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

THE CASE CONCERNING THE STERREN FORTY



THE REPUBLIC OF ANTRANO

APPLICANT

v.

THE KINGDOM OF REMISIA

RESPONDENT

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

MEMORIAL FOR THE RESPONDENT

2024

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TREATIES AND CONVENTIONS

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Convention on Certain Questions Relating to the Conflict of Nationality Law (adopted 12 April 1930, came into force 1 July 1937) 179 LNTS 89.....	2, 19
Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175	7, 9
European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS 166	19
Vienna Convention on Consular Relations (adopted 24 April 1963, entered into force 19 March 1967) 596 UNTS 261	18, 19, 23
Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95	23
Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331	7, 19

UN RESOLUTIONS AND INTERNATIONAL DOCUMENTS

‘Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission’ (18 June 2002) UN-Doc. ST/SGB/2002/9.....	28
‘United Nations Conference on Consular Relations: Official Records’ (1963) U.N. Doc. A/Conf.25/6, U.N. Sales. No. 63.X.2	19
Council of European Union, ‘Independent International Fact-Finding Mission on the Conflict in Georgia’ (Volume II, September 2009).....	16
HRCComm, ‘General Comment 27’ (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 .14	
HRCComm, ‘General Comment 34’ (12 September 2011) CCPR/C/GC/34	12
ILC, ‘Comments by Governments on the Draft Convention on the Elimination of Future Statelessness and on the Draft Convention on the Reduction of Future Statelessness’ (1954) UN Doc A/CN.4/82 and Add. 1-8	1

ILC, ‘Draft Article on Responsibility of States for Internationally Wrongful Acts’ (2001) U.N. Doc. A/56/10.....	5, 16, 19
ILC, ‘Draft Articles on Consular Relations, with Commentaries’ (1961) II International Law Commission Yearbook of International Law.....	19
ILC, ‘Draft articles on Expulsion’ (2001) UN Doc A/69/10.....	9, 13
ILC, ‘Report of the International Law Commission on the work of its Fifty-Second Session’ (2000) UN Doc A/CN.4/513.....	5
ILC, ‘The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat’ (1967) UN Doc A/CN.4/L.118 and Add.1 and 2.....	26
ILC, ‘The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat’ (1967) UN Doc A/CN.4/L.118 and Add.1 and 2.....	27
ILC, ‘Third report on State responsibility, by Mr. James Crawford, Special Rapporteur’ (2000) UN Doc A/CN.4/507 and Add 1–4.....	2
OSCE and Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’.....	10
Sec A, par. 1, Ch. VIII, Dumbarton Oaks Proposal, Doc No 274, III/2/6, C/1, 3 UNCIO Docs 13 (1945), 107, 115.....	26
Third report of the Special Rapporteur, Sir Michael Wood (67th session of the ILC (2015)). A/CN.4/682.....	28
UN Department of Operational Support ‘Standard Operating Procedure for the Issuance of United Nations Travel Documents’ DOS/2021.07 (2021).....	26
UN Human Rights Special Procedures, ‘The human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022).....	10
UN Office of Legal Affairs, ‘Memorandum to the Executive Director of the United Nations Institute for Training and Research’ (1990) UN Juridical Yearbook 305.....	26
UNGA ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc A/HRC/13/34 (14 December 2009).....	10
UNGA, ‘Fourth report on State responsibility by Mr. James Crawford, Special Rapporteur’ (2 April 2001) UN Doc A/CN.4/517.....	5
United Nations Conference on the Elimination or Reduction of Future Statelessness, ‘Addendum to Comments by Governments on the revised Draft Convention on the	

Elimination of Future Statelessness and the revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its sixth session' (Geneva 1959 and New York 1961) UN Doc A/CONF.9/5/Add.3, 5.....	2
United Nations High Commission for Refugees 'Expert Meeting - The Concept of Stateless Persons under International Law' (Prato 2010).....	16
United Nations Human Rights Committee, 'General Comment 24' (4 November 1994) CCPR/C/21/Rev.1/Add.6.....	3
United Nations Human Rights Committee, 'General Comment 31' (29 March 2004) CCPR/C/21/Rev.1/Add.13.....	4
United Nations Human Rights Committee, 'General Comment 37' (17 September 2020) UN Doc CCPR/C/GC/37.....	10, 11
United Nations Human Rights Committee, 'Human rights and arbitrary deprivation of nationality' (19 December 2013) A/HRC/25/28.....	9, 10
United Nations Human Rights Council, 'Human Rights and arbitrary deprivation of Nationality', UN Doc A/HRC/RES/13/2 (24 March 2010).....	10
United Nations Human Rights Council, 'Human rights and arbitrary deprivation of nationality', UN Doc A/HRC/RES/20/5 (16 July 2012).....	10
United Nations Office on Drugs and Crime 'Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems' (June, 2013) UN Doc A/67/458.....	20
United Nations Repertory of Practice of United Nations Organs, 'Extracts relating to Articles 104 and 105 of the Charter of the United Nations' Supplement No. 3 (1959–1966).....	27
UNSC Res 1193 (28 August 1998) UN Doc S/RES/1193.....	25
UNSC Res 1336 (23 January 2001) UN Doc S/RES/1336.....	25
UNSC Res 1405 (19 April 2002) UN Doc S/RES/1405.....	25
UNSCOR, 169th and 170th meetings, art 14, UN Doc. S/PV.170 (29 July 1947).....	25

ICJ AND PCIJ CASES AND ADVISORY OPINIONS

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<i>Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations</i> (Advisory Opinion) [1989] ICJ Rep 177.....	23

<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)</i> (Preliminary Objection) [2022] ICJ Rep 477 (Dissenting Opinion of Judge Xue).....	6
<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)</i> (Provisional Measures) [2020] ICJ Rep 3 (Declaration of Judge Kress)	6
<i>Arbitral Award of 3 October 1899 (Guyana v Venezuela)</i> (Preliminary Objections) [2023] ICJ Rep 1	6
<i>Avena and Other Mexican Nationals (Mexico v. United States of America)</i> [2004] ICJ Rep 12	15, 19
<i>Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)</i> (New Application: 1962) (Preliminary Objections) [1970] ICJ Rep 3.....	3
<i>Bosnia and Herzegovina v Serbia and Montenegro</i> (n 1) (Order) [1993] ICJ Rep 325 (Separate Opinion of Judge Lauterpacht)	24
<i>Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)</i> (Merits) (Sep Op of Vice President Alfaro) 162 ICJ Rep 6.....	20
<i>Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)</i> (Judgement) [2008] ICJ Rep 177	7
<i>Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America)</i> (Provisional Measures)[1998] ICJ Rep 248.....	15
<i>Corfu Channel</i> (Judgment) [1948] ICJ Rep 15.....	25
<i>East Timor (Portugal v. Australia)</i> (Judgment) [1995] ICJ Rep 90	6
<i>Free Zones of Upper Savoy and the District of Gex</i> (Judgement) (1932) PCIJ Series A/B No. 46.....	17
<i>Gabcikovo-Nagymaros Project (Hungary/Slovakia)</i> (Judgment) [1997] ICJ Rep 7	7
<i>Jadhav (India v. Pakistan)</i> [2019] ICJ Rep 418	15, 18
<i>Jadhav (India v. Pakistan)</i> [2019] ICJ Rep 418 (Declaration of Judge Robinson)	20
<i>Jadhav (India v. Pakistan)</i> [2019] ICJ Rep 418 (n 96) (Declaration of Judge Sebutinde)	21
<i>Jadhav (India v. Pakistan)</i> [2019] ICJ Rep 418 (Separate Opinion of Judge Cañado Trindade)	20
<i>LaGrand (Germany v. United States of America)</i> [2001] ICJ Rep 466.....	15, 16, 19
<i>Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)</i> (Judgement) 1990 ICJ Rep 92.....	20

<i>Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory</i> (Advisory Opinion) [2004] ICJ Rep 136	24
<i>Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921</i> (Great Britain v France) (Advisory Opinion) [1923] ICJ Rep 271	15, 24
<i>Nottebohm Case (Liechtenstein v Guatemala)</i> (Second Phase) [1955] ICJ Rep 4	16, 17, 19
<i>Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)</i> (Judgement) 2018 ICJ Rep 507	21
Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v United Kingdom) (Order) [1992] ICJ Rep 3 (Dissenting Opinion of Judge Bedjaoui).....	24
<i>Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the</i> <i>Aerial Incident at Lockerbie (Libya v US)</i> (Preliminary Objections) [1992] ICJ Rep 114 .	24
<i>Questions of Interpretation and Application of the 1971 Montreal Convention arising from the</i> <i>Aerial Incident at Lockerbie (Libyan v United Kingdom)</i> (Order) [1992] ICJ Rep 3 (Separate Opinion of Judge Shahabuddeen)	24
<i>Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)</i> (Judgement) [2012] ICJ Rep 422 (Dissenting Opinion of Judge Xue).....	1
Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174 (Dissenting Opinion of Judge Hackworth).....	28
Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174 (Opinion of Judge Azevedo)	28
<i>Reservations to the Genocide Convention</i> (Advisory Opinion) [1951] ICJ Rep 15	1, 2
<i>South West Africa (Ethiopia v South Africa)</i> (1966) ICJ Rep 6.....	6

REGIONAL COURT JUDGMENTS

<i>Al-Jedda v UK</i> App no 27021/08 (ECHR 2011)	24
<i>CR v. United Kingdom</i> App no 20190/92 (ECHR, 27 June 1994)	11
<i>Ekrem Can and Others v. Turkey</i> App no 10613/10 (ECHR, 2022)	12
<i>Éva Molnár v. Hungary</i> App no 10346/05 (ECHR, 2008)	12
<i>Handyside v. The United Kingdom</i> 5493/72 (ECHR 1976).....	12
Joined Cases C-584/10P, C-593/10P, and C-595/10P, <i>Commission and Others v Kadi (Kadi II)</i> [2013] ECJ	23, 24

Judgement of the Court of 7 July 1992, <i>Micheletti v Delegación del Gobierno en Cantabria</i> , C-369/90, ECLI:EU:C:1992:295	24
<i>Karpyuk and Others v Ukraine</i> App nos 30582/04 and 32152/04 (ECHR 1976)	12
<i>Mexico v. United States of America</i> , Advisory Opinion OC-16/99, IACtHR Series A No 16 (1 October 1999) 4 (‘Advisory Opinion 16’)	15, 17, 20
<i>Nada v Switzerland</i> , App no 10593/08 (ECHR Grand Chamber 2012)	24
<i>Primov and Others v. Russia</i> App no 17391/06 (ECHR, 2014)	12
<i>Rai and Evans v the United Kingdom</i> App nos 26258/07 and 26255/07 (ECHR, 17 November 2009)	12
<i>Salduz v. Turkey</i> (2008), App no 36391/02 (ECHR, 2008)	20

INTERNATIONAL TRIBUNAL AWARDS

<i>Belle M. Hendry (United States) v. United Mexican States</i> 6 RIAA	21
<i>Carrizosa v Colombia</i> , PCA Case No. 2018-56, Award (2021)	18
<i>Case of Enrique Rau</i> , Decision No. 51 (German-Mexican Claims Commission)	17
<i>Feldman Karpa v Mexico</i> (Jurisdiction) ICSID Case No ARB(AF)/99/1	17
<i>Flegenheimer Case - Decision No. 182 (United States v. Italy)</i> (1958) 14 R.I.A.A. 327 .	16, 18
<i>Islamic Republic of Iran v. United States of America</i> , IUSCT Case No. A-18, Decision (1984)	18
<i>Loss of Property in Ethiopia Owned by Non-Residents - Eritrea's Claim 24</i> (Partial Award) (2005) 26 RIAA 429	18
<i>Mergé Case—Decision No. 55 (United States v. Italy)</i> (1955) 14 R.I.A.A. 236	16, 18
<i>Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan</i> , (Jurisdiction) SCC Case No. 064/2008, (2 September 2009)	21
<i>Nasser Esphahanian v. Bank Tejarat</i> , IUSCT Case No. 157, Final Award (1983)	19
<i>Salem Case (Egypt, USA)</i> (Award) (1932) 2 RIAA 1161	18
<i>The Prosecutor v Dusko Tadic</i> IT-94-I-A (ICTY, 1999)	25
<i>Vereano Case-Decision No. 172 (United States v. Italy)</i> (1957) 14 RIAA 321	18

DOMESTIC MATERIALS

Case of F & T, German Constitutional Court, 2 BvR 2115/01, Decision of 9 Sept. 2006	20
Code of Belgian Nationality 2012	8
Constitution of the Commonwealth of Dominica	4

Ireland Nationality and Citizenship Act 1956	8
Irish Nationality and Citizenship Act 1956	4
Jamaica Nationality Act 1962	4, 8
<i>Joyce</i> [1946] A.C 347	21
Nicaragua Nationality Law, Law number 149	4
Pakistan Citizenship Act 1951	4
Republic of Lithuania Law on Citizenship 2010	8
<i>Sadat v. Mertes</i> , 464 F. Supp. 1311	19
<i>Tan Seng Kiah v. Queen</i> , (2001) Northern Territories Court of Criminal Appeal 1, 160 Federal Law Reports 26	20
The Bahamas Nationality Act	4
The Citizenship Act 1951	4

TREATISES AND BOOKS

A. H. Feller, <i>The Mexican Claims Commission 1923-1934: A Study in Law and Procedure of International Tribunals</i> (The MacMillon Company 1935)	17
Anna Peters, <i>Beyond Human Rights</i> (Cambridge University Press 2016), Chapter 11 'Individual Rights in Consular Law'	20
August Reinisch, <i>The Convention on the Privileges and Immunities of the United Nations and its Specialised Agencies: A Commentary</i> (Oxford University Press 2016)	23
Bowett, <i>The Law of International Organisations</i> (Stevens 1984)	25
Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus and Nikolai Wessendorf (eds), <i>The Charter of the United Nations: A Commentary</i> (3rd edn, OUP 2012 vol 1)	25
Cornelia Hagedorn, 'Passport' in Rüdiger Wolfrum (ed) 'Max Planck Encyclopedias of International Law' (Oxford University Press 2008)	21
Farid Ahmadov, 'The Right of <i>Actio Popularis</i> before International Courts and Tribunals', in Malgosia Fitzmaurice and Sarah Singer (eds) <i>Queen Mary Studies in International Law Vol.31</i> (Nijhoff 2018).....	6
Haro van Panhuys, 'Section X.II: The Waning Significance of Nationality in Rules Concerning the Protection of Human Rights', <i>The Role of Nationality in International Law</i> (AW Sythoff 1959)	4

Ineta Ziemele, ‘State Succession and Issues of Nationality’, in Laura Van Waas and Alice Edwards (eds), <i>Nationality and Statelessness under International law</i> (Cambridge University Press 2014).....	11
Jean d'Aspremont, ‘Persona non grata’ Max Planck Encyclopaedia of Public International Law (OUP 2021) para.....	27
Karl Doehring, ‘Unlawful Resolutions of the Security Council and their Legal Consequences’ (1997) 1 Max Planck Yearbook of UN International Law 91	23
L. M. Goodrich, E. Hambro and A. P. Simons, <i>Charter of the United Nations, Commentary and Documents</i> (3rd edn, Columbia University Press, New York 196).....	25
Laura Van Waas, <i>Nationality Matters</i> (Intersentia 2008).....	4
Malcolm Shaw, <i>International Law</i> (Cambridge University Press 1991)	25
Michael Schoiswohl, <i>Commentary on Art VII Sections 24–28 General Convention</i>	26
Nehemiah Robinson, <i>Convention relating to the Status of Stateless Persons: Its History and Interpretation</i> (Institute of Jewish Affairs 1960).....	13, 14
Paul Weis, <i>Nationality and Statelessness in International Law</i> (Stevens London 1956).passim	
Rosalyn Higgins, ‘A General Assessment of United Nations Peace-keeping’ in <i>United Nations Peace-Keeping: Legal Essays</i> (ed Cassese, 1978) 1.....	25
Samantha Besson, ‘Sovereignty’, Max Planck Encyclopaedia of Public International Law (2011).....	26
Thomas Giegerich, <i>The Statute of the International Court of Justice: A Commentary</i> (3rd edn, Andreas Zimmermann, Christian Tams, Karin Oellers-Frahm, Christian Tomuschat eds, Oxford University Press 2019) 205	25
Wolfgang Münch, ‘The UN Laissez Passer: Legal Reflections and Managerial Issues’ in U Fastenrath et al (eds), <i>From Bilateralism to Community Interest—Essays in Honour of Judge Bruno Simma</i> (Oxford University Press 2011)	27
Yuval Shany, <i>Questions of Jurisdiction and Admissibility before International Courts</i> (Cambridge University Press, 2015).....	5

JOURNAL ARTICLES

Akande, ‘The International Court of Justice and the Security Council: Is There Room for Judicial Control of the Political Organs of the UN’ (1997) 46 <i>International and Comparative Law Quarterly</i> 309	23
--	----

Cançado Trindade, ‘The Humanization of Consular Law: The Impact of Advisory Opinion No 16 (1999) of the Inter-American Court of Human Rights on International Case-law and Practice’ (2007) 6 Chinese Journal of International Law	20
Clive Perry, ‘The Duty to Recognise Foreign Nationality Law’ (1958) 22(1) Heidelberg Journal of International Law	19
D.W Bowett, 'Estoppel before International Tribunals and Its Relation to Acquiescence' (1957) 33 Britain Yearbook of International Law 176.....	21
Ernest L. Kerley, 'The Powers of Investigation of the United Nations Security Council' (4 October 1961) 55 The American Journal of International Law 892.....	25
Hutchinson, ‘The Material Scope of the Obligation under the United Nations Charter to Take Action to Settle International Disputes’ (1992) 14 Australian Year Book of International Law 1	24
Johannes M Chan, ‘The Right to a Nationality as a Human Right: the Current Trend towards its Recognition’ (1991) 12 Human Rights Law Journal 4	3
Josef Kunz, ‘The Nottebohm Judgement’ (1960) 54(3) The American Journal of International Law 536	16
Kawser Ahmed, ‘The Domestic Jurisdiction Clause in the United Nations Charter: A historical view’ (2006) 10 Singapore Yearbook of International Law 175	24
Michael Akehurst, 'Custom as a Source of International Law' (1976) 47 British Yearbook of International Law 1	28
Ralf Dahrendorf, ‘Citizenship and Beyond: The Social Dynamics of an Idea’ (1974) 41(4) Social Research 673	17
Robert Sloane, ‘Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality’ (2009) 50(1) Harvard International Law Journal 1	16
William Aceves, ‘Actio Popularis - The Class Action in International Law’ (2003) University of Chicago Legal Forum Article	6

OTHER AUTHORITIES

Amnesty International, ‘Iran 2022’ (<i>Amnesty International</i> , 2022)	27
CBS News, ‘Manila Is Mad At Claire Danes’ (CBS News, 1 October 1998).....	27
Harriet Sherwood, ‘Günter Grass barred from Israel over poem’ (The Guardian, 8 April 2012)	27

Institute on Statelessness and Inclusion, ‘ <i>Principles on Deprivation of Nationality as a National Security Measure</i> ’ (2020)	10
JURIST, ‘UN Mission to Darfur should be non-negotiable’ (JURIST, 14 February 2017)....	27
Kareem Fahim, ‘U.N. investigator awaiting permission to enter Saudi Consulate in probe of Khashoggi killing’ (Washington Post, 29 January 2019)	27
Moulid Hujale, ‘Somalia expels top UN official over ‘interference with internal affairs’’(<i>The Guardian</i> , 3 January 2019)	28
OHCHR, ‘UN human rights experts suspend Hungary visit after access denied’ (OHCHR, 15 November 2018)	27
Peter Spiro, ‘Nottebohm and ‘Genuine Link’: Anatomy of a Jurisprudential Illusion’ (2009) Investment Migration Working Papers IMC-RP 2019/1	16
Philip Bump, ‘How to be declared ‘persona non grata’ and get yourself kicked out of the United States’ (Washington Post, 29 December 2016)	27
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STATEMENT OF JURISDICTION

The Republic of Antrano (“Antrano”) and the Kingdom of Remisia (“Remisia”) appear before the International Court of Justice (“ICJ”) 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

- I. *Whether* Antrano has standing to bring the matter of the deprivation of nationality of the “Sterren Forty” to this Court.
- II. *Whether* Remisia violated international law when it deprived the “Sterren Forty” of their Remisian citizenship in accordance with the DCA.
- III. *Whether* Antrano violated international law when it denied Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano.
- IV. *Whether* Remisia violated international law by refusing to allow Dr. Malex to enter Remisia.

STATEMENT OF FACTS

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 reduction of 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. Antrano continues to play an important role in protecting the rights of the stateless by raising the said issue in international fora at every suitable opportunity. The Kingdom of Remisia (“Remisia”), a landlocked country situated 11,000 kilometres away from Antrano, is a constitutional monarchy. Queen Khasat, the reigning monarch, traces her lineage back to the first king of Remisia. The social fabric of Remisia is interwoven with deep veneration for the monarchy.

DISLOYALTY TO THE CROWN

As per the Remisian Constitution, secures reverence to the monarch. In similar vein, the Disrespect to the Crown Act (DCA) was passed in 1955, which penalises conduct which is defamatory, insulting, or threatening to the reigning monarch. Moreover, if such conduct is deemed disloyal to the Crown, deprivation of nationality may befall the guilty. The DCA, however, has been invoked fewer than a dozen times.

THE MINING PARTNERSHIP

Upon her accession to the throne in 2006, Queen Khasat promised Remisians that the nation would emerge as a leading economy and she would endeavour to attract foreign investment in critical industries. To this end, she forwarded the proposal of her friend Saki Shaw to the Prime Minister to establish a joint venture named Lithos-Remisia Cooperative (LRC). The Remisian Ministry of Mines granted permits to the LRC to begin cobalt mining which subsequently resulted in substantial employment and 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. Maintenance of a residence in Remisia is not required. Pursuant to this, the Naturalisation by Investment Programme (NIP) invited applications from high-net-worth individuals and advertised the perks of holding a Remisian nationality. Saki Shaw, born in Molvania in 1970, applied under the programme and was naturalised in June 2016. The programme proved extremely successful by generating a gross revenue tantamount to over 1.5 billion euros. This testified to the worldwide acceptance of the Remisian citizenship which allows visa-free travel to 120 countries, and to obtain consular and diplomatic assistance in 140 jurisdictions with Remisian embassy or consulate.

THE PROTESTS

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 to realise the promise made by Queen Khasat. In September 2019, certain students commenced conducting lectures and rallies as a sign of resistance to the LRC project. A group named *Isidre League of Student Activists (ILSA)* anonymously signed a manifesto calling for immediate cessation of mining activities. More permits were granted only after a due diligence review which ruled out concerns of threats to public health. 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 took various forms, ranging from display of slanderous placards and sloganeering which described the Queen's policy decisions as betrayal to the country. Demonstrators began blocking access to public roads to mining sites, eventually crippling the mining operations. Forty protestors were arrested at the gates of the Sterren Palace for forming a human chain around the building, blocking its entrances and exits. They were christened "the Sterren Forty".

TRIAL OF STERREN FORTY

Charges under the DCA were levelled against 230 students, including the Sterren Forty, since they refused to apologise and get the charges dismissed. The pursuant trials culminated in a guilty verdict for each defendant since none of the allegations were denied by them. While the rest were awarded imprisonment for periods varying from one to three years, the Sterren Forty were granted 5 years imprisonment and were deprived of their nationality in accordance with the provisions of the DCA. Their appeal was rejected by the Supreme Court as evidence

of their disloyalty was manifest given their conduct of surrounding the Sterren Palace, the Queen's residence.

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 Sterren Forty. Remisian Foreign Minister categorically communicated that it viewed Antrano's efforts as unwelcome since it meddled with Remisia's internal affairs. Thereafter, Antrano further attempted to escalate the matter. In January 2022, Antrano exploited its UNSC presidency to make the said issue the focal point of international affairs discourse by portraying a domestic situation as that which could potentially endanger the maintenance of international peace and security. 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. None of this was made public.

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, as prescribed under the VCCR, was denied since the Antranan officials refused to recognise her Remisian nationality and deemed her a Molvanian national for all relevant purposes. Antrano maintained this hardline position while replying to Remisia's assertion on a consular meeting. As a natural response, Remisia issued an emergency travel advisory for those who were naturalised via nationality by investment to not visit Antrano. Thereafter, Saki Shaw died of a heart attack. Queen Khasat expressed grief over the loss of her dear friend.

RESOLUTION 9997

On 11 April, 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 expressed discontent over this decision by reiterating its position that it amounted to unnecessarily interfering with Remisia's domestic affairs.

DENIAL OF ENTRY

Pursuant to Resolution 9997, Dr Malex arrived at the airport but was denied entry into Remisia. Earlier, Remisia had clearly declared that Malex would not be granted an entry visa in facilitation of an action aimed at embarrassing Remisia and the Queen. As a consequence, Malex was sent back to New York.

SUMMARY OF PLEADINGS

I.

Antrano does not have standing. Remisia does not owe any obligation to Antrano, as this matter does not involve *erga omnes partes* or *erga omnes* obligations. *Erga omnes partes* obligations originate from treaties established in collective interest. CRS does not establish a collective interest because it protects individual interests of state parties. Additionally, CSP and ICCPR establish a wide range of rights, not a sole overarching collective interest. Therefore, *erga omnes partes* obligations do not arise. *Erga omnes* obligations emerge from customary obligations considered imperative by the international community as a whole. However, the right to a nationality has not attained customary status, and the obligation against statelessness demonstrates a lack of imperativeness, the threshold for which has a close nexus with jus cogens norms. Assuming such obligations exist, such an obligation was not breached against Antrano. This requires the existence of material or moral damage, which Antrano could not have suffered, being located 11,000 km away from Remisia. A contrary determination amounts to an *actio popularis*, violating this Court's rules governing standing.

II.

Remisia had a right to deprive their nationality by virtue of its reservation under Article 8(3) CRS. This reservation is valid as it adheres to the object and purpose of CRS. Remisia exercised this right validly under DCA as the conduct of the Sterren Forty undermined the foundations of Remisia's political system, by threatening its Queen, thereby seriously prejudicing its vital interests. Additionally, the deprivation was non-discriminatory, as it was based on the gravity of the conduct, and not political belief and followed a fair trial, establishing it was not arbitrary. Further, the deprivation of nationality does not violate Article 21 of the ICCPR, as Article 21 only extends to peaceful assemblies, and the Sterren Forty's conduct was not peaceful. Finally, the Sterren Forty no longer retain a sense of social bonding with Remisia, as they have no loyalty to the Remisian monarchy, establishing that they do not possess a right against expulsion under Article 12(4) of ICCPR. In any event, Article 31 of CSP was not violated as their prospective expulsion is on grounds of national security.

III.

Antrano violated international law by refusing to grant consular access to Remisia. Ms. Shaw's Remisian nationality was validly conferred, thereby establishing Remisia's independent right to consular access, and its standing to bring this claim. The genuine link test is no longer customary, as reflected in subsequent jurisprudence of tribunals. However, Ms. Shaw's nationality still meets this threshold, due to the existence of close economic links. Further, Antrano cannot place reliance on the dominant nationality test, as it is generally inapplicable to consular access, and specifically inapplicable to this case, as this case does not involve competing nationalities, but a claiming state and a third state. Even if the test were applicable, Remisia is the dominant nationality considering Ms. Shaw's economic interests and close ties with the country. Furthermore, in light of the extradition request, Molvania could not have effectively safeguarded Ms. Shaw's due process rights, necessitating Remisian consular access. Finally, Antrano cannot place any reliance on its domestic law as its application defeats Remisia's rights, thereby defeating the purposes underlying article 36(1), which blocks the operation of article 36(2).

IV.

Remisia did not violate international law denying Dr. Malex entry. Antrano lacks standing to bring this claim since the denial of entry did not cause a personal injury to Dr. Malex, but only a functional injury to the UNIMR. Regardless, Antrano's claims are unfounded. The Resolution is invalid as it exceeds the competence of UNSC under Article 34 by sanctioning a full-fledged investigation, and interfering within Remisia's domaine reserve. In any event, the resolution does not create binding obligations, owing to the suggestive character of Chapter VI resolutions. In any case, Remisia continues to retain its sovereign right to regulate entry, a right that is not superseded by the CPI, as the issuance of documents under the CPI do not substitute travel documents. Finally, as supported by state practice, Remisia can apply the doctrine of *persona non grata* to Dr. Malex, because UN experts retain significant links with their state of nationality.

PLEADINGS

ISSUE I: ANTRANO LACKS STANDING TO BRING THE MATTER OF THE DEPRIVATION OF THE NATIONALITY OF THE “STERREN FORTY” TO THIS COURT

Standing is established when an obligation is owed to a State and breached against that State.¹ Antrano has no standing to approach this Court for the deprivation of the nationality of the Sterren Forty as (A.) Remisia did not owe any obligation to refrain from such deprivation to Antrano, and (B.) in any case, such obligations have not been breached against Antrano.

A. REMISIA DID NOT OWE ANY OBLIGATION EITHER *ERGA OMNES PARTES* OR *ERGA OMNES TO ANTRANO*

1. *REMISIA DID NOT OWE ANY ERGA OMNES PARTES OBLIGATIONS*

For a treaty to create obligations of an *erga omnes partes* character, it must be evident that contracting States ‘do not have interests of their own, they merely have, one and all, a common interest’.² This is untrue for the (a.) the 1961 Convention on the Reduction of Statelessness, (b.) the 1954 Convention on the Status of Stateless Persons, (c.) and the ICCPR.

a) THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS DOES NOT ESTABLISH A COLLECTIVE INTEREST OF STATE PARTIES

Comments by the United Kingdom³ during the drafting of the CRS suggest that compliance of a State party to its CRS obligations may not be of interest to other State parties.

¹ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgement) [2012] ICJ Rep 422 (Dissenting Opinion of Judge Xue) para 17.

² *Reservations to the Genocide Convention* (Advisory Opinion) [1951] ICJ Rep 15, 12; *Belgium v. Senegal* (n 1).

³ ILC, ‘Comments by Governments on the Draft Convention on the Elimination of Future Statelessness and on the Draft Convention on the Reduction of Future Statelessness’ (1954) UN Doc A/CN.4/82 and Add. 1-8, 172.

Additional support comes from the practice of Belgium,⁴ Egypt,⁵ the United States,⁶ Ireland,⁷ and Japan.⁸

Further, as State parties retain the sovereign right to determine their nationality legislation,⁹ the CRS effectively achieves a balance between the rights of individuals with these State interests. If the CRS did establish a common interest, it could not have spoken of such a ‘contractual balance between rights and duties.’¹⁰

In any case, a common interest must emerge to exist ‘over and above’ any individual State interests.¹¹ Even if the CRS establishes a common interest in the reduction of statelessness, this derives from the adverse burdens imposed by stateless individuals on the sovereignty of the receiving state.¹² Thus, it does not exist ‘over and above’ an individual interest in maintaining state sovereignty. This implies that obligations under the CRS are not owed *erga omnes partes*.

b) THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS DOES NOT ESTABLISH A COLLECTIVE INTEREST

Unlike the Convention against Torture, and the Convention on the Prevention and Punishment of the Crime of Genocide, which establish narrow collective interests in the adherence to *jus cogens* norms, and have been regarded to be *erga omnes partes*, the ICCPR establishes wide and diverse individual rights. Additionally, Article 2 states that obligations under the ICCPR are only owed to individuals within the jurisdiction of the State party. This implies that obligations under the ICCPR are not *erga omnes partes*.

In any case, the HRCComm’s practice reflects that state parties are permitted to make reservations to articles 12 (right against expulsion), 19 (freedom of expression) and 21

⁴ Ibid 164.

⁵ Ibid 167.

⁶ Ibid 173.

⁷ United Nations Conference on the Elimination or Reduction of Future Statelessness, ‘Addendum to Comments by Governments on the revised Draft Convention on the Elimination of Future Statelessness and the revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its sixth session’ (Geneva 1959 and New York 1961) UN Doc A/CONF.9/5/Add.3, 5.

⁸ Ibid UN Doc A/CONF.9/5/Add.2, 3.

⁹ Convention on Certain Questions Relating to the Conflict of Nationality Law (adopted 12 April 1930, came into force 1 July 1937) 179 LNTS 89 (‘Hague Convention’).

¹⁰ *Reservations to the Genocide Convention* (n 2) 23.

¹¹ ILC, ‘Third report on State responsibility, by Mr. James Crawford, Special Rapporteur’ (2000) UN Doc A/CN.4/507 and Add 1–4, para 92.

¹² Paul Weis, *Nationality and Statelessness in International Law* (Stevens London 1956) 51.

(freedom of assembly).¹³ Therefore, state practice deviating from these obligations, does not contravene the common interests (if any), forming the ICCPR's object and purpose. This implies that these obligations are not owed *erga omnes partes*, as they are not essential to realize the purported common interests protected by the ICCPR.

c) THE 1954 CONVENTION ON THE STATUS OF STATELESS PERSONS DOES NOT ESTABLISH COLLECTIVE INTEREST

Similar to the ICCPR, the CSP also establishes wide and diverse individual rights, implying that obligations under it are not *erga omnes partes*.

In any case, states are permitted to make reservations to Article 31. Thus, deviations from Article 31 in state practice do not contravene the common interests (if any), forming the CSP's object and purpose. This implies that the obligation to adhere to Article 31 is not owed *erga omnes partes*.

2. *THERE EXISTS NO ERGA OMNES OBLIGATION AGAINST DEPRIVATION OF NATIONALITY*

a) THE RIGHT TO A NATIONALITY IS NOT OWED ERGA OMNES

Article 15 of the Universal Declaration of Human Rights confers upon everyone the right to a nationality. In *Barcelona Traction*, this Court established that the obligation to respect 'basic human rights' is owed *erga omnes*.¹⁴ However, the right to a nationality does not fall under this category as (i.) it has not attained customary status, and (ii.) it is of insufficient imperativeness to be regarded as *erga omnes*.

i. *The right to a nationality has not attained customary status*

There exists insufficient state practice informed by *opinio juris* to establish Article 15 of the Universal Declaration of Human Rights as customary.

The *travaux préparatoires* of the Universal declaration of Human Rights indicates that states were unwilling to commit themselves to a binding obligation to confer nationality, as it would require them to give up a significant component of their sovereign powers.¹⁵

¹³ HRCComm, 'General Comment 24' (4 November 1994) CCPR/C/21/Rev.1/Add.6.

¹⁴ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)* (Preliminary Objections) [1970] ICJ Rep 3 para 34.

¹⁵ Johannes M Chan, 'The Right to a Nationality as a Human Right: the Current Trend towards its Recognition' (1991) 12 Human Rights Law Journal 4, 5.

Additional support comes from the choice to exclude the right to a nationality from the ICCPR. It is the object and purpose of the ICCPR to create legally binding rules protecting civil and political rights. Thus, the exclusion of the right to a nationality from the ICCPR indicates absence of *opinio juris* to establish the right as customary.

Finally, state practice of The Bahamas,¹⁶ Bangladesh,¹⁷ Dominica,¹⁸ Jamaica,¹⁹ Nicaragua,²⁰ Pakistan,²¹ and Ireland,²² which retain the right to deprive nationality in their nationality legislation, even if it leads to statelessness, reflects that there exists inconsistent state practice to support the same.

ii. It is of insufficient imperativeness to establish it as erga omnes

Historically, the importance of nationality derived from its role in accessing other human rights. However, the evolution of human rights law has gradually diminished this significance.²³ For instance, conventions such as the ICCPR, obligate State parties, to secure human rights to all individuals under their jurisdiction, irrespective of nationality.²⁴ Thus, the right to a nationality lacks the imperativeness to be owed *erga omnes*.

b) THE OBLIGATION TO AVOID STATELESSNESS IS NOT OWED ERGA OMNES

Remisia will establish that (i.) there exists insufficient state practice informed by *opinio juris* to establish the obligation to avoid statelessness as customary, and (ii.) the obligation is not of sufficient imperativeness to establish it as *erga omnes*.

i. There exists insufficient state practice and lack of opinion juris to establish the obligation to avoid statelessness as customary

To establish an obligation to avoid statelessness as customary, it must be accompanied by extensive and virtually uniform state practice. However only 79 states are parties to the CRS, failing to meet this threshold. Moreover, five state parties to the CRS have retained the

¹⁶ The Bahamas Nationality Act, art 11.

¹⁷ The Citizenship Act 1951, s 16.

¹⁸ Constitution of the Commonwealth of Dominica, art 101.

¹⁹ Jamaica Nationality Act 1962 art 8(2)(a).

²⁰ Nicaragua Nationality Law, Law number 149.

²¹ Pakistan Citizenship Act 1951, art 16.

²² Irish Nationality and Citizenship Act 1956, art(1)(b).

²³ Haro van Panhuys, 'Section X.II: The Waning Significance of Nationality in Rules Concerning the Protection of Human Rights', *The Role of Nationality in International Law* (AW Sythoff 1959) 220; Laura Van Waas, *Nationality Matters* (Intersentia 2008) 218.

²⁴ HRCComm, 'General Comment 31' (29 March 2004) CCPR/C/21/Rev.1/Add.13.

right to deprive nationality, even when it leads to statelessness by making reservations to it, reflecting the absence of an *opinio juris* supporting an obligation to avoid statelessness.²⁵

ii. The obligation is not of sufficient imperativeness to establish it as erga omnes

In practice, this Court has only recognised norms of a *jus cogens* character, such as the prohibition of genocide, and the prohibition of slavery, as being owed *erga omnes*. The obligation to avoid statelessness is not an absolute obligation, but affords significant leeway, and departure. Thus, it does not meet the requisite threshold for imperativeness, which has a close nexus to the status of *jus cogens* norms, which permit no departure.

B. IN ANY CASE, THE ERGA OMNES OR ERGA OMNES DOCTRINE IS NOT A VALID BASIS OF STANDING IN THE ABSENCE OF DAMAGE

As an island nation located 11,000 kilometers away from Remisia which is a land-locked state, Antrano has absolutely no connection to Remisia's deprivation of citizenship.²⁶ It is virtually impossible that the Sterren Forty will end up in Antrano injuring it in any manner. Therefore, Antrano's claim is a pure *actio popularis*. State practice,²⁷ reflects that there exists no right to initiate countermeasures in the absence of injury,²⁸ implying that non-injured states cannot invoke state responsibility. As a progressive codification of law, Article 48 of the (D)ARSIWA also does not establish this right.²⁹ Consequently, non-injured states are also precluded from initiating proceedings before this Court.³⁰

In any case, there exists a distinction between the general entitlement to invoke state responsibility, and the specific entitlement to initiate judicial proceedings before this Court. As its jurisprudence reflects, the procedural rules governing jurisdiction before this Court primarily derive out of a concern for State consent.³¹ This concern is accorded primacy,

²⁵ Weis (n 12).

²⁶ Compromis [5].

²⁷ ILC, 'Report of the International Law Commission on the work of its Fifty-Second Session' (2000) UN Doc A/CN.4/513, para 175-177.

²⁸ UNGA, 'Fourth report on State responsibility by Mr. James Crawford, Special Rapporteur' (2 April 2001) UN Doc A/CN.4/517, para 72.

²⁹ (D)ARSIWA Commentaries art 48, para 12.

³⁰ (D)ARSIWA Commentaries art 42, para 2.

³¹ Yuval Shany, *Questions of Jurisdiction and Admissibility before International Courts* (Cambridge University Press, 2015) 22-36.

irrespective of the substantive norms in question.³² Standing is a question of the exercise of this Court's jurisdiction.³³ Consequently, similar to other international tribunals³⁴, concerns of proliferation of litigation³⁵, vague and insubstantial claims³⁶, and transgression of permissible limits of adjudication³⁷ must inform this Court's standing requirements, implying that there exists no right to *actio popularis* before it.³⁸

³² *East Timor (Portugal v. Australia)* (Judgment) [1995] ICJ Rep 90, para 34 and 39.

³³ *Arbitral Award of 3 October 1899 (Guyana v Venezuela)* (Preliminary Objections) [2023] ICJ Rep 1 para 64.

³⁴ William Aceves, 'Actio Popularis - The Class Action in International Law' (2003) University of Chicago Legal Forum Article 9.

³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Provisional Measures) [2020] ICJ Rep 3 (Declaration of Judge Kress) para 33.

³⁶ *ibid* (Preliminary Objection) [2022] ICJ Rep 477 (Dissenting Opinion of Judge Xue) para 39.

³⁷ Farid Ahmadov, 'The Right of Actio Popularis before International Courts and Tribunals', in Malgosia Fitzmaurice and Sarah Singer (eds) *Queen Mary Studies in International Law Vol.31* (Nijhoff 2018).

³⁸ *South West Africa (Ethiopia v South Africa)* (1966) ICJ Rep 6 para 55.

ISSUE II: REMISIA DID NOT VIOLATE INTERNATIONAL LAW WHEN IT DEPRIVED THE STERREN FORTY OF THEIR REMISIAN CITIZENSHIP IN ACCORDANCE WITH THE DCA

Remisia did not violate international law when it deprived the Sterren Forty of their Remisian citizenship as (A.) Remisia validly exercised its right to deprive its nationals of their nationality under international law, and in doing so, it did not breach its obligations (B.) to respect political expression, or (C) to respect the right against expulsion or arbitrary denial of entry to one's own country.

A. REMISIA VALIDLY EXERCISED ITS RIGHT TO DEPRIVE ITS NATIONALS OF THEIR NATIONALITY

1. *THE DEPRIVATION OF THE NATIONALITY OF THE STERREN FORTY ADHERED TO ARTICLE 8 OF THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS*

State parties may retain the right to deprive their citizens of citizenship, for conduct seriously prejudicial to the state's vital interests, which is inconsistent with the duty of loyalty to the state. This must be based on a valid reservation specifying the 'prejudice to the vital interest' as a ground in domestic law.³⁹ Remisia's deprivation of citizenship of the Sterren Forty adheres to Article 8, as (a.) Remisia has made a valid reservation to Article 8, and (b.) by threatening the Queen's safety, the Sterren Forty seriously prejudiced Remisia's vital interests.

a) REMISIA MADE A VALID RESERVATION WITHIN THE SCOPE OF ARTICLE 8(3)

Remisia's reservation to the CRS is valid because it does not violate its object and purpose,⁴⁰ that is, to balance between the sovereign right of a State to determine its nationals, and an individual's right against the same.⁴¹

Article 8(3) achieves this by allowing states to protect their vital interests, by vesting in them the power to deprive nationality when such interests have been seriously prejudiced. States have considerable discretion in determining 'vital interests', which lie at the foundation and organization of a State.⁴²

³⁹ CRS, art 8.

⁴⁰ VCLT art 19(c).

⁴¹ CRS, 'Introductory Note by the Office of the United Nations High Commissioner for Refugees'.

⁴² *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)* (Judgement) [2008] ICJ Rep 177, para 145; *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7, para 54.

Remisian society holds deep reverence towards the monarchy,⁴³ which is constitutionally recognized.⁴⁴ The monarchy forms the very foundations of the Remisian State. Resultantly, the DCA which guards against actions which undermine the monarchy, protects Remisia's vital interests. Thus, it adheres to the object and purpose of the CRS.

Additional support comes from the practice of other states such as, Belgium,⁴⁵ Ireland,⁴⁶ Jamaica,⁴⁷ and Lithuania,⁴⁸ who have made reservations to the CRS on similar grounds, which have not been objected to by State parties to the CRS.

b) BY THREATENING THE SAFETY OF THE QUEEN, THE STERREN FORTY SERIOUSLY PREJUDICED THE VITAL INTERESTS OF REMISIA

As established, protection of monarchy is of vital interest to Remisia. Conduct that threatens the very foundations of this institution amounts to serious prejudice to Remisia's vital interests.

Since 2020, the ILSA has organised mass protests in Remisia. During these protests, students held libelous placards making unsubstantiated allegations of bias against the Queen for granting mining licenses, on multiple occasions.⁴⁹ In fact, the licenses were granted following a due diligence review,⁵⁰ and the mines were a major contributor to the Remisian economy, employing more than 4000 people.⁵¹

In a subsequent communique, the ILSA leadership further fuelled this sentiment by insinuating that the Monarch did not prioritize the well-being of her citizens.⁵² In fact, the ILSA leadership went further, and stated that the Queen was destroying the future of Remisia, reflecting an intention to undermine Remisia's entire political system, and through subsequent messages, incited protestors to storm the government's mines and cripple the mining operations.⁵³

⁴³ Compromis [5].

⁴⁴ Compromis [7].

⁴⁵ Code of Belgian Nationality 2012 art 23(5).

⁴⁶ Ireland Nationality and Citizenship Act 1956 art 19(1)(b).

⁴⁷ Jamaica Nationality Act 1962 art 8(2)(a).

⁴⁸ Republic of Lithuania Law on Citizenship 2010 art 24(6).

⁴⁹ Compromis [26].

⁵⁰ Compromis [18].

⁵¹ Compromis [21].

⁵² Compromis [27].

⁵³ Compromis [29].

In response, Remisia offered them recourse through diplomatic channels. Ignoring these requests, the Sterren Forty reached the gates of the Sterren Palace, and surrounded it, forming a human chain. This put the entire palace, and its residents in grave danger. Queen Khasat's absence was a fortuitous coincidence.⁵⁴

By putting the Queen's life in grave danger, and refusing to apologise for the same,⁵⁵ the Sterren Forty seriously prejudiced Remisia's vital interests in a manner inconsistent with a duty of loyalty owed to it. Therefore, Remisia's deprivation of citizenship of the Sterren Forty adhered to Article 8 of the CRS.

2. THE DEPRIVATION OF NATIONALITY OF THE STERREN FORTY ADHERED TO CUSTOMARY PRINCIPLE OF NON-ARBITRARINESS

The deprivation of nationality by Remisia meets the standard of non-arbitrariness.⁵⁶

a) THE DEPRIVATION WAS NOT DISCRIMINATORY

The Sterren Forty were sentenced for five years and deprived of their citizenship, while other protestors who were charged were given a sentence between one to three years.⁵⁷ However, this was not based on discriminatory grounds, including that of political belief.⁵⁸

Unlike the other protestors, the Sterren Forty blocked the entrances and exits of the Sterren Palace, a venerated symbol of Remisian society. Additionally, this gravely risked the safety of the Queen, and other palace residents, establishing that the deprivation of the citizenship of the Sterren Forty was determined by gravity of conduct, not political belief.

b) THE DEPRIVATION WAS NOT FOR THE SOLE PURPOSE OF EXPULSION

The prohibition on deprivation of nationality for the sole purpose of expulsion⁵⁹ does not purport to limit the normal operation of laws relating to loss or expulsion.⁶⁰ As Remisia has deprived the Sterren Forty of its citizenship on the basis of grounds provided under the DCA, the customary prohibition on deprivation of nationality, if any, for the sole purpose of expulsion has no application here.

⁵⁴ Compromis [30].

⁵⁵ Compromis [31].

⁵⁶ HRC, 'Human rights and arbitrary deprivation of nationality' (19 December 2013) A/HRC/25/28.

⁵⁷ Compromis [34].

⁵⁸ CRS, art 9; 'Human rights and arbitrary deprivation of nationality' (n 56) para 22.

⁵⁹ ILC, 'Draft articles on the expulsion of aliens, with commentaries' (2014) art 8.

⁶⁰ ILC, 'Draft articles on Expulsion' (2001) UN Doc A/69/10 art 8, para 3.

c) THE DEPRIVATION WAS THE RESULT OF A FAIR TRIAL WHICH WAS SUBJECT TO A SUSPENSIVE APPEAL

The right to a fair hearing requires “minimum procedural standards”.⁶¹ It involves the right to appeal which must be suspensive,⁶² notifying the individual of an intent to deprive them of their nationality beforehand,⁶³ and opportunity to provide evidence in their defence.⁶⁴

The Sterren Forty were informed of an intention to deprive their nationality.⁶⁵ The Zoom trial did not preclude them from presenting evidence in their defence, and saw no objection by the defendants.⁶⁶ They exercised their right to appeal by appealing to the Supreme Court of Remisia.⁶⁷ Clearly, the appeal was suspensive since they were deprived of nationality only after the appeal was dismissed.⁶⁸

B. REMISIA DID NOT BREACH ITS DUTY TO RESPECT POLITICAL EXPRESSION

The deprivation of the citizenship of the Sterren Forty does not breach Article 21, as (1.) the protests were not peaceful and (2.) in any case, the deprivation of the citizenship of the Sterren Forty was provided by law, followed a legitimate purpose, and was necessary to secure that purpose.⁶⁹

1. *THE PROTESTS WERE NOT PEACEFUL*

‘Peaceful’, under Article 21, means ‘non-violent’.⁷⁰ Conduct that uses or incites others to use physical force that is likely or intended to inflict injury or serious property damage is considered violent, falling outside the protection of Article 21.⁷¹

⁶¹ UNGA ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc A/HRC/13/34 (14 December 2009) para 43 and 63; HRC, ‘Human Rights and arbitrary deprivation of Nationality’, UN Doc A/HRC/RES/13/2 (24 March 2010) para 10; HRC, ‘Human rights and arbitrary deprivation of nationality’, UN Doc A/HRC/RES/20/5 (16 July 2012) para 10.

⁶² Human rights and arbitrary deprivation of nationality (n 56) para 33.

⁶³ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’ (2020) Principle 7.6.2.

⁶⁴ UN Human Rights Special Procedures, ‘The human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria’ (February 2022) 16.

⁶⁵ Compromis [31].

⁶⁶ Compromis [33].

⁶⁷ Compromis [34].

⁶⁸ Ibid.

⁶⁹ HRCComm, ‘General Comment 37’ (17 September 2020) UN Doc CCPR/C/GC/37 para 11.

⁷⁰ Ibid para 15.

⁷¹ OSCE and Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (2019) para 51.

Protests organised by the ILSA had a history of leading to violence, and serious damage to public property. In some instances, protesters had blocked access roads, and chained themselves to mining equipment. When asked to disperse, peacefully, they had consistently refused to do so. In such circumstances, the Sterren Forty, who had consistently participated in the ILSA protests, ended up forming a human chain outside the Sterren Palace itself. In light of their prior conduct, the human chain is clearly violent.⁷² Their physical use of force was capable of inflicting injury to the Palace's residents, and serious damage to the Palace itself. Consequently, the protests fell outside the protection offered by Article 21.

2. THE PROTESTS WERE NOT FREE OF LEGITIMATE RESTRICTIONS

Even if the protests were not violent, they were legitimately restricted because the restriction was **(a.)** provided by law **(b.)** pursued a legitimate aim and **(c.)** was necessary in a democratic society.

a) THE DEPRIVATION WAS PROVIDED BY LAW

In order to be non-arbitrary, deprivation must be in accordance with law which must be foreseeable.⁷³ The consequences under the law must be foreseeable with appropriate legal advice, if needed and need not be foreseeable to absolute certainty.⁷⁴

The ground of disloyalty is provided by law under the DCA which is accessible to the public.⁷⁵ Additionally, it outlaws a specific conjunction of those acts which are disloyal in addition to being threatening, defamatory, or insulting. Its prior invocations⁷⁶ as well as the statement by the police officer⁷⁷ offer sufficient guidance as to the conduct which is unlawful under the DCA. Therefore, it is sufficiently precise.

⁷² HRCComm, 'General Comment 37' (n 69) para 19.

⁷³ Ineta Ziemele, 'State Succession and Issues of Nationality', in Laura Van Waas and Alice Edwards (eds), *Nationality and Statelessness under International law* (CUP 2014)113.

⁷⁴ *CR v. United Kingdom* App no 20190/92 (ECHR, 27 June 1994) para 46.

⁷⁵ Compromis[7].

⁷⁶ Compromis [8].

⁷⁷ Compromis [26].

b) THE DEPRIVATION IS IMPOSED FOR A LEGITIMATE AIM

Protecting national security and public order are considered legitimate aims under article 21.⁷⁸ Overcrowded gatherings are held to have endangered public order,⁷⁹ while disrupting flow of traffic has been held to violate right of movement of others.⁸⁰

The Sterren Forty's conduct is much more serious. Blocking entrances and exits of the Sterren Palace by forming a human chain threaten the monarchical foundation of the Remisian society. Therefore, the deprivation served the legitimate aim of securing public order.

c) THE DEPRIVATION WAS A NECESSARY STEP IN A DEMOCRATIC SOCIETY

"Necessary" does not mean "indispensable", or "absolutely necessary".⁸¹ A necessary interference must (i) correspond to a pressing social need; and (ii) be proportionate to the legitimate aim pursued.⁸²

i. Existence of a pressing social need

Protecting public safety, rights and freedom of others, and essential public services is recognized as a pressing social need. In matters of high disruption to ordinary life, states have a wide discretion to determine the pressing social need.⁸³

The human chain formed by the Sterren Forty, clearly restricted the freedom of those within the Sterren Palace, threatened their public safety, and disrupted the essential functions of the Sterren Palace, in addition to threatening the Queen. The escalating gravity of the ILSA protests including university walkouts and halting of mining operations, disrupted ordinary life. Thus, there existed a pressing social need.

ii. The deprivation was proportionate to the legitimate aim pursued

States have a margin of discretion to determine the proportionality of a restriction on freedom of assembly. This justifies criminally sanctioning demonstrations in security sensitive areas.⁸⁴

⁷⁸ HRCComm, 'General Comment 34' (12 September 2011) CCPR/C/GC/34.

⁷⁹ *Primov and Others v. Russia* App no 17391/06 (ECHR, 2014) para 130.

⁸⁰ *Éva Molnár v. Hungary* App no 10346/05 (ECHR, 2008) para 34.

⁸¹ *Handyside v. The United Kingdom* 5493/72 (ECHR 1976) para 48.

⁸² *Karpyuk and Others v Ukraine* App nos 30582/04 and 32152/04 (ECHR 1976) para 218.

⁸³ *Ekrem Can and Others v. Turkey* App no 10613/10 (ECHR, 2022) para 91.

⁸⁴ *Rai and Evans v the United Kingdom* App nos 26258/07 and 26255/07 (ECHR, 17 November 2009).

The Sterren Forty blocked the access to Sterren Palace, a place of residence of Remisia's reigning monarch. This is the safest place for the Queen and therefore, a sensitive area. Such a threat to the Queen's life and the foundations of Remisian society, must not be allowed in any circumstance. Additionally, the Sterren Forty were deprived of citizenship after they refused to apologize to the Queen.⁸⁵

C. SUBSEQUENT ORDER OF EXPULSION DOES NOT VIOLATE THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS OR THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

States have an inherent sovereign right to expel non-nationals⁸⁶ limited only by the duty to respect territorial sovereignty of other states.⁸⁷ Remisia has not expelled the Sterren Forty at this point,⁸⁸ creating no burden on another state.

In any case, even the order of expulsion does not violate international law because **(1)** it does not violate Article 31 of the CSP and **(2)** it does not arbitrarily deprive the Sterren Forty the right to enter Remisia under Article 12(4) of ICCPR.

1. THE ORDER OF EXPULSION DOES NOT VIOLATE ARTICLE 31 OF THE 1954 CONVENTION ON THE STATUS OF STATELESS PERSONS

Expulsion order of the Sterren Forty does not violate Article 31 because **(a.)** they were not in Remisia lawfully, **(b.)** the order of expulsion was based on grounds of public order and **(c.)** the order of expulsion provided reasonable time to secure legal admission into another country.

a) THE PRESENCE OF THE STERREN FORTY IN REMISIA WAS NOT LAWFUL

The order of expulsion shows that Remisia no longer authorised their presence in Remisia. Presence beyond the authorised period amounts to unlawful presence.⁸⁹

⁸⁵ Compromis [31].

⁸⁶ 'Draft articles on Expulsion' (n 60) art 3 para 1.

⁸⁷ Weis (n 12).

⁸⁸ Compromis [34].

⁸⁹ Nehemiah Robinson, *Convention relating to the Status of Stateless Persons: Its History and Interpretation* (Institute of Jewish Affairs 1960) art 31 para 4.

b) THE ORDER OF EXPULSION WAS BASED ON THE GROUND OF PUBLIC ORDER

Contracting parties have the discretion to determine such conduct violating public order.⁹⁰ The conduct of the Sterren Forty disrupted the security and functions of the Sterren Palace and the reigning monarch. The institution of monarchy is foundational to the Remisian state; therefore, the Sterren Forty's conduct was violative of public order.

c) THE ORDER OF EXPULSION PROVIDED REASONABLE TIME TO SECURE ADMISSION INTO ANOTHER COUNTRY

The country ordering the expulsion has to provide necessary assistance for the stateless individuals to secure admission.⁹¹ The Sterren Forty have not been expelled till date, and can seek this assistance from Remisia during five years of their sentence and the subsequent 60 days. States can apply necessary internal measures during this time; therefore, Sterren Forty's imprisonment does not affect the assistance they can seek.

2. *EXPULSION ORDER DOES NOT ARBITRARILY DEPRIVE THE STERREN FORTY OF THEIR RIGHT TO ENTER REMISIA UNDER ARTICLE 12(4) OF THE ICCPR*

Article 12(4) prevents an individual from being arbitrary deprived of the right to enter his own country. While this right accrues to non-nationals of a country, it requires a close connection between the person and such country.⁹²

The Sterren Forty's manifest evidence of disloyalty to the crown,⁹³ which is strongly shared by the Remisian society,⁹⁴ shows a clear lack of such connection between the Sterren Forty and Remisa. Since they also do not possess Remesian citizenship, Article 12(4) does not apply to them.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² HRCComm, 'General Comment 27' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9, para 20.

⁹³ Compromis [31].

⁹⁴ Compromis [5].

ISSUE III: ANTRANO VIOLATED INTERNATIONAL LAW WHEN IT DENIED SAKI SHAW, A REMISIAN CITIZEN, ACCESS TO REMISIAN CONSULAR REPRESENTATIVES WHILE SHE WAS HELD PRISONER IN ANTRANO

After being admitted on her Remisian passport on 15 March 2022, Ms. Shaw was detained by the Antranan police on 16 March 2022.⁹⁵ She specifically demanded Remisian consular access. However, this was denied to her. In doing so, Antrano breached international law as (A.) Remisia had the right obtain consular access, (B.) Antrano cannot place reliance on the dominant nationality test, or Article 36(2) of VCCR. Finally, (C.) Antrano is estopped from not recognising Miss Shaw’s Remisian nationality.

A. REMISIA HAD THE RIGHT TO PROVIDE CONSULAR ACCESS TO MS. SHAW, OWING TO HER VALIDLY CONFERRED NATIONALITY

Article 36 of the VCCR creates rights for both the State⁹⁶ and the individual.⁹⁷ Remisia’s conferral of nationality, (1.) adhered to the limited international law restrictions on the exercise of the power of conferral and (2.) did not amount to an abuse of rights, thus having international legal effects. This establishes standing through diplomatic protection, as well as Remisia’s independent status as an injured state.

1. CONFERRAL OF REMISIAN NATIONALITY TO MS. SHAW CONFORMS TO INTERNATIONAL LAW

International Law imposes only limited restrictions on a state’s right to confer its nationality.⁹⁸

⁹⁵ Compromis [42].

⁹⁶ *Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America)* (Provisional Measures)[1998] ICJ Rep 248, 258 (‘Breard’); *LaGrand (Germany v. United States of America)* [2001] ICJ Rep 466, 491; *Avena and Other Mexican Nationals (Mexico v. United States of America)* [2004] ICJ Rep 12, 43; *Jadhav (India v. Pakistan)* [2019] ICJ Rep 418, 448; *Mexico v. United States of America*, Advisory Opinion OC-16/99, IACtHR Series A No 16 (1 October 1999) 4 (‘Advisory Opinion 16’).

⁹⁷ Ibid.

⁹⁸ *Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921 (Great Britain v France)* (Advisory Opinion) [1923] ICJ Rep 271.

The limited requirement in International Law for a nationality to have international effects is the requirement of a ‘legal link,’⁹⁹ which the ICJ held in *Nottebohm*, must be a ‘genuine one’, based on ‘social fact of attachment’.¹⁰⁰ However, **(a.)** this test has not found acceptance in international law and in any case **(b.)** Ms. Shaw had genuine links with Remisia.

a) THE GENUINE LINK TEST IS NOT APPLICABLE

Subsequent to the ICJ’s decision in *Nottebohm*, international tribunals,¹⁰¹ the ILC¹⁰² and scholarly opinion,¹⁰³ have rejected the ‘genuine link’ test. Hence, the test does not enjoy customary status for such questions.

It might be contended that the test has limited relevance to the narrow factual circumstances of the *Nottebohm* case i.e., a state (Lichtenstein) espousing claims on behalf of an individual (Mr. Nottebohm) against a state with which the national has closer factual ties with (Guatemala).¹⁰⁴ However, in *LaGrand*,¹⁰⁵ where Germany sought to exercise diplomatic protection over the LaGrand brothers who were permanent residents of the United States, adopted children of a United States national, the ICJ refrained from applying the *Nottebohm* test implying that the test no longer holds relevance in such circumstances as well.

In any case, Remisia claims standing as an injured state as well.

b) IN ANY CASE, MS. SHAW HAD A GENUINE LINK WITH REMISIA

Nottebohm defined the minimum threshold for a nationality to satisfy to have international legal effects, as one based on ‘a genuine connection of existence, interests and

⁹⁹ UNHCR ‘Expert Meeting - The Concept of Stateless Persons under International Law’ (Prato 2010) 2; Council of European Union, ‘Independent International Fact-Finding Mission on the Conflict in Georgia’ (Volume II, September 2009) 158.

¹⁰⁰ *Nottebohm Case (Liechtenstein v Guatemala)* (Second Phase) [1955] ICJ Rep 4, 23.

¹⁰¹ *Flegenheimer Case - Decision No. 182 (United States v. Italy)* (1958) 14 R.I.A.A. 327, 376; *Mergé Case—Decision No. 55 (United States v. Italy)* (1955) 14 R.I.A.A. 236, 243.

¹⁰² (D)ARSIWA Commentaries, art 4, para 5.

¹⁰³ Peter Spiro, ‘Nottebohm and ‘Genuine Link’: Anatomy of a Jurisprudential Illusion’ (2009) Investment Migration Working Papers IMC-RP 2019/1 <<https://investmentmigration.org/wp-content/uploads/2020/10/IMC-RP-2019-1-Peter-Spiro.pdf>> accessed 10 January 2019; Robert Sloane, ‘Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality’ (2009) 50(1) Harvard International Law Journal 1; Josef Kunz, ‘The Nottebohm Judgement’ (1960) 54(3) The American Journal of International Law 536.

¹⁰⁴ *Nottebohm* (n 100) 22.

¹⁰⁵ *LaGrand* (n 96).

sentiments.’¹⁰⁶ Such a bond can be established through socio-political membership,¹⁰⁷ the terms of which are best determined by the State itself.¹⁰⁸

Residence is not a mandatory requirement for establishing a ‘genuine link’, thus, Ms. Shaw’s lack of residence in Remisia is not fatal to establishing such a link.¹⁰⁹ Neither can Antrano contend that a nationality obtained by acquiring real property lacks international legal effects.¹¹⁰ Rather, international tribunals recognise that economic interests and sentimental connections, also furnish a ‘genuine link’.¹¹¹ Ms. Shaw has both an economic, and political link to Remisa. Her economic link flows from the investments that she made in the NIP, and the joint venture she established, in collaboration with the Remisian Government.¹¹² Her political link flows from her acknowledgement of the authority of its Queen. Taken together, this furnishes a genuine link.

2. CONFERMENT OF MS. SHAW’S NATIONALITY DOES NOT AMOUNT TO ABUSE OF RIGHTS CAPABLE OF VITIATING RIGHT TO CONSULAR ACCESS

An exercise of a right towards an improper purpose, causing detriment to other states amounts to an abuse of rights.¹¹³ The burden to establish abuse lies on Antrano.¹¹⁴ The standard for establishing abuse is very high.

There exist no procedural irregularities in the way Ms. Shaw obtained Remisian nationality. Further, she acquired it for a sincere purpose, i.e., to expand her business interests, evidenced by the establishment of the LRC. Thus, no abuse of rights is made out in the present case.

¹⁰⁶ *Nottebohm* (n 100) 23.

¹⁰⁷ Ralf Dahrendorf, ‘Citizenship and Beyond: The Social Dynamics of an Idea’ (1974) 41(4) *Social Research* 673, 674.

¹⁰⁸ *Advisory Opinion 16* (n 96), para 36.

¹⁰⁹ *Weis* (n 12) 101.

¹¹⁰ *Case of Enrique Rau*, Decision No. 51 (German-Mexican Claims Commission) (as cited in A. H. Feller, *The Mexican Claims Commission 1923-1934: A Study in Law and Procedure of International Tribunals* (The MacMillan Company 1935) 100).

¹¹¹ *Feldman Karpa v Mexico* (Jurisdiction) ICSID Case No ARB(AF)/99/1.

¹¹² *Compromis* [17].

¹¹³ *Nottebohm* (n 100).

¹¹⁴ *Free Zones of Upper Savoy and the District of Gex* (Judgement) (1932) PCIJ Series A/B No. 46, 167.

B. THE APPLICANT HAS VIOLATED ITS INTERNATIONAL LAW OBLIGATIONS UNDER ARTICLE 36(1) OF THE VIENNA CONVENTION ON CONSULAR RELATIONS

1. ANTRANO HAD NO LEGAL BASIS IN INTERNATIONAL LAW TO DISLODGE REMISIA'S RIGHT TO PROVIDE CONSULAR ACCESS BY FAVOURING MOLVANIA'S RIGHT

a) THE TEST OF DOMINANT NATIONALITY DOES NOT APPLY TO CONSULAR ACCESS

Article 36 only requires that the individual be a national of the state seeking consular access. The VCCR operates as *lex specialis* to customary international law on matters expressly governed by the convention,¹¹⁵ therefore, the test has no application to Article 36.

b) THE TEST OF DOMINANT NATIONALITY DOES NOT APPLY IN CASES OF CLAIMS AGAINST A THIRD STATE

Dominant nationality test is exclusively applicable to circumstances when a claim is brought by one state of nationality against another state of nationality to assess if the dispute is of an international character.¹¹⁶ Tribunals have rejected the application of the test when the dual nationality is of the claiming state and a third state.¹¹⁷ Thus, a third state (Antrano) cannot contest the claim of one of the two states of nationality (Remisia) by referring to the nationality of the other (Molvania), by relying on this doctrine.¹¹⁸

c) IN ANY CASE, REMISIA IS THE STATE OF DOMINANT NATIONALITY FOR MS. SHAW

Dominance is comparative.¹¹⁹ Relevant factors including, centre of economic interests and participation in public life, and not just habitual residence, must be considered.¹²⁰

Ms. Shaw's economic interests were based heavily in Remisia. She personally invested €500,000 in Remisia and her company invested €3,000,000. Her intent to deepen her economic interests is clear as her company transferred €5,000,000 in the bank of the joint venture.¹²¹

¹¹⁵ VCCR, Preamble; *Jadhav* (n 96) para 89.

¹¹⁶ *Loss of Property in Ethiopia Owned by Non-Residents - Eritrea's Claim 24* (Partial Award) (2005) 26 RIAA 429, para 11.

¹¹⁷ *Flegenheimer* (n 101); *Mergé Case* (n 101); *Vereano Case-Decision No. 172 (United States v. Italy)* (1957) 14 RIAA 321, 322.

¹¹⁸ *Salem Case (Egypt, USA)* (Award) (1932) 2 RIAA 1161, 1188; Draft Articles on Diplomatic Protection, art 6(1).

¹¹⁹ *Carrizosa v Colombia*, PCA Case No. 2018-56, Award (2021) para 184.

¹²⁰ *Islamic Republic of Iran v. United States of America*, IUSCT Case No. A-18, Decision (1984) 26.

¹²¹ *Compromis* [17-19].

Further, she had close personal ties with Remisia and a significant role in the state's public life, employing over 4000 Remisian citizens.¹²² It is her Remisian Nationality which was actually operative,¹²³ evidenced by the usage of her Remisian passport to travel. Comparatively, Ms. Shaw lacked habitual residence in both Molvania, and Remisia, as she abandoned Molvania as her state of residence over a decade ago.¹²⁴ Taken together, this establishes the dominance of her Remisian nationality.

2. ANTRANO CANNOT APPLY ARTICLE 36(2) IN A MANNER THAT VIOLATES REMISIA'S RIGHTS UNDER ARTICLE 36(1)

a) A STATE IS OBLIGATED TO RECOGNISE A VALID NATIONALITY

Antrano's domestic law cannot be used to avoid international obligations.¹²⁵ Following the principle of opposability,¹²⁶ Antrano had the customary obligation to recognise her Remisian nationality since it was granted in consonance with international law.¹²⁷ Thus, non-recognition of Miss Saki Shaw's Remisian nationality has no legal basis.

b) THE APPLICATION OF ANTRANO'S DOMESTIC LAW CANNOT BE VALIDATED THROUGH ARTICLE 36(2) SINCE IT WOULD DEFEAT THE TEXT AND PURPOSE OF ARTICLE 36(1)

Application of domestic law 'must enable full effect to be given to the purposes' for which the rights under Article 36(1) are intended.¹²⁸ This limits the use of Article 36(2) to severely.¹²⁹ Its negotiating history specifically rejects that domestic law can prevail over the rights guaranteed under Article 36(1).¹³⁰ Additional support comes from the ICJ¹³¹ and

¹²² Compromis [21].

¹²³ *Nasser Esphahanian v. Bank Tejarat*, IUSCT Case No. 157, Final Award (1983) para 34.

¹²⁴ *Sadat v. Mertes*, 464 F. Supp. 1311.

¹²⁵ (D)ARSIWA art 3; VCLT art 27.

¹²⁶ Hague Convention (n 9) art 1; European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS 166 art 3(2); Clive Perry, 'The Duty to Recognise Foreign Nationality Law' (1958) 22(1) Heidelberg Journal of International Law.

¹²⁷ *Nottebohm* (n 100) 21; *Nottebohm* (Judge Read) (n 100) 46.

¹²⁸ VCCR, art 36(2).

¹²⁹ ILC, 'Draft Articles on Consular Relations, with Commentaries' (1961) II International Law Commission Yearbook of International Law 113 para 5.

¹³⁰ 'United Nations Conference on Consular Relations: Official Records' (1963) U.N. Doc. A/Conf.25/6, U.N. Sales. No. 63.X.2 181.

¹³¹ *LaGrand* (n 96) para 77; *Avena* (n 96) para 40.

IACtHR,¹³² which recognize the rights under Article 36 to have been created for the state of nationality, for ensuring that its nationals are not mistreated elsewhere.¹³³

Exclusive grant of Molvanian consular access to Ms. Shaw defeats the purpose of Article 36(1) by extinguishing Remisia's independent right.

c) GRANTING REMISIAN CONSULAR ACCESS TO MS. SHAW WAS ESSENTIAL TO SAFEGUARD HER DUE PROCESS RIGHTS

Due process rights, provided under Articles 9, 13, and 14 of the ICCPR, apply to pre-trial proceedings such as extradition.¹³⁴ There exists an inextricable link between grant of consular access and an individual's due process rights,¹³⁵ recognised by the ICJ,¹³⁶ the IACtHR¹³⁷ and domestic jurisprudence.¹³⁸ Molvania, as the state requesting her extradition, had a conflicting vested interest, and could not have provided effective legal assistance to Ms. Saki Shaw. Thus, the denial of Remissian consular access, violated Saki Shaw's individual due process rights.

C. IN ARGUENDO, ANTRANO IS ESTOPPED FROM NOT RECOGNISING MS. SHAW'S REMISIAN NATIONALITY

Estoppel requires **(1.)** an unambiguous statement of fact; **(2.)** which is voluntary, unconditional, and authorised; **(3.)** which is relied on in good faith to the detriment of the other party or to the advantage of the party making the statement.¹³⁹ All elements are met here.

¹³² Advisory Opinion 16 (n 96).

¹³³ Anna Peters, *Beyond Human Rights* (CUP 2016), Chapter 11 'Individual Rights in Consular Law'.

¹³⁴ *Salduz v. Turkey* (2008), App no 36391/02 (ECHR, 2008); United Nations Office on Drugs and Crime 'Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems' (June, 2013) UN Doc A/67/458, p 8, para 14.

¹³⁵ Cançado Trindade, 'The Humanization of Consular Law: The Impact of Advisory Opinion No 16 (1999) of the Inter-American Court of Human Rights on International Case-law and Practice' (2007) 6 Chinese JIL, 1–16.

¹³⁶ *Jadhav* (Declaration of Judge Robinson) (n 96) para 2(i); *Jadhav* (Separate Opinion of Judge Cançado Trindade) (n 96).

¹³⁷ *Advisory Opinion 16* (n 96).

¹³⁸ Case of F & T, German Constitutional Court, 2 BvR 2115/01, Decision of 9 Sept. 2006 para 65; Tan Seng Kiah v. Queen, (2001) Northern Territories Court of Criminal Appeal 1, 160 Federal Law Reports 26, 42.

¹³⁹ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (Judgement) 1990 ICJ Rep 92, para 63; *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Merits) (Sep Op of Vice President Alfaro) 162 ICJ Rep 6.

1. ENTRY ON A PASSPORT IS A CLEAR ACCEPTANCE OF THE INDIVIDUAL'S NATIONALITY

Passports are official documents issued by national or international authorities, enabling the bearer to offer proof of his or her nationality for international travel.¹⁴⁰ A national passport, specifically indicates the bearer's nationality, distinguishing it from any analogous travel document issued to a non-nationals, which contains no such assertion.¹⁴¹ Tribunals have deemed passports to be the strongest evidence of nationality,¹⁴² and acceptance of this passport has been deemed to create estoppel.¹⁴³ When a state accepts an individual on the passport of a particular country, a legal relationship is developed between the state of nationality and the state accepting the individual.¹⁴⁴ Ms. Shaw's admission on the basis of her Remisian passport, and its subsequent stamping, evidences this acceptance.

2. THE ACCEPTANCE WAS VOLUNTARY, UNCONDITIONAL AND AUTHORISED

Absence of intention to make a legal commitment is no defence to estoppel.¹⁴⁵ Its essential aim is to preclude a party from benefiting by its own inconsistency to the detriment of another party who has in good faith relied upon a representation of fact made by the former party.¹⁴⁶ Thus, Antrano cannot rely upon its alleged mistake as a defence to estoppel especially after Ms. Shaw was already arrested.

Additionally, the immigration officer was authorized to stamp the passport, and did so unconditionally. Therefore, this criterion is met.

3. THERE WAS RELIANCE IN GOOD FAITH TO MS. SHAW'S DETRIMENT

Ms. Shaw intended to enter Antrano as a Remisian national, and presented her Remisian passport, pursuant to this intention. Remisia's corresponding intention to exercise diplomatic and consular protection to all its nationals, acquiring nationality through NIP is evidenced from

¹⁴⁰ *Joyce* [1946] A.C 347; Cornelia Hagedorn, 'Passport' in Rüdiger Wolfrum (ed) 'Max Planck Encyclopedias of International Law' (OUP 2008) para 1; Weis (n 12).

¹⁴¹ Weis (n 12) 224, 225.

¹⁴² *Jadhav* (n 96) (Declaration of Judge Sebutinde) para 10; *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, (Jurisdiction) SCC Case No. 064/2008, (2 September 2009) para 130.

¹⁴³ *Belle M. Hendry (United States) v. United Mexican States* 6 RIAA 616; *Nottebohm* (Dissenting Opinion of Judge Read) (n 100).

¹⁴⁴ *Nottebohm* (Dissenting opinion of Judge Read) (n 100).

¹⁴⁵ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* (Judgement) 2018 ICJ Rep 507 para. 154, 156, 159.

¹⁴⁶ D.W Bowett, 'Estoppel before International Tribunals and Its Relation to Acquiescence' (1957) 33 *Britain Yearbook of International Law* 176, 177.

the advertisements it has issued. Thus, as the stamping of Ms. Shaw's passport lent additional support to Ms. Shaw's expectation of being treated as a Remisian national, her reliance was *bona fide*.

ISSUE IV: REMISIA HAS NOT VIOLATED INTERNATIONAL LAW BY REFUSING TO ALLOW DR.
MALEX TO ENTER REMISIA

**A. ANTRANO LACKS STANDING AS IT CANNOT EXERCISE DIPLOMATIC PROTECTION OVER
DR. MALEX**

Antrano's declaration purports to allow it to exercise the customary right to exercise diplomatic protection for an injury to its national, irrespective of the interests of the UN.¹⁴⁷ However, there exists no personal injury to Dr. Malex in the present case. The immunities and privileges under Section 23 of CPI accrue to the UN, not the experts themselves.¹⁴⁸ Similarly, the VCCR¹⁴⁹ and the VCDR¹⁵⁰ also do not attach these privileges and immunities to the individuals concerned, and any violation of rights under them amounts to that of a State, not an individual.¹⁵¹ Thus, any injury created from denying entry to Dr. Malex, accrues exclusively to the UN and its administrative machinery, precluding standing.

**B. UNSC RESOLUTION 9997 DOES NOT HAVE THE FORCE OF LAW OWING TO ITS
INVALIDITY**

1. THE ICJ IS COMPETENT TO DETERMINE THE VALIDITY OF A UNSC RESOLUTION

UN is a subject of international law.¹⁵² In acting beyond its competence, or contrary to its purposes, or by violating peremptory norms, the UN violates international law.¹⁵³

¹⁴⁷ Clarifications, [11].

¹⁴⁸ August Reinisch, *The Convention on the Privileges and Immunities of the United Nations and its Specialised Agencies: A Commentary* (OUP 2016) 379; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Advisory Opinion) [1989] ICJ Rep 177.

¹⁴⁹ VCCR, Preamble.

¹⁵⁰ VCDR, Preamble.

¹⁵¹ The exception to this is Article 36 of the VCCR.

¹⁵² Karl Doehring, 'Unlawful Resolutions of the Security Council and their Legal Consequences' (1997) 1 Max Planck Yearbook of UN International Law 91.

¹⁵³ Joined Cases C-584/10P, C-593/10P, and C-595/10P, *Commission and Others v Kadi (Kadi II)* [2013] ECJ para 19; Akande, 'The International Court of Justice and the Security Council: Is There Room for Judicial Control of the Political Organs of the UN' (1997) 46 International and Comparative Law Quarterly 309, 328.

As the principal judicial organ of the UN¹⁵⁴ ICJ holds the right to scrutinise the actions of the UNSC.¹⁵⁵ This flows from the fact that no UN organ, as a subject of international law capable of acting illegally, acts free from judicial control.¹⁵⁶ The ICJ's jurisprudence in contentious cases¹⁵⁷ and Advisory Opinions,¹⁵⁸ along with that of the ECJ,¹⁵⁹ and the ECtHR,¹⁶⁰ affirm this.

2. RESOLUTION 99997 IS VIOLATIVE OF INTERNATIONAL LAW

a) THE RESOLUTION INTERFERES WITH MATTERS ESSENTIALLY WITHIN REMISIA'S DOMESTIC JURISDICTION

A substantial essence of Article 2(7) remains unaffected by developing practice.¹⁶¹ Being integral to their sovereignty, matters of nationality continue to remain within the domaine reserve of states.¹⁶² Thus, Resolution 99997 is contrary to the UN Charter.¹⁶³

b) THE RESOLUTION GOES BEYOND THE CONTOURS OF ARTICLE 34

The mandate of the UNIMR, includes fact-finding, through the conduct of in-person interviews and collection of evidence.¹⁶⁴ This exceeds the limits of Art. 34. Article 34 has a very limited purpose, restricted to determining whether circumstances falling under UNSC's

¹⁵⁴ UN Charter, art 92.

¹⁵⁵ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v United Kingdom)* (Order) [1992] ICJ Rep 3 (Separate Opinion of Judge Shahabuddeen) 32; *Libya v United Kingdom* (Dissenting Opinion of Judge Bedjaoui) 44.

¹⁵⁶ *Bosnia and Herzegovina v Serbia and Montenegro* (n 1) (Order) [1993] ICJ Rep 325 (Separate Opinion of Judge Lauterpacht) 439.

¹⁵⁷ *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v US)* (Preliminary Objections) [1992] ICJ Rep 114.

¹⁵⁸ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403, para 42; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, paras 27–28.

¹⁵⁹ *Kadi II* n (153).

¹⁶⁰ *Al-Jedda v UK* App no 27021/08 (ECHR 2011) para 102; *Nada v Switzerland*, App no 10593/08 (ECHR Grand Chamber 2012) para 224.

¹⁶¹ Kawser Ahmed, 'The Domestic Jurisdiction Clause in the United Nations Charter: A historical view' (2006) 10 *Singapore Yearbook of International Law* 175, 197.

¹⁶² *Nationality Decrees* (n 98); Judgement of the Court of 7 July 1992, *Micheletti v Delegación del Gobierno en Cantabria*, C-369/90, ECLI:EU:C:1992:295 para 10.

¹⁶³ Hutchinson, 'The Material Scope of the Obligation under the United Nations Charter to Take Action to Settle International Disputes' (1992) 14 *Australian Year Book of International Law* 1.

¹⁶⁴ *Compromis* [Annex A].

competence to pursue further action have arisen.¹⁶⁵ It is only the initial step that may be taken by the UNSC. Consequently, sanctioning a full-fledged fact-finding mission falls outside the scope of Article 34. Additional support comes from the general practice followed by the UNSC in calling upon the Secretary General first, when fact-finding missions are sought to be established.¹⁶⁶

C. NOTWITHSTANDING ITS VALIDITY, THE UNSC RESOLUTION 99997 DOES NOT CREATE BINDING OBLIGATIONS FOR REMISIA

UNSC actions are categorised into binding *decisions*¹⁶⁷ and non-binding *recommendations*.¹⁶⁸ The obligation of member states to accept and carry out UNSC actions extends only to the former, which are the measures under Chapter VII.¹⁶⁹

1. ACTIONS UNDER CHAPTER VI OF THE UN CHARTER ARE NOT ‘DECISIONS’

Generally, a Chapter VI actions are of recommendatory nature,¹⁷⁰ In *Corfu Channel*, the ICJ held that the obligations arising out of resolutions under Chapter VI were purely voluntary since Article 25 applies exclusively to Chapter VII resolutions.¹⁷¹ This finds affirmation in state practice.¹⁷² Non-compliance with UNSC *recommendations* is of no legal consequence.¹⁷³

¹⁶⁵ UN Charter, art 34; Ernest L. Kerley, 'The Powers of Investigation of the United Nations Security Council' (4 October 1961) 55 *The American Journal of International Law* 892, 898.

¹⁶⁶ UNSC Res 1336 (23 January 2001) UN Doc S/RES/1336; UNSC Res 1405 (19 April 2002) UN Doc S/RES/1405.

¹⁶⁷ UNSC Res 1193 (28 August 1998) UN Doc S/RES/1193, para 16.

¹⁶⁸ Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus and Nikolai Wessendorf (eds), *The Charter of the United Nations: A Commentary* (3rd edn, OUP 2012 vol 1), 790, para 8.

¹⁶⁹ Malcolm Shaw, *International Law* (CUP 1991) p 640, para 702-703; Bowett, *The Law of International Organisations* (Stevens 1984) 462-464.

¹⁷⁰ The Prosecutor v Dusko Tadic IT-94-I-A (ICTY, 1999) para 31; Rosalyn Higgins, 'A General Assessment of United Nations Peace-keeping' in *United Nations Peace-Keeping: Legal Essays* (ed Cassese, 1978) 1, 4; L. M. Goodrich, E. Hambro and A. P. Simons, *Charter of the United Nations, Commentary and Documents* (3rd edn, Columbia University Press, New York 196) 208.

¹⁷¹ *Corfu Channel* (Judgment) [1948] ICJ Rep 15, 18.

¹⁷² US proposed a draft resolution to establish an investigation commission under Article 34 and argued that UNSC actions under Chapter VI carry full binding force in reference to Article 25. Representatives from Albania, Bulgaria, Yugoslavia, and USSR disagreed, stating that such a decision to investigate was violative of sovereignty. UNSCOR, 169th and 170th meetings, art 14, UN Doc. S/PV.170 (29 July 1947).

¹⁷³ Thomas Giegerich, *The Statute of the International Court of Justice: A Commentary* (3rd edn, Andreas Zimmermann, Christian Tams, Karin Oellers-Frahm, Christian Tomuschat eds, OUP 2019) 205, para 73.

2. ARTICLE 34 IS MERELY PERMISSIVE IN NATURE

The drafting history of the UN Charter demonstrates that Article 34 previously used the term ‘empowered’, instead of ‘may investigate’. This was in response to a specific clarification of the UNSC’s investigatory powers,¹⁷⁴ evidencing an intention to only vest recommendatory powers under Article 34.

D. ARGUENDO, REMISIA COULD STILL DENY ENTRY TO DR. MALEX

1. THE CPI DOES NOT EXTINGUISH REMISIA’S SOVEREIGN RIGHT TO REGULATE ENTRY OF EXPERTS

The UN system is premised on the principle of sovereign equality,¹⁷⁵ a necessary corollary of state sovereignty.¹⁷⁶ No treaty obligations can be read in a manner to unduly derogate the sovereignty of Remisia.

Immunity from immigration restrictions is provided only to UN officials,¹⁷⁷ This provision along with Art. VII, which relates to UNLP (to be issued only to officials), is the basis for the UN personnel to enter and reside in host states.¹⁷⁸ However, a similar provision is absent in case of experts on mission, demonstrating that State’s retain the sovereign right to deny experts entry.

2. UN DOCUMENTATION DOES NOT SUFFICE IN CREATING AN OBLIGATION TO PROVIDE ENTRY

UN Certificate, unlike the UNLP, is not a legally valid travel document in itself.¹⁷⁹ It only certifies that the holder is travelling on official business on behalf of the UN,¹⁸⁰ serving

¹⁷⁴ Sec A, par. 1, Ch. VIII, Dumbarton Oaks Proposal, Doc No 274, III/2/6, C/1, 3 UNCIO Docs 13 (1945), 107, 115.

¹⁷⁵ UN Charter, art 2(1).

¹⁷⁶ Samantha Besson, ‘Sovereignty’, Max Planck Encyclopaedia of Public International Law (2011) para 2.

¹⁷⁷ CPI, s18(d).

¹⁷⁸ Michael Schoiswohl, *Commentary on Art VII Sections 24–28 General Convention*; ILC, ‘The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat’ (1967) UN Doc A/CN.4/L.118 and Add.1 and 2, p 275 para 306.

¹⁷⁹ UN Department of Operational Support ‘Standard Operating Procedure for the Issuance of United Nations Travel Documents’ DOS/2021.07 (2021).

¹⁸⁰ UN Office of Legal Affairs, ‘Memorandum to the Executive Director of the United Nations Institute for Training and Research’ (1990) UN Juridical Yearbook 305, 6.

identification document.¹⁸¹ It does not suffice to replace a travel document, such as a visa. Dr. Malex has never applied for a Remisian visa. Consequently, no obligation to permit entry was owed to him.

State practice,¹⁸² affirms this – Israel,¹⁸³ Hungary,¹⁸⁴ Iran,¹⁸⁵ Saudi Arabia,¹⁸⁶ Sudan.¹⁸⁷

E. THE DENIAL OF ENTRY TO DR. MALEX IS JUSTIFIED BY THE DOCTRINE OF *PERSONA NON GRATA*

1. *THE DOCTRINE APPLIES TO ‘EXPERTS ON MISSION’*

Every State has the right to declare an individual *persona non grata*, under customary international law.¹⁸⁸ The doctrine extends to civilians.¹⁸⁹

The UN, however, has consistently maintained that the doctrine has no application to its personnel, as they cannot be attributed to any State, and are solely its employees.¹⁹⁰ Yet, the

¹⁸¹ United Nations Repertory of Practice of United Nations Organs, ‘Extracts relating to Articles 104 and 105 of the Charter of the United Nations’ Supplement No. 3 (1959–1966) ch XVI para 104.

¹⁸² Wolfgang Münch, ‘The UN Laissez Passer: Legal Reflections and Managerial Issues’ in U Fastenrath et al (eds), *From Bilateralism to Community Interest—Essays in Honour of Judge Bruno Simma* (OUP 2011) 272.

¹⁸³ UN News, ‘Visa refusal for UN human rights staff in Palestine part of wider ‘worrying trend’: Bachelet’ (*UN News*, 30 August 2022) <https://news.un.org/en/story/2022/08/1125762>.

¹⁸⁴ OHCHR, ‘UN human rights experts suspend Hungary visit after access denied’ (*OHCHR*, 15 November 2018) <https://www.ohchr.org/en/press-releases/2018/11/un-human-rights-experts-suspend-hungary-visit-after-access-denied>.

¹⁸⁵ Amnesty International, ‘Iran 2022’ (*Amnesty International*, 2022) <https://www.amnesty.org/en/location/middle-east-and-north-africa/iran/report-iran/>.

¹⁸⁶ Kareem Fahim, ‘U.N. investigator awaiting permission to enter Saudi Consulate in probe of Khashoggi killing’ (*Washington Post*, 29 January 2019) https://www.washingtonpost.com/world/national-security/un-investigator-awaiting-permission-to-enter-saudi-consulate-in-probe-of-khashoggi-killing/2019/01/29/c49f6a0a-23d7-11e9-90cd-dedb0c92dc17_story.html.

¹⁸⁷ JURIST, ‘UN Mission to Darfur should be non-negotiable’ (*JURIST*, 14 February 2017) <https://www.jurist.org/commentary/2007/02/un-intervention-in-darfur-should-be-non/>

¹⁸⁸ Jean d’Aspremont, ‘Persona non grata’ *Max Planck Encyclopaedia of Public International Law* (OUP 2021) para 1.

¹⁸⁹ Harriet Sherwood, ‘Günter Grass barred from Israel over poem’ (*The Guardian*, 8 April 2012) <https://www.theguardian.com/world/2012/apr/08/gunter-grass-barred-from-israel>; Philip Bump, ‘How to be declared ‘persona non grata’ and get yourself kicked out of the United States’ (*Washington Post*, 29 December 2016) <https://www.washingtonpost.com/news/the-fix/wp/2016/12/29/how-to-be-declared-a-persona-non-grata-and-get-yourself-kicked-out-of-the-united-states/>; CBS News, ‘Manila Is Mad At Claire Danes’ (*CBS News*, 1 October 1998) <https://www.cbsnews.com/news/manila-is-mad-at-claire-danes/>.

¹⁹⁰ ILC, ‘The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat’ (1967) UN Doc A/CN.4/L.118 and Add.1 and 2.

bond between the UN and its personnel does not substitute the personnel's allegiance to their States or expatriate them of the same.¹⁹¹

Ties of nationality acquire even greater relevance for experts,¹⁹² as they are also not free from national service obligations.¹⁹³ State practice - Somalia,¹⁹⁴ Sudan,¹⁹⁵ Mali,¹⁹⁶ Ethiopia,¹⁹⁷ Burkina Faso,¹⁹⁸ - affirms this. The fact that such practice was met with state silence, establishes it as custom.¹⁹⁹

2. THE DOCTRINE IS APPLICABLE IN THE CASE OF DR. MALEX

The application of the *persona non grata* is highly discretionary. Even the actions of the individual's state of nationality can form its basis.²⁰⁰

Dr Malex's employment at the Antranan Department of Nationality Rights,²⁰¹ a state openly committed to eradicate statelessness,²⁰² casts aspersions on the possibility of the UNIMR conducting an objective inquiry. It can also hinder Dr Malex from maintaining highest possible standards of integrity,²⁰³ not seeking instructions from Antrano,²⁰⁴ and keeping *only*

¹⁹¹ Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174 (Dissenting Opinion of Judge Hackworth) 201.

¹⁹² Ibid (Opinion of Judge Azevedo) 194-195.

¹⁹³ CPI, s 18(c).

¹⁹⁴ Moulid Hujale, 'Somalia expels top UN official over 'interference with internal affairs'' (*The Guardian*, 3 January 2019) <https://www.theguardian.com/global-development/2019/jan/03/somalia-expels-top-un-official-over-interference-with-internal-affairs>.

¹⁹⁵ Al Jazeera, Sudan declares UN envoy Volker Perthes 'persona non grata' (*Al Jazeera*, 9 June 2013) <<https://www.aljazeera.com/news/2023/6/9/sudan-declares-un-envoy-volker-perthes-persona-non-grata>> accessed 2 January 2024.

¹⁹⁶ UN, 'Secretary-General Deeply Regrets Malian Government's Declaration of United Nations Human Rights, Peacekeeping Official as Persona Non Grata' (7 February 2013) <https://press.un.org/en/2023/sgsm21681.doc.htm>.

¹⁹⁷ UN, 'Secretary-General Denounces Ethiopia's Expulsion of Senior United Nations Officials as Security Council Delegates Differ on Potential Response' (6 October 2021) <https://press.un.org/en/2021/sc14657.doc.htm>.

¹⁹⁸ UN, 'Burkina Faso Transitional Government's Persona Non Grata Designation for Resident Coordinator Does Not Apply to United Nations Officials, Secretary-General Says (24 December 2022) <https://press.un.org/en/2022/sgsm21643.doc.htm>.

¹⁹⁹ Third report of the Special Rapporteur, Sir Michael Wood (67th session of the ILC (2015)). A/CN.4/682; Michael Akehurst, 'Custom as a Source of International Law' (1976) 47 *British Yearbook of International Law* 1, 10

²⁰⁰ Jean d'Aspremont (n 188), para 6.

²⁰¹ Compromis [51].

²⁰² Compromis [3].

²⁰³ 'Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission' (18 June 2002) UN-Doc. ST/SGB/2002/9, Reg 2(a).

²⁰⁴ Ibid, Reg 2(b).

the interests of the UN in view.²⁰⁵ This presents a reasonable cause for the application of *persona non grata* here, validating Dr. Malex's denial of entry.

²⁰⁵ Ibid, Reg 2(c).

PRAYER FOR RELIEF

For the foregoing reasons, the Kingdom of Remisia, the Respondent, respectfully prays that this Honourable Court:

- I. **DECLARE** that Antrano lacks standing to bring the matter of the deprivation of nationality of the “Sterren Forty” to this Court;
- II. **DECLARE** that Remisia did not violate international law by depriving the “Sterren Forty” of their Remisian citizenship in accordance with the DCA;
- III. **DECLARE** that Antrano violated international law by denying Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano; and
- IV. **DECLARE** that Remisia did not violate international law by refusing to allow Dr. Malex to enter Remisia.

Respectfully submitted,
Agents for the Kingdom of Remisia