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**THE 2024 PHILIP C. JESSUP INTERNATIONAL LAW  
MOOT COURT COMPETITION**

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**THE CASE CONCERNING THE STERREN FORTY**



**THE REPUBLIC OF ANTRANO**

**APPLICANT**

**v.**

**THE KINGDOM OF REMESIA**

**RESPONDENT**

**IN THE INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**

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**MEMORIAL FOR THE APPLICANT**

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**2024**



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### UN RESOLUTIONS AND INTERNATIONAL DOCUMENTS

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Arab Charter on Human Rights (1994).....	4
ASEAN Human Rights Declaration (2012).....	4

Commonwealth of Independent States Convention on Human Rights (1995).....	4
Council of Europe, ‘Explanatory Report to the Council of Europe Convention on the avoidance of statelessness in relation to State succession’ (2006) .....	5
Council of Europe, Res 2263 (2019) .....	14
Declaration on Social Progress and Development, UNGA Res. 2542 (XXIV) (11 December 1969) .....	24
Dumbarton Oaks Proposal for A General International Organization (1945) ch VIII sec A para 1 Doc. No. 1, C/1,3 .....	27
European Commission, ‘Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for “selling” EU citizenship’ (European Commission, 2020) .....	18
Excerpt of a report of the Secretary-General (UN Doc. E/4994, Annex III) reprinted in (1971) UNJYB 187.....	29
Financial Action Task Force, ‘Misuse of Citizenship and Residency by Investment Programmes’ (2023) .....	18
HRC (11 July 2014) A/HRC/Res/26/14 .....	4
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ILC, ‘Draft Article on Responsibility of States for Internationally Wrongful Acts’ (2001) U.N. Doc. A/56/10.....	1
ILC, ‘Draft Articles on Diplomatic Protection with Commentaries’ (2006) UN Doc A/61/10 art 1 .....	21
ILC, ‘Draft articles on the expulsion of aliens, with commentaries’ (2014).....	13
ILC, ‘Fourth Report on Nationality in Relation to the Succession of States by Mr. Václav Mikulka, Special Rapporteur’ (23 April 1998) UN Doc A/CN.4/489.....	5
ILC, ‘Guide to Practice on Reservations of Treaties’ (2011) II Yearbook ILC 32 ..... 11, 12, 25	
ILC, ‘Report of Special Rapporteur Manley O’Hudson’ A/CN.4/50, 21 .....	12
ILC, ‘Report of Special Rapporteur Robert Cordova’ (1954) UN Doc A/CN.4/83 .....3, 11, 12	
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Letter from the Secretary-General of the United Nations to the Permanent Representative of a Member State (6 March 1963) .....	28

UN Ad hoc Committee on Refugees and Stateless Persons, ‘A Study of Statelessness’ (1 August 1949) UN Doc E/1112/Add.1 .....	2, 3, 11
UN Office of Legal Affairs, ‘Aide-Mémoire to the Permanent Representatives of various Member States concerning the status of military observers serving with a United Nations mission’ (1964) UNJYB 261 .....	29
UN Office of Legal Affairs, ‘Interoffice Memorandum to the Under-Secretary-General for Administration and Management’ (2 November 1972).....	29
UNGA ‘Report of the Secretary-General on Personnel Policy’ 7th Session UN Doc A/236429	
UNGA Res 61/137 (25 January 2007) A/RES/61/137 .....	5
UNGA Res 67/149 (18 December 2013) A/RES/67/149 .....	5
UNGA Res 70/135 (23 February 2016) A/RES/70/135 .....	5
UNGA Res. 60/288 (20 September 2006) .....	12
UNGA Sixth Committee (1st Session) ‘Report of the Preparatory Commission of the United Nations’ (London 1946) PC/20.....	28
UNGA Sixth Committee (1st Session) ‘Second Report of the Sub-Committee on Privileges and Immunities (5 February 1946) UN-Doc. A/C.6/3.....	28
UNGA Third Committee (13 December 1956) A/C.3/SR.709.....	24
UNHCR, ‘Conclusions of the Expert Meeting on the Interpretation of the Reduction of Statelessness’ (2013).....	12
United Nations Conference on Consular Relations, Official Records, vol. I, UN Doc. A/Conf.25/16 .....	20
United Nations Economic and Social Council, ‘General Comment 14’ (2000) E/C.12/2000/49	
United Nations High Commissioner for Refugees ‘Handbook on the Protection of Stateless Persons’ (Geneva 2014).....	2
United Nations High Commissioner for Refugees, ‘The Campaign to End Statelessness: October–December 2021 Update’ (Report, 1 February 2022) .....	5
United Nations Human Rights Committee ‘General Comment 35’ (16 December 2014) CCPR/C/GC/35.....	13
United Nations Human Rights Committee, ‘General Comment 24’ (4 November 2011) CCPR/C/21/Rev.1/Add.6.....	3
United Nations Human Rights Committee, ‘General Comment 31’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13 .....	3

United Nations Human Rights Committee, ‘General Comment 37’ (17 September 2020) UN Doc CCPR/C/GC/37 .....	7, 8, 9, 10
United Nations Human Rights Committee, CCPR/C/THA/CO/2 ‘Concluding observations on the second periodic report of Thailand’, paras 37-38 .....	9
United Nations Human Rights Committee, ‘General Comment 27’ (2 November 1999) CCPR/C/21/Rev.1/Add.9.....	14
United Nations Human Rights Committee, <i>Zhao v. Netherlands</i> (Individual opinion of Hélène Tigroudja) (2020) UN Doc CCPR/C/130/D/2918/2016 .....	4
United Nations Human Rights Council (27 March 2008) A/HRC/Res/7/10.....	4
United Nations Security Council Official Records, (1947) 2nd Sess, 91 meeting 2nd Session U.N. Doc. S/PV. 91.....	28
United Nations Security Council Official Records, 169th and 170th meetings, at 14, UN Doc. S/PV.170 (29 July 1947).....	28
United Nations Security Council, The Greek Frontier (1946) UN Doc S/RES/15 .....	27, 28
Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) .....	13
UNSCOR, Statement of the representative of France, 168th Meeting .....	27
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#### **ICJ AND PCIJ CASES AND ADVISORY OPINIONS**

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## **TREATISES AND BOOKS**

- A. H. Feller, *The Mexican Claims Commission 1923-1934: A Study in Law and Procedure of International Tribunals* (The MacMillon Company 1935) .....22
- Andreas Zimmerman (ed), *Commentary to the 1951 Refugee Convention* (OUP 2011) ..... 16
- Angelika Nussberger, ‘Work, Right to, International Protection’, *Max Planck Encyclopedia of Public International Law* (2007) .....24
- Benedetto Conforti and Carlo Focarelli, *The Law and Practice of the United Nations, vol 57* (5th edn, Martinus Nijhoff 2016).....26, 27
- Bin Cheng, *General Principles of Law as applied by International Courts and Tribunals* (Stevens and Sons 1953)..... 18
- Bruno Simma (ed), *The Charter of the United Nations: A Commentary* (OUP 2012).....27
- Cassese (ed), *A General Assessment of United Nations Peace-keeping’ in United Nations Peace-Keeping: Legal Essays* (1978) .....28
- Christian Tams, *Enforcing Obligations Erga Omnes in International Law* (Cambridge University Press 2005) ..... 1, 3
- Christian Tomuschat (ed), *The Charter of the United Nations: A Commentary* (OUP 2012).26
- Grahl Madsen, *The Status of Refugees in International Law: Volume II* (A. W. Sijthoff, 1966) ..... 16
- Hans Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems: with Supplement* (Stevens & Sons 1951) .....26
- James Crawford, *Brownlie’s Principles of International Law* (9th edn, OUP 2019) ..... 18, 23
- John Quigley, William J. Aceves and S. Adele Shank, *The Law of Consular Access: A Documentary Guide* (Routledge 2010) .....20
- K S Zeigler, *Domain Reserve* (Max Planck Encyclopedia of Public International Law, 2013) .....26
- L M Goodrich, E Hambro and A P Simons, *Charter of the United Nations, Commentary and Documents* (3 edn, CUP 1969) .....28
- Laura van Waas, ‘The UN Stateless Conventions’ in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (CUP 2014)..... 16

Laura van Wass, <i>Nationality Matters</i> (Intersentia 2008).....	12
Luke T Lee and John B Quigley, <i>Consular Law and Practice</i> (3rd edn, OUP 2008).....	20
Mark Manly, ‘UNHCR’s Mandate and its Activities’ in Alice Edwards and Laura van Waas (eds.) <i>Nationality and Statelessness under International Law</i> (CUP 2014).....	5
Mohsen Aghahosseini, <i>Claims of Dual Nationals and the Development of Customary International Law</i> (Nijhoff Brill 2007).....	20
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Paul Weis, <i>Nationality and Statelessness in International Law</i> (Springer 1956).....	5, 13
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## STATEMENT OF JURISDICTION

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The Republic of Antrano (“Antrano”) and the Kingdom of Remisia (“Remisia”) appear before the International Court of Justice (“Statute”) in accordance with Article 40(1) of the Statute of the International Court of Justice by way of the submission of a Special Agreement for the resolution of differences between them concerning the Sterren Forty. Antrano and Remisia have referred the dispute to the Court, granting it jurisdiction under Article 36(1) of the Statute. The Parties concluded the Special Agreement in the Hague, the Netherlands, and jointly notified this Court of their Special Agreement on 15 September 2023.

## QUESTIONS PRESENTED

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- I. *Whether* Antrano has standing to bring the dispute concerning Remisia's deprivation of nationality of its citizens before the Court.
- II. *Whether* Remisia's deprivation of nationality of the "Sterren Forty," rendering them stateless, is a violation of international law.
- III. *Whether* Antrano violated international law when it refused to provide Remisia consular access to Ms. Saki Shaw during her time as a prisoner in Antrano.
- IV. *Whether* Remisia violated international law by denying an Antranan national, Dr. Tulous Malex, entry to Remisia as required by Security Council Resolution 99997.

## **STATEMENT OF FACTS**

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### **OVERVIEW OF THE PARTIES**

Established in 1951, the Republic of Antrano (“Antrano”) is one of the islands that constitute the Mahali Archipelago. These islands have historically experienced colonial occupation. Antrano, a constitutional republic, has championed the cause of reducing statelessness. Antrano played a key role in the formulation of the Convention Relating to the Status of Stateless Persons in 1954 and the Convention on the Reduction of Statelessness in 1961. It continues to play an important role in protecting the rights of the stateless by raising awareness about their plight in international fora at every suitable opportunity. The Kingdom of Remisia (“Remisia”) is a constitutional monarchy with Queen Khasat as the reigning monarch. The social fabric of Remisia, a landlocked country, is interwoven with deep veneration for the monarchy.

### **DEPRIVATION OF NATIONALITY**

The Remisian Constitution criminalizes disrespect to the monarch. This principle finds statutory expression in the Disrespect to the Crown Act (DCA), passed in 1955, which imposes heavy punishments for disrespect. This includes imprisonment up to five years for defaming, insulting or threatening the monarch and additionally an immediate deprivation of nationality if such acts prove disloyal to the Crown, accompanied by expulsion. Invocation of the DCA was historically a rarity, with no cases of deprivation of nationality. This trend recently broke.

### **THE MINING PARTNERSHIP**

Upon her accession to the throne in 2006, Queen Khasat promised Remisians that the nation would emerge as a leading economy. To this end, she partnered with her close friend, Saki Shaw, by way of a joint venture named Lithos-Remisia Cooperative (LRC). The Remisian Ministry of Mines granted permits to LRC to begin cobalt mining which subsequently resulted in substantial public revenue.

### **NATIONALITY BY INVESTMENT**

The Queen assented to the Naturalisation by Investment Act (NIA) in 2008. The legislation enabled the government to confer nationality on any applicant purchasing real property or contributing to the Remisian economy either through the National Infrastructure

Development Fund or direct investment of 500,000 euros or more. There exists no residence requirement. Pursuant to the same, the Naturalisation by Investment Programme (NIP) invited applications from high net-worth individuals and advertised the perks of holding a Remisian nationality, which included a wide range of consular and diplomatic assistance. Saki Shaw, born in Molvania in 1970, applied under the programme and was naturalised in June 2016. She had made no visits to Remisia since 2006.

### **THE PROTESTS**

The potential impact of ore mining and processing on the environment in Remisia was a serious concern. The Ministry of Mines found no grave implications on the environment while conducting its survey to provide LRC with mining permits. The operations of the LRC significantly expanded leading to the discharge of toxic waste into water bodies, violating the right to health of the Remisian populace. In September 2019, certain students commenced conducting lectures and rallies to raise awareness about the issue. Later in December, a clarion call for affecting an immediate end to all mining operations was issued and led by the anonymous group, *Isidre League of Student Activities (ILSA)*. Dismissing the environmental concerns, LRC applied for more permits which were approved. Thereafter, protests broke out with students in some places making verbal expressions alleging that the Queen was prioritising her friendship and professional partnership at the cost of nation's future. This was particularly objected to by the law enforcement officials on the ground. Subsequently, arrests of seven students were made. Demonstrators began blocking access to public roads to mining sites, eventually crippling the mining operations. On 27 February, student demonstrators in excess of 1000 were detained across the nation along with forty protestors getting arrested at the gates of the Sterren Palace for forming a human chain around the building. The Queen was not present in the palace at that time. The demonstrations were brutally repressed and the said forty protestors were labelled as the "Sterren Forty".

### **TRIAL OF STERREN FORTY**

Charges under the DCA were levelled against 230 students, including the Sterren Forty, on refusal to apologise to the Queen. ILSA issued a statement to clarify that their intention was not to insult the Queen but to merely facilitate debate on a matter of grave concern. The pursuant trials were conducted online via Zoom which concluded within only a month. All

defendants were declared guilty, with most being sentenced to between one and three of imprisonment. However, every member of the Sterren Forty was given a five-year sentence and additionally an order to the effect of depriving them of their nationality was passed. Their appeal against the verdict was premised on the fact that this decision rendered them stateless, hence violating international law. The Supreme Court rejected the appeal.

#### **ANTRANO'S PURSUIT OF THE MATTER**

In April 2021, Antranan President Iyali offered to meet with the Remisian Prime Minister Sezan to address the issue of the imminent statelessness of the Sterren Forty. Remisian Foreign Minister categorically communicated that it viewed Antrano's efforts as unwelcome. Thereafter, Antrano attempted to resolve their differences which was thwarted. In January 2022, Antrano utilised its UNSC presidency to stir discussion on the matter. Their ambassador brought the deprivation of nationality of the Sterren Forty to the attention of the Council under Article 35. Antrano underlined that their attempt at amicable resolution under Article 33 was rebuffed by Remisia. Hence, an action under Articles 34 and 36 was sought.

#### **THE EXTRADITION REQUEST**

On 7 March 2022, an arrest warrant was issued against Saki Shaw by Molvania. Molvanian Attorney-General requested Antrano for her to be extradited under a mutual treaty of extradition. Antrano replied in the affirmative with the promise of prompt action, without making any judgment as to Shaw's guilt or innocence.

#### **SAKI SHAW'S VISIT TO ANTRANO**

On 15 March, Shaw was admitted into Antrano on her Remisian passport. Later, she was detained owing to the extradition request. She was arrested and both her passports—Molvanian and Remisian—confiscated. Her request to exercise her right to the Remisian consul was denied since the laws of Antrano do not consider valid a 'purchased nationality' and hence, she was a Molvanian national for relevant purposes. Antrano maintained the same position while replying to Remisia's assertion on a consular meeting. Remisia responded by issuing an emergency travel advisory for those who were naturalised via nationality by investment to not visit Antrano. Unfortunately, despite the best medical efforts, Shaw died of a heart attack. The autopsy found natural causes to be the reason.

### **RESOLUTION 9997**

On 11 April, as a culmination of Antrano's persistent efforts, UNSC adopted Resolution 9997 establishing the UN Inspection Mission to Remisia (UNIMR), with Dr Tulous Malex as its head, to examine the situation related to the Sterren Forty's deprivation of nationality. Remisia attempted to defend the DCA by citing sovereignty. Antrano welcomed the resolution.

### **DENIAL OF ENTRY**

Pursuant to Resolution 9997, Dr Malex arrived at the airport but was denied entry into Remisia. Earlier, Remisia had declared that it would not provide him entry visa. This was followed by a statement of the UNSC President categorically asserting that denial of entry to the UNIMR chief would be deemed a violation of obligations under Resolution 9997 and the Charter.

## SUMMARY OF PLEADINGS

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### I.

Antrano has standing because it has a legal interest in this dispute. This derives from the *erga omnes* or *erga omnes partes* character of the obligations forming the subject matter of this claim. Since these obligations emerge out of a consensus for fundamental values, their breach furnishes such a legal interest, irrespective of damage. By rendering them stateless and liable for expulsion, Remisia's deprivation of the nationality of the Sterren Forty breaches *erga omnes partes* obligations emerging from CRS (Articles 8 and 9), CSP (Article 31) and ICCPR, and *erga omnes* obligations in the form of the obligation to respect the right of every human being to a nationality, and the obligation to avoid statelessness. Additionally, Antrano's personal experience with statelessness furnishes an interest that is concrete and personal, vesting it with a specific entitlement to institute judicial proceedings.

### II.

Remisia has deprived the Sterren Forty of their nationality, rendering them stateless and liable for expulsion. This breaches Remisia's obligations to respect political expression under ICCPR (Articles 19 and 21) and CRS (Article 9). ICCPR was breached as the conduct of the Sterren Forty was peaceful, and Remisia's measure was a disproportionate response to such conduct. CRS was breached because the conduct of the Sterren Forty was consistent with their internationally guaranteed human rights, and Article 9 precludes deprivation of nationality as a response to such conduct. Alternatively, Remisia has breached its obligation to refrain from deprivation of nationality leading to statelessness under CRS (Article 8), and to refrain from arbitrary deprivation under custom. CRS was breached as Remisia's exercise of the power of deprivation derived from an incompatible reservation, and the Sterren Forty's conduct did not cause serious prejudice to Remisia's vital interests. Prohibition on arbitrary deprivation was breached, as the deprivation was underscored by an underlying motivation to expel the Sterren Forty, evidenced from the operation of the DCA, in addition to being a disproportionate measure. Finally, Remisia owed an obligation to refrain from the expulsion of the Sterren Forty under ICCPR (Article 12(4)) and CSP (Article 31). These obligations were breached as there were insufficient grounds warranting expulsion under either statute.

### III.

Antrano did not violate international law by refusing to provide consular access of Ms. Shaw to Remisia. This is because Ms. Shaw did not bear a 'genuine link' with Remisia, having acquired Remisian nationality solely through investment, in order to evade prosecution in Molvania. In fact, this amounts to an abuse of rights. Therefore, her Remisian nationality lacks international legal effects precluding, Remisia from establishing a right to obtain consular access and consequently, precluding Remisia's standing. In any event, Antrano's conduct was not wrongful as Article 36(2) of the VCCR, and the application of the dominant nationality test validate Antrano's grant of consular access to Molvania, over Remisia. Finally, Antrano is not estopped to recognise Ms. Shaw's Remisian nationality since routine immigration stamping is incapable of creating estoppel.

### IV.

Remisia's denial of entry to Antranan national Dr. Malex is unlawful. Antrano has standing as it can exercise diplomatic protection over him, since he has suffered personal injury, and Antrano's reservation, which has been tacitly accepted, establishes that this right remains unaffected by the UN's purported, simultaneous interests in the same. Further, any purported objections to the validity of Resolution 99997 are unfounded as neither is the ICJ competent to adjudicate such claims, nor do they carry substantive merit, given that Article 2(7) and Article 34 of the UN Charter have been adhered to. This is because Remisia's deprivation of the nationality of the Sterren Forty, rendering them stateless and liable for expulsion, may prospectively impose material burdens upon Remisia's neighbouring states, warranting international concern. As UNSC resolutions passed under Article 34 are binding, the validity of resolution 99997 entailed an obligation to permit the UNIMR entry on the part of Remisia. Remisia cannot rely on Dr. Malex's absence of visa to preclude wrongfulness, as the CPI imposes a facilitative duty upon it to grant entry. Nor can reliance be placed on the doctrine of *persona non grata*, as this does not apply to UN personnel.



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## PLEADINGS

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### ISSUE I: ANTRANO HAS STANDING TO BRING THE DISPUTE CONCERNING REMISIA'S DEPRIVATION OF NATIONALITY OF ITS CITIZENS BEFORE THE COURT

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Antrano has standing as (A.) disputes over the breach of *erga omnes partes* or *erga omnes* obligations establish a general entitlement for any state (or any state party) to institute proceedings before the ICJ. In depriving the nationality of Sterren Forty and rendering them stateless, Remisia has breached (B.) *erga omnes partes* and (C.) *erga omnes* obligations. Additionally, (D.) Antrano's personal experience with statelessness establishes a specific entitlement to initiate judicial proceedings before the ICJ.

#### **A. BREACH OF ERGA OMNES PARTES OR ERGA OMNES OBLIGATIONS ESTABLISHES A GENERAL ENTITLEMENT TO INSTITUTE JUDICIAL PROCEEDINGS**

Existence of a legal interest in the subject matter of the dispute establishes standing before the ICJ.<sup>1</sup> For bilateral obligations, this is predicated upon material or moral damage.<sup>2</sup> However, because *erga omnes* or *erga omnes partes* obligations emerge from a consensus around respecting certain fundamental values,<sup>3</sup> their breach itself establishes a legal interest,<sup>4</sup> irrespective of damage.<sup>5</sup> This is supported by state practice – in participating in judicial processes,<sup>6</sup> for the breach of such obligations; and scholarly opinion.<sup>7</sup> Thus, there exists a

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<sup>1</sup> *South West Africa (Liberia v. South Africa)* (Judgement) [1966] ICJ Rep 6, para 4; *Application of the Genocide Convention on the Prevention and Punishment on the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgement) [2007] ICJ Rep 43, para 185.

<sup>2</sup> (D)ARSIWA, art 31(2).

<sup>3</sup> Bruno Simma, 'From Bilateralism to Community Interest' (1994) 250 *Recueil de Cours* 217, 233-234; Philip Jessup, *Modern Law of Nations* (Macmillan 1949) 2.

<sup>4</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Preliminary Objections) [1970] ICJ Rep 3, paras 33-34.

<sup>5</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Preliminary Objections) [2022] ICJ Rep 477, paras 108-109; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgement) [2012] ICJ Rep 422, para 69.

<sup>6</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Application instituting Proceedings) [2023] paras 13-17; *Gambia v Myanmar* (n 5) (Declaration of the Intervention of the Maldives).

<sup>7</sup> Institut de droit International, 'Krakow Resolution' (2005) art 3; Christian Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP 2005) 196-197.

general entitlement for any state (or state party) to initiate judicial proceedings when disputes over such obligations arise.

**B. THE SUBJECT MATTER OF THIS DISPUTE INVOLVES ERGA OMNES PARTES OBLIGATIONS**

The (1.) 1954 Convention on the Status of Stateless Persons; (2.) the 1961 Convention on the Reduction of Statelessness and (3.) the International Covenant on Civil and Political Rights to which Antrano and Remisia are state parties,<sup>8</sup> impose *erga omnes partes* obligations.

Treaties holding the protection of common interests or shared values, as their object and purpose generate such obligations.<sup>9</sup> This is determined by rules of treaty interpretation.<sup>10</sup> Treaty obligations are owed *erga omnes partes* if they are essential to realise such common interests.<sup>11</sup>

**1. ARTICLE 31 OF THE 1954 CONVENTION ON THE STATUS OF STATELESS PERSONS IS OWED ERGA OMNES PARTES.**

As stated in its preamble, and supported by its drafting history,<sup>12</sup> all State parties to the CSP have a common interest in ‘securing the widest possible enjoyment of human rights for stateless persons.’<sup>13</sup> Article 31 guarantees stateless persons the right to admission. Adherence to Article 31 is a necessary precursor for the fulfilment of any other CSP rights.<sup>14</sup> Thus, it is essential to securing the common interest forming the object and purpose of the CSP, implying that it is owed *erga omnes partes*.

Consequently, Article 34 of the CSP, which stipulates that, “Any dispute between Parties to this Convention... shall be referred to the ICJ at the request of any one of the parties

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<sup>8</sup> Compromis [62].

<sup>9</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 18, 21.

<sup>10</sup> Pork Yin Stephenson Chow, ‘On Obligations Erga Omnes Partes’ (2021) 52(2) *Georgetown Journal of International Law* 1, 25-26.

<sup>11</sup> *Belgium v. Senegal* (n 5); *Gambia v. Myanmar* (n 5).

<sup>12</sup> UN Ad hoc Committee on Refugees and Stateless Persons, ‘A Study of Statelessness’ (1 August 1949) UN Doc E/1112/Add.1, 53.

<sup>13</sup> CRS, Preamble.

<sup>14</sup> UNHCR ‘Handbook on the Protection of Stateless Persons’ (Geneva 2014) para 147.

to the dispute”, interpreted in light of the substantive character of Article 31, establishes standing to approach this Court when disputes over its application arise.<sup>15</sup>

**2. ARTICLES 8 AND 9 OF THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS ARE OWED ERGA OMNES PARTES**

Similarly, as stated in its preamble,<sup>16</sup> and supported by its drafting history,<sup>17</sup> all state parties to the CRS have a common interest in the reduction of statelessness. Article 8 prohibits deprivation of nationality leading to statelessness, unless exceptional circumstances laid out in Article 8(3) are satisfied. Article 9 prohibits deprivation of nationality on the basis of discriminatory criteria, such as, political opinion, ethnicity, or religion. These are regarded as ‘essential duties,’<sup>18</sup> necessary to fulfil its common interest, implying that they are owed *erga omnes partes*. Thus, Article 14 of the CRS establishes standing to approach the ICJ, when disputes over the application of Articles 8 or 9 arise.

**3. HUMAN RIGHTS OBLIGATIONS UNDER THE ICCPR ARE OWED ERGA OMNES PARTES**

All State parties to the ICCPR have a common interest in ensuring that civil and political rights are effectively protected, through the creation of legally binding standards.<sup>19</sup> This implies that human rights obligations under the ICCPR are *erga omnes partes*, as they realise this common interest.<sup>20</sup> Consequently, Article 2 of the ICCPR, interpreted in light of this object and purpose, vests every State party with a legal interest in every other State party's discharge of their respective obligations.<sup>21</sup> Thus, State parties have standing to institute proceedings before the ICJ when disputes over their respective adherence to ICCPR obligations arise.

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<sup>15</sup> Tams (n 7), 76-77.

<sup>16</sup> CRS, Preamble.

<sup>17</sup> ILC, ‘Report of Special Rapporteur Robert Cordova’ (1954) UN Doc A/CN.4/83, paras 14-16, 29; A Study of Statelessness (n 12).

<sup>18</sup> CRS, Finland and Sweden’s Objections to Tunisia’s Reservation.

<sup>19</sup> HRCComm, ‘General Comment 24’ (4 November 2011) CCPR/C/21/Rev.1/Add.6.

<sup>20</sup> Erika de Wet, ‘Invoking Erga Omnes Obligations in the 21st Century’ (2013) 37 South African Yearbook International Law 1, 9.

<sup>21</sup> HRCComm, ‘General Comment 31’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13.

### **C. THE SUBJECT MATTER OF THIS DISPUTE INVOLVES ERGA OMNES OBLIGATIONS**

Remisia's deprivation of the Sterren Forty's nationality rendered them stateless,<sup>22</sup> creating a dispute over (1.) the obligation to respect the right of all individuals to a nationality, and (2.) the obligation to avoid statelessness, both of which are owed *erga omnes*.

#### **1. THE OBLIGATION TO RESPECT THE RIGHT TO A NATIONALITY IS OWED ERGA OMNES**

All human rights emerge from a community interest in realising the dignity of the human person.<sup>23</sup> Thus, those human rights which mature into customary international law are considered 'basic human rights'.<sup>24</sup> Respecting such rights is an *erga omnes* obligation.<sup>25</sup>

The right to a nationality, and the prohibition of its arbitrary deprivation has been codified in Article 15 of the Universal Declaration of Human Rights. Subsequent state practice demonstrates that Article 15 has attained customary status.<sup>26</sup> This is supported by successive, unanimous HRC Resolutions recognising it as a 'fundamental human right',<sup>27</sup> the Human Rights Committee – which has affirmed nationality as guaranteed under the ICCPR, as a facet of the rights to identity, dignity and personality,<sup>28</sup> and other human rights tribunals which have expressly recognised the right as having attained customary status.<sup>29</sup>

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<sup>22</sup> Compromis [34].

<sup>23</sup> Bruno Simma (n 3) 242.

<sup>24</sup> Theodor Meron, *Human Rights and Humanitarian Norms are Customary Law* (Clarendon Press 1989) 192; Pierre-Marie Dupuy, 'L'unité de l'ordre juridique international' (2002) 297 *Recueil des Cours* 382, 384.

<sup>25</sup> *Barcelona Traction* (n 4) para 34.

<sup>26</sup> American Declaration of the Rights and Duties of Man, OAS Res XXX (1992), art 20; ASEAN Human Rights Declaration (2012); Arab Charter on Human Rights (1994) art 24; Commonwealth of Independent States Convention on Human Rights (1995); European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS 166, art 4.

<sup>27</sup> HRC (27 March 2008) A/HRC/Res/7/10; HRC (18 July 2016) A/HRC/RES/32/7; HRC (14 April 2010) A/HRC/RES/13/2; HRC (11 July 2014) A/HRC/Res/26/14.

<sup>28</sup> HRCComm, *Zhao v. Netherlands* (Individual opinion of Hélène Tigroudja) (2020) UN Doc CCPR/C/130/D/2918/2016, para 5.

<sup>29</sup> ACtHPR, *Anudo Ochieng Anudo v United Republic of Tanzania* (Judgement) App No 012/2015, para 76; IACtHR, *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, IACtHR Series A No 4 (1984), para 26.

## 2. ***THE OBLIGATION TO AVOID STATELESSNESS IS OWED ERGA OMNES***

State practice,<sup>30</sup> and *opinio juris*,<sup>31</sup> establish that there exists a customary obligation upon all States to avoid statelessness.<sup>32</sup>

Independent of its human rights implications, statelessness challenges the international legal system by creating a class of individuals for whom no State stands responsible.<sup>33</sup> Thus, state practice,<sup>34</sup> UNGA Resolutions,<sup>35</sup> and scholarly opinion,<sup>36</sup> reflect that the very existence of statelessness is of common concern to the international community as a whole. The obligation to avoid statelessness realises this community interest, implying that it is owed *erga omnes*.<sup>37</sup>

### **D. ANTRANO'S PERSONAL EXPERIENCE WITH STATELESSNESS ESTABLISHES A SPECIFIC ENTITLEMENT TO INSTITUTE JUDICIAL PROCEEDINGS**

Remisia may question Antrano's 'specific' entitlement to represent the international community (or a collective of states) in initiating judicial proceedings before the ICJ.<sup>38</sup>

Similar to Marshall Islands in the *Nuclear Disarmament* cases, which viewed its personal experience of suffering from nuclear testing as establishing a distinct personal

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<sup>30</sup> Convention on Certain Questions Relating to the Conflict of Nationality Law (adopted 12 April 1930, entered into force 1 July 1937) 179 LNTS 89 ('**Hague Convention**'); Special Protocol Concerning a Certain Case of Statelessness (adopted 12 April 1930) C.27.M.16.1931.V; CSP; CRS.

<sup>31</sup> Resolution Concurring in the Accession to the 1961 Convention on the Reduction of Statelessness, Res 964, 18th Congress (2021) (the Philippines); UNHCR, 'The Campaign to End Statelessness: October–December 2021 Update' (Report, 1 February 2022) 5.

<sup>32</sup> Council of Europe, 'Explanatory Report to the Council of Europe Convention on the avoidance of statelessness in relation to State succession' (2006) para 1.

<sup>33</sup> Peter Spiro, 'Towards a New International Law of Citizenship' (2011) 105(4) American Journal of International Law 694, 724.

<sup>34</sup> Hague Convention, Preamble; CRS, Preamble; Restatement (Third) of Foreign Relation Law s 211 Commentary (1987).

<sup>35</sup> UNGA Res 61/137 (25 January 2007) A/RES/61/137; UNGA Res 67/149 (18 December 2013) A/RES/67/149; UNGA Res 70/135 (23 February 2016) A/RES/70/135.

<sup>36</sup> Mark Manly, 'UNHCR's Mandate and its Activities' in Alice Edwards and Laura van Waas (eds.) *Nationality and Statelessness under International Law* (CUP 2014) 114; Paul Weis, *Nationality and Statelessness in International Law* (Springer 1956) 166.

<sup>37</sup> ILC, 'Fourth Report on Nationality in Relation to the Succession of States by Mr. Václav Mikulka, Special Rapporteur' (23 April 1998) UN Doc A/CN.4/489; Jeffrey Blackman, 'State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law' (1998) 19(4) Michigan Journal of International Law 1141.

<sup>38</sup> K Sachiarew, 'State Responsibility for Multilateral Treaty Violations: Identifying the Injured State and Its Legal Status' (1988) 35 Netherland International Law Review 273.

interest,<sup>39</sup> Antrano has a personal interest in Remisia's deprivation of the nationality of the Sterren Forty. This derives from its historical commitment as a State striving for the betterment of stateless persons.<sup>40</sup> The UNSC has also recognised Antrano's leading role in protecting the rights of stateless persons around the world.<sup>41</sup> Thus, Antrano's interest is 'concrete and personal,'<sup>42</sup> establishing its specific entitlement to initiate judicial proceedings, unequivocally.

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<sup>39</sup> *Cessation of the Nuclear Arms Race and Nuclear Disarmament (Marshall Islands v. the United Kingdom)* (Memorial of the Marshall Islands) [2015] 20.

<sup>40</sup> *Compromis* [36].

<sup>41</sup> *Compromis*, Annex A.

<sup>42</sup> *Legality of the Use of Force* (Separate Opinion of Judge Kreca) [2004] ICJ Rep 279, para 64.

ISSUE II: REMISIA'S DEPRIVATION OF NATIONALITY OF THE "STERREN FORTY," RENDERING THEM STATELESS, IS A VIOLATION OF INTERNATIONAL LAW

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Remisia has deprived the Sterren Forty of its nationality, rendering them stateless and liable for expulsion. This breaches its obligations to (A.) respect political expression, and (B.) refrain from deprivation of nationality leading to statelessness, and (C.) refrain from deprivation of nationality concluding in expulsion.

**A. THE DEPRIVATION OF THE NATIONALITY OF THE STERREN FORTY BREACHES REMISIA'S OBLIGATIONS TO RESPECT POLITICAL EXPRESSION**

The Sterren Forty's conduct, limited to participation in protests, and the formation of a human chain was, (1.) within the permissible limits of their right to political expression. Consequently, (2.) the deprivation of their nationality breaches Remisia's obligations to respect political expression under the ICCPR, and (3.) the CRS.

**1. *THE STERREN FORTY ACTED WITHIN THE PERMISSIBLE LIMITS OF THEIR RIGHT TO POLITICAL EXPRESSION THROUGH PEACEFUL ASSEMBLY***

'Peaceful' is equivalent to non-violent.<sup>43</sup> The Sterren Forty's conduct (a.) was not directly violent, and (b.) it was unlikely to incite violence.

**a) THE STANDARD FOR VIOLENT CONDUCT IS NOT MET**

The Sterren Forty's conduct was limited to participation in demonstrations, chanting slogans, carrying signs,<sup>44</sup> and the formation of a human chain outside the Sterren Palace.<sup>45</sup> This does not meet the standard for violent conduct, which necessitates the use of physical force against others likely to result in injury or death, or serious damage to property.<sup>46</sup>

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<sup>43</sup> HRCComm, 'General Comment 37' (17 September 2020) UN Doc CCPR/C/GC/37, para 15 ('GC 37'); *Kudrevičius & Others v Lithuania* (Judgement) App no 37553/05 (ECHR 2015) para 91.

<sup>44</sup> Compromis [33].

<sup>45</sup> Compromis [30].

<sup>46</sup> GC 37 (n 43) para 15; European Commission for Democracy Through Law and Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly* (2nd edn, Organization for Security and Co-operation in Europe 2010).

**b) ADDITIONALLY, THE STERREN FORTY'S CONDUCT WAS UNLIKELY TO INCITE VIOLENCE**

The Sterren Forty were unarmed at all times, and had never conducted themselves violently prior.<sup>47</sup> While Remisia may contend that their conduct was disruptive, disruption is a feature of any form of protest activity, and is insufficient to meet the threshold for imminent violence.<sup>48</sup> Previously, even the formation of a blockade outside Parliament has been held as falling within the threshold for peaceful assembly.<sup>49</sup>

The disruption caused to the mining operations when protesters chained themselves to mining equipment, and blocked access roads also does not establish imminent violence from the conduct of the Sterren Forty.<sup>50</sup> These were isolated instances of greater disruption, which were a reaction to Remisia's detention of 7 student activists on unsubstantiated grounds,<sup>51</sup> and do not reflect an intention to incite violence on the part of other protesters, or the organizers.<sup>52</sup>

**2. *THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY DOES NOT ADHERE TO THE THREE-PART TEST***

Measures taken by a State party must be (a) provided by law, (b) in pursuance of a legitimate purpose, and (c.) necessary to secure such purpose.

**a) DEPRIVATION OF THE STERREN FORTY'S NATIONALITY WAS NOT PROVIDED BY LAW**

For a measure to be provided by law, the law itself must not confer unfettered discretion upon the executive to curtail political expression.<sup>53</sup> The DCA utilises vague terminology such as 'defame', 'insult', 'threat', and 'disloyalty',<sup>54</sup> and does not include statutory explanations to the same. In doing so, it mirrors *lese-majeste* laws, such as that of Thailand,<sup>55</sup> which have been

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<sup>47</sup> Compromis [25].

<sup>48</sup> GC 37 (n 43), para 7.

<sup>49</sup> *Makarashvili and Others v Georgia* (Judgement) App nos. 23158/20 (ECHR 2022), paras 89-94.

<sup>50</sup> Compromis, [29]-[30].

<sup>51</sup> *Ibid.*

<sup>52</sup> *Frumkin v Russia* (Judgement) App. no 74568/12 (ECHR 2016) para 99; *Schwabe and M.G. v Germany* (Judgement) App nos. 8080 (ECHR 2011) para 103.

<sup>53</sup> HRCComm, 'General Comment 34' (12 September 2011) CCPR/C/GC/34, para 25 ('GC 34'); Paul Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (CUP 2020) 552.

<sup>54</sup> Compromis [7].

<sup>55</sup> Thailand Penal Code 1956, s 112.

extensively criticised by the HRCComm.<sup>56</sup> Such laws are overbroad as they insulate the monarch, a public figure, from criticism,<sup>57</sup> failing this requirement.

**b) DEPRIVATION OF THE STERREN FORTY'S NATIONALITY DOES NOT FOLLOW A LEGITIMATE PURPOSE**

Remisia must demonstrate that there existed clear and imminent harm to one of the purposes set out under Article 19 or 21,<sup>58</sup> to establish that its measures followed a legitimate purpose. The Sterren Forty's conduct, limited to participation in demonstrations, sloganeering, carrying signs, and forming a human chain outside the Sterren Palace,<sup>59</sup> can be considered disruptive, but nothing more. Mere disruption is insufficient to invoke public order, or national security as grounds for interference.<sup>60</sup>

**c) DEPRIVATION OF THE STERREN FORTY'S NATIONALITY WAS NOT NECESSARY IN A DEMOCRATIC SOCIETY**

Necessity demands (i.) the existence of a pressing social need, (ii.) the adoption of the least intrusive measure, and (iii.) guarding against a chilling effect.

*i. Deprivation of the Sterren Forty's nationality does not conform to a pressing social need*

The conformity of a measure to a pressing social need is determined by the relevance and sufficiency of the reasons used to justify it.<sup>61</sup> Remisia had a 51% stake in the Lithos-Remisia Cooperative,<sup>62</sup> which allowed the outflow of toxic waste from its cobalt mines.<sup>63</sup> This violated the right to health of Remisian citizens.<sup>64</sup> The Sterren Forty's conduct drew attention to these concerns, thereby contributing to public accountability. Such forms of expression are

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<sup>56</sup> HRCComm, CCPR/C/THA/CO/2 'Concluding observations on the second periodic report of Thailand', paras 37-38; GC 34 (n 53) para 38.

<sup>57</sup> GC 34 (n 53) para 38.

<sup>58</sup> *Gul v Turkey* (Judgement) App no 44715/98 (ECHR 2004) paras 41-42; GC 37 (n 43) para 19.

<sup>59</sup> Compromis [30].

<sup>60</sup> *Cisse v. France* (Judgement) App no 51346/99 (ECHR 2002), paras 35-40; *Tuskia and Ors v. Georgia* (Judgement) App no 14237/07 (ECHR 2018) para 73.

<sup>61</sup> *Cumpănă and Mazăre v Romania* (Judgment) App No 33348/96 (ECHR 2003), para 90; *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (Judgement) App No 5095/71 (ECHR 1976) para 63.

<sup>62</sup> Clarifications [4].

<sup>63</sup> Compromis [22].

<sup>64</sup> ICESCR, art 8; ECOSOC, 'General Comment 14' (2000) E/C.12/2000/4, para 34.

accorded a high value by the ICCPR.<sup>65</sup> Further, the ILSA's statements, calling for a transition to a democratic polity reflect 'ideas which challenged the existing order,' which must be given a proper opportunity for expression'.<sup>66</sup> This outweighs Remisia's speculative concerns regarding public order, or national security.<sup>67</sup>

*ii. Deprivation of the Sterren Forty's nationality was not the least intrusive measure*

Peaceful demonstrations should not be subject to penal sanction.<sup>68</sup> Assuming there existed legitimate concerns towards public order, or national security, Remisia could have pursued alternatives such as stipulating alternative sites for the protesters to congregate.<sup>69</sup> Assuming the Sterren Forty's conduct was severe enough to warrant penal sanction, this could have been limited to a prison sentence. This renders the deprivation of their nationality, and expulsion disproportionate. The rejection of the offer to negotiate,<sup>70</sup> by the protesters does not validate these measures either, since it did not obligate the Sterren Forty, or any other protester, to refrain from further protests.<sup>71</sup>

*iii. Deprivation of the Sterren Forty's nationality is likely to have a chilling effect on the further exercise of fundamental freedoms*

The likelihood of a measure to have a chilling effect on the further exercise of fundamental freedoms can render it disproportionate.<sup>72</sup> Fear of severe sanction coupled with ambiguity in the criminalising statute can produce such a chilling effect.<sup>73</sup> The ambiguous wording of the DCA, coupled with its sudden application to the Sterren Forty, breaking away

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<sup>65</sup> GC 34 (n 53), para 38.

<sup>66</sup> *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Judgement) App no 29221/95 (ECHR 2001) para 97.

<sup>67</sup> *Vajnai v. Hungary* (Judgement) App No 6061/10 (ECHR 2008) para 55.

<sup>68</sup> *Pekasland and Ors. v. Turkey* (Judgement) App No 4572/06 (ECHR 2012) para 8.

<sup>69</sup> *Rai and Evans v. The United Kingdom* (Admissibility) App No 26258/07 (ECHR 2009).

<sup>70</sup> *Compromis* [30].

<sup>71</sup> GC 37 (n 43).

<sup>72</sup> *Balçık and Others v. Turkey* (Judgement) App No 25/02 (ECHR 2007) para 41.

<sup>73</sup> *Ricardo Canese v Paraguay* (Judgement) IACtHR Series C No 111 (2004); *Mosley v. the United Kingdom* (Judgement) App no 48009/08 (ECHR 2011) para 129.

from prior instances of its application,<sup>74</sup> is likely to have a similar chilling effect on further protests,<sup>75</sup> establishing it as disproportionate.

**3. *THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY VIOLATES ARTICLE 9 OF THE 1961 CONVENTION ON REDUCTION OF STATELESSNESS***

Article 9, CRS prohibits the use of the power to deprive nationality on political grounds.<sup>76</sup> This precludes state parties from depriving individuals of their nationality, where their conduct is within the permissible bounds of their internationally guaranteed human rights.<sup>77</sup> Antrano has already established that the Sterren Forty's conduct was within their right to peaceful assembly. Thus, Antrano's deprivation of the Sterren Forty's nationality breaches Article 9.

**B. THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY RENDERED THEM STATELESS VIOLATING INTERNATIONAL LAW**

**1. *THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY BREACHES ARTICLE 8 OF THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS***

State parties must meet two concurrent conditions to deprive nationality in adherence with Article 8. (a.) They must have made a valid reservation, and (b.) the conduct of the nationals must be inconsistent with their duty of loyalty to that State by causing serious prejudice to its vital interests.

**a) REMISIA'S RESERVATION TO ARTICLE 8 IS INVALID**

Invalid reservations are null and void.<sup>78</sup> Remisia's reservation to the CRS is invalid as it is incompatible with its object and purpose.<sup>79</sup>

The drafting history of the CRS affirms that its object and purpose is to restrict the power of deprivation in the larger interest of the international community to avoid

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<sup>74</sup> Compromis [8].

<sup>75</sup> *Novikova and Others v Russia* (Judgement) App no 25501/07 (ECHR 2016) para 211.

<sup>76</sup> CRS, art 9.

<sup>77</sup> UNHCR, 'Guidelines on Stateless Persons No. 5' (2020) UN Doc HCR/GS/20/05 para 79.

<sup>78</sup> ILC, 'Guide to Practice on Reservations of Treaties' (2011) II Yearbook ILC 32, Guideline 4.5.1; *Belilos v. Switzerland* (Judgement) Series A No. 132 (ECHR 1988) para. 60.

<sup>79</sup> VCLT, art 19(1)(c); Guide to Reservations (n 78).

statelessness.<sup>80</sup> State practice establishes that Article 8 is an essential duty under the CRS.<sup>81</sup> The exclusion of ordinary crimes of a general nature from the power of deprivation of nationality, even for reserving States,<sup>82</sup> is a necessary part of the general thrust of Article 8.

Remisia's reservation broadens the scope of the power of deprivation to include conduct "defaming", "insulting", or "threatening" the Queen – which are ordinary crimes of a general nature. This renders the reservation incompatible with the object and purpose of the CRS, as it affects an essential element of the CRS, necessary to its general thrust.<sup>83</sup> Notably, similar reservations made by Jamaica, Ireland, and Tunisia have been objected to by States parties,<sup>84</sup> and criticised in scholarly opinion.<sup>85</sup> Even Remisia's reservation has been objected to by 4 State parties.<sup>86</sup>

**b) THE STERREN FORTY'S CONDUCT WAS NOT INCONSISTENT WITH A DUTY OF LOYALTY TO REMISIA AS IT WAS NOT SERIOUSLY PREJUDICIAL TO REMISIA'S VITAL INTERESTS**

As unarmed student protesters, the Sterren Forty lacked the capacity to cause serious prejudice,<sup>87</sup> which requires conduct to be of a similar stature as terrorism,<sup>88</sup> i.e. "activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments".<sup>89</sup>

Even if Remisia asserts the life of its Queen as its purported vital interest, her absence from the Sterren Palace at the time of the formation of the human chain,<sup>90</sup> proves that the Sterren Forty did not endanger her life, and Remisia's vital interests remained unaffected. Thus, Remisia's deprivation of the nationality of the Sterren Forty, breaches Article 8.

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<sup>80</sup> Robert Cordova (n 17), para 18; A Study of Statelessness (n 12) 148.

<sup>81</sup> Finland, Sweden, and German Objections to Tunisia's Reservation (n 18).

<sup>82</sup> Robert Cordova (n 17), 29; ILC, 'Report of Special Rapporteur Manley O'Hudson' A/CN.4/50, 21; UNHCR, 'Conclusions of the Expert Meeting on the Interpretation of the Reduction of Statelessness' (2013) para 65.

<sup>83</sup> Guide to Reservation of Treaties (n 78), principle 3.1.5.

<sup>84</sup> Finland, Sweden, and German Objections to Tunisia's Reservation (n 18).

<sup>85</sup> Laura van Wass, *Nationality Matters* (Intersentia 2008) 83.

<sup>86</sup> Clarifications [10].

<sup>87</sup> UNHCR, Expert meeting (n 82) para 65; Guidelines on Stateless Persons (n 77) para 61.

<sup>88</sup> Guidelines on Stateless Persons (n 77), para 65.

<sup>89</sup> UNGA Res. 60/288 (20 September 2006), Preamble, para 2.

<sup>90</sup> Compromis [30].

**2. THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY VIOLATES THE  
CUSTOMARY PROHIBITION ON ARBITRARY DEPRIVATION OF NATIONALITY**

Customary international law prohibits arbitrary deprivation of nationality.<sup>91</sup> Non-arbitrariness requires acts of deprivation to follow (a.) a legitimate purpose, and (b.) be proportionate to secure such purpose.<sup>92</sup> Remisia's deprivation of the Sterren Forty's nationality is presumptively arbitrary as it rendered them stateless.<sup>93</sup>

**a) THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY FOLLOWED AN  
ILLEGITIMATE PURPOSE**

Deprivation of nationality for the sole purpose of expulsion, amounts to arbitrary deprivation.<sup>94</sup> This is to prevent states from abusing the right to deprive nationality to transfer the material burden of its nationals, onto the rest of the international community.<sup>95</sup> Expulsion under the DCA is solely predicated upon deprivation of nationality.<sup>96</sup> This is sufficient to establish that the sole purpose of the deprivation of nationality was expulsion,<sup>97</sup> rendering it arbitrary.

**b) THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY WAS DISPROPORTIONATE**

Judging the proportionality of a measure requires balancing the impact of the measure on the interest being protected by the State, against its impact on the individual.<sup>98</sup> The Sterren Forty possess no other nationality. Thus, the deprivation of their nationality leaves them without an identity, international protection, membership, economic and social rights such as

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<sup>91</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 15(2); *Anudo* (n 29).

<sup>92</sup> *Janko Rottman v. Freistaat Bayern* CJEU para 55; UNHRC, 'Report of the Secretary General on Arbitrary Deprivation of Nationality' (2013) A/HRC/25/28 para 25; HRCComm, 'General Comment 35' (16 December 2014) CCPR/C/GC/35, para 12.

<sup>93</sup> Johannes M Chan, 'The Right to a Nationality as a Human Right: the Current Trend towards its Recognition' (1991) 12 Human Rights Law Journal 1, 8.; Ruth Donner, *The Regulation of Nationality in International Law* (2nd edn, Transnational Publishers 1994) 171.

<sup>94</sup> UDHR (n 91) art 15; ILC, 'Draft articles on the expulsion of aliens, with commentaries' (2014), art 8.

<sup>95</sup> John F Williams, 'Denationalization' (1927) *British Yearbook International Law* 45-61; Weis (n 36) 51.

<sup>96</sup> *Compromis* [6].

<sup>97</sup> *Anudo*, para 99 (n 20).

<sup>98</sup> 'Report of the Secretary General on Arbitrary Deprivation of Nationality' (n 92) para 4.

food, work, and social security,<sup>99</sup> with nowhere to go – putting them in a position of extreme vulnerability.<sup>100</sup>

Conversely, even the efficacy of the deprivation of the Sterren Forty's nationality in securing Remisia's purported public order, or national security interests is debatable. For instance, the practice of the Council of Europe views citizenship-deprivation as *counterproductive* in ensuring national security interests.<sup>101</sup> Thus, the impact of the deprivation of the Sterren Forty's nationality on their lives outweighs its impact on the purpose being secured, rendering it disproportionate.

**C. THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY LEADS TO THEIR EXPULSION VIOLATING INTERNATIONAL LAW**

**1. THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY VIOLATES ARTICLE 12(4) OF THE ICCPR**

Article 12(4) confers upon all individuals the right against the arbitrary denial of their ability to gain admission into 'his own country.'<sup>102</sup>

**a) ARTICLE 12(4) EXTENDS TO THE STERREN FORTY**

'His own country' extends beyond individuals who retain a formal bond of nationality with the State to include individuals who have been stripped of their nationality by their country of origin.<sup>103</sup> Thus, the protection under Article 12(4) extends to the Sterren Forty.

**b) THE EXPULSION OF THE STERREN FORTY IS ARBITRARY**

Given the impact of an expulsion upon individuals and their families, there are few, if any, circumstances that could justify a denial of the right to admission.<sup>104</sup> Even 'serious criminality', in the form of multiple murder convictions does not warrant expulsion.<sup>105</sup> The

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<sup>99</sup> *Case of Expelled Dominicans and Haitians v Dominican Republic* (Judgement) IACtHR C No 282 (October 22 2014) para 267.

<sup>100</sup> *Case of Yean and Bosico Children v Dominican Republic* (Judgement) IACtHR C No 130 (September 8 2005) para 142.

<sup>101</sup> Council of Europe, Res 2263 (2019).

<sup>102</sup> ICCPR, art 12(4).

<sup>103</sup> HRCComm, 'General Comment 27' para 20; *Nystrom v. Australia* CCPR/C/102/D/1557/2007 (HRCComm, 2007) para 7.4; *Warsame v. Canada* CCPR/C/102/D/1959/2010 (HRCComm, 2011) para 8.5.

<sup>104</sup> General Comment 27 (n 103) para 21.

<sup>105</sup> *Warsame v. Canada* (n 103), paras 8.6 - 8.10.

Sterren Forty's conduct was limited to participation in protests. Thus, their expulsion, resulting from the deprivation of their nationality, is arbitrary.

**2. *THE DEPRIVATION OF THE STERREN FORTY'S NATIONALITY VIOLATES ARTICLE 31 OF THE 1954 CONVENTION ON THE STATUS OF STATELESS PERSONS***

Article 31 of the CSP stipulates that a Contracting State shall not expel stateless persons, (a.) lawfully on their territory, except for, (b.) reasons of public order or national security. Further, (c.) contracting states are obligated to ensure that the process of expulsion affords a 'reasonable period' to the stateless person to seek admission elsewhere.<sup>106</sup>

**a) THE STERREN FORTY ARE LAWFULLY PRESENT ON REMISIA'S TERRITORY**

'Lawful presence' on a state's territory only requires presence to be authorized by the State party.<sup>107</sup> The issuance of non-citizen cards to the Sterren Forty authorizes their presence on Remisian territory, fulfilling this requirement.

**b) NO CONCERNS OF PUBLIC ORDER OR NATIONAL SECURITY WARRANT THEIR EXPULSION**

Article 31, interpreted in good faith, requires that concerns pertaining to public order or national security can only be used to legitimize the expulsion of a stateless person, if the concerns stem from their conduct as stateless persons.<sup>108</sup> Conversely, Remisia's expulsion of the Sterren Forty is based on concerns arising from the conduct when they were citizens. No concerns of public order or national security emerging from their conduct as stateless persons warrant their expulsion. Thus, their expulsion breaches this obligation.

**c) THE DISRESPECT TO CROWN ACT DOES NOT AFFORD A 'REASONABLE TIME PERIOD' TO SEEK ADMISSION ELSEWHERE**

60 days are given to non-citizens after the completion of their imprisonment, after which they are subject to expulsion.<sup>109</sup>

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<sup>106</sup> CSP, art 31.

<sup>107</sup> Handbook on Stateless Persons (n 14); Nehemiah Robinson, *Commentary to the 1954 Convention on the Status of Stateless Persons* (Institute of Jewish Affairs 1997).

<sup>108</sup> VCLT, art 26; Robinson (n 107) 'Article 31'.

<sup>109</sup> Compromis [8].

Reasonability is judged against the prospects for gaining admission into another country.<sup>110</sup> The CSP was drafted along with the 1951 Convention Relating to the Status of Refugees<sup>111</sup> – establishing that the Refugee Convention forms a part of its legal context.<sup>112</sup> Under Article 32 of the Refugee Convention, the period afforded must be at least 3-4 months to be considered sufficient.<sup>113</sup> Thus, by affording non-citizens a period of only 60 days, the DCA fails to meet the threshold for a ‘reasonable time period’.

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<sup>110</sup> Andreas Zimmerman (ed), *Commentary to the 1951 Refugee Convention* (OUP 2011) 1321.

<sup>111</sup> Laura van Waas, ‘The UN Stateless Conventions’ in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (CUP 2014) 64; Betsy Fisher, ‘The Travaux Préparatoires of the 1954 Convention Relating to the Status of Stateless Persons’ (2022).

<sup>112</sup> VCLT, art 31(2).

<sup>113</sup> Zimmerman (n 110) 1323; Grahl Madsen, *The Status of Refugees in International Law: Volume II* (A. W. Sijthoff, 1966) 436.

ISSUE III: ANTRANO DID NOT VIOLATE INTERNATIONAL LAW WHEN IT REFUSED TO PROVIDE  
REMISIA CONSULAR ACCESS TO MS. SAKI SHAW DURING HER TIME AS A PRISONER  
IN ANTRANO

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Ms. Shaw's nationality is a form of purchased citizenship. Thus, (A.) Remisia is not entitled to bring this claim and in any event, (B.) Antrano was not obligated to grant Remisia consular access. Additionally, (C.) the admission of Ms. Shaw on a Remisian passport does not estop Antrano to treat her as a Remisian national.

**A. REMISIA IS NOT ENTITLED TO BRING THIS CLAIM SINCE MS. SHAW'S  
NATIONALITY LACKED INTERNATIONAL LEGAL EFFECTS**

(1.) Ms. Shaw lacked a genuine link with Remisia, and (2.) Remisia's conferral of its nationality on her was an abuse of rights, rendering her Remisian nationality devoid of international legal effects. This precludes Remisia from claiming standing through diplomatic protection,<sup>114</sup> or as an injured State.

**1. MS. SHAW LACKS A GENUINE LINK WITH REMISIA**

In *Nottebohm*,<sup>115</sup> the ICJ held that for a nationality to have international legal effects, there must exist a social bond determined by a 'genuine connection of existence' between the individual and the state of nationality, at the time of conferral.<sup>116</sup> Tribunals have employed this test, both before<sup>117</sup> and after *Nottebohm*,<sup>118</sup> for adjudging the international effects of multiple nationalities, reflecting that it is customary. Since Ms. Shaw also held two nationalities, the application of the 'genuine link' test to her is without controversy.

Ms. Shaw had never visited Remisia except for two instances during her undergraduate years prior to obtaining the nationality, neither did she have family members there.<sup>119</sup>

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<sup>114</sup> *The Mavrommatis Palestine Concessions* (Judgement) (1924) PCIJ Rep Series A No 2, 12.

<sup>115</sup> *Nottebohm Case (Liechtenstein v Guatemala)* (Second Phase) [1955] ICJ Rep 4.

<sup>116</sup> Craig Forcese, 'The Capacity to Protect: Diplomatic Protection of Dual Nationals in the "War on Terror"' (2006) 17 *European Journal of International Law* 369, 381.

<sup>117</sup> *Mathison Case* (Umpire Plumley) (1903) 9 RIAA 485, 492; *Barthez de Montfort v Treuhander Hauptverwaltung (France v Germany)* 3 ILR 279.

<sup>118</sup> *Olguín v Paraguay*, ICSID Case No. ARB/98/5, Award (2001) para 61.

<sup>119</sup> *Compromis* [15].

Consequently, she had no association to the culture, the people, the history or to the traditions of Remisia, rendering her Remisian nationality devoid of international legal effects.

In any case, the jurisprudence of international tribunals rejects nationality obtained solely through acquisition of property as having international legal effects.<sup>120</sup> An emerging global apprehension of the misuse of nationalities acquired by investment offers additional support.<sup>121</sup> Consequently, Remisia cannot rely upon Ms. Shaw's investment of a predetermined sum to establish a genuine link.

## **2. CONFERRAL OF REMISIAN NATIONALITY ON MS. SHAW AMOUNTS TO ABUSE OF RIGHTS**

The prohibition on abuse of rights,<sup>122</sup> exists as a general principle of law.<sup>123</sup> A right abused has no international legal effects.<sup>124</sup> An unjustified exercise of a right to avoid rule of law establishes abuse of right.<sup>125</sup>

Remisia's cobalt mines were discovered as far back as 1989.<sup>126</sup> The option to obtain Remisian nationality via investment has existed since 2008.<sup>127</sup> However, Saki Shaw only reached out to Remisia in November 2014.<sup>128</sup> This was within 7 months of realising that she might be incarcerated in Molvania for tax evasion and money laundering. Within a year, both parties established the LRC; Ms. Shaw invested €500,000 to acquire Remisian nationality and her company committed €3,000,000 to the Joint Venture.<sup>129</sup> Since obtaining Remisian

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<sup>120</sup> *Naomi Russell (USA) v Mexico* (1931) 4 RIAA 805, 905.

<sup>121</sup> European Commission, 'Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for "selling" EU citizenship' (European Commission, 2020); Financial Action Task Force, 'Misuse of Citizenship and Residency by Investment Programmes' (2023) <<https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Misuse-CBI-RBI-Programmes.pdf.coredownload.pdf>> accessed 3 January 2024.

<sup>122</sup> Bin Cheng, *General Principles of Law as applied by International Courts and Tribunals* (Stevens and Sons 1953) 121.

<sup>123</sup> *United States—Import Prohibition of Certain Shrimp and Shrimp Products* (12 October 1998) WT/DS58/AB/R para 158.

<sup>124</sup> Robert Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 *Harvard International Law Journal* 1, 20.

<sup>125</sup> Cheng (n 122) 123; *ibid* 21; James Crawford, *Brownlie's Principles of International Law* (9th edn, OUP 2019) 502.

<sup>126</sup> *Compromis* [9].

<sup>127</sup> *Compromis* [11].

<sup>128</sup> *Compromis* [16].

<sup>129</sup> *Compromis* [17]-[20].

nationality, Ms. Shaw has never returned to Molvania, frustrating the subpoena and the arrest warrant. In facilitating this, Remisia's conferral of nationality amounts to abuse of rights, lacking international effects.

**B. IN ANY EVENT, ANTRANO HAS NOT VIOLATED ITS OBLIGATIONS UNDER ARTICLE 36 OF THE VCCR**

In any event, Antrano's denial of consular access to Remisia does not breach its obligations under Article 36, as (1.) Article 36(2) of the VCCR permits Antrano to refrain from recognising 'purchased nationality' and in any event, (2.) the obligation to provide consular access extended only to the state of dominant nationality, Molvania.

**1. ARTICLE 36(2) OF THE VCCR PERMITS NON-RECOGNITION OF PURCHASED NATIONALITY FOR GRANTING CONSULAR ACCESS**

Under Article 36(2) of the VCCR, exercise of rights conferred by Article 36(1) is subject to domestic legislation, unless the purpose underlying these rights is defeated. Antrano's refusal to grant Remisia consular access is legitimate as (a) non-recognition of Saki Shaw's purchased nationality is valid under international law, and (b) this did not defeat the purpose underlying Article 36(1) rights as Molvania continued to be granted consular access.

**a) NON-RECOGNITION OF MS. SHAW'S PURCHASED NATIONALITY IS VALID UNDER INTERNATIONAL LAW**

This Court is only competent to review Antrano's application of its domestic law to Ms. Shaw, a dual national, and not its application, generally.<sup>130</sup>

The customary obligation to recognise a 'validly conferred' nationality does not extend to recognising the legal effects of all nationalities held by a person.<sup>131</sup> States are only limited by an obligation to avoid statelessness.<sup>132</sup> As Antrano has given effect to her Molvanian nationality, its non-recognition of Ms. Shaw's Remisian nationality does not violate international law.

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<sup>130</sup> *Interpretation of the Statute of the Memel Territory* (1932) PCIJ Ser A/B No 49, 294, 336.

<sup>131</sup> 'Nationality including Statelessness' (1954) II Yearbook ILC 88; Hague Convention art 5.

<sup>132</sup> Text to n 37.

**b) THE PURPOSE UNDERLYING ARTICLE 36(1) WAS NOT DEFEATED**

While rights under Article 36(1) are created for both, the State, and the individual concerned,<sup>133</sup> the *travaux préparatoires* of the VCCR establishes that the purpose of such rights is the assistance of individuals present on foreign soil.<sup>134</sup> In extradition proceedings, the consul has a limited, facilitative role in ensuring that the procedure followed is regular, and efficient.<sup>135</sup> The grant of Molvanian consular access, was sufficient to discharge this purpose.

**2. *IN ANY EVENT, ANTRANO WAS ONLY OBLIGATED TO GRANT CONSULAR ACCESS TO MOLVANIA***

**a) THE TEST OF DOMINANT NATIONALITY IS APPLICABLE TO THE PRESENT CASE**

*i. The dominant nationality test generally extends to consular access*

The dominant nationality test applies to diplomatic protection,<sup>136</sup> thereby extending to consular access, as consular access is a form of diplomatic protection.<sup>137</sup>

In any event, the test applies as customary international law,<sup>138</sup> to those treaty rights which are contingent upon nationality.<sup>139</sup> Article 36 of the VCCR is one such right. Since the VCCR is silent on the rules governing the application of Article 36 to dual nationals,<sup>140</sup> and does not operate as *lex specialis* for matters not explicitly governed by the convention,<sup>141</sup> the dominant nationality test applies to resolve matters of nationality arising under Article 36.

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<sup>133</sup> *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466, para 77; *Avena and Other Mexican Nationals (Mexico v United States of America)* (Judgment) [2004] ICJ Rep 12, 35–36; *Jadhav (India v Pakistan)* (Merits) (Separate Opinion of Judge Cañçado Trindade) 2019 ICJ Rep 418, para 37.

<sup>134</sup> United Nations Conference on Consular Relations, Official Records, vol. I, UN Doc. A/Conf.25/16, paras 36, 50 and 58.

<sup>135</sup> Luke T Lee and John Quigley, *Consular Law and Practice* (3rd edn, OUP 2008) 279; John Quigley, William J. Aceves and S. Adele Shank, *The Law of Consular Access: A Documentary Guide* (Routledge 2010) 6.

<sup>136</sup> *Serafín García Armas v Bolivia* (Jurisdiction) PCA Case No. 2013-3, para 167.

<sup>137</sup> Forcese (n 116) 374; Mohsen Aghahosseini, *Claims of Dual Nationals and the Development of Customary International Law* (Nijhoff Brill 2007) 83.

<sup>138</sup> *Mergé Case—Decision No. 55 (United States v Italy)* (1955) 14 R.I.A.A. 236, 243; *Islamic Republic of Iran v. United States of America* (Advisory Opinion) IUSCT Case No A-18 (6 April 1984) (‘Case No A/18’).

<sup>139</sup> *Case No A/18* (n 138), para 40; Javier Garcia Olmedo, ‘Claims by Dual Nationals under Investment Treaties: Are Investors Entitled to Sue Their Own State?’ (2017) *Journal of International Dispute Settlement* 1.

<sup>140</sup> Lee (n 135) 125.

<sup>141</sup> VCCR, Preamble; *Jadhav* (Dissenting opinion of Judge Jillani)

*ii. The dominant nationality test specifically applies to Ms. Shaw*

Both Remisia and Molvania have sought to exercise their right to consular access to Ms. Shaw.<sup>142</sup> This is a parallel exercise of rights. In such cases, obligations are only owed to the state of dominant nationality,<sup>143</sup> to avoid the imposition of repetitive obligations on States.<sup>144</sup>

In any event, under Article 5 of the Hague Convention, i.e., “within a third State, a person having more than one nationality shall be treated as if he had only one”, the dominant nationality test extends to controversies between a claiming State (Remisia) and a third State (Molvania). This is affirmed by the jurisprudence of international tribunals.<sup>145</sup> The ILC Draft Articles on Diplomatic Protection, which reject this position, are not applicable to claims of consular access.<sup>146</sup>

**b) MOLVANIA IS THE STATE OF DOMINANT NATIONALITY**

‘Stronger factual ties’ is a comparative metric<sup>147</sup> judged on a subjective basis.<sup>148</sup> Having been born, raised, and spent 42 out of 52 years of her life in Molvania, Saki Shaw was its habitual resident, implying ‘stronger factual ties.’<sup>149</sup> Additionally, both her company, and its parent company are headquartered there.

In comparison, Ms. Shaw has visited Remisia only twice, bearing no social links, barring personal ties with its queen. Finally, she did not move to Remisia even after acquiring its nationality, choosing to continue living in Italy.<sup>150</sup> Taken together, this establishes Molvania to be the state of dominant nationality.

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<sup>142</sup> Compromis [45].

<sup>143</sup> *Barcelona Traction* (Separate Opinion of Judge Jessup) (n 5) 171.

<sup>144</sup> *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) 1949 ICJ Rep 174, 186.

<sup>145</sup> *Uiterwyk Corporation v Iran*, IUSCT Case No. 381 (Partial Award) (1991) para 33; *Saghi v Iran*, IUSCT Case No. 298 (Interlocutory Award) (1987) para 14; *Baron de Born v Yugoslav State*, 4 Ann. Dig. 277 (Yugoslavia-Hungary Mixed Arbitration Tribunal (1926)); *Barthez de Montfort v Treuhander Hauptverwaltung (France v Germany)* 3 ILR 279.

<sup>146</sup> ILC, ‘Draft Articles on Diplomatic Protection with Commentaries’ (2006) UN Doc A/61/10 art 1, para 9.

<sup>147</sup> *Flegenheimer Case - Decision No. 182 (United States v Italy)* (1958) 14 R.I.A.A. 327, 376; *Carrizosa v Colombia*, PCA Case No. 2018-56, Award (2021) para 184.

<sup>148</sup> *ibid.*

<sup>149</sup> *Nottebohm* (n 115).

<sup>150</sup> Compromis [16].

**C. IN ANY CASE, ANTRANO WAS NOT ESTOPPED TO TREAT MS. SHAW AS A REMISIAN NATIONAL**

Estoppel requires (a) the existence of clear, consistent and voluntary representation; (b) made by an agent authorised to speak for the State; and (c) legitimate reliance upon the representation inducing the State to suffer prejudice or convey benefit to the Representing State.<sup>151</sup> However, as (1.) admission on a Remisian passport is not ‘clear and voluntary representation’ recognising Ms. Shaw’s Remisian Nationality, and (2.) passport-stamping is a routine administrative act, estoppel has not been established here.

**1. ADMISSION ON REMISIAN PASSPORT IS NOT A CLEAR AND VOLUNTARY REPRESENTATION RECOGNISING MS. SHAW’S REMISIAN NATIONALITY**

**a) PASSPORT IS NOT ‘CONCLUSIVE AND UNEQUIVOCAL REPRESENTATION’ OF THE BEARER’S NATIONALITY**

Being travel documents, passports are not conclusive evidence of nationality.<sup>152</sup> In *Nottebohm*, the ICJ did not treat Nottebohm’s admission on a Liechtensteinian passport as establishing estoppel.<sup>153</sup> Similarly, Saki Shaw’s admission on an individually produced Remisian passport does not reflect a State-to-State representation recognising a bond of nationality. Thus, such admission does not create estoppel.<sup>154</sup>

**b) IN ANY CASE, THE STAMPING OF MS. SHAW’S REMISIAN PASSPORT WAS UNINTENTIONAL**

Only intentional representation creates estoppel.<sup>155</sup> Since 2017, Antrano has consistently, and publicly maintained that it does not recognise purchased nationality.<sup>156</sup> The revocation of Ms. Shaw’s admission on a Remisian passport within a matter of hours, proves that her admission was an unintentional error, precluding estoppel.

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<sup>151</sup> *North Sea Continental Shelf (Federal Republic of Germany/Denmark)* (Judgement) 1969 ICJ Rep 3 para 30.

<sup>152</sup> *Jadhav* (Declaration of Judge Sebutinde) (n 133) 499; *Aven v Costa Rica*, ICSID Case No. UNCT/15/3, (Award) (2018) para 219; *Saad v Tabet* 9 Clunet (1932) 968.

<sup>153</sup> *Nottebohm* (n 115).

<sup>154</sup> A. H. Feller, *The Mexican Claims Commission 1923-1934: A Study in Law and Procedure of International Tribunals* (The MacMillon Company 1935) 271; Flegenheimer (n 147).

<sup>155</sup> *Indo-Pakistan Western boundary (Rann of Kutch) between India and Pakistan* (Award) 27 RIAA 1, 78; *Oleg Vladimirovich Deripaska v. Montenegro*, PCA Case No 2017-07, Final Award, 15 October 2019, para 295.

<sup>156</sup> Clarifications [8].

## **2. ROUTINE ADMINISTRATIVE ACTS DO NOT CREATE ESTOPPEL AGAINST A STATE**

Routine, and incidental administrative acts do not create estoppel, as they cannot be attributed to be the official position of the State.<sup>157</sup> In *Gulf of Maine*,<sup>158</sup> Canada contended that the issuance of sea-bed exploration permits and a subsequent letter by a United States Official to his Canadian counterpart inquiring about location of Canadian oil and gas exploration permits in a disputed area within the Gulf, estopped the US to recognise Canadian sovereignty over that area. The ICJ rejected this contention, holding that these were routine matters of internal administration which did not reflect the official position of the United States. Similarly, the stamping of Saki Shaw's Remisian passport by an immigration officer, was a routine administrative act, and does not create estoppel.

## **3. MS. SHAW WAS NOT ENTITLED TO RELY ON AN ERRONEOUS REPRESENTATION**

Antrano has maintained a clear legislative position of not recognising purchased nationality since 2017. This has been well publicised at all its ports.<sup>159</sup> Ms. Shaw, as the owner of a multi-national company with regional headquarters in Duniya, Antrano would have been familiar with the travel restrictions of Antrano. No estoppel is created when reliance is to one's own detriment when it is apparent that the inconsistent representation is not capable of suggesting a legally binding commitment.<sup>160</sup>

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<sup>157</sup> Crawford (n 125) 521; *Nottebohm* (n 115); *Flegenheimer* (n 147).

<sup>158</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Judgment) I.C.J. Reports 1984, p. 246.

<sup>159</sup> Clarification [8].

<sup>160</sup> *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, PCA Case No. 2011-03, (Award) (2015) para 458.

ISSUE IV: REMISIA VIOLATED INTERNATIONAL LAW BY DENYING ANTRANAN NATIONAL DR.  
TULOUS MALEX ENTRY AS REQUIRED BY RESOLUTION 99997

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Dr. Malex is an Antranan national, thus, (A.) Antrano has standing on the basis of diplomatic protection. Further, (B.) purported objections to the validity of Resolution 99997 are unfounded, and consequently, (C.) Remisia was obligated to permit the UNIMR entry. Furthermore, absence of visa does not preclude wrongfulness here, as (D.) the CPI obligated Remisia to facilitate the entry of UN Experts bearing valid UN Certificates. Finally, (E.) Remisia cannot place reliance on the doctrine of *persona non grata*.

**A. ANTRANO HAS STANDING AS IT IS ENTITLED TO EXERCISE DIPLOMATIC PROTECTION OVER DR. MALEX**

Antrano has a customary right to exercise diplomatic protection, as (1.) Dr. Malex has been caused personal injury by Remisia's denial of entry. Moreover, (2.) The United Nations's interests in the injury suffered by Dr. Malex does not prejudice Antrano's exercise of this independent right.

**1. DR. MALEX SUFFERED A PERSONAL INJURY THROUGH THE VIOLATION OF HIS RIGHT TO WORK**

The ICESCR confers Dr. Malex with the individual, human right to work.<sup>161</sup> This right is rooted in the dignity of the individual,<sup>162</sup> by fulfilling '*personal development*'.<sup>163</sup> By denying Dr. Malex entry, Remisia inhibits him from carrying out his professional responsibilities,<sup>164</sup> violating this right. Such human rights violations are a recognised form of personal injury,<sup>165</sup> for which Antrano is entitled to exercise diplomatic protection.

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<sup>161</sup> ICESCR, art. 6; Angelika Nussberger, 'Work, Right to, International Protection', Max Planck Encyclopedia of Public International Law (2007).

<sup>162</sup> UNGA Third Committee (13 December 1956) A/C.3/SR.709,142 (USSR) para 4.

<sup>163</sup> Declaration on Social Progress and Development, UNGA Res. 2542 (XXIV) (11 December 1969) art 6(2); ILO Convention Concerning Employment Promotion and Protection against Unemployment (adopted 21 June 1988, entered into force 17 October) 1654 UNTS 67.

<sup>164</sup> Compromis [59].

<sup>165</sup> *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (Judgement) [2010] ICJ Rep 639 paras 43-48.

## **2. *THE UNITED NATIONS' INTERESTS IN DR. MALEX'S INJURY DO NOT PREJUDICE ANTRANO'S EXERCISE OF DIPLOMATIC PROTECTION***

Antrano's reservation to the CPI stipulates that section 23 does not prejudice Antrano's right to diplomatic protection. Since, no objections have been made to the reservation since it was filed, it has been tacitly accepted.<sup>166</sup> Therefore, no purported interests of the United Nations prejudice Antrano's right to exercise diplomatic protection in the present case.

### **B. OBJECTIONS TO THE VALIDITY OF RESOLUTION 99997 ARE UNFOUNDED**

#### **1. *THE ICJ IS NOT COMPETENT TO REVIEW THE VALIDITY OF UNSC RESOLUTIONS***

Neither the UN Charter, nor the ICJ Statute permit the Court to review the functioning of the UNSC.<sup>167</sup> This derives from the status of both institutions as principal UN organs, operating independently on a horizontal plane.<sup>168</sup> The concurrent competence of the ICJ and the UNSC in dealing with a matter,<sup>169</sup> further demonstrates that neither defers to the other.<sup>170</sup>

Furthermore, the competence of the ICJ *ratione personae* precludes such a power of judicial review. Only States can be parties to contentious proceedings before the ICJ.<sup>171</sup> To afford it the power of review over UNSC actions, would amount to allowing an adjudication of the Council's conduct, without providing it an opportunity to be heard.<sup>172</sup>

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<sup>166</sup> Guide to Reservations (n 78), s 2(8)(2); Clarifications [11].

<sup>167</sup> *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* (Preliminary Objections) [1998] ICJ Rep 9 (Dissenting Opinion of Judge Schwebel).

<sup>168</sup> Michael Mathieson, 'ICJ Review of Security Council Decisions' (2004) 36 *George Washington International Law Review* 615, 619.

<sup>169</sup> *Concerning United States Diplomatic and Consular Staff in Tehran (United States v Iran)* (Judgment) [1980] ICJ Rep 3; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)* (Jurisdiction) [1984] ICJ Rep 392.

<sup>170</sup> *Nuclear Tests Case (Australia v France) (Judgment)* [1974] ICJ Rep 253.

<sup>171</sup> ICJ Statute, art 34.

<sup>172</sup> Karl Doehring, 'Unlawful Resolutions of the Security Council and their Legal Consequences' (1997) 1 *UN Yearbook International Law* 91.

## 2. *IN ANY CASE, RESOLUTION 9997 IS VALID*

### a) RESOLUTION 9997 DOES NOT INTERFERE WITH MATTERS ESSENTIALLY WITHIN REMISIA'S DOMESTIC JURISDICTION

Article 2(7) of the UN Charter precludes the UNSC from interfering into matters essentially within the domestic jurisdiction of a State. However, the scope of the *domaine reserve* has reduced considerably.<sup>173</sup> State practice demonstrates that the existence of statelessness is of concern to the international community as a whole.<sup>174</sup> Therefore, the regulation of nationality no longer falls under the *domaine reserve*,<sup>175</sup> especially when it leads to statelessness.

### b) THERE EXISTS A 'SITUATION' WITHIN THE MEANING OF ARTICLE 34 OF THE UN CHARTER

Art. 34 permits the UNSC to investigate the following scenarios- 'dispute', 'situation which might lead to international friction' or, 'situation which might give rise to any dispute.' Even *uncertainty* over whether a scenario is actually endangering peace and security is sufficient to trigger the power to investigate under Art. 34,<sup>176</sup> provided it is of an 'international character'.<sup>177</sup> The statelessness and subsequent expulsion of the Sterren Forty is likely to place substantial burdens on Remisia's neighbouring states, thereby being a source of regional instability, having the potential to become a threat to international peace and security,<sup>178</sup> satisfying the threshold for a 'situation'.<sup>179</sup>

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<sup>173</sup> Benedetto Conforti and Carlo Focarelli, *The Law and Practice of the United Nations*, vol 57 (5th edn, Martinus Nijhoff 2016) 140.

<sup>174</sup> Text to n 42.

<sup>175</sup> K S Zeigler, *Domain Reserve* (Max Planck Encyclopedia of Public International Law, 2013) para 5.

<sup>176</sup> EL Kerley, 'The Powers of Investigation of the United Nations Security Council' (1961) 55 *American Journal of International Law* 892, 904.

<sup>177</sup> Christian Tomuschat (ed), *The Charter of the United Nations: A Commentary* (OUP 2012) 181.

<sup>178</sup> UNHCR, *The State of the World's Refugees: A Humanitarian Agenda* (1997).

<sup>179</sup> Hans Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems: with Supplement* (Stevens & Sons 1951) 388.

c) POWER TO INVESTIGATE INCLUDES THE AUTHORITY TO SANCTION THE ACTIVITIES OF UNIMR

‘Investigation’ has evolved with time,<sup>180</sup> to include the ascertainment of facts and occurrences along with their causes.<sup>181</sup> Calling for reports, hearing witnesses, and dispatching a commission for inspection are acceptable means of investigation.<sup>182</sup> The mandate of UNIMR, which includes establishment and operation of a fact-finding system along with conduction of in-person interviews, falls within the scope of this power.

C. RESOLUTION 9997 CREATES A BINDING OBLIGATION UPON REMISIA TO PERMIT THE UNIMR ENTRY

1. *THE INDEPENDENT RIGHT TO INVESTIGATE UNDER ARTICLE 34 CREATES A CORRESPONDING OBLIGATION TO PERMIT THE INVESTIGATION ENTRY*

Article 34 stipulates that the UNSC ‘may’ investigate’ a dispute, when it meets certain threshold requirements. While the drafting history originally used the term ‘should be empowered’,<sup>183</sup> even the term ‘may’, in its ordinary meaning confers an independent, permissive *right* on the UNSC to order an investigation.<sup>184</sup> Since Remisia is a State party to the UN Charter, the principle of opposability applies,<sup>185</sup> imposing a corresponding obligation upon Remisia to comply with a valid exercise of such right. State practice confirms this.<sup>186</sup> Since, Resolution 9997 is valid, establishing a binding obligation upon Remisia to permit entry to the investigation.

2. *IN ANY CASE, RESOLUTION 9997 AMOUNTS TO A DECISION WITHIN THE MEANING OF ARTICLE 25 OF THE UN CHARTER*

Article 25 establishes that members of the United Nations are *bound* to accept and carry out the decisions of the UNSC, if taken in accordance with article 25 of the UN Charter.

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<sup>180</sup> Conforti (n 169).

<sup>181</sup> UNSC, The Greek Frontier (1946) UN Doc S/RES/15.

<sup>182</sup> Four-Power Statement (7 June 1945) UNCIO XI, 711–14.

<sup>183</sup> Dumbarton Oaks Proposal for A General International Organization (1945) ch VIII sec A para 1 Doc. No. 1, C/1,3.

<sup>184</sup> Bruno Simma (ed), *The Charter of the United Nations: A Commentary* (OUP 2012) 1097.

<sup>185</sup> Eirik Bjorge, ‘Opposability and Non-Opposability in International Law’ (2021) *British Yearbook of International Law* 1, 17.

<sup>186</sup> UNSCOR, Statement of the representative of France, 168th Meeting, (1947) 1552-1553.

Nothing in Article 25 limits its application only to Chapter VII, implying that it is of general application.<sup>187</sup> This is affirmed by the drafting history of the UN Charter, where a Belgian proposal to insert an express clause limiting the application of Article 25 to certain parts of the Charter, was rejected.<sup>188</sup> Additional support comes from state practice<sup>189</sup> which confirms the application of Article 25 to Article 34. Finally, the usage of terms like *decides* instead of *recommends* or *calls upon*, as in Resolution 9997,<sup>190</sup> indicates a scrupulous intention to create a binding obligation.<sup>191</sup>

**D. ANTRANO HAD AN OBLIGATION TO FACILITATE DR. MALEX’S ENTRY AS AN ‘EXPERT ON MISSION’ WITH A VALID UN CERTIFICATE**

Under section 22 of the CPI, experts on mission are accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their mission.<sup>192</sup> Dr. Malex is an ‘expert on mission’ entrusted with the UNIMR<sup>193</sup> and thereby holds privileges and immunities necessary for his work.<sup>194</sup>

Dr. Malex holds a UN certificate,<sup>195</sup> entitling him to unhindered movement for effective and independent discharge of their functions.<sup>196</sup> The drafting history of the convention,<sup>197</sup> establishes that States parties are obligated to refrain from imposing immigration requirements

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<sup>187</sup> Cassesse (ed), *A General Assessment of United Nations Peace-keeping’ in United Nations Peace-Keeping: Legal Essays* (1978); Dumbarton Oaks Doc. No. 555, III/1/27, 11 UNCIO Docs 380-381.

<sup>188</sup> UNSCOR (1947) 2nd Sess, 91 meeting 2nd Session U.N. Doc. S/PV. 91, 45.

<sup>189</sup> Greek Frontier (Statements made by representatives of Australia, Belgium, Brazil, China, Colombia France, Syria and UK) (n 177). UNSCOR, 169th and 170th meetings, at 14, UN Doc. S/PV.170 (29 July 1947).

<sup>190</sup> Compromis [Annex A].

<sup>191</sup> L M Goodrich, E Hambro and A P Simons, *Charter of the United Nations, Commentary and Documents* (3 edn, CUP 1969) 278.

<sup>192</sup> CPI s 22.

<sup>193</sup>Compromis [51].

<sup>194</sup>*Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Mazilu)* (Written Statement Submitted on Behalf of the Secretary General of the United Nations) [1989] para 52; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (Advisory Opinion) [1999] ICJ Rep 62, 85.

<sup>195</sup> Compromis [55].

<sup>196</sup> Letter from the Secretary-General of the United Nations to the Permanent Representative of a Member State (6 March 1963).

<sup>197</sup> UNGA Sixth Committee (1st Session) ‘Report of the Preparatory Commission of the United Nations’ (London 1946) PC/20; UNGA Sixth Committee (1st Session) ‘Second Report of the Sub-Committee on Privileges and Immunities (5 February 1946) UN-Doc. A/C.6/3.

that impede personnel from taking up their post of duty.<sup>198</sup> Issuance of visa should be a mere formality in such cases.<sup>199</sup> Not only did Remisia prevent Dr. Malex's entry on grounds of absence of visa, it did so by making it *impossible* for Dr. Malex to avail one, breaching its obligation to facilitate entry.

**E. REMISIA CANNOT PLACE RELIANCE ON THE DOCTRINE OF PERSONA NON GRATA**

The doctrine of *persona non grata*, which allows the receiving State to preclude the entry of diplomatic personnel into its territory,<sup>200</sup> exclusively applies in the context of bilateral relations between States, having no application to UN personnel. This is because UN personnel cannot be accredited to a *State*,<sup>201</sup> as they serve as impartial and independent officers, only accountable to the UN.<sup>202</sup> The UN itself, whose practice has been previously relied upon by the ICJ in determining the character of UN experts,<sup>203</sup> has also consistently maintained that its personnel are not attributable to any state. Thus, the doctrine has no application here.

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<sup>198</sup> UNGA 'Report of the Secretary-General on Personnel Policy' 7th Session UN Doc A/2364.

<sup>199</sup> UN Office of Legal Affairs, 'Interoffice Memorandum to the Under-Secretary-General for Administration and Management' (2 November 1972); Excerpt of a report of the Secretary-General (UN Doc. E/4994, Annex III) reprinted in (1971) UNJYB 187, 191.

<sup>200</sup> VCDR art. 9.

<sup>201</sup> The duties of UN staff are of exclusively international character and entail. upholding of the highest standards of efficiency, competence, and efficiency. UN Charter, art 100 and 101.

<sup>202</sup> UN Office of Legal Affairs, 'Aide-Mémoire to the Permanent Representatives of various Member States concerning the status of military observers serving with a United Nations mission' (1964) UNJYB 261 26.

<sup>203</sup> Mazilu (n 194).

## PRAYER FOR RELIEF

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For the foregoing reasons, the Republic of Antrano, the Applicant, respectfully prays that this Honourable Court:

- I. **DECLARE** that Antrano has standing to bring the dispute concerning Remisia's deprivation of nationality of its citizens before the Court;
- II. **DECLARE** that Remisia's deprivation of nationality of the "Sterren Forty", rendering them stateless, violated international law;
- III. **DECLARE** that Antrano did not violate international law by refusing to provide Remisia consular access to Ms. Saki Shaw during her time as a prisoner in Antrano; and
- IV. **DECLARE** that Remisia violated international law by denying Antranan national, Dr. Tulous Malex, entry to Remisia as required by Security Council Resolution 99997.

*Respectfully submitted,*  
*Agents for the Republic of Antrano*