

INTERNATIONAL COURT OF JUSTICE

The Peace Palace
The Hague, The Netherlands



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)

MEMORIAL FOR THE APPLICANT

2024

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STATEMENT OF JURISDICTION

The Republic of Antrano (“**Antrano**”) and the Kingdom of Remisia (“**Remisia**”) (collectively, “**the Parties**”) appear before the International Court of Justice in accordance with Article 40(1) of the *Statute of the International Court of Justice* through submission of a Special Agreement for the resolution of the differences between them concerning the “Sterren Forty” and other matters. The Parties 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 14 September 2023.

QUESTIONS PRESENTED**I**

Does Antrano have standing to bring the dispute concerning Remisia's deprivation of nationality of its citizens before the Court?

II

Did Remisia violate international law by depriving its citizens of their nationality and rendering them stateless?

III

Did Antrano violate international law when it refused to provide Remisia consular access to Ms. Saki Shaw during her time in custody in Antrano?

IV

Did Remisia violate international law by denying Antranan national Dr. Tulous Malex entry to Remisia as required by Security Council Resolution 99997?

STATEMENT OF FACTS

Overview of the Parties

Established in 1951, Antrano is a constitutional republic comprising several islands within the Mahali Archipelago. Since its inaugural President was elected, Antrano has been committed to promoting the rights of stateless individuals.

Approximately 11,000 kilometres away from Antrano, Remisia is a constitutional monarchy on the Isidre Plateau. Under its Constitution of 1923, the monarch is entitled to reverence. Remisia's reigning monarch, Queen Khasat, ascended to the throne in 2006.

Disrespect to the Crown Act ("DCA")

Remisia's legislature enacted the DCA in 1955, making it an offence punishable by up to five years imprisonment to defame, insult or threaten the reigning monarch. The DCA authorizes the deprivation of Remisian citizenship if an individual is found guilty and a court determines their act or speech showed disloyalty to the Crown.

Antrano and Remisia are both parties to the *Convention on the Reduction of Statelessness* ("CSR"). Antrano was an original party, while Remisia ratified the CSR in 1967 with a declaration under Article 8(3). Remisia's declaration seeks to retain the authority to revoke an individual's citizenship and render them stateless if convicted under the DCA. Antrano and three other States objected to Remisia's declaration as being against the object and purpose of the CSR.

Citizenship for Sale

Following her coronation, Queen Khasat prioritized foreign investment. In 2008, Remisia enacted the Naturalization by Investment Act, authorizing the government to grant citizenship to applicants who invest €500,000 or more in Remisia. Remisia subsequently launched the Naturalization by Investment Program ("NIP"), a global marketing campaign encouraging high net worth individuals to apply for Remisian citizenship under the NIA, citing various benefits.

Ms. Shaw Purchases Remisian Citizenship

Ms. Saki Shaw, a Molvanian national, shared a close friendship with Queen Khasat since 1988. Shaw was head of Lithos Limited, a wholly owned subsidiary of Shaw Corporation, a transnational mining conglomerate. Molvanian authorities launched a financial crimes investigation into ShawCorp in 2014 but were unable to subpoena Shaw, who, since purchasing a residence in Italy in 2012, had not revisited Molvania.

In November 2014, Shaw contacted Queen Khasat and proposed a joint venture in cobalt mining between Lithos and the Remisian Ministry of Mines. This developed into the Lythos-Remisia Cooperative (“LRC”), approved in 2015, with ownership structured as 51% for Remisia and 49% for Lithos.

Shaw personally contributed €500,000 to Remisia’s National Infrastructure Development Fund as part of the arrangement. Shaw, who had not visited Remisia since Queen Khasat’s coronation in 2006, successfully applied for Remisian citizenship under the NIP and became a naturalized Remisian citizen in June 2016. Remisian law allows for dual citizenship.

Non-Recognition of Purchased Citizenship

Antrano’s statutory non-recognition of purchased citizenship has been in effect since 2017. Passports issued under such arrangements are not valid in Antrano, with signage at every port of entry informing travellers of such.

Protests against Cobalt Mining

LRC applied for three mining licenses in July 2016, receiving approval from the Ministry in August 2017. Their cobalt mining operations caused environmental and health concerns because their facilities generated dust and emitted metallic minerals into nearby rivers.

In October 2019, LRC sought licenses for five new mines, denying any health risks. By December 2019, the Isidre League of Student Activists (“ISLA”) called for an end to cobalt mining because of environmental hazards.

The Ministry approved four new licenses in January 2020. In response, ILSA organized a nationwide strike on 3 February with more than 30,000 students. More protests erupted that week, and police arrested seven students suspected of being coordinators. Protesters subsequently blocked access to LRC's mines for three weeks. Thousands of protesters vocalized that Queen Khasat's friendship with Shaw meant LRC's operations were favoured at the risk of public health.

The Sterren Forty

To end the demonstrations, the Remisian police detained over 1,000 protesters on 27 February 2020. At the Sterren Palace gates, forty protesters forming a human chain were arrested. They gained international media attention and were dubbed "the Sterren Forty." Queen Khasat was not in residence at the time.

The Remisian Attorney-General announced all protesters would be charged under the DCA unless they apologized to the Queen. ILSA clarified that they did not intend to challenge the Queen and expressed disappointment that free debate was not tolerated. Charges were ultimately filed against 230 students, including the Sterren Forty.

Trials concluded by March 2021, all resulting in guilty verdicts. While most sentences ranged from one to three years, the Sterren Forty received five-year sentences with citizenship revocation. All 40 appealed to the Supreme Court of Remisia, arguing they were convicted of political offences and would be rendered stateless. Their appeals were rejected. The Sterren Forty are now serving their sentences within Remisia as stateless individuals. This is the first time Remisia employed its citizenship-stripping powers under the DCA.

Diplomatic Tensions

In April 2021, Antrano's President Iyali attempted to speak with Remisian authorities and resolve their differences regarding the application of the DCA. Remisia declined, citing internal affairs. In January 2022, Antrano notified the United Nations ("UN") Security Council ("UNSC") that Remisia's actions created a dispute which could endanger the maintenance of international peace and security. Antrano sought Council action under Articles 34 and 36 of the *Charter of the United Nations*, affirming that Remisia rejected its attempts to amicably resolve the dispute as required by Article 33. Debate was scheduled for 28 March.

Extradition Request

On 7 March 2022, Molvanian authorities replaced the 2014 subpoena for Shaw with an arrest warrant for financial crimes and obstruction of justice. Aware of Shaw's impending trip to Antrano, Molvania requested her extradition from Antrano.

On 16 March, Shaw was detained by Antranan police based on the extradition request. Shaw told her arresting officers that she was a Remisian citizen and sought to speak to the Remisian consul. Antrano denied her request with a written notice because Antrano does not recognize purchased citizenship. Antrano arranged for Shaw to speak with the Molvanian consul instead, which she refused. Antrano also provided Remisia with a copy of Shaw's notice and recommended they coordinate with the Molvanian Consulate.

Two weeks later, Shaw died of natural causes while in Antrano's custody.

UN Inspection Mission to Remisia ("UNIMR")

Following its scheduled meeting, the UNSC established the UNIMR by adopting Resolution 99997. Tasked with determining the circumstances underlying Remisia's application of the DCA, Antranan national Dr. Tulous Malex was selected to lead the UNIMR. Remisia wrote to the UN Secretary-General twice, announcing that it would not permit Malex to enter Remisia without an entry visa, which they would not grant. The Secretary-General stated that denying Malex entry would violate Resolution 99997 and later condemned Remisia's lack of cooperation.

On 9 August 2022, Malex was denied entry into Remisia despite his UN Certificate. The Secretary-General referred Remisia's refusal to the UNSC, but a resolution calling for additional measures was vetoed by a permanent member.

Diplomatic Negotiations

On 15 August 2022, Antrano and Remisia began discussions to submit a Special Agreement for the resolution of the differences between them concerning the Sterren Forty and other matters to the International Court of Justice. The Parties successfully negotiated and submitted the terms of the Special Agreement to the Registrar of the Court on 14 September 2023.

SUMMARY OF PLEADINGS

OVERVIEW

Antrano has standing to invoke the responsibility of Remisia with a view to ascertaining its failure to comply with its obligations *erga omnes partes* under the *CRS* and obligations *erga omnes* to respect the right to a nationality. In depriving the Sterren Forty of their nationality and rendering them stateless, Remisia violated its treaty obligations under the *CRS* and the customary international prohibition of arbitrary deprivation of nationality.

Antrano satisfied its obligations to provide consular access to Remisian nationals under Article 36 of the *Vienna Convention on Consular Relations* (“*VCCR*”). Remisia was not entitled to exercise consular protection over Shaw, who purchased Remisian citizenship and lacked an effective link to the State.

Remisia violated its *Charter* and treaty obligations to facilitate Dr. Malex’s entry into the country. Security Council Resolution 99997 was a binding Security Council decision to establish a UNIMR which would operate in Remisia.

I

Antrano has standing to invoke the responsibility of Remisia with a view to ascertaining its failure to comply with its obligations *erga omnes partes* and *erga omnes*. Antrano does not need to establish a special interest to launch this claim.

Antrano has standing because it invokes the responsibility of Remisia for violating its obligations *erga omnes partes* under Articles 8 and 9 of the *CRS*. States parties to the *CRS* have a common interest in preventing statelessness and cannot do so effectively without a common interest in compliance with the rules therein.

Further, Antrano has standing to invoke the responsibility of Remisia for violating its obligations *erga omnes* to respect the right to a nationality and prevent the arbitrary deprivation of nationality. These are customary international law norms concerning the basic rights of the human person and are thus obligations *erga omnes*.

II

In depriving the Sterren Forty of their nationality and rendering them stateless, Remisia violated its treaty obligations under Articles 8 and 9 of the *CRS*. Remisia's declaration under Article 8(3) does not excuse its violation of Article 8(1) or impact its violation of Article 9.

Further, Remisia violated the customary international prohibition of arbitrary deprivation of nationality because its actions against the Sterren Forty did not have a clear basis in law, did not serve a legitimate purpose, and were not proportionate.

III

Antrano satisfied its obligations to provide consular access to Remisian nationals under Article 36 of the *VCCR*. Remisia was not entitled to exercise consular protection over Shaw, who purchased Remisian citizenship and lacked an effective link to the State. Further, Remisia cannot bring this claim because Shaw did not exhaust local remedies in Antrano, and the direct injury alleged by Remisia follows from non-recognition of Shaw's citizenship. In any event, Antrano complied with the Convention by providing consular notice to Remisia without delay and exercising its obligation to provide consular access to Remisian nationals in good faith, in accordance with Antranan law.

IV

Remisia violated its *Charter* and treaty obligations to facilitate Dr. Toulous Malex's entry into the country. Security Council Resolution 99997 was a binding Security Council decision to establish a UN Inspection Mission which would operate in Remisia. The Resolution must be presumed to be a valid exercise of the Council's Article 34 powers of investigation under the *Charter*, and obliged Remisia to grant entry to investigators. Remisia violated its obligations under Article 25 to accept and carry out the decisions of the Security Council by refusing to grant entry to the UNIMR lead, Dr. Malex. Further, Remisia violated its obligation under Section 26 of the CPI by failing to facilitate a speedy issuance of an entry visa for a UN Expert. Remisia cannot defend its violations as legal countermeasures against the Security Council, or Antrano.

PLEADINGS

I. ANTRANO HAS *ERGA OMNES PARTES* AND *ERGA OMNES* STANDING TO BRING THE DISPUTE CONCERNING REMISIA’S DEPRIVATION OF NATIONALITY OF THE STERREN FORTY BEFORE THE COURT.

1. Antrano has standing as an indirectly injured State because Remisia violated its obligations *erga omnes partes* and *erga omnes* in depriving the Sterren Forty of their nationality and rendering them stateless. Antrano does not need to establish a special interest to launch this claim [A]. Antrano has standing to invoke the responsibility of Remisia for violating its obligations *erga omnes partes* under Articles 8 and 9 of the CRS [B]. Further, Antrano has standing to invoke the responsibility of Remisia for violating its obligations *erga omnes* to respect the right to a nationality and prevent the arbitrary deprivation of nationality [C].

A. ANTRANO DOES NOT NEED TO ESTABLISH A SPECIAL INTEREST.

2. Antrano does not need to establish a special interest or show that the victims are its nationals to launch this claim. Rather, Antrano is entitled to invoke the responsibility of Remisia with a view to ascertaining its failure to comply with its obligations *erga omnes partes* and *erga omnes*.¹ The *raison d’être* of the *erga omnes (partes)* doctrine is that, without it, a State could evade accountability by breaching fundamental rules in a way that did not directly injure any particular State.² Requiring a special interest would prevent any State from making a claim regarding Remisia’s deprivation of nationality of the Sterren Forty before the Court, an acute concern here as the victims were solely Remisian nationals and are now stateless.³

¹ *Questions relating to the Obligation to Prosecute or Extradite (Belgium/Senegal)*, [2012] ICJ Rep 422, ¶¶68-69 [Belgium]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia/Myanmar)*, [2022] ICJ Rep 477, ¶112 [The Gambia]; *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands/Syrian Arab Republic)*, [2023] ICJ Rep 2, ¶50 [Canada]; *Barcelona Traction, Light and Power Company, Limited (Belgium/Spain)*, [1970] ICJ Rep 3, ¶33 [Barcelona Traction].

² *Belgium*, ¶69; *The Gambia*, ¶108.

³ Compromis, ¶34; *Belgium*, ¶69; *The Gambia*, ¶108; Maria Jose Recalde-Vela, “Access to Redress for Stateless Persons Under International Law: Challenges and Opportunities” (2019) 24:2 *TilburgLRev*, 183 [Recalde-Vela].

B. ANTRANO HAS *ERGA OMNES PARTES* STANDING TO LAUNCH THIS CLAIM.

3. Antrano has standing because it invokes the responsibility of Remisia for violating its obligations *erga omnes partes* under Article 8 of the *CRS*, which generally prohibits rendering individuals stateless, and Article 9, which prohibits the discriminatory deprivation of nationality.⁴

4. This Court has recognized the standing of indirectly injured States to invoke State responsibility for breaches of obligations *erga omnes partes*.⁵ These are certain multilateral treaty obligations established for the protection of a common interest owed towards a group of States parties to the same treaty, all of which have a legal interest in respecting the rules therein.⁶ Antrano and Remisia are both parties to the *CRS*, making Antrano part of the relevant *omnes*.⁷

5. A treaty obligation is *erga omnes partes* if: (1) the treaty creates an obligation that States parties have a common interest in upholding, and (2) the provisions invoked are “relevant” to that common interest.⁸ Both elements are satisfied because the *CRS* establishes an obligation to prevent and reduce statelessness, a commitment which the States parties have a common interest in upholding [1]. Remisia’s obligations under Articles 8 [2] and 9 [3] of the *CRS* are relevant to that common interest and thus owed *erga omnes partes*.

1. States parties to the *CRS* have a common interest in preventing statelessness.

6. Taken together, the text and design of the *CRS* suggest States parties have a common interest in preventing statelessness and cannot do so effectively without a common interest in

⁴ *Convention on the Reduction of Statelessness*, 1961, 989 U.N.T.S 175, Arts.8-9 [*CRS*].

⁵ *Belgium*, ¶¶68-69; *The Gambia*, ¶112; *Canada*, ¶¶50-51. See International Law Commission (“ILC”), *Articles on Responsibility of States for Internationally Wrongful Acts*, A/56/49 (2001), Art.48(1)(a) [*ARSIWA*]; ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001), ILC Yearbook, Vol.II(2), 126 [*ARSIWA* Commentaries]; Institut de Droit International, Resolution: Obligations *Erga Omnes* in International Law, Krakow Session (2005), Art.3 [Krakow Resolution].

⁶ *Belgium*, ¶¶68-69; *The Gambia*, ¶107; *Canada*, ¶50.

⁷ Compromis, ¶62; *ARSIWA* Commentaries, 126.

⁸ *Belgium*, ¶69; *The Gambia*, ¶108; Oona Hathaway, Alaa Hachem & Justin Cole, “A New Tool for Enforcing Human Rights: *Erga Omnes Partes* Standing” (2024) 61:2 *ColumbJTransnat’IL*, 30-31 [Hathaway].

compliance with the rules therein.⁹ Common interests “transcend[] the sphere of bilateral relations of the States parties” and go “over and above the interests of the States concerned individually.”¹⁰ Whether a common interest exists involves analyzing the object and purpose of the relevant treaty, which can be expressed through the treaty’s text and design.¹¹

7. For instance, in *Belgium v. Senegal*, this Court analyzed the preamble of the *Convention against Torture (“CAT”)* to ascertain that its object and purpose is to “make more effective the struggle against torture... throughout the world.”¹² From this purpose, this Court found that States parties to the CAT share a common interest in preventing torture and ensuring compliance with the “relevant obligations” outlined therein, meaning each party to the CAT can bring forth a claim regarding an alleged violation by another party.¹³

8. Similarly, in *The Gambia v. Myanmar*, this Court affirmed that the *Genocide Convention* was adopted for the humanitarian purpose of preventing genocide, and as such, States parties to the *Genocide Convention* have a common interest in preventing genocide by committing themselves to the obligations therein.¹⁴ Motivated by these high ideals, the relevant obligations under the *Genocide Convention* are thus owed by any State party to all other parties.¹⁵

9. Antrano’s claims are grounded in the *CRS* and pursue the common interest of preventing and reducing statelessness, which is precisely the type of common interest this Court found to form the basis of *erga omnes partes* standing in *Belgium v. Senegal* and *The Gambia v. Myanmar*. This is a common interest that transcends bilateral relations, as articulated in the preamble where the

⁹ *Vienna Convention on the Law of Treaties*, 1969, 1155 U.N.T.S. 331, Art.31-32 [VCLT]; UNHCR, *Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness* (2014), 2 [UNHCR Brochure].

¹⁰ *ARSIWA Commentaries*, 126.

¹¹ *Belgium*, ¶68; *The Gambia*, ¶¶106-107; Hathaway, 32-33; Pok Yin S. Chow, “On Obligations *Erga Omnes Partes*” (2021) 52:2 *GeoJInt’IL*, 496 [Chow]. See also: *VCLT*, Art.31.

¹² *Belgium*, ¶68.

¹³ *Belgium*, ¶68-79.

¹⁴ *The Gambia*, ¶107.

¹⁵ *The Gambia*, ¶107.

States parties consider it “desirable to reduce statelessness by international agreement.”¹⁶ The obligations in the *CRS* also go above the interests of the States concerned individually, as the Introductory Note by the United Nations High Commissioner for Refugees (“UNHCR”) explains that “[u]nderlying the [*CRS*] is the notion that while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with... the principle that statelessness should be avoided.”¹⁷ Importantly, the *CRS* extends beyond individual State interests because the primary victims of statelessness are nationals of the State responsible for rendering them stateless, as opposed to nationals of other States.¹⁸

10. In line with the high ideals it was inspired by, the *CRS* sets common rules related to acquisition, renunciation, loss, and deprivation of nationality intended to prevent and reduce statelessness. The obligations within the *CRS* are like those in the *CAT* or the *Genocide Convention*, in which this Court observed that “[i]n such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the Convention.”¹⁹

2. Article 8 of the *CRS* is an *erga omnes partes* obligation.

11. Article 8(1) of the *CRS* prohibits the deprivation of nationality if it would result in statelessness.²⁰ This provision governs unless one of the narrow exceptions set out in Articles 8(2) or 8(3) applies.²¹ Since Article 8 establishes a general prohibition on rendering individuals stateless, it is relevant to the common interest in preventing and reducing statelessness and is thus an *erga omnes partes* obligation.

12. That Article 8(3) permits States to submit a declaration retaining the right to withdraw nationality in exceptional circumstances does not take away from the high ideals that motivate

¹⁶ *CRS*, Preamble; *VCLT*, Art.31(2).

¹⁷ *CRS*, Introductory Note; *VCLT*, Art.31(2).

¹⁸ *The Gambia*, ¶109.

¹⁹ *Belgium*, ¶68; *The Gambia*, ¶106.

²⁰ *CRS*, Art.8(1).

²¹ *CRS*, Arts.8(2)-(3); UNHCR Guidelines, 14.

Article 8(1). On the contrary, the carefully circumscribed nature of these exceptions should be seen as supplementary to, not diminishing of, States parties' interest in each other's compliance.²² Antrano is entitled to verify whether Remisia's declaration and the actions purportedly undertaken under that declaration comply with the strict limits of the *CRS* and its *erga omnes partes* character,²³ especially since reservations are prohibited under Article 8.²⁴

3. Article 9 of the *CRS* is an *erga omnes partes* obligation.

13. Article 9 of the *CRS* prohibits deprivation of nationality based on racial, ethnic, religious or political grounds.²⁵ Although Article 9 applies irrespective of whether statelessness would result, the UNHCR notes it is highly relevant to situations where a State party relies on individual's political beliefs as a basis for deprivation of nationality resulting in statelessness under Article 8(3).²⁶ In addition, the discriminatory deprivation of nationality, including on political grounds, is one of the root causes of statelessness globally.²⁷ Accordingly, the rule under Article 9 is relevant to the common interest in preventing statelessness and is thus an *erga omnes partes* obligation.

C. ANTRANO HAS *ERGA OMNES* STANDING TO LAUNCH THIS CLAIM.

14. All States have standing to invoke the responsibility of another State for breaches of obligations *erga omnes*.²⁸ In *Barcelona Traction*, this Court distinguished between obligations

²² CCPR/C/21/Rev.1/Add.13 (2004), 1-2.

²³ *Belgium*, ¶68-69; *The Gambia*, ¶112.

²⁴ *CRS*, Art.17.

²⁵ *CRS*, Art.9.

²⁶ UNHCR, Guidelines on Statelessness No.5, HCR/GS/20/05 (2020), ¶78 [UNHCR Guidelines].

²⁷ UNHCR, *Addressing Statelessness through the Rule of Law* (2022), 5-6 [UNHCR Rule of Law]; International Federation for Human Rights, "Nicaragua: Serious human rights impacts caused by arbitrary deprivation of nationality" (2023); Human Rights Watch, "Bahrain: Hundreds Stripped of Citizenship" (2018).

²⁸ *Barcelona Traction*, ¶33; *East Timor (Portugal/Australia)*, [1995] ICJ Rep 90, ¶29 [*East Timor*]; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo/Rwanda)*, [2006] ICJ Rep 6, ¶¶64-65; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina/Serbia and Montenegro)*, [1996] ICJ Rep 595, ¶31 [*Bosnia*]; ARSIWA, Art.48(1)(b); ARSIWA Commentaries, 126; Krakow Resolution, Art. 3; Yoshifumi Tanaka, "The Legal

owed to particulate States and those owed “towards the international community as a whole.”²⁹ Regarding the latter, this Court stated that “[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”³⁰

15. Obligations *erga omnes* generally (1) emerge from customary international law and (2) are of fundamental importance of the international community.³¹ According to this Court, obligations *erga omnes* include “the principles and rules concerning the basic rights of the human person.”³²

16. There is no judicial or scholarly consensus which dictates that obligations *erga omnes* must be *jus cogens*. Rather, the two are distinct categories.³³ For example, the obligation to protect the marine environment is considered *erga omnes* but not a *jus cogens*.³⁴

1. The right to a nationality and the prohibition of arbitrary deprivation of nationality are obligations *erga omnes*.

17. Antrano has standing because it invokes the responsibility of Remisia for violating its obligations *erga omnes* to respect the right to a nationality and prevent the prohibition of arbitrary deprivation of nationality. These are obligations *erga omnes* because they are customary international law norms [i] and constitute a basic right of the human person [ii].

Consequences of Obligations *Erga Omnes* in International Law” (2021) 68:1
NethInt’lLRev, 23 [Tanaka].

²⁹ *Barcelona Traction*, ¶33.

³⁰ *Barcelona Traction*, ¶33.

³¹ *Barcelona Traction*, ¶34; *East Timor*, ¶29, *Bosnia*, ¶31; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep 136, ¶¶155-157; Tanaka, 3.

³² *Barcelona Traction*, ¶34.

³³ Paolo Picone, “The Distinction between *Jus Cogens* and Obligations *Erga Omnes*” *The Law of Treaties Beyond the Vienna Convention* (2011), 414; Tanaka, 9.

³⁴ *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, [2011] ITLOS Rep 10, ¶80; Tanaka, 4-5.

- i. *The right to a nationality and the prohibition of arbitrary deprivation of nationality are customary international law norms.*

18. The right to a nationality, and its corollary, the prohibition of arbitrary deprivation of nationality, are in customary international law. The Universal Declaration of Human Rights is the cornerstone source for these norms, with Article 15 guaranteeing the right to a nationality and prohibiting arbitrary deprivation of nationality.³⁵ These norms have been explicitly or implicitly incorporated into various United Nations³⁶ (“UN”) and regional³⁷ human rights treaties. In addition, the fundamental importance of the right to a nationality has been echoed by UN General Assembly Resolutions,³⁸ resolutions of the Human Rights Council and its predecessor,³⁹ general comments from treaty bodies,⁴⁰ UN Secretary-General reports,⁴¹ and UNHCR Executive Committee conclusions.⁴²

³⁵ *Universal Declaration of Human Rights*, 1948, 217 A (III), Art.15.

³⁶ *Convention on the Rights of Persons with Disabilities*, 2007, 2515 U.N.T.S 3, Art.18; *International Covenant on Civil and Political Rights*, 1996, 999 U.N.T.S 171, Art.24(3); *Convention on the Rights of the Child*, 1989, 1577 U.N.T.S. 3, Art.7; *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, 660 U.N.T.S. 195, Art.5(d)(iii); *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979, 1249 U.N.T.S 13, Art.9; *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 1990, 2220 U.N.T.S 3, Art. 29; *Convention on the Nationality of Married Women*, 1957, 309 U.N.T.S 65, Arts.1-3.

³⁷ *American Convention on Human Rights*, 1969, 1144 U.N.T.S 123, Art.20(3); *European Convention on Nationality*, 1997, 2135 U.N.T.S 213, Art.4; *Revised Arab Charter on Human Rights*, 15 September 1994, Art.29; *African Charter on the Rights and Welfare of the Child*, 1990, Art.6.

³⁸ A/RES/50/152 (1995); A/RES/53/125 (1996); A/RES/59/34 (2004); A/RES/61/136 (2006); A/RES/67/149 (2012); A/RES/68/141 (2013).

³⁹ A/HRC/RES/32/5 (2016); A/HRC/RES/26/14 (2014); A/HRC/RES/20/5 (2012); A/HRC/RES/20/4 (2012); A/HRC/RES/13/2 (2010); A/HRC/RES/10/13 (2009); A/HRC/RES/7/10 (2008); E/CN.4/RES/2005/45 (2005); E/CN.4/RES/1999/28 (1999); E.CN.4/RES/1998/48 (1998); E.CN.4/RES/1997/36 (1997).

⁴⁰ CEDAW General Recommendation No. 21 (1994); CCPR/C/21/Rev.1/Add.9 (1999); CERD General Recommendation XXX on Discrimination Against Non-Citizens (2002).

⁴¹ A/HRC/13/34 (2009); A/HRC/19/43 (2011); A/HRC/25/28 (2013); A/HRC/31/29 (2015).

⁴² UNHCR General Conclusion No. 78(XLVI) (1995); UNHCR General Conclusion No. 102(LVI) (2005); UNHCR General Conclusion No. 106(LVI) (2006).

19. The convergence of (1) State practice and (2) *opinio juris*, shown through such widespread treaty ratification and adoption by consensus of many international resolutions on nationality, demonstrates the crystallization of the right to a nationality and the prohibition of arbitrary deprivation of nationality as customary international law norms.⁴³ The customary nature of these norms is supported by eminent legal scholars,⁴⁴ Special Rapporteurs,⁴⁵ and various judicial decisions,⁴⁶ including those rendered by this Court.⁴⁷

ii. *The right to a nationality and the prohibition of arbitrary deprivation of nationality are rules concerning the basic rights of the human person.*

20. The right to a nationality is a basic right of the human person; it is the “right to have rights.”⁴⁸ It serves the legal link between the individual and the State,⁴⁹ and since traditionally only States were subjects of international law, nationality also serves as “the link between the individual

⁴³ *North Sea Continental Shelf*, [1969] ICJ Rep 3, ¶77.

⁴⁴ Tamás Molnár, “The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives” (2015) *Hungarian YB Int’l & Eur Law*, 71; Mark Manly & Laura Van Waas, “The Value of the Human Security Framework in Addressing Statelessness” *Human Security and Non-Citizens* (2010), 63; UNHCR, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality* (2014), 2 [Tunis Conclusions].

⁴⁵ Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on citizenship stripping in North-East Syria (February 2022), 6.

⁴⁶ *Partial Award (Civil Claims - Eritrea’s Claims 15, 16, 23, 37-32)*, Eritrea-Ethiopia Claims Commission, [2004], ¶¶57-58, 60; *Anudo Ochieng Anudo v. United Republic of Tanzania*, [2018] African Court on Human and Peoples’ Rights, ¶76 [*Anudo*]; *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion, [1984] Inter-American Court of Human Rights (“IACtHR”), ¶¶33-34 [*Proposed Amendments*]; *Case of Expelled Dominicans and Haitians v. Dominican Republic*, [2014] IACtHR, ¶253.

⁴⁷ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States/Iran)* [1980] ICJ Rep 3, ¶91.

⁴⁸ Hannah Arendt, *The Origins of Totalitarianism* (1958), 296-297; *Trop v. Dulles*, 356 US 86 (1958), 102; *Pham v. The Secretary of State for the Home Department*, [2018] EWCA Civ 2064, ¶49.

⁴⁹ *Nottebohm (Liechtenstein/Guatemala)*, [1995] ICJ Rep 4, 23 [*Nottebohm*].

and the law of nations.”⁵⁰ Being without a nationality has long signified falling between the cracks of the international legal system, making the right to a nationality an indispensable right.⁵¹

21. Statelessness is a violation of the right to a nationality, leading to serious impediments in enjoying a socio-political life, securing employment, accessing healthcare and education, facing restrictions on freedom of movement, and experiencing a lack of state protection.⁵² The violation of the right to a nationality can also threaten the maintenance of international peace and security, especially in cases of statelessness involving forced displacement or persecution, making it a fundamental concern to the international community.⁵³

22. Because of the importance of the right to a nationality and the prohibition of arbitrary deprivation of nationality, Antrano has a legal interest in their protection and has *erga omnes* standing to launch this claim.

II. REMISIA VIOLATED INTERNATIONAL LAW BY DEPRIVING THE STERREN FORTY OF THEIR NATIONALITY AND RENDERING THEM STATELESS.

23. In depriving the Sterren Forty of their nationality and rendering them stateless, Remisia violated its treaty obligations under the *CRS* [A] and the customary international prohibition of arbitrary deprivation of nationality [B].

A. REMISIA VIOLATED ITS OBLIGATIONS UNDER THE *CRS*.

24. Remisia violated Article 8(1) of the *CRS* [1]. Should Remisia’s declaration be considered valid, Remisia still violated Article 9 of the *CRS* [2].

⁵⁰ Recalde-Vela, 184-185; Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law* (2011), 28.

⁵¹ *Dickson Car Wheel Company v. United Mexican States*, [1931] 4 R.I.A.A. 669, 678.

⁵² UNHCR Rule of Law, 6.

⁵³ A/RES/71/1 (2016); Mirna Adjami, *Statelessness and Nationality in Côte D’Ivoire* (2016), 2; Amal de Chickera, “Statelessness and Identity in the Rohingya Refugee Crisis” (2018), 7.

1. Remisia violated Article 8(1) of the CRS.

25. Remisia violated Article 8(1) of the *CRS* [i]. Remisia’s declaration under Article 8(3) does not excuse this violation [ii]. Should Remisia’s declaration be considered a reservation, it is impermissible [ii] and Remisia remains party to the *CRS* without the reservation [iii].

i. Remisia violated Article 8(1) of the CRS.

26. Article 8(1) of the *CRS* prohibits depriving individuals of their nationality if doing so renders them stateless.⁵⁴ Remisia breached that provision because its deprivation of the Sterren Forty’s nationality rendered them stateless.⁵⁵

ii. Remisia’s declaration does not excuse its violation of Article 8(1).

27. Remisia’s declaration does not excuse its violation of Article 8(1) because it does not modify the legal effect of the *CRS*.⁵⁶ Remisia is simply purporting to interpret the *CRS* through its declaration; it is asserting its belief that the DCA complies with Article 8(3).⁵⁷

28. In any event, Remisia’s actions against the Sterren Forty do not comply with Article 8(3)(a)(ii) of the *CRS*, which allows deprivation of nationality leading to statelessness based on conduct “seriously prejudicial” to the “vital interests” of the State.⁵⁸ This exception establishes a high threshold: (1) there must be clear evidence of intent to act inconsistently with their duty of loyalty to the State as a whole, not just a specific government or part of the State, and (2) conduct must threaten the fundamental foundation and organization of the State rather than mere criminal conduct.⁵⁹ The conduct of the Sterren Forty did not meet this threshold.

⁵⁴ *CRS*, Art.8(1).

⁵⁵ *Compromis*, ¶34.

⁵⁶ ILC, *Guide to Practice on Reservations to Treaties*, A/66/10 (2011), 1.3 [ILC Guide].

⁵⁷ *Maritime Delimitation in the Black Sea (Romania/Ukraine)*, [2009] ICJ Rep 61, ¶42.

⁵⁸ *CRS*, Art.8(3)(a)(iii).

⁵⁹ UNHCR Guidelines, ¶¶56-62; *Tunis Conclusions*, ¶68.

29. First, the Sterren Forty's actions reflected policy disagreements with the government's economic and environmental policies, not disloyalty to the State itself.⁶⁰ To the extent they peacefully advocated for a change in the form of government, this does not equate to disloyalty to the State.⁶¹ In a constitutional monarchy, which Remisia has been since 1923,⁶² the monarch is just one component of the broader State.⁶³

30. Second, the Sterren Forty engaged in peaceful protests as opposed to the narrow spectrum of crimes – espionage, treason, and certain terrorist acts – which are considered fundamentally detrimental to the State's vital interests.⁶⁴ "Vital interests" is a higher standard than "national interests" and denotes protecting interests such as external security, not economic development.⁶⁵

iii. Remisia's purported reservation to the CRS is impermissible.

31. Should Remisia's declaration be considered a reservation, it is impermissible because it is contrary to the object and purpose of the *CRS* to prevent and reduce statelessness.⁶⁶ In particular, Remisia's purported reservation seeks to limit its obligation to not deprive individuals of their nationality if doing so would render them stateless to an extent not covered by the narrow exceptions under Article 8(3), as shown by the analysis above. The provisions in the *DCA* have a lower threshold for deprivation of nationality compared to the core obligations in the *CRS*, and as such, Remisia's purported reservation is incompatible with the object and purpose of the *CRS*.⁶⁷ As an impermissible reservation, Remisia's reservation is null and void.⁶⁸

⁶⁰ Compromis, ¶¶23-25, 28-30.

⁶¹ Compromis, ¶¶27, 32.

⁶² Compromis, ¶¶5-6.

⁶³ George Tridimas, "Constitutional monarchy as power sharing" (2021) 32 *Constitutional Political Economy*, 431.

⁶⁴ UNHCR Guidelines, ¶¶62-64; Tunis Conclusions, ¶68.

⁶⁵ UNHCR Guidelines, ¶62; Tunis Conclusions, ¶68.

⁶⁶ *VCLT*, Art.19; ILC Guide, 3.1.4-3.1.5.

⁶⁷ *VCLT*, Art.19; ILC Guide, 3.1.4-3.1.5.

⁶⁸ ILC Guide, 4.5.1.

iv. *Remisia remains bound by the CRS without the benefit of its reservation.*

32. In accordance with the severability principle, Remisia is bound by *CRS* without the benefit of its impermissible reservation. Endorsed by the Human Rights Committee and regional courts, this principle dictates that the “normal consequence” of an impermissible reservation is the entry into force of a treaty for the reserving State without the benefit of the reservation.⁶⁹ Remisia cannot incontrovertibly rebut the presumption of severability due to the wording of its reservation, its subsequent conduct, and the special character of the *CRS*.

33. First, Remisia’s reservation is worded as a “simple” declaration which must be distinguished from “conditional” declarations.⁷⁰ When Remisia ratified the *CRS*, it did not qualify its declaration as a condition for its participation in the treaty.⁷¹

34. Second, shortly after Remisia ratified the *CRS* in 1967, four States including Antrano objected to Remisia’s declaration, contending that it was an impermissible reservation.⁷² Remisia has been aware of the potential impermissibility of its declaration for many decades and has signalled no intention to not be bound by the *CRS* until now. Antrano’s objection also did not state an intention to preclude the entry into force of the *CRS* between Antrano and Remisia.⁷³ As it did for the reserving State in *Loizidou v. Turkey*, this awareness suggests a willingness on Remisia’s part to assume the risk that its declaration could be deemed impermissible without affecting the entry into force of the treaty.⁷⁴

⁶⁹ CCPR/C/21/Rev.1/Add.6 (1994), ¶18; *Belilos v. Switzerland*, [1998] European Court of Human Rights (“ECtHR”) Application No. 10328/83, ¶60; *Weber v. Switzerland*, [1990] ECtHR Application No. 11034/84, ¶38; *Loizidou v. Turkey*, [1995] ECtHR Application No. 15318/89, ¶97 [*Loizidou*]; *Hilaire v. Trinidad and Tobago*, [2001] IACtHR, ¶98 [*Hilaire*].

⁷⁰ ILC Guide, 1.4.

⁷¹ *Compromis*, ¶62.

⁷² *Clarifications*, ¶10.

⁷³ *Clarifications*, ¶10.

⁷⁴ *Loizidou*, ¶95.

35. Third, as is common for courts analyzing the consequences of an impermissible reservation, this Court should bear in mind the special character of the treaty at issue.⁷⁵ As submitted in Section I.C of these pleadings, the States parties to the *CRS* share a common interest in preventing statelessness and ensuring compliance with the rules therein.⁷⁶ If this Court concluded that Remisia's impermissible reservation nullifies their instrument of ratification, this would also exempt Remisia from its *erga omnes partes* obligations normally unaffected by its declaration, including those under Article 9. This would elevate the impermissible reservation and Remisia's Constitution into the primary reference points for the Court, reducing the *CRS* into a subsidiary parameter.⁷⁷ Such a shift risks fragmenting the international legal order for preventing statelessness and undermines the *erga omnes partes* doctrine.

36. Because Remisia cannot incontrovertibly rebut the presumption of severability, the *CRS* remains operative between Antrano and Remisia and Remisia's reservation is invalid.⁷⁸

2. Remisia violated Article 9 of the CRS.

37. Irrespective of Remisia's declaration, Remisia breached Article 9 of the *CRS* which prohibits deprivation of nationality on political grounds.⁷⁹ Under this provision, nationality cannot be revoked to delegitimize political opinions different from those held by the government or in response to conduct consistent with an individual's rights to freedom of expression and assembly.⁸⁰

38. Remisia violated both of these rules. First, Remisia targeted the Sterren Forty for featuring prominently in the protests and expressing disagreement with the government's economic and environmental policies.⁸¹ Hundreds of protestors who expressed the same political opinions as the Sterren Forty had their charges dropped after signing an apology, demonstrating how Remisia

⁷⁵ *Loizidou*, ¶93; *Hilaire*, ¶94.

⁷⁶ Pleadings, ¶¶6-10.

⁷⁷ *Hilaire*, ¶93.

⁷⁸ ILC Guide, 4.5.3(2); HRI/MC/2007/5, ¶7.

⁷⁹ *CRS*, Art.9.

⁸⁰ UNHCR Guidelines, ¶78; Tunis Conclusions, ¶71.

⁸¹ *Compromis*, ¶30.

selectively employed the DCA and its citizenship-stripping powers to delegitimize protesters who refused to change their political opinions.⁸² Second, the actions of the Sterren Forty were in exercise of their rights to freedom of expression, constituting a form of political discourse,⁸³ and freedom of assembly, constituting peaceful protests.⁸⁴ Remisia deprived the Sterren Forty of their nationality on political grounds in response to them exercising these rights.⁸⁵

B. REMISIA VIOLATED THE PROHIBITION OF ARBITRARY DEPRIVATION OF NATIONALITY.

39. As submitted in Section I.B of these pleadings, the prohibition of arbitrary deprivation of nationality is customary international law.⁸⁶ Remisia is bound by this norm [1] and violated it in depriving the Sterren Forty of their nationality [2].

1. Remisia is bound by the prohibition of arbitrary deprivation of nationality.

40. Remisia's declaration to the *CRS* does not impact its obligations under customary international law,⁸⁷ and Remisia is not a persistent objector to the customary international norm prohibiting arbitrary deprivation of nationality because it has not withdrawn the nationality of its citizens each time the DCA was invoked over several decades.⁸⁸

2. Remisia violated the prohibition of arbitrary deprivation of nationality.

41. Remisia violated the customary international prohibition of arbitrary deprivation of nationality because its actions against the Sterren Forty did not have a clear basis in law [i], did not serve a legitimate purpose [ii], and were not proportionate [iii].⁸⁹

⁸² Compromis, ¶31.

⁸³ CCPR/C/GC/34 (2011), ¶11.

⁸⁴ CCPR/C/GC/37 (2020), ¶¶4-7.

⁸⁵ Compromis, ¶¶30-31, 33-34.

⁸⁶ Pleadings, ¶¶18-19.

⁸⁷ ILC Guide, 4.4.2.

⁸⁸ Compromis, ¶8.

⁸⁹ UNHCR Guidelines, ¶91; Tunis Conclusions, ¶¶16-24; A/HRC/13/34 (2009), ¶25; A/HRC/19/43 (2011); ¶4; A/HRC/25/28 (2013), ¶3; Institute on Statelessness and

Remisia's actions did not have a clear basis in law.

42. Deprivation of nationality must be established by law and be predictable.⁹⁰ Although the DCA authorizes the withdrawal of nationality, it employs wide-ranging terms such as “defame” and “insult” without defined criteria.⁹¹ The DCA is not sufficiently precise to enable citizens to reasonably foresee the consequences of actions that could lead to withdrawal of nationality.⁹²

i. Remisia's actions had no legitimate purpose.

43. Remisia's actions had no legitimate purpose because, as submitted in Section II.A of these pleadings, it deprived the Sterren Forty of their nationality on political grounds.⁹³ They were not convicted for blocking infrastructure or economic projects, but to stifle their political opinions.⁹⁴

ii. Remisia's actions were not proportionate.

44. Since deprivation of nationality destroys a fundamental right, it is presumptively disproportionate absent exceptionally strong countervailing State interests.⁹⁵ The consequences of any deprivation of nationality must be weighed against the gravity of the offence for which withdrawing nationality is prescribed.⁹⁶ In this case, the severity of the punishment imposed on the Sterren Forty – five-year imprisonment sentences coupled with deprivation of nationality and expulsion post-custodial term – far exceeds the appropriate sentence for minor offences that harmed no one.⁹⁷ Most protesters convicted under the DCA for comparable actions received

Inclusion, *Principles on Deprivation of Nationality as a National Security Measure*, Art.7.

⁹⁰ UNHCR Guidelines, ¶92; Tunis Conclusions, ¶16.

⁹¹ Compromis, ¶7.

⁹² UNHCR Guidelines, ¶92; Tunis Conclusions, ¶16.

⁹³ Pleadings, ¶¶37-38.

⁹⁴ Compromis, ¶¶33-34; UNHCR Guidelines, ¶78; Tunis Conclusions, ¶71.

⁹⁵ UNHR Guidelines, ¶95; Tunis Conclusions, ¶23; A/HRC/13/34 (2009), ¶5; A/HRC/25/28 (2013), ¶4.

⁹⁶ Tunis Conclusions, ¶21; A/HRC/13/34 (2009), ¶28; A/HRC/25/28 (2013), ¶4; Anudo, ¶79; *Janko Rottmann v. Freistaat Bayern*, [2010] European Court Reports I-01449, ¶56.

⁹⁷ Compromis, ¶34; Jorunn Brandvoll, “Deprivation of nationality” *Nationality and Statelessness under International Law* (2014), 210.

sentences ranging from one to three years, demonstrating that Remisia could have achieved its goals without resorting to the clearly disproportionate step of withdrawing nationality.⁹⁸

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

45. Remisia was not entitled to exercise consular protection of Ms. Saki Shaw because Remisia's naturalization of Shaw does not impose binding obligations on Antrano, and Shaw lacks a genuine connection to Remisia [A]. Further, Remisia's claim is inadmissible because Shaw failed to exhaust the local remedies available in Antrano to establish her right to consular protection by Remisia [B]. Regardless, Antrano met its obligations under Article 36.1(b) 'without delay' and did not violate Article 36.1(a) and (c) of the *VCCR* [C].

A. REMISIA WAS NOT ENTITLED TO EXERCISE CONSULAR PROTECTION OVER SHAW.

46. Under the *VCCR*, a state can only provide consular assistance to their own nationals.⁹⁹ As the ICJ held in *Nottebohm*, nationality must be determined under international law as Remisian legislation cannot unilaterally impose obligations on Antrano.¹⁰⁰ The absence of an effective tie of nationality can authorize Antrano to deny the legitimacy of diplomatic protection.¹⁰¹

47. Remisia was not entitled to exercise consular protection over Shaw in Antrano, as Shaw is not a national of Remisia under international law.¹⁰² Since Shaw's naturalization was conferred in 'exceptional circumstances of speed and accommodation,' the effective nationality test in *Nottebohm* applies [1]. Shaw's connection to Remisia was extremely tenuous. Her NIP application

⁹⁸ *Compromis*, ¶34.

⁹⁹ *Vienna Convention on Consular Relations* (1963), 596 U.N.T.S 261, Art 36 [*VCCR*].

¹⁰⁰ *Nottebohm*, 21; Ian Brownlie, "The Relations of Nationality in Public International Law" (1963) 39 *Brit YB Int'l L* 284, 290-291.

¹⁰¹ *Eudoro Armando Olguín v. Republic of Paraguay*, [2001] ICSID Case No ARB/98/5, Award, ¶62 [*Olguin*]; ILC, *First Report on Diplomatic Protection* by the Special Rapporteur, Mr. John R. Dugard (2000), ¶119 [Dugard].

¹⁰² *Jadhav Case (India/Pakistan)* [*Jadhav*], Declaration of Judge Sebutinde, [2019] ICJ Rep 494, ¶8 citing J. Crawford, *Brownlie's Principles of Public International Law*, 8th ed (2012), 702 [Crawford].

and personal details failed to reveal any authentic ties to Remisia, before and after her naturalization [2].¹⁰³ Furthermore, Antrano was not estopped from denying Shaw's Remisian citizenship [3].

1. The effective nationality test in *Nottebohm* applies.

48. This Court in *Nottebohm* held that naturalization may not establish diplomatic protection if it is 'not based on any real prior connection' and if it did not 'alter the manner of life of the person upon whom it was conferred.'¹⁰⁴ Courts assess the individual's habitual residence, the centre of their interests, family ties and participation in public life in making this determination.¹⁰⁵

49. Effective nationality is a binding requirement for countries claiming diplomatic protection over an individual.¹⁰⁶ The International Centre for Settlement of Investment Disputes ("ICSID") noted that the absence of effective nationality would authorize a state to deny the legitimacy of diplomatic protection.¹⁰⁷ The International Institute of Law resolved that nationality conferred in the absence of "any link of attachment" is *prima facie* conferred in bad faith and, therefore, may not be recognized for the purpose of diplomatic protection.¹⁰⁸

50. The ICSID maintains that *Nottebohm*'s effective nationality test may apply to 'nationalities of convenience' conferred in 'circumstances of exceptional speed and accommodation, such as Shaw's, whose citizenship was purchased and motivated by the promise of gaining access to

¹⁰³ *Nottebohm*, 23, 26.

¹⁰⁴ *Nottebohm*, 26.

¹⁰⁵ *Nottebohm*, 22; *Islamic Republic of Iran v. United States of America*, [1984] IUSCT Case No. A-18, DEC 32-A18-FT, ¶43 [A/18].

¹⁰⁶ *Nottebohm*, 23; A/18 ¶¶45,50; Robert D. Sloane, *Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality*, in 50 Harv Intl LJ 1 (2009), 25 citing H.F. Van Panhuys, *The Role of Nationality in International Law* (1959), 158 and Ruth Donner, *The Regulation of Nationality in International Law* (1994), 62; Crawford, 516.

¹⁰⁷ *Olguin*, ¶62.

¹⁰⁸ Institut de Droit International, *The National Character of an International Claim Presented by a State for Injury Suffered by an Individual* (1965), Warsaw, Art.4(c) cited in Dugard, ¶119.

international fora.¹⁰⁹ The NIP provided Shaw access to visa-free travel and consular assistance in over a hundred countries shortly after she fled her home state due to legal complications.¹¹⁰ Additionally, Shaw's approval for naturalization was guaranteed once she transferred €500,000 to the National Infrastructure Development Fund, as agreed with the Remisian government.¹¹¹

2. Shaw was not a Remisian national under international law.

51. Shaw lacked an effective link and cannot be considered a Remisian national under international law. Purchased citizenship under the NIP does not indicate an effective link. Individually, Shaw had no 'real prior connection' to Remisia, and her naturalization did not alter her manner of life.¹¹² Further, the commercial activities of Lithos Limited cannot be attributed to Shaw personally, nor do they indicate any exceptional connection to Remisia.

52. First, naturalization under the NIP does not meet the effective nationality test. State practice demonstrates that countries may decline to recognize purchased citizenship. Only thirteen states operate citizenship-for-purchase programs, while the European Union, France, Germany, Italy, the United Kingdom, Canada, and the United States have taken steps to restrict other countries' sale of citizenship.¹¹³ Shaw purchased her citizenship for €500,000 and qualified without any consideration of "real and lasting ties" with Remisia.¹¹⁴

¹⁰⁹ *Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20, Award (2010), ¶¶77-78; Casas, 66.

¹¹⁰ Compromis, ¶¶12, 16.

¹¹¹ Compromis, ¶¶11, 18, 19.

¹¹² *Nottebohm*, 26.

¹¹³ European Commission, *Investor citizenship scheme: Commission refers MALTA to the Court of Justice* (Brussels, 2022); European Commission, *Joint Statement on further restrictive economic measures* (2022); Secretary of State for the Home Department, *Statement of Changes in Immigration Rules* (2023), UIN HCWS979; Immigration, Refugees and Citizenship Canada, *Canada imposes a visa requirement on Antigua and Barbuda* (2017); 117th Congress (2021-2022) *No Travel for Traffickers Act of 2022*, H.R.6911.

¹¹⁴ Compromis, ¶¶11, 19. *Nottebohm*, 22-23; *Proposed Amendments*, ¶¶36-37; Manley O. Hudson, *Special Rapporteur on Nationality Including Statelessness, Rep. on Nationality Including Statelessness* (1952), ILC, A/CN.4/50, 8.

53. Second, Shaw lacked a ‘real prior connection’ to Remisia, and her naturalization did not alter her manner of life.¹¹⁵ Shaw’s Remisian citizenship was used to avoid legal complications in her home country of Molvania.¹¹⁶ She had little personal connection to Remisia, lived outside of the country and was naturalized a decade after her last visit to Remisia.¹¹⁷ After naturalization, Shaw’s relationship with Remisia remained unchanged. She did not travel to or show any intention of settling in Remisia.¹¹⁸

54. Third, Lithos business activities do not show a link between Shaw and Remisia. As a separate legal entity, decisions made by Shaw as the head of Lithos are solely attributable to the corporation.¹¹⁹ Corporations are determinant legal personalities which override the continuing autonomy of their shareholders and employees.¹²⁰ Nor did Lithos hold the power of attorney to affect Shaw’s legal interests in Remisia.¹²¹ Remisia’s evaluation of Shaw’s application confirms that corporate actions are irrelevant to Shaw’s qualification for the NIP and referenced only her personal contributions, not those of Lithos.¹²² Even if Lithos’ national ties can serve as a proxy for Shaw’s, the corporation lacks any exceptional tie to Remisia. Lithos operates globally, with various headquarters in other countries.¹²³

3. Antrano is not estopped from denying Shaw’s Remisian nationality.

55. Antrano never recognized Remisia’s title to exercise protection over Shaw. In *Nottebohm*, this Court affirmed that validating a passport upon entry is distinct from recognizing that the

¹¹⁵ *Nottebohm*, 26.

¹¹⁶ *Compromis*, ¶¶16-19; *Barcelona Traction*, Separate Opinion of Judge Jessup, ¶46; *Casas*, 66-67.

¹¹⁷ *Compromis*, ¶19.

¹¹⁸ *Nottebohm*, 25; *Compromis*, ¶16; *Clarifications*, ¶5.

¹¹⁹ *Barcelona Traction*, ¶45.

¹²⁰ *Barcelona Traction*, ¶40.

¹²¹ Cf *Nottebohm*, 13.

¹²² *Compromis*, ¶¶18,19.

¹²³ *Compromis*, ¶15.

citizenship presented conferred any title to the exercise of protection.¹²⁴ Border officials are not responsible for determining whether assertions of nationality are valid in international law.¹²⁵

¹²⁴ *Nottebohm*, 18.

¹²⁵ IC MacGibbon, *Estoppel in International Law* (1958), 7:3 Int'l & CLQ 468, 483-484.

B. SHAW DID NOT EXHAUST LOCAL REMEDIES.

56. Local remedies must be exhausted where the primary injury does not directly impact the claimant state.¹²⁶

57. The *Avena* exception to this rule does not apply because Remisia's claim is not one of 'interdependence.'¹²⁷ It is a 'mixed' claim with a direct alleged injury – the denial of Remisia's consular access to Shaw – that is dependent on the indirect and preponderant alleged injury – non-recognition of Shaw's nationality in Antrano.¹²⁸ *Avena* considered the obligation of consular notice, which may be owed independently to the state and a purported national, prior to confirmation of the latter's nationality.¹²⁹ However, the duty to provide consular access is only owed to nationals. Remisia's rights are not interdependent but sequential to the validity of Shaw's nationality in Antrano.¹³⁰ Further, non-recognition cannot be a direct injury to Remisia as Antrano is under no obligation to recognize the effects of Remisia's citizenship-for-sale.¹³¹ Thus, Remisia's claim is barred because Shaw did not exhaust local remedies in Antrano.¹³²

C. IF REMISIA WAS ENTITLED TO EXERCISE CONSULAR PROTECTION OVER SHAW, ANTRANO'S ACTIONS COMPLIED WITH INTERNATIONAL LAW.

58. If Remisia was entitled to exercise consular protection over Shaw, Antrano met its obligations under Article 36 of the *VCCR*. Antrano met any relevant obligations to be fulfilled 'without delay' under sub-paragraph 1(b) to inform Shaw of her rights under the *VCCR* and to provide consular notice to Remisia [1].¹³³ Antrano did not violate any obligations under Article 36 sub-paragraphs 1(a) and 1(c), respectively, to provide Remisia with freedom of communication and visitation with its nationals in custody [2].¹³⁴

1. If applicable, Antrano did not violate its obligations under Article 36, subparagraphs 1(A) and (C).

59. Antrano met any obligation it assumed to, 'without delay' (1) inform Shaw of her rights under Article 36 and (2) provide consular notice to Remisia of Shaw's detainment.¹³⁵ These duties are relevant prior to confirmation of the nationality of a detainee and are preliminary steps to facilitate the rights to consular communication and visitation.¹³⁶

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- ¹²⁶ *Electronica Sicula S.P.A. (ELSI)*, Judgment, [1989] ICJ Rep 15, ¶52; ILC, *Draft Articles on Diplomatic Protection with Commentaries* (2006), Art.14 ¶11 [Diplomatic Protection with Commentaries].
- ¹²⁷ *Avena and Other Mexican Nationals (Mexico/United States of America)*, Judgment, [2004] ICJ Rep 12, ¶40 [*Avena*] citing *LaGrand*, ¶77.
- ¹²⁸ *Avena*, Separate Opinion of Judge Vereshchetin, ¶¶5, 7. Diplomatic Protection with Commentaries.
- ¹²⁹ *VCCR*, Art.1(b); *Avena*, ¶¶40, 63.
- ¹³⁰ Cf. John Quigley, *Procedural Limitations on Capital Punishment: The Case of Foreign Nationals* (2000), 6 ILSA J. INT'L & COMP. L. 519, 522 [Quigley].
- ¹³¹ Jacques Maury, 'L'arret Nottebohm et La Condition de Nationalite Effective' (1958) 23 *Zeitschrift fur auslandisches und internationales Privatrecht* 515, 517.
- ¹³² Crawford, 686.
- ¹³³ *VCCR*, Art.36(1)(b); *Official Records of the United Nations Conference on Consular Relations, Vienna* (1963) A/CONF.25/16/Add.1, Vol. II, 24 [Official Records].
- ¹³⁴ *Compromis*, ¶47; *VCCR*, Art.36(1)(a)(c).
- ¹³⁵ *VCCR*, Art.36(1)(b).
- ¹³⁶ *LaGrand*, ¶74; *Avena* ¶¶76, 99, 102-104; *Jhadav*, ¶¶107-108 citing Official Records, 24.

60. Upon her arrest, Antrano fulfilled its duty to inform Shaw of her *VCCR* rights.¹³⁷ As this Court held in *Avena*, ‘without delay’ is not understood as ‘immediately upon arrest and before interrogation.’¹³⁸ Instead, these obligations are only triggered when there are grounds to believe that the person in custody is probably a foreign national.¹³⁹ Where the declarations of nationality by the person in custody are in dispute, diplomatic correspondence may be evidence that the detained is ‘probably’ a foreign national.¹⁴⁰ While in “obvious” cases, 48 hours may constitute delay,¹⁴¹ in “less obvious” cases, consular notice may be provided five days after arrest.¹⁴²

61. Antrano complied with both ‘without delay’ standards in providing consular notice to Remisia. When Shaw entered Antrano, she had no valid documentation connecting her to Remisia, nor was there any evidence of personal ties to the state, such as a residence or family ties.¹⁴³ Under Antranan law, the passports she carried pointed solely to her status as a Molvanian citizen.¹⁴⁴ Accordingly, the Molvanian consulate was notified of her custody.¹⁴⁵ Shaw’s connection to Remisia was not obvious until its ambassador claimed the right to exercise consular protection two days after her arrest.¹⁴⁶ At that time, Antrano satisfied its duty to provide consular notice by informing Remisia that it had “notified the Molvanian Consulate of Ms. Shaw’s arrest” and forwarding relevant written communication.¹⁴⁷ The form of consular notice provided is immaterial since the communication was sufficient to facilitate the exercise of Remisia’s rights under Article 36.¹⁴⁸

¹³⁷ Clarifications, ¶7.

¹³⁸ *Avena*, ¶85.

¹³⁹ *Avena*, ¶63.

¹⁴⁰ *Jadhav*, Declaration of Judge Sebutinde, ¶11.

¹⁴¹ *Jadhav*, ¶114 citing *Avena*, ¶89.

¹⁴² *Jadhav*, ¶114, citing *Avena*, ¶97.

¹⁴³ Nottebohm, ¶22.

¹⁴⁴ *Compromis*, ¶42.

¹⁴⁵ Clarification, ¶7; *Compromis*, ¶43.

2. If applicable, Antrano did not violate its obligations under Article 36, subparagraphs 1(A) and (C).

62. Antrano complied with its obligations to allow Remisia free communication and visitation of its nationals in custody.¹⁴⁹ Antran laws may regulate consular access unless their application nullifies Remisia's rights under Article 36.¹⁵⁰ This is a high standard, and the burden of proof falls on Remisia to establish this violation in "well-founded fact and law."¹⁵¹

63. Remisia was empowered to exercise its consular rights through Molvania.¹⁵² International law permits states to jointly exercise diplomatic protection in respect of a dual national.¹⁵³ Since Remisia never attempted to exercise consular access or communication in coordination with Molvania, it cannot provide conclusive evidence that its rights were nullified.¹⁵⁴

64. Even if Antrano's offer to coordinate through Molvania was insufficient, Remisia cannot prove Antrano failed to provide consular access in a timely manner. Antrano is obligated to exercise due diligence by identifying a detainee's nationality in accordance with its own internal laws.¹⁵⁵ While ascertaining Shaw's nationality, Antrano provided Remisia with consular notice in

¹⁴⁶ Compromis, ¶45.

¹⁴⁷ Compromis, ¶45.

¹⁴⁸ *Jadhav*, ¶111.

¹⁴⁹ *VCCR*, Art.36(1)(a)(c).

¹⁵⁰ *VCCR*, Art.36(2); ILC, *Draft Articles on Consular Relations with Commentaries* (1961), Art.36, ¶¶5,7.

¹⁵¹ ICJ Statute, Art.53(2); *Oil Platforms (Islamic Republic of Iran/United States of America)*, Judgement [2003] ICJ Rep 161, ¶119.

¹⁵² Compromis, ¶45.

¹⁵³ Diplomatic Protection, Art.6(2).

¹⁵⁴ *Corfu Channel Case (Merits)*, [1949] ICJ Rep 4, 16-17.

¹⁵⁵ *El derecho a la informacion sobre la asistencia consular en el marco de las garantias del debido proceso legal*, [1999] Advisory Opinion, IACrtHR OC/16/99, ¶94; Quigley, 522-523.

good faith compliance with Article 36.¹⁵⁶ During Shaw's detention, Antrano could not confirm her Remisian nationality and, consequently, could not legally provide Remisia with access.¹⁵⁷

IV. REMISIA VIOLATED INTERNATIONAL LAW BY DENYING DR. TULOUS MALEX ENTRY TO REMISIA AS REQUIRED BY SECURITY COUNCIL RESOLUTION 99997.

65. Dr. Malex was empowered by Security Council Resolution 99997 to travel to Remisia to establish the UNIMR.¹⁵⁸ Remisia violated international law by denying Malex entry to Remisia.

66. Resolution 99997 imposed legal obligations on Remisia to, inter alia, grant entry to the civilian experts and necessary support staff of the UNIMR, including Malex [A]. Remisia violated these obligations by refusing to grant Malex an entry visa [B] and cannot defend its actions as a legal countermeasure [C].

67. This Court cannot judicially review the UNSC's invocation of Article 34 [D]. In any event, Resolution 99997 was validly enacted under Article 34 in line with the UN Charter [E].

A. RESOLUTION 99997 IMPOSED LEGAL OBLIGATIONS ON REMISIA TO GRANT ENTRY TO MALEX.

68. The UNSC's decision to establish the UNIMR is a mandatory provision which, per Article 25 of the *UN Charter*, imposes the obligation on Remisia to grant entry to Malex.¹⁵⁹ Article 25 requires UN members to carry out the decisions of the Council, even if those decisions do not concern enforcement action under Chapter VII of the *Charter*.¹⁶⁰ Council decisions are presumptively binding unless they take the clear form of 'recommendations.'¹⁶¹ In *Namibia*, this

¹⁵⁶ Quigley, 523.

¹⁵⁷ Compromis, ¶47.

¹⁵⁸ Security Council Resolution 99997 (2022), Art.1 [Resolution].

¹⁵⁹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, [1971] ICJ Rep 16, ¶113 [Namibia].

¹⁶⁰ *Namibia*, ¶113.

¹⁶¹ Sydney D. Bailey, and Sam Daws, 'Voting', *The Procedure of the UN Security Council*, 3rd edn (1998), 269 citing General Assembly Official Records, 16th session, Supplement no. 1A, A/4800/Add. 1, 4. [Bailey and Daws].

Court held that Council decisions are interpreted based on text, *Charter* provisions invoked, and relevant circumstances.¹⁶² The text of Resolution 99997 [1], the invocation of Article 34 [2], and the circumstances around its adoption [3] clarify that Remisia was under a binding obligation to grant Malex entry.

¹⁶² *Namibia*, ¶114; Michael Wood, *The Interpretation of Security Council Resolutions* (1998), 2 Max Planck Yearbook of United Nations Law, 75 [Wood].

1. The terms of Resolution 99997 confirm a binding obligation to grant entry.

69. Article 1 of Resolution 99997 states that the Council “[d]ecides to establish... the UN Inspection Mission to Remisia.”¹⁶³ The use of the word ‘decides’ indicates that the provision is mandatory, and, in accordance with the common sense interpretation of the text ‘to Remisia’ indicates the location where the UNIMR will operate.¹⁶⁴

70. Entry into Remisia is a constitutive component of the establishment of the UNIMR, as described in Article 1. Since it is not considered by subsequent Articles in the resolution, it must be included in the binding decision to establish the UNIMR for Article 1 to have any effect.¹⁶⁵ Article 2, which ‘[c]alls upon’ Remisia to cooperate with the Mission once established, does not contemplate entry into the country. Neither does Article 3, which refers UN personnel to observe municipal laws within the countries in which they are operating.¹⁶⁶

2. Decisions under Article 34 are binding under Article 25.

71. Remisia is obligated under Article 25 ‘to accept and carry out’ the decision to launch an Inspection Mission to Remisia under Article 34.¹⁶⁷ The reference to this provision supports the conclusion that Remisia was obligated to permit Malex’s entry.

72. Under Article 34, the UNSC can dispatch a commission of inquiry for on-the-spot assessments with greater authority than subsequent articles of Chapter VI, which authorize “recommendation[s]” for state compliance.¹⁶⁸ Decisions under Article 34 are also binding per the *Charter* principle to ‘give every assistance to the United Nations in any action it takes in

¹⁶³ *Resolution*, Art.1.

¹⁶⁴ Wood, 82, 86-87.

¹⁶⁵ Bruno Simma et al, *The Charter of the United Nations: A Commentary, Volume I*, 3rd Edition (2012) [Simma] at Anne Peters, “Ch. V. The Security Council Functions and Powers, Article 25”, 794 [Peters] citing Hans Kelsen, *The Law of the United Nations, A Critical Analysis of its Fundamental Problems* (1950), 445 [Kelsen]; Simma at Theodor Schweisfurth, “Ch VI. Pacific Settlement of Disputes, Article 34”, 1103 [Schweisfurth].

¹⁶⁶ *Resolution*, Art.2,3.

¹⁶⁷ Schweisfurth, 1103; *Resolution*, Preamble.

¹⁶⁸ Schweisfurth, 1095 and 1103 citing *Charter of the United Nations*, 1945, 1 UNTS XVI, Art.33(2), 36, 37(2), 38 [*Charter*].

accordance with the present *Charter*.¹⁶⁹ Further, the decision to investigate must be taken in accordance with the voting procedure set out in Article 27(3), which applies only to substantive decisions of the UNSC.¹⁷⁰

73. Highly qualified publicists and UNSC practice confirm that Remisia cannot prevent the execution of the SC's investigative powers, which are necessary for the Council to discharge its mandate to maintain international peace and security.¹⁷¹ Article 34 is a preliminary measure which provides the UNSC with the information necessary to determine its functions as the UN organ primarily responsible for the maintenance of international peace and security.¹⁷² The Council has the right to investigate "regardless of whether or not the State investigated approves or likes it" since the entry of investigators is an essential precondition for the effective discharge by the UNSC of its functions.¹⁷³

74. The *Charter* establishes that Remisia cannot rely on other treaties to evade UNSC decisions. Per Article 103, obligations imposed by Article 34 prevail over obligations under any other international agreement, including the *Vienna Convention on Diplomatic Relations*.¹⁷⁴

3. The context, object, and purpose of Resolution 99997.

75. Consideration of the context, object and purpose behind Resolution 99997 evidences that Article 1 is a binding decision for the UNIMR to enter Remisia.¹⁷⁵ As the UNSC President stated,

¹⁶⁹ *Charter*, Art.2(5); Bailey and Daws, 267; Peters, 795.

¹⁷⁰ Schweisfurth, 1100-1101.

¹⁷¹ Schweisfurth, 1104.

¹⁷² *Charter*, Art.34; S/PV-168, *U.N. Security Council, Second Year, Official Records* [Records], No. 65, 168th Meeting (1947), 1553 [168th Meeting] referenced in LM Goodrich and AP Simons, *United Nations and the Maintenance of Peace and Security* (Brookings Institution 1955) 181 [Goodrich and Simons]; Schweisfurth, 1104.

¹⁷³ Peters, 794 citing Kelsen, 445; US Delegation, S/PV-167, Records, No. 64, 167th Meeting, 1541 [167th Meeting] cited in Goodrich and Simmons, 181.

¹⁷⁴ *Charter*, Art.103; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya/United Kingdom)*, Provisional Measures, [1992], ICJ Rep 3, ¶39 [Lockerbie].

¹⁷⁵ Wood (1998), 89-94.

“denying entry to the UNIMR chief would be in violation” of Resolution 9997.¹⁷⁶ Presidential statements may provide authoritative clarification on the bindingness of UNSC Resolutions.¹⁷⁷

76. The UNIMR was established because the spread of statelessness in Remisia gave rise to a “dispute... which might lead to international friction.”¹⁷⁸ Statelessness risks fueling international disputes, forcible displacement and violence; its spread falls within the UNSC’s primary responsibility under Article 24 to maintain international peace and security.¹⁷⁹ Given the potential gravity of the proliferation of statelessness, the UNSC would be unlikely to recommend a non-binding investigation.

B. REMISIA VIOLATED ITS OBLIGATIONS TO GRANT ENTRY TO MALEX.

77. By refusing to grant Malex an entry visa, Remisia is actively interfering with the binding decision to dispatch the UNIMR to Remisia.¹⁸⁰ Remisia violated its obligations to accept and carry out the decisions of the UNSC under Article 25 of the *UN Charter* and contravened the general principle under Article 2(5) to ‘assist the [UN] in any action taken in accordance with the *Charter*.’¹⁸¹

78. Remisia also violated its obligations under Section 22 and Section 26 of the *Convention on the Privileges and Immunities of the United Nations (“CPI”)* to grant Malex the necessary facilities for entry into the State as necessary for the independent exercise of his functions.¹⁸² In accordance

¹⁷⁶ *Compromis*, ¶53.

¹⁷⁷ Wood at 82-84.

¹⁷⁸ *Compromis*, ¶39.

¹⁷⁹ *Charter*, Art.24; UNHCR, *The Statelessness Conventions Campaign: Why States Should Accede to the 1954 and 1961 Statelessness Conventions* (2010), ¶3 [Statelessness]; Valeria Bello. *Is the discussion of ‘Statelessness’ in the UN Security Council a question of human security or international security?* (2014), Policy Report No. 02/02. Barcelona: UNU-GCM, 8-15 [Bello].

¹⁸⁰ *Compromis*, ¶52.

¹⁸¹ *Charter*, Art.2(5), 25.

¹⁸² Michael Schoiswohl, *IV Immunities and Privileges, X Laissez-Passer, Laissez-Passer* (2016), 459 [Schoiswohl]; UN Office of Legal Affairs, *Facsimile to the Chief of the Special Procedures Centre for Human Rights*, United Nations Office in Geneva (1996) UNJYB,

with Remisia's obligations under the CPI, issuing an entry visa should have been a formality, not an impediment to Malex's ability to enter on UN business.¹⁸³ Instead, Remisia repeatedly refused to facilitate the speedy issuance of a visa for Malex.¹⁸⁴

C. REMISIA'S VIOLATIONS CANNOT BE DEFENDED AS COUNTERMEASURES.

79. Remisia cannot establish that its actions were legal countermeasures to illegal actions taken by the UNSC or Antrano. As the UNIMR lead, Malex's right of entry belongs to the UN.¹⁸⁵ ILC *Draft Articles on the Responsibility of International Organizations* states that members of an organization may not take countermeasures against the organization unless such countermeasures are provided for by the rules of the organization.¹⁸⁶ Remisia also cannot deny Antranan UN personnel entry because of its dispute with Antrano. This would violate Article 105 of the *Charter*, which prohibits denying entry to UN personnel based on their nationality.¹⁸⁷

D. THIS COURT CANNOT REVIEW THE INVOCATION OF ARTICLE 34.

80. This Court cannot judicially review UNSC decisions, and there is no procedure in the UN for determining the validity of a UNSC resolution.¹⁸⁸ The Court cannot substitute its discretion for

437 cited by Anthony Miller, *United Nations Experts on Mission and their Privileges and Immunities* (2007), *International Organizations Law Review*, 11.

¹⁸³ Schoiswohl, 498.

¹⁸⁴ Compromis, ¶52, 57, 58.

¹⁸⁵ Schoiswohl, 496.

¹⁸⁶ *ILC Draft Articles on the responsibility of International Organizations* (2011), Art.52(2) cited by Peters, 847.

¹⁸⁷ *Charter*, Art.105; Schoiswohl, 495.

¹⁸⁸ *Lockerbie*, ¶39-43; *Namibia*, ¶89, quoted by Dapo Akabe, *The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations* (1997), 46:2 *Inti & CLQ* 309, 326. [Akabe]; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, [1962] *ICJ Rep* 151, 168 [*Certain Expenses*].

the UNSC's, as it is the primary UN organ responsible for the maintenance of peace and security.¹⁸⁹ Remisia, accordingly, cannot challenge the lawfulness of Resolution 9997 before this Court.

81. Discretionary determinations by the UNSC, such as the existence of a threat to the peace, cannot be reviewed.¹⁹⁰ The decision to invoke Article 34 to investigate the situation in Remisia is also discretionary and beyond the jurisdiction of this Court. Whether the UNIMR is an effective mechanism for the UNSC to fulfill its responsibilities to maintain international peace and security is also not reviewable by this Court.¹⁹¹

E. THIS COURT CANNOT REVIEW THE INVOCATION OF ARTICLE 34.

82. Even if UNSC decisions could be judicially reviewed, the standard of review is highly deferential.¹⁹² The UNSC enjoys wide discretion in its evaluation of facts and interpretation of *Charter* terms, and its resolutions are presumptively valid.¹⁹³

83. Here, the procedural and substantive requirements for triggering Article 34 have been met. There is no evidence of procedural issues in the enactment of Resolution 9997.¹⁹⁴ Substantively, the UNSC may investigate any situation that may give rise to an international dispute, provided it does not fall within the *domaine réservé* of the State.¹⁹⁵

84. The proliferation of statelessness in Remisia could threaten international peace and security and falls within the primary of the UNSC under Article 24.¹⁹⁶ The presumption by Antrano that a

¹⁸⁹ *Charter*, Art. 24; Akabe, 337 citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, [1993] Provisional Measures, ICJ Rep 325, Separate Opinion Lauterpatch, 439 ¶¶99.

¹⁹⁰ Akabe 337 citing *Lockerbie*, Dissenting Opinion by Judge Weeramantry, 66 & 176; *Charter*, Art.39.

¹⁹¹ *Prosecutor v Duško Tadić aka Dule* (1995), Decision on the defence motion on jurisdiction, IT-94-1-T, ICTY, ¶23.

¹⁹² *Lockerbie*, ¶¶39-43.

¹⁹³ *Certain Expenses*, ¶168; Peters, 817, 844-845.

¹⁹⁴ *Compromis*, ¶48; *Charter*, Art.27(3), 32.

¹⁹⁵ Schweisfurth, 1097.

¹⁹⁶ *Charter*, Art.24; Statelessness; Bello.

dispute emerged with Remisia regarding statelessness was sufficient to empower the UNSC to invoke Article 34.¹⁹⁷ As a party to the CSP and the CRS, Remisia's refusal to comply with its obligations under the Conventions as required by Antrano confirms that a dispute arose.¹⁹⁸

85. Further, statelessness is not within Remisia's *domaine réservé* because it is regulated by multiple international conventions, including the CSP and CRS.¹⁹⁹ Generally, the narrow carve-out for the *domaine réservé* of a State under Article 2(7) of the Charter does not effectively limit the UNSC's Article 34 authority to investigate situations which might lead to international friction or give rise to dispute.²⁰⁰

86. The mandate of the UNIMR under Article 1 of Resolution 9997 accords with Article 34's purpose to determine if a situation poses a threat to international peace and security.²⁰¹ Subparagraph 1(a) directs the UNIMR to investigate the underlying cause of the proliferation of statelessness, and 1(b) investigates the current state of the stateless prisoners.²⁰² This direction is consistent with past uses of Article 34, which directed broad investigations in 1946 and 1948.²⁰³ For example, despite opposition from several of the states affected, Resolution 15 established a Commission with a broad geographical scope to "elucidate the causes and nature" of disturbances along the Greek border.²⁰⁴ Thus, Resolution 9997 was validly enacted.

¹⁹⁷ Compromis, ¶39; Schweisfurth, 1097.

¹⁹⁸ *South West Africa Cases (Ethiopia/South Africa; Liberia/South Africa)*, Preliminary Objections, [1962] ICJ Rep 319, 328 cited in *Lockerbie*, Judgment - Preliminary Objections, ¶22; Simma at Christian Tomuschat, "Ch. 1. Purposes and Principles, Article 2(3)", 195 cf *ARSIWA*, Art. 48, taken note of by UNGA Res 56/83 (2001) UN Doc A/RES/56/83; Schweisfurth, 1097.

¹⁹⁹ *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, [1923] PCIJ Rep Ser B, No 4, 23-24; Simma at Greg Nolte, "Ch.1. Purposes and Principles, Article 2(7)", 291-292.

²⁰⁰ *Charter*, Art.2(7); Schweisfurth, 1098.

²⁰¹ Schweisfurth, 1098; *Charter*, Art. 34.

²⁰² Resolution, Art.1.

²⁰³ UN Security Council Resolution 15 (1946), S/Res/15 [*The Greek Question*]; UN Security Council Resolution 39 (1948), S/Res/39.

²⁰⁴ *The Greek Question*; 167th Meeting, 1542.

PRAYER FOR RELIEF

For the foregoing reasons, the Republic of Antrano respectfully requests this Court find, adjudge, and declare that:

I

Antrano has standing to submit the dispute concerning Remisia's deprivation of nationality of the Sterren Forty before the Court to determine whether Remisia violated its obligations *erga omnes partes* and *erga omnes*;

II

Remisia's deprivation of nationality of the Sterren Forty, rendering them stateless, violated its obligations under Articles 8 and 9 of the *Convention on the Reduction of Statelessness* and the customary international prohibition of arbitrary deprivation of nationality.

III

Remisia did not have the right to exercise consular protection over Ms. Saki Shaw and Antrano fulfilled its *VCCR* obligations to provide consular access to Remisian nationals.

IV

Security Council Resolution 99997 was a binding decision by the Security Council to establish an inspection mission in Remisia. Remisia breached its Charter and Treaty obligations by refusing to facilitate Dr. Toulous Malex's entry into the country.