

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING THE J-VID-18 PANDEMIC

(UNITED REPUBLIC OF APREPLUYA v.
DEMOCRATIC STATE OF RANOVSTAYO)

ORDER OF 11 SEPTEMBER 2020

2020

COUR INTERNATIONALE DE JUSTICE

AFFAIRE CONCERNANT LA PANDÉMIE J-VID-18

(RÉPUBLIQUE UNIE D'APREPLUYA c.
ÉTAT DÉMOCRATIQUE DE RANOVSTAYO)

ORDONNANCE DU 11 SEPTEMBRE 2020

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2020
11 September
General List
No. 198

YEAR 2020

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(UNITED REPUBLIC OF APREPLUYA *v.*
DEMOCRATIC STATE OF RANOVSTAYO)

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 12 July 2018, whereby the Government of the United Republic of Aprepluya (“Aprepluya” or “Applicant”) instituted proceedings against the Democratic State of Ranovstayo (“Ranovstayo” or “Respondent”) with regard to a dispute concerning alleged violations of international law by Ranovstayo;

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

Whereas Aprepluya and Ranovstayo have appointed their respective Agents;

Whereas, on 16 July 2018, Ranovstayo notified the Registrar and the Agent of Aprepluya that it intended to contest Aprepluya’s claims, and wished to file a counter-claim under Article 80 of the Rules of Court;

Whereas, on 18 July 2018, Aprepluya notified the Court of its intention to challenge the Court’s exercise of jurisdiction over Ranovstayo’s counter-claim, as well as to defend against it on the merits in the event that the Court rejects the jurisdictional challenge;

Whereas, on 1 December 2018, the Parties jointly informed the Court that they wished to suspend the proceedings in order to pursue settlement negotiations;

Whereas, on 3 August 2020, the Parties jointly informed the Court that their settlement efforts had not been successful, and that they wished to continue the proceedings;

Whereas, at a meeting with the President of the Court on 17 August 2020, the Agents of the Parties agreed that the Court has jurisdiction over Aprepluya’s claims, and furthermore agreed to have those claims and Ranovstayo’s counter-claim, as well as the issue of the Court’s exercise of jurisdiction over the counter-claim, heard together in a single phase of the proceedings;

Whereas, at the same meeting, 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 Parties jointly communicated the attached Statement of Agreed Facts to the Court on 10 September 2020;

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

Whereas the Parties have agreed that a “dispute” between them exists with respect to each of the issues presented, and that the counter-claim 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;

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 2021 Philip C. Jessup International Law Moot Court Competition; and

Adopts the Official Rules of the 2021 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 eleventh day of September, two thousand and twenty, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Governments of Aprepluya and Ranovstayo.

(Signed)
President

(Signed)
Registrar

STATEMENT OF AGREED FACTS

CASE CONCERNING THE J-VID-18 PANDEMIC

(UNITED REPUBLIC OF APREPLUYA v.
DEMOCRATIC STATE OF RANOVSTAYO)

10 SEPTEMBER 2020

1. The United Republic of Aprepluya (“Aprepluya”) is a developed parliamentary democracy with a population of 3 million and a gross domestic product of €160 billion. Its capital city, Beauton, is located 50 kilometers west of its eastern border. The principal contributor to its GDP is the banking and financial services sector, centered in Beauton.
2. The Democratic State of Ranovstayo (“Ranovstayo”) is also a developed, democratic nation. It has a population of 25 million and a gross domestic product of €1 trillion. It lies directly to the east of Aprepluya. Its capital, Bogpadayo, is located 80 kilometers east of the border with Aprepluya and 130 kilometers east of Beauton. Ranovstayo’s economy is centered on its petroleum, agricultural, and manufacturing sectors. Neither Ranovstayo nor Aprepluya permits its nationals to have any other nationality.
3. Aprepluya has historically had an active tourism industry. The city of Beauton features a grand casino, historical and cultural museums, several large parks, and a world-renowned theatre district. Aprepluya’s Segura Province, about 100 kilometers west of Beauton, is also prized by tourists for its mountain villages and folklore. The country drew an average of nine million tourist arrivals and gross tourism receipts of €7.5 billion every year from 2013 to 2017. During this period, approximately 25% of the foreign tourists in Aprepluya were Ranovstayan nationals or residents, and another 40% were third-country nationals who traveled to or from Aprepluya through the Bogpadayo Airport, the busiest airport in the region in terms of total flights and total passengers. Because of the large number of Ranovstayan vacationers in Segura Province, Ranovstayo established a consulate there in 1980. It was the only consulate in the province.
4. Hadbard is a country located eight time zones from Aprepluya and Ranovstayo. In March 2018, the Hadbard health authorities reported that a large number of cases of a respiratory condition resembling pneumonia had been identified in a rural village. Symptoms included uncontrollable coughing, difficulty in breathing, high fever, chills, and listlessness. The Hadbard Ministry of Health quickly identified the cause of the disease as a previously unknown strain of virus, which they named “J-18,” with the disease caused by it called “J-VID-18.” Several of the patients diagnosed with J-VID-18 were reported to be in critical condition, and by 31 March 2018, six of them had died.
5. By 10 April 2018, the genome of the virus had been sequenced by epidemiologists in Hadbard, and the results were made public. Aprepluya’s State-owned and State-run National Bioresearch Laboratory (“NBL”), located in Segura Province, and Ranovstayo’s Central Biodefense Institute, in Bogpadayo, were among 22 research institutes around the world that initiated projects to study the virus with the goal of developing a vaccine. The

World Health Organization (“WHO”) coordinated the distribution of live cultures of the virus to all of these institutes.

6. The NBL personnel assigned to its vaccine project consisted of a Director, four research scientists, 16 lab technicians, and seven support staff. All employees of NBL were required to sign, at the time of their hiring, a non-disclosure agreement that read, in relevant part:

Employees agree as a condition of employment that they will not disclose or divulge to anyone not on the Laboratory staff any information concerning their work at the Laboratory, unless required to do so by a court of law. Violation of this undertaking may result in termination and possible prosecution.

7. The Hadbard Health Ministry implemented multiple measures to try to contain the virus, to no avail. In the first half of April, reports of J-VID-18 surfaced in other parts of the country, as well as in Tsarote, Hadbard’s neighbor to the north. By 15 April 2018, Ministry scientists determined that the virus was capable of human-to-human transmission. They estimated the basic reproduction rate to be 1.2 to 1.4 and the incubation period to be 7 to 14 days. Experts at several of the research facilities studying the virus also determined that human-to-human transmission was possible during the incubation period, and that infected individuals who never developed symptoms were capable of spreading the virus to others. These factual determinations have at all relevant times been accepted as accurate by Aprepluya and Ranovstayo.
8. On 20 April 2018, the WHO Director-General declared the outbreak of J-VID-18 a public health emergency of international concern (“PHEIC”). At the same time, the Director-General issued Temporary Recommendations in accordance with Articles 15 and 49 of the 2005 International Health Regulations (“IHR”). The concluding paragraph of the Recommendations stated: “Based upon the current information available, we urge the general observance of social distancing and the use of face coverings in areas reporting infection, and the self-quarantine for at least 14 days of anyone who seems to have symptoms, to combat the spread of the disease. At this time, however, travel and trade restrictions are not recommended.” WHO’s Situation Report that day stated that three countries (Hadbard, Tsarote, and their common neighbor, Bitsrote) had reported a total of 626 confirmed cases of, and 22 deaths from, J-VID-18.
9. As of 20 April 2018, 12 countries located within 3,000 kilometers of Hadbard (including Tsarote) had implemented measures prohibiting all foreign nationals with symptoms of J-VID-18 from entering their territories. No country, however, had responded to the disease by barring the entry of individuals not manifesting any symptoms.
10. From 15 to 22 April 2018, the Health Ministry of Ranovstayo conducted an urgent and intensive risk assessment, taking into account what it called the best scientific evidence available. Based on that study, on 22 April 2018, the Ranovstayan Home Office published a regulation governing entry into the country, specifically to address the J-VID-18 public health emergency. The regulation was adopted in accordance with national law, and stated in relevant part:

- Section 1. All non-Ranovstayan nationals who have been in a “high-risk country” within the past 18 days are prohibited from entering the territory of Ranovstayo.
- Section 2. All Ranovstayan nationals entering the territory of Ranovstayo who have been in a “high-risk country” within the past 18 days must be quarantined at a government quarantine center until 18 days have elapsed since they were last in a “high-risk country.”
- Section 3. The Ministry of Health shall maintain a list of “high-risk countries” on its website, to be updated on a daily basis. This list shall include, but shall not necessarily be limited to, any country in whose territory there have been at least 50 confirmed cases of J-VID-18 over the previous two months.
- Section 4. Individuals transiting at one of Ranovstayo’s airports are considered to be “entering the territory of Ranovstayo” for the purposes of this regulation.
- Section 5. The term “non-Ranovstayan nationals” includes non-Ranovstayan nationals with family members who are Ranovstayan nationals, as well as non-Ranovstayan nationals with permanent residence in Ranovstayo.
- Section 6. This regulation shall be effective from 25 April through 20 July 2018, and is subject to renewal at the discretion of the Ministry of Health.

11. That afternoon, Ranovstayo’s President, Erken Kalkan, explained the regulation in a national address, which began:

My fellow citizens, today, the government adopted restrictions applicable to anyone attempting to enter the territory of Ranovstayo. We did not take this decision lightly. But we need to ensure that the J-18 virus does not spread into our country, putting our well-being and our very lives in jeopardy. Our Health Ministry has carefully reviewed the threat posed to our people if we do nothing. We have now concluded that it is necessary for us to bar the entry of anyone who may be carrying the virus, perhaps without knowing it. We are aware of the inconvenience that this temporary measure may cause, but protecting the lives of all Ranovstayans outweighs this small disruption to our routines.

12. On 23 April 2018, Ranovstayo informed WHO of the entry regulation, and provided to the Organization the public health rationale and relevant scientific information upon which the government relied. At a press conference on 24 April 2018, a reporter asked Ranovstayo’s Health Minister, Mr. Adasap Adapi, whether the Cabinet had taken into account the fact that the WHO Director-General was not recommending travel restrictions. Minister Adapi responded: “We are aware of what WHO has recommended and not recommended. But in

light of the scientific evidence, we feel compelled to take these precautions to deal with an unprecedented threat.” He then added: “We cannot afford to get this wrong. No one can. We encourage other countries to follow our lead to prevent the spread of the virus. Only if we act in concert, globally and immediately, can we protect public health, our lives, and our economies.”

13. Apreluya did not adopt entry restrictions relating to J-VID-18. Instead, on 24 April 2018, the Apreluyan Ministry of Health began publishing a daily “Public Health Advice,” which contained reminders, but not orders, to use face coverings and to practice social distancing. The daily bulletins also provided updates on the numbers of cases around the world reported by WHO, and regularly contained the recommendation that people experiencing symptoms of J-VID-18 should report themselves to local health authorities and self-quarantine for 18 days.
14. On 27 April 2018, WHO sent a communication to the Ranovstayan Ministry of Health, recalling that the Director-General was not recommending travel restrictions, and requesting that Ranovstayo therefore reconsider the application of its 22 April regulation. On 1 May, Minister Adapi replied, writing in relevant part: “We respectfully decline to modify or revoke our entry regulation. We believe it to be absolutely necessary to have a mechanism in place to protect our nationals and residents from the serious threat posed by J-VID-18 and, in any case, controlling our borders is a matter that falls exclusively within our national sovereignty.”
15. On 15 May 2018, WHO declared that J-VID-18 constituted a pandemic. WHO’s Situation Report that day stated that 65 countries had reported a total of 15,274 confirmed cases of, and 212 deaths from, J-VID-18. As of that date, however, neither Apreluya nor Ranovstayo, nor any other country in their region, had any suspected or confirmed cases of J-VID-18.
16. Although WHO did not alter its position on travel and trade restrictions, by 15 May 2018, 24 countries (including Ranovstayo) had adopted regulations limiting or barring the entry into their territories of individuals who had recently been in “high-risk countries,” as designated by their own respective authorities. An article in Chile’s *El Mercurio* newspaper summarized the 24 sets of regulations, and concluded that Ranovstayo’s was “the most stringent,” particularly since no other regime applied to individuals who had been in a “high-risk country” more than 14 days earlier. As of 15 May 2018, 52 countries had been designated by the Ranovstayan Health Ministry as “high-risk.”
17. On 20 May 2018, Apreluya announced that its J-VID-18 vaccine project at NBL had reported “significant progress” in developing a vaccine, and that a further public statement was “forthcoming.” NBL, along with other facilities around the world, was sharing its results with WHO.
18. On the morning of 3 June 2018, a Twitter account under the handle @J18atNBL was created with false personal information, and the account promptly published the following tweet: “Over the past week, eight lab technicians working on the J-VID-18 vaccine project at NBL have developed symptoms of the disease, but this news is being kept secret. Why

don't our superiors care about our lives? And why does the government keep denying that anyone has the virus?" Over the next few hours, the post was re-published by thousands of other social media accounts. Media efforts to interview senior staff at NBL were unsuccessful, and the reported infections were not confirmed by the authorities.

19. Aprepluya's police traced the original tweet back to a lab technician working on the vaccine project, Ms. Keinblat Vormund, an Aprepluyan national born and raised in Segura Province.
20. At 14:33, two Aprepluyan police officers arrived at her residence to question her about the origins of the tweet. As they waited at her doorstep, she left her home through the back door, got into her car, and departed. The police officers chased her until 14:52, when Ms. Vormund drove through the front gates of Ranovstayo's consulate in Segura Province. The officers aborted their pursuit outside the consulate's premises.
21. Once inside the consulate, Ms. Vormund was asked by the consular officer on duty to state her business, and she indicated a desire to make a request in writing. She was directed to a reception area and an hour later, she emerged and handed to the desk officer a letter that read in relevant part:

I posted the tweet concerning the vaccine project, and I am frightened. I do not know what the authorities will do to me if they learn that I am the one who told the world that we have a serious problem, a life-threatening problem, a possibly catastrophic problem, on our hands in Segura Province.

On Monday, 25 May, two lab technicians working on the vaccine project at NBL – two of my friends! – reported symptoms like the ones people have with J-VID-18. When I learned that, I told my director that we had to test them for the virus, suspend the project until we were sure that the disease was not circulating among NBL employees, and temporarily shut down the Lab for deep cleaning. He agreed to order J-VID-18 tests for the two techs, but refused to interrupt the project or to close NBL. He made clear to me that this information should not be publicized.

Over the next three days, six more of our colleagues developed J-VID-18 symptoms. So on Thursday, 28 May, I emailed my director once more to say that we had to alert the health authorities about this situation, suspend the project, and close down NBL, at least until we get a handle on the state of affairs. But he refused again. He told me that he had not yet received the test results from the first two techs, and he would not take any action until there was actually a confirmed case of J-VID-18 at the Lab. He also said that the NBL Executive Director had ordered him to consider this whole matter to be highly confidential unless and until someone tested positive for the virus. He left no doubt in my mind that if I told anyone about this, I was going to be in deep trouble. But at the same time, my conscience told me that I had to let someone know. The risks were too great. My friends and

my workmates might die. And if the virus gets out of the Lab, our families and villages are in danger.

It isn't right that no one knows about this. Our government is telling the whole world that this country has not had a single case of J-VID-18. But that isn't true: I know that. Someone has to make sure that this information gets out. I think they are going to arrest me to shut me up. And I fear that they might do worse. I don't think I have broken the law, but I cannot afford to find out. I am very scared. My friends are dying. I need protection. I beg you to help me.

22. The Consul, who was not in the office at the time, agreed to let Ms. Vormund stay in an unused room in the consulate building until a decision could be made on her request for protection. He reported by phone and email to his superiors in the Foreign Ministry in Bogpadayo.
23. On 4 June 2018, at 16:00 local time, President Kalkan of Ranovstayo and Hanabar Haraka, the Prime Minister of Aprepluya, with members of their staffs, met by videoconference. The Aprepluyan representatives confirmed that, since 25 May, 12 employees at NBL had developed symptoms resembling pneumonia, and they were all tested for J-VID-18. Prime Minister Haraka reported that just a few hours earlier, the results of the first two tests had been received, and both were positive. She noted that her Health Minister would be announcing this publicly the next day. The Ranovstayan side expressed disappointment that they had not been informed of these suspected cases from the very beginning, not least because of the large number of Ranovstayan nationals vacationing in Segura Province.
24. President Kalkan asked for a report on the precautionary measures taken since 25 May to stem the spread of the disease. Prime Minister Haraka responded that the NBL Executive Director had initially declined to take any action because, until just a short time earlier, there had been no confirmed cases.
25. The Aprepluyan side then sought clarification on the status of Ms. Vormund. President Kalkan acknowledged that her government had decided to consider Ms. Vormund to be an applicant for asylum, allowing her to remain at the consulate for the time being, until it could be clarified whether she was under criminal investigation and, if so, for what offense.
26. President Kalkan also warned her counterpart that her government intended, without further notice, to add Aprepluya to its list of "high-risk countries," unless Aprepluya properly managed the virus outbreak in Segura Province. Prime Minister Haraka noted her "strong objection," on the grounds that there was no scientific basis for what she called "this gross overreaction."
27. The next morning, the Aprepluyan Health Minister, Ms. Raika Pahad, made the following announcement:

I regret to confirm that two individuals affiliated with the J-VID-18 vaccine project at National Bioresearch Laboratory in Segura Province have

contracted the disease. We have isolated them and everyone whom we believe may have come into contact with them.

Since there have been reports of suspected cases among other NBL personnel, however, we have decided, as a precaution, to temporarily interrupt operations at NBL, until test results can be received and analyzed. We are very hopeful that this interruption will be brief, and that our skilled and dedicated staff will be able to return to their posts very soon.

We are also, out of an abundance of caution, instituting mandatory social distancing throughout Segura Province and imposing a quarantine, in particular, barring travel into or out of the Province. The only exceptions are for foreign nationals who are permitted to take evacuation flights organized by their countries of nationality and pre-approved by our Ministry of Foreign Affairs. This emergency measure takes effect immediately. We understand that this will cause significant inconvenience, but everyone will have to make sacrifices like this until we are sure that we have the virus outbreak under control. The government is confident that patriotic Aprepluyans in every part of our country will understand, and will rise to the occasion.

28. On 6 June 2018, the leading local newspaper, *The Segura Preso*, published the text of the announcement under a headline reading: “Beauton Locks Us Up in Segura Prison with J-VID-18.” Segura Province’s representatives in the National Parliament demanded an emergency session to discuss the situation, but no legislative action was proposed.
29. Later that day, Minister Pahad announced four more confirmed cases of J-VID-18 in Segura Province, all of whom were employees at NBL. Three more confirmed cases were reported the following day, all of them NBL staff, bringing the total number of confirmed cases to nine. That afternoon, Ranovstayo’s Ministry of Health announced on its website that Aprepluya was added to the list of “high-risk countries” maintained in accordance with Section 3 of the regulation of 22 April, effective at 00:01 local time on 8 June.
30. From 5 to 7 June 2018, approximately 80% of tourists in Aprepluya, including nearly all of those participating in group tours, left the country. Over those three days, Aprepluyan border officials administered an optional survey for departing foreign nationals, asking them, among other things, the primary reason they were leaving the country. Two thirds of those responding answered that they were from or had flight connections in Ranovstayo, and were concerned that if Aprepluya were designated a high-risk country, they would be stranded.
31. On 7 June 2018, Ranovstayo recalled all non-essential diplomats and consular officers from Aprepluya, leaving only five at the embassy in Beauton and two at the consulate in Segura Province.
32. On 8 June, Aprepluya’s Prosecutor’s Office formally charged Ms. Vormund with three offenses under the National Penal Code: (i) causing public disorder; (ii) violation of a

governmental non-disclosure agreement; and (iii) interference with a police investigation. The Prosecutor's Office also issued a public statement calling on the Ranovstayan consulate to hand over Ms. Vormund.

33. On 9 June, Aprepluya's Ministry of Foreign Affairs delivered a *note verbale* to Ranovstayo's embassy in Aprepluya, stating in relevant part:

Aprepluya respectfully objects to Ranovstayo's listing of Aprepluya as a "high-risk country." The quarantine on Segura Province ensures that the virus will not spread beyond the Province's boundaries, and we have reported not a single case elsewhere in our country. There is no reason to exclude Aprepluyans who have not been in Segura. And in any event, Aprepluya as a whole, even including Segura Province, has not reported the 50 confirmed cases stipulated in your entry regulation. In these circumstances, we consider the application of your regulation to Aprepluya to be in violation of international law, and we request that Ranovstayo remove Aprepluya from its list of "high-risk countries."

Aprepluya furthermore insists that Ranovstayo surrender Ms. Vormund to our domestic authorities, particularly in light of the criminal charges recently filed against her by the Prosecutor's Office. Ranovstayo's failure to do so constitutes another violation of international law.

34. The following day, Ranovstayo's Ministry of Foreign Affairs responded in a *note verbale*, as follows:

Ranovstayo is conscious of the many complexities entailed by the need to deal effectively with the outbreak of J-VID-18. We regret the need for us to classify Aprepluya as a "high-risk country." But we consider this step to be a necessary part of our efforts to protect our own people from the virus. The facts as we know them reveal tremendous uncertainty regarding the extent of the virus's spread in Aprepluya's territory, particularly since your government took no precautionary measures when the first suspected cases were reported more than two weeks ago. Even if there are at this moment fewer than 50 confirmed cases of J-VID-18 in Aprepluya, we are still obligated to take special precautions, given the regular exchanges between the people of our two countries. We are confident that the application of our entry regulation in this instance is entirely consistent with international law.

We also take note of the request for Ms. Vormund's surrender, but we must respectfully decline to comply with it. As a sovereign State, Ranovstayo has no obligation under international law to surrender individuals who seek asylum at our diplomatic or consular missions abroad. Moreover, we consider the information disclosed by Ms. Vormund to be of great importance to us – not least because so many Ranovstayan nationals are currently in Segura Province – and to the world, since it suggests the spread of J-VID-18 to an area not previously identified as affected. It is troubling

that her brave disclosure is being treated as a criminal offense. We will continue to evaluate this case in accordance with the laws, treaties, and customs applicable to such matters.

35. By 15 June 2018, 52 individuals in Segura Province were reported to have tested positive for J-VID-18. All of them had been, or lived with someone who had been, on the premises of NBL within the previous 18 days. The roads and streets of the province were mostly empty, with many retail outlets and recreation venues closed and transportation sporadic. Media reported that residents were reluctant to leave their homes, unemployment sharply increased, and residents were stockpiling food and other provisions. The Segura Airport, which previously operated an average of 25 departures daily, was mostly deserted except for occasional evacuation flights.
36. As of mid-June 2018, Aprepluya had no suspected or confirmed cases outside of Segura Province, and Ranovstayo had no cases at all in its territory.
37. On 16 June, the Aprepluyan government ordered all residents of Segura Province displaying J-VID-18 symptoms to self-quarantine for 18 days, and arranged to make testing available for anyone in the Province requesting a test. The authorities also ordered the use of face coverings in public places, the closure of indoor dining and drinking establishments, and the prohibition of gatherings of more than 20 people.
38. On 19 June, the Justice Ministers of both Aprepluya and Ranovstayo received identical reports from INTERPOL indicating that a clandestine organization calling itself “Friends of Justice” (“FOJ”), was planning a terror attack on a national capital in the region, using a bomb-laden civilian airplane as a weapon. Both countries promptly put their Air Forces on heightened alert.
39. FOJ, which has been blamed by several national intelligence agencies for bombings in London, Ottawa, and Abuja over the last three years, has been included on the United Nations Security Council Consolidated List as a terrorist organization since 2016. It claims to have “cells” of its adherents in over 100 countries; while many of those claims have not been verified, the domestic security agencies in both Aprepluya and Ranovstayo have conducted surveillance of suspected FOJ operatives on their territories. The Aprepluyan authorities reported intercepting an encrypted message between two of those suspects in January 2018, which read, in relevant part, “It’s our turn to do our part for the cause. We just need to wait for a moment when the government is distracted and lets its guard down. Nothing now. Be patient. But when that moment comes, it will be our moment in the spotlight. Let’s be ready!” The presumed sender of that message was interrogated by the National Police in Segura Province, his place of residence, but there was no probable cause to detain him.
40. On the morning of 23 June 2018, the Ranovstayan Foreign Ministry announced that it intended to permanently close its consulate in Segura Province at noon on 26 June. On the same day, the Consul filed the required notice that, in view of the outbreak of J-VID-18 as well as the growing unrest, he and his remaining colleague would be departing on the next chartered evacuation flight from Segura Airport to Bogpadayo, scheduled for 16:00 local

time on the afternoon of 25 June. The evacuation flight carrying the Ranovstayan Consul, his colleague, and six tourists of Ranovstayan nationality departed on schedule two days later, and landed without incident.

41. Early in the morning of 26 June, a Mantyan Airways aircraft crashed into a forest in Aprepluya, between Segura Province and Beauton. Mantyan Airways is a low-cost charter airline privately owned by Aprepluyan nationals. At 10:00 local time, Prime Minister Haraka made the following statement:

At 3:12 this morning, our Air Force shot down a civilian aircraft headed in the direction of Beauton. The aircraft had taken off from Segura Airport without authorization, and as it neared our capital city, failed to identify itself or to comply with standard operating procedures. Our fighter jet, piloted by a highly trained and decorated Air Force officer, followed internal and international regulations to the letter in warning the aircraft. When the rogue airplane failed to respond to any of these attempts to determine its identity and mission, the pilot was ordered to fire at it. We are currently conducting an investigation into who was on the aircraft and where it was going.

This is a deeply lamentable event, and we regret what we presume was the loss of life of whoever was on board. In the interests of full transparency, we intend to publish the incident report filed by the officer who oversaw the operation.

42. The incident report, authored by the Commanding Officer of the Beauton Area Air Force Base, was issued the next day. It stated as follows:

At 02:57 local time, a 12-person civilian aircraft, owned by Mantyan Airways and registered in Aprepluya, took off without authorization from Segura Airport. I did not know, and still do not know, who was on board. I was overseeing the operations center at the Beauton Area Air Force Base, when I was informed by our radar operators of the presence of a rogue airplane flying toward our capital city. I immediately ordered my staff to obtain its identification. My team and I personally attempted to initiate radio communication with the aircraft over both military and civilian channels, in accordance with standard operating procedures, but we received no response. At 02:59, I scrambled a fighter jet, piloted by Lieutenant Amelor Defesa, to approach the aircraft and to intercept it if it continued to ignore increasingly urgent communications.

At 03:06, Lieutenant Defesa reported that he was flying alongside the Mantyan Airways aircraft. He attempted radio communication and used visual and other signals in accordance with all applicable regulations, instructing the pilot to deviate from its apparent flight path toward Beauton and to follow him, but the aircraft continued flying without response. At 03:09, Lieutenant Defesa fired tracers across the path of the plane, but even

that did not cause it to alter its route. As it was headed in the direction of Beauton, I was concerned that the pilot was planning to fly into government buildings, a threat raised in an alert issued by the Defense Minister last week. At 03:12, when the aircraft was just three minutes flying time from the outskirts of the city, I ordered Lieutenant Defesa to fire a short burst at its wing root area, in the hope that it would be forced to land. Apparently, however, the pilot was unable to maintain control after being hit, and the plane crash landed in a forest 12 kilometers from the presidential palace in the heart of Beauton.

43. Aprepluya commissioned an independent inquiry into the incident by the International League for Safety in Aviation (“ILSA”), a private company regularly engaged by airlines and governments to investigate aircraft disasters, with headquarters in Buenos Aires, Argentina and its center of operations in Sofia, Bulgaria. ILSA reviewed the cockpit voice recorder of the Mantyan Airways plane, and conducted interviews with many individuals involved (including Lieutenant Defesa as well as the Base personnel who communicated with him during the mission). ILSA’s 2 July 2018 report, which both Aprepluya and Ranovstayo have accepted as accurate, stated in relevant part:

Sometime before 2300 hours on 25 June 2018, Ms. Keinblat Vormund, formerly a lab technician at National Bioresearch Laboratory of Aprepluya, left the premises of the Ranovstayan consulate in Segura Province – where she had apparently been residing for approximately three weeks – on foot. She did not inform the consulate staff of her plans, and managed to avoid a police patrol vehicle at the gates of the facility. Near the consulate, she met with her friend Ms. Gwo Hye, who had been employed as a pilot for Mantyan Airways for three years. The two traveled together by private car to Segura Airport. It appears that Ms. Hye had made advance arrangements with certain airport personnel, who made a small aircraft available to them. The plane, a 12-seat propeller-driven aircraft with tail number A7P-BB4, belonged to Mantyan Airways. Ms. Hye and Ms. Vormund intended to fly to the international airport at Bogpadayo, Ranovstayo and for Ms. Vormund to seek asylum there.

Before boarding the aircraft, Ms. Hye placed a telephone call to the Mantyan Airlines office at Bogpadayo Airport. There was no answer. She left a voice recording containing the following message, which was not retrieved until Mantyan personnel reported for work at 09:00 on 26 June 2018: “Please get this message to the Station Manager at once. Gwan, this is Hye, calling from Segura. I know this is irregular, but I am about to fly one of our airplanes to Bogpadayo.” After providing the aircraft’s identification details, she continued, “I will have a passenger with me. She intends to seek asylum. Please make the necessary arrangements. We will be wheels-up here at around 03:00, and should be on the ground by 03:45. Radio my landing vector and weather information as soon as you get this. Thanks and see you soon!”

The Mantyan Airways aircraft took off, with Ms. Vormund and Ms. Hye inside. Ms. Hye sat at the controls, and Ms. Vormund occupied the first officer's seat. The Aprepluyan National Police located the wreckage of the plane, including the flight recorder, which picked up conversations inside the cockpit, in which the two women discussed how to respond to the visual signals from the Aprepluyan fighter jet. A voice believed to be that of Ms. Hye is heard to say, "They're signaling for us to follow them, but they haven't sent any radio communications. It seems that our radio may not be working. In any case, we're not far from Ranovstayan airspace, so I think they'll just let us go if we continue our route."

No later cockpit conversations could be detected. But the recorder did not contain any radio messages sent from the Beauton Area Air Force Base, from Bogpadayo Airport or from the fighter jet. We conclude that the messages were not received, because the airplane's radio was not functioning; the plane had been sitting on the tarmac unattended at the Segura Airport since the end of May. In any event, two bodies were recovered. They were identified as Ms. Vormund and Ms. Hye. No explosives or weapons were found in the wreckage of the plane.

44. On 4 July, Ranovstayo's President's Office issued a statement regarding the incident:

We condemn Aprepluya's shoot-down of the Mantyan Airways aircraft, as well as the lawless killing of Ms. Keinblat Vormund and the pilot. Because this airplane was attempting to reach the territory of Ranovstayo, and one of its passengers was seeking asylum, we consider this attack to have been against our interests, and we protest it in the strongest terms. We demand that the matter be investigated thoroughly, and that the perpetrators of this inhumane act be brought to justice.

45. The next day, Prime Minister Haraka issued a statement in response, which read in relevant part:

We make no apology for interrupting what we had good cause to believe was a terrorist attack threatening our capital city. Our civilian and military authorities acted promptly and responsibly to prevent a tragedy. This is a purely domestic matter, and we are accountable to no one but our consciences and our Creator for the consequences. Ranovstayo has no right to "demand" anything from us; indeed, had Ranovstayo handed over Ms. Vormund in response to our lawful request, this tragedy could have been averted. But as long as we are speaking of accountability, Ranovstayo interfered in our internal affairs by allowing her to stay at its Consulate. That decision, as well as the arbitrary regulation discouraging its nationals from entering Aprepluyan territory even when they have families, property, or other interests here, or simply want to visit us, are violations of international law, and Ranovstayo must be held accountable for them.

46. On 8 July 2018, the Aprepluyan Ministry of Tourism published a study entitled *The Effect of Ranovstayo's Entry Restrictions on Tourism in Aprepluya*. The report concluded that, from its inception through 30 June 2018, the Ranovstayan entry regulation had resulted in over €130 million in revenue lost by Aprepluya and its nationals from hotels, restaurants, tourist venues, souvenir and handicrafts shops, the transportation sector, and related industries. The study also noted that there was no possibility for these losses to be recovered through any domestic judicial or administrative process in either country, a fact that both Aprepluya and Ranovstayo have confirmed.
47. On 12 July 2018, Aprepluya filed an Application with the Court instituting the present proceedings against Ranovstayo, alleging that the entry restrictions affecting Aprepluya and its nationals, as well as the decision allowing Ms. Vormund to stay at the Segura Consulate, were in violation of international law.
48. Aprepluya and Ranovstayo had, on 7 January 2002 and 10 March 2003 respectively, deposited Declarations with the Secretary-General of the United Nations under Article 36(2) of the Statute of the International Court of Justice. Both Declarations stated:

The Government declares, with immediate effect, that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to the Secretary-General of the United Nations withdrawing or modifying this Declaration.
49. Aprepluya's Declaration, however, also included the following reservation:

This Declaration shall not apply to any dispute concerning Aprepluyan military activities, or to any dispute with regard to matters which are essentially within the domestic jurisdiction of the United Republic of Aprepluya, as determined by the Government of the United Republic of Aprepluya.
50. On 16 July 2018, Ranovstayo notified the Court that it wished to file a counter-claim against Aprepluya, asserting that the shoot-down of the Mantyan Airways aircraft violated international law. Two days later, Aprepluya noted its intention to contest the Court's exercise of jurisdiction over that counter-claim.
51. On 20 July 2018, when its entry regulation was to expire, Ranovstayo renewed it for another three months, on the basis of a fresh risk assessment and what it asserted was the best scientific evidence available.
52. In September 2018, it was discovered that certain previously existing and widely available antiviral medications were very effective at combating J-VID-18 symptoms and reducing the contagiousness of the disease. In October, the number of active cases of J-VID-18 around the world began to decrease, and on 20 November 2018, WHO declared that J-VID-18 was no longer a pandemic.

53. On 1 December 2018, Aprepluya and Ranovstayo requested a suspension of the proceedings in order to pursue settlement negotiations. These discussions continued for more than a year and a half, without success. On 3 August 2020, the Parties requested that the proceedings before the Court be continued.
54. Aprepluya and Ranovstayo have at all relevant times been parties to the Charter of the United Nations, the Statute of the International Court of Justice, the Constitution of the World Health Organization, the 2005 International Health Regulations, the Convention on International Civil Aviation, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Relating to the Status of Refugees, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the Vienna Convention on the Law of Treaties. The two States are not parties to any other multilateral or bilateral agreement relevant to the present proceedings.
55. Aprepluya requests that the Court adjudge and declare that:
 - a. Ranovstayo violated international law by applying its entry regulation to Aprepluya, and is thus obligated to compensate it for the resulting economic losses;
 - b. Ranovstayo violated international law by failing to hand over Ms. Keinblat Vormund to the Aprepluyan authorities after they requested her surrender on 9 June 2018;
 - c. The Court may not exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft; and
 - d. Even if the Court were to exercise jurisdiction over the counter-claim, Aprepluya did not violate international law by shooting down the aircraft.
56. Ranovstayo requests that the Court adjudge and declare that:
 - a. Ranovstayo did not violate international law by applying its entry regulation to Aprepluya, and even if it did, it should not be required to compensate Aprepluya for any claimed economic losses;
 - b. Ranovstayo did not violate international law by refusing to hand over Ms. Keinblat Vormund to the Aprepluyan authorities;
 - c. The Court may exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft; and
 - d. Aprepluya violated international law by shooting down the aircraft.

2021 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

CORRECTIONS AND CLARIFICATIONS TO THE STATEMENT OF AGREED FACTS

The following corrections and clarifications to the Statement of Agreed Facts have been agreed to by the parties, and the text jointly communicated to the Court on 10 September 2020 should be considered amended accordingly. The Registrar of the Court reminds all parties and participants of the following:

- a. The wording of the Statement of Agreed Facts has been carefully chosen, and is the result of extensive negotiation. The parties decline to “clarify” matters about which they are unlikely to agree. The parties will not stipulate as to which legal principles are relevant or which arguments are acceptable or unacceptable.
- b. Any request for clarification not addressed in the following paragraphs has been considered by the parties to be redundant, inappropriate, or immaterial, or the parties were unable to reach agreement on a mutually acceptable answer.
- c. Except to the extent that corrections and clarifications are set out below, participants are to assume that the Statement of Agreed Facts is accurate and complete in all respects. In particular, the parties stipulate as to the authenticity of all documents referenced in the Statement.
- d. With respect to the pronunciation of the various proper names used in the Statement of Agreed Facts, all parties and the Court have agreed that they will not take formal or informal offense at any reasonable effort to pronounce proper names correctly.
- e. Aprepluya and Ranovstayo are not parties to any relevant bilateral or multilateral treaties, conventions, or accords other than those referenced within the Statement of Agreed Facts or herein.

CORRECTIONS

1. In paragraph 21, the reference to “Monday, 25 May” is corrected to read “Friday, 25 May.”
2. In paragraph 21, the reference to “Thursday, 28 May” is corrected to read “Monday, 28 May.”

CLARIFICATIONS

1. Ms. Gwo Hye was, at all relevant times, a national of Aprepluya.
2. Mantyan Airways is a corporation registered under the laws of Aprepluya. Its principal place of business is in Beauton.

3. Apreluya and Ranovstayo have at all relevant times been parties to the 1984 Protocol Relating to an Amendment to the Convention on International Civil Aviation (Article 3 bis).
4. Among the charges against Ms. Keinblat Vormund, “violation of a governmental non-disclosure agreement” is the most serious. According to the applicable statute, the penalty upon conviction is imprisonment for one to 20 years. Apreluya’s Prosecutor’s Office, in its statement on 8 June 2018, declared: “In light of the seriousness of the offense, we intend to seek the maximum penalty on all charges.”
5. On 28 June 2018, the Apreluyan Ambassador to the United Nations submitted a letter to the President of the Security Council, informing the Council that it had shot down an aircraft over its territory “to protect our capital from an apparent terrorist attack.”
6. Ranovstayo accepts the accuracy of the incident report prepared by the Commanding Officer of the Beauton Area Air Force Base, as reproduced in paragraph 42.
7. As of 20 November 2018, Apreluya had recorded 2,445 confirmed cases of J-VID-18, of which 1,995 were located in Segura Province. As of that date, Ranovstayo had recorded only 31 confirmed cases, all of which were individuals who had recently returned from abroad and were promptly quarantined upon arrival.
8. The Parties have agreed not to assert any claims or defenses based upon any of the Annexes to the Convention on International Civil Aviation.
9. The last time any member of the Ranovstayan consular staff saw Ms. Keinblat Vormund was at the consulate at 18:00 local time on 24 June 2018. The next morning, it was discovered that she was no longer on the consular premises.