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THE 2024 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE



At the Peace Palace

THE HAGUE, THE NETHERLANDS

2024

THE CASE CONCERNING THE STERREN FORTY

*between*

THE REPUBLIC OF ANTRANO (APPLICANT)

*and*

THE KINGDOM OF REMISIA (RESPONDENT)

**MEMORIAL FOR APPLICANT**

**TABLE OF CONTENTS**

[INDEX OF AUTHORITIES IV](#_Toc155961544)

[STATEMENT OF JURISDICTION XIV](#_Toc155961545)

[QUESTIONS PRESENTED XV](#_Toc155961546)

[STATEMENT OF FACTS XVI](#_Toc155961547)

[SUMMARY OF PLEADINGS XXI](#_Toc155961548)

[PLEADINGS 1](#_Toc155961549)

[I. ANTRANO HAS STANDING TO BRING THE DISPUTE CONCERNING REMISIA’S DEPRIVATION OF NATIONALITY OF ITS CITIZENS BEFORE THE COURT 1](#_Toc155961550)

[A. Antrano has standing based on *Erga Omnes Partes* obligations violated by Remisia 1](#_Toc155961551)

[1. Antrano has standing under the CRS 2](#_Toc155961552)

[a. Antrano’s standing stems from the Erga Omnes Partes character of the obligations violated by Remisia under the CRS 2](#_Toc155961553)

[b. Antrano can submit its dispute with Remisia under Article 14 of the CRS 3](#_Toc155961554)

[2. Antrano has standing under the ICCPR 4](#_Toc155961555)

[B. Alternatively, Antrano has standing based on the *Erga Omnes* obligation to protect the basic human right to nationality 5](#_Toc155961556)

[C. Antrano’s standing is not barred by the Nationality of the Claimant rule 7](#_Toc155961557)

[II. REMISIA’S DEPRIVATION OF NATIONALITY OF THE STERREN FORTY, RENDERING THEM STATELESS, IS A VIOLATION OF INTERNATIONAL LAW 9](#_Toc155961558)

[A. Remisia violated its obligations under the CRS 9](#_Toc155961559)

[1. Remisia violated Article 8(1) of the CRS 9](#_Toc155961560)

[a. Rendering the Sterren Forty stateless was not in accordance with law pursuant to Article 8(4) of the CRS 10](#_Toc155961561)

[b. Rendering the Sterren Forty stateless did not fall within the grounds recognized in Article 8(3) of the CRS 11](#_Toc155961562)

[c. Rendering the Sterren Forty stateless was disproportionate to achieve Remisia’s aims 12](#_Toc155961563)

[2. Remisia violated Article 9 of the CRS 13](#_Toc155961564)

[3. Furthermore, Remisia cannot rely on Article 8(3) of the CRS to render Sterren Forty stateless 14](#_Toc155961565)

[B. Remisia violated its obligations under Articles 19 and 21 of the ICCPR 15](#_Toc155961566)

[1. Remisia’s restrictions on the rights to freedom of expression and assembly of the Sterren Forty were not based on legitimate aims 16](#_Toc155961567)

[a. Remisia’s restriction cannot be justified on national security 16](#_Toc155961568)

[b. Remisia’s restriction cannot be justified on public order 17](#_Toc155961569)

[c. Remisia’s restriction cannot be justified on public morals 17](#_Toc155961570)

[2. Remisia’s restriction was not necessary in a democratic society 18](#_Toc155961571)

[C. This Court can and should order the restitution of the Sterren Forty’s Remisian nationality 20](#_Toc155961572)

[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 21](#_Toc155961573)

[A. Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality 21](#_Toc155961574)

[1. The Naturalization by Investment Act is not supported by customary international law.....................................................................................................................................22](#_Toc155961575)

[2. Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality based on the genuine link principle 23](#_Toc155961576)

[a. The genuine link principle is applicable to Ms. Shaw’s case 23](#_Toc155961577)

[b. Molvania is the State of Ms. Shaw’s effective nationality 24](#_Toc155961578)

[B. Antrano complied with its obligations under Article 36 of the VCCR 25](#_Toc155961579)

[1. Remisia does not have the right to bring consular assistance to Ms. Shaw 26](#_Toc155961580)

[2. Antrano guaranteed Ms. Shaw’s rights under the VCCR 26](#_Toc155961581)

[3. Antrano’s law on non-recognition of purchased citizenship did not nullify the purpose of her rights pursuant to Article 36(2) of the treaty 27](#_Toc155961582)

[IV. REMISIA VIOLATED INTERNATIONAL LAW BY DENYING ANTRANAN NATIONAL DR. TULOUS MALEX ENTRY TO REMISIA AS REQUIRED BY SECURITY COUNCIL RESOLUTION 99997 29](#_Toc155961583)

[A. The UNSC has competence to investigate the Sterren Forty’s situation 29](#_Toc155961584)

[B. Antrano’s right to exercise diplomatic protection over Dr. Malex is not precluded by the UN’s functional protection 31](#_Toc155961585)

[C. Remisia violated international law by denying Dr. Malex entry to its territory ...................................................................................................................................32](#_Toc155961586)

[1. Remisia violated Dr. Malex’s privileges conferred by Article 7 of the CPI 32](#_Toc155961587)

[2. Remisia violated Article 25 of the UN Charter by not complying with the obligations imposed by Resolution 99997 33](#_Toc155961588)

[a. The Charter’s provisions invoked in Resolution 99997 obliges Remisia to cooperate with the UNIMR 33](#_Toc155961589)

[b. Resolution 99997 obliges Remisia to cooperate with the UNIMR in accordance with the VCLT interpretation rules 34](#_Toc155961590)

[i. The ordinary meaning of the operative verb ‘*Call upon*’ in Resolution 99997 obliges Remisia to cooperate with the UNIMR 35](#_Toc155961591)

[ii. The object and purpose of the Resolution 99997 obliges Remisia to cooperate with the UNIMR 36](#_Toc155961592)

[iii. The practice subsequent to the adoption of Resolution 99997 obliges Remisia to cooperate with the UNIMR 36](#_Toc155961593)

[PRAYER FOR RELIEF 38](#_Toc155961594)

# INDEX OF AUTHORITIES

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The American Heritage Dictionary of the English Language, (Call upon, 2022), <https://www.ahdictionary.com/word/search.html?q=call> accessed 11 January 2024 35

DOMESTIC LEGISLATION

Thai Criminal Code B.E. 2499 (01 January 2003) (Thailand) 10

# STATEMENT OF JURISDICTION

The Republic of Antrano (‘Antrano’) and the Kingdom of Remisia (‘Remisia’) have agreed to submit their dispute concerning the Sterren Forty to the International Court of Justice (‘ICJ’) pursuant to Article 40(1) of the Statute of the ICJ and the Special Agreement signed in The Hague, The Netherlands on 14 September 2023. The Parties have jointly notified the Court on the next day.

In accordance with Article 36 of the Statute of the ICJ and Article 3 of the Special Agreement, the ICJ has jurisdiction to adjudicate all matters submitted to it and both Parties undertake to consider the judgment as final and binding and execute it in good faith.

# QUESTIONS PRESENTED

*The Republic of Antrano respectfully requests the Court to adjudge:*

**I**

*Whether* Antrano has standing to bring the dispute concerning Remisia’s deprivation of nationality of its citizens before the Court.

**II**

*Whether* Remisia’s deprivation of nationality of the ‘Sterren Forty,’ rendering them stateless, is a violation of international law.

**III**

*Whether* Antrano violated international law when it refused to provide Remisia consular access to Ms. Saki Shaw during her time as a prisoner in Antrano.

**IV**

*Whether* Remisia violated international law by denying Antranan national Dr. Tulous Malex entry to Remisia as required by the United Nations Security Council Resolution 99997.

# STATEMENT OF FACTS

**BACKGROUND**

The Republic of Antrano is located in the Mahali Archipelago. Since its establishment in 1951, Antrano has demonstrated a keen interest in eliminating statelessness worldwide. Its first President, Muna Songida, was a vocal proponent of the Convention Relating to the Status of Stateless Persons (‘CSP’) and the Convention on the Reduction of Statelessness (‘CRS’). He also founded the Antrano Nationality Department in 1960. Antrano’s representatives regularly propose resolutions against statelessness in international forums.

The Kingdom of Remisia is a constitutional monarchy situated on the Isidre Plateau. Queen Khasat, as its current monarch, appoints the Prime Minister and the commander-in-chief of the armed forces. Disrespecting the Queen can result in the loss of the Remisian nationality by virtue of the Disrespect to the Crown Act (‘DCA’).

**HAZARDOUS COBALT MINING IN REMISIA**

In 1989, Remisia discovered cobalt deposits in its territory which it decided to limit extraction of, due to uncertainty regarding the potential impact on the atmosphere and waters. In 2016, Ms. Saki Shaw (‘Ms. Shaw’), a close friend of Queen Khasat, proposed a joint venture to exploit the cobalt mines through her company Lithos Limited, leading to the establishment of the Lithos-Remisia Cooperative (‘LRC’).

The LRC requested licenses from the Remisian Ministry of Mines to commence cobalt mining at three sites, which were approved in 2017. However, several Remisian students of the ‘Isidre League of Student Activists’ (‘ILSA’) initiated protests against the mines on the basis that cobalt mining generated a significant amount of dust and released metallic minerals into nearby rivers, adversely affecting the health of the population and their access to clean water. Despite this, in January 2020, the Ministry of Mines allowed the opening of other four mine sites for the LRC.

**REMISIA’S DECISION TO RENDER THE STERREN FORTY STATELESS**

ILSA continued organizing protests all over Remisia, showing their disagreement against the decisions taken by Queen Khasat’s Government. Remisia’s Attorney-General announced that all those involved in the protests would be prosecuted under the DCA. On 27 February 2020, over 1,000 students were detained across Remisia. Forty protesters were arrested at the gates of Sterren Palace. They were dubbed ‘the Sterren Forty’ by the press.

Remisian authorities charged 230 students under the DCA. Of the convicted students, 190 were sentenced to imprisonment from one-to-three years. The remaining ‘Sterren Forty’ were given five-year prison sentences and ordered the deprivation of their nationality. All of the Sterren Forty appealed to the Supreme Court of Remisia. They argued that stripping their nationality would render them stateless, in violation of international law. The Supreme Court rejected their appeals.

Antrano’s President offered to meet with the Remisian Prime Minister to negotiate alternatives for the Sterren Forty, but Remisia dismissed the proposal. Then, Antrano’s Secretary of Nationality Rights contacted Remisia’s Home Office to resolve their dispute concerning the application of the DCA. Remisia again rejected this request, prompting Antrano to escalate the dispute to the United Nations Security Council (‘UNSC’).

**MS. SHAW’S ARREST AND EXTRADITION PROCESS**

Ms. Shaw was born in Molvania in 1970. Her grandmother, Pevara Shaw, founded the Shaw Corporation (‘ShawCorp’). Ms. Shaw is the head of Lithos Limited, a wholly owned subsidiary of ShawCorp, headquartered in Molvania. In April 2014, the Molvanian authorities ordered an inquiry into ShawCorp operations, including subpoenas on members of the Shaw family, after investigative reports alleged that the company and its principals had engaged in money laundering and tax evasion. However, Molvanian authorities have been unable to serve a subpoena on Ms. Shaw. Seven months after the subpoena was issued to Ms. Shaw, she applied to the Naturalization by Investment Act (‘NIA’), which allowed investors to acquire Remisian citizenship without residence. Although she had not visited Remisia since 2006, her request was approved in June 2016. In this regard, Antrano’s laws do not recognize purchased citizenship.

In March 2022, Molvania’s Attorney-General replaced the 2014 subpoena on Ms. Shaw with an arrest warrant charging her with bank fraud, money laundering, and obstruction of justice. Since Molvania has an extradition treaty with Antrano, and the Molvanian authorities were aware she would travel to the Antranan capital, Molvania delivered a formal request for her extradition. As a result, she was detained and arrested by Antranan authorities in her hotel.

Antrano informed Ms. Shaw about her rights under the Vienna Convention on Consular Relations (‘VCCR’). She requested consular assistance from Remisia, but Antrano denied her request, instead granting her access to the Molvanian consul. The Remisian consul had requested to meet her. In response, Antrano stated that it does not recognize purchased citizenship, such as between Ms. Shaw and Remisia, and she was aware of this. Signage at every Antranan port of entry informed travelers that purchased passports were not valid for entry. Unfortunately, two weeks later Ms. Shaw collapsed in jail and died of natural causes.

**REMISIA’S DENIAL OF ENTRY OF DR. MALEX AND NON-COMPLIANCE WITH UNSC RESOLUTION 99997**

The UNSC unanimously adopted Resolution 99997 on 11 April 2022, which created the United Nations Inspection Mission to Remisia (‘UNIMR’), aimed to investigate the situation of the Sterren Forty. In this resolution, the UNSC ‘*called upon*’ Remisia to fully cooperate with the mission by providing access to all testimonial information and evidence that is deemed relevant to the Mission, including ‘in-person interviews.’ Antranan national Dr. Tulous Malex (‘Dr. Malex’) was appointed as the mission chief.

On 14 July, Dr. Malex submitted a formal request to Remisia to meet and interview the Sterren Forty. The next day, Remisia’s UN Ambassador announced that Remisia would not permit Dr. Malex to enter without proper documentation. On August 3, Dr. Malex notified Remisia again of his arrival. He requested assurances of his entry based on his UN certificate, but Remisia stated that it would not grant an entry visa for the purposes of UNIMR.

The UNSC President affirmed that denying entry to the UNIMR chief would be a violation under the Charter of the United Nations (‘UN Charter’) obligations and of UNSC Resolution 99997. The UN Secretary-General also condemned Remisia’s refusal to recognize UNSC authority under Chapter VI of the UN Charter. Nevertheless, when Dr. Malex arrived in Remisia on 9 August, border agents denied him entry and placed him on the next plane back to New York.

**TREATIES IN FORCE BETWEEN THE PARTIES**

Antrano and Remisia are parties to the UN Charter, the Statute of the International Court of Justice, the Vienna Convention on the Law of Treaties (‘VCLT’), the Vienna Convention on Diplomatic Relations (‘VCDR’), the International Covenant on Civil and Political Rights (‘ICCPR’), the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’), the Convention on the Privileges and Immunities of the United Nations (‘CPI’), the VCCR, the CSP and the CRS.

Remisia submitted a declaration upon accession to the CRS which intended to preserve its application of the DCA. However, Antrano and three other State parties objected to this reservation on the grounds that it was incompatible with the object and purpose of the treaty.

Antrano issued a declaration upon accession to the CPI, stating that the convention would not affect its right to exercise diplomatic protection over its nationals, even if it concerns the interests of the UN.

# SUMMARY OF PLEADINGS

**I**

Antrano has standing to invoke the responsibility of Remisia for violating *Erga Omnes Partes* obligations contained in the CRS by rendering the Sterren Forty stateless, and in the ICCPR for breaching the Sterren Forty’s rights to freedom of expression and assembly. Alternatively, this Court should grant standing to Antrano based on the *Erga Omnes* obligation to protect the basic human right to nationality. Antrano can protect the Sterren Forty even if they are not Antranan citizens, as the Nationality of the Claimant Rule is not required for claims based on *Erga Omnes Partes* or *Erga Omnes* obligations*,* in order to ensure that stateless persons are still able to be protected at international law.

**II**

Remisia breached its CRS obligations by rendering the Sterren Forty stateless. It violated Article 8(1) as deprivation of the Sterren Forty’s nationality was not in accordance with law and was not based on the exceptions recognized in Article 8(3). Moreover, rendering them stateless was disproportionate. Remisia had other means at its disposal to sanction the group, such as the shorter imprisonment sentences imposed on the other 190 students.

Remisia violated Article 9 by depriving the Sterren Forty’s nationality based on their political opinions about the Queen’s government. Finally, Remisia cannot rely on the declaration it submitted under Article 8(3) to be exempt from its obligations under Article 8(1) of the CRS. This ‘declaration’ constitutes a reservation incompatible with the treaty, since withdrawing nationality as a punishment for committing crimes is contrary to the object and purpose of the CRS.

Remisia violated the Sterren Forty’s ICCPR rights by imprisoning and depriving them of citizenship to restrict their rights to freedom of expression and assembly. The suppression of their peaceful protests was neither provided by law nor based on the legitimate aims recognized in the ICCPR. Further, this restriction was not necessary as it fell within the realm of legitimate political expression.

Therefore, as a State seeking to fight against the plight of statelessness, Antrano requests that this Court order the restitution of the Sterren Forty’s Remisian nationality.

**III**

Antrano did not violate international law when it refused to allow Remisian consular assistance to Ms. Shaw. Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality, as it was a purchased citizenship granted by the NIA, which is not supported under customary international law. Moreover, Ms. Shaw does not have a genuine link with Remisia, which bars Remisia’s claim of consular protection over her. Instead, Ms. Shaw had dual nationality and acquired Remisia’s nationality to obtain protection against her criminal prosecutions in Molvania, the State of her effective nationality.

Conversely, Antrano fulfilled its obligations under Article 36 of the VCCR. It maintains that Remisia did not have the right to provide consular assistance to Ms. Shaw. Antrano guaranteed her rights to consular assistance by allowing her access to the Molvanian consul. Therefore, Antrano’s laws did not nullify the purpose of Ms. Shaw’s rights pursuant to Article 36(2) of the VCCR.

**IV**

Remisia violated international law by denying Dr. Malex entry as required by UNSC Resolution 99997. First, Antrano’s claim is admissible since its right to exercise diplomatic protection on behalf of Dr. Malex is not precluded by the UN’s functional protection. Second, the UNSC has the competence to investigate the Sterren Forty’s situation, as the loss of nationality and resulting statelessness are not matters exclusively within Remisia’s internal affairs. Remisia breached Article 7 of the CPI by not guaranteeing Dr. Malex a visa and speedy travel assurances, privileges that he had as a UN expert, being the chief of UNIMR.

Remisia also violated Article 25 of the UN Charter by not complying with Resolution 99997. The UNSC is authorized to investigate the situation of the Sterren Forty by virtue of Article 34 of the UN Charter, and its authority must be respected by Remisia as a UN member. Further, the application of the VCLT interpretation rules: the ordinary meaning of the operative verbs, the object and purpose, and the practice after the adoption of UNSC Resolution 99997, illustrate Remisia’s obligation to cooperate fully with UNIMR. Thus, Remisia was obliged to allow the entry of Dr. Malex.

# PLEADINGS

## I. ANTRANO HAS STANDING TO BRING THE DISPUTE CONCERNING REMISIA’S DEPRIVATION OF NATIONALITY OF ITS CITIZENS BEFORE THE COURT

The Sterren Forty are victims of Remisia’s abuse of its sovereign prerogative over nationality.[[1]](#footnote-1) After merely expressing dissent against the governamental decisions of Remisia’s Queen, the Sterren Forty were rendered stateless, sentenced to imprisonment, and faced potential expulsion from Remisia,[[2]](#footnote-2) their country of birth and residence. Antrano claims that this treatment of the Sterren Forty violated international law.[[3]](#footnote-3) For this purpose, Antrano bases its standing on **(A)** the *Erga Omnes Partes* obligations under the Convention on the Reduction of Statelessness (‘CRS’), the International Covenant on Civil and Political Rights (‘ICCPR’) violated by Remisia and **(B)** the *Erga Omnes* obligation to protect the basic human right to nationality. In addition, **(C)** Antrano’s standing is not barred by the Nationality of the Claimant rule.

### Antrano has standing based on *Erga Omnes Partes* obligations violated by Remisia

This Court has accepted standing based on *Erga Omnes Partes* obligations established for the protection of a collective interest.[[4]](#footnote-4) In this regard, Antrano has standing based on *Erga Omnes Partes* obligations violated by Remisia contained in **(1)** theCRS and **(2)** the ICCPR.

#### Antrano has standing under the CRS

##### *Antrano’s standing stems from the Erga Omnes Partes character of the obligations violated by Remisia under the CRS*

Antrano can invoke the responsibility of Remisia for violating its *Erga Omnes Partes* obligations.[[5]](#footnote-5) These obligations are enshrined in multilateral treaties designed to protect a collective interest, rather than individual State interests.[[6]](#footnote-6) In that sense, the obligations central to safeguarding the collective interest pursued by the treaty have *Erga Omnes Partes* character,[[7]](#footnote-7) thereby being owed by each State party to all contracting States.[[8]](#footnote-8) This entitles any State party to claim the *Erga Omnes Partes* obligations violated by another contracting State.[[9]](#footnote-9)

As reflected in its preamble,[[10]](#footnote-10) the collective interest pursued by the CRS is to reduce statelessness. The obligations contained in Articles 8(1) and 9 are central to safeguarding that collective interest. Article 8(1) prohibits States from rendering their nationals stateless[[11]](#footnote-11) while Article 9 forbids depriving nationality based on political grounds.[[12]](#footnote-12) Therefore, these obligations are *Erga Omnes Partes*. The fact that the *travaux préparatoires*[[13]](#footnote-13) affirm the shared commitment among contracting States, not driven by self-interest but by the collective interest of reducing statelessness worldwide supports this conclusion.

Thereby, Antrano has standing to invoke the responsibility of Remisia for violating those obligations by rendering the Sterren Forty stateless.

##### *Antrano can submit its dispute with Remisia under Article 14 of the CRS*

Article 14 of the CRS allows all State parties to submit their disputes concerning the application of the treaty with another contracting State before this Court.[[14]](#footnote-14) This provision ensures the enforceability of the *Erga Omnes Partes* obligations contained in the treaty[[15]](#footnote-15) when disputes between State parties cannot be settled by other means.[[16]](#footnote-16) Furthermore, as ruled in *Belgium v. Senegal*, the Applicant does not have to prove a particular interest to submit a dispute concerning obligations *Erga Omnes Partes*.[[17]](#footnote-17)

Both Parties agreed on the existence of a dispute[[18]](#footnote-18) and Antrano has already unsuccessfully attempted to resolve it through other means with Remisia.[[19]](#footnote-19) Antrano is not obliged to prove a particular interest to present a claim against Remisia for violating its obligations *Erga Omnes Partes*. Therefore, Antrano can submit its dispute with Remisia to this Court based on Article 14 of the CRS.

#### Antrano has standing under the ICCPR

Article 2(1) of the ICCPR imposes obligations *Erga Omnes Partes* as it establishes that all States parties must ensure the rights contained in the treaty to individuals within their territory.[[20]](#footnote-20) The UN Human Rights Committee (‘HRComm’), when interpreting the ICCPR has reinforced this conclusion by asserting that each party to the treaty possesses a legal interest in ensuring that other State parties fulfill their treaty obligations.[[21]](#footnote-21)

The object and purpose of the ICCPR is to ‘secure the ideal of free human beings enjoying civil and political freedom.[[22]](#footnote-22) Consequently, obligations central to fulfilling that purpose, such as freedom of expression and assembly, have an *Erga Omnes Partes* character.[[23]](#footnote-23)

Remisia deprived the Sterren Forty’s nationality and imprisoned them[[24]](#footnote-24) in order to suppress their rights to freedom of expression and assembly.[[25]](#footnote-25) Therefore, Antrano’s standing shall be recognized as it seeks to compel Remisia to fulfill its *Erga Omnes Partes* obligationsunder the ICCPR.

### Alternatively, Antrano has standing based on the *Erga Omnes* obligation to protect the basic human right to nationality

Antrano is entitled to invoke the responsibility of Remisia for breaching *Erga Omnes* obligations.[[26]](#footnote-26) As ruled in *Barcelona Traction,* since these obligations are owed to the international community as a whole,[[27]](#footnote-27) all states have a legal interest in their compliance.[[28]](#footnote-28)This is supported by decisions of international tribunals[[29]](#footnote-29) and practice of states instituting proceedings on *Erga Omnes* obligations standing basis.[[30]](#footnote-30)

*Erga Omnes* obligations extend to the protection of basic human rights,[[31]](#footnote-31) and are not limited to *Jus Cogens* rules.[[32]](#footnote-32) Although there is no settled consensus on which obligations have *Erga Omnes* character,[[33]](#footnote-33) evidence can be found in international treaties, and the conduct of international organizations reflecting the international community interest in protecting certain basic human rights.[[34]](#footnote-34)

Regional Human Rights Courts have highlighted the basic nature of the right to nationality, including that it is an inherent right of all human beings,[[35]](#footnote-35) and a necessary precondition for the exercise of political rights and legal capacity.[[36]](#footnote-36) Its *Erga Omnes* character is evidenced in the common interest of the international community in protecting this basic human right, as reflected in several treaties,[[37]](#footnote-37) State practice,[[38]](#footnote-38) and the conduct of international organizations.[[39]](#footnote-39) Therefore, this Court should grant Antrano standing based on the *Erga Omnes* obligation to protect the basic human right to nationality of the Sterren Forty.

### Antrano’s standing is not barred by the Nationality of the Claimant rule

The Nationality of the Claimant rule provides that when a State seeks to protect a person, said person must be its national.[[40]](#footnote-40) However, this rule does not apply when the State’s claim stems from *Erga Omnes Partes* or *Erga omnes* obligations,[[41]](#footnote-41) since in those cases the Respondent State is often the one victimizing its own nationals.[[42]](#footnote-42) As this Court held in *The Gambia v. Myanmar,* requiring this rule would make it impossible for any State to protect persons who are victims of violations committed by their own State.[[43]](#footnote-43)

Remisia may argue that Antrano’s claim is inadmissible as the Sterren Forty are not Antranan nationals.[[44]](#footnote-44) However, Antrano bases its standing on *Erga Omnes Partes* obligations under the CRS and the ICCPR, and the *Erga Omnes* obligation to protect the basic human right to nationality, which was violated by Remisia,[[45]](#footnote-45) especially as without that standing no State could bring a claim for these violations since the Sterren Forty are stateless,[[46]](#footnote-46) leaving them totally unprotected.

Therefore, Antrano’s standing is not barred by the Nationality of the Claimant rule.

## II. REMISIA’S DEPRIVATION OF NATIONALITY OF THE STERREN FORTY, RENDERING THEM STATELESS, IS A VIOLATION OF INTERNATIONAL LAW

Remisia’s deprivation of nationality of the Sterren Forty violated its obligations under **(A)** the CRS by rendering them stateless and **(B)** the ICCPR for violating their rights to freedom of expression and assembly. Hence, **(C)** this Court can and should order the restitution of the Sterren Forty’s Remisian nationality.

### Remisia violated its obligations under the CRS

Remisia violated **(1)** Article 8(1) by rendering the Sterren Forty stateless and **(2)** Article 9 of the CRS for depriving their nationality on political grounds. **(3)** Furthermore, Remisia cannot rely on its declaration pursuant Article 8(3) to render them stateless as it is incompatible with the object and purpose of the treaty.

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

Article 8(1) of the CRS prohibits states from depriving a person of his nationality if such deprivation would render him stateless.[[47]](#footnote-47) Any exception to this general prohibition must be in accordance with domestic law pursuant to Article 8(4),[[48]](#footnote-48) and based on the grounds recognized in Article 8(3).[[49]](#footnote-49) Moreover, deprivation of nationality must be a proportionate measure to achieve the State’s legitimate aims.[[50]](#footnote-50) Antrano argues that Remisia violated Article 8(1) of the CRS since rendering the Sterren Forty stateless **(a)** was not in accordance with law, **(b)** did not fall within the grounds recognized in Article 8(3), and **(c)** was disproportionate to Remisia’s legitimate aims.

##### *Rendering the Sterren Forty stateless was not in accordance with law pursuant to Article 8(4) of the CRS*

Article 8(4) of the CRS provides that deprivation of nationality must be in accordance with law.[[51]](#footnote-51) Domestic laws must indicate the scope of the specific actions that may trigger deprivation of nationality.[[52]](#footnote-52) Laws that feature ambiguous and broad terms without specifying their extent fail to comply with this requirement,[[53]](#footnote-53) as they grant states unfettered discretion to deprive nationality.[[54]](#footnote-54)

The DCA fails to determine the scope of which actions fit into ‘defames, insults, or threatens’ and ‘disloyalty.’[[55]](#footnote-55) The use of these broad terms grants Remisia unfettered discretion to apply the DCA. A similar lack of clarity has been criticized by the HRComm[[56]](#footnote-56) in the Thailand Criminal Code[[57]](#footnote-57) which employs the same ambiguous terms as the DCA.

Thereby, Rendering the Sterren Forty stateless was not in accordance with law pursuant to Article 8(4) of the CRS.

##### *Rendering the Sterren Forty stateless did not fall within the grounds recognized in Article 8(3) of the CRS*

Under Article 8(3) of the CRS, the conduct of citizens inconsistent with their duty of loyalty to their State is a ground for depriving their nationality.[[58]](#footnote-58) This duty is only violated when the individual has rendered services to other States,[[59]](#footnote-59) or when a citizen’s actions seriously prejudice the vital interests of the State.[[60]](#footnote-60) In accordance with the *travaux préparatoires* of the CRS,[[61]](#footnote-61) ‘State’s vital interests’ indicate that the conduct covered by this exception must threaten the foundations and organization of the State.[[62]](#footnote-62) Depriving citizenship as a punishment for criminal offenses is not a legitimate ground recognized by the CRS.[[63]](#footnote-63)

 The Sterren Forty did not render services to other States, and their conduct did not affect Remisia’s vital interests. They were students who pacifically protested outside the gates of the Sterren Palace,[[64]](#footnote-64) and posed no threat to Remisia’s foundations or organization. Instead, the Sterren Forty’s deprivation of nationality was a punishment imposed by Remisia for a criminal offense committed under the DCA[[65]](#footnote-65) and did not fall within the grounds recognized in Article 8(3) of the CRS.

##### *Rendering the Sterren Forty stateless was disproportionate to achieve Remisia’s aims*

Because of the seriousness of its effects, deprivation of nationality must be proportional to the aims pursued.[[66]](#footnote-66) As stated above, the aim Remisia pursued when depriving the Sterren Forty’s nationality was criminal justice.[[67]](#footnote-67) The State must assess the achievement of that aim against the consequences for the people whose nationality has been deprived,[[68]](#footnote-68) including the exercise and enjoyment of their human rights.[[69]](#footnote-69) Deprivation of nationality must be also the least intrusive mean to achieve that aim,[[70]](#footnote-70) and includes consideration of whether criminal justice could be achieved through other available means.[[71]](#footnote-71)

The deprivation of the Sterren Forty’s nationality was a disproportionate measure in relation to the criminal justice Remisia sought to achieve.[[72]](#footnote-72) Firstly, the Sterren Forty were rendered stateless[[73]](#footnote-73) which limits the exercise and enjoyment of their other human rights.[[74]](#footnote-74) Remisia had at its disposal other available means to punish the Sterren Forty, such as the one-to-three-year imprisonment sentences imposed on the other 190 students.[[75]](#footnote-75) This implies that the deprivation of nationality was not the least intrusive means Remisia could use to achieve the aim pursued.

Thus, rendering the Sterren Forty stateless was disproportionate to achieve Remisia’s aims.

#### Remisia violated Article 9 of the CRS

Article 9 of the CRS enshrines the principle of non-discrimination concerning the deprivation of nationality.[[76]](#footnote-76) It expressly prohibits states from depriving any group of persons of their nationality on political grounds.[[77]](#footnote-77) As held by the United Nations High Commissioner for Refugees in interpreting this Article, deprivation of nationality grounded in conduct aligned with an individual’s political opinion is inherently discriminatory.[[78]](#footnote-78)

Remisia discriminated against the Sterren Forty on political grounds by denying them their nationality. They were the first Remisian nationals prosecuted to the fullest extent of the DCA,[[79]](#footnote-79) being deprived of their nationality based on their acts and political speech in the protest.[[80]](#footnote-80) Consequently, the Remisia targeted the Sterren Forty under this provision exclusively for expressing their political opinions against its government.[[81]](#footnote-81)

Thereby, Remisia violated Article 9 of the CRS for depriving the Sterren Forty of their nationality as a discriminatory measure against their political opinion.

#### Furthermore, Remisia cannot rely on Article 8(3) of the CRS to render Sterren Forty stateless

As an exception to Article 8(1), Article 8(3) of the CRS allows State parties to submit declarations which enable them to retain the right to deprive nationality in specific circumstances.[[82]](#footnote-82) However, if the statement pretends to exclude the State from an obligation contained in the treaty, it constitutes a reservation.[[83]](#footnote-83) In this regard, reservations that are incompatible with the object and purpose of the treaty are invalid.[[84]](#footnote-84)

The CRS *travaux préparatoires* note that depriving nationality as a sanction for crimes is contrary to its object and purpose,[[85]](#footnote-85) which is to prevent and reduce statelessness.[[86]](#footnote-86) For instance, several State parties to the CRS have objected to Tunisia’s declaration under Article 8(3),[[87]](#footnote-87) which allows deprivation of nationality for committing criminal offenses.[[88]](#footnote-88)

Similarly, Remisia submitted a ‘declaration’ under Article 8(3) of the CRS to deprive nationality if their nationals have been convicted under the DCA.[[89]](#footnote-89) Antrano and three other State parties objected to this declaration,[[90]](#footnote-90) since allowing statelessness as a sanction for crimes is incompatible with the object and purpose of the CRS. Therefore, Remisia cannot rely on its invalid reservation submitted under Article 8(3) of the CRS as an exemption to Article 8(1) when it rendered the Sterren Forty stateless.

### Remisia violated its obligations under Articles 19 and 21 of the ICCPR

Remisia violated its ICCPR obligations by imprisoning the Sterren Forty and depriving them of their nationality for exercising their rights to freedom of expression[[91]](#footnote-91) and assembly.[[92]](#footnote-92) Under the ICCPR, any restriction to these rights must be provided by law, based on the legitimate aims recognized in the treaty and necessary in a democratic society.[[93]](#footnote-93) As argued above,[[94]](#footnote-94) the DCA lacks sufficient clarity such that it does not meet the ‘provided by law’ requirement. Moreover, **(1)** the restriction cannot be justified by any legitimate aim, and **(2)** it was not necessary.

#### Remisia’s restrictions on the rights to freedom of expression and assembly of the Sterren Forty were not based on legitimate aims

Remisia’s restriction was not based on the legitimate aims recognized in the ICCPR for restricting freedom of expression and assembly,[[95]](#footnote-95) such as **(a)** national security, **(b)** public order or **(c)** public morals.

##### *Remisia’s restriction cannot be justified on national security*

The national security exception only applies to preserve a State’s capacity to protect its territorial integrity or political independence against a threat or use of force.[[96]](#footnote-96) In *Surek v. Turkey*, the European Court of Human Rights (‘ECHR’) considered that restricting expressions of support for the PKK terrorist group was legitimate, as the violence employed by this group posed a threat to Turkey’s national security.[[97]](#footnote-97) At no time did the Sterren Forty ever use force or incite violent actions. Instead, the Sterren Forty merely coordinated some peaceful marches,[[98]](#footnote-98) and made a human chain at the gates of the Sterren Palace[[99]](#footnote-99) as a symbol of protest against the Government. Therefore, Remisia's restriction cannot be justified on national security.

##### *Remisia’s restriction cannot be justified on public order*

Public order is defined as the sum of rules which ensure the functioning of society, including the respect for human rights.[[100]](#footnote-100) Hence, states cannot rely on a vague definition of ‘public order’ to restrict the rights of freedom of assembly and expression.[[101]](#footnote-101) To justify any restriction, the State must establish a clear and imminent danger to public order.[[102]](#footnote-102) Despite the Sterren Forty’s demonstrations and political speeches being disruptive against government decisions,[[103]](#footnote-103) their actions did not endanger Remisia’s public order as they remained peaceful. Therefore, Remisia’s restriction cannot be justified on public order.

##### *Remisia’s restriction cannot be justified on public morals*

Restrictions on freedom of expression and assembly should only exceptionally be imposed for the protection of public morals.[[104]](#footnote-104) Since moral values are different in each society,[[105]](#footnote-105) the HRComm affirmed that limitations based on this ground must be made under the criteria of the universality of human rights and non-discrimination.[[106]](#footnote-106) This means that the restriction cannot derive from a single social tradition.[[107]](#footnote-107) While the Crown is venerated in Remisia,[[108]](#footnote-108) it cannot restrict the Sterren Forty’s rights based solely on this moral value, disregarding their right to express ideas that may disturb the Queen’s Government[[109]](#footnote-109) and discriminating against them for such expressions.[[110]](#footnote-110) Therefore, Remisia’s restriction cannot be justified on public morals.

#### Remisia’s restriction was not necessary in a democratic society

Restrictions to freedom of expression and assembly must be necessary, as these rights are essential in democratic societies.[[111]](#footnote-111) Necessity implies the existence of a pressing social need[[112]](#footnote-112) which involves or encourages acts of violence that cause a high level disruption to ordinary life, causing harm or significant inconveniences to others.[[113]](#footnote-113) Such restrictions cannot be intended to punish dissent against the government, particularly to figures subject to criticism such as the head of the State.[[114]](#footnote-114)

In *Stern Taulats v. Spain*, the ECHR held that even burning a large size photograph of the Kings of Spain in a public plaza did not constitute a pressing social need that justified the restriction of the rights of freedom of expression and assembly.[[115]](#footnote-115) This is because the previous act fell within the scope of political expression, and not personal criticism of the monarchy.[[116]](#footnote-116)

The peaceful protests made by the Sterren Forty did not constitute nor encourage any act of violence that disrupted ordinary life inside Remisia. There are no records that, when forming the human chain in the Sterren Palace, they caused any harm or inconvenience to others.[[117]](#footnote-117) Instead, their conduct was a political expression against the Queen’s Government decisions that endangered Remisians’ health and access to adequate water services,[[118]](#footnote-118) and not a personal criticism of herself. Remisia intended to punish dissent against its head of State and silence the students’ speech in opposition to the Government.[[119]](#footnote-119)

Thus, Restrictions on the Sterren Forty’s rights of free expression and assembly were not necessary, as there was no pressing social need that justify it.

### This Court can and should order the restitution of the Sterren Forty’s Remisian nationality

Remisia violated its obligations under international law by depriving the Sterren Forty’s nationality and therefore is obliged to restitute it.[[120]](#footnote-120) As held by the International Law Commission, restitution can be requested by indirectly affected States for the benefit of the individuals who suffered the injury.[[121]](#footnote-121) Hence, as a State seeking to fight against the plight of statelessness,[[122]](#footnote-122) Antrano requests that this Court order the restitution of the Sterren Forty’s Remisian nationality.

## 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

Antrano does not recognize nationality granted solely by investment.[[123]](#footnote-123) Such was the case with Ms. Shaw, a Molvanian national by birth who purchased Remisian citizenship.[[124]](#footnote-124) When she was detained in Antrano’s territory pursuant to an extradition process, Antrano denied Remisia’s request to provide consular assistance to her.[[125]](#footnote-125) Although Remisia claims that this violated international law, Antrano argues that **(A)** it is not obliged to recognize Ms. Shaw’s Remisian nationality and **(B)** it complied with its obligations under Article 36 of the VCCR.

### Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality

The VCCR sets the rules governing consular relations between the parties.[[126]](#footnote-126) It establishes, *inter alia*, the right of consular assistance to nationals of the sending State detained in the territory of the receiving State.[[127]](#footnote-127) As the VCCR does not regulate nationality, the rules of customary international law determine who is a ‘national of the sending State.’[[128]](#footnote-128) In this regard, Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality since **(1)** the Naturalization by Investment Act (‘NIA’) is not supported by customary international law, and **(2)** Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality based on the genuine link principle.

#### The Naturalization by Investment Act is not supported by customary international law

Antrano is not obliged to recognize Remisian nationality granted in a manner inconsistent with international law.[[129]](#footnote-129) Particularly, nationality granted solely by investment or payment enjoys almost no support in State practice.[[130]](#footnote-130) The majority of states tend to grant nationality on the basis of birth or family ties,[[131]](#footnote-131) and investment but with habitual residency requirements.[[132]](#footnote-132) Moreover, *Opinio Juris* against these kind of programs is reflected in the constant criticism made by international organizations,[[133]](#footnote-133) such as the European Union, to the states which allow the purchase of their nationality.[[134]](#footnote-134)

Therefore, Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality since the NIA is not supported by customary international law.

#### Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality based on the genuine link principle

The genuine link principle establishes that there must be a social fact of attachment between the State and the individual for their nationality to be recognized by other states.[[135]](#footnote-135) Antrano is not obliged to recognize Ms. Shaw’s Remisian nationality granted by the NIA since **(a)** the genuine link principle is applicable to this case, and **(b)** Molvania is the State of her effective nationality.

##### *The genuine link principle is applicable to Ms. Shaw’s case*

The application of the genuine link principle is supported by State practice[[136]](#footnote-136) and international tribunals.[[137]](#footnote-137) In *Nottebohm*, this Court held that Guatemala was not obliged to recognize Mr. Nottebohm’s nationality from Liechtenstein, since he acquired it to obtain its protection with no intent to settle in that country.[[138]](#footnote-138) Moreover, this principle is particularly applicable in cases of individuals with dual nationality to ascertain their effective nationality.[[139]](#footnote-139)

Ms. Shaw is a dual national from Molvania[[140]](#footnote-140) and Remisia.[[141]](#footnote-141) The fact that she applied to the NIA only a few months after Molvania initiated criminal investigations against her in 2014,[[142]](#footnote-142) indicates that she probably acquired Remisia’s nationality in order to obtain its protection. In addition, she has not entered Remisia since 2006,[[143]](#footnote-143) meaning that she had no intention of settling in this country either.

Thus, the genuine link principle must be applied to this case in order to ascertain her effective nationality which shall be recognized by Antrano.

##### *Molvania is the State of Ms. Shaw’s effective nationality*

 Since Ms. Shaw has dual nationality, Antrano shall recognize only the nationality of the State to which she is more closely connected,[[144]](#footnote-144) resolving any collision of rights between Molvania and Remisia.[[145]](#footnote-145) Factors such as the amount of time spent in each State, family ties, and the center of financial interests determines her effective nationality.[[146]](#footnote-146)

Both Molvania and Remisia were willing to exercise their rights of consular assistance to Ms. Shaw.[[147]](#footnote-147) In this regard, Ms. Shaw lived in Molvania from her birth in 1970 until 2012,[[148]](#footnote-148) where she also had all her family ties.[[149]](#footnote-149) The center of her financial interests were also in Molvania as her family’s company ShawCorp, and its subordinate Lithos, which she used to head, were also incorporated in that State.[[150]](#footnote-150) For this reasons, she was more closely connected to Molvania than to Remisia by virtue of the €500,000 investment with which she bought Remisia’s nationality.[[151]](#footnote-151)

Therefore, Antrano shall only recognize Ms. Shaw’s Molvanian citizenship, as Molvania is the State of her effective nationality.

### Antrano complied with its obligations under Article 36 of the VCCR

As **(1)** Remisia does not have the right to bring consular assistance to Ms. Shaw, **(2)** Antrano guaranteed her rights under Article 36 of the VCCR through the Molvanian consul. Further, **(3)** Antrano’s law on non-recognition of purchased citizenship does not nullify the purpose of her rights pursuant to Article 36(2) of the treaty.

#### Remisia does not have the right to bring consular assistance to Ms. Shaw

The State entitled to provide consular assistance to a person detained abroad is his State of nationality.[[152]](#footnote-152) For this reason, the receiving State shall inquire into the nationality of the detained person[[153]](#footnote-153) to be able to comply with its obligations under the VCCR.[[154]](#footnote-154) Antrano was under no obligation to recognize Ms. Shaw’s Remisian citizenship as it was not the State of her effective nationality.[[155]](#footnote-155) Accordingly, Antrano established that Ms. Shaw was a Molvanian national when she was detained.[[156]](#footnote-156)

Therefore, Antrano was obliged to grant Molvanian and not Remisian consular assistance to Ms. Shaw.

#### Antrano guaranteed Ms. Shaw’s rights under the VCCR

Under Article 36(1)(b) of the VCCR, the detained foreign national shall be informed of his right to consular assistance.[[157]](#footnote-157) Then, if he so request, the receiving State shall notify the sending State about the detention of its national.[[158]](#footnote-158) The former State shall allow free communication between the detained national and his consulate.[[159]](#footnote-159)

Antrano informed Ms. Shaw about her rights under the VCCR and the charges against her in a language that she could understand.[[160]](#footnote-160) Antrano was not obliged to accept her request to meet the Remisian consul,[[161]](#footnote-161) but it complied with its VCCR obligations by notifying the consul of her effective nationality, Molvania.[[162]](#footnote-162) Antrano provided Ms. Shaw with the option to freely communicate with the Molvanian consul, but she expressly refused to exercise her rights.[[163]](#footnote-163) Thus, Antrano guaranteed Ms. Shaw’s rights to consular assistance under the VCCR.

#### Antrano’s law on non-recognition of purchased citizenship did not nullify the purpose of her rights pursuant to Article 36(2) of the treaty

Article 36(2) states that the laws and regulations of the receiving State must enable full effect to the purposes of the rights recognized under Article 36(1).[[164]](#footnote-164) In accordance with the *travaux préparatoires* of the VCCR, this means that the laws cannot nullify the exercise of these rights.[[165]](#footnote-165) Antrano’s law on non-recognition of purchased passports[[166]](#footnote-166) did not interfere with Ms. Shaw’s right to consular assistance, since Antrano still facilitated the possibility for Ms. Shaw to meet with the consul of Molvania, and receive the benefits of consular assistance under the VCCR.[[167]](#footnote-167)

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

Due to the situation in Remisia concerning the Sterren Forty’s deprivation of nationality, the United Nations Security Council (‘UNSC’) adopted Resolution 99997, establishing the United Nations Inspection Mission to Remisia (‘UNIMR’).[[168]](#footnote-168) Despite appointing Antranan national Dr. Malex as the mission’s chief, Remisia denied him entry into its territory,[[169]](#footnote-169) hindering the performance of his functions as an UN expert. Remisia justified its non-cooperation by asserting that the UNSC lacked competence since it was allegedly interfering in its domestic affairs.[[170]](#footnote-170)

Conversely, Antrano submits that **(A)** the UNSC has competence to investigate the Sterren Forty’s situation. Furthermore, Antrano’s claim is admissible since **(B)** its right to exercise diplomatic protection over Dr. Malex is not precluded by the UN’s functional protection and **(C)** Remisia violated international law for denying his entry into its territory.

### The UNSC has competence to investigate the Sterren Forty’s situation

The UNSC as an independent organ retains the right to primarily determine its competence by interpreting the UN Charter,[[171]](#footnote-171) which carries a presumption of legal validity.[[172]](#footnote-172) Article 34 of the UN Charter establishes the legal basis for the UNSC to investigate situations that may lead to international frictions.[[173]](#footnote-173)

Although the UNSC does not have competence in affairs which are essentially within the domestic jurisdiction of States,[[174]](#footnote-174) the right to nationality is a matter of international law, as it is a basic human right protected by the international community.[[175]](#footnote-175) This is supported by both Regional Human Rights Courts[[176]](#footnote-176) and practice of UN organs.[[177]](#footnote-177) Consequently, the UNSC created the UNIMR under Article 34 of the UN Charter,[[178]](#footnote-178) and Remisia cannot argue that the UNSC lacks competence to investigate the Sterren Forty’s deprivation of nationality since it is a matter of international concern.

### Antrano’s right to exercise diplomatic protection over Dr. Malex is not precluded by the UN’s functional protection

The Convention on the Privileges and Immunities of the United Nations (‘CPI’) grants privileges to mission experts in the interest of the UN.[[179]](#footnote-179) While the UN may exercise functional protection during the performance of their functions,[[180]](#footnote-180) the State of nationality can exercise its right of diplomatic protection on behalf of its national[[181]](#footnote-181) as much as it deems necessary.[[182]](#footnote-182) This is subject only to the requirements of nationality and exhaustion of local remedies.[[183]](#footnote-183) In this case, exhaustion of local remedies is neither required nor possible[[184]](#footnote-184) as Dr. Malex was prevented from entering the territory of Remisia, to be able to seek or exhaust local remedies.[[185]](#footnote-185)

The fact that that Dr. Malex is an Antranan national is not in question.[[186]](#footnote-186) Further, upon accession to the CPI, Antrano declared that its right to exercise diplomatic protection on behalf of its nationals is not affected by their status as UN experts, even when the injury concerns also the interests of the UN.[[187]](#footnote-187) Since neither Remisia nor any other State party to the treaty has objected to this declaration,[[188]](#footnote-188) Antrano can exercise diplomatic protection on behalf of Dr. Malex without prejudice to the UN functional protection.

### Remisia violated international law by denying Dr. Malex entry to its territory

Remisia violated **(1)** Dr. Malex’s privileges conferred by Article 7 of the CPI and **(2)** Article 25 of the UN Charter by not complying with the obligation to cooperate with the UNIMR imposed by the UNSC Resolution 99997.

#### Remisia violated Dr. Malex’s privileges conferred by Article 7 of the CPI

Under the CPI, freedom for officials to travel is granted as a privilege for the exercise of their functions[[189]](#footnote-189) and State parties are obliged to allow entry or grant visas promptly[[190]](#footnote-190) to experts on missions who present a United Nations certificate.[[191]](#footnote-191) Dr. Malex traveled to Remisia as a leading expert of the UNIMR with a UN certificate.[[192]](#footnote-192) However, Remisia did not allow his entry,[[193]](#footnote-193) and stated that under no circumstances would it grant him an entry visa to fulfill the mission.[[194]](#footnote-194) Thus, Remisia violated its obligations under Article 7 of the CPI by not guaranteeing Dr. Malex’s privileges as an UN expert.

#### Remisia violated Article 25 of the UN Charter by not complying with the obligations imposed by Resolution 99997

Article 25 obliges the UN members to accept and carry out the UNSC decisions taken in its resolutions.[[195]](#footnote-195) Therefore, Remisia’s denial of entry of Dr. Malex violated Article 25 of the UN Charter since it is obliged to fully cooperate with the UNIMR in accordance with (**a**) the Charter’s provisions invoked under Resolution 99997 and (**b)** the Vienna Convention on the Law of Treaties (‘VCLT’) interpretation rules.

##### *The Charter’s provisions invoked in Resolution 99997 obliges Remisia to cooperate with the UNIMR*

The Charter’s provisions invoked in UNSC resolutions determine their binding character.[[196]](#footnote-196) UNSC enforcement measures apply to all decisions adopted in accordance with Article 25 of the Charter, including those based under Chapter VI concerning the pacific settlement of disputes.[[197]](#footnote-197) Accordingly, Article 34 empowers the UNSC to investigate any situation which might lead to international friction or give rise to a dispute.[[198]](#footnote-198)

The UNSC decided to establish the UNIMR acting under the powers conferred by Chapter VI.[[199]](#footnote-199) In this regard, Resolution 99997 was adopted in accordance with the functions assigned to the UNSC in Article 34.[[200]](#footnote-200) Remisia must respect this resolution as a UN member, which requires allowing the UNSC to investigate the situation concerning the Sterren Forty as a necessary step to determine the existence of an international dispute which might endanger the maintenance of peace and security.

 Thereby, the Charter’s provisions invoked in Resolution 99997 obliges Remisia to cooperate with the UNIMR by allowing the entry of Dr. Malex.

##### *Resolution 99997 obliges Remisia to cooperate with the UNIMR in accordance with the VCLT interpretation rules*

In *Kosovo,* this Court established that VCLT rules can be used to interpret UNSC resolutions.[[201]](#footnote-201) In this sense, Remisia is obliged to allow the entry of Dr. Malex and cooperate with UNIMR as per **(i)** the ordinary meaning of the operative verbs employed, **(ii)** the object and purpose,[[202]](#footnote-202) and **(iii)** the subsequent practice of Resolution 99997.[[203]](#footnote-203)

###### The ordinary meaning of the operative verb ‘*Call upon*’ in Resolution 99997 obliges Remisia to cooperate with the UNIMR

The ordinary meaning of the operative verb is frequently used to determine the binding nature of Resolutions.[[204]](#footnote-204) ‘*Call upon*’ means ‘to order or require’.[[205]](#footnote-205) In *Namibia* , this Court ruled that when the UNSC employed the operative verb ‘*Call upon*’ in Resolution 276 of 1970, it was imposing the obligation towards South Africa to withdraw immediately from Namibia.[[206]](#footnote-206) In Resolution 99997, the UNSC called upon Remisia to cooperate fully with the mission, including by providing relevant evidence such as ‘in-person interviews’.[[207]](#footnote-207) Thus, the ordinary meaning of the operative verb employed in Resolution 99997 obliges Remisia to cooperate with UNIMR and allowed Dr. Malex to meet the Sterren Forty.

###### The object and purpose of the Resolution 99997 obliges Remisia to cooperate with the UNIMR

The object and purpose[[208]](#footnote-208) of UNSC Resolutions can be depicted from its preamble, which often summarizes the original will of its drafters.[[209]](#footnote-209) The preamble of Resolution 99997 establishes that revoking nationality as a criminal sanction contributes to statelessness,[[210]](#footnote-210) and commended the efforts of Antrano to defend the right of nationality of all persons.[[211]](#footnote-211) In turn, it recalls both the resolutions of the UN General Assembly and the principles of the CRS and CSP, international treaties concerning the fight against statelessness.[[212]](#footnote-212)

Given the concern of the UNSC on the issue of statelessness as noted in Resolution 99997 preamble, being its object and purpose to investigate the Sterren Forty’s deprivation of nationality, Remisia is compelled to cooperate with UNIMR.

###### The practice subsequent to the adoption of Resolution 99997 obliges Remisia to cooperate with the UNIMR

 Interpretation of UNSC resolutions requires analyzing the subsequent practice after its adoption.[[213]](#footnote-213) The practice of States affected by those resolutions, relevant UN organs, statements made from the president of the Security Council[[214]](#footnote-214) and their members,[[215]](#footnote-215) can determine the binding nature of a resolution.[[216]](#footnote-216)

The UNSC unanimously adopted Resolution 99997.[[217]](#footnote-217) Nevertheless, Remisia’s UN Ambassador announced that Dr. Malex would not be permitted to enter Remisia.[[218]](#footnote-218) The Secretary-General condemned Remisia’s refusal to recognize UNSC authority under Chapter VI of the Charter,[[219]](#footnote-219) and the President of the UNSC noted the obligation on all UN members to carry out their obligations under the Charter, and typified denying entry to Dr. Malex as a violation of those obligations and of Resolution 99997.[[220]](#footnote-220) After Remisia denied Dr. Malex entry, members of the UNSC criticized its intransigence. [[221]](#footnote-221)

Therefore, the ordinary meaning of the operative verbs employed, the object and purpose, and the subsequent practice after the adoption of UNSC Resolution 99997, demonstrate Remisia’s obligation to cooperate fully with UNIMR and to allow the entry of Dr. Malex as the mission chief.

# PRAYER FOR RELIEF

*The Republic of Antrano respectfully requests the Court to adjudge and declare that*:

**I**

Antrano has standing to bring the dispute concerning Remisia’s deprivation of nationality of its citizens before the Court.

**II**

Remisia’s deprivation of nationality of the ‘Sterren Forty,’ rendering them stateless, is a violation of international law.

**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.

**IV**

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

1. Compromis, [34]. [↑](#footnote-ref-1)
2. Compromis, [8], [34]. [↑](#footnote-ref-2)
3. Compromis, [63(b)]. [↑](#footnote-ref-3)
4. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar) (Preliminary Objections) [2022] [*‘The Gambia v. Myanmar’*] ICJ Rep 516 [114]; *Questions relating to the Obligation to Prosecute or Extradite* (Belgium v Senegal) (Judgment) [2012] [*‘Belgium v Senegal’*] ICJ Rep 450 [70]. [↑](#footnote-ref-4)
5. ILC, ‘Articles on Responsibility of States for Internationally Wrongful Act adopted by the ILC at its 53rd Session, annexed to G.A. Res. 56/83’ (12 December 2001) UN Doc A/RES/56/83 [‘ARSIWA’], Art 48(1)(a); *The Gambia v. Myanmar* [108]; *Belgium v Senegal* [69]. [↑](#footnote-ref-5)
6. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] [*‘Genocide Reservations’*] ICJ Rep 23, pp. 12; European Commission of Human Rights ‘Austria v. Italy - Decision of the Commission as to the Admissibility of Application No. 788/60’ (11 January 1961), pp. 19-20. [↑](#footnote-ref-6)
7. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar) (Declaration of Judge Ad Hoc Kreß) [2022] ICJ Rep 545 [16]; Chow, P. *On Obligations Erga Omnes Partes* (GJIL, 2020) pp. 497; *Belgium v Senegal* [69]. [↑](#footnote-ref-7)
8. *Prosecutor v. Blaskić,* ICTY-95-14 (29 October 1997) [26]; *Prosecutor v. Nzabonimana*, ICTR-98-44 (4 March 2010) [29]. [↑](#footnote-ref-8)
9. *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Canada and the Netherlands v. Syrian Arab Republic) (Provisional Measures) [2023] ICJ Rep 14 [50]-[51]; *S.S. Wimbledon* case (United Kingdom, France, Italy, Japan v. Germany) (Judgment) (1923) PCIJ Series A, No. 1, pp. 6. [↑](#footnote-ref-9)
10. Convention on the Reduction of Statelessness, (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 [‘CRS’], Preamble. [↑](#footnote-ref-10)
11. CRS, Art 8(1). [↑](#footnote-ref-11)
12. CRS, Art 9. [↑](#footnote-ref-12)
13. ‘United Nations Conference on the Elimination or Reduction of Future Statelessness’ (24 April 1961) UN Doc A/CONF.9/C.1/SR.2, pp. 3; Vienna Convention on the Law of Treaties (adopted 23 May 1969) 1155 UNTS 331 [‘VCLT’], Art 32. [↑](#footnote-ref-13)
14. CRS, Art 14; Tams, C. *Enforcing Obligations Erga Omnes in International Law* (CUP, 2005) [*‘Tams 2005’*] pp. 75; Ahmadov, F. *The Right of Actio Popularis before International Courts and Tribunals* (Brill Nijhoff 2018), pp. 102-103. [↑](#footnote-ref-14)
15. Hathaway, O. and Hachem, A. and Cole, J. *A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing* (CJTL, 2023) pp. 29-30; *The Gambia v. Myanmar,* [111]-[112]. [↑](#footnote-ref-15)
16. CRS, Art 14. [↑](#footnote-ref-16)
17. *Belgium v Senegal,* [70]. [↑](#footnote-ref-17)
18. Compromis, [60]; Special Agreement, Art 3. [↑](#footnote-ref-18)
19. Compromis, [36]-[38]; Special Agreement, Preamble. [↑](#footnote-ref-19)
20. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 [‘ICCPR,’], Art 2(1); HRComm ‘General Comment 31 - The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13 [‘General Comment 31’] [2]; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Separate Opinion Judge Simma) [2005] ICJ Rep 347 [35]. [↑](#footnote-ref-20)
21. General Comment 31, [2]; Ahmadou *Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Merits) [2010] [*‘Diallo’*] ICJ Rep 664 [66]. [↑](#footnote-ref-21)
22. ICCPR, Preamble. [↑](#footnote-ref-22)
23. HRComm ‘General Comment 34 - Article 19: Freedoms of opinion and expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [‘General Comment 34’] [2]; HRComm ‘General Comment 37 - Article 21: Right of peaceful assembly’ (17 September 2020) UN Doc CCPR/C/GC/37 [‘General Comment 37’] [2]. [↑](#footnote-ref-23)
24. Compromis, [34]. [↑](#footnote-ref-24)
25. *Memorial*, II.B.

 [↑](#footnote-ref-25)
26. ARSIWA, Art 48(1)(b); Institut de Droit International, *Obligation Erga Omnes in International Law* (Fifth Commission, 2005) Arts 1(a), 3. [↑](#footnote-ref-26)
27. *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Second Phase) [1970] [*‘Barcelona Traction’*] ICJ Rep 32 [33]-[34]. [↑](#footnote-ref-27)
28. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] [‘*The Wall’*] ICJ Rep 194 [155]; *East Timor (Portugal v Australia)* (Judgment) [1995] ICJ Rep 90 [29]. [↑](#footnote-ref-28)
29. *Responsibilities and obligations of States with respect to activities in the Area* (Advisory Opinion) (1 February 2011) ITLOS Reports 10 [180]; *Prosecutor v. Furundzija* (Trial Judgment) ICTY 95-17 (10 December 1998) [151]-[152]. [↑](#footnote-ref-29)
30. *Proceedings instituted by South Africa against the State of Israel* (South Africa v Israel) [2023] [13]; *East Timor (Portugal v Australia)* (Memorial of Portugal) [1991], [8.3]; *Arctic Sunrise Arbitration* (Netherlands v Russian Federation) (Award on the Merits) [2015] PCA-2014-02 [182]. [↑](#footnote-ref-30)
31. General Comment 31, [2]. [↑](#footnote-ref-31)
32. Koskenniemi, M. ‘Fragmentation of international law - Report of the Study Group of the International Law Commission’ (13 April 2006) UN Doc A/CN.4/L.682 [404]. [↑](#footnote-ref-32)
33. ILC, Articles on Responsibility of States for Internationally Wrongful Act with commentaries, adopted by the ILC at its 53rd Session., UN Doc A/56/10 (2001) [‘ARSIWA commentaries’], Art 48 [9]. [↑](#footnote-ref-33)
34. *Tams 2005*, pp. 153; *East Timor (Portugal v Australia)* (Dissenting Opinion Judge Weeramantry) [1995] ICJ Rep 194, pp. 108-110. *East Timor (Portugal v Australia)* (Dissenting Opinion Judge Skubiszewski) [1995] ICJ Rep 266 [136]-[138]. [↑](#footnote-ref-34)
35. *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica* *OC-4/84* (Advisory Opinion) IACtHR Series A No. 4 (19 January 1984) [*‘IACtHR* *OC-4/84’*] [32]. [↑](#footnote-ref-35)
36. *Petropavlovskis v. Latvia* (Judgment) ECHRApp. No. 44230/06 (2 May 2021) [‘*Petropavlovskis v. Latvia*’] [43]. [↑](#footnote-ref-36)
37. ICCPR, Art 24(3); CRS, Art 1, Art 8(1). Art 9; European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS 166 [‘European Convention on Nationality’] Art 4(a); American Convention on Human Rights (22 November 1969) 1144 UNTS 123, Art 20; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49, Art 6; Arab Charter on Human Rights (adopted 15 September 1994) League of Arab States, Art 24.

 [↑](#footnote-ref-37)
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202. *Kosovo Advisory Opinion* [94]; *Namibia Advisory Opinion* [32]; VCLT, Art 2 (1)(a); UNSC ‘*Report And Recommendations Made By The Panel of Commissioners Concerning the Fifteenth Instalment of “E2” Claims*’ (18 December 2003) UN Doc S/AC.26/2003/29 [54]; *Prosecutor v. Dusko Tadic* (Trial Chamber Decision) ICTY-94-1 (10 August 1995) [18]; *Prosecutor v. Barayagwiza* (Decision) ICTR-97-19-AR72 (3 November 1999) [46]; *Kordić & Čerkez case,* [23]. [↑](#footnote-ref-202)
203. VCLT, Art 31. [↑](#footnote-ref-203)
204. *Namibia Advisory Opinion* [114]; *Kosovo Advisory Opinion* [94]; *Prosecutor v Kordic and Cerkez* (Decision on Appeals)ICTY-95-14/2-AR73.6 (18 September 2000) [‘*Kordic and Cerkez case*] [22]. [↑](#footnote-ref-204)
205. The American Heritage Dictionary of the English Language, (Call upon, 2022), <https://www.ahdictionary.com/word/search.html?q=call> accessed 11 January 2024; Fry, J., *Dionysian Disarmament: Security Council WMD Coercive Disarmament Measures and Their Legal Implications* (MJIL 2008), pp. 230; Orakhelashvili, A., *Collective Security* (OUP 2011) pp. 37. [↑](#footnote-ref-205)
206. *Namibia Advisory Opinion* [115]. [↑](#footnote-ref-206)
207. Compromis, Annex A. [↑](#footnote-ref-207)
208. VCLT, Art 31(1). [↑](#footnote-ref-208)
209. *Sovereignty over Pulau Ligitan and Pulau Sipadan* (*Indonesia v Malaysia*) (Merits) [2002] ICJ Rep 652 [51]; *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. USA*) (Judgment) [1986] ICJ Rep 138 [275]. [↑](#footnote-ref-209)
210. Compromis, Annex A. [↑](#footnote-ref-210)
211. Compromis, Annex A. [↑](#footnote-ref-211)
212. Compromis, Annex A. [↑](#footnote-ref-212)
213. *Kosovo Advisory Opinion* [94]; ILC ‘Report of the International Law Commission on the work of its sixty-fifth session’ (6 May–7 June and 8 July–9 August 2013) UN Doc A/68/10 [22]; HRComm ‘Communication No 1472/2006- Sayadi and Vinck’ (29 December 2008) UN Doc CCPR/C/94/D/1472/2006, [37]. [↑](#footnote-ref-213)
214. VCLT, Art 31 (1); *Kosovo Advisory Opinion*, [94]; Wood, M., *The Interpretation of Security Council Resolutions* (OUP 1998) pp. 83-84. [↑](#footnote-ref-214)
215. *Kosovo Advisory Opinion* [94]. [↑](#footnote-ref-215)
216. *Namibia Advisory Opinion* [114]; HRComm ‘Communication No 1472/2006- Sayadi and Vinck’ (29 December 2008) UN Doc CCPR/C/94/D/1472/2006, [37]. [↑](#footnote-ref-216)
217. Compromis, [48]. [↑](#footnote-ref-217)
218. Compromis, [52]. [↑](#footnote-ref-218)
219. Compromis, [57]. [↑](#footnote-ref-219)
220. Compromis, [53]. [↑](#footnote-ref-220)
221. Compromis, [59]. [↑](#footnote-ref-221)