded with globally wide support for the Pandas, and people from all corners of the world began staging protests and wearing panda masks as a symbol of resistance.

15. The UNICEF issued a statement that read,

While the origins and objectives of this organisation remain unclear, and its legitimacy suspect, the international community undoubtedly owes them a great debt for saving the lives of so many children, and uniting so many families across the globe.

16. Soon after the child trafficking racket was shut down, Rianshan released a press release stating that the exposé by the Pandas was backed and sponsored by the government, and key government officials were supervising and controlling the operation.

17. The office of the Appalachian Secretary of State instantly issued a statement in response, that read,

While we are thankful for the children rescued, we must call a spade a spade. The Pandas are cyberterrorists and no less than a lynch-mob. The fact that they have been backed by the Rianshan government is clear evidence that Rianshan has been using the Pandas to plant backdoors and sabotage rival governments. Our investigation has shown that there exists an advanced persistent threat attack traceable to Rianshan soil, targeting government institutions and companies in Appalachia and other countries.

18. However, Rianshan continued with its support to the Pandas. In 2017, in light of escalating cybersecurity threats around the globe, the government of the Sichou Province of Rianshan contractually appointed Pandas to protect its territory and infrastructure from cyberattacks and cyberespionage.

19. Meanwhile, Ahyadri had been mired with its own problems. While in the years after the signing of the ARBIT, businesses were better supported, the growth was relatively slowed down by the Ahyadrian democratic process, corruption in the system, and frequently changing

governments. It became evident that Rianshanian businesses had been able to take a better advantage of the economic cooperation brought on by the ARBIT. By 2010, a number of Rianshanian businesses had deeply penetrated the Ahyadrian market and set up operations in Ahyadri. Shops were filled with “Made in Rianshan” products. Majority of the Ahyadrian computer and mobile systems had Rianshanian apps and software downloaded.

20. The Ahyadrian industry became increasingly disgruntled with the dominance of Rianshanian businesses. In 2012, the Federation of Ahyadrian Business (“the FAB”), the primary industry body representing Ahyadrian business interests, adopted a resolution to actively promote, through marketing as well as lobbying, use of products and services offered by Ahyadrian businesses domestically. Over the following years, most Ahyadrian businesses oriented their brands and advertisements towards capturing this flavour of patriotic sentiment. A 2014 report by Democracy Watch, a non-profit organisation that publishes research about political parties, opined that lobbying and political donations by businesses had increased to support protectionist policies.

21. In 2015, in the general elections in Ahyadri, the Nationalist Democratic Party of Ahyadri (“NDPA”) achieved a decisive victory on the back of a nationalistic political campaign styled “Make Ahyadri Great Again”. The new Prime Minister Amirtha Raj declared in her opening address to the country,

For too long, Ahyadrian businesses have been stifled by predatory, unhealthy and unethical competition by some countries. Our previous governments meekly ignored this attack on our economy in the name of friendship and solidarity. Your new government will defend the economy from such aggressors, and bring the Ahyadrian economy to its full glory. We promise you that by 2025, we will have a 5 trillion-dollar economy.

22. The new government took a series of measures to incentivise domestic businesses. By the end of 2015, the government introduced laws to mandate that a minimum percentage of materials in public infrastructure projects must be sourced domestically. Further, production linked incentives were offered to companies manufacturing in Ahyadri. A number of countries such as Bangalla and Xanadu announced plans to shift their businesses away from other manufacturing hubs like Rianshan to Ahyadri due to this. Over the following years, the number of foreign businesses that won government tenders also reduced progressively.

23. These actions led to some backlash. Rianshanian investment in Ahyadri plateaued. Rianshan's Minister of Commerce, when asked to comment on increasing protectionism by Ahyadri commented that,

Of course, we understand that there is some level of protectionism that every government must indulge from time to time. Our own government has policies that are labelled as protectionist by some countries. Personally, I don't think it matters how you categorise a policy or on what end of the spectrum it falls. The most important thing is that the policy must be in pursuance of *bona fide* economic development, and not motivated by politics. You see, politics has, in the past, unravelled even the best of relationships.

24. In March 2020, elections took place again in Ahyadri. The NDPA was re-elected on their promise to "finish the work we already started". Within weeks of the re-election, Prime Minister Amirtha Raj banned 273 Rianshanian mobile apps under the Ahyadri Information Technology Act. This included the famous online multiplayer gaming app 'RAU-D', document sharing app 'ScanCammer' and video sharing app 'PishPosh', which had garnered significant traction in Ahyadri.

25. A government press release dated 28 March 2020 stated as follows:

The Ministry of Information Technology, Government of Ahyadri ("MITy") in view of the emergent nature of threats has decided to block 273 mobile apps in view of the information available that they are engaged in activities which is prejudicial to sovereignty and integrity of Ahyadri, defence of Ahyadri, security of state and public order. This move will safeguard the interests of crores of Ahyadrian mobile and internet users.

MITy has received many complaints from various sources including several reports about misuse of some mobile apps available on Android and iOS platforms for stealing and surreptitiously transmitting users' data in an unauthorised manner to servers which have locations outside Ahyadri. The compilation of this data, its mining and profiling by elements hostile to national security and defence of Ahyadri, which ultimately impinges upon the sovereignty and integrity of Ahyadri, is a matter of very deep and immediate concern which requires emergency measures.

On the basis of recent credible inputs, it is determined that information posted, permissions sought, functionality embedded as well as data harvesting practices of these apps raise serious concerns that these apps collect and share data in surreptitious manner and compromise personal data and information of users that can have a severe threat to security of the State.

26. The move was widely welcomed by FAB and the Ahyadrian public. Similarly, some States, such as the government of Appalachia lauded this move, remarking that, "Rianshan's

cyber notoriety is well known. The use of businesses as a front for illicit data gathering and espionage must be met with sternly.”

27. On the other hand, there was no doubt that the move struck at the Rianshanian economy. In the background of the spread of the deadly COVID-19 virus, resulting in worldwide lockdowns and trade restrictions, Rianshan was crippled by the loss of its largest IT consumer base. Rianshanian representatives raised the issue at the World Trade Organisation, encouraging other States to condemn Ahyadri’s actions. Meanwhile, some newspapers reported that Ahyadrian exports at Rianshanian ports were facing increased checks and delays. Some Ahyadrian businesses that had operations in Rianshan reported isolated incidents of abrupt power cuts or instances of vandalism on social media.

28. The Ahyadrian Foreign Minister commented on these incidents at a press conference,

Rianshan’s backlash in light of the ban on apps that pose a threat to our national security is expected. While some of it is legitimate, some is very concerning. We are open to dialogue. But, at the same time, let me be clear – we will not be bullied into action. Our stance on the apps is very clear, and will not change.

29. Shortly after this statement, on 12 June 2020 the Rianshanian government issued a Notice of Arbitration to Ahyadri under Article 12 of the ARBIT, on behalf of its investors, requesting compensation to its investors and a permanent injunction on the ban of Rianshanian apps. Article 12 of the ARBIT reads as follows:

Article 12. Settlement of Disputes between the Contracting Parties

12.1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through the amicable means.

12.2. Subject to the provisions of paragraph 12.3, a Contracting Party may submit a claim to arbitration,

(a) seeking damages for an alleged breach of this Agreement on behalf of an Investor or Investment, or

(b) for a matter concerning the interpretation or application of a provision of this Agreement in which it is in dispute with the other Contracting Party.

12.3. A Contracting Party may not submit a claim to arbitration seeking damages for an alleged breach of this Agreement on behalf of an Investor or Investment,

(a) unless the Investor or Investment, as appropriate, has first submitted a claim before the domestic courts of the Host State for the purpose of pursuing local

remedies, after the exhaustion of any administrative remedies, relating to the measure underlying the claim under this Agreement, and a resolution has not been reached within a reasonable period of time from its submission to a local court of the Host State; or

(b) unless the claimant State Party demonstrates to the tribunal established under this Article that there are no reasonably available domestic legal remedies capable of providing effective relief for the dispute concerning the underlying measure, or that the legal remedies provide no reasonable possibility of such relief in a reasonable period of time.

30. While the Ahyadrian government spokespersons decried this action as needless escalation of the situation, it responded to the Notice and arbitration proceedings commenced.

31. Days later, reports started to emerge about aggressive posturing by the armies of both States along the valley of the Liusha river at the LFC. One report noted a violent encounter on 15 August 2020, when opposing patrols came across each other on a narrow ridge overlooking the Liusha river, and a fight broke out between them. Consequentially, hundreds of troops from both sides were called in and they fought with iron rods and batons with spikes. The reports confirmed that the 20 Ahyadrian soldiers, including the commanding officer of an infantry battalion, lost their lives in the clash. Sources have indicated a possible total of 43 casualties, including injuries to RPLA soldiers. While both governments convened high-level meetings respectively to discuss the “Liusha incident”, neither made any official statement in that regard. However, both states began to heavily militarise the region.

32. The Ahyadrian National Army (“the ANA”) deployed quadcopter drones to provide a live feed of activity along the border. The Rianshanian troops along the border responded by shooting down drones spotted along the LFC. However, two weeks into the deployment of the drones, the ANA intercepted and decrypted the following communication made to Rianshanian forward patrols,

HQ instructs all soldiers to not fire at Ahyadrian drones, and instead, report all sighting to HQ with exact coordinates. Timely information can be used to hack and neutralise the drones remotely by the Sichou Province’s cyber apparatus.

33. On 31 January 2021, an Ahyadrian drone deployed along the LFC was brought down. The Ahyadrian drone pilot reported that he lost manual control on the drone, and it began straying across the LFC. Within seconds, the drone crashed and was destroyed. An auto-

generated crash report noted that the firewall aboard the drone had been disabled. The ANA immediately recalled all drones flying along the border.

34. Meanwhile, the arbitration under the ARBIT progressed to an advanced stage. The parties completed their pleadings by January 2021, and completed production of documents by April 2021. Due to the COVID-19 pandemic and a lack of available dates, the Tribunal decided to postpone its oral hearing to the end of March 2022.

35. On 5 July 2021, the Rianshanian state news agency, Rianshan Today, reported a special telecast. The news anchor reported that Rianshan had gained access to certain confidential documents that revealed that the Ahyadrian mobile app ban had been motivated as a pure reprisal against Rianshan's boosting economy, and to promote substitute Ahyadrian mobile apps. The news telecast was as follows:

Anchor: Greetings, people of the great Republic of Rianshan! We interrupt our regular show to bring you some breaking news. As you may know, late last year, the jingoistic government of our neighbour Ahyadri had unfairly banned several mobile apps based out of Rianshan from operating in Ahyadri. Our government had boldly taken up the cause of the Rianshanian businesses whose apps were banned, and initiated an international arbitration under the Ahyadri-Rianshan BIT, an international treaty by which Ahyadri promised fair treatment to our businesses and investors in Ahyadri. We have just learned that our honourable government has boldly executed an operation by which the Ahyadrian ministry databases were hacked, and several documents were recovered which are incriminating evidence that the mobile app ban was a deliberate, politically motivated action taken by the Ahyadri government to feed the jingoistic sentiments of its population and voter base. To tell us more on this news, we have with us the Minister for Commerce.

36. At this point, the feed switched briefly to the minister, but was immediately cut off by an advertisement. After a few minutes of advertisement, the feed returned with the anchor and the minister looking visibly angry.

Anchor: Countrymen, we now have with us the Minister for Commerce to tell us more about how these confidential documents were obtained.

Minister: Let me just begin by correcting what you said earlier. The Rianshanian government has not conducted any cyber operation or hack of any kind whatsoever. The Rianshanian government does not involve itself in such activities. In fact, might I add, it is the Ahyadrian government that has no respect for other States' sovereignty, and no regard for the border treaty and investment treaty it has with Rianshan. Let me clarify: earlier today, our government anonymously received a series of documents concerning Ahyadri's mobile app

ban. It appears that the anonymous group was moved by the plight of our businesses in the State of Ahyadri, and angered by the lies the Ahyadri government has made as excuses to impose bans on our businesses. Accordingly, the computer systems of the Ahyadri government were accessed to obtain various documents that lay bare the conspiracy hatched by the Ahyadrian government to harm our businesses and unravel decades of friendship and mutual growth between our nations. We will be producing these documents before the international tribunal and exposing Ahyadri so that they have to compensate our businesses for their reckless acts.

Anchor: Thank you very much, Minister! So, viewers, it is plainly obvious that any reasonable person would be shocked by the treatment Rianshanian businesses have received at the hands of the Ahyadrian government. It appears that the hacktivists are back again and justice will be done.

37. Within hours of this broadcast, the Ahyadrian Prime Minister called for an emergency meeting of the cabinet. A detailed investigation was ordered into the veracity of the attack, and its methodology. Working through the night, the Ahyadri Cyber Command presented a report to the Prime Minister Amirtha Raj. The report revealed that on 29 June 2021, the Ahyadrian ministry computers was the subject of a coordinated phishing attack whereby its employees received emails asking them to download and fill in their employee evaluation forms. A few employees had clicked on the links on these emails, resulting in spyware entering these computers, that scanned all connected databases, identified key confidential documents and uploaded copies back to an external server. The files were traced travelling through a series of botnets, and eventually reached IP addresses located in Rianshan, associated with the Pandas.

38. The report also noted that ordinarily such a phishing attack would have been stopped by Ahyadri's state-of-the-art firewall. However, the firewall across computer networks in several ministries had been disabled at various points in the past few months. The cause of the disabled firewall was a self-replicating malware that had been hopping across Ahyadrian government networks for the past few months. The malware was traced as originating in the hack that had disabled and destroyed an Ahyadrian drone across the LFC.

39. Finally, the report revealed that in the days leading up to the cyberattack, the IP addresses associated with the Pandas that housed cryptocurrency wallets had received 1024.2408 bitcoins from a number of public addresses. These public addresses were attributed to the Rianshan National Intelligence Agency ("the RNIA") by cluster analysis. Further, the Pandas' IP addresses had received encrypted communications from the RNIA containing

intelligence reports about internal data storage and encryption protocols of the Ahyadrian government.

40. On 26 July 2021, Ahyadri instituted proceedings before the Court invoking Article 17 of the Treaty. The application recited the facts described herein and noted that the seizure by Rianshan of the documents and data violated (i) the sovereignty of Ahyadri and (ii) its property and other rights under international law. On the same day, Ahyadri also submitted a Request for the indication of the following provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73 to 75 of the Rules of Court:

(a) That Rianshan immediately deliver to Ahyadri and the Court (i) a list of any and all electronic documents and data containing information accessed from Ahyadrian government servers, and (ii) a list of the identities or descriptions of persons to whom such documents and data has been disclosed or transmitted;

(b) That all of the documents and data (and any and all copies thereof), in the possession of Rianshan be immediately sealed and delivered into the custody of the Court;

(c) That Rianshan (i) destroy beyond recovery any and all copies of the documents and data, and (ii) inform Ahyadri and the Court of all steps taken in pursuance of that order for destruction, whether or not successful.

41. Consequently, on 2 August 2021, Rianshan sent a response to the Office of the Attorney General of Ahyadri, which stated, in relevant part:

Rianshan has no objection to the admissibility of the matters concerning the Treaty before the Court. However, all matters described in Ahyadri's application, including the cyber-attack on Ahyadrian offices and Rianshan's alleged direct responsibility, fall outside of the ambit of the Treaty and jurisdiction is contested.

42. On 23 August 2021, Ahyadri informed the Court of its intention to include *ex parte* expert, Ms. Daisy Katanya. Ms. Katanya is a renowned cyber-security expert as well as a lawyer, and is one of two experts in the world who have published several papers on the intersection of cyberspace and public international law. Ms. Katanya has also published scientific papers on the nature and use of self-replicating malware.

43. By letter dated 1 September 2021, Rianshan requested the Court to reject the appointment of Ms. Katanya as Ahyadri's expert in this case. The letter noted that Ms. Katanya had previously been a junior partner in Kulshreshtha LLP. During the same time, a sitting judge of the Court of Bangalla nationality, Judge Guran, had been a partner. Rianshan noted that the introduction of Ms. Katanya as a witness would in all likelihood result in the recusal or removal of Judge Guran.

44. As of March 2021, due to delays to the meetings of the General Assembly and Security Council caused by the COVID-19 pandemic, the election of judges to replace vacancies had been held in abeyance, and the present strength of the Court was only 11. In March 2021, Judge Escobar had resigned from her membership as judge of the Court in order to accept her appointment as President in her home country, Columbiana. On 31 May 2021, unfortunately Judge Iglesias passed away due to COVID-19, leaving his seat at the Court vacant. Accordingly, Rianshan argued that the recusal of one more judge would result in a lack of quorum, rendering the Court unable to hear the case.

45. Ahyadri responded to Rianshan's objection stating that it had the right to appoint an expert of its own choosing. In any case, even assuming there is a conflict, that in itself would not make the recusal of Judge Guran a *fait accompli*. Moreover, there were procedures to appoint further judges to the Court.

Issues for the Court's Consideration

46. The Court is confronted by the following issues:

- (a) Whether the Court has jurisdiction over the claims in this case under Article 17 of the Treaty?
- (b) Whether Rianshan's request for a direction to prevent Ahyadri from appointing Ms. Katanya must be granted?
- (c) Whether Ahyadri's urgent request for the provisional measures sought must be granted?

47. Ahyadri and Rianshan are both members of the United Nations, and are parties to the Statute of the International Court of Justice.

ANNEXURE**AGREEMENT ON THE MAINTENANCE OF PEACE
BETWEEN THE STATE OF AHYADRI AND THE
PEOPLE'S REPUBLIC OF RIANSHAN****8 APRIL 1972****[excerpts]**

The State of Ahyadri and the People's Republic of Rianshan ("Ahyadri" and "Rianshan" respectively, collectively "Parties"),

Desiring to find a negotiated solution to the situation in the Kailasa region, in accordance with the Five Principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit and peaceful coexistence and with a view to maintaining peace and tranquillity;

Acknowledging that the situation in the Kailasa region arose primarily due to escalation of minor skirmishes through charged political rhetoric, which was entirely avoidable by resorting to diplomatic efforts instead;

Desiring to lay down means for avoiding further tensions along the border in the form of continuous dialogue and a procedure for resolution of disputes;

Hereby agree on the following provisions.

Article 1

The war between the Governments of Ahyadri and Rianshan is hereby brought to an end.

Article 2

(a) The cease-fire line is established in the Kailasa region, as follows:

(i) [...]

(b) The cease-fire line described above shall be verified mutually on a map and on the ground by authorised representatives of both Governments, with the assistance of the United Nation Commission. In the event of any disagreement of the representatives, the decision by the Military Adviser appointed by the United Nation Commission shall be final.

(c) No troops shall be stationed or operate in the area surrounding the cease-fire line, except on the following Points:

(i) [...]

(d) Both sides shall be free to adjust their defensive positions behind the cease-fire line as permitted in this Agreement, subject to no wire or mines being used when new bunkers and defences are constructed.

[...]

Article 16

The Governments of Ahyadri and Rianshan undertake to make every possible effort to ensure that the present Agreement is respected and implemented and peace efforts are maintained between the States.

Article 17

To avoid a repetition of circumstances that brought about this Treaty, the Parties hereby agree that any dispute regarding a violation of territorial sovereignty between them shall be resolved by referring the matter, at the request of either Party, to the International Court of Justice. Both Parties undertake to respect and to carry out the decision of said Court.

[...]

Article 20

The present Agreement shall come into force upon its signing by the parties. Except as modified by this Agreement, this Agreement shall continue to remain operative.

General Chinartan Jadhav
State of Ahyadri

General Sa Chin Soneta
People's Republic of Rianshan