The 2021 Philip C. Jessup International Law Moot Court Competition

The United Republic of Aprepluya

v.

The Democratic State of Ranovstayo

The Case Concerning the J-VID-18 Pandemic

BEST MEMORIAL – GLOBAL ROUNDS
(Applicant)

First Place – Applicant
Hardy C. Dillard Award

Chongqing University
China (Team #392)

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE, THE NETHERLANDS

CASE CONCERNING THE J-VID-18 PANDEMIC

UNITED REPUBLIC OF APREPLUYA
(APPLICANT)

V.

DEMOCRATIC STATE OF RANOVSTAYO
(RESPONDENT)

MEMORIAL FOR APPLICANT

THE 2021 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

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STATEMENT OF JURISDICTION

The United Republic of Aprepluya (**Aprepluya**) instituted proceedings against the Democratic State of Ranovstayo (**Ranovstayo**) before the International Court of Justice (**the Court**) on 12 July 2018 pursuant to Article 40(1) of the Statute of the International Court of Justice (**the Statute**) regarding the dispute concerning alleged violations of international law by Ranovstayo. Ranovstayo filed a counter-claim under Article 80 of the Rules of Court on 16 July 2018, and Aprepluya noted its intention to contest the Court's exercise of jurisdiction over that counter-claim on 18 July 2018. The Parties accepted the jurisdiction of the Court over Aprepluya's claims, and agreed to have all the claims and counter-claims heard together in a single set of proceedings, and the Parties jointly communicated to the Court the Statement of Agreed Facts on 10 September 2020. Both States are party to the Court's compulsory jurisdiction under Article 36(2) of the Statute.

QUESTIONS PRESENTED

I. Whether Ranovstayo violated international law by applying its entry regulation to Aprepluya, and whether Ranovstayo is thus obligated to compensate it for the resulting economic losses;

II. Whether 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;

III. Whether the Court may exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft;

IV. Even if the Court were to exercise jurisdiction over the counter-claim, whether Aprepluya violated international law by shooting down the aircraft.

STATEMENT OF FACTS

BACKGROUND

Aprepluya is a developed parliamentary democracy and the principal contributor to its GDP is the banking and financial services sector. Ranovstayo, which lies directly to the east of Aprepluya, is also a developed, democratic nation. Its economy is centered on petroleum, agricultural, and manufacturing sectors. Given its culture and scenery, Aprepluya has had an active tourism industry particularly in Segura Province. A large portion of the tourists to this province are Ranovstayans or nationals of other States who travel through Ranovstayo's Bogpadayo Airport.

J-VID-18

J-VID-18 was a previously unknown disease emerging in March 2018 in Hadbard. Scientists discovered that J-VID-18 was transmissible between humans, with a basic reproduction rate of 1.2 to 1.4 and an incubation period of 7 to 14 days. J-VID-18 was declared to be a PHEIC and a pandemic on 20 April and 15 May by the WHO respectively. Certain available antiviral medications were found to be effective in September, and the WHO later declared that J-VID-18 was no longer a pandemic on 20 November 2018.

ENTRY REGULATION AND TEMPORARY RECOMMENDATIONS

On 20 April 2018, the Director General issued Temporary Recommendations. These recommendations did not recommend travel and trade restrictions. Faced with the J-VID-18, Ranovstayo conducted a risk assessment and adopted an entry regulation on 22 April. The regulation prohibited the entry of non-Ranovstayan nationals and imposed quarantine on Ranovstayan nationals from the high-risk countries, which Ranovstayo regarded as having at least 50 confirmed cases. The WHO requested that Ranovstayo reconsider its entry regulation, but Ranovstayo declined to modify or revoke it.

Aprepluya's economy is heavily reliant on the tourism industry. On 8 June, when Aprepluya had only 9 confirmed cases in Segura Province, Ranovstayo added Aprepluya to its list of high risk countries. The regulation not only impeded travel to Aprepluya, but also heavily affected Aprepluya and Aprepluyan nationals' way of life. As a result, Aprepluya suffered heavy economic losses which, as a result of Ranovstayo's entry regulation, cannot be recovered

through any domestic regime. On 20 July, Ranovstayo renewed the regulation for another three months.

NATIONAL BIORESEARCH LABORATORY (NBL)

The National Bioresearch Laboratory, a State-owned and State-run laboratory located in Segura Province, was one of the research institutes conducting research on a vaccine for J-VID-18 virus.

Personnel working at NBL signed a non-disclosure agreement upon being hired, prohibiting them from divulging information concerning their work at the Laboratory. On 20 May 2018, NBL had reported significant progress in vaccine development. Since 25 May, 12 employees at NBL developed pneumonia-like symptoms and were quickly tested for J-VID-18 and isolated. On 4 June, two tests results were confirmed positive. On 5 June, Aprepluya decided to temporarily interrupt operations at NBL as a precaution. On 7 June, there were nine confirmed cases in total amongst all NBL employees. By 15 June, 52 individuals in Segura Province, all who had been to or lived with someone who has been to NBL's premises within the previous 18 days, had been confirmed positive for J-VID-18.

MS. KEINBLAT VORMUND (MS. VORMUND)

Ms. Keinblat Vormund, an Aprepluyan national, was a technician at NBL who researched the J-VID-18 virus. As part of her hiring process, she signed a non-disclosure agreement. On 3 June 2018, an anonymous tweet publicly posted information regarding the suspect J-VID-18 cases at NBL. Aprepluyan officials were able to trace the tweet back to Ms. Vormund. Aprepluyan police went to her home to ask her questions regarding the tweet, however, Ms. Vormund fled. As the police waited at her doorstep, she fled the scene, and, while being pursued by the police, drove through the gates of the Ranovstayan consulate in Segura Province. Aprepluyan police abandoned their pursuit outside the consular premises and did not harm Ms. Vormund in any way.

In order to escape law enforcement officials, Ms. Vormund sought protection in the consulate. Ranovstayo quickly agreed to let Ms. Vormund stay and that they considered has as an applicant for asylum. On 8 June, Aprepluya formally charged Ms. Vormund under the National Penal Code with three offences. Aprepluya then formally requested her surrender on 9 June. Ranovstayo refused to hand over Ms. Vormund on account of their consideration of her asylum,

which was in violation of international law.

On 26 June, Ms. Vormund left the consulate and boarded an aircraft at Segura Airport. The aircraft was piloted by her friend, Ms. Gwo Hye, and took off from Segura Airport without authorization. Ms. Vormund was killed in the lawful shoot-down of the aircraft, suspected to be conducting a terrorist attack.

DECLARATIONS TO THE COMPULSORY JURISDICTION

On 7 January 2002 and 10 March 2003 respectively, Aprepluya and Ranovstayo deposited Declarations with the Secretary-General of the United Nations under Article 36(2) of the Statute. Both States recognized the compulsory jurisdiction of the Court in conformity with Article 36(2) of the Statute without special agreement.

In addition, Aprepluya's Declaration included two reservations, stating that the 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.

FRIENDS OF JUSTICE (FOJ)

FOJ is a terrorist organization which has been included in the United Nations Security Council Consolidated List. In January 2018, Aprepluya intercepted a message between two suspected FOJ members, indicating that they were waiting for a moment when government let its guard down. On 19 June, INTERPOL sent a report to Aprepluya and Ranovstayo, indicating that FOJ was planning a terrorist attack on a national capital, using a civil aircraft as a weapon. Both Aprepluya and Ranovstayo promptly put their Air Forces on heightened alert.

THE MANTYAN AIRWAYS AIRCRAFT

The aircraft in question is a 12-person civilian aircraft, owned by Mantyan Airways and registered in Aprepluya. At 02:57 in the morning of 26 June 2018, it took off from Segura Airport without authorization and headed in the direction of Beauton. As the aircraft failed to identify itself or to comply with standard operating procedures, Aprepluya sent a fighter jet to intercept it. Even after multiple attempts at initiating communication via radio, various visual signals and tracer bullets across the path of the aircraft, it remained non-responsive. With three minutes

flying time remaining from the outskirt of its capital city, Aprepluyan military officials decided to fire a short burst at its wing area to force it down. The aircraft pilot, however, was unable to maintain control and the plane crashed nearby.

SUMMARY OF PLEADINGS

PLEADING I

Ranovstayo violated international law by applying its entry regulation to Aprepluya, and thus was obligated to compensate it for the resulting economic losses.

Ranovstayo violated the International Health Regulations (**IHR**) because the entry regulation was applied towards Aprepluya in a discriminatory manner in violation of Article 42. Moreover, the entry regulation did not conform to additional health measures under Article 43, because it was more restrictive of international traffic and failed to abide by scientific standards.

Ranovstayo violated its obligations under international human rights law. The regulation violated the right to freedom of movement under the International Covenant on Civil and Political Rights (**ICCPR**), including the right to leave of Ranovstayan nationals and the right to enter of Aprepluyan nationals. Furthermore, the regulation violated obligations under the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) because it applies extraterritorially and Ranovstayo has violated the obligation to respect the Economic, Social and Cultural (**ESC**) rights of Aprepluyan nationals.

Consequently, Ranovstayo was obligated to compensate Aprepluya for the resulting economic losses.

PLEADING II

Ranovstayo interfered in the territorial sovereignty of Aprepluya. As Aprepluya had exclusive territorial jurisdiction over Ms. Vormund, Ranovstayo violated the duty to respect its jurisdiction based on the non-intervention principle.

Ranovstayo wrongfully considered the asylum of Ms. Vormund in the consulate as Ms. Vormund had no right of asylum in her State of origin. Meanwhile, Ranovstayo had no right to grant asylum in the consulate. Under the Vienna Convention on Consular Relations (**VCCR**), consular premises could not be used as the place of asylum as this is incompatible with consular functions. Also, there were no humanitarian grounds that could be considered in our case and Ms. Vormund was not a political offender who could be protected.

Alternatively, there was no obligation to refrain from refoulement because non-refoulement obligation cannot be applied extraterritorially. Furthermore, no obligations under refugee law and human rights require Ranovstayo to protect her.

Thus, Ranovstayo was obligated to surrender Ms. Vormund upon Aprepluya's request when there was no legal basis for Ms. Vormund to remain in the consulate.

PLEADING III

Notwithstanding the direct connection between the principal claim and the counter-claim, the Court cannot exercise jurisdiction over Ranovstayo's counter-claim because the conditions of jurisdiction are not met. The Court lacks jurisdiction over Ranovstayo's counter-claim because Aprepluya's reservations preclude the Court's jurisdiction. Aprepluya's reservation on matters essentially within Aprepluya's domestic jurisdiction is valid and Aprepluya invokes it in good faith, based on a genuine understanding that the shoot-down is essentially within Aprepluya's domestic jurisdiction. Additionally, the shoot-down is a military activity and falls within Aprepluya's reservation on dispute concerning military activities.

In the alternative, Ranovstayo lacks standing to bring the counter-claim before the Court. Ranovstayo is not an injured-State and thus cannot make claims. Besides, there is no rule of that allow States to invoke responsibility on the basis of collective interest as a non-injured State and the shoot-down is insufficient for Ranovstayo to make claims before the Court. Therefore, the counter-claim is inadmissible.

PLEADING IV

Given credible intelligence and the suspicious conduct performed by the aircraft, Aprepluya had good reason to believe it was being used for a terrorist attack. The shoot-down of this aircraft did not violate the principle of non-use of force, as it does not deal with matters within the State's sovereignty. Additionally, Aprepluya did not violate the right to life under the ICCPR because Aprepluya was obliged to protect people's lives on the ground and the shooting was not an arbitrary deprivation of life. Furthermore, Aprepluya did not violate Article 3bis under the Convention on International Civil Aviation (**Chicago Convention**). Article 3bis is not applicable in our case, since it only applied to foreign aircraft and aircraft used as a weapon loses its status as such.

Alternatively, Aprepluya's conduct constituted self-defence, which is an exception under Article 3bis. Using aircraft as a weapon by non-State actors can be regarded as an armed attack. Such attack in our case was imminent, and anticipatory self-defence is lawful under international

law. Finally, the shoot-down met the criteria of proportionality and necessity.

PLEADINGS

I. RANOVSTAYO VIOLATED INTERNATIONAL LAW BY APPLYING ITS ENTRY REGULATION TO APREPLUYA, AND IS THUS OBLIGATED TO COMPENSATE IT FOR THE RESULTING ECONOMIC LOSSES.

By applying the entry regulation to Aprepluya, Ranovstayo violated [**A**] the 2005 International Health Regulations, [1] [**B**] international human rights law, and [**C**] it was consequently obligated to compensate Aprepluya for the resulting economic losses.

A. Ranovstayo's application of its entry regulation to Aprepluya violated the IHR.

The IHR administered by World Health Organization (**WHO**) is binding to its Parties.[2] The IHR shares common purpose with the Agreement on the Application of Sanitary and Phytosanitary Measures (**SPS Agreement**),[3] aiming at reducing barriers to international trade,[4] which can be interpreted in a compatible way.[5] Ranovstayo violated the IHR as *first*, its entry regulation was applied in a discriminatory manner and *second*, it did not conform to additional health measures.

1. The entry regulation was applied in a discriminatory manner under Article 42.

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[1] International Health Regulations (2005) 2509 UNTS 79 [**IHR**].

[2] Constitution of the World Health Organization (1946) 14 UNTS 185, Art 2(a), 21.

[3] Agreement on the Application of Sanitary and Phytosanitary Measures (1951) 1867 UNTS 493 [**SPS Agreement**].

[4] WHO, 'Revision of the International Health Regulations: Progress Report' (1998) A51/8, ¶¶235-236; David P. Fidler, 'From International Sanitary Conventions to Global Health Security: The New International Health Regulations' (2005) 4 Chinese JIL 325 [**Fidler**], 352.

[5] IHR, Art 42, 43(1), 43(2), 57; SPS Agreement, Art 2(2), 5(6), 5(7); Barbara von Tigerstrom, 'The Revised International Health Regulations and Restraint of National Health Measures' (2005) 13 Health Law J 35, 60.

States shall not be treated differently in identical conditions like spread of the same disease prevail.[6] Under the circumstance, arbitrary and unjustifiable discrimination exists when applying harsher measure without rationally explaining the difference,[7] or without an appropriate examination between the regulation and the State's prevailing condition.[8]

With the same J-VID-18 prevailing, the application of the regulation to Aprepluya was discriminatory without a reasonable basis, as *firstly*, Ranovstayo disregarded the facts that there were only 9 confirmed cases for the time, way lower than the settled number of 50, and no single case presented outside Segura Province.[9] *Secondly*, Aprepluya had itself adopted multiple strict measures including lockdown of Segura Province,[10] showing a high credibility to control the disease.[11] Therefore, this regulation was applied discriminatorily.

2. The entry regulation was not compatible with additional health measures under Article 43.

a. The entry regulation was more restrictive of international traffic.

Alternative measures should be examined to determine whether an additional health measure

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[6] WTO, *European Communities: Measures Concerning Meat and Meat Products (Hormones)* (1997) WT/DS26/AB/R and WT/DS48/AB/R [***EC-Hormones***], ¶217; WTO, *India: Measures Concerning the Importation of Certain Agricultural Products* (2014) WT/DS430/R [***India-Agricultural Products***], ¶7.400.

[7] *India-Agricultural Products*, ¶7.43.

[8] *India-Agricultural Products*, ¶7.400; WTO, *United States: Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina* (2015) WT/DS447/R [***US-Animals***], ¶7.573; WTO, *Russian Federation: Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union* (2016) WT/DS475/R [***Russia-Pigs (EU)***], ¶7.1318.

[9] *Agreed Facts*, ¶¶29, 33.

[10] *Agreed Facts*, ¶27.

[11] *US-Animals*, ¶7.581.

is more restrictive of international traffic.[12] If certain less restrictive alternative is reasonably available,[13] while meets the appropriate level of protection (**ALOP**),[14] then the additional measure in question is more restrictive.

Concerning Ranovstayo's ALOP, it must include the intensity, extent, or relative amount of protection.[15] Only claiming to prevent spread of J-VID-18 was not sufficient for a qualified ALOP.[16] Moreover, deducing from Ranovstayo's entry regulation, which served as a corresponding measure reflecting the actual ALOP,[17] Ranovstayo would tolerate a level of risk up to 50 confirmed cases.[18] To meet such protection, measures such as social distancing and using face coverings provided by the WHO[19] serve as reasonably available alternatives. The previously existing medications[20] would also act as an alternative for the renewed regulation after September. Over all, the entry regulation was more restrictive of international traffic.

b. Ranovstayo's conduct did not satisfy scientific standards.

Under Article 43(2), Ranovstayo shall base its entry regulation on three standards

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[12] WTO, *Australia: Measures Affecting Importation of Salmon* (1998) WT/DS18/AB/R, ¶194; WTO, *Japan: Measures Affecting the Importation of Apples* (2005) WT/DS245/RW, ¶8.162.

[13] WTO, *Australia: Measures Affecting Importation of Salmon-Recourse to Article 21.5 by Canada* (2000) WT/DS18/RW, ¶7.146.

[14] WTO, *Australia: Measures Affecting the Importation of Apples from New Zealand* (2010) WT/DS367/AB/R [***Australia-Apples***], ¶344.

[15] *India-Agricultural Products*, ¶¶7.562, 7.565.

[16] *Agreed Facts*, ¶34.

[17] *Russia-Pigs (EU)*, ¶7.747.

[18] *Agreed Facts*, ¶10.

[19] *Agreed Facts*, ¶7.

[20] *Agreed Facts*, ¶52.

cumulatively,[21] including [**i**] scientific principles, [**ii**] scientific evidence, and [**iii**] advice from the WHO.[22]

i. Ranovstayo's entry regulation did not abide by scientific principles.

"Scientific principles" refer to accepted fundamental laws and facts of nature known through scientific methods,[23] such as basic reproduction rates (**R0**) reflecting the contagiousness of a virus.[24] Highly contagious viruses like H1N1 and Ebola have R0 ranging from 1.5 to above 2.[25] However, WHO did not recommend trade or travel restrictions towards these viruses.[26] Comparatively, J-VID-18 is significantly less contagious with a R0 ranging from 1.2 to 1.4.[27] Hence, the entry regulation did not abide by scientific principles.

ii. Ranovstayo's entry regulation was not based on scientific evidence.

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[21] Roojin Habibi et al., 'The Stellenbosch Consensus on Legal National Responses to Public Health Risks: Clarifying Article 43 of the International Health Regulations' (2020) IOLR 1 [**Habibi et al.**], 26; Fidler, 382.

[22] IHR, Art 43(2).

[23] *Ibid*, Art 1.

[24] Paul L. Delamater et al., 'Complexity of the Basic Reproduction Number (R0)' (2019) 25(1) Emerging Infectious Diseases 1, 1.

[25] Dr Sylvie Briand, 'Epidemiology and Illness Severity of Pandemic (H1N1) 09 Virus' (2009) 8; WHO Ebola Response Team, 'After Ebola in West Africa-Unpredictable Risks, Preventable Epidemics' (2016) 375(6) NEJM 587, 590.

[26] WHO, 'Statement on the Meeting of the International Health Regulations (2005) Emergency Committee for Ebola virus disease in the Democratic Republic of the Congo on 17 July 2019' (2019) 5.

[27] *Agreed Facts*, ¶7.

Scientific evidence must be drawn from a specific risk assessment,[28] which specifically addresses an ascertainable risk rather than the general risk of harm.[29] With insufficient available scientific evidence, States should utilize the available information including that from the WHO,[30] whereas an additional measure cannot be justified solely on scientific uncertainty.[31]

Ranovstayo asserted that it has taken the best scientific evidence available, whereas disregarded the 14-day incubation period and set the entry regulation in a "most stringent" way.[32] Specifically addressing Aprepluya, Ranovstayo conducted no specific risk assessment but added Aprepluya to the list merely based on the asserted tremendous uncertainty.[33] Hence, such application lacked scientific evidence.

iii. Ranovstayo did not follow any available specific guidance or advice from the WHO.

A State's measures should also be based upon any available specific guidance or advice.[34] Temporary Recommendations clearly falls within the criteria,[35] acting as advice in response to a Public Health Emergency of International Concern.[36]

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[28] WTO, *Australia: Measures Affecting the Importation of Apples from New Zealand* (2010) WT/DS367/R, ¶7.214.

[29] *EC-Hormones*, ¶¶184, 186, 199-208; WTO, *Japan: Measures Affecting the Importation of Apples* (2003) WT/DS245/AB/R [***Japan-Apples***], ¶¶202-206; WTO, *Canada: Continued Suspension of Obligations in the EC-Hormones Dispute* (2008) WT/DS321/AB/R, ¶569.

[30] IHR, Art 43(2).

[31] *Japan-Apples*, ¶¶183-184; *Australia-Apples*, ¶244.

[32] *Agreed Facts*, ¶¶7, 10, 12, 16.

[33] *Agreed Facts*, ¶¶10, 34, 51.

[34] IHR, Art 43(2)(c).

[35] Habibi et al., 26.

[36] IHR, Art 1.

Ranovstayo did not follow the Temporary Recommendation on travel and trade,[37] and refused to modify or revoke its regulation even after the WHO suggested reconsideration.[38] Thus, Ranovstayo did not base its entry regulation on the WHO's advice.

B. Ranovstayo's conduct violated obligations under international human rights law.

1. The regulation violated the freedom of movement under the ICCPR.

a. Ranovstayo has violated the right to leave under the ICCPR.

i. Aprepluya has standing to claim as a specially affected State.

An injured State can claim the violation of another State as a specially affected State.[39] "Specially affected" requires particular adverse effects on the injured State, and should be assessed on a case-by-case basis regarding the purpose and facts.[40]

The entry regulation hampered Ranovstayan nationals to leave Ranovstayo when they had families, property, or other interests in Aprepluya and brought huge economic losses to Aprepluya,[41] which distinguished from "the generality of other States to which the obligation is owed".[42] Thus, Aprepluya has standing to claim.

ii. Ranovstayo has violated the right to leave of its nationals.

Enjoyment of the right to leave is often adversely affected by obstructing people to enter their own countries.[43] Being the counterpart of right to leave,[44] right to enter is subject to no

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[37] *Agreed Facts*, ¶8.

[38] *Agreed Facts*, ¶14.

[39] ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) UN Doc A/56/10 [**ARSIWA Commentaries**], Art 42(b)(i).

[40] ARSIWA Commentaries, Art 42, ¶12.

[41] *Agreed Facts*, ¶45.

[42] ARSIWA Commentaries, Art 42, ¶12.

[43] International Covenant on Civil and Political Rights (1966) 999 UNTS 171 [**ICCPR**], Art

restriction even for public interest enumerated under Article 12(3).[45] Pre-entry controls like burdensome conditions upon returning would render the exercise of the right to leave ineffective and difficult.[46]

Ranovstayo's regulation implemented an 18-day compulsory quarantine, which heavily affected Ranovstayan nationals' right to enter their own country.[47] In turn, the quarantine discouraged Ranovstayan nationals to exercise their right to leave.[48]

b. Ranovstayo has violated the right to enter of the Aprepluyan nationals.

The right to enter is subject to no restriction envisaged under Article 12(3).[49] No one shall be arbitrarily deprived the right to enter his own country[50] where a person has special ties[51] as long-standing residence and close family ties.[52] Deprivation covers legislative, administrative or

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12(2), 12(4); Eckart Klein, 'Movement, Freedom of, International Protection' (2007) MPIL [**Klein**], ¶6.

[44] Klein, ¶6.

[45] ICCPR, Art 12(3).

[46] José D. Inglés, 'Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including His Own, and to Return to his Country' (1963) UN Doc E/CN A/Sub.2/229/Rev.l, 46.

[47] *Agreed Facts*, ¶10.

[48] *Agreed Facts*, ¶45.

[49] Rutsel Martha and Stephen Bailey, 'The Right to Enter His or Her Own Country' <https://www.ejiltalk.org/the-right-to-enter-his-or-her-own-country/> accessed 1 January 2021.

[50] ICCPR, Art 12(3).

[51] UNHRC, 'General Comment No 27' (1999) UN Doc CCPR/C/21/Rev.1/Add.9 [**GC 27**], ¶20.

[52] *Stewart v Canada* (1996) Communication No 538/1993 UN Doc CCPR/C/58/D/538/1993, 21; *Nystrom v Australia* (2011) Communication No 1557/2007 UN Doc CCPR/C/102/D/1557/2007, ¶7.4.

judicial actions,[53] and can only be regarded reasonable by granting lawful exile as punishment.[54]

In our case, the application of the entry regulation hampered Aprepluyan nationals who had family members or residence in Ranovstayo to return to Ranovstayo.[55] Thus Ranovstayo's entry regulation constituted an arbitrary deprivation.

2. The regulation violated obligations under the ICESCR.

a. The ICESCR applies extraterritorially.

In light of the text,[56] relevant rules,[57] and preamble reflecting its object and purpose,[58] the ICESCR shall be extraterritorially applied for that ESC rights are enjoyed by all human beings regardless of their nationalities.[59] Thus, Ranovstayo owns extraterritorial ESC obligations.

b. Ranovstayo has violated the obligation to respect the ESC rights.

The ICESCR imposes tripartite State obligations, *inter alia*, the obligation to respect in achieving the full realization of ESC rights.[60] The obligation to respect entails obligations not to interfere with the enjoyment of all human rights and to ensure material resources to satisfy basic

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[53] GC 27, ¶21.

[54] Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel 2005) 283.

[55] *Agreed Facts*, ¶10.

[56] International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3 [**ICESCR**], Art 6-8.

[57] Charter of the United Nations (1945) 1 UNTS 16 [**UN Charter**], Art 1, 55, 56.

[58] Vienna Convention on the Law of the Treaties (1969) 1155 UNTS 331 [**VCLT**], Art 31.

[59] ICESCR, Preamble.

[60] A Eide, 'The Right to Adequate Food as a Human Right' (1987) UN Doc E/CN.4/Sub.2/1987/23, ¶66; CESCR, 'General Comment 19' (2008) UN Doc E/C.12/GC/19, ¶43; CESCR, 'General Comment 18' (2005) UN Doc E/C.12/GC/18, ¶22.

needs in exercising rights.[61] To achieve this, States shall not adopt laws or other measures which do not conform to ESC rights.[62]

The apprehension of Aprepluya being designated as a high-risk country by Ranovstayo has promptly led approximately 80% of tourists to leave Aprepluya within three days.[63] Consequently, by the end of July, Aprepluya's tourism-related industries were heavily struck, unemployment increasing, food and other provisions essential for everyday lives in short supply.[64] Such changes brought by Ranovstayo's application of its entry regulation severely interfered in Aprepluyans with exercising their right to work, right to food and right to an adequate standard of living.[65] Thus, Ranovstayo violated the obligation to respect by adversely influencing Aprepluyans' enjoyment of ESC rights.

C. Ranovstayo was obligated to compensate Aprepluya for the resulting economic losses.

A State must make full reparation for any wrongful act that engages its responsibility.[66] Compensation arises when the damage cannot be made good by restitution,[67] while the loss is financially assessable.[68]

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[61] J. Symonides (ed), *Human Rights: Concepts and Standards* (Routledge 2000) 127.

[62] Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart Publishing 2009) 23.

[63] *Agreed Facts*, ¶30.

[64] *Agreed Facts*, ¶¶35, 46.

[65] ICESCR, Art 6, 11.

[66] ARSIWA Commentaries, Art 31; *Case Concerning the Factory at Chorzów (Germany v Poland)* (Jurisdiction) [1927] PCIJ Rep Series A No 9, 21.

[67] ARSIWA Commentaries, Art 36(1); *Case Concerning the Factory at Chorzów (Germany v Poland)* (Merits) [1928] PCIJ Rep Series A No 17, 47–48.

[68] ARSIWA Commentaries, Art 36(2), Art 36, ¶ 1; *Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v Albania)* (Merits) [1949] ICJ Rep 4 [***Corfu Channel Case***], 26.

As revoking the regulation or any other domestic process was not achievable to make full reparation of Aprepluya's economic loss,[69] Ranovstayo must compensate Aprepluya for the established €130 million[70] and further loss awaiting calculation.

[69] *Agreed Facts*, ¶46.

[70] *Agreed Facts*, ¶46.

II. 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.

By failing to surrender Ms. Keinblat Vormund (**Ms. Vormund**) upon Aprepluya's request, [**A**] Ranovstayo interfered in the territorial sovereignty of Aprepluya. Further, [**B**] Ranovstayo wrongfully considered asylum of Ms. Vormund in the consulate and [**C**] if Ranovstayo claimed diplomatic asylum had not yet been granted, it was also not obligated to refrain from refoulement. Thus, [**D**] Ranovstayo violated the obligation to surrender Ms. Vormund upon request.

A. Ranovstayo interfered in the territorial sovereignty of Aprepluya.

1. Aprepluya was exclusively entitled to exercise territorial jurisdiction over Ms. Vormund.

Territorial jurisdiction[71] of States as a fundamental rule[72] is exclusive and absolute[73] within the State's territory.[74] It prevails over all other jurisdiction when the latter is conflict with the former.[75] Here, Ms. Vormund, a citizen of Aprepluya remained in the territory of Aprepluya,[76] consequently was under the exclusive territorial jurisdiction by Aprepluya.

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[71] Rafiqul Islam and Jahid Hossain Bhuiyan (eds), *An Introduction to International Refugee Law* (Martinus Nijhoff 2013) 154.

[72] Cedric Ryngaert, *Jurisdiction in International Law* (OUP 2015) 35-36.

[73] *Corfu Channel Case*, 35.

[74] *The Case of the S.S. "Lotus" (France v Turkey)* (Judgment) [1927] PCIJ Rep Series A No 10, 18, 20; Andrew Clapham (ed), *Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations* (OUP 2012) 206.

[75] Robert Jennings and Arthur Watts KCMG QC (eds), *Oppenheim's International Law* (OUP 2008) [**Oppenheim's International Law**] 458.

[76] *Agreed Facts*, ¶¶18-34.

2. Ranovstayo interfered in Aprepluya's jurisdiction.

Non-intervention principle is a customary international law (**CIL**)[77] which provides the duty to all other States to respect the territorial States' jurisdiction.[78] Only in cases of mob violence and which States have temporarily lapsed,[79] diplomatic asylum is not the impediment of territorial jurisdiction.[80] Thus, asylum cannot be considered as a mean to avoid the operation of regular law generally.[81]

In our case, Aprepluya exercised its national law to charge Ms. Vormund.[82] However, by refusing to hand her over and considering her asylum, Ranovstayo obstructed Aprepluya's jurisdiction.

B. Ranovstayo wrongfully considered asylum of Ms. Vormund in the consulate.

1. Ms. Vormund had no right of asylum in the consulate.

Under Article 14 of UDHR which is a CIL,[83] it is everyone's right to seek and enjoy asylum in other countries' territory.[84] Differently, Ms. Vormund sought protection in her State of origin[85]

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[77] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 [***1986 Nicaragua***], ¶202.

[78] Jean Combacau and Serge Sur, *Droit International Public* (Monchrestien 2012) 264.

[79] Green Haywood Hackworth, *Digest of International in International Law* (CUP 1941) 622.

[80] UNGA, 'Question of Diplomatic Asylum. Report of the Secretary-General' (1975) UN Doc A/10139 (Part II) 169.

[81] *Asylum Case (Colombia v Peru)* (Judgment) [1950] ICJ Rep 266 [***Asylum Case***], 284.

[82] *Agreed Facts*, ¶¶32-33.

[83] S.R. Chowdhury, 'A Response to the Refugee Problems in Post-Cold War Era: Some Existing and Emerging Norms of International Law' (1994) 7 IJRL 100, 105; *United States Diplomatic and Consular Staff in Tehran* (*United States of America v Iran)* (Judgment) [1980] ICJ Rep 3, ¶91.

[84] UNGA, Universal Declaration of Human Rights (1948) Res 217A (III), Art 14(1).

which revealed that she had no right of asylum.

2. Ranovstayo had no right to grant asylum in the consulate.

a. Ranovstayo failed to respect Article 55(2) of the VCCR.

A consular post shall not be used in ways incompatible with the exercise of its functions,[86] *inter alia* it should perform its function in no objection by the receiving State.[87] So long as the receiving State disapproves,[88] consular premises, proved by[89] *travaux préparatoires*[90] and subsequent State practices,[91] cannot be used as places of asylum for persons prosecuted by local authorities.

In our case, Ranovstayo refused to hand Ms. Vormund over claiming she was an applicant of asylum, [92] notwithstanding Aprepluya consistently objected its protection and requested surrender.[93] Obviously Ranovstayo violated Article 55(2).

b. Ranovstayo had no right to consider asylum by humanitarian grounds.

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[85] *Agreed Facts*, ¶21.

[86] Vienna Convention on Consular Relations (1963) 596 UNTS 261, Art 55(2).

[87] *Ibid*, Art 5(m).

[88] Maarten den Heijer, 'Diplomatic Asylum and the Assange Case' (2013) 26 LJIL 399, 413.

[89] VCLT, Art 32.

[90] UNOR (1963) UN Doc A/CONFJS/16/Add.1, 36; ILC, 'Yearbook of the International Law Commission' (1960) Vol II UN Doc A/CN.4/SER.A/1960/Add.1, 176; ILC, 'Yearbook of the International Law Commission' (1961) Vol I UN Doc A/CN.4/SER.A/1961, 86, 145.

[91] Convention between the United States and Mexico (1942) 125 UNTS 300, Art V(2); Consular Convention between the United Kingdom and Sweden (1952) 202 UNTS 157 [**United Kingdom and Sweden**], Art 10(4).

[92] *Agreed Facts*, ¶¶25, 34.

[93] *Agreed Facts*, ¶¶22, 32-33.

Diplomatic asylum[94] on humanitarian grounds[95] is not a CIL.[96] Alternatively, most formulations of diplomatic asylum require the individuals' right to life or liberty[97] face immediate threat to legitimize it,[98] and exclude the inchoate threat.[99]

In our case there was no actual imminent threat. *Firstly*, two Aprepluyan police officers merely waited at Ms. Vormund's doorstep and lawfully aborted their pursuit outside the consulate.[100] *Secondly*, Aprepluya did nothing except requested her surrender.[101] Hence, there was no humanitarian grounds.

c. Ranovstayo could not consider asylum of a political offender.

Protection to a political offender is an exception in opposition to local justice.[102] However,

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[94] Susanne Riveles, 'Diplomatic Asylum as a Human Right: The Case of the Durban Six' (1989) 11 JHUP 139, 158.

[95] *Asylum Case*, ¶¶282-283.

[96] Paul Behrens, 'The Law of Diplomatic Asylum–a Contextual Approach' (2014) 35 MJIL 319, 333-334.

[97] Ivor Roberts (ed), *Satow's Diplomatic Practice* (OUP 2016) 234; Andreas Zimmermann, Felix Machts and Jonas Dörschner (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (OUP 2011) [**Refugee Convention Commentary**] 1430.

[98] UNGA, 'Question of Diplomatic Asylum. Report of the Secretary-General' (1975) UN Doc A/10139 (Part I) 18-19, 27.

[99] C. Ronning, *Diplomatic Asylum: Legal Norms and Political Reality in Latin American Relations* (Martinus Nijhoff 1965) 111.

[100] *Agreed Facts*, ¶20.

[101] *Agreed Facts*, ¶33.

[102] *Asylum Case*, 284; Daniel Patrick O'Connell, *International Law* (Stevens and Sons 1970) 737.

such offence should involve the direct assault on the integrity or security of the State.[103] Further, offender should possess the motivation[104] to bring about a change in the government.[105] No political elements were considered by Ms. Vormund when she divulged the situations at NBL and escaped from the law enforcement.[106] Correspondingly, Ms. Vormund was not a political offender and thus should be surrendered.

C. Even if Ranovstayo claimed diplomatic asylum had not yet been granted, there was no obligation to refrain from refoulement.

1. Ranovstayo did not owe non-refoulement obligation extraterritorially.

Non-refoulement principle is a CIL.[107] However, it cannot be applied to persons who remain inside their State of origin[108] irrespective of their status.[109] In our case, as an asylum seeker, Ms. Vormund was still in the territory of Aprepluya.[110] Therefore, the non-refoulement principle could not be used by Ranovstayo.

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[103] UNHCR, 'The Interface between Extradition and Asylum' (2003) PPLA/2003/05 [**The Interface between Extradition and Asylum**], ¶75.

[104] UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1992) UN Doc HCR/IP/4/ENG/REV.1 [**Handbook**], ¶152.

[105] The Interface between Extradition and Asylum, ¶77.

[106] *Agreed Facts*, ¶¶21, 32.

[107] Frances Nicholson and Judith Kumin, *A Guide to International Refugee Protection and Building State Asylum Systems* (UNHCR 2017) 20; *Furundžija Case* (Judgment) (1998) ICTY-95-17/1, ¶144.

[108] Handbook, ¶88; Thomas Gammeltoft-Hansen, *Access to Asylum* (CUP 2011) 46.

[109] UNGA, UN Doc Res A/RES/52/103 (1998) ¶5; UNHCR, 'Non-Refoulement' No 6 (XXVIII) (1977) UN Doc A/32/12/Add.1, ¶(c); *Charles Chitat Ng v Canada* (1993) Communication No 469/1991 UN Doc CCPR/C/49/D/469/1991, ¶14.1.

[110] *Agreed Facts*, ¶¶19-25.

2. In any event, Ranovstayo could not grant protection to Ms. Vormund.

a. Ranovstayo could not protect Ms. Vormund under the Refugee Convention.

i. Ms. Vormund did not fall within the definition of Article 1.

Asylum is the most basic mechanism for the protection of persons who meet the criteria of refugee status.[111] Under Article 1A(2),[112] a refugee is an applicant who has nationality 'outside' of the country of their nationality.[113] Ms. Vormund, however, applied for protection within the territory of Aprepluya.[114] Hence, Ms. Vormund did not satisfy the definition of the refugee,[115] and thus could not be placed under the protection of Ranovstayo.

ii. In any event, Ms. Vormund did not fall within the scope of Article 33 protected.

Article 33 prohibits the forcible removal of persons to a risk of persecution[116] under refugee law.[117] A State's prosecution and punishment of its citizens who violated generally applicable

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[111] Convention relating to the Status of Refugees (1951) 189 UNTS 137 [**Refugee Convention**], Preamble; *Pacheco Tineo Family v Bolivia*, Judgment, IACHR Series C No 272 (2013) ¶139.

[112] Refugee Convention, Art 1A(2).

[113] Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (OUP 2007) [**The Refugee in International Law**] 14.

[114] *Agreed Facts*, ¶21.

[115] Refugee Convention Commentary, 1426.

[116] UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol' (2007) ¶¶6-7; Elihu Lauterpacht and Daniel Bethlehem, *The Scope and Content of the Principle of Non-refoulement: Opinion* (CUP 2003) 116.

[117] Refugee Convention, Art 33.

criminal law[118] does not equate to persecution.[119] In this situation harsher penalties which these persons will face shall not be taken into considerations by host States.[120]

Here, the possible penalty was merely imprisonment under National Penal Code[121] which is applicable and legitimate for all Aprepluyans. There is no evidence to suggest that she would face persecution throughout the judicial process, and thus Article 33 could not bar surrender of her.

b. Ranovstayo could not protect Ms. Vormund under the ICCPR.

As an asylum seeker who falls outside the scope of Refugee Convention[122], protection under human rights law[123] may be provided to such person.[124] But these situations did not exist in our case.

i. Ms. Vormund's right under Article 7 was not infringed.

Article 7 prohibits the removal of an individual to a place[125] where he may face torture,

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[118] UNHCR, 'Guidelines on International Protection: Religion-Based Refugee Claims Under Art 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees' (2004) UN Doc HCR/GIP/04/06, ¶26.

[119] *Bandari v INS*, 227 F3d 1160 (9th Circuit 2000) 1168; *Shardar v Ashcroft*, 382 F3d 318 (3rd Circuit 2004) 323.

[120] *Castellano-Chacon v INS*, 341 F3d 533 (6th Circuit 2003) 549.

[121] *Agreed Facts*, ¶32; *Clarifications*, ¶4.

[122] Jane McAdam, 'The Refugee Convention as a Rights Blueprint for Persons in Need of International Protection' (UNHCR 2006) 1.

[123] UNHCR, 'Guidance Note on Extradition and International Refugee Protection' (2008) ¶17.

[124] The Refugee in International Law, 297.

[125] UNHRC, 'General Comment No 31' (2004) UN Doc CCPR/C/21/Rev.1/Add.1326, ¶4.

inhuman and degrading treatment and punishment.[126] However, imprisonment cannot be considered as torture,[127] and the possible deprivation of liberty is not the inhuman treatment.[128]

Here, the most serious penalty for Ms. Vormund may be 20 years imprisonment,[129] which was not torture or other inhuman treatments. Hence, Ranovstayo could not refrain from surrendering her based on human rights law.

ii. Ms. Vormund's right under Article 19 was not infringed.

The right to freedom of expression is limited for the protection of public order.[130] Further, common factors of the violation of it were the use of force to intimidate and suppress persons by law enforcement,[131] such as arbitrary arrest, intimidation and death threats.[132] In our case, Ms. Vormund spread information which caused public disorder and Aprepluyan polices did no harm to her in the tracing process.[133] Therefore, her right under Article 19 was not infringed.

D. Ranovstayo violated the obligation to surrender Ms. Vormund upon request.

1. There was no legal basis for Ranovstayo to consider asylum in its consulate.

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[126] ICCPR, Art 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) 1465 UNTS 85, Art 3.

[127] *P.Q.L. v Canada* (1997) Communication No 57/1996 UN Doc CAT/C/19/D/57/1996, ¶5.4.

[128] *Vuolanne v Finland* (1989) Communication No 265/1987 UN Doc CCPR/C/35/D/265/1987, ¶9.2.

[129] *Clarifications*, ¶4.

[130] ICCPR, Art 19(3).

[131] Merrilyn Onisko, 'Criminalization of Dissent in the United States: Obligations of the US under Articles 19 and 21 of the ICCPR' (2006) 63 Guild Prac 35, 42.

[132] Article 19 Brazil and South America, 'Violations of Freedom of Expression' (2016) 12.

[133] *Agreed Facts*, ¶¶18, 20.

Legal bases[134] to grant diplomatic asylum may be special agreements[135] or well-established customs[136] between States.[137]

In our case, Aprepluya and Ranovstayo did not sign asylum agreements, nor is there any evidence to suggest that regional custom exists between them.[138] Thus, there existed no legal basis for Ranovstayo to consider asylum.

2. Ranovstayo failed to surrender Ms. Vormund upon request of Aprepluya.

With the absence of agreements or customs, the sending State must surrender individuals who take refuge in the consular premises upon request of the local authority.[139] It has been established as a CIL, supported by State practice[140] and *opinio juris*.[141] Ms. Vormund was requested surrender by Aprepluya.[142] Thus, Ranovstayo was obligated and failed to surrender her upon request.

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[134] *Asylum Case*, 275.

[135] Vienna Convention on Diplomatic Relations (1961) 500 UNTS 95, Art 41(3).

[136] Carol Edler Baumann, *The Diplomatic Kidnappings* (Martinus Nijhoff 1973) 54-55.

[137] ILC, 'Yearbook of the International Law Commission' (1957) Vol I UN Doc A/CN.4/SER.A/1957, 144; René Värk, 'Diplomatic Asylum: Theory, Practice and the Case of Julian Assange' (2012) 11 Sisekaitseakadeemia Toimetised 240, 254.

[138] *Agreed Facts*, ¶54.

[139] Oppenheim's International Law, 1083; Refugee Convention Commentary, 1433.

[140] Convention on Diplomatic Asylum (1954) OAS Treaty Series No 34 OEA/Ser. X/1, Art III; United Kingdom and Sweden, Art 10(4).

[141] *R (on the application of B and ors) v Secretary of State for the Foreign and Commonwealth Office* [2004] EWCA Civ 1344, ¶88; *WM v Denmark* App no 17392/90 (ECtHR 1992) 7.

[142] *Agreed Facts*, ¶33.

III. THE COURT MAY NOT EXERCISE JURISDICTION OVER RANOVSTAYO'S COUNTER-CLAIM CONCERNING THE MANTYAN AIRWAYS AIRCRAFT.

The Court may entertain a counter-claim when it falls within its jurisdiction and directly connects with the principal claim.[143] Notwithstanding the direct connection between the principal claim and counter-claim here,[144] the Court needs to establish its jurisdiction under Article 36 of the Statute of the Court.[145] However, [**A**] the Court lacks jurisdiction over Ranovstayo's counter-claim. [**B**] Alternatively, Ranovstayo lacks standing to bring the counter-claim before the Court. Therefore, the Court may not exercise jurisdiction over Ranovstayo's counter-claim.

A. The Court lacks jurisdiction over Ranovstayo's counter-claim.

States are permitted to make reservations under jurisdictional clauses[146] and the Court should define the narrower jurisdictional scope indicated by reservations under the reciprocity principle.[147] Aprepluya has two reservations,[148] [**1**] matters essentially within domestic jurisdiction and [**2**] disputes concerning military activities, either of which can preclude the

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[143] ICJ, Rules of Court, *Acts and Documents No 6* (2007), Art 80.

[144] *Case Concerning the J-VID-18 Pandemic* (Order) [2002], 2.

[145] Statute of the International Court of Justice (1945) 33 UNTS 993 [**ICJ Statute**], Art 36(2); ICJ, *The International Court of Justice: Handbook* (2019) [**Handbook of the ICJ**], 34, 59.

[146] *Aerial Incident of 10 August 1999 (Pakistan v India)* (Judgment) [2000] ICJ Rep 12, 30; *Fisheries Jurisdiction (Spain v Canada)* (Jurisdiction) [1998] ICJ Rep 432 [***Fisheries Jurisdiction***], ¶44; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Jurisdiction and Admissibility) [1984] ICJ Rep 392 [***1984 Nicaragua***], ¶37.

[147] ICJ Statute, Art 36(2); *Phosphates in Morocco (Italy v France)* (Preliminary Objections) [1938] PCIJ Rep Series A/B No 74 [***Morocco***], 22; *Certain Norwegian Loans (France v Norway)* (Judgment) [1957] ICJ Rep 9 [***Norwegian Loans***], 23-24.

[148] *Agreed Facts*, ¶49.

Court's jurisdiction.

1. Aprepluya's reservation on matters essentially within domestic jurisdiction precludes the Court's jurisdiction.

Aprepluya's reservation concerning domestic jurisdiction is defined as an self-judging reservation in practice.[149]

a. The self-judging reservation is valid.

States have the right to make any reservation under the jurisdictional clauses[150] as a sovereign act.[151] Some States have made the same self-judging reservations,[152] and the Court has yet to declare them invalid.[153]

Some may argue that self-judging reservation is invalid for the contradiction with the principle of the *compétence de la compétence*,[154] which is regulated in the Statute that the Court

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[149] Giovanni Distefano and Aymeric Hêche, 'Optional Clause Declarations: International Court of Justice' (2018) MPIL, ¶109.

[150] *1984 Nicaragua*, ¶59.

[151] James Crawford, 'The Legal Effect of Automatic Reservations to the Jurisdiction of the International Court' (1979) 50 BYIL 63, 79; Christian Tomuschat (ed), *The Statute of the International Court of Justice, A Commentary* (OUP 2019) 767.

[152] Handbook of the ICJ, 43.

[153] *Interhandel Case (Switzerland v United States of America)* (Judgment) [1959] ICJ Rep 6, 11; *Norwegian Loans*, 21, 43-46; Stanimir A. Alexandrov, 'Accepting the Compulsory Jurisdiction of the International Court of Justice with Reservations: An Overview of Practice with a Focus on Recent Trends and Cases' (2001) 14 LJIL 89, 114.

[154] *Certain Norwegian Loans (France v Norway)* (Dissenting Opinion of Judge Read) [1957] ICJ Rep 79 [**Judge Read's Dissenting Opinion**], 95; *Certain Norwegian Loans (France v Norway)* (Separate Opinion of Judge Sir Hersch Lauterpacht) [1957] ICJ Rep 34 [**Judge Lauterpacht's Separate Opinion**], 44.

should determine its own jurisdiction.[155] However, the statement by the reserving State of the domestic matter is not final or determinative.[156] When reviewing the self-judgment clause, the Court revised the standard to whether the clause was invoked in good faith, namely the "manner".[157] By analogy,[158] the Court can review the manner of Aprepluya and is still the final decision maker upon the case. Therefore, the self-judging reservation does not violate the principle of the *compétence de la competence* and thus is not invalid.

b. The self-judging reservation is invoked in good faith and precludes the Court's jurisdiction.

If a State invokes a self-judging reservation based on reasonable genuine understanding, it cannot be deemed as an arbitrary power to oust the Court's jurisdiction.[159] Aprepluya has reasonable grounds to invoke the self-judging reservation in good faith as follows.

i. Matters can essentially fall within domestic jurisdiction while governed by international law.

The scope of domestic jurisdiction depends upon the development of international

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[155] ICJ Statute, Art 36(6); *Nottebohm (Liechtenstein v Guatemala)* (Preliminary Objections) [1953] ICJ Rep 111, 119-120; Judge Lauterpacht's Separate Opinion, 46.

[156] Hugh Thirlway, *The International Court of Justice* (OUP 2015) 51.

[157] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France)* (Judgment) [2008] ICJ Rep 177, ¶202; Stephan Schill and Robyn Briese, '"If the State Considers": Self-Judging Clauses in International Dispute Settlement' (2009) 13 MPYUL 61, 116.

[158] *1984 Nicaragua*, ¶63; *Fisheries Jurisdiction*, ¶46.

[159] Judge Read's Dissenting Opinion, 94; *Interhandel Case (Switzerland v United States of America)* (Separate Opinion of Sir Percy Spender) [1959] ICJ Rep 54 [**Sir Percy's Separate Opinion**], 58; Robert Yewdall Jennings, 'Recent Cases on "Automatic" Reservations to the Optional Clause' 7 ICLQ 349, 361.

relations.[160] Additionally, the substitution of "essentially" for "solely" indicates that a matter regulated by international law can still fall within domestic jurisdiction[161] for a wider range of application.[162] Thus, Aprepluya can still claim for its domestic jurisdiction over the counter-claim even under the assumed international obligations.

ii. The shoot-down falls within Aprepluya's domestic jurisdiction.

The evaluation of whether matters fall within domestic jurisdiction depends upon the essence of the matters.[163] Such essence refers to State's competence,[164] which is manifested by State's sovereignty.[165] Every State exercises full sovereignty over the airspace above its territory[166] and its own registered aircraft.[167] Here, Aprepluya was exercising its competence by

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[160] *Nationality Decrees Issued in Tunis and Morocco (France v the United Kingdom and Northern Ireland)* (Advisory Opinion) [1923] PCIJ Rep Series B No 4, 24; *Aegean Sea Continental Shelf (Greece v Turkey)* (Judgment) [1978] ICJ Rep 3 [***Aegean***], ¶59.

[161] MS Rajan, 'United States Attitude Toward Domestic Jurisdiction in the United Nations' (1959) 13 International Organization 19, 27; Bruno Simma and Georg Nolte (eds), *The Charter of the United Nations: A Commentary* (OUP 2012) [**UN Commentary**] 296.

[162] Leland Goodrich, 'The United Nations and Domestic Jurisdiction' (1949) 3 International Organization 14, 14.

[163] Bin Cheng, 'Jurimetrics: The Meaning and Measurement of Legal Sovereignty and Domestic Jurisdiction' (1991) 1 UMICL 30, 42; Harrison and Sons, 'Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question' (1920) 3 League of Nations OJ 3, 4.

[164] Helen Hart Jones, 'Domestic Jurisdiction-From the Covenant to the Charter' (1952) 46 III L Rev 219, 228.

[165] James Crawford, *Brownlie's Principles of Public International Law* (OUP 2019) 431.

[166] Stephan Hobe, 'Airspace' (2019) MPIL, ¶14; Bin Cheng, 'Recent Development in Air Law' (1956) CLP 208, 209.

intercepting an aircraft registered in Aprepluya over Aprepluyan airspace,[168] thus it is within Aprepluya's domestic jurisdiction.

Furthermore, only matters of international concern for grave repercussion could be excluded from the domain of matters within domestic jurisdiction,[169] such as systematic suppression of human rights.[170] The term "systematic" refers to violations carried out deliberately.[171] However, the accident was beyond Aprepluya's purpose.[172] Thus, it remains within Aprepluya's domestic jurisdiction.

c. Provided that the reservation is invalid, the entire Declaration will be nullified which deprives the Court's jurisdictional basis.

The reservations and jurisdictional clauses are inseparable since there exists a close and necessary link between them.[173] Moreover, reservations are of essential function to the Declaration of accepting the Court's jurisdiction.[174] The separation would undermine the true

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[167] Major Darren C. Huskisson, 'The Air Bridge Denial Program and the Shootdown of Civil Aircraft under International Law' (2005) 56 AF L Rev 109 [**Huskisson**], 136.

[168] *Agreed Facts*, ¶¶42-43.

[169] John Howell, 'Domestic Questions in International Law' (2017) CUP 90, 92.

[170] Myres McDougal and Michael Reisman, 'Rhodesia and the United Nations: The Lawfulness of International Concern' (1968) 62 AJIL 1, 15.

[171] ARSIWA Commentaries, Art 40, ¶8.

[172] *Agreed Facts*, ¶¶42-43.

[173] *Fisheries Jurisdiction*, ¶47; *Aegean*, ¶79; ILC, 'Report of the International Law Commission, Sixty-third Session' (2011) UN Doc A/66/10/Add.1, 104.

[174] *Interhandel Case (Switzerland v United States of America)* (Dissenting Opinion of Sir Hersh Lauterpacht) [1959] ICJ Rep 95, 101; Sir Percy's Separate Opinion, 59; John Arndt, 'International Court of Justice-Legal Effect, Constitutional and International of the Connally Reservation' (1959) 28 UMKC Law Review 1, 18.

intention of a State,[175] which shows State's acceptance of the compulsory jurisdiction within specified limits.[176] Here, the validity of the self-judging reservation and that of Aprepluya's Declaration should be consistent. Otherwise, the Declaration will be void and deprives the Court's jurisdiction.

2. Aprepluya's reservation on any dispute concerning military activities precludes the Court's jurisdiction.

"Military activities" can be interpreted broadly[177] including activities undertaken by military aircraft.[178] Specifically, the evaluation of disputes concerning military activities depends on the characterization of the activities in question.[179] The activities concerning armed forces[180] and firing against terrorist threats[181] are of a military character.

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[175] Sir Percy's Separate Opinion, 57.

[176] *Morocco*, 24.

[177] *Fisheries Jurisdiction*, ¶44; *Case concerning the Detention of Three Ukrainian Naval Vessels (No 26) (Ukraine v Russian Federation)* (Separate Opinion of Gao) ITLOS Reports 2019 [**Judge Gao's Separate Opinion**], ¶19; Stefan Talmon and Bing Bing Jia (eds), *The South China Sea Arbitration: A Chinese Perspective* (Hart Publishing 2014) 57.

[178] Said Mahmoudi, 'Foreign Military Activities in the Swedish Economic Zone' (1996) 11 IJMCL 365, 375; R.J. Dupuy and Daniel Vignes (eds), *A Handbook on the New Law of the Sea* (Martinus Nijhoff 1991) 1249.

[179] *Case concerning the Detention of Three Ukrainian Naval Vessels (No 26) (Ukraine v Russian Federation)* (Order of 25 May 2019) ITLOS Reports 2019, ¶¶64-65; Judge Gao's Separate Opinion, ¶22.

[180] Bryan Garner, *Black's Law Dictionary* (Thomson Reuters 2004) 3145.

[181] ICAO, 'Manual Concerning Safety Measures Relating to Military Activities Potentially Hazardous to Civil Aircraft Operations' (1990) Doc 9554-AN/932 [**ICAO Manual**], 4; Geraint Hughes, *The Military's Role in Counterterrorism: Examples and Implications for Liberal*

The shoot-down here is of a military character as *first*, the force was used by the fighter jet from Aprepluyan Air Force,[182] and *second*, the firing was against a highly potential terrorist threat.[183] Therefore, the shoot-down dispute concerns military activities and this reservation precludes the Court's jurisdiction.

B. Ranovstayo lacks standing to bring the counter-claim before the Court.

States need to possess the right to make claims before the Court, namely the "standing".[184] However, Ranovstayo cannot make claims [**1**] either as an injured State [**2**] or a non-injured State.

1. Ranovstayo is not an injured State.

An injured State has standing to invoke responsibility for its individual interests being specially affected.[185] States can claim for their infringed rights[186] or their nationals.[187] Here, Ranovstayo did not claim for its own rights and both the people on board and the aircraft are of

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Democracies (Strategic Studies Institute 2011) 32; Stephen Neff, *War and the Laws of Nations* (CUP 2009) 393-394.

[182] *Agreed Facts*, ¶¶41-42.

[183] *Agreed Facts*, ¶¶38-39, 41-42.

[184] *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Judgment) [1970] ICJ Rep 3 [***Barcelona***], ¶102; *South West Africa, Second Phase* (Judgment) [1966] ICJ Rep 6, ¶4; ARSIWA Commentaries, Art 42, ¶2.

[185] ARSIWA Commentaries, Art 42(b)(i); *Barcelona*, ¶36; Christian Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP 2005) [**Tams**], 41.

[186] *Barcelona*, ¶¶49, 86; Kyoji Kawasaki, 'The "Injured State" in the International Law of State Responsibility' (2000) 28 Hitotsubashi Journal of Law and Politics 17, 20.

[187] ILC, 'Yearbook of the International Law Commission' (2006) Vol II UN Doc A/CN.4/SER.A/2006/Add.1 (Part 1) 29, 37; *Panevezys-Saldutiskis Railway (Estonia v Lithuania)* (Judgment) [1939] PCIJ Rep Series A/B No 76, 16.

Aprepluyan nationality.[188] Thus, Ranovstayo cannot make claims regarding the shoot-down.

2. Ranovstayo cannot make claims as a non-injured State.

a. There is no legal basis for Ranovstayo to claim.

States may have legal interest upon the obligations *erga omnes partes* and obligations *erga omnes*.[189] However, the rule of invoking responsibility for breaching these obligations as a non-injured State has been under criticism[190] and is not a general rule.[191] Furthermore, there should be instruments embodying human rights that confer the capability to make claims[192] such as compromissory clauses.[193] Since there is no compromissory clause in our case,[194] there is no legal basis for Ranovstayo to claim.

b. The shoot-down accident is insufficient for Ranovstayo to claim before the Court.

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[188] *Agreed Facts*, ¶¶19, 41, 44.

[189] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422 [***Extradite***], ¶68; *Barcelona*, ¶33.

[190] Michael Johnson, 'The Consequences of the ICJ Decision in the Whaling Case for Antarctica and the Antarctic Treaty System' (2015) 7 YPLO 168 [**Johnson**], 184; James Crawford, 'Chance, Order, Change: The Course of International Law' (2014) 106 Hague Academy of International Law 15, ¶341; ILC, 'Comments and Observations Received from Governments' (2001) UN Doc A/CN/4/515 and Add. 1-3, 43.

[191] Johnson, 184; James Crawford, *State Responsibility* (CUP 2013) 490.

[192] *Barcelona*, ¶91.

[193] *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)* (Dissenting Opinion of President Winiarski) [1962] ICJ Rep 449, 457; Pok Chow, 'On Obligations Erga Omnes Partes' (2020) 52 GJIL I [**Chow**], IV; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* (Preliminary Objections) [2008] ICJ Rep 412, ¶40.

[194] *Agreed Facts*, ¶54.

The Court should take a restrictive position in the jurisdiction, otherwise, a flood of cases will pour into the Court.[195]

Firstly, non-injured States are only entitled to demand for cessation of the presumed wrongful act.[196] Here, since the accidental shoot-down discontinued and Ranovstayo did not demand for cessation,[197] the claim is inadmissible.

Alternatively, the invocation of such obligations should consider the gravity of the infringement.[198] Compared with the acts listed by the Court such as aggression,[199] the accidental loss of two lives in our case does not reach the severity.[200] Therefore, the shoot-down is insufficient for Ranovstayo to claim.

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[195] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Declaration of Judge Oda) [1996] ICJ Rep 625, ¶10; Chow, IV.

[196] Chow, IV; *Extradite*, ¶69.

[197] *Agreed Facts*, ¶56.

[198] Tams, 41; *Application of the Conventions on the Prevention and Punishment of the Crime of Genocide (Gambia v Myanmar)* (Separate Opinion of Vice-President Xue) General List No 178 [2020] ICJ, ¶9.

[199] *Barcelona*, ¶34; Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (OUP 1997) 132.

[200] *Agreed Facts*, ¶¶41-42.

IV. EVEN IF THE COURT WERE TO EXERCISE JURISDICTION OVER THE COUNTER-CLAIM, APREPLUYA DID NOT VIOLATE INTERNATIONAL LAW BY SHOOTING DOWN THE AIRCRAFT.

The defence of an honest and reasonable mistake is raised by numerous States[201] and accepted by this Court,[202] the United Nations (**UN**)[203] and International Civil Aviation Organization (**ICAO**).[204] In our case, given credible intelligence of a terrorist threat and multiple failed attempts at communication,[205] Aprepluya's shoot-down of this rogue aircraft was the result of an honest and reasonable belief. Accordingly, Aprepluya cannot be held internationally responsible, as shooting down the aircraft used for terrorism is lawful.

A. The principle of non-use of force under the UN Charter was not applicable in our case.

Article 2(4) of the UN Charter prohibits the use of force in State relations.[206] It does not cover the use of force against an aircraft of a State's own registration[207] solely within the State's

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[201] *Case Concerning the Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America)* (Preliminary Objections Submitted by the USA) [1991] ICJ 40; John Phelps, 'Aerial Intrusions by Civil and Military Aircraft in Time of Peace' (1985) 107 Mil L Rev 255, 291-294.

[202] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)* (Judgment) [2002] ICJ Rep 303, ¶311; *Oil Platforms (Islamic Republic of Iran v United States of America)* (Judgment) [2003] ICJ Rep 161 [***Oil Platforms***], ¶¶73, 76.

[203] UNSC, 'Record of the 2812nd Meeting' (1988) UN Doc S/PV.2820.

[204] ICAO, 'Report on Korean Air Lines 007 Incident' (1983) Doc C-WP/7764; ICAO, 'Resolution and Report Concerning the Destruction of Iran Air Airbus on July 3' (1989) 28 ILM 896.

[205] *Agreed Facts*, ¶¶38-39, 42.

[206] UN Charter, Art 2(4).

[207] Ruwantissa Abeyratne, *Aviation Security Law* (Springer 2010) [**Abeyratne**] 200; Huskisson, 126.

territory.[208] Here, since the use of force was against an Aprepluyan aircraft in Aprepluyan territory,[209] Article 2(4) cannot be applied here.

B. Aprepluya did not violate the ICCPR by shooting down the aircraft.

Everyone has the inherent right to life.[210] States are obliged to protect people's lives and refrain from arbitrary deprivation of life.[211] Here, [**1**] Aprepluya observed its obligation to protect lives. Besides, [**2**] Aprepluya's shoot-down was not arbitrary.

1. Aprepluya observed its obligation to protect lives from reasonably foreseen threat.

States are obliged to protect lives from any reasonably foreseen threat,[212] including international terrorism.[213] To assess the existence of such threat, States must evaluate their intelligence.[214] In our case, the intelligence of an imminent terrorist attack was intercepted by Aprepluya and reported by INTERPOL,[215] a professional organization specializing in combating terrorism.[216] Because of reliable sources, Aprepluya had no reason to doubt there was a threat posed by this aircraft. Hence, Aprepluya's shoot-down was to observe its obligation.

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[208] Malcolm N. Shaw, *International Law* (CUP 2003) 1040; UN Commentary, 200.

[209] *Agreed Facts*, ¶42.

[210] ICCPR, Art 6(1).

[211] UNHRC, 'General Comment No 36' (2018) UN Doc CCPR/C/GC/36 [**GC 36**], ¶7.

[212] UNHRC, 'Consideration of Reports Submitted by States Parties' (1998) UN Doc CCPR/C/79/Add.93, ¶17; *Case of Osman v the UK* App no 87/1997/871/1083 (ECtHR 1998) ¶115.

[213] UNGA, '2005 World Summit Outcome' (2005) UN Doc A/Res/60/1, ¶¶81-91.

[214] *McCann and Others v United Kingdom* App no 18984/91 (ECtHR 1995) ¶213; *Alejandre Jr. v Cuba*, IACHR Report No 86/99 (1999) ¶44.

[215] *Agreed Facts*, ¶¶38-39.

[216] INTERPOL, 'What is INTERPOL' <https://www.interpol.int/Who-we-are/What-is-INTERPOL> accessed 13 December 2020.

2. Aprepluya's shoot-down was not arbitrary.

A non-arbitrary deprivation of life is lawful.[217] This indicates that when facing terrorist suicide attack by aircraft, using lethal force against it can be permissible if States act non-arbitrarily.[218] "Non-arbitrariness" means the use of force is absolutely necessary and proportionate.[219] In our case, Aprepluya satisfied such tests. *Firstly*, "Absolute necessity" requires fewer extreme options cannot achieve the same result.[220] When intercepting an aircraft, a less drastic way can be visual signals, radio communication, and guidance of the aircraft.[221] Here, Aprepluya exhausted aforementioned measures before the resort to force.[222] *Secondly*, terrorist attack poses a serious threat to human lives. Repressing it by force is proportionate.[223]

C. Aprepluya did not violate Article 3bis under the Chicago Convention by shooting down the aircraft.

Every State must refrain from resorting to the use of weapons against civil aircraft.[224] However, Aprepluya did not violate it, because [**1**] the aircraft did not fall under this Convention. Alternatively, [**2**] Aprepluya's shoot-down of the aircraft constituted self-defence, which is an exception under Article 3bis.

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[217] GC 36, ¶12; UNGA, 'Code of Conduct for Law Enforcement Officials' (1979) UN Doc Resolution 34/169, Art 3.

[218] Nils Melzer, *Targeted Killing in International Law* (OUP 2009) 222-232.

[219] UNGA, 'Extrajudicial, Summary or Arbitrary Executions' (2016) UN Doc A/71/372 [**2016 UN Special Rapporteur report**], ¶50.

[220] *Bubbins v United Kingdom* App no 50196/99 (ECtHR 2005) ¶135; *Camargo v Colom (1982)* Communication No 45/1979 UN Doc CCPR/C/15/D/45/1979, ¶13.2.

[221] ICAO Manual, ¶4.1.2.

[222] *Agreed Facts*, ¶¶42-43.

[223] 2016 UN Special Rapporteur report, ¶51.

[224] Convention on International Civil Aviation (1944) 15 UNTS 295 [**Chicago Convention**], Art 3bis.

1. This rogue aircraft does not fall under the Chicago Convention.

The Chicago Convention is only applicable to foreign[225] civil aircraft.[226] However, the aircraft in our case [**a**] was a domestic aircraft and [**b**] lost its civil status.

a. The rogue aircraft was merely a domestic aircraft.

Article 3bis is only reserved for foreign aircraft.[227] At no stage of the deliberations and drafting did the Assembly of the ICAO contemplate regulation of an aircraft of State's own registration.[228] Again, the purpose of the Convention is to establish rules of conduct in the relations of sovereign States.[229] If domestic aircraft is regulated, it would exceed the scope of the Convention.[230] Here, the aircraft registered in Aprepluya[231] fell out of the scope.

b. The aircraft used in terrorism shall not be reclassified as civil aircraft.

To determine an aircraft's status, the function or usage it actually performs at a given time is the key criterion.[232] If a civil aircraft is used or suspected to be used[233] for aggressive purposes,

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[225] Michael Milde, 'Interception of Civil Aircraft vs Misuse of Civil Aviation' (1986) 11 Annals of Air and Space Law 105 [**Milde**], 125, 126.

[226] Chicago Convention, Art 3(a).

[227] Abeyratne, 200.

[228] Milde, 125.

[229] Chicago Convention, Preamble, Art 44.

[230] Huskisson, ¶126.

[231] *Agreed Facts*, ¶42.

[232] European Union Council, 'International Legal Obligations of Council of EU Members' (2006) Doc CDL-DI (2006) 001, ¶92; Ruwantissa Abeyratne, *A Commentary: Convention on International Civil Aviation* (Springer 2014) 51.

[233] ICAO, 'Secretariat Study on Civil and State Aircraft' (1994) Doc LC/29-WP/2-1, ¶4.8.3.

like performing a terrorist attack, it will lose its status.[234] In our case, the aircraft was suspected to be used in terrorism, thus, it lost its status.

2. Alternatively, Aprepluya's shoot-down of the aircraft constituted self-defence.

Exercising the right of self-defence is an exception under 3bis.[235] In our case, Aprepluya's conduct constituted self-defence.

a. Aprepluya was the potential victim of an armed attack.

Terrorist attacks count as an armed attack.[236] Because [**i**] an armed attack can emanate from non-State actors and [**ii**] such attacks reach a high gravity. Here, evidence available for Aprepluya at that time indicated there was a terrorist attack,[237] which made it a potential victim of an armed attack.

i. An armed attack can emanate from non-State actors.

Article 51 of the UN Charter[238] and this Court[239] never denied possibilities that non-State actors are one source of armed attacks. This is widely accepted by States,[240] the judges[241] and the

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[234] Horace Robertson, 'The Status of Civil Aircraft in Armed Conflict' (1997) 27 IYHR 113, 122; ICAO, 'Report, Minutes and Documents' (1984) Doc A25-Min.EX/1, 23.

[235] Chicago Convention, Art 3bis; UN Charter, Art 51.

[236] Thomas Franck, 'Terrorism and the Right of Self-defence' (2001) 95 AJIL 839, 841.

[237] *Agreed Facts*, ¶42.

[238] UN Charter, Art 51; Ruth Wedgwood, 'Responding to Terrorism: The Strikes Against bin Laden' (1999) 24 YJIL 559, 564.

[239] *1986 Nicaragua*, ¶195; Christine Gray, *International Law and the Use of Force* (OUP 2018) [**Gray**] 209.

[240] UNSC, 'Record of the 4836th Meeting' (2003) UN Doc S/PV.4836; UNGA, 'Letter from the Democratic People's Republic of Korea' (2016) UN Doc A/70/778-S/2016/222; UNSC, 'Letter from the USA' (2014) UN Doc S/2014/695.

UN[242] after 9/11. Accordingly, Aprepluya was under the threat of an armed attack by terrorists.

ii. A suicide attack by an aircraft reaches the gravity required by an actual armed attack.

Armed attack shall be the gravest form of the use of force.[243] To determine gravity, the scale and effects of the attack shall be considered.[244] The 9/11 terrorist attacks have proven that a civil aircraft is capable of bringing about destruction comparable to that caused by an actual armed attack.[245]

In our case, the aircraft was small.[246] However, size of the plane is not the only or even key element.[247] Time, place and the impact of the attack are more important.[248] The aircraft flew directly to the heart of Beauton when most people were asleep.[249] If it launched an attack, the destruction would have surpassed the gravity required for the constitution of an armed attack.

b. Aprepluya can utilize anticipatory self-defence to head off an imminent terrorist

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[241] *Legal Consequence of the Construction of a Wall in the Occupied Palestinian Territory* (Separate Opinion of Judge Kooijmans) [2004] ICJ Rep 219, ¶35; *Legal Consequence of the Construction of a Wall in the Occupied Palestinian Territory* (Separate Opinion of Judge Higgins) [2004] ICJ Rep 207, ¶33.

[242] UNSC, Res 1368 (2001) UN Doc S/RES/1368; UNSC, Res 1373 (2001) UN Doc S/RES/1373.

[243] *Oil Platforms*, ¶51; *1986 Nicaragua*, ¶195.

[244] *Ibid.*

[245] Robin Geiß, 'Civil Aircraft as Weapons of Large-Scale Destruction' (2005) 27 MJIL 227, 252.

[246] *Agreed Facts*, ¶42.

[247] Yoram Dinstein, *War, Aggression, and Self-defence* (CUP 1994) 173.

[248] Gray, 154.

[249] *Agreed Facts*, ¶¶41-42.

threat.

i. The right of anticipatory self-defence is permissible.

Anticipatory self-defence is a CIL,[250] originating in *Caroline incident*,[251] and increasingly accepted by States.[252] It is stated that States can exercise self-defence against imminent armed attacks.[253] This is not in conflict with Article 51,[254] because CIL exists alongside the Charter.[255] Consequently, Aprepluya can utilize the right of anticipatory self-defence.

ii. The act of this rogue aircraft constituted an imminent attack.

An imminent attack shall be "immediate, requiring a necessity to act that is instant, overwhelming, leaving no choice of means, and no moment of deliberation".[256] To establish the

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[250] SD Murphy, 'The Doctrine of Preemptive Self-defence' (2005) 50 VLR 699, 711; Ian Brownlie, *International Law and the Use of Force by States* (OUP 1963) 258.

[251] John Bassett Moore, *A Digest of International Law* (Princeton Press 1906) 412.

[252] UNGA, 'A More Secure World: Our Shared Responsibility' (2004) UN Doc A/59/565, ¶188; UNGA, 'In Larger Freedom: Towards Development, Security and Human Rights for All' (2005) UN Doc A/59/2005, ¶¶122-125.

[253] Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 662-663.

[254] Terry Gill, 'The Temporal Dimension of Self-defence: Anticipation, Pre-emption, Prevention and Immediacy' (2006) 11 JCSL 361, 364.

[255] *1986 Nicaragua*, ¶176; D.W. Bowett, *Self-defence in International Law* (Manchester Univ Press 1958) 187.

[256] Daniel Webster, 'Letter from Mr. Webster to Mr. Fox Dated 24 April 1841' (1841) 29 British and Foreign State Papers 1129, 1137-1138; Robert Yewdall Jennings, 'The Caroline and McLeod Cases' (1938) 32 AJIL 82, 83-84.

imminent attack, the defending State shall prove the entity has both intention[257] and capacity[258] to attack. A plane has manifested hostility by erratic flying[259] and it is capable to be misused as a weapon causing unbearable destruction.[260]

In our case, the aircraft took off without authorization, showed no response to multiple communication attempts and flew directly to the capital city.[261] The aggressive intent can be clearly assumed from the known facts. Hence, Aprepluya was under an imminent attack.

c. Aprepluya's act of self-defence satisfied the principle of necessity and proportionality.

Exercising the right of self-defence is subject to the principle of necessity and proportionality,[262] which is a CIL.[263] Here, Aprepluya satisfied this dual condition.

i. Aprepluya's self-defence was necessary.

Self-defence is only available if there is no other choice of means.[264] Moreover, timing also

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[257] *Oil Platforms*, ¶64; E. Wilmshurst, 'The Chatham House Principles' (2006) 55 ICLQ 963 [**Wilmshurst**], 967-968.

[258] Michael Schmitt, 'Responding to Transnational Terrorism Under the Jus Ad Bellum' (2008) 56 NLR 1, 21.

[259] Stephen Rory, 'Shooting Down Civilian Aircraft: Illegal, Immoral and Just Plane Stupid' (2007) 20 RQDI 57 **[Rory]**, 69; ICAO, 'Fact-Finding Investigation' (1988) Doc C-WP/8708, ¶3.2.1.

[260] ICAO, 'Acts of Offenses of Concern to the International Aviation Community' (2014) Doc A36-WP/12, ¶2.1.2.

[261] *Agreed Facts*, ¶¶41-42.

[262] *1986 Nicaragua*, ¶¶176, 194; *Oil Platforms*, ¶¶73-77.

[263] *Ibid.*

[264] Judith Gardam, *Necessity, Proportionality and the Use of Force by States* (CUP 2009) 149; Gray, 159-160.

plays an important role.[265] In our case, given that *firstly*, Aprepluya exhausted all peaceful measures to divert the aircraft,[266] *secondly*, with only 3 minutes left,[267] there was no time for Aprepluya to pursue alternatives. Aprepluya shooting the wing area was necessary.

ii. Aprepluya's self-defence was proportionate.

Proportionality is not simply the symmetry between defence and attack.[268] It refers to what is necessary to repel or stop the attack.[269] Specifically, factors like the target of the attack, the number of people at risk, the speed of the plane shall be considered in aerial context.[270] Here, the aircraft was suspected that it would strike to heart of Aprepluya's capital.[271] Numerous people's lives were at risk.[272] As Aprepluya's act was confined to eliminate such threat, it was proportionate.

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[265] Wilmshurst, 967.

[266] *Agreed Facts*, ¶42.

[267] *Agreed Facts*, ¶42.

[268] ILC, 'Yearbook of the International Law Commission' (1980) Vol II UN Doc A/CN.4/SER.A/1980/Add.l (Part 1) 69; *Legality of the Threat or Use of Nuclear Weapons* (Dissenting Opinion of Judge Higgins) [1996] ICJ Rep 583, ¶5.

[269] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Dissenting Opinion of Judge Schwebel) [1986] ICJ Rep 558, ¶212; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Separate Opinion of Judge Kooijmans) [2005] ICJ Rep 306, ¶34.

[270] Rory, 71.

[271] *Agreed Facts*, ¶¶38-39, 42.

[272] *Agreed Facts*, ¶42.

PRAYER FOR RELIEF

The United Republic of Aprepluya, the Applicant, respectfully requests the Court to **DECLARE** that:

I. Ranovstayo violated international law by applying its entry regulation to Aprepluya, and is thus obligated to compensate it for the resulting economic losses;

II. 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;

III. The Court may not exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft; and

IV. Even if the Court were to exercise jurisdiction over the counter-claim, Aprepluya did not violate international law by shooting down the aircraft.

Respectfully submitted,

AGENTS FOR THE APPLICANT