

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING THE HELIAN HYACINTH

(STATE OF ADAWA *v.*  
REPUBLIC OF RASASA)

**ORDER OF 20 SEPTEMBER 2019**

**2019**

COUR INTERNATIONALE DE JUSTICE

AFFAIRE CONCERNANT LA JACINTHE HELIANE

(ETAT D'ADAWA *c.*  
REPUBLIQUE DE RASASA)

**ORDONNANCE DU 20 SEPTEMBRE 2019**

INTERNATIONAL COURT OF JUSTICE

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**CASE CONCERNING THE HELIAN HYACINTH**

(STATE OF ADAWA *v.* REPUBLIC OF RASASA)

**ORDER**

The International Court of Justice,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45(1), 48, 49, and 80 of the Rules of Court;

Having regard to the Application filed in the Registry of the Court on 1 July 2019, whereby the Government of the State of Adawa (“Adawa” or “Applicant”) instituted proceedings against the Republic of Rasasa (“Rasasa” or “Respondent”) with regard to a dispute concerning alleged violations of international law by Respondent;

Whereas the Application was communicated to Rasasa on the day it was filed;

Whereas, on 12 July 2019, Rasasa informed the Registrar and the Agent of Adawa of its intention to file a counterclaim under Article 80 of the Rules of Court;

Whereas Adawa and Rasasa have appointed their respective Agents;

Whereas, at a meeting with the President of the Court on 22 July 2019, the Agents of the Parties agreed to have all claims and counterclaims heard together in a single set of proceedings, and that all issues of jurisdiction and admissibility would be determined alongside the merits;

Whereas, after negotiations, the Agents of the Parties jointly communicated the annexed Statement of Agreed Facts on 9 September 2019;

Whereas the Agents of the Parties have agreed that they shall each submit one written Memorial and make oral pleadings solely on the claims presented in the Statement of Agreed Facts;

Whereas the Agents of the Parties have agreed that a “dispute” exists between the Parties with respect to each of the aforementioned claims and counterclaim and that the counterclaim is “directly connected with the subject matter” of at least one of the claims within the meaning of Article 80 of the Rules of Court; and

Whereas the Parties have agreed that the designation of Adawa as Applicant and Rasasa as Respondent shall be without prejudice to the allocation of the burden of proof;

Taking into account the agreement of the Parties,

*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 2020 Philip C. Jessup International Law Moot Court Competition; and

*Adopts* the Official Rules of the 2020 Philip C. Jessup International Law Moot Court Competition.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of September two thousand nineteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Governments of Adawa and Rasasa.

*(Signed)*  
President

*(Signed)*  
Registrar

## STATEMENT OF AGREED FACTS

### CASE CONCERNING THE HELIAN HYACINTH

Adawa v. Rasasa

**9 September 2019**

1. The State of Adawa and the Republic of Rasasa are neighboring countries in the Region of Crosinia (“the Region”), a subtropical and semi-arid inland expanse formed by hills and valleys where citrus fruits, olives, grapes, dates, and spices are grown. The Region is also the only place on Earth where the Helian hyacinth (*Hyacinthus solaris*) is cultivated. The Helian hyacinth is a flowering plant best known for producing the flavoring spice Helian, which is derived from its pollen and which has a weight-to-value ratio comparable to that of saffron. According to well-established botanical scholarship, it takes no less than 20 years for newly planted Helian bulbs to produce export-quality spice.
2. There are four other States in the Region. All six States are dominated by the same ethnic group, speak the same language and share many cultural traditions. Exports of Helian spice contribute significantly to the GDPs of all six Crosinian States. Adawa has a population of approximately 5.4 million and a nominal GDP per capita of approximately €17,500. Rasasa has a population of approximately 9.9 million and a nominal GDP per capita of approximately €21,000. Adawa and Rasasa share a border that is 201 kilometers long.
3. Until 1928, all six Crosinian States were provinces of the Kingdom of Crosinia. When the last king, Narang III, died in 1924 without a direct male descendant as required by royal tradition, the provinces divided over competing claimants to the throne. Four of the provinces, including Rasasa, backed the late monarch’s brother, Taplup, while the other two, Zeitounia and Adawa, sought to have Narang’s eldest daughter, Goleta, named Queen.
4. Scattered violence and skirmishing over the next three years became a full-fledged civil war in 1927, with Rasasa as the main belligerent on the side favoring Taplup. Over the next year, each of the three provinces allied with Rasasa declared independence and withdrew from the hostilities.

5. On 29 October 1929, representatives of the remaining belligerents – Adawa, Zeitounia, and Rasasa – met in the Rasasan capital of Botega and concluded negotiations ending the bloodshed. Rasasa declared itself an independent republic, and the provinces of Adawa and Zeitounia united to form the Adawa-Zeitounia Union (AZU), an independent monarchy, as of that date. The newly installed President of Rasasa and Queen Goleta of the AZU signed the Treaty of Botega on Armistice and Pacification (“the Treaty of Botega”) several days later. The relevant portions of the Treaty of Botega are attached to this Statement of Agreed Facts as *Annex A*.
6. The five independent Crosinian States promptly applied for and were granted membership in the League of Nations, and all became parties to the Statute of the Permanent Court of International Justice.
7. During the 1930s, the AZU encountered significant economic and social stresses. Adawa became more urbanized and industrialized while Zeitounia did not, and the central government, under heavy Zeitounian influence, opposed what it considered to be demands that it invest disproportionately in infrastructure in Adawa. Effective 1 January 1939, the two provinces amicably agreed to dissolve their Union, and each declared its independence as of that date. Adawa adopted a republican form of government, while Zeitounia retained Queen Goleta as monarch.
8. Both Adawa and Rasasa joined the United Nations in 1947 and acceded to the Statute of the International Court of Justice. Neither State has filed a declaration accepting the Court’s compulsory jurisdiction under Article 36(2) of the Statute.
9. In the decades following the Second World War, Rasasa became a substantial participant in the international technology sector, eventually developing a robust robotics industry. Adawa’s economy was and remains primarily focused on the exploitation of natural resources. All of the Crosinian States engaged in the highly profitable activities of growing, harvesting, and processing Helian hyacinth pollen and exporting Helian spice.
10. In light of the very specific equipment and exacting procedures needed for successful cultivation of the Helian hyacinth, and the need for ongoing research and development, the

Agriculture Ministries of the six Crosinian States in 1964 formed an unofficial roundtable, meeting twice per year to discuss technical and economic issues specific to the Helian industry. Five years later, that arrangement was formalized in a treaty, signed on 20 June 1969 and promptly ratified by all six Member States, declaring the formation of the Crosinian Helian Community (CHC). The parties to the CHC agreed to impose no customs duties within the CHC on Helian spice or the equipment and materials used to harvest or process the Helian hyacinth. Relevant portions of the CHC Treaty are attached as *Annex B*.

11. Between 1969 and 1979, the net value of Helian spice exports across the six CHC Member States increased by an average of 12.3% per year, and employment in Helian-related activities increased by 8% per year. In 1979, to mark the tenth anniversary of the Community, heads of government of the CHC Member States were invited to participate in the semi-annual meeting. They issued a joint communiqué at its conclusion, proclaiming what they called “the remarkable achievements of the Crosinian Helian Community in improving revenue, employment, and the quality of life for all of the people of our Region.”
12. In 1982 and 1985, respectively, Rasasa and Adawa acceded to the General Agreement on Tariffs and Trade (GATT). Both States became original members of the World Trade Organization (WTO) in 1995 and remain members. When they joined the GATT, both States submitted their then-applicable tariff schedules, and agreed that these would be “bound rates” applicable on a most favored nation (MFN) basis. With respect to Helian plants, bulbs, pollen, spice, and other material, the bound rates were zero.
13. In 1998, Adawa became an original party to the Rome Statute establishing the International Criminal Court, and remains a party to that treaty. Rasasa is not a party to the Rome Statute.
14. Ms. Darian Grey was (and remains) one of the wealthiest citizens of Rasasa. From 1979 to 2016, she served as founder and chief executive officer of the Rasasan Robotics Corporation (RRC), a privately-held company headquartered in Botega. RRC advises governments on computerized and autonomous defense and security systems; designs, develops and implements these systems in conflict zones around the world; and provides

training in their use. Ms. Grey and her company have been the subjects of mixed publicity. In 1998, Forbes Magazine named her one of “The 20 Women Who Will Make a Mark in the 21<sup>st</sup> Century.” In 2000, Human Rights Watch accused Ms. Grey and RRC of “active complicity in keeping some of the worst despotic regimes in the world securely in power.”

15. In February 2009, the remote island Republic of Garantia (not a party to this case or otherwise involved in this dispute) formally referred a situation to the Prosecutor of the International Criminal Court concerning war crimes and crimes against humanity that were alleged to have occurred during the 2007-2009 civil war in that State. The referral noted that “several private foreign enterprises sold weapons systems and provided training to government militias, and such systems and training materially aided the [regime then in power] in its unlawful conduct.” The referral specifically mentioned RRC as one of the accused foreign contractors, and cited Ms. Grey as having been personally responsible for its activities. In accordance with ICC procedures, the Office of the Prosecutor opened an investigation in August 2009.
16. On 14 July 2012, an unprecedented and catastrophic tropical cyclone, Hurricane Makan, struck the entire Region. The death toll from the cyclone exceeded 8,000 and, in each of the six States, entire towns were inundated, roads and power lines were destroyed, and major urban centers suffered historic flooding. More than 60% of the Helian hyacinths in Rasasa, 20% of those in Adawa, and between 15% and 20% of those in the other four States were destroyed. Unemployment began to increase across the Region as farms, their suppliers, and the businesses that depended on them became no longer viable.
17. In the weeks and months following the storm, crime rates skyrocketed throughout the Region. Armed gangs roamed the countryside, stealing salvageable Helian plants and harvesting and processing equipment from the devastated farms. According to the overwhelmed police forces of the six States, many of the gang members were former Helian farmers whose way of life had been disrupted by the cyclone. Official reports described them as “simple hooligans,” drawn to the opportunity to make easy money with little risk, and noted the broad range of their criminal activities: acts of violence, arsons,

vandalism of public and private property, as well as thefts of cash, equipment, and trade goods.

18. In October 2012, the President of Rasasa, Beta Tihmar, convened a meeting of major Rasasan corporate executives to elicit ideas on how to address the increasingly serious crime wave that the police had been unable to staunch. Notes of the meeting later released to the media reported that Ms. Grey offered “to devote RRC’s expertise and resources to spearhead the development of a ground-breaking autonomous security system to suppress criminal activities in Rasasa and throughout the Region.” Ms. Grey referred to the system she had in mind as the “Weaponized Autonomous Limitation Line” (or “the WALL”). Its principal feature, she contended, was that it would deploy advanced technology to deter and apprehend criminals, while using force only when absolutely necessary and when the chance of targeting innocents was reduced to virtually zero.
19. President Tihmar expressed great interest in the concept and asked Ms. Grey to prepare a formal proposal. Although the details of the ensuing negotiations between RRC and the Rasasan government remain classified, in January 2013 the President notified the other five CHC Member States that Rasasa had contracted with RRC to undertake research and development of the WALL. President Tihmar invited them to collaborate in “this state-of-the-art system that will reduce the pressure on our respective police forces, facilitate the efficient apprehension of dangerous criminals, eliminate the potential for tragic interactions between police and civilians, and help our societies recover from Hurricane Makan.” President Tihmar added that the WALL would be especially valuable in promoting “the revival of our Region’s Helian industry and those who depend on it.”
20. On 2 February 2013, RRC distributed further technical details in a report signed by 15 police and military technology experts from 12 States, including all six CHC Member States. The report disclosed that the WALL employed machine learning algorithms, developed from a large quantity of “training data” acquired from the Rasasan police and the police and military forces of 10 other States, in order to identify threats. The training data included millions of images, video footage, computer models, and other information derived from prior instances of armed conflict, civil unrest, and criminal activities during



peacetime. According to RRC, the WALL featured an advanced form of “supervised learning,” in which the training data had been meticulously “tagged” by teams of software engineers from RRC working in cooperation with Rasasan police officers and military officials. The tagging highlighted aspects of the training data that indicated armed threats, as well as indicators of retreat, surrender, incapacity, and other factors that would render an individual effectively *hors de combat*.

21. All six CHC Member States devoted funds and provided leading government and private sector scientists and engineers, as well as materials, to the research and development phase of the project, which was conducted at RRC’s laboratories in Botega and its testing ranges in rural Rasasa.
22. By April 2013, police in the other four Crosinian States had gained the upper hand, and crime levels were restored to pre-Hurricane Makan levels. Each of these States gradually withdrew from the WALL project and, by August 2013, only Rasasa and Adawa continued to participate in the development of the venture. The withdrawing States assigned any rights they might have acquired during the development of the project back to RRC.
23. Research and development of the WALL proceeded steadily over the next two years, including a review by advisers from the Rasasan government for compliance with international law. The system was subjected to hundreds of thousands of computer simulations and field tests under the close supervision of representatives of police, military, and engineering experts from the Rasasan and Adawan governments.
24. On 6 July 2015, Ms. Grey announced the completion of the project. At a meeting of ministerial-level representatives of Rasasa and Adawa, she described the WALL as follows:

The physical infrastructure of the WALL consists of 10-meter-tall metal towers, each topped with an advanced surveillance and response unit. With 360-degree motion-sensing, high-definition, and infrared cameras, each surveillance unit can closely monitor all ground and aerial activity within a 130,000 square meter area around the base of its tower, enabling the towers to be placed as far as 200 meters from one another without sacrificing coverage. To respond to threats, each unit is equipped with an

array of lethal and non-lethal options, ranging from speakers broadcasting audible warnings, all the way to fully automatic .50 caliber machine guns mounted on 360-degree turntables.

But the true genius of the WALL lies in what you cannot see. The system is fully autonomous and independent of human control, in a way the world has never seen before. Once deployed and activated, each unit is in constant communication with every other unit, sharing data and responses over secured, encrypted wireless channels. Using advanced artificial swarm intelligence, the WALL can instantaneously and appropriately decide whether and how to respond to any given threat, without any intervention by human actors. In fact, decisions are made so rapidly that second-guessing by humans is practically impossible. Finally, this distributed approach to decision-making means that the destruction or incapacitation of a single unit will not impair the efficacy of the entire system.<sup>1</sup>

25. Teams of Adawan and Rasasan scientists then presented their conclusions based upon the simulated and field tests. They explained that each element of the system, as well as the system as a whole, had been extensively peer-reviewed and tested by government and private experts in more than 30 countries. The head of the Adawan team spoke next:

Naturally, the testing team paid particular attention to the question of whether the WALL might deploy deadly force when the situation does not warrant such a response. Although it carries lethal potential as a last resort, the WALL is unimaginably more reliable than human police or soldiers. During months of testing, it demonstrated a ‘false positives’ rate of less than 0.0001% – meaning that the system, or any unit of the system, will make a mistake no more than one time in one million encounters. And with embedded rules instructing the software to favor non-lethal deterrence, our testing indicates that the WALL would mistakenly use excessive force no more than once in two hundred million encounters.

26. Although the attendees declared themselves suitably impressed with the WALL and the testing data, neither government elected to purchase it. Both Adawa and Rasasa announced their satisfaction with having been involved in the development of the WALL, but stated that it was neither economically feasible nor politically desirable to go further with the

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<sup>1</sup> This version of Ms. Grey’s remarks was reported in the national and international media the following day. It was edited by Rasasan government authorities to remove classified technical information.

project. RRC reportedly marketed the WALL in the ensuing years, but there has been no public confirmation of its deployment by other governments.

27. Throughout this period, violent and property crime rates continued to dwindle in both Adawa and Rasasa. However, in August 2016, relying upon arrest records and eyewitness accounts, the Rasasan Border Police reported what they termed “an alarming new trend” along the border: “The small Adawan gangs that arose in the wake of Hurricane Makan have apparently organized themselves into larger armed groups, and have turned the resources, personnel, and weapons they previously used for localized crimes towards cross-border crime into Rasasa.”
28. Adawan criminal gangs regularly entered Rasasa under cover of night and attacked small villages, assaulting and even killing villagers, returning to Adawa with Helian bulbs, growing and processing equipment, and virtually anything else of value. The Rasasan Border Police observed that there had been a marginal but constant increase in the frequency of such raids every month since January 2016.
29. At the request of President Tihmar, in September 2016 the Rasasan and Adawan governments established a high-level task force to “consider joint responses to the increase in cross-border crimes.” The joint task force met several times over the next year, but was unable to formulate a comprehensive plan to suppress the gangs.
30. According to a report published by the Rasasan Helian Growers Association (RHGA), a prominent industry group based in Botega, beginning in October 2016 Rasasa’s share of the global Helian market had declined sharply relative to that of other States in the Region. The RHGA expressed alarm that Rasasan Helian processors had increasingly begun to purchase their raw material from Adawan Helian farmers in lieu of Rasasan suppliers, who had been unable to meet their Helian pollen requirements. The RHGA’s report concluded, “if current trends continue, many Rasasan Helian farms will collapse in five to ten years, with catastrophic effects for the Rasasan economy and Rasasan society in general.”
31. Rasasa held its regular presidential election in December 2016. Mr. Venevar Pindro, a former military officer, ran on a platform calling for, among many other things: tightening

border controls to eliminate armed incursions; and enhancing and protecting Rasasa's Helian industry, the failure of which he repeatedly claimed "would pose a fundamental threat to our economy and national security."

32. Mr. Pindro was elected president of Rasasa with 58% of the vote, and he took office in January 2017. He quickly named officers of the new government, appointing Darian Grey as Minister of Foreign Affairs. Upon her nomination, Ms. Grey resigned her post at RRC and divested herself of any direct financial stake in the company. Shortly after her appointment, investigative reporters for the Budapest-based daily newspaper *Népszabadság* obtained and published what it claimed were previously-undisclosed memoranda from Ms. Grey to her staff at RRC approving the clandestine supply of arms and the training of military personnel in numerous conflict zones, including Garantia. Rasasan human rights groups protested Ms. Grey's appointment as Foreign Minister, and the opposition party in parliament was unanimous in voting against it. As of the time of her nomination to the cabinet, neither RRC nor Ms. Grey had been charged with crimes in any domestic or international tribunal. Her appointment was confirmed by parliament on 15 January 2017.
33. During the campaign and following his election, President Pindro criticized the joint task force as ineffective. He called upon Adawa, "in the spirit of our long friendship," to take prompt and effective measures to quash the criminal gangs based within its territory. Shortly after taking office, President Pindro submitted two bills for legislative approval. The first invoked "essential security interests" and provided for the introduction of tariffs of 25% *ad valorem* on Helian bulbs, live plants, and pollen imported into Rasasa, in an effort to encourage Rasasa's domestic processors to return to local farms for their feedstock. The second called for expedited review of options for the hardening of the Adawa-Rasasa border.
34. In its annual report delivered to the Rasasan Parliament in February 2017, the Rasasan Border Police reported that, "The border issue has fundamentally changed in its character. What were once disorganized gangs have become organized militias, and their crimes are no longer limited to opportunistic thievery." The report indicated that Adawan nationals had established permanent and well-defended encampments within Rasasan territory,

which they were using as bases for international trafficking in illegal drugs. The report concluded, “These new militants are well armed and well-organized, and the police are simply unable to remove them.”

35. In March 2017, the United Nations Office on Drugs and Crime (UNODC) reported that, “There is a new and major player in international trafficking of illegal drugs. The previously unorganized Adawan bandits have used their profits to create a structured and well-armed militia, which uses its permanent camps within Rasasan territory as a headquarters for its global enterprise.” In response, both Adawa and Rasasa declared that their domestic police efforts had been ineffective in counteracting the militia, in part because criminal operatives were able to freely cross the Adawa-Rasasa border.
36. On 1 June 2017, the militia simultaneously attacked nine Rasasan Border Police stations, killing 21 officers. Eyewitnesses stated that the raiders were “heavily armed with military-grade weapons and equipment,” and that the attacks indicated “a high level of prior planning and training.”
37. On 25 June 2017, President Pindro authorized the deployment of the Rasasan Army against the militia camps within Rasasa, as well as the purchase of the WALL from RRC and its installation along the Rasasa-Adawa border. He simultaneously sent a message to Adawan President Omar Moraga which read, in relevant part:

I have today given my authorization to the Rasasan Army Engineers Battalion to begin installation of the WALL along the entire length of our shared border. This is a step necessitated by critical national security concerns. As you are well aware – since your government was involved in the development of this weapons system – it is infinitely more reliable than any in the history of mankind. The WALL will be erected and deployed entirely on Rasasan soil, and each tower will surveil up to 200 meters on each side of our shared frontier. The system is designed to detect threats, and to prevent them from becoming reality. It will deploy, on the basis of graduated sequencing, demonstrative measures (alarms, verbal warnings of increasing volume and urgency) to preset levels of force (dispersal of disabling chemicals, non-targeted explosions, and finally gunfire), based upon its training data, against anyone attempting to cross the border illegally, in either direction.

38. President Moraga responded, saying:

Mr. President, while your words apparently intended to provide comfort, the WALL will still involve the deployment of lethal weaponry along our border. So long as the possibility exists that this autonomous system might be unleashed against our people or on our soil, its deployment will be incompatible with international law. We are firmly of the view that your proposed installation of the WALL would be a flagrant violation of international law, including but not limited to the Treaty of Botega of 1929 between your government and the predecessor of mine. We urge you to reconsider this aggressive and ill-advised measure.

39. President Pindro announced the completed installation of the WALL on 10 January 2018. He declared, in a televised address:

With vanishingly close to 100% accuracy, the WALL will prevent illegal border crossings, while virtually guaranteeing that no mistakes will be made and no innocents will be harmed. Law-abiding Rasasans and our Adawan neighbors need have no concern; they may go about their lives just as they did before, and so long as they do not act out of intent to injure our country, they will do so in safety and tranquility.

40. On 1 February 2018, President Moraga issued a statement saying, in relevant part:

The fact that lethal weapons have been amassed along our border, and that the WALL will monitor the activities of our citizens, fills all Adawans with dread and anger. That these weapons are fully under the control of an advanced artificial intelligence, with no possibility for the exercise of mercy or judgment by human actors, only exacerbates our fears and violates the letter and spirit of Rasasa's international obligations. Even if lethal force were unleashed no more than once in a millennium, that would be small comfort. The placement of these weapons on our frontier is far out of proportion to whatever was claimed to have motivated it. But that is only one indication of the illegality of this belligerent exercise.

41. The Defense Ministers of the two States agreed to meet to discuss the issue of the WALL, and the joint task force resumed its regular meetings, which had been suspended after President Pindro's election. The task force reviewed reports from both States' national police forces, which indicated that, in the four months following the deployment of the WALL, reports of trans-border incidents decreased more than 80 percent. The Rasasan

Minister reported that the Rasasan Army was making “substantial inroads” into dispersing the armed camps within her country.

42. In May 2018, in response to recommendations from the task force, Adawa stationed unarmed human monitors on its side of the border, and the Rasasan Border Police launched a telephone and Internet “hotline” to permit members of the public in both countries to communicate any concerns to the authorities. To this date, there have been no reports of any incidents of lethal force deployed by the WALL. In its May 2018 official publication, the joint task force observed: “Although Adawa continues to maintain its opposition to the program on legal grounds, the WALL has without question had a positive impact in reducing and deterring cross-border crime.”
43. A few months earlier, in January 2018, Rasasa’s Parliament had, with little debate, adopted President Pindro’s proposal to impose tariffs on unprocessed Helian materials imported into Rasasa. Adawa protested the decision and, in addition, the CHC Director-General issued the following statement: “I remind Rasasa of its obligation, under Article 3 of the CHC Agreement, to abstain from creating impediments to trade in Helian and Helian-related goods. Its unilateral actions do not further, and in fact may well hinder, the CHC’s goals of ensuring the everlasting and sustainable cultivation of the Helian hyacinth across Crosinia.”
44. The Rasasan Foreign Ministry responded: “Rasasa must take steps to protect and promote the wellbeing of our own Helian growers. Ensuring their survival, and that of our citizens who depend on them, is a vital matter of national security.”
45. In October 2018, Adawa formally requested consultations with Rasasa pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) of the WTO. Government officials from both Adawa and Rasasa met, but were unable to resolve the dispute amicably.
46. In January 2019, the International League for the Support of Agriculture (ILSA) – a non-profit and non-partisan organization headquartered in Ottawa devoted to “supporting farmers and agri-business worldwide” – published a study entitled “Another Rise and Fall:

The Market for Helian Spice Around the World, 1975-2018.” The monograph presented comprehensive and detailed evidence that, as a direct result of the tariffs imposed by Rasasa in January 2018, Adawan farmers were estimated to have lost more than €10 million in revenue through the end of the studied period in October 2018 as a result of declining sales to processors in Rasasa. It projected that the losses would increase in coming years.

47. In February 2019, Adawa requested the establishment of a panel pursuant to Article 6.2 of the DSU, alleging that Rasasa’s tariffs on Helian products were an unjustifiable breach of its commitment to maintain the bound rate of zero on such items.
48. On 13 April 2019, the Prosecutor of the International Criminal Court announced that, pursuant to Article 58 of the Rome Statute, she was requesting the issuance of a warrant for the arrest of Minister Grey, assigning to her criminal responsibility for certain alleged activities of RRC in Garantia between 2007 and 2009. The charged acts included war crimes, and “other serious violations of the laws and customs applicable to armed conflicts not of an international character,” within Articles 8.2(a) and 8.2(e) of the Rome Statute. The indictment specifically cited the training and supervision of paramilitary forces that perpetrated such crimes, the sale and use of prohibited weapons systems, and the conduct of unauthorized surveillance of civilians that allegedly led to their becoming the targets of violent repression.
49. On 18 June 2019, the CHC welcomed representatives of its Member States to Novazora, the capital city of Adawa, for its regular annual meeting, which coincided with the 50<sup>th</sup> anniversary of the founding of the Community. Minister Grey, representing Rasasa, arrived late in the morning of 18 June 2019 for the four-day session.
50. On 20 June 2019, a Pre-Trial Chamber of the ICC granted the Prosecutor’s 13 April 2019 request and issued a warrant of arrest for Minister Grey.
51. Two days later, on 22 June 2019, officers of the Novazora police approached Minister Grey as she was leaving her hotel. After ascertaining her identity, they took her into custody. She did not resist but informed the arresting officers that she “enjoyed diplomatic immunity.”



The Foreign Ministry of Adawa promptly notified the Rasasan Ambassador to Adawa of Minister Grey's arrest, and Rasasan consular agents were provided access to her. She was then brought before a magistrate, who confirmed that she was the person named in the indictment. Minister Grey's counsel (whom she selected freely and without interference) argued that she was entitled to immunity while on Adawan soil in her official capacity, but the magistrate rejected that argument, noting that, "the Rome Statute of the ICC makes no exception for sitting government ministers." A judicial appeal was denied, as was a request for the Minister's provisional release.

52. The Adawan Ministry of Justice informed the ICC Office of the Prosecutor that it had apprehended the indictee and would arrange for her transfer to The Hague. However, at the time of the signature of both parties to this Statement of Agreed Facts, it was agreed that Minister Grey would remain under house arrest at a monitored diplomatic guesthouse in Adawa, pending this Court's disposition of the case.
53. Rasasa's Deputy Foreign Minister, upon learning of the arrest, delivered a *note verbale* to the Adawan Embassy to Rasasa:

The apprehension and detention of diplomatically protected persons is prohibited by international law. One of our Ministers has been kidnapped while she was visiting Adawan territory. She is entitled to absolute immunity under binding treaties and customary international law. We have no reason to believe that the Minister committed a crime recognized in our legal system, and we have no intention of trying, rendering, or extraditing her. Meanwhile, it is the responsibility of the Adawan authorities to return her immediately. There will be serious consequences if this responsibility is not carried out.

54. Several hours after the note was delivered, the Adawan Ambassador was declared *persona non grata* by President Pindro, and the Ambassador promptly left the country. Adawa protested the expulsion, insisting that it had acted legally in its treatment of Minister Grey. The Adawan Foreign Minister declared the next day that, "it is time for us to bring in the assistance of a third party, before the situation with Rasasa gets completely out of hand and our long and peaceful relationship is forever jeopardized. We are very fortunate that, in accordance with international law, the doors of the International Court of Justice are open

to us, and we will seek the Court's help in resolving this and our other pending controversies with our neighbor. I have instructed my legal office to prepare an Application to the Court."

55. On 23 June 2019, the Permanent Representative of Rasasa to the United Nations delivered a communication to the Secretary General, noting that "Rasasa objects to the purported succession of Adawa to the Treaty of Botega and, accordingly, does not consider itself in treaty relations with Adawa pursuant to the aforementioned treaty."
56. On 24 June 2019, at a press conference in Botega, the Rasasan Minister of Justice answered a question from a reporter about the charges against Minister Grey. She replied, "We continue to be offended by the violation of international law and protocols regarding the treatment of our Minister, which we consider an insult to our sovereignty. We are reserving all of our legal options in this matter, both international and domestic."
57. On 1 July 2019, after negotiations between the parties, the Adawan Ambassador to the Kingdom of the Netherlands submitted an Application instituting proceedings on behalf of Adawa against Rasasa, invoking the compromissory clause of the 1929 Treaty of Botega. Adawa contested the legality of the installation of the WALL, and also alleged that Rasasa's Helian tariffs violated the CHC, seeking monetary reparation for the resulting financial harm, a remedy that it characterized as "not typically awarded by WTO Panels."
58. Rasasa responded by contesting the Court's jurisdiction under the Treaty of Botega, stating that "the State of Adawa is not a party to the Treaty, nor can it claim to have become one through the law of State succession. This sudden attempt to invoke the Treaty – for the sole purpose of bringing a dispute before the ICJ – is improper and abusive." Rasasa further contested the Court's jurisdiction over, and the admissibility of, Adawa's claim based on the CHC treaty, arguing that the WTO has exclusive jurisdiction over trade disputes between the Parties, and that proceedings were already underway before the Dispute Settlement Body. Rasasa asserted that the tariffs were, in any event, lawful protections of its essential security interests. Finally, Rasasa asserted a counterclaim concerning the illegality of the apprehension of Minister Grey.

59. On 22 July 2019, the Court entered an Order recommending that the parties draft a Statement of Agreed Facts (the present document), without prejudice to any arguments they might seek to present during the proceedings.
60. In addition to the treaties and other international agreements referenced elsewhere in this Statement, at all relevant times both Adawa and Rasasa have been parties to the four Geneva Conventions of 1949, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Vienna Convention on Diplomatic Relations, and the Vienna Convention on the Law of Treaties.
61. Pursuant to the Order of the Court, and the agreement of the parties, Adawa, as Applicant, respectfully requests that the Court:
  - a. Declare that it has jurisdiction over Adawa's claims because Adawa is a party to the 1929 Treaty of Botega;
  - b. Adjudge that Rasasa's development and deployment of the WALL along the border between Adawa and Rasasa is in violation of international law, and order that the WALL be dismantled and removed forthwith;
  - c. Declare that it may adjudicate Adawa's claim that Rasasa's imposition of tariffs on Helian products from Adawa violates the CHC Treaty, and that Adawa is entitled to compensatory damages reflecting the financial harm it has suffered to date, such amount to be determined in subsequent proceedings; and
  - d. Declare that the arrest and detention of Darian Grey were consistent with Adawa's obligations under international law, and that Adawa may proceed to render her to the International Criminal Court.
62. Rasasa, as Respondent, asks the Court to adjudge and declare that:
  - a. The Court lacks jurisdiction over Adawa's claims because Adawa is not a party to the 1929 Treaty of Botega;
  - b. Rasasa's development and deployment of the WALL along the border between Adawa and Rasasa is consistent with international law;
  - c. Adawa's claim that Rasasa's Helian tariffs violate the CHC Treaty falls outside the Court's jurisdiction or is inadmissible; in the alternative, the imposition of the tariffs did not violate the CHC Treaty; and
  - d. Adawa's arrest and detention of Darian Grey constitute internationally wrongful acts, and that she must be immediately repatriated to Rasasa.

## *ANNEX A*

### **Treaty of Botega on Armistice and Pacification**

**1 November 1929**

*[excerpts]*

*The Adawa-Zeitounia Union and the Republic of Rasasa:*

*Desiring to save succeeding generations of Crosinians from the scourge of war;*

*Conscious that all Crosinian peoples are united by common bonds, their cultures having developed together in a shared heritage, and concerned that peace in the region may be shattered at any time,*

*Recognizing that Crosinia's endemic Helian fields suffered grave damage during the recent war and that, by reason of the developments in the techniques of warfare, they are in increasing danger of destruction;*

*Manifesting their desire to renounce all recourse to armed force as an instrument of policy among Crosinian nations;*

*Accepting the establishment of an armistice between the armed forces of the two High Contracting Parties as an indispensable step toward the cessation of armed conflict and the restoration of peace and security to the peoples of Crosinia; and*

*Resolving to ensure the pacific settlement of future disputes which may arise between them,*

*Have agreed as follows:*

#### **Article I**

1. In pursuance of regional peace and stability, a general armistice among and between the armed forces of the High Contracting Parties – land, sea and air – is hereby declared and established.
2. The Armistice Demarcation Lines have been defined with a view toward separating the armed forces of the High Contracting Parties in such manner as to minimize the possibility of friction and incident, while providing for the gradual restoration of normal civilian life, without prejudice to the ultimate settlement.
3. The Armistice Demarcation Lines shall be as delineated on the map attached to this Agreement as Annex I.

[ . . . ]

### **Article III**

1. The High Contracting Parties agree to establish on the border between the Zeitounian region of the Adawa-Zeitounia Union and Rasasa an International Zone of Peace, which shall be accessible to all citizens of both High Contracting Parties without the need for border formalities. It is their intention that this Zone shall stand as a reminder to the peoples of both nations of the scourge of war, and the need to resolve disputes peacefully.
2. The High Contracting Parties agree in principle to explore, over the coming years, the possibility of expanding the International Zone of Peace to other areas on or in close proximity to the border between Zeitounia and Rasasa.

[ . . . ]

### **Article VI**

In conformity with Article 36 of the Statute of the Permanent Court of International Justice, the High Contracting Parties declare that they recognize the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- a) The interpretation of a treaty;
- b) Any question of international law;
- c) The existence of any fact which, if established, would constitute the breach of an international obligation; and
- d) The nature or extent of the reparation to be made for the breach of an international obligation.

[ . . . ]

In faith whereof the Plenipotentiaries have signed the present Treaty.

DONE at Botega, Rasasa, this first day of November, One thousand nine hundred twenty-nine, in one copy, which will be deposited in the archives of the League of Nations.

*ANNEX B*

**Treaty Establishing the Crosinian Helian Community**

**20 June 1969**

*[excerpts]*

**Article 1**

The High Contracting Parties to this Treaty – the six independent and sovereign States of the Crosinian Region – hereby establish the Crosinian Helian Community. The Member States of this Community solemnly pledge their everlasting commitment to the sustainable cultivation of the Helian hyacinth.

**Article 2**

The Member States of the Community agree:

- a. To share their agronomic, scientific, and economic data regarding the growing, harvesting, processing, and commercializing of the Helian hyacinth and especially the spice derived from it, which is prized around the world; and
- b. To meet periodically at technical levels, and no less than twice annually at the Ministerial level, to discuss matters of common interest regarding the production, processing, and exportation of Helian products, and to take decisions as provided in this Treaty.

**Article 3**

To facilitate the development and health of the Helian industry, the Member States agree to impose no customs duties on Helian products, as well as goods that are primarily or exclusively used in the harvesting or processing of the Helian hyacinth, which originate from the territory of a Member State.

[. . .]

**Article 22**

Nothing in this Treaty shall be construed as:

- a. Requiring any Member State to furnish information, the disclosure of which it considers contrary to its essential security interests, or
- b. Precluding the application of measures necessary to protect a Member State's essential security interests.

[...]

**Article 31**

The Community shall enjoy in the territory of each of its Member States such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

**Article 32**

Representatives of Member States at meetings convened by the Community shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind.

[...]

**Article 41**

Nothing in this Treaty shall be read as undermining or compromising the sovereignty, independence, or international legal personality of any Member State of the Community.

DONE at Pivo, Adawa, this twentieth day of June, one thousand nine hundred sixty-nine, in one copy, which shall be deposited in the archives of the United Nations.