**357R**

**International Court of Justice**

The peace palace

The Hague, the Netherlands



The 2024 Philip C. Jessup International Law

Moot Court Competition

**case concerning THE STERREN FORTY**

**THE REPUBLIC OF ANTRANO**

(applicant)

v.

**tHE KINGDOM OF REMISIA**

(respondent)

**----------------------------------**

**Memorial for RESPONDENT**

**----------------------------------**

2024

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[PLEADINGS 1](#_Toc156019705)

[I. Antrano lacks standing to bring the matter of the deprivation of nationality of the “Sterren Forty” to this Court. 1](#_Toc156019706)

[A. Antrano is not a directly injured State. 1](#_Toc156019707)

[1. Antrano is not a directly injured State under Article 42(a) of the Articles on the Responsibility of States for Internationally Wrongful Acts [“ARSIWA”]. 1](#_Toc156019708)

[2. Antrano is not an injured State under Article 42(b)(i) of ARSIWA. 1](#_Toc156019709)

[a. Antrano’s claims under the Convention on the Reduction of Statelessness [“CRS”] and the International Covenant on Civil and Political Rights [“ICCPR”] do not involve obligations *erga omnes partes.* 2](#_Toc156019710)

[b. The right to nationality and the right not to be arbitrarily deprived thereofare not obligations *erga omnes.* 3](#_Toc156019711)

[c. Antrano is not a specially affected State. 4](#_Toc156019712)

[B. Antrano has no right to institute actio popularis against Remisia for breaches of obligations erga omnes or erga omnes partes. 4](#_Toc156019713)

[1. Actio popularis has no basis in international law. 4](#_Toc156019714)

[a. *Actio popularis* is not a general principle of law. 4](#_Toc156019715)

[b. Actio popularis has not crystallized into custom. 7](#_Toc156019716)

[2. Even if the Court finds that actio popularis has basis under international law, Antrano’s claim does not involve obligations erga omnes or erga omnes partes. 8](#_Toc156019717)

[C. Antrano cannot exercise diplomatic protection over the Sterren Forty. 8](#_Toc156019718)

[II. Remisia did not violate international law when it deprived the “Sterren Forty” of their Remisian citizenship in accordance with the Disrespect to the crown Act [“dca”]. 9](#_Toc156019719)

[A. Remisia’s right to deprive the Sterren Forty of their citizenship, based on the DCA, is a matter falling solely within its domaine réservé and is not governed by international law. 9](#_Toc156019720)

[1. Although Remisia is a party to the CRS, it validly retained its right to deprive individuals of their nationality in accordance with the DCA. 9](#_Toc156019721)

[a. Remisia’s declaration is valid and does not constitute an impermissible reservation. 10](#_Toc156019722)

[b. Consequently, Remisia’s enforcement and interpretation of the DCA is a purely domestic matter falling outside the scope of the CRS. 11](#_Toc156019723)

[2. Remisia’s right to deprive nationality is not limited by any customary norm. 11](#_Toc156019724)

[B. Alternatively, Remisia exercised its right to deprive the Sterren Forty of their nationality in accordance with its treaty obligations. 11](#_Toc156019725)

[1. The deprivation of the Sterren Forty’s citizenship complied with Article 8(3)(a)(ii) of the CRS. 12](#_Toc156019726)

[2. Remisia’s deprivation of the Sterren Forty’s citizenship was not “based on political grounds”; in this regard, Remisia’s conduct falls within the accepted limitations to the freedom of expression and assembly under the ICCPR. 13](#_Toc156019727)

[a. The restriction was provided for by law. 13](#_Toc156019728)

[b. The restriction had a legitimate aim. 14](#_Toc156019729)

[c. The restriction was necessary and proportionate. 15](#_Toc156019730)

[3. Remisia complied with the due process requirements under Article 8(4) of the CRS. 16](#_Toc156019731)

[C. Remisia did not act arbitrarily when it deprived the Sterren Forty of citizenship. 16](#_Toc156019732)

[III. Antrano violated international law when it denied Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano. 17](#_Toc156019733)

[A. Antrano violated Remisia’s rights under Article 36(1) of the VCCR. 17](#_Toc156019734)

[1. Article 36(1) of the VCCR applies with respect to the nationals of a sending State. 17](#_Toc156019735)

[a. Antrano is obliged to recognize Remisia’s grant of citizenship to Saki Shaw as the grant is consistent with the general principles of law relating to nationality. 18](#_Toc156019736)

[b. The effective nationality principle does not negate Antrano’s obligation to recognize Saki Shaw’s Remisian nationality. 19](#_Toc156019737)

[2. Antrano is bound to recognize Saki Shaw’s Remisian nationality as it is estopped from claiming otherwise. 22](#_Toc156019738)

[B. In turn, Antrano violated Remisia’s rights to consular notification, visitation, and communication with respect to its detained national. 23](#_Toc156019739)

[C. Antrano violated Saki Shaw’s individual rights under the VCCR and ICCPR. 24](#_Toc156019740)

[IV. Remisia did not violate international law by refusing to allow dr. malex to enter remisia. 24](#_Toc156019741)

[A. Preliminarily, the Court must refuse to exercise jurisdiction over Antrano’s claims as the UNSC remains “seized of the matter” underlying Resolution 99997. 25](#_Toc156019742)

[B. Remisia did not violate its obligations under Article 25 of the UN Charter when it refused to allow Dr. Malex’s entry. 26](#_Toc156019743)

[1. Resolution 99997 is invalid for failing to conform to substantive and procedural requirements under Articles 2(7) and 27, respectively, of the UN Charter. 26](#_Toc156019744)

[a. The UNSC violated the principle of non-intervention by interfering with matters that are essentially within Remisia’s domestic jurisdiction. 27](#_Toc156019745)

[b. Antrano’s failure to abstain from voting makes Resolution 99997 procedurally infirm. 27](#_Toc156019746)

[2. Resolution 99997 imposes no binding obligations upon Remisia. 28](#_Toc156019747)

[a. Resolutions adopted in the exercise of the UNSC’s Chapter VI powers are generally recommendatory. 28](#_Toc156019748)

[b. The terms used by Resolution 99997 impose no binding obligations. 29](#_Toc156019749)

[c. The UNSC’s refusal to take additional measures against Remisia affirms the non-binding character of Resolution 99997. 30](#_Toc156019750)

[3. Even assuming Resolution 99997 imposes binding obligations upon Remisia, Remisia’s act of denying Dr. Malex’s entry is not inconsistent with such obligations. 30](#_Toc156019751)

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| S.C. Res. 1965 (July 15, 2006).  | 30 |
| S.C. Res. 2379 (Sept. 21, 2017).  | 30, 31 |
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|  |  |
| **Miscellaneous** |  |
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| Assn’n of Se. Asian nations (ASEAN), Human Rights Declaration, art. 18., (2012).  | 11 |
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| Citizenship of Zimbabwe Act (1984);  | 11 |
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| Explanatory Report to the European Convention on Nationality, E.T.S. No. 166, 6.XI., (1997) | 18 |
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| Jensen, Report from Denmark, ACA-Europe, 140 (1986). | 6 |
| Kuwait Nationality Law (1959). | 11 |
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| Liberia Aliens and Nationality Law (1973).  | 11 |
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# STATEMENT OF JURISDICTION

The Republic of Antrano and the Kingdom of Remisia have agreed to submit, by way of *compromis,* their differences concerning the Sterren Forty and other matters to this Court, in accordance with Article 40(1) of the Statute of the International Court of Justice [“**ICJ**”].An original copy thereof was transmitted to the Registrar on 15 September 2023. Thus, both parties have accepted the jurisdiction of the Court pursuant to Article 36(1) of the Statute of the ICJ.

Remisia has undertaken to accept the judgment of this Court as final and binding, and shall execute it in its entirely and in good faith.

# QUESTIONS PRESENTED

1. *Whether* Antrano has standing to bring the matter of the deprivation of nationality of the “Sterren Forty” to this Court;
2. *Whether* Remisia violated international law when it deprived the “Sterren Forty” of their Remisian citizenship in accordance with the Disrespect to the Crown Act [“**DCA**”];
3. *Whether* Antrano violated international law when it denied Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano; and
4. *Whether* Remisia violated international law by refusing to allow Dr. Malex to enter Remisia.

# STATEMENT OF FACTS

**Background**

The Republic of Antrano [**“Antrano”**], a constitutional republic, is an island within the Mahali Archipelago. Antrano was primarily a homeland for nomadic peoples and remains to be home to a mix of races and ethnicities. The Kingdom of Remisia [**“Remisia”**], a constitutional monarchy, is a land-locked country 11,000 kilometers away from the Mahali Archipelago. Its current head of state is Queen Khasat.

**Disrespect to the Crown Act [“DCA”]**

The monarchy has always been venerated by Remisia’s citizens. Remisia’s Constitution provides that the monarch is entitled to reverence and that insulting the monarch is a crime. In 1955, Remisia enacted the DCA which punishes anyone who defames, insults, or threatens the reigning monarch with imprisonment of up to five years and, if found by a court to be disloyal to the Crown, the deprivation of his/her Remisian citizenship.

**Naturalization by Investment Act [“NIA”]**

For Remisia to be among the leading nations in the region, Queen Khasat promised that her government would encourage foreign investment and international commerce to raise revenue. Thus, in 2008, Her Majesty signed into law the NIA, which grants citizenship to any applicant who purchases real property, contributes to the National Infrastructure Development Fund, or otherwise makes a direct investment in the Remisian economy of €500,000 or more. Dual citizenship is permitted in Remisia and there is no residency requirement to qualify for the NIA.

Subsequently, Remisia implemented the Naturalization by Investment Program [“**NIP**”], a worldwide marketing campaign which invites individuals to apply for citizenship under the NIA. The program was considered extremely successful, generating over €1.5 billion in gross revenue for Remisia from its inception through 2021.

**Saki Shaw**

Saki Shaw was born in, and is a citizen of, Molvania. In 1988, Saki Shaw formed a close personal friendship with then-Princess Khasat. The two remained close as Saki Shaw would visit Kamil (the capital of Remisia) during her undergraduate years and even attended Queen Khasat’s coronation.

Saki Shaw was appointed the head of Lithos Limited [“**Lithos**”], a wholly owned subsidiary of multinational minerals and mining conglomerate — Shaw Corporation [“**ShawCorp**”]. Lithos ventured into the leasing and operation of cobalt mines along with the refinement of ore.

In 2014, Lithos and the Remisian Government agreed to form a joint venture, called the Lithos-Remisia Cooperative [“**LRC**”], for the purpose of undertaking cobalt mining operations. As part of the agreement, Saki Shaw applied for citizenship under the NIP after contributing €500,000 to the National Infrastructure Development Fund. Having met the requirements, the Remisian government approved Saki Shaw’s application and she was naturalized as a Remisian citizen.

Meanwhile, Remisia’s Ministry of Mines granted the LRC permits to initiate its cobalt mining operations after conducting standard due diligence and finding no substantial negative environmental consequences. LRC’s mines employed more than 4,000 Remisians and generated substantial public income through export tariffs.

**The Sterren Forty**

In 2019, locals began complaining about a “cobalt curse” — a persistent hacking cough accompanied by an itchy skin rash, which was believed to be caused by contact with the dust and metallic minerals originating from LRC’s facilities. Demonstrators started holding rallies and calling for the halt of LRC’s cobalt mining operations in Remisia. Nevertheless, Remisia’s Ministry of Mines approved four more licenses in favor of LRC, stating that claims of potential threats to public health lacked substantiation.

As the government did not retract the permits granted to LRC, protests resumed throughout Remisia. Despite prior warning from police officers that insulting the Queen is considered a ground for arrest, demonstrators continued to chant and display placards with direct statements against the Queen, insinuating that Her Majesty’s close association with Saki Shaw was the primary factor for the issuance of permits.

 In 2020, the protests intensified with students shifting from campus demonstrations to the blocking of access roads leading to the mining facilities. Some went to the extent of chaining themselves to entrance gates and machinery in the facilities. This disruption persisted for weeks and effectively crippled mining operations. After the students disregarded requests to peacefully leave the mine sites, authorities resorted to making arrests. Forty protesters, who had created a human chain at the Sterren Palace gates, were apprehended and later referred to as “the Sterren Forty”.

 All protesters faced charges under the DCA, with an option to have the charges dropped by signing a written apology to Her Majesty. The Sterren Forty declined to apologize. During the trial, none of the defendants denied being involved in the protests, chanting slogans, and displaying signs declaring that Queen Khasat was responsible for permitting risky mining operations. All were pronounced guilty, leading to five-year sentences and revocation of citizenship. Remisia’s Supreme Court unanimously denied the Sterren Forty’s appeal, citing that evidence of the Sterren Forty’s disloyalty was manifest and that the sentences complied with domestic and international law.

**Antrano’s Denial of Remisian Consular Access**

In March 2022, Molvania issued an arrest warrant against Saki Shaw charging her with bank fraud, money laundering, and obstruction of justice.

Shortly thereafter, Saki Shaw arrived in Duniya (capital of Antrano) for a ShawCorp board meeting. She was cleared for entry at the immigration checkpoint after presenting her Remisian passport, which was stamped by the Antranan authorities. The next morning, Antranan police arrested and detained her pursuant to Molvania’s extradition request. Despite identifying as a Remisian and requesting access to Remisian consular officials, Antranan authorities denied her plea, stating that they do not recognize purchased citizenship. Remisia persistently sought access to Saki Shaw, but Antrano refused.

**UN Security Council** [“**UNSC**”] **Resolution 99997**

The UNSC, with Antrano as President, unanimously passed Resolution 99997, establishing the UN Inspection Mission to Remisia [“**UNIMR**”] for the purpose of investigating the Sterren Forty’s imprisonment and deprivation of citizenship.

Remisia asserted, however, that the prosecution and punishment of the Sterren Forty were internal matters beyond the purview of the UNSC. To safeguard its sovereignty, Remisia denied entry to Dr. Tulous Malex, appointed leader of the UNIMR, from meeting with the Sterren Forty. Remisia asserted that Resolution 99997 did not impose legal obligations, and the decision to allow or deny entry was a sovereign prerogative.

Despite Antrano’s calls for additional measures against Remisia following the latter’s refusal to allow Dr. Malex’s entry, the UNSC failed to adopt such measures.

**Relevant Conventions**

Antrano and Remisia are members of the UN and acceded to the Statute of the International Court of Justice.

Both States are parties to the Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness [“**CRS**”].

When Remisia ratified the CRS, it submitted a declaration stating that “it retains the right to deprive a person of his nationality in accordance with Article 8.3 of the Convention if such person has been convicted of an offense under the [DCA] and satisfies such other criteria as are laid out in that statute.”

# SUMMARY OF PLEADINGS

**I. ANTRANO DOES NOT HAVE STANDING TO BRING THE CLAIM CONCERNING REMISIA’S DEPRIVATION OF THE STERREN FORTY’S CITIZENSHIP.**

Antrano lacks standing to invoke Remisia’s responsibility, if any, as Antrano is not a directly injured State. The human rights obligations involved here are owed to individuals and not to States. Neither can Antrano claim to be a ‘specially affected’ State, as it lacks a personal and concrete interest in the matter of the Sterren Forty.

Antrano is likely to argue standing to institute *actio popularis* for breaches of obligations *erga omnes* or *erga omnes partes* butsuch argument cannot be sustained. *Actio popularis* is neither a general principle of law nor a customary norm binding in these proceedings. In any event, the principle finds no application here as the obligations involved are neither *erga omnes* nor *erga omnes partes*.

Finally, Antrano cannot exercise diplomatic protection over the Sterren Forty as they are not Antrano’s nationals. To successfully exercise diplomatic protection over the Sterren Forty as stateless persons, they should have been lawfully and habitually residing in Antrano, which is not the case here.

**II. REMISIA DID NOT VIOLATE INTERNATIONAL LAW WHEN IT DEPRIVED THE STERREN FORTY OF THEIR CITIZENSHIP.**

The deprivation of the Sterren Forty’s citizenship is within Remisia’s *domainé réservé*. While Remisia ratified the Convention on the Reduction of Statelessness [“**CRS**”], it submitted a valid declaration retaining its right to deprive nationality for grounds stated in the Disrespect to the Crown Act. Further, no customary norm limits Remisia’s right to deprive individuals of their nationality.

Even if Remisia’s act is subject to international law, Remisia nevertheless acted consistently with its obligations. Remisia had a valid ground under the CRS to revoke the Sterren Forty’s citizenship as they acted ‘inconsistently with their duty of loyalty’ and ‘conducted themselves in a manner seriously prejudicial to Remisia’s vital interests’. The interference with the Sterren Forty’s freedom of speech is also justified as a valid limitation on human rights: it was provided for by law and was necessary and proportionate to achieve the legitimate aim of restoring public order. Finally, Remisia did not act arbitrarily when it deprived the Sterren Forty of their nationality.

**III. Antrano violated international law when it deprived Saki Shaw of Remisian consular access.**

The Vienna Convention on Consular Relations [“**VCCR**”] guarantees the right of Remisian consular officers to communicate, have access to, and visit Remisian nationals detained in Antrano. Thus, Antrano violated the VCCR when it refused to grant Remisian consular officers access to Saki Shaw while she was detained in Antrano.

Antrano cannot justify its breach on the ground that it does not recognize ‘purchased citizenship’. International law requires Antrano to recognize Remisia’s grant of citizenship to Saki Shaw. Specifically, *jus doni* is a general principle of law relating to nationality binding on Antrano. Antrano’s refusal to recognize Saki Shaw’s Remisian citizenship based on the effective nationality principle does not also convince because the principle is not customary and, in any case, finds no application in the field of consular protection. At any rate, Antrano is estopped from refuting Saki Shaw’s nationality, having accepted her into Antrano with her Remisian passport.

**IV. Remisia did not violate international law when it denied Dr. Malex entry notwithstanding United Nations Security Council [“UNSC”] Resolution 99997.**

Preliminarily, the Court must refuse to exercise jurisdiction as the UNSC remains “seized of the matter” underlying Resolution 99997. If the Court will take cognizance of the matter, it would preempt the UNSC on issues concerning international peace and security.

Should the Court find that it may exercise jurisdiction, Resolution 99997 is nevertheless invalid as the UNSC unlawfully intervened into matters that are essentially within Remisia’s domestic jurisdiction. Resolution 99997’s text, the Charter provisions invoked, and the UNSC’s contemporaneous and subsequent acts also show that the UNSC never intended to impose binding obligations upon Remisia.

If at all, Remisia is only obliged to ‘cooperate fully’ with the Investigative Mission established under Resolution 99997. Full cooperation, however, does not require the entry of mission members so long as the purpose of the Mission can be achieved through other means (*e.g.*, providing information and documents), as is the case here.

# PLEADINGS

## Antrano lacks standing to bring the matter of the deprivation of nationality of the “Sterren Forty” to this Court.

Standing before this Court pertains to a State’s right to bring a claim against another State for a breach of an international obligation.[[1]](#footnote-1) Without standing, a State’s claim is inadmissible.[[2]](#footnote-2)

Custom permits a State to bring a claim against another State for breaches of international obligations if it is directly injured by such breach.[[3]](#footnote-3) [**A**] The Republic of Antrano [“**Antrano**”] is not, however, a directly injured State. While Antrano might claim standing based on *actio popularis*, [**B**] *actio popularis* is neither customary nor a general principle of law and, in any event, finds no application here. Finally, [**C**] Antrano has no right to exercise diplomatic protection over the Sterren Forty.

### Antrano is not a directly injured State.

#### Antrano is not a directly injured State under Article 42(a) of the Articles on the Responsibility of States for Internationally Wrongful Acts [“ARSIWA”].

Article 42(a) of the ARSIWA, which reflects custom,[[4]](#footnote-4) entitles a State to invoke the responsibility of another State if the obligation breached is owed to that State individually. Here, Antrano’s claims are anchored on human rights obligations owed to individuals[[5]](#footnote-5) and not to any particular State. Consequently, Antrano cannot claim standing under Article 42(a).

#### Antrano is not an injured State under Article 42(b)(i) of ARSIWA.

Article 42(b)(i) of the ARSIWA, which also reflects custom,[[6]](#footnote-6) allows a State to invoke the responsibility of another State when the former is specially affected by the latter’s breach of collective obligations (*i.e.*, *erga omnes* and *erga omnes partes*).[[7]](#footnote-7) Here, Antrano’s claims do not involve obligations [**a**]*erga omnes partes* or [**b**]*erga omnes* and [**c**]Antrano is not a specially affected State.

##### Antrano’s claims under the Convention on the Reduction of Statelessness [“CRS”] and the International Covenant on Civil and Political Rights [“ICCPR”] do not involve obligations *erga omnes partes.*

Obligations *erga omnes partes* are obligations owed to a group of States and established to protect their collective interests.[[8]](#footnote-8)

In *Belgium v. Senegal,* the ICJ ascertained the object and purpose of a treaty to determine whether it establishes community interests.[[9]](#footnote-9)A treaty’s object and purpose may be deduced from its preamble,[[10]](#footnote-10) *travaux préparatoires*,[[11]](#footnote-11) and framework.[[12]](#footnote-12)

Here, the [**i**]CRS and [**ii**] ICCPR do not create obligations *erga omnes partes*.

###### The CRS does not create obligations *erga omnes partes*.

The CRS, being a human rights treaty, creates obligations owed to individuals,[[13]](#footnote-13) not States. Its preamble shows that its object and purpose is to “reduce and, if possible, eliminate future statelessness”[[14]](#footnote-14) but this alone does not reveal an intent to establish obligations for the parties’ collective interests. Previously,[[15]](#footnote-15) the Court found that obligations that uphold ‘elementary considerations of humanity’ are established for the international community’s collective interests; nothing in the CRS, however, suggests that the obligations thereunder rise to that level.

###### The ICCPR does not create obligations *erga omnes partes*.

The Human Rights Committee [“**HRComm**”] explained that the beneficiaries of rights in the ICCPR are individuals[[16]](#footnote-16) and that the ICCPR is “not a web of inter-State exchanges of mutual obligations.”[[17]](#footnote-17) Thus, the ICCPR seeks to protect individual rights rather than the collective interests of its parties*.*

##### The right to nationality and the right not to be arbitrarily deprived thereofare not obligations *erga omnes.*

Obligations *erga omnes* are those owed to the international community as a whole.[[18]](#footnote-18) Although this Court recognized that basic human rights are *erga omnes*,[[19]](#footnote-19) such does not cover all human rights.[[20]](#footnote-20) Indeed, this Court only recognized obligations pertaining to genocide, slavery, and racial discrimination as *erga omnes*.[[21]](#footnote-21) While Antrano might argue that the right to nationality and right not to be arbitrarily deprived thereof are as fundamental as those mentioned in *Barcelona Traction*, it bears emphasizing that nationality is not a prerequisite to the enjoyment of a whole host of rights guaranteed under international law,[[22]](#footnote-22) which militates against the claim that the right to nationality is fundamental*.*

##### Antrano is not a specially affected State.

A State is “specially affected” if it is affected by the breach in a way that distinguishes it from the generality of other States to which the obligation is owed.[[23]](#footnote-23) The State must show that it has a *personal interest* that is specific, concrete, and not abstract.[[24]](#footnote-24)

Antrano has no *personal interest* in the Sterren Forty’s deprivation of nationality. At most, Antrano has advocated for the rights of stateless persons[[25]](#footnote-25) but mere advocacy is insufficient to establish injury or a specific and concrete interest that distinguishes Antrano from other States.

### Antrano has no right to institute *actio popularis* against Remisia for breaches of obligations *erga omnes* or *erga omnes partes*.

*Actio popularis* pertains to a right to take legal action in vindication of a public interest.[[26]](#footnote-26) Although *actio popularis* is known to domestic legal systems, [**1**] such has no basis in international law as it is neither a general principle of law nor customary;[[27]](#footnote-27) [**2**] alternatively, this principle is inapplicable here because Antrano’s claims do not involve the vindication of ‘public interest’, *i.e.*, obligations *erga omnes* or *erga omnes partes*.

#### Actio popularis has no basis in international law.

##### *Actio popularis* is not a general principle of law.

General principles of law are legal norms accepted among the majority of municipal legal systems[[28]](#footnote-28) that embody “universal standards that must always be applied.”[[29]](#footnote-29) According to the International Law Commission [“**ILC**”], the existence of a general principle of law “cannot and should not be easily assumed”[[30]](#footnote-30) as it must satisfy two stringent[[31]](#footnote-31) requirements: [**i**] the principle is common to various legal systems; and [**ii**] such principle is transposable to the international legal system.[[32]](#footnote-32) *Actio popularis* fails to meet these requirements.

###### *Actio popularis* is not common to municipal legal systems.

Determining the existence of a principle common to the various legal systems of the world requires a wide and representative comparative analysis of national legal systems.[[33]](#footnote-33) The assessment must cover major legal systems (*e.g.*, civil and common law systems)[[34]](#footnote-34) and various regions of the world.[[35]](#footnote-35) In this regard, a principle must be present in a “large number and variety of legal systems”[[36]](#footnote-36) to constitute a general principle of law.

In *South West Africa*, the Court found that *actio popularis* was not a general principle of law,[[37]](#footnote-37) because it was only known to “*certain* municipal systems of law”[[38]](#footnote-38) and was not widely recognized.[[39]](#footnote-39) Even today, major civil and common law jurisdictions have widely rejected the notion of ‘public interest litigation’. For instance, the courts of Uzbekistan,[[40]](#footnote-40) Slovenia,[[41]](#footnote-41) Austria,[[42]](#footnote-42) France,[[43]](#footnote-43) Namibia,[[44]](#footnote-44) Sudan,[[45]](#footnote-45) Denmark,[[46]](#footnote-46) Ethiopia,[[47]](#footnote-47) Iceland,[[48]](#footnote-48) Ireland,[[49]](#footnote-49) and Russia[[50]](#footnote-50) have dismissed *actio popularis* claims.

###### *Actio popularis* is not transposable to the international legal system.

For a principle to be transposable to the international legal system: the principle must be compatible with fundamental principles of international law;[[51]](#footnote-51) and conditions must exist for the adequate application of the principle in the international legal system.[[52]](#footnote-52)

*First,* the principle must be capable of existing within the broader framework of international law,[[53]](#footnote-53) particularly, the set of “rules of international law within which the principle applies.”[[54]](#footnote-54) One fundamental rule of international law is that standing requires legal interest.[[55]](#footnote-55) In this regard, damage or injury has traditionally been seen as a necessary precondition to have legal interest.[[56]](#footnote-56) *Actio popularis*, which does not require a plaintiff to show injury or damage to itself,is thus inconsistent with the fundamental principles of international law.

*Second,* structural differences between international and domestic law[[57]](#footnote-57) do not permit the adequate application of *actio popularis* in the international legal system.[[58]](#footnote-58) The objective of *actio popularis* in municipal systems is to restrain public authorities from violating law but its objective under international law is unclear[[59]](#footnote-59) because the concept of ‘public authorities’ is not known to international law.[[60]](#footnote-60) Additionally, *actio popularis* in municipal systems creates binding effect on every person within the State, thereby facilitating the protection of public interest; in contrast, decisions rendered by international tribunals,[[61]](#footnote-61) including the ICJ, are binding on the parties alone.[[62]](#footnote-62)

##### Actio popularis has not crystallized into custom.

*Actio popularis* fails to meet the twin requirements of settled state practice and *opinio juris.*[[63]](#footnote-63)

Regarding State practice, various States have refused to allow *actio popularis*.[[64]](#footnote-64) Several human rights treaties also do not allow for *actio popularis*:for example, the ECHR held that the European Convention does not “envisage the bringing of *actio popularis*” and that plaintiffs must show a direct injury.[[65]](#footnote-65) Other international tribunals also found that plaintiffs who institute complaints on behalf of public interest lack standing.[[66]](#footnote-66)These show that practice is inconsistent and lacks generality.[[67]](#footnote-67)

*Opinio juris* is also lacking. ICJ Judges Winiarski,[[68]](#footnote-68) Morelli,[[69]](#footnote-69) De Castro,[[70]](#footnote-70) and Kress[[71]](#footnote-71) share the view that *actio popularis* is alien to international law. International tribunals,[[72]](#footnote-72) including human rights bodies like the HRComm[[73]](#footnote-73) and domestic tribunals,[[74]](#footnote-74) also refused to hear *actio popularis* claims. Although *actio popularis* is found in Article 48 of the ARSIWA, such is simply a reflection of *de lege ferenda*[[75]](#footnote-75) rather than the ILC’s codification of international law.

#### Even if the Court finds that actio popularis has basis under international law, Antrano’s claim does not involve obligations erga omnes or erga omnes partes.[[76]](#footnote-76)

### Antrano cannot exercise diplomatic protection over the Sterren Forty.

As a rule, the right to exercise diplomatic protection resides in the State of nationality and no other.[[77]](#footnote-77) The Sterren Forty are not Antrano’s nationals.

Although Article 8 of the Draft Articles on Diplomatic Protection allows diplomatic protection over stateless persons, such is not customary.[[78]](#footnote-78) In any event, Article 8 strictly[[79]](#footnote-79) requires the stateless persons to have been lawfully and habitually residing in the State espousing the claim at the date of the injury and the official presentation of the claim,[[80]](#footnote-80) which is not the case here.

Thus, Antrano cannot exercise diplomatic protection over the Sterren Forty.

## Remisia did not violate international law when it deprived the “Sterren Forty” of their Remisian citizenship in accordance with the Disrespect to the crown Act [“dca”].

### Remisia’s right to deprive the Sterren Forty of their citizenship, based on the DCA, is a matter falling solely within its domaine réservé and is not governed by international law.

In *Nationality Decrees*,the PCIJ ruled that questions of nationality fall within a State’s *domaine réservé* and are subject only to the State’s international obligations.[[81]](#footnote-81) Even today, human rights bodies, such as the ECHR[[82]](#footnote-82) and Inter-American Court of Human Rights [“**IACtHR**”],[[83]](#footnote-83) continue to uphold the *Nationality Decrees* doctrine. Hence, absent a binding international obligation restricting the Kingdom of Remisia’s [“**Remisia**”] right to deprive its nationals of citizenship, this matter falls solely within Remisia’s domestic jurisdiction.

#### Although Remisia is a party to the CRS, it validly retained its right to deprive individuals of their nationality in accordance with the DCA.

Article 8(3) of the CRS allows a State Party to retain its right to deprive persons of their nationality by submitting a declaration that specifies such retention based on the grounds listed under the same Article, being grounds existing in its national law at that time.[[84]](#footnote-84) Here, Remisia submitted the required declaration and retained its right to deprive Remisians of their nationality for acts of “disloyalty” – a ground common to the CRS and the DCA.[[85]](#footnote-85)

##### Remisia’s declaration is valid and does not constitute an impermissible reservation.

While a *reservation* excludes or modifies the legal effect of certain provisions of a treaty,[[86]](#footnote-86) a *declaration* simply clarifies the meaning or scope of certain provisions to the declaring state.[[87]](#footnote-87) A declaration enjoys the presumption that it is not a reservation, so long as it is consistent with the allowed terms under a treaty.[[88]](#footnote-88) An examination of States’ objections to the declarations made by Togo, Tunisia, and the Philippines in respect of Article 8(3) of the CRS shows that a declaration only amounts to an impermissible reservation[[89]](#footnote-89) when it goes beyond the scope of Article 8(3).[[90]](#footnote-90)

Here, Remisia declared that:

“… it retains the right to deprive a person of his nationality in accordance with Article 8.3 of the Convention if such person has been convicted of an offense under the [DCA] and satisfies such other criteria as are laid out in that statute.”

In turn, the DCA allows the deprivation of nationality when a person has been found “disloyal to the Crown”.[[91]](#footnote-91) As Remisia’s declaration simply echoes a ground found in Article 8(3), it does not amount to an impermissible reservation.

##### Consequently, Remisia’s enforcement and interpretation of the DCA is a purely domestic matter falling outside the scope of the CRS.

The ECHR, among other human rights bodies, affirmed that the interpretation and enforcement of domestic laws, especially those concerning deprivation of nationality, are matters decided by national authorities[[92]](#footnote-92) and international courts will not disturb such decisions.[[93]](#footnote-93) The DCA must thus be interpreted and enforced by Remisia alone to the exclusion of international bodies such as this Court.

#### Remisia’s right to deprive nationality is not limited by any customary norm.

The right to nationality and the right not to be arbitrarily deprived thereof have not attained customary status.[[94]](#footnote-94) While the same are enshrined in soft law instruments,[[95]](#footnote-95) such merely express non-binding norms and guiding principles that are insufficient to prove custom.[[96]](#footnote-96) This is further proven by inconsistencies in state practice, such as the *en masse* denationalization by States like Bhutan and Ethiopia[[97]](#footnote-97) and the reluctance of states like Zimbabwe, Liberia, Myanmar, and Kuwait to accept international law obligations relating to nationality.[[98]](#footnote-98)

### Alternatively, Remisia exercised its right to deprive the Sterren Forty of their nationality in accordance with its treaty obligations.

#### The deprivation of the Sterren Forty’s citizenship complied with Article 8(3)(a)(ii) of the CRS.

Article 8(3) of the CRS allows States to deprive persons of their nationality where such persons have, inconsistently with their duty of loyalty to the State, conducted themselves in a manner seriously prejudicial to the vital interests of the State.[[99]](#footnote-99)

The duty of loyalty is characterized as a citizen’s “firm and constant support to the State as a whole.”[[100]](#footnote-100) In *Petropavlovskis v. Latvia*, the ECHR ruled that while a person is free to disagree with his government’s policies in the exercise of his freedom of expression, such critique must be in accordance with law.[[101]](#footnote-101) In this regard, the scope of a citizen’s duty of loyalty is ultimately dependent on each State’s law.[[102]](#footnote-102) As to disloyal acts that are “prejudicial to the vital interests of the State,” the Tunis Conclusions interpret these actions as those that threaten the foundations and organization of the State,[[103]](#footnote-103) a matter best determined by the State itself.[[104]](#footnote-104)

In safeguarding its interests, State authorities enjoy a margin of discretion in interpreting their laws and determining when to deprive persons of their nationality.[[105]](#footnote-105) This is consistent with the practice of parties to the CRS like the UK.[[106]](#footnote-106)

While the Sterren Forty are free to disagree with Remisia’s policies, the exercise of their freedom must not transgress Remisia’s law. By accusing the Queen of being responsible for the ‘cobalt curse’, “threatening [their] future”, and “betraying” Her people,[[107]](#footnote-107) the Sterren Forty threatened the very foundation of Remsia’s institutions. To be sure, Remisia’s Supreme Court concluded that “evidence of their disloyalty was manifest and that the deprivation of their nationality was fully consistent with international law and domestic law.”[[108]](#footnote-108) Absent any showing that the Supreme Court acted arbitrarily, its finding cannot be disturbed.

#### Remisia’s deprivation of the Sterren Forty’s citizenship was not “based on political grounds”; in this regard, Remisia’s conduct falls within the accepted limitations to the freedom of expression and assembly under the ICCPR.

Article 9 of the CRS provides that States may not deprive persons of nationality based on political grounds. According to the UNHRC, “political grounds” must be interpreted in light of subsequent developments in international human rights law.[[109]](#footnote-109) Thus, an individual must not be deprived of his nationality if it would be inconsistent with freedom of expression and assembly.[[110]](#footnote-110) Nevertheless, the freedom of expression and assembly are not absolute. Here, Remisia acted consistently with its human rights obligations considering that the restriction was [**a**] provided for by law, [**b**] pursuant to a legitimate aim, and [**c**] necessary and proportionate.

##### The restriction was provided for by law.

A restriction is properly provided for by law when there is sufficient precision as to which expression or conduct is restricted[[111]](#footnote-111) and the conditions where such rights are limited are sufficiently established.[[112]](#footnote-112) The ECHR held that the requirement is complied with when the limitation has basis in a domestic law and is accessible to the public.[[113]](#footnote-113)

Here, Remisia's Constitution and the DCA clearly specify which acts and forms of speech are criminalized and the ground for which their citizenship may be revoked (i.e., when they have been proven to manifest one's "disloyalty to the Crown").[[114]](#footnote-114) The concept of "disloyalty to a State" is neither new[[115]](#footnote-115) nor vague and has, in fact, been incorporated in Article 8 of the CRS itself. Therefore, having established with sufficient precision which acts are penalized, the DCA satisfies the legality requirement.

##### The restriction had a legitimate aim.

Article 19(3)(b) of the ICCPR provides that the protection of public order is a legitimate ground in restricting one’s right to freedom of expression.[[116]](#footnote-116) Public order is threatened when physical order and the effective functioning of democratic institutions are disturbed.[[117]](#footnote-117) In *Gauthier v. Canada*, the HRComm found that an individual’s right under Article 19 of the ICCPR was properly restricted to ensure that governmental bodies effectively carry out their functions.[[118]](#footnote-118)

Here, Remisia properly deprived the Sterren Forty of their nationality in order to restore public order and protect public interest. The Sterren Forty’s actions (*e.g.*, chaining themselves to the Sterren Palace,[[119]](#footnote-119) crippling a critical national industry,[[120]](#footnote-120) instigating nationwide demonstrations) threatened physical order while their statements (*e.g.,* choosing democracy over monarchy,[[121]](#footnote-121) claiming Her Majesty’s betrayal,[[122]](#footnote-122) and baseless accusations that the Queen was responsible for the ‘cobalt curse’[[123]](#footnote-123)) bore the dangerous tendency to sow distrust. Collectively, these threatened Remisia’s government as a whole and undermined its institutions. Under these conditions, Remisia had a legitimate aim to pursue.

##### The restriction was necessary and proportionate.

A restriction is ‘necessary’ if the measure is appropriate to achieve a legitimate aim.[[124]](#footnote-124) It is ‘proportionate’ if the measure is the least restrictive measure to achieve its desired results.[[125]](#footnote-125) In determining whether an imposed restriction is necessary and proportionate, States are afforded a margin of discretion in limiting individuals’ freedom of expression where there is a legitimate aim to be protected.[[126]](#footnote-126)

Although the freedom of expression is essential for democratic societies, Remisia’s restriction was necessary as it averted further public disarray and addressed the ongoing threat to public order. The restriction was also proportionate for three reasons. *First*, Remisia only resorted to the restriction after authorities requested demonstrators to disperse peacefully, offered to meet for peaceful dialogue, and issued several warnings, all to no avail. *Second*, Remisia announced that it would drop the charges against the Sterren Forty if they apologized to Her Majesty but they all refused to do so. *Third*, the Sterren Forty had the influence to start mass demonstrations across the country that garnered international attention, all the while making unfounded statements against the Queen, Her character, and Her government.[[127]](#footnote-127) Given the Sterren Forty’s influence[[128]](#footnote-128) and the inflammatory nature of the statements made,[[129]](#footnote-129) stricter measures were justified.

#### Remisia complied with the due process requirements under Article 8(4) of the CRS.

Article 8(4) of the CRS guarantees the right to a fair hearing by a court or other independent body.[[130]](#footnote-130) In *Ramadan v. Malta,* the ECHR found that the applicant was granted the opportunity to be heard through hearings and was able to challenge the decision, in compliance with the procedural safeguards concerning deprivation of nationality.[[131]](#footnote-131) Here, Remisia afforded the Sterren Forty the right to be heard by a court and an adequate opportunity to challenge their conviction,[[132]](#footnote-132) thus complying with due process.

### Remisia did not act arbitrarily when it deprived the Sterren Forty of citizenship.

Deprivation of nationality is only arbitrary when it is not in accordance with law, unnecessary and disproportionate to achieve a legitimate aim,[[133]](#footnote-133) and done without procedural safeguards.[[134]](#footnote-134) State authorities do not act arbitrarily when they have acted swiftly and diligently.[[135]](#footnote-135)

Here, Remisia’s deprivation of the Sterren Forty’s nationality was done in accordance with law and was necessary and proportionate to protect public order.[[136]](#footnote-136) Remisia also afforded the Sterren Forty appropriate procedural safeguards.[[137]](#footnote-137) Finally, the Sterren Forty’s case did not meet any unjust delay considering that their case was resolved in just a little over a year after their arrest. Such a span of time is well within international standards.[[138]](#footnote-138)

## Antrano violated international law when it denied Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano.

Article 36(1) of the Vienna Convention on Consular Relations [“**VCCR**”] guarantees that a sending State’s consular officers shall be free to communicate with, have access to, and visit detained nationals of the sending state. Saki Shaw acquired Remisian citizenship pursuant to Remisia’s Naturalization by Investment Program [“**NIP**”][[139]](#footnote-139) prior to her detention in Antrano. By denying Remisian consular representatives access to Saki Shaw, Antrano violated international law.

### Antrano violated Remisia’s rights under Article 36(1) of the VCCR.

#### Article 36(1) of the VCCR applies with respect to the nationals of a sending State.

*Avena* affirm that Article 36(1) of the VCCR applies to nationals of a sending State.[[140]](#footnote-140) While Antrano may argue that it is not bound to recognize Saki Shaw’s Remisian citizenship, this argument cannot be sustained.

Pursuant to its sovereignty, Remisia has the absolute discretion to *grant* nationality to individuals.[[141]](#footnote-141) Such grant is entitled to *recognition* by other States insofar as the grant is consistent with general principles of law relating to nationality and international custom.[[142]](#footnote-142) This obligation to recognize a person’s citizenship is customary, as affirmed by the commonality of language in the 1930 Hague Convention[[143]](#footnote-143) and European Convention on Nationality,[[144]](#footnote-144) their ratification by States,[[145]](#footnote-145) as well as the ILC’s Draft Articles on Diplomatic Protection[[146]](#footnote-146) and decisions of this Court.[[147]](#footnote-147)

Here, Antrano is bound to recognize Remisia’s grant of citizenship to Saki Shaw as the same is consistent with [**a**] general principles of law relating to nationality and [**b**] custom.

##### Antrano is obliged to recognize Remisia’s grant of citizenship to Saki Shaw as the grant is consistent with the general principles of law relating to nationality.

*Jus sanguinis* and *jus soli* are not the only common modes of acquiring nationality.[[148]](#footnote-148) The wide practice of States demonstrates the grant of nationality based on other grounds.[[149]](#footnote-149) In fact, 170 States allow the naturalization of aliens as long as they comply with requirements established under domestic law.[[150]](#footnote-150)

That Saki Shaw was naturalized in Remisia primarily by virtue of her contribution to the State’s development fund[[151]](#footnote-151) does not make her citizenship any less entitled to recognition by other States. Citizenship by investment or *jus doni* is a common mode of conferring nationality upon individuals for their investment or economic contribution to the country.[[152]](#footnote-152) *Jus doni* is recognized in both common law[[153]](#footnote-153) and civil law[[154]](#footnote-154) jurisdictions and thus constitutes a general principle of law. While it requires substantial investment from an individual to the development fund of a particular State, it does not require habitual residence.[[155]](#footnote-155) This is not unusual – as observed by the tribunal in *Soufraki v. United Arab Emirates* because it is difficult for someone with multiple business interests to construct actual residence, especially for a considerable period of time.[[156]](#footnote-156)

As *jus doni* is a general principle of law relating to nationality, Antrano must recognize Saki Shaw’s citizenship.

##### The effective nationality principle does not negate Antrano’s obligation to recognize Saki Shaw’s Remisian nationality.

 The principle of effective nationality requires a ‘genuine link’ to exist between an individual and a State that seeks to exercise diplomatic protection over the individual.[[157]](#footnote-157)

 The effective nationality principle, however, cannot bar Antrano’s obligation to recognize Saki Shaw’s Remisian nationality because [**i**] the principle is not customary and [**ii**] even if it is, it finds no application to the field of consular protection. In any event, [**iii**] Saki Shaw has a genuine link to Remisia.

###### The effective nationality principle is not customary.

The effective nationality principle fails to meet the requirement of settled state practice and *opinio juris*.[[158]](#footnote-158)

*First*, out of 190 countries, only half allow dual citizenship, with only a quarter not accepting dual citizenship at all.[[159]](#footnote-159) This includes the practice of the US, Canada, Italy, France, Tunisia, and the UK, which assists its nationals, as long as they are nationals by their domestic law.[[160]](#footnote-160)

*Second*, *opinio juris* is proven through diplomatic correspondences, widespread acceptance in literary work,[[161]](#footnote-161) and decisions of tribunals.[[162]](#footnote-162) The ILC, in its Draft Articles on Diplomatic Protection, rejected the requirement of an effective link to exercise diplomatic protection.[[163]](#footnote-163) To the contrary, dual nationals may be protected by both States of nationality.[[164]](#footnote-164) This is supported by decisions of tribunals, as in the *Micheletti Case* where the European Court of Justice rejected the application of effective nationality to determine one’s nationality.[[165]](#footnote-165)

###### Even assuming the effective nationality principle is customary, it finds no application in the field of consular protection.

Diplomatic protection pertains to the remedial procedure[[166]](#footnote-166) where a State seeks to espouse the claims of its nationals against another State.[[167]](#footnote-167) In contrast, consular protection pertains to the rights conferred under the VCCR.[[168]](#footnote-168) Nothing in the VCCR[[169]](#footnote-169) or its *traveaux préparatoires*[[170]](#footnote-170) discusses the need for a ‘genuine link’ before a sending State may afford consular protection to its nationals. Notably, the *Nottebohm Case* applied the effective nationality principle only in the context of diplomatic, not consular, protection[[171]](#footnote-171) and as such, the doctrine is not controlling here.

###### In any event, Saki Shaw has a genuine link to Remisia.

In cases[[172]](#footnote-172) where genuine link was tested, tribunals shared the view that no single factor is indispensable. Instead, every factor must be examined according to the circumstances of a case.[[173]](#footnote-173)

Relevantly, in *Nottebohm*, Judge Read refused to recognize Nottebohm’s “lack of residence” as a decisive factor in the recognition of his nationality.[[174]](#footnote-174) This is supported by the *Merge Claim*[[175]](#footnote-175)and *A/18 Case*[[176]](#footnote-176) where all relevant factors, including participation in public life and other evidence of attachment, were considered as a whole.

Here, Saki Shaw has proven her participation in Remisian public life by establishing the Lithos-Remisia Cooperative and playing an active part in supporting Remisia’s goals and aspirations.[[177]](#footnote-177) She also has a close personal relationship with Remisia’s Monarchy.[[178]](#footnote-178) Considering these factors as a whole, Saki Shaw is genuinely linked to Remisia. The fact that she maintains no residence therein is not decisive of the issue.

#### Antrano is bound to recognize Saki Shaw’s Remisian nationality as it is estopped from claiming otherwise.

International estoppel precludes a State from taking a position contrary to its prior conduct or statement.[[179]](#footnote-179) For estoppel to bind a State, three requisites must concur:[[180]](#footnote-180) there needs to be a clear conduct by a State; such conduct must be voluntary, unconditional, and authorized; and the party relying on such conduct would be prejudiced by the conduct. Here, all requisites are present.

*First*, following *Serbian Loans*,[[181]](#footnote-181) *El Salvador/Honduras*,[[182]](#footnote-182)and *Nicaragua*,[[183]](#footnote-183)the requirement of clear conduct is satisfied when the conduct of the State is definite and consistent, evincing a particular state of affairs, instead of ambiguous statements. In presenting a passport to State authorities, the holder represents herself as a national of the issuing State[[184]](#footnote-184) as a passport is *prima facie* evidence of one’s nationality.[[185]](#footnote-185) Thus, the Antranan immigration officer’s act of allowing Saki Shaw to enter Antrano using her Remisian passport shows the clear and unambiguous recognition of Saki Shaw’s Remisian citizenship.

*Second*, the *Gulf of Maine* and *Legal Status of Eastern Greenland* cases provide that conduct is authorized and unconditional if it is made by an organ competent to bind the State[[186]](#footnote-186) without express conditions.[[187]](#footnote-187) The immigration officer, as an officer exercising elements of governmental authority with respect to the entry of aliens,[[188]](#footnote-188) is capable of binding Antrano. Moreover, the immigration officer did not attach conditions to his acceptance of Saki Shaw’s Remisian passport. Thus, the immigration officer’s conduct is voluntary, authorized, and unconditional.

*Third*, the party relying on a State’s conduct must have been prejudiced for estoppel to lie.[[189]](#footnote-189) Antrano’s sudden turnaround and refusal to recognize Saki Shaw’s Remisian citizenship caused her prejudice as she was ultimately refused access to Remisian consular representatives during her detention.[[190]](#footnote-190)

*Finally*, estoppel may lie against a State, despite the lack of ‘good faith reliance’ on the part of the party claiming estoppel.[[191]](#footnote-191) In *Pious Fund of California*,[[192]](#footnote-192) *Anglo-Fisheries*,[[193]](#footnote-193) and *Russian Indemnity*,[[194]](#footnote-194) acts gave rise to estoppel despite the lack of good faith reliance. Thus, Remisia need not prove ‘good faith reliance’ on Saki Shaw’s part for estoppel to lie against Antrano.

### In turn, Antrano violated Remisia’s rights to consular notification, visitation, and communication with respect to its detained national.

Article 36(1) of the VCCR requires receiving States to notify without delay the consular post of the sending State whenever a national of the sending State is detained in the former’s territory.[[195]](#footnote-195) In *Avena*, the Court held that the obligation to notify arises once a State realizes that the person in its custody is a foreign national.[[196]](#footnote-196) Here, Antranan authorities knew from the beginning that Saki Shaw was a Remisian national.[[197]](#footnote-197) By failing to notify Remisia of her detention, Antrano violated Remisia’s right to be notified under Article 36(1).

Article 36(1) also guarantees a sending State’s right to communicate with and visit its detained nationals, so as to arrange for their representation.[[198]](#footnote-198) Antrano’s refusal to let Remisian consular officers visit Saki Shaw and its failure to provide Remisia with an opportunity to arrange for Saki Shaw’s legal representation violate Remisia’s VCCR rights.[[199]](#footnote-199)

### Antrano violated Saki Shaw’s individual rights under the VCCR and ICCPR.

The Court in *Jadhav* has affirmed that Article 36(1) of the VCCR grants nationals of a sending State individually enforceable rights to have access to consular officers of the sending State.[[200]](#footnote-200) Thus, Antrano’s refusal to provide Saki Shaw access to Remisian consular representatives during her detention violated her rights under the VCCR.

Separately, Article 14 of the ICCPR provides minimum due process guarantees to individuals facing courts and tribunals, regardless of the nature of the proceedings before such bodies.[[201]](#footnote-201) It includes the right to be given facilities for one’s defense, including legal representation of one’s choosing.[[202]](#footnote-202)In *Jadhav*, Judge Robinson opined that the right to consular access is amongst the guarantees in Article 14 as it is tied to the ability of an individual to defend herself before a competent tribunal.[[203]](#footnote-203) Thus, Antrano also violated the ICCPR.

## Remisia did not violate international law by refusing to allow dr. malex to enter remisia.

International law guarantees the protection of State sovereignty[[204]](#footnote-204) and territorial integrity.[[205]](#footnote-205) Pursuant to these principles and as recognized in the *Rights of Passage Case*, a State has the power to refuse the entry of foreign nationals absent binding international obligations to the contrary.[[206]](#footnote-206) Thus, Remisia had the right to refuse Dr. Malex’s entry. While Antrano argues that Remisia was duty-bound to allow Dr. Malex’s entry pursuant to UNSC’s Resolution 99997, such argument holds no water because Resolution 99997 is procedurally and substantively infirm and, in any event, imposes no binding obligations on Remisia.

### Preliminarily, the Court must refuse to exercise jurisdiction over Antrano’s claims as the UNSC remains “seized of the matter” underlying Resolution 99997.

UN Organs are independent of one another, with distinct areas of jurisdiction.[[207]](#footnote-207) Each organ is supreme in its own sphere of competence[[208]](#footnote-208) which must not be encroached upon by other UN bodies.[[209]](#footnote-209) The UNSC has primary[[210]](#footnote-210) competence over all matters concerning the maintenance of international peace and security.[[211]](#footnote-211) While the ICJ is the principal judicial organ of the UN,[[212]](#footnote-212) drafters of the UN Charter refused to grant the ICJ the power to review UNSC decisions as it would unduly expand the Court’s powers[[213]](#footnote-213) and disturb the balance established by the Charter.[[214]](#footnote-214) In practice, the UNSC has emphasized this separation of functions in its resolutions by indicating that it decides“to remain actively seized of the matter.”[[215]](#footnote-215) By “seizing itself of the matter,” the UNSC puts an end to the Court’s jurisdiction.[[216]](#footnote-216)

Indeed, the Court itself has recognized that it does not possess powers of judicial review over matters within the competence of the UNSC.[[217]](#footnote-217) In *Lockerbie*, for example, the ICJ refused to grant provisional measures to Libya on the ground that the UNSC already issued a binding resolution.[[218]](#footnote-218) This is because if the Court were to take cognizance of matters seized by the UNSC, it would preempt, and even substitute, the UNSC on the same issues.[[219]](#footnote-219)

Here, the UNSC took cognizance of the establishment of the United Nations Inspection Mission to Remisia [“**UNIMR**”], pursuant to its mandate to ensure the maintenance of peace and security,[[220]](#footnote-220) and decided to “remain seized of the matter.”[[221]](#footnote-221) Since Antrano’s claims fall within the UNSC’s exclusive competence, the Court must refuse to exercise its jurisdiction over such claims.

### Remisia did not violate its obligations under Article 25 of the UN Charter when it refused to allow Dr. Malex’s entry.

#### Resolution 99997 is invalid for failing to conform to substantive and procedural requirements under Articles 2(7) and 27, respectively, of the UN Charter.

##### The UNSC violated the principle of non-intervention by interfering with matters that are essentially within Remisia’s domestic jurisdiction.

Article 2(7) prohibits the UN, including the UNSC,[[222]](#footnote-222) from intervening in matters that are “essentially” within the domestic jurisdiction of a Member State. A matter is *essentially* within a State’s domestic jurisdiction if it is governed by domestic law in principle.[[223]](#footnote-223) The drafting history of Article 2(7) shows that the drafters intentionally used the term “*essentially*”instead of “*solely*”[[224]](#footnote-224) to grant broader protections to a State’s *domaine réservé*. Thus, that a matter might be governed by rules of international law does not take it outside the guarantees provided by Article 2(7).[[225]](#footnote-225)

Here, Remisia’s deprivation of the Sterren Forty’s citizenship based on the DCA is a matter falling within Remisia’s domestic jurisdiction.[[226]](#footnote-226) Even assuming that such deprivation is governed by rules of international law, such matter remains essentially within Remisia’s domestic jurisdiction given that it concerns former Remisians, their acts occurring in Remisia’s territory, and Remisia’s implementation of its own domestic law. Thus, the UNSC unlawfully intervened when it adopted Resolution No. 99997.

##### Antrano’s failure to abstain from voting makes Resolution 99997 procedurally infirm.

Decisions of the UNSC on all non-procedural matters shall be made by an affirmative vote of at least nine members including the concurring votes of the permanent members; further, in decisions under Chapter VI, a party to a dispute must abstain from voting.[[227]](#footnote-227)

A dispute between parties exist when there is a disagreement on a point of law, a conflict of legal views or interests, or a claim is positively opposed by another.[[228]](#footnote-228)

Here, a dispute exists between Antrano and Remisia by virtue of their conflicting legal views regarding the Sterren Forty. Considering that the UNSC adopted Resolution 99997 pursuant to its Chapter VI powers, Antrano, as a member of the UNSC,[[229]](#footnote-229) should have abstained from voting on the Resolution. The unanimous adoption[[230]](#footnote-230) of Resolution 99997 makes it procedurally infirm and, therefore, invalid.

#### Resolution 99997 imposes no binding obligations upon Remisia.

Following the Court’s approach in *Namibia*,[[231]](#footnote-231)an examination of [**a**] the Charter provisions invoked in Resolution 99997, [**b**] the terms of Resolution 99997, and [**c**] the UNSC’s refusal to take additional measures against Remisia shows that Resolution 99997 was not intended to create binding obligations upon Remisia.

##### Resolutions adopted in the exercise of the UNSC’s Chapter VI powers are generally recommendatory.

The UNSC, in the exercise of its Chapter VI powers, may assist parties in the pacific settlement of disputes.[[232]](#footnote-232) As the pacific settlement of disputes under international law is ultimately consent-based,[[233]](#footnote-233) resolutions adopted by the UNSC under Chapter VI are generally recommendatory, unless there is a clear intent to bind Member States.[[234]](#footnote-234) This is in contrast with the UNSC’s Chapter VII powers, which generally impose binding obligations upon states and trigger Article 25 of the Charter.[[235]](#footnote-235)

In *Lockerbie*, this Court applied Article 25 of the Charter after finding that the resolution was issued under Chapter VII and expressly framed as a decision.[[236]](#footnote-236) Similarly, in *Namibia*, this Court ruled that Resolution 276 issued under Chapter VI was binding only because it invoked Article 25 of the Charter.[[237]](#footnote-237)

Here, Resolution 99997 was issued pursuant to the UNSC’s Chapter VI powers and did not refer to the Article 25 of the Charter.[[238]](#footnote-238) Taken together, they show an intent on the part of the UNSC not to create binding obligations on Member States.

##### The terms used by Resolution 99997 impose no binding obligations.

Following the test laid down in *Kosovo*[[239]](#footnote-239) and *Namibia*,[[240]](#footnote-240)the Court may likewise determine the binding effect of Resolution 99997 based on its text and past UNSC practice.[[241]](#footnote-241)

Paragraph two of Resolution 99997 simply “*calls upon*” Remisia to cooperate with the UNIMR. In Resolution No. 582, the term “*calls upon”* was also used, but was considered as non-binding.[[242]](#footnote-242) This is consistent with the practice of the UNSC to use stronger language such as “*requires*”,[[243]](#footnote-243) “*demands*”,[[244]](#footnote-244) and “*warns*”[[245]](#footnote-245) in Resolutions they consider binding.[[246]](#footnote-246) Given that the no such language was used here, Resolution 99997 can only be interpreted as non-binding.

##### The UNSC’s refusal to take additional measures against Remisia affirms the non-binding character of Resolution 99997.

Applying the VCLT [“***Vienna Convention on Law of the Treaties***”][[247]](#footnote-247) analogously,[[248]](#footnote-248) where contemporaneous acts or subsequent conduct may be used to interpret the intent behind a treaty,[[249]](#footnote-249) and consistent with the post-authorization practice of the UNSC,[[250]](#footnote-250) this Court may likewise look into the UNSC’s actions after the adoption of Resolution 99997 in determining its binding character.

In *Lockerbie*, for instance, the UNSC adopted Resolution 748 to reiterate the binding obligations of Libya initially contained in an earlier resolution. Unlike in *Lockerbie*, however, the UNSC refused to adopt additional measures against Remisia[[251]](#footnote-251) even as the latter refused to allow Dr. Malex’s entry. This only confirms that the UNSC did not intend Resolution 99997 to impose binding obligations upon Remisia.

#### Even assuming Resolution 99997 imposes binding obligations upon Remisia, Remisia’s act of denying Dr. Malex’s entry is not inconsistent with such obligations.

In interpreting UNSC resolutions, this Court in *Kosovo* stated that resort must be had to the resolution’s language, considering its context and object and purpose, [[252]](#footnote-252) and previous practice of the UNSC.[[253]](#footnote-253) Here, the object and purpose of Resolution 99997 is to investigate the circumstances surrounding the revocation of the Sterren Forty’s citizenship, and establishing for that purpose, the UNIMR.[[254]](#footnote-254) To achieve this, Resolution 99997 calls uponRemisia “to *cooperate fully* with the [UNIMR] by providing access to all documentary, testimonial, and physical information and evidence that is deemed relevant to the [UNIMR].”[[255]](#footnote-255) ‘*Cooperating fully*’, as understood in its ordinary meaning, means taking actions to serve and accomplish a specific objective.[[256]](#footnote-256)

In Resolution 1267 concerning *Al Qaida*, the UNSC demanded that States “*cooperate fully*” with the UNSC Committee[[257]](#footnote-257) in its tasks related to the suppression of terrorism, which include recommending and reporting its counter terrorism efforts and designating financial resources for implementation.[[258]](#footnote-258) In “*cooperating fully*,” States were not required to report or act on every single task as listed by the UNSC and they maintained the discretion to choose how best to achieve the object and purpose of Resolution 1267. This is consistent with UNSC’s previous practice involving the establishment of investigation missions,[[259]](#footnote-259) which did not necessitate the entry of mission members provided the purpose of those missions can be achieved through other means.

Hence, Remisia’s denial of Dr. Malex’s entry does not violate Resolution 99997 because there are other means of achieving its object and purpose, such as providing the UNIMR with information upon its request. To be sure, had the UNSC intended to absolutely require that Remisia allow the entry of Mission Members, it could have easily said so in the Resolution as it has done so in the past.[[260]](#footnote-260)

# PRAYERS FOR RELIEF

For the aforementioned reasons, the Kingdom of Remisia, respectfully prays that this Court:

1. **DECLARE** that Antrano lacks standing to bring the matter of deprivation of nationality of the “Sterren Forty” to this Court;
2. **DECLARE** that Remisia did not violate international law when it deprived the “Sterren Forty” of their Remisian citizenship in accordance with the DCA;
3. **DECLARE** that Antrano violated international law when it denied Saki Shaw, a Remisian citizen, access to Remisian consular representatives while she was held prisoner in Antrano; and
4. **DECLARE** that Remisia did not violate international law by refusing to allow Dr. Malex to enter Remisia.

Respectfully submitted,

 **Agents for Respondent**

1. Gaja, *Standing*, in Max Planck Encyclopedias of International Law 1 (2018). [↑](#footnote-ref-1)
2. South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Second Phase, 1966 I.C.J. 6, ¶51 [“**1966 *South West Africa***”]. [↑](#footnote-ref-2)
3. Book 25: Materials on the Responsibility of States for Internationally Wrongful Acts, United Nations Legislative Series, art. 42, ¶2. [↑](#footnote-ref-3)
4. ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries,* U.N. Doc. A/56/10, art.42, ¶2 [“**ARSIWA Commentary**”]. [↑](#footnote-ref-4)
5. HRComm, *General Comment 24*, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994),¶17 [“**GC 24**”]. [↑](#footnote-ref-5)
6. ARSIWA Commentary, art.42, ¶2. [↑](#footnote-ref-6)
7. Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Second Phase, 1970 I.C.J. 3,¶33 [“***Barcelona Traction***”]; Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), 2012 I.C.J. 422, ¶68 [“***Belgium/Senegal***”]. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
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