BENCH MEMORANDUM

THE CASE CONCERNING THE STERREN FORTY

MEMORIALS AND NATIONAL ROUNDS EDITION

8 February 2024

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2024 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

INTRODUCTION

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1. QUESTION PRESENTED #1:

Antrano's Prayer for Relief	Remisia's Prayer for Relief
Antrano has standing to bring the dispute concerning Remisia's deprivation of nationality of its citizens before the Court.	Antrano lacks standing to bring the matter of the deprivation of nationality of the "Sterren Forty" to this Court.

For hyperlinks to the sources referenced in this section, click here.

1.1 Standing before the Court based on a theory of obligations *erga omnes partes* or *erga omnes*

The first issue presents a true standing question for students that must be resolved before turning to the second issue. In such situations, the Court has previously held that when there are procedural questions that cannot be resolved without considering the underlying substantive rule, the Court will consider both. This is significant this year, because the substantive issue must be analyzed to some degree to determine whether a breach of the rule rises to the level that justifies application of the *erga omnes* or *erga omnes partes* doctrine. The students will need to confine their analysis to the nature of the rule itself and not the alleged violations of the rules against rendering persons stateless and any potential justifications for doing so.

Since Applicant is not directly harmed by the deprivation of statehood to the Sterren Forty, Applicant can approach standing in one of two ways. They might argue that the rules applicable to the prohibition on rendering persons stateless are obligations *erga omnes partes* by virtue of the 1961 Convention on the Reduction of Statelessness. They might argue that, if the Convention does not give rise to obligations *erga omnes partes*, standing is established by way of *erga omnes* obligations existing as a matter of customary international law. Either way, Applicant must establish that standing exists as a result of the collective nature of the obligations sought to be enforced, and not because of any direct injury to, or special interest of, Applicant.

1.2 Relevant facts

None of the members of the Sterren Forty are citizens or nationals of Antrano, nor do any of them have any particular connection to Antrano such as residence, property ownership or relatives; therefore, any claim made by Antrano cannot proceed on the basis of Diplomatic Protection. Antrano has, however, historically defended the rights of stateless people, supported efforts to end statelessness by the UN and taken up the cause of the Sterren Forty publicly.

1.3 Remisia's declaration under Article 8(3) of the 1961 Convention

Remisia's Declaration is similar in effect to a treaty Reservations, but the statement made by Remisia and referenced in *Compromis* paragraph 62 of is not a formal Reservation, and teams should not argue that it is. Article 17 of the 1961 Convention states that Reservations are only permitted to Articles 11, 14 and 15, and specifically notes that "No other reservations to this Convention shall be admissible." The Declaration is merely Remisia's exercise of the right granted to it by Article 8 (3)(a)(iii) to continue to enforce a pre-existing law under the conditions specified in Article 8 of the Convention.

In fact, QP 2 will turn in large measure on whether Remisia is able to show that the offenses under the 1955 Disrespect to the Crown Act are of the kind required for Article 8 (3)(a)(ii) to apply.

1.4 Progressive development of the *erga omnes* doctrine

As the Latin phrase *erga omnes* ("to all") suggests, obligations *erga omnes* are obligations owed to the international community as a whole (or, in the case of *erga omnes partes*, to the other parties to a treaty as a whole). Students should be familiar with and able to discuss the principal authorities addressing *erga omnes* obligations – the ILC Articles on State Responsibility and the commentaries to the Draft of the same, as well as the cases by both the PCIJ and ICJ – and be able to use these authorities to show the progressive development of the doctrine. Invocation of the Articles on State Responsibility and the commentaries must be clear that the Articles themselves are not a source of law: Articles 42 to some degree and Article 48 in its entirety were considered – at the time – to embody the progressive development of customary international law and the ILC requested that the General Assembly only adopt the Articles as a Resolution and that it not convene a Conference to eventually create a Convention on the topic.

1.5 Overview of the issues

Applicant will likely argue that *erga omnes partes* is now a fully accepted basis for standing before the Court as reflected in recent decisions and scholarly writings interpreting these decisions. Applicant will need to demonstrate that the core obligations of the 1961 Convention are of a type and nature that permits every party to the Convention to invoke the responsibility of any other party to the Convention for a breach even if the complaining state cannot show direct injury. If the students are unable to make that showing, then they will need to demonstrate that the rule suggested by the ILC in Article 48(1)(b) of the Articles on State Responsibility has developed sufficiently – since the ILC considered it to be an evolving rule – that the court can grant standing on that basis as a theoretical matter (since it has not done so to date). Assuming Applicant can demonstrate international law allows application of the *erga omnes* doctrine based on breaches of customary law, the students must establish that rendering persons stateless, absent any permitted justifications, is a delict of sufficient gravitas to invoke the responsibility of all states.

Teams should not argue anything in relation to the question of consent to jurisdiction – a limitation the Court in *East Timor* and several judges in other cases have placed on the existence of erga omnes standing – because the 1961 Convention and the *Compromis* directly confer jurisdiction on the Court. Respondent did not deposit a Reservation to the jurisdictional clause in the Convention and did not object to jurisdiction in the present case.

Teams can, however, rely on other concerns respecting expansion of the *erga omnes* doctrine. In the *Bosnian Genocide Case*, Judge Oda expressed hesitancy to find the existence of a "dispute" under this theory. In the present case, the parties will argue whether there is a "dispute," as that term is defined *inter alia* in the Articles on State Responsibility, between Antrano and Remisia. Teams should be prepared to discuss the positions of the various members of the Court who have opined on this issue – particularly in dissents and separate opinions – and help the Bench assess whether there is a dispute, whether what constitutes a "dispute" is different when *erga omnes* obligations are invoked and whether perhaps in the context of *erga omnes* obligations the traditional notion of a "dispute" falls away. Antrano can particularly rely on the writings of Judge Weeramantry whereas Remisia will likely cite Judge Xue, Judge Oda, and others.

Judge Xue and Judge *ad hoc* Sur had concerns in the *Prosecute or Extradite Case*, deeming the existence of a collective interest insufficient to grant standing in and of itself. Judge Xue in particular raised relevant concerns in expanding the *erga omnes* doctrine when – contrary to the majority – she rejected the notion of non-justiciability if standing were not granted. She reasoned that the existence of alternative resolution mechanisms takes care of this concern.

Judge Xue also noted in the *Prosecute or Extradite Case* that reservations to the jurisdiction of the Court are permitted under the relevant treaties which – in her view – undercut the notion of more generalized *erga omnes* standing and precluded standing if one of the parties to the proceeding had submitted a reservation. The 1961 Statelessness Convention permits a reservation to the Court's jurisdiction but as noted, neither party in this proceeding has made such a reservation. This reasoning might undercut Applicant's argument on the *erga omnes* nature of the obligation not to render someone stateless. While Judge Xue and Judge *ad hoc* Sur appear to come to this conclusion in the *Prosecute or Extradite Case*, the Court has stated that the mere fact that a treaty permits a reservation to the Court's jurisdiction does not preclude the existence of *erga omnes* obligations and their enforcement if the parties to the proceeding have not made such a reservation.

One remaining interesting wrinkle is the question of remedies. The ILC in its Commentary to the Articles on State Responsibility seems to be saying that if a state has standing under Article 48 but is not directly injured, its remedies are limited to cessation, assurances, and non-repetition. They exclude reparation because third party reparation claims require a showing that the claimant is acting on behalf of the injured state. If judges ask about this distinction, then the exceptionally well-prepared teams will be aware of the limitation but will point out that remedies beyond a declaration of wrongfulness were not requested in the *Compromis*.

1.6 *Erga omnes partes*

As defined in Article 48(1)(a) of the Articles on State Responsibility, standing *erga omnes partes* exists when "the obligation breached is owed to a group of States, including that State, and it is established for the protection of a collective interest of the group." The commentary and subsequent practice make clear that such obligations are established via treaty. Respondent is unlikely to prevail with an argument that *erga omnes partes* is not a valid basis for invoking the responsibility of a state by a non-injured state, given recent trends at the ICJ including the Court's failure to address – and Japan's failure to object to – Australia's de facto *erga omnes partes* argument in the *Whaling in the Antarctic Case (Australia v. Japan; New Zealand Intervening)*, Judgment of 31 March 2014, [2014] ICJ Rep. 226, and the Court's express recognition of the right in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar*), Order for Provisional Measures of 23 January 2020, para 41. Even though the standing was not ultimately determined on the basis of standing *erga omnes partes*, Teams should also be familiar with the Court's statements on this issue in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, the *East Timor Case* (including Judge Weeramantry's Dissent), and the *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* (again Judge Weeramantry in a Separate Opinion)

However, Teams should be aware that the doctrine has been narrowly applied and confined to Treaties that contemplate the possibility of invoking the doctrine either in the operative provisions, the preamble/object and purpose, or – potentially – in the preparatory documents. This can be seen in not just the *Whaling* and *Myanmar* cases which applied the Whaling and Genocide Conventions respectively, but also earlier decisions of the Court and separate or dissenting opinions of its judges. In the *S.S. Wimbledon*, PCIJ Rep. Series A No. 15 (1923), the PCIJ relied on language in the Treaty that permitted any "Interested Power" to bring a claim. Similar sentiments were expressed in the *South-West Africa Cases* – even if standing was not granted in those cases – when the Court recognized the possibility as long as the right is "clearly vested in those who claim them, by some text or instrument, or rule of law." The court went a bit further in the *Barcelona Traction Case* when it stated that contrary to the field of diplomatic protection, there are obligations owed by their nature to the international community as a whole and "all States can be held to have a legal interest in their protection; they are obligations erga omnes." (In the *Prosecute or Extradite Case*, the Court looked to the object and purpose of the Torture Convention.)

1.7 *Erga omnes partes* as applied to the 1961 Convention

The 1961 Convention does not facially contain operative provisions that create obligations *erga omnes partes*; however, as the Court has noted repeatedly, such obligations can be inferred from the object and purpose of the Convention and, possibly by extension, the positions of the parties and circumstances leading to its conclusion. The Preamble consists only of a short statement that it was acting in pursuance of GA Resolution 896 (IX) (1954) (the "Resolution on the Elimination or Reduction of Future Statelessness") and deemed it desirable to reduce statelessness by

international agreement. In the Resolution, the General Assembly called for a convention on the topic but declared the Convention's purpose to "reduce and if possible, eliminate" statelessness. In 1953, when the ILC Special Rapporteur circulated two drafts of the Convention, the draft entitled "Elimination of Future Statelessness" was ultimately rejected in favor of the version we have today that seeks "reduction" of statelessness. Teams should be familiar with Special Rapporteur Roberto Cordova's report from 1953 and the summary records of the Plenary Meetings for the adoption of the Convention of which there were many.

Both sides should be able to find fodder for the position that the Convention either does or does not give rise to obligations *erga omnes*, particularly in respect of Article 8. The statements of the conference participants made clear that pragmatic concerns made rules demanding the elimination of statelessness impossible, but that there were certain non-negotiables such as Article 9 which prohibits States from stripping people of nationality for political or other suspect reasons. Teams should be able to apply the Court's reasoning on what makes an obligation *erga omnes* in character to this history and content of the 1961 Convention. Teams could also look to the 2014 Introductory Note to the Convention by the UN High Commissioner for Refugees and other scholarly writings surrounding the Convention to characterize the nature of the obligations under the Convention.

At this stage, to the best of their ability, Teams should not venture into the application of the substantive provisions of Articles 8 and 9 of the Convention, which is the purview of QP 2. This will be challenging for Teams, but the Bench can do much to steer the conversation back to the standing issue by focusing not on whether the obligation was breached, but rather whether the nature of the alleged obligation falls within the types of obligations identified by the court as potential or actual *erga omnes partes* obligations.

1.7.1 Erga Omnes Partes in the ICCPR

Some Applicants may seek to avoid the question of whether the 1961 Convention creates obligations *erga omnes partes* by relying instead on General Comment 31(2) of the International Covenant on Civil and Political Rights (ICCPR), which seems to characterize that Covenant as not only having an *erga omnes* character but also allowing for claims outside the dispute resolution process of the Covenant. While this reading is textually correct and certainly supported by the Human Rights Committee and by publicists writing on the topic, the problem for Applicant is the call of the question in Paragraph 63 (b) of the Compromis. The gravamen of the second claim is that the prosecutions were unlawful because they rendered the Sterren Forty stateless. Other than ICCPR Article 24(3), which states that every child has the "right to acquire a nationality," the ICCPR does not contain provisions guaranteeing the right to a nationality or prohibitions against rendering a person stateless. Therefore, teams may not rely on General Comment 31(2) to the ICCPR to acquire standing to complain that rendering the Sterren Forty stateless was unlawful since the ICCPR contains no prohibitions against doing so. (A good Respondent team should spot and respond to this claim if it is raised by Applicant.

1.8 Customary rules establishing a right of standing

Absent a right of standing in a Treaty, Article 48 of the Articles on State Responsibility also recognized a right founded in customary law "if the obligation breached is owed to the international community as a whole." While recognized by the Court in theory in its *Barcelona Traction*, *East Timor*, and *Nuclear Tests* cases, the Court has never found standing on this basis. In fact, such standing, sometimes called an *actio popularis*, was deemed unknown to international law in the *South-West Africa Cases* in 1966. The question is whether it has become "known" almost 60 years later?

If the students argue *erga omnes* derives from custom, they must be able to demonstrate both elements of a customary rule – state practice and *opinio juris* – and then show that the customary rule is akin to the obligations previously identified by the Court and scholarly writings as susceptible to the application of the *erga omnes* doctrine. These obligations include, *inter alia*, the right to be free from acts of aggression, slavery & racial discrimination, and genocide (*Barcelona Traction*); to enjoy self-determination (*East Timor*), to seek redress for environmental devastation (*Gabčíkovo* – Judge Weeramantry's separate opinion), and to not be subjected to genocide (*Gambia v. Myanmar*).

Applicant's best hope is that in *Barcelona Traction* the list of possible candidates included "the basic rights of the human person" and freedom from slavery and discrimination were listed as examples of the same. If Applicant can establish that the right to a nationality is a "basic right of the human person" then standing can be granted even if it is not conferred under the 1961 Convention. Respondent – on the other hand – should look to the opinion of Judge DeCastro in the *Nuclear Test Cases* that this language should be taken with a grain of salt.

1.9 The right to a nationality as a matter of customary international law

If Applicant argues that the prohibitions against rendering persons stateless are matters of customary law that generate an *erga omnes* obligation enforceable by the international community, it will have to choose their ground carefully and will have a hard row to hoe. They will not be able to demonstrate that there is an obligation *erga omnes* to never render a person stateless – the entire history of statelessness and laws designed to combat it argues against that conclusion. The only possible customary rules that exist are those that prohibit rendering someone stateless on account of political or other prohibited grounds or using a domestic law permissible under Article 8 in a manner that produces a result prohibited absolutely by Article 9. The focus is not on statelessness *per se* but rather on the right to a nationality which would be violated by an impermissible deprivation of the same that renders the person stateless.

Applicant will need to look at UNHCR materials to argue that the right to a nationality is a right on par with the right to be free from genocide, slavery, torture, etc., which is of an *erga omnes*

nature. They will then have to show that if someone is deprived of their nationality on an impermissible basis (any of the Article 9 grounds), then any other State may bring a claim. They will have to identify the rules regarding the right to a nationality, identify commonalities within those rules and distill a customary principle. Applicant should argue that, based on the records from the Plenary Meetings for the 1961 Convention, its drafters distilled that customary principle in Article 9 and the exceptions in Article 8 must be applied in a manner consistent with Article 9.

The recent UNHCR's Report on Preventing and Reducing Statelessness lists several instruments recognizing the right to a nationality, including the Universal Declaration on Human Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and various regional agreements and directives. It describes these obligations as "complementary to those in the 1961 Convention." Annex A to the UNHCR Global Plan to End Statelessness adds to this list the ICCPR and 19 other potential sources of a customary rule enshrining the right to a nationality that teams could use to argue that the right to a nationality is a right for all humans and impermissible violations of that right are opposable *erga omnes* by any state against any other state because it constitutes a "basic right of the human person."

Respondent will argue that there is no custom – let alone an obligation *erga omnes* – because there is far too much unchallenged state practice of stripping people of nationality for supporting terrorist organizations, sedition, and other acts prejudicial to the interests of the state. Even if Applicant points to public statements objecting to these laws and their application as representing *opinio juris*, Respondent can point to the lack of uniformity even among the protesting states themselves.

For those judges who want to delve deeper into this question in respect of offenses against the state, in February 2022, the UNHCR Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism submitted a report on citizenship stripping in the context of North-East Syria. The report focuses on "national security" (as reflected in Article 8(3) of the 1961 Convention) and its potential and actual misuses by several governments including Syria. It observes that the current use of citizenship stripping "in the name of countering terrorism for national security purposes works against the spirit and intention" of the ICCPR and the 1961 Convention. The Report also cites substantial source material that the teams can use to demonstrate either the existence of a customary rule that prohibits rendering persons stateless outside the expressly permitted conditions of the 1961 Convention, or, alternatively, that the rule is not sufficiently far-reaching for the Court to apply Article 48(1)(b) for the first time.

2. QUESTION PRESENTED #2:

Antrano's Prayer for Relief	Remisia's Prayer for Relief
Remisia's deprivation of nationality of the Sterren Forty," rendering them stateless, is a violation of international law.	Remisia did not violate international law when it deprived the "Sterren Forty" of their Remisian citizenship in accordance with the DCA.

For hyperlinks to the sources referenced in this section, click here.

2.1 Remisia's Obligations Not to Render the Sterren Forty Stateless

The call of the question is whether the prosecution and conviction of the Sterren Forty under Remisia's "Disrespect to the Crown Act," (DCA) ultimately rendering them stateless, violates international law. The source for any obligation to avoid rendering a person stateless may be found either in the 1961 Convention on the Reduction of Statelessness (1961 Convention) or in customary law. There may well be other potential violations of international law vis-à-vis the Sterren Forty, but they are not before the Court under the terms of the questions presented.

2.2 Relevant Facts

Since 1955, the DCA has criminalized defamation, insults, or threats against the reigning monarch in Remisia. If the disrespectful act is of sufficient gravity, one of the potential penalties is that the accused will be stripped of their Remisian citizenship. Prior to the situation at issue in the Compromis, this had never occurred. However, in the wake of major student environmental protests in 2019 that culminated in a group of students forming a human chain blockading the gates of the Sterren Palace (the residence of the Remisian Queen), forty student protesters were ultimately convicted under the DCA and stripped of Remisian citizenship. These student protesters were dubbed the "Sterren Forty" by the media.

The procedural process of the trials and the underlying factual allegations respecting the conduct of the students were not challenged by anyone, but the students did appeal their convictions and sentences.

2.3 Breach of Article 8 of the 1961 Convention

Article 8 of the 1961 Convention prohibits a contracting state from depriving a person of his nationality if the deprivation would render him stateless. Respondent's stripping of citizenship following their conviction in Remisian court constitutes a *prima facie* breach of this provision. The

question then becomes whether such *prima facie* breach may nevertheless be justified under the Convention.

While the exceptions in Article 8(2) do not apply in this case, Article 8(3)(a)(ii) provides that a State may deprive a person of his nationality where, inconsistently with his duty of loyalty to the [state], the person "has conducted himself in a manner seriously prejudicial to the vital interests of the State." The burden of asserting and proving the applicability of this exception lies with Respondent.

The terms "seriously prejudicial" and "vital interests" are to be given their ordinary meaning in light of the object and purpose of the treaty, pursuant to the customary rules of treaty interpretation reflected in Article 31 of the Vienna Convention of the Law on Treaties ("VCLT"). It is important here to note that the VCLT, which came into force in 1980, is explicitly not retroactive. The 1961 Convention came into force in 1975; therefore, the teams cannot apply the VCLT itself and must at least understand that they are applying customary rules and not the specific provisions of the VCLT. Good teams may well be able to explain why and how a customary rule of treaty interpretation became custom, but even average teams should be able to understand this distinction.

Applicant is likely to rely on the UNHCR Summary Conclusions prepared by the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoid Statelessness resulting from Loss and Deprivation of Nationality ("Summary Conclusions"). In paragraph 68 of the Summary Conclusions, the report explains that:

> The ordinary meaning of the terms "seriously prejudicial" and "vital interests" indicate that the conduct covered by this exception must **threaten the foundations and organization of the State** whose nationality is at issue. The term "seriously prejudicial" requires that the individuals concerned have the capacity to impact negatively the State. Similarly, "vital interests" sets a considerably higher threshold than "national interests". This interpretation is confirmed by the *travaux préparatoires*. The exception **does not cover criminal offences of a general nature**. On the other hand, acts of treason, espionage and – depending on their interpretation in domestic law – "terrorist acts" may be considered to fall within the scope of this paragraph.

While this conclusion is not binding on the State parties in the sense of a "subsequent agreement", it does give clues as to what the parties meant when they chose this particular language, instead of alternatives that have a lower threshold.

Teams may rely on the Summary Records of the various Plenary Meetings held prior to the adoption of a final Convention text – e.g. UN Conference on the Elimination or Reduction of Future Statelessness, Summary Record of the First Plenary Meeting, UN Doc A/CONF.9/SR.1 (24 April 1961) 3 – as well as the responses to the Special Rapporteur Roberto Cordova who – in 1953

– presented two alternative versions of the text. One version did not include all of the exceptions found in Article 8 - its focus was the elimination of statelessness - whereas the other version - which was ultimately adopted - contained the exceptions and focused on reduction. Teams should look at the statements of the Conference participants in the Plenary meetings to demonstrate what countries meant when they adopted this language. Politics played a key role in the conference discussions – giving states less discretions and fewer exceptions would likely mean fewer states would sign the Convention, whereas making the Convention hortatory would encourage a lot of signatories but lead to very little improvement for those who are stateless. Therefore, the Convention was a compromise between those who wanted to eliminate statelessness altogether and those who wanted to protect their unfettered rights to determine how to confer citizenship (*jus sanguinis* versus *jus soli*). Article 8 represents a safeguard in that scheme to ensure that deprivations of nationality are limited in scope and, in the case of 8(3), subjected to a relatively high justification threshold.

Applicant should argue that a high threshold for "seriously prejudicial" and "vital interests" accords best with the object and purpose of the Statelessness Convention, which is to "prevent and reduce statelessness." This is especially true because fewer than 20% of the parties to the Convention have opted into Article 8(3) and the exception is used in very limited circumstances, such as where a citizen has joined a radical terror group. On the facts, the Sterren Forty were engaged in an act of civil disobedience by chanting slogans critical of the Queen and forming a "human chain" blocking the entrance to the Sterren Palace. Applicant should be prepared to argue that this act is not seriously prejudicial to any vital interest of Respondent and explain why. Applicant must be able to articulate what the interest is and why it is not vital and, whether vital or not, why the actions are not seriously prejudicial. It is likely that the vital interest proposed by the Applicant will be different than that of the Respondent so one fruitful area of discussion might be whether Applicant's argument would change if they were to adopt the vital interest as characterized by Respondent.

Respondent should argue that the acts of the Sterren Forty meet this high threshold on the facts, particularly because States are generally given deference in determining their own vital interests. Assuming Remisia has the right to determine its own vital interests, Respondents should be able to articulate how these actions seriously prejudiced that interest. They should look to other countries that have *lèse-majesté* laws and how those have been enforced and use those examples to support their claim of both the nature of the interest and the impact of the actions of the Sterren Forty. One possible argument is that a State has the right to choose its form of government and countries who have chosen monarchies have repeatedly stated that respect for the person who embodies the monarchy is critical in preserving the fundamental nature, structure and functioning of a monarchial government. Whether *lèse-majesté* rules – in their application – violate a country's other positive international law obligations, is a different question from whether their existence protects a vital government interest and whether a violation of these laws constitutes "serious prejudice" to that vital interest.

Respondents should also be prepared to argue that the DCA expressly provided that an act of speech that is "disloyal" may subject a person to deprivation of citizenship. The prohibited action and consequences were clearly provided by law and the Sterren Forty were aware of both having been warned by Remisia on several occasions. They were also given a chance to have their charges dismissed if they signed a written apology but elected not to do so.

2.4 Breach of Article 9 of the 1961 Convention

Article 9 of the 1961 Convention provides that no state may deprive a person of nationality "on racial, ethnic or political grounds", irrespective of whether it would render them stateless. Article 9 must be read in harmony with Article 8 and – unlike Article 8 – Article 9 does not have any exceptions and is not subject to reservation pursuant to Article 17. Therefore, even if the DCA itself is valid under Article 8(3) and even if the actions of the Sterren Forty were "seriously prejudicial to Remisia's "vital interests", a conviction cannot lead to a deprivation of nationality on political grounds. The Sterren Forty alleged in their appeals that this is precisely what happened. Teams should be prepared to demonstrate what punishment on political grounds, including nationality stripping, looks like by using the writings of the UN Special Rapporteur on the use of citizenship stripping in terrorist prosecutions, the use of national laws such as those of the UK, Canada, Israel, and the Netherlands that have similar objectives. This will be a relatively nuanced argument because Teams will have to balance a State's legitimate right to protect itself (vital interest) against the absolute prohibition on using these tools to punish political enemies of the state.

2.5 Violations of Customary International Law

Assuming Applicant is unable to show it has standing *erga omnes partes* or chooses to argue that the alleged breach by Remisia also gives rise to breaches of customary international law of an *erga omnes* character, Applicant has a hard but not impossible argument to make. Applicant must establish the existence of a rule that prohibits rendering a person stateless based on a conviction that punished the person purely on political grounds and must then apply that rule to the prosecution of the Sterren Forty.

As discussed in Section 1.9 of this Memorandum, Applicant must first establish that there is in fact a customary rule of law of an *erga omnes* character that prohibits stripping someone's nationality either because the right to a nationality is universal or because it was done on political grounds. Either rule could be argued by the teams; however, each contains some pitfalls. The right to a nationality may well be considered universal when the various international instruments that discuss such a right are considered as determinative; however, many of those documents ask states to endeavor to ensure such a right and allow for derogations and exceptions. Respondent may argue that these exceptions in and of themselves mean the rule cannot be *erga omnes*. Applicant may argue that exceptions do not swallow the rule – as long as it is established that the right to a nationality is a "basic right of the human person" as stated in *Barcelona Traction* then it is *erga*

omnes. The *erga omnes* character of the prohibition against nationality stripping on political ground which is expressed in Article 9 of the 1961 Convention and – arguably - is a prohibited punishment (although not specifically listed) in other human rights instruments such as the ICCPR Article 19 which protect freedom of speech and freedom of expression is likewise subject to debate. While Article 9 of the 1961 Convention is an absolute obligation that does not allow for derogation, Article 19 of the ICCPR – for example – allows for derogation under Article 19 as it is not included in the non-derogable provisions listed in Article 4(2) and contains express permissible limitations in Article 19(3). Teams choosing to go the route of customary law should be prepared to address these issues.

2.6 Remisia's Statement Respecting Article 8(3)

Article 8(3) provides that a state may "retain the right" to deprive a person of his or her nationality if "at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time." Respondent submitted a statement pursuant to Article 8(3) when it ratified the 1961 Convention, retaining its right to deprive a person of his nationality in accordance with the DCA. It is true that – generally – declarations are treated as reservations and cannot be incompatible with the object and purpose of a treaty, see: ILC, Guide to Practice on Reservations to Treaties (2011). However, as discussed earlier in this memorandum, the statement is not even a "declaration" as that term is generally understood. Remisia was – as required - giving notice at the time of ratification that it intended to exercise a right granted to it by the very terms of the 1961 Convention under Article 8(3). The United Kingdom (1966), Austria (1972), Ireland (1973), Tunisia (2000), New Zealand (2006), Brazil (2007), Jamaica (2013), Lithuania (2013), Belgium (2014) and Georgia (2014) have all submitted notice statements in accordance with Article 8(3); each generally concern citizens who join radical fighting groups in civil wars overseas. Applicant certainly has a claim that the manner in which the DCA was implement violates the object and purpose of the 1961 Convention; however, that is a different matter entirely from arguing that Remisia's statement that it intends to continue to use the DCA - in and of itself – violates the object and purpose of the 1961 Convention.

2.7 Applicability of the ICCPR

This question is intended to examine whether the punishment of rendering a person stateless is permissible, not whether the Sterren Forty were prosecuted in a manner that unlawfully infringes on their right to freedom of opinion or expression. Remisia's lese majeste law certainly limits expression and might well constitute a breach of the ICCPR; however, the question presented to the ICJ in this case is not whether the law itself is invalid, but rather whether the punishment of rendering someone stateless is a permissible punishment. Teams that argue the ICCPR by its terms somehow prohibits rendering the Sterren Forty stateless will have a steep hill to climb – much steeper than simply applying and analyzing Articles 8 and 9 of the 1961 Statelessness Convention which has direct language respecting the obligation to avoid rendering a person stateless. The ICCPR contains no provisions that prohibit rendering a person stateless or stripping them of

nationality. Again – the problem is the call of the question, which is whether the punishment can be imposed. At best Applicants could try to argue that various violations of the ICCPR demonstrate that Remisia has not met its burden of showing that the conduct of the Sterren Forty was "seriously prejudicial" to Remisia's "vital interests" or that it was conduct of the type that could not be sanctioned even if it was "seriously prejudicial" to Remisia's "vital interests" because it was political in nature. In either case, these arguments are covered by Articles 8 and 9 of the Statelessness Convention.

2.2. As the conduct of the parties and the reaction of the international community demonstrate – the fact that the trials were done via video was not deemed objectionable nor were there objections to the procedural fairness of the trials. Teams may however try to argue that there was a violation of Article 19 of the ICCPR which protects the right to expression and freedom of opinion. While – as noted – this is better addressed under Article 9 of the 1961 Convention which contains no exceptions and is not subject to derogation, some teams – particularly in earlier rounds – may elect to argue Article 19 of the ICCPR. Teams electing to do so will have to deal not only with the operative provisions of Article 19(1) and 19(2) but also the permitted exceptions under Article 19(3). Each of these provisions as discussed below.**Whether the convictions violated ICCPR Article 19(1)**

ICCPR Article 19(1) relates to the freedom of opinion. In *Yong-Joo Kang v. Republic of Korea*, the HRC found that the "coercive" "ideology conversion system" whereby inmates in a South Korean prison were offered "preferential treatment" if they altered their political opinion was a violation of Article 19(1). Applicant may argue that the offer to dismiss the charges in exchange for a "written apology" to the Queen is analogous, and therefore, a violation of Art 19(1).

Respondent may reply that the case can be distinguished on the grounds that there was no "coercion" involved and that the Sterren Forty were merely asked to apologize for their actions, rather than to change their political ideology.

2.2.2. Whether the convictions violated ICCPR Article 19(2)

Applicant may argue that the Sterren Forty's freedom of expression was violated since according to ICCPR Article 19(2), "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds…." People who exercise the highest political authority may be subject to criticism, and the fact that some forms of expression are insulting to a public figure is not sufficient to justify prison sentences or the loss of nationality.

However, Respondent may argue that many States around the globe allow for a restriction of this right through *lèse-majesté* laws, specifically those governed by a monarchy. Such is the example of Thailand, considered to be one of the strictest, which can lead to a conviction maximum of 15

years in prison. Cambodia, Brunei, Belarus, Belgium, Qatar, Kuwait, Spain, and Russia have laws that punish people who defame or insult the Head of State.

2.2.3. Whether the convictions violated ICCPR Article 19(3).

ICCPR Article 19(3) permits restrictions if they are provided by law and are necessary (a) for respect of the rights or reputation of others or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Applicant and Respondent are unlikely to dispute that the restriction was provided by law, as the DCA was duly enacted into law in 1955. The argument will focus on the two permitted purposes of the law.

Any such restriction must conform to the strict tests of necessity and proportionality. A restriction is not "necessary" if the protection could be achieved in other ways which do not restrict the freedom of expression. A measure is proportionate if it is the least intrusive measure comparing the interest to be protected to the measure taken. The measure must be proportionate not only *per* se but also as applied by the administrative and judicial authorities.

Applicant will argue that the restriction in the DCA lacks a legitimate aim and that it is neither necessary nor proportionate. The DCA prevents criticism of the Queen; Respondent will argue that legitimacy of the crown is not a legitimate aim under the ICCPR. Further, stripping the Sterren Forty of their citizenship is neither necessary nor proportionate, as it is not the least intrusive measure.

Respondent will argue that preserving the legitimacy of the crown is a legitimate aim. Further, the measure was necessary as less intrusive measures had failed previously. For example, the Sterren Forty were invited to apologize in exchange for dismissal of the charges. The stripping of their citizenship should also be viewed in their broader political context: the protests surrounding the LRC cobalt mines, which threatened the peace and stability in Remisia.

3. QUESTION PRESENTED #3:

Antrano's Prayer for Relief	Remisia's Prayer for Relief
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.	Antrano violated international law when it denied Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano.

For hyperlinks to the sources referenced in this section, click here.

3.1 Relevant facts

Saki Shaw was a Molvanian national who acquired Remisian nationality through Remisia's Naturalization by Investment Program (NIP) in 2016, following her donation of EUR 500.000 to the National Infrastructure Development Fund. She has never resided in Remisia and was last present on Remisian territory in 2006. She never visited Remisia after the acquisition of Remisian nationality (Clarification #5).

Shaw entered Antrano presenting her Remisian passport (*Compromis* para. 42). When arrested, she requested to speak with the Remisian consul to Antrano, which request was denied. Antranan officials explained that Antrano did not recognize her Remisian nationality, as it does not recognize purchased citizenship. Antrano invited her to meet with the Molvanian consul, which Shaw did not desire, given the pending charges against her in Molvania. Antrano's statutory non-recognition of purchased citizenship has been in force since 2017. Signage at every Antranan port of entry informs travelers that passports obtained in this manner are not valid for entry. (Clarification #8).

3.2 Overall Legal Structure

Teams must assess whether, by denying Saki Shaw access to Remisian consular representatives, (i) Antrano violated a customary norm which obliges it to recognize consequences of the conferment of nationality by another State to an individual, and (ii) Antrano violated article 36 of the Vienna Convention on Consular Relations ("VCCR").

Applicant might incorrectly object to Remisia's standing to raise a claim on Shaw's behalf, misconstruing this case as one involving Diplomatic Protection. Such an objection is not applicable in this case: this issue presents a direct claim by Remisia based upon its rights under the VCCR, not a claim which Remisia seeks to espouse on behalf of a national. Respondent might additionally mention the *LaGrand* case, where the Court concluded that Article 36, paragraph 1, creates individual rights, which, by virtue of Article 1 of the Optional Protocol, may be invoked in this

Court by the national State of the detained person. While this is certainly true, the argument is essentially a red herring, because the existence of an alternative claim based on diplomatic protection does not negate the existence of Remisia's direct claim based on its own rights under the VCCR and Remisia need only pursue and establish standing for one claim, not both.

3.3 Is the conferment of Remisian nationality to Ms. Shaw via the NIP legitimate under international law?

Despite the growing number of international instruments containing provisions on nationality, each State's freedom to regulate matters related to nationality remains largely unfettered. As long as the conferment of nationality is consistent with applicable international conventions, customary international law, and the principles of law generally recognized with regard to nationality, the freedom of a State to determine who is a national is overall unquestioned, as it is considered a matter pertaining to the *domaine réservé* of a State. The freedom of States to define their own rules on the acquisition of citizenship also encompasses the freedom to establish programs for the acquisition of "citizenship by investment."

Teams may be prompted to address, as a preliminary issue, the legitimacy of the conferment of nationality through the NIP. Respondent may support the legitimacy of the conferment of nationality to Ms Shaw by referring to:

- The Advisory Opinion of the Permanent Court of International Justice (PCIJ) in *Nationality Decrees Issued in Tunis and Morocco*, at 24, according to which the questions of nationality are in principle within the *domaine réservé* of a State,
- The 1930 Convention on Certain Questions Relating to the Conflict of Nationality Law, Article 1, which states "it is for each State to determine under its own law who are its nationals,"
- the European Convention on Nationality, Article 3, according to which "it is for each State to determine under its own law who are its nationals,"
- the Draft Protocol on Nationality of the African Union, Article 3, which states "it is for each State Party to determine under its own national law who are its nationals," and
- the case law of international tribunals which reaffirms the discretion of States in the conferment of nationality, for example the European Court of Human Rights in *Petropavlovsk v. Latvia* [2015] ECHR Application No. 44230/ 06, para. 80, and the Inter-American Court of Human Rights in *Case of the Girls Yean and Bosico v. Dominican Republic* [2005] IACtHR Series C No. 130 (2005), para. 140.

Applicant will have a hard task in contesting the legitimacy of the NIP and of the conferment of nationality. Applicant may point to criticisms raised against such practice, by referring for example to the E.U. Commission Report on Investor Citizenship and Residence Schemes in the European Union.

3.4 Is Antrano obliged to recognize the consequences of the attribution of Remisian nationality to Ms. Shaw?

Even if the Court finds that the conferment of Remisian nationality to Ms Shaw was legitimate under international law, the question remains whether Antrano is obliged to recognize such citizenship.

In treaty law, nationality is often used to determine the personal scope of application of treaties, thus constituting a prerequisite for their application. It is therefore questionable whether, under international law, States are obliged to bear the consequences, in terms of obligations owed to other States, of the attribution of nationality by another State to an individual.

Article 1 of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Law, as well as Article 3 of the European Convention on Nationality, provide that national law conferring nationality to individuals "shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality." Respondent may argue that this evinces a customary obligation by States to recognize the conferment of nationality.

Applicant will likely argue that there is no international law rule applicable to Antrano which obliges it to recognize Shaw's Remisian nationality. Antrano is not party to either of the treaties mentioned above. There is no state practice or *opinio juris* supporting the conclusion that such a customary norm exists. In the alternative, Applicant may frame the obligation narrowly, for example obliging States to recognize nationality when doing otherwise would lead to statelessness. This is clearly not the case for Shaw, who is unquestionably a Molvanian national.

Applicant will likely rely on the judgment in the famous *Nottebohm* case, in which the Court concluded that a grant of nationality is entitled to recognition by other States only if it represents a "genuine connection" between the individual and the State granting its nationality. Applicant will argue that Shaw purchased Remisian nationality and cannot demonstrate any other genuine link with that country aside from her purchase/investment.

Respondent teams will reply that the *Nottebohm* case represents an isolated judgment of the Court, and no subsequent judgments or instruments have reiterated the need to establish a genuine link. It may refer to this effect to the *LaGrand* case, where the Court had not required evidence of any "genuine link" on which to base the right to diplomatic protection. Subsequent instruments also appear to reject the *Nottebohm* approach. Article 4 of the 2006 ILC Draft Articles on Diplomatic Protection provides that "a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or any other manner, not inconsistent with international law." The accompanying commentary explicitly states that "Draft article 4 does not require a State to prove an effective or

genuine link between itself and its national, along the lines suggested in the *Nottebohm* case," indicating that the ILC considered that certain factors served to limit the application of the *Nottebohm* approach. This suggests that the Court did not intend to expound a general rule applicable to all States, but only a specific rule according to which a State in Lichtenstein's position was required to show a genuine link between itself and Mr. Nottebohm to exert his nationality in a claim against Guatemala, with whom he had extremely close ties. The rejection of the *Nottebohm* approach finds its way also in more recent ICSID cases (most notably, *Micula et al. v. Romania*, ICSID Case No ARB/05/20, Decision on Jurisdiction and Admissibility of 24 September 2008 para. 99).

Respondent teams will also likely argue that, even if the *Nottebohm* approach is accepted by the Court, Shaw meets that test and can prove a genuine link with Remisia. Respondent teams may point to the factual differences between *Nottebohm* and the present case. Shaw's ties to Remisia are much closer than those of Nottebohm to Lichtenstein, as she invested significant amounts in business projects in the country. *Nottebohm* recognizes nationality as a "legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties." Respondent may argue economic ties to Remisia are sufficient to establish a genuine link.

Furthermore, Shaw's ties to third States are not significantly stronger than her ties to Remisia. She is a Molvanian national by birth but left the country in 2012; she is an Italian resident but there are no known family or economic ties with the country. It is therefore not possible for Antrano to claim that Shaw has only "extremely tenuous" ties to Remisia compared to other countries, as was the case for Mr. Nottebohm's ties to Liechtenstein.

3.5 Did Antrano violate Article 36(1) of the Vienna Convention on Consular Relations (VCCR) by denying Ms. Shaw's request to speak with the Remisian consular officials?

Article 36 of the Vienna Convention on Consular Relations lays down rights of the sending State relating to communication and contact with its nationals. In particular, it provides that:

> (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
> (b) if [the prisoner] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights;

> (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody, or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody, or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody, or detention if he expressly opposes such action.

Applicant will argue that Antrano did not violate Article 36, arguing that Antrano complied with this provision when it informed the Molvanian consulate about the arrest of Shaw and offered her access to Molvanian consular officers. To this effect, they will build upon the conclusions developed before, *i.e.* that Antrano is not obliged to recognize Ms Shaw's Remisian nationality.

Even if Antrano must recognize Shaw's Remisian nationality, nothing in the wording of Article 36 suggests that, in case of dual nationality, the person under detention has the "right to choose" or that both sending States must be informed. Applicant will thus likely argue that informing one consular post is sufficient to comply with its obligations under the VCCR.

Respondent will argue that both Remisia and Molvania had equal rights under the VCCR and that, by engaging only with Molvanian consular officials, Antrano violated Article 36. Respondent will point at the recitals of the VCCR, which refer to the sovereign equality of States and that the purpose of privileges and immunities under the VCCR "is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States." Obligations under the VCCR are owed to the State, and all States must be treated equally.

Respondent may rely on Article 6 of the 2006 ILC Draft Articles on Diplomatic Protection, according to which "Any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that person is not a national." Respondent might also rely upon Article 7, which recognizes the relevance of dominant nationality only in the case where diplomatic protection is exercised against the other State of nationality. If Respondent relies upon the law of Diplomatic Protection, it must be able however to demonstrate that the same rationale applies to the VCCR, which is not concerned with Diplomatic Protection. More sophisticated teams may be able to engage in a discussion in relation to the similarities and differences between the two legal regimes.

Both teams may refer to the jurisprudence of the Iran-United States Claims Tribunal dealing with the determination of a dual national claimant's dominant and effective nationality (e.g. Case A/18, the *Malek* case, the *Areya* case), arguing in favor or against the relevance of the "dominant nationality," the right of individuals with dual nationality to have a choice in the objective determination of their dominant and effective nationality, and the duty not to abuse of this right. However, teams should be aware of the peculiar legal questions presented before the Iran-United States Claims Tribunal, in the context of which such jurisprudence developed, and thus the fact these arguments may not be persuasive.

3.6 Is Antrano estopped from raising any argument based on the alleged lack of Remisian nationality of Ms. Shaw?

Paragraph 42 of the *Compromis* states that Shaw was admitted to Antrano after presenting her Remisian passport. Some teams may argue that Antrano is thereby estopped from relying upon her lack of Remisian nationality before the Court.

Under international law, the principle of estoppel aims at protecting legitimate expectations raised by a State through its acts and conduct. In the words of Judge Spender, in his dissenting opinion in the Court's *Temple of Preah Vihear* case, estoppel prevents a State from "contesting before the Court a situation contrary to a clear and unequivocal representation previously made by it to another State, either expressly or impliedly, on which representation the other State was, in the circumstances, entitled to rely and in fact did rely, and as a result that other State has been prejudiced or the State making it has secured some benefit or advantage for itself."

Respondent may argue that, by admitting Shaw into the country with her Remisian passport, Antrano acknowledged and recognized her as Remisian national, and cannot therefore bring an argument before the Court based on the lack of such nationality.

Applicant has the upper hand on this argument. Applicant will point at the criteria for the application of the principle of estoppel (*Chagos* Arbitration (Mauritius v United Kingdom) (Award of 18 March 2015), at paragraph 438) and argue that such criteria are not met in the present case. In particular, Applicant teams will likely point at Clarification 8, according to which

> "Antrano's statutory non-recognition of purchased citizenship has been in force since 2017. Signage at every Antranan port of entry informs travelers that passports obtained in this manner are not valid for entry."

Therefore, no legitimate expectation could arise from her admission to Antrano.

4. QUESTION PRESENTED #4:

Antrano's Prayer for Relief	Remisia's Prayer for Relief
Remisia violated international law by denying Antranan national Dr. Tulous Malex entry to Remisia as required by Security Council Resolution 99997.	Remisia did not violate international law by refusing to allow Dr. Malex to enter Remisia.

For hyperlinks to the sources referenced in this section, click here.

4.1 Remisia's non-cooperation with the UN inspection mission

The question concerns whether Remisia has violated international law by refusing to cooperate with the United Nations Inspection Mission to Remisia ("UNIMR"). The question requires the parties to examine the relationship between Remisia and the United Nations, as established by the UN Charter and subsequent practice.

Before coming to the actual question of non-cooperation, oralists might first address whether the UN Security Council illegally interfered with the domestic affairs of Remisia by creating the UNIMR or whether the Security Council acted *ultra vires* in that regard.

4.2 Prohibited intervention into domestic affairs by the UN Security Council

The principle of non-intervention into the domestic affairs of States is not only applicable in inter-State relations as a reflection of sovereign equality of States, but also in the relationship between the members of an international organization and the organization itself. In the law of the United Nations, this is reflected in Article 2(7) of the Charter, and the argument follows the same lines, concerning substance and interpretation, as the principle of non-intervention between States.

Applicant	Respondent
Does the Security Council deal with a subject that is in the exclusive internal affairs of the State?	
The questions which are addressed by UNSC Resolution 99997 (2002) do not fall within the *domaine réservé* of the Respondent and	Article 2(7) is applicable. Resolution 99997 was adopted under Chapter VI of the Charter, not Chapter VII.

therefore, the Security Council has not violated the Charter. What belongs into the sphere of the *domaine réservé* is a question of the development of international law and therefore, must be measured by the evolution of treaty and customary international law, a State is bound to (PCIJ, *Nationality Decrees Issues in Tunis and Morocco Case*). The questions of criminal justice in conjunction with statelessness are not in the *domaine réservé* of states as they are a matter of human rights which is recognized as an internationalized matter (Criminal Justice: Art. 14 *et seq.* ICCPR, Statelessness/Right to a Nationality: Article 15 UDHR). The UN is tasked with safeguarding human rights under Charter Articles 1(3) and 55(c). Respondent has acknowledged the internationalization of its obligations regarding statelessness by ratifying the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. A reservation to an international treaty is a minor adjustment to the general treaty regime and does not affect the competence of Security Council.	The Security Council violated the principle of non-intervention of Article 2(7) by creating the inspection mission. Questions regarding citizenship do traditionally fall within the sole jurisdiction of States. International law has no say on who can be a citizen of a given State. The DCA and judgements made thereunder involve only domestic affairs. The DCA is designed to protect the honor of the monarchy, a feature of the internal constitutional organization of the State. The penalties, including the revocation of citizenship, are only an extension of that protection. Respondent explicitly invoked the DCA in its Statelessness Convention declaration; it is therefore outside the international regime and beyond the competence of the Security Council.
Is the Resolution or its implementation coercive in nature?	
UNIMR is merely an investigation mission. Investigation of any matter does not reach the required threshold of coercion. An investigation only looks into issues and does not propose coercive actions.	The element of coercion forms the very essence of the non-intervention principle (*Nicaragua* Case). UNIMR coerces the organs of the State to expose their practices concerning revocation of citizenship to outside scrutiny.

	UNIMR is at least a first step towards coercion as more drastic measures, such as sanctions, condemnations might follow from a negative conclusion by the Mission.

4.3 Ultra vires act by the UN Security Council

While the Security Council has frequently established investigative bodies, commissions of inquiry, and fact-finding mission, it has rarely relied on Article 34 of the Charter. A very prominent instance dates to the late 1940s when the Council mandated a body to investigate the alleged frontier violations from the territories of Albania, Bulgaria, and Yugoslavia against the Hellenic Republic. Scholarly writings are extensive on both sides of the matter. Teams may rely upon the wording of the Charter, its place within the rules concerning the Security Council, and/or the developing practice of the United Nations after the end of the Cold War. The question is whether this situation falls within the scope of Article 34 or is *ultra vires*.

Applicant	**Respondent**
The Security Council acted *intra vires* by adopting Resolution 99997. Article 34 can be used as a general tool for conflict prevention because UN practice since the end of the Cold War has shifted from a culture of reaction to a culture of prevention. This practice must prevail in determining competences of UN organs in such fields as investigation, inquiry, and fact-finding. Therefore, the Security Council must enjoy a means to get information before a situation escalates into a state that is detrimental to international relations. It follows from the word "may" in Article 34 that the Security Council has discretion to assess and react to a situation as it sees fit. Even if this situation is outside Article 34, the Security Council can rely on its implied powers	By adopting Resolution 99997, the Security Council acted outside of its competences and therefore, the resolution was *ultra vires*. The wording of Article 34 clearly states that the Security Council can only rely on Article 34 to determine its own competence. However, UNIMR is clearly designed as a fact-finding mission concerning the citizenship issue. The Security Council cannot rely on Article 34 as that provision foresees that the Organ may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. The revocation of citizenship is a purely domestic matter with no potential to lead to armed conflict or other threat to international peace and security.

to erect the UNIMR (*Reparation for Injuries Advisory* Opinion).	Resolution 99997 cannot be justified under implied powers, as the Security Council has explicitly referred to Article 34.

4.4 Duty to cooperate with UNIMR

Teams must address whether UN membership obliges Remisia to cooperate with the UNIMR, especially regarding the opening of the territory to the Mission. This question must be answered from the wording of the Charter, its place within the rules concerning the Security Council, and/or the developing practice of the United Nations. Here again, the Court has not adjudicated upon the matter and there are no clear-cut rules within the Charter.

Applicant	**Respondent**
Is there any general obligation to cooperate with an investigative body under the Charter?	
Although Chapter VI resolutions may be only of a recommendatory nature, States must regard them in a *bona fide* way.	Cooperation with UNIMR is not legally required as only resolutions under Chapter VII have a binding effect.
Is a State required to open its territory, or do any other thing, with respect to investigative body under the Charter?	
There is a functional nexus between the Security Council's competence to investigate and its primary responsibility for the maintenance of international peace and security conferred, as evidenced by Article 25 of the Charter. Therefore, if the Security Council relies upon Article 34, the State concerned is obliged to accept and carry out the decision and to permit the entry of an investigative subsidiary organ into its territory. Under Article 2 (5), all UN Member States are obliged to give every assistance in any action the Organization undertakes in accordance with the Charter.	Article 2(1) and Article 2 (7) of the Charter imply that legal obligations arising under the Charter do not have an impact on the territorial sovereignty of States, which allows them to regulate who enters their respective territories. Teams may also rely on the practice of States that have denied UN fact-finding missions access to their territories (*e.g.* Eritrea, North Korea, and Israel). There are no clear standards under international law defining the precise level of assistance a State must provide to a UN mission. Operational paragraph 2 of Resolution 99997 is not precise enough in this regard.

While Resolution 99997 does not explicitly require an investigation *in loco* it requires the UNIMR to investigate prison conditions and to conduct in-person interviews. This can only be done if access to the sovereign territory is granted.	The Resolution does not explicitly require an investigation *in loco*. The evidence called for the resolution could also be obtained or delivered outside of the sovereign territory.
Does the citizenship of Dr. Malex affect the impartiality of UNIMR?	
Dr. Malex is a scholar in the field of statelessness. Therefore, it can be expected of him to lead UNIMR with the necessary professionalism which includes independence, impartiality, and objectivity applicable to scientific work.	The designation of Dr. Malex does not comply with international standards regarding impartiality and objectivity as it is presided by a national of the Applicant, namely Dr. Malex. UN practice does not indicate any instance where a national of a State concerned with an observed situation was appointed to be a commissioner or preside over such a mission. Standards for impartiality and objectivity in international investigations can be derived from Article 5 of the Permanent Court of Arbitration Optional Rules for Fact-Finding Commissions of Inquiry or from Rule 3 of the Declaration of the General Assembly on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security.

4.5. Whether the ICJ has jurisdiction to review the application of a UNSC Resolution

Some Respondents may attempt to argue that the Court does not have the power of judicial review of a UNSC Resolution. In its Advisory Opinion, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* the Court concluded that it does not possess powers of judicial review or appeal in respect of the decisions taken by the Security Council or other Organs of the United Nations. This is not a strong argument, considering that the question before this Court is not to discuss the content of the Resolution but whether not complying with the Resolution violates international law.

However, the Court has mentioned that while the interpretation and application of a decision of one of the political organs of the United Nations is, in the first place, the responsibility of the organ which took that decision, the Court, as the principal judicial organ of the United Nations, has also

frequently been required to consider the interpretation and legal effects of such decisions. It has done so both in the exercise of its advisory jurisdiction (see for example, *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p.175;* and *Legal Consequences for States of the Continued Presence of South Africain Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports1971, pp.51-54, paras.107-116*), and in the exercise of its contentious jurisdiction (see for example, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports1992, pp.126-127, paras.42-44*).

Annex I: Timeline

1955	Remisia's legislature adopted the Disrespect to the Crown Act (DCA).
1970	Saki Shaw was born in Molvania.
1988	Shaw and Princess Khasat met while on holiday and became close friends.
2006	Queen Khasat ascended to the throne in Remisia.
2008	Her Majesty signed into law the Naturalization by Investment Act (NIA).
2012	Shaw purchased a Residence in Trieste, Italy and has not returned to Molvania since.
14 April 2014	Molvanian newspaper *Alitheia* publishes a series of investigatory reports into ShawCorp.
April 2014	The Minister of Justice opened an inquiry into ShawCorp's operations in Molvania, issuing subpoenas for documents and testimony to numerous members of the Shaw family, including Saki Shaw.
November 2014	Shaw contacted Queen Khasat and proposed the creation of a joint venture between Lithos and the Ministry of Mines of Remisia.
10 November 2015	Shaw and the Prime Minister signed an agreement creating the joint venture, the Lithos-Remisia Cooperative (LRC).
1 June 2016	Shaw's was naturalized as a Remisian citizen under the NIP.
July 2016	LRC applied to the Ministry of Mines of Remisia for permits to begin cobalt extraction via strip mining at three sites in northern Remisia.
August 2017	The Ministry approved all three locations to begin operations. LRC opened and operated the mines the following two years, employing more than 4,000 Remisians.
August 2019	A correspondent for a popular international travel website wrote an article that expressed concern for the pollution of the waters caused by cobalt mining.
September 2019	Students at Remisia National University began holding impromptu lectures and rallies to raise awareness of what they claimed were the environmental hazards of the LRC cobalt operations.
October 2019	LRC applied for permits to open five new mines in Remisia.
December 2019	ILSA student leaders issued a manifesto calling for an immediate end to all cobalt mining operations in Remisia.
January 2020	Remisia issues permits for four of five new mines proposed by LRC.
3 February 2020	More than 30,000 students at all levels walked out of classes in protest of the new issued licenses.
6 February 2020	ILSA leadership issued a communique manifesting their discontent towards the situation, calling for public dialogue.
8 February 2020	Protests resumed throughout Remisia. The police arrested seven students suspected of coordinating the demonstrations.
8-27 February 2020	The Minister of Mines ordered the release of the seven arrestees and offered to meet with them, but the demonstrations continued for three weeks, effectively crippling the mining operations.
27 February 2020	More than 1,000 student demonstrators were detained across Remisia, including the Sterren Forty.

March 2021	Trials of the defendants concluded.
31 March 2021	*De Telegraaf* correspondent posted a video reporting on the Supreme Court oral arguments, which went viral.
April 2021	President Iyali of Antrano spoke at a ceremony marking the 40th anniversary of the death of Mona Songida, calling for resolution of the Sterren Forty situation.
January 2022	Antrano served as President of the UN Security Council and submitted the matter of the Sterren Forty under Article 35.
7 March 2022	The Attorney-General of Molvania annulled the 2014 subpoena for Saki Shaw, and in its place issued an arrest warrant.
15 March 2022	Shaw landed in Duniya, Antrano, with plans to attend the ShawCorp board meeting the next day.
16 March 2022	Shaw was detained by Antranan police on the authority of the extradition request. She informed her arresting officers that she was a citizen of Remisia and demanded to exercise her right under the Vienna Convention on Consular Relations to speak to the Remisian consul, but her request was denied.
17 March 2022	Shaw refused to meet with a Molvanian consular official visiting her in custody.
18 March 2022	Remisia's Ambassador notified the Foreign Ministry of Antrano of its intention to meet with Shaw. Antrano denied the request two hours later.
18 March 2022	Remisia's Home Minister issued an emergency travel advisory advising NIA citizens to abstain from traveling to Antrano.
28-29 March 2022	The Security Council met to discuss the Remisia situation.
April 2022	Saki Shaw collapsed in custody and was rushed to the hospital where she died of a heart attack.
11 April 2022	The Security Council adopted Resolution 99997 creating the UNIMR.
1 June 2022	UNIMR began its preliminary research.
14 July 2022	Dr. Malex requested entry to Remisia.
15 July 2022	Remisia's UN Ambassador informed the Secretary-General that Remisia would not permit the UNIMR team to enter.
18 July 2022	UN Security Council discussed Remisia's refusal. While no resolution was adopted, the President of the Security Council concluded the discussion by noting that "all UN members must carry out their obligations under the Charter in good faith, and denying entry to the UNIMR chief would be a violation of those obligations and of Resolution 99997."
25 July 2022	Dr. Malex announced that he intended to visit Remisia alone from 10 to 20 August.
3 August 2022	Dr. Malex wrote to Prime Minister Sezan, informing him that he would arrive at Remisia International Airport on a commercial flight on 10 August. The Remisian UN ambassador again informs the Secretary-General that Remisia will not cooperate.
8 August 2022	Dr. Malex met with the Secretary-General in New York.
9 August 2022	Dr. Malex boarded a flight to Remisia. When he arrived, Dr. Malex was stopped at passport control at Kamil International Airport and his entry to Remisia was denied. He was placed on the next flight back to New York.

12 August 2022	The Secretary-General referred the refusal to the Security Council.
15 August 2022	The Remisian foreign minister contacted his Antranan counterpart by phone, initiating negotiations over all issues in the *Compromis*.
14 September 2023	After months of negotiations, the parties announced they had successfully negotiated the Special Agreement.

Annex II: References

QUESTION PRESENTED #1:

- Territorial and Maritime Dispute (Nicaragua v. Colombia)
- Certain Iranian Assets (Islamic Republic of Iran v. United States of America)
- ILC Guide to Practice on Reservations to Treaties, with commentaries, Section 1.7.1 ("Alternatives to Reservations") and accompanying commentary, especially paragraph 16
- East Timor (Portugal v. Australia)
- Application of the Convention on the Prevention and Punishment of the Crimes of Genocide
- Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)
- Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)
- ILC, Draft Articles on the Law of Treaties with commentaries
- Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)
- Gabčíkovo-Nagymaros Project (Hungary/Slovakia)
- South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)
- Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)
- Roberto Cordova, Special Rapporteur, Report on the Elimination or Reduction of Statelessness, UN Doc A/CN.4/64 (30 March 1953)
- Nuclear Tests (Australia v. France)
- The Human Rights Consequences Of Citizenship Stripping In The Context Of Counter-Terrorism With A Particular Application To North-East Syria

QUESTION PRESENTED #2:

- Convention on the Reduction of Statelessness (1961)
- Expert Meeting Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality Summary Conclusions
- Deprivation of nationality under article 8 (3) of the 1961 Convention on the reduction of statelessness
- Thailand: UN rights expert concerned by the continued use of lèse-majesté prosecutions
- Text of the set of draft guidelines constituting the Guide to Practice on Reservations to Treaties, provisionally adopted by the Commission
- Human Rights Committee, General Comment 34
- Michelle Foster, *The 1961 Convention on the Reduction of Statelessness: History, Evolution and Reliance*

QUESTION PRESENTED #3:

- Nationality Decrees Issued in Tunis and Morocco

- 1930 Convention on Certain Questions Relating to the Conflict of Nationality Law
- European Convention on Nationality
- Draft Protocol on Nationality of the African Union
- Petropavlovsk v Latvia [2015] ECHR Application No. 44230/ 06 para 80
- Case of the Girls Yean and Bosico v Dominican Republic [2005] IACtHR Series C No. 130 (2005) para 140
- EU Commission Report on Investor Citizenship and Residence Schemes in the European Union.
- *Nottebohm* case
- *LaGrand* case
- 2006 ILC Draft Articles on Diplomatic Protection
- Micula et al. v Romania ICSID Case No ARB/05/20
- Vienna Convention on Consular Relations
- Case A/18
- Malek case
- Areya case
- Case concerning the Temple of Preah Vihear [Cambodia v Thailand] [Merits] [Dissenting Opinion of Sir Percy Spender] 143-44
- Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom) (Award of 18 March 2015) – para 438
- LaGrand (Germany v. United States of America)

QUESTION PRESENTED #4:

- Charter of the United Nations
- PCIJ, Nationality Decrees Issues in Tunis and Morocco Case
- ICCPR
- Universal Declaration of Human Rights
- Nicaragua Case
- Reparation for Injuries Advisory Opinion
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)
- Accordance with international law of the unilateral declaration of independence in respect of Kosovo

Annex III: Additional Resources

- Jessup 2024 Official Rules
- Summary of Changes to the Jessup 2024 Official Rules
- Introduction to International Law
- Video: A Guide to Oral Rounds
- Video: Summary of the 2024 Jessup Problem: The Case Concerning the Sterren Forty
- New Judges Guide
- Oral Round Judging Guidelines
- Preliminary Rounds Oral Scoresheet
- Advanced Rounds Oral Scoresheet
- Oral Round Judging Checklist
- Sample Questions - Sample Oral Round questions from prior years