TEAM 621A

International Court of Justice

THE 2021 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

CASE CONCERNING THE J-VID 18

UNITED REPUBLIC OF APREPLUYA

APPLICANT

v.

DEMOCRATIC STATE OF RANOVSTAYO

RESPONDENT

On Submission to the International Court of Justice

The Peace Palace, The Hague, The Netherlands

MEMORIAL FOR APPLICANT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Treaties and Other International Instruments

Cases before the ICJ and the PCIJ

International decisions and arbitral awards

European Court of Human Rights

Domestic cases

Documents and Reports

Treatises and articles

S. Murphy ‘Counter-claims Article 80 of the Rules’ in Andreas Zimmermann, Christian Tomuschat and Karin Oellers-Frahm (eds) *The Statute of the International Court of Justice: A Commentary* (OUP Oxford 2012, 2nd ed.)……37

Schmitt, Michael (ed.). *Tallinn Manual 2.0 On the International Law Applicable to Cyber Operations.* Cambridge: Cambridge University Press, 2017……41

Trapp, Kimberley. «Back to Basics: Necessity, Proportionality, and the Right of Self-Defence against NonState Terrorist Actors.» *The International and Comparative Law Quarterly* (Cambridge University Press) 56, nº 1 (2007): 141-156……40

Trapp, Kimberley. «Uses of Force against Civil Aircraft.» *European Journal of International Law Blog*, 2011……39

Zemanek, Karl. «Armed Attack.» *Max Planck Encyclopedia of Public International Law.* October de 2013……...41

International materials

Hague Rules of Air Warfare, Drafted by a Commission of Jurists at The Hague, December 1922 - February 1923……...……33

International Law Commission. Draft Articles on Prevention of Transboundary Harm from Hazardous Activities 2001, text adopted by the International Law Commission at its fifty-third session in 2001 (A/56/10)……23

International Law Commission, ‘Report of the Study Group of the International Law Commission, Fragmentation of International Law: difficulties arising from the diversification and expansion of international law’ (1 May-9 June and 3 July-11 August 2006) UN Doc A/CN.4/L.682……..……38

International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Volume 2, Yearbook of the International Law Commission 31 (2001)……..38, 40, 41, 42, 43

International Law Commission. Documents of the Tenth Session, [1958] 2 Y.B. Int'l L. Comm'n 104, U.N. Doc. A/CN.4/Ser.A/1958/Add.1……...…43

UN General Assembly, *Report of the International Law Commission, Second report on State responsibility*, 17 March 1999, A/CN.4/498 and Add.1–4……...43

STATEMENT OF JURISDICTION

By virtue of the Declarations deposited in the Secretary-General of the United Nations on the 10 March 2003 and 7 January 2002 respectively, the Democratic Republic of Ranovstayo ("Ranovstayo") and the United Republic of Aprepluya ("Aprepluya"), under Article 36 (2) of the Statute of the International Court of Justice, recognized the compulsory jurisdiction of this Honorable Court on the following terms:

> The Government declares, with immediate effect, that it recognizes as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to the Secretary-General of the United Nations withdrawing or modifying this Declaration.

Aprepluya's Declaration included the following reservation:

> This Declaration shall not apply to any dispute concerning Aprepluyan military activities, or to any dispute with regard to matters, which are essentially within the domestic jurisdiction of the United Republic of Aprepluya, as determined by the Government of the United Republic of Aprepluya.

QUESTIONS PRESENTED

The United Republic of Aprepluya respectfully requests the Honorable Court to adjudge:

1. Whether Ranovstayo violated international law by applying its entry regulation to Aprepluya, and whether is obligated to compensate it for the resulting economic losses;

2. Whether Ranovstayo violated international law by failing to hand over Ms. Keinblat Vormund to the Aprepluyan authorities after they requested her surrender on 9 June 2018;

3. Whether The Court may not exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft; and

4. Whether, even if the Court were to exercise jurisdiction over the counter-claim, Aprepluya did not violate international law by shooting down the aircraft.

STATEMENT OF FACTS

BACKGROUND

Aprepluya has an active tourism industry. The country drew an average of nine million tourists and gross tourism receipts of €7.5 billion every year from 2013 to 2017. During this period, approximately 25% of the foreign tourists in Aprepluya were Ranovstayan, and another 40% traveled to or from Aprepluya through the Airport in Bogpadayo, Ranovstayo´s capital.

The J-VID 18

Hadbard is a country located eight time zones from Aprepluya and Ranovstayo. Its health authorities reported cases of a respiratory condition resembling pneumonia. Its Ministry of Health identified the disease caused by it called "J-VID-18". Its Ministry scientists determined that the virus was capable of human-to-human transmission.

Aprepluya's National Bioresearch Laboratory ("NBL") located in Segura Province is a research institute that initiated projects to study the virus with the goal of developing a vaccine. Its employees were required to sign, at the time of their hiring, a non-disclosure agreement to not disclose or divulge any information concerning their work at the Laboratory whose violation may result in possible prosecution.

On 20 April 2018, the World Health Organization ("WHO") Director-General declared the outbreak of J-VID-18 a public health emergency of international concern ("PHEIC"). It issued Temporary Recommendations in accordance with the 2005 International Health Regulations ("IHR") to combat the spread of the disease, urging the general observance of social distancing, the use of face coverings, and self-quarantine for at least 14 days of anyone who seems to have symptoms. Travel and trade restrictions were not recommended.

Ranovstayo´s Health Ministry conducted a risk assessment, considering what it called the best scientific evidence available. Based on that study, the Ranovstayan Home Office published certain regulations, which prohibited all non-Ranovstayan nationals who had been in a "high-risk country" within the past 18 days from entering the territory of Ranovstayo. The list of "high-risk countries" should include any country where there had been at least 50 confirmed cases of J-VID-18 over the previous two months. Ranovstayo's President, Erken Kalkan, expressed they were "aware of the inconvenience that this temporary measure may cause". The

WHO sent a communication to the Ranovstayan Ministry of Health, recalling that the Director-General was not recommending travel restrictions, and requesting to reconsider the application of its regulation.

On 15 May 2018, the WHO declared the J-VID-18 a pandemic. As of that date, neither Aprepluya nor Ranovstayo, nor any other country in their region, had any suspected or confirmed cases.

On 6 June 2018 Ranovstayo's Ministry of Health announced that Aprepluya was added to the list of "high-risk countries". The next two days, approximately 80% of tourists in Aprepluya left the country. Two thirds of the departing foreign nationals, who were surveyed, answered that the primary reason they were leaving was because they were from or had flight connections in Ranovstayo and were concerned that with the decision, they would be stranded.

The Aprepluyan Ministry of Tourism published a study which concluded that the Ranovstayan entry regulation had resulted in over €130 million in revenue lost by Aprepluya and its nationals, and noted that there was no possibility for these losses to be recovered through any domestic judicial or administrative process in either country.

As of mid-June 2018, Aprepluya had no suspected or confirmed cases outside of Segura Province.

Ms. Keinblat Vormund and the consulate

On 3 June 2018, a Twitter account, that was created with false personal information, published that eight lab technicians at NBL had developed symptoms of the disease and this news was being kept secret. The post was re-published by thousands of other social media accounts. Authorities did not confirm reported infections. Aprepluya's police traced the tweet back to an NBL technician working on the vaccine project, Ms. Keinblat Vormund ("Vormund"). Two Aprepluyan police officers arrived at her residence to question her about the origins of the tweet. As they waited at her doorstep, she left her home, got into her car, and departed. They chased up to the front gates of Ranovstayo's consulate in Segura Province. The officers aborted their pursuit outside the consulate's premises. Then, the Consul agreed to let Vormund stay in the consulate building until they reached a decision on her request for protection. President Kalkan acknowledged that her government had decided to consider Vormund to be an applicant for asylum, allowing her to remain at the consulate for the time being, until it was clarified whether she was under criminal investigation and, if so, for what offense.

On 8 June, the Aprepluyan Prosecutor's Office formally charged Vormund with three offenses under the Aprepluya´s National Penal Code: (i) causing public disorder; (ii) violation of a governmental non-disclosure agreement; and (iii) interference with a police investigation; and issued a public statement calling on the Ranovstayan consulate to hand over Vormund.

On 23 June 2018, the Ranovstayan Foreign Ministry announced that it intended to permanently close its consulate in Segura Province. The evacuation flight departed on 25 June. The last time any member of the Ranovstayan consular staff saw Vormund was at the consulate at 18:00 local time on 24 June 2018. The next morning, it was discovered that she was no longer on the consular premises.

Aircraft incident

The Justice Ministers of both Aprepluya and Ranovstayo received reports from INTERPOL indicating that a clandestine organization was planning a terror attack using a bomb-laden civilian airplane as a weapon. Both countries promptly put their Air Forces on heightened alert.

On 26 June, a Mantyan Airways aircraft crashed into a forest in Aprepluya. Prime Minister Haraka said that the Aprepluyan Air Force had shot down a civilian aircraft headed in the direction of Beauton, that the aircraft had taken off from Segura Airport without authorization and, as it neared Beauton, failed to identify itself or to comply with standard operating procedures, and that, when the rogue airplane failed to respond to any of these attempts to determine its identity and mission, the pilot was ordered to fire at it. Two days later, on 28 June 2018, Aprepluya informed the United Nations Security Council that it had shot down a civil aircraft over its territory to protect the capital from an apparent terrorist attack.

Hye and Vormund intended to fly to the international airport at Bogpadayo. Before boarding the aircraft, Hye placed a telephone call to the Mantyan Airlines office at Bogpadayo Airport. There was no answer. Hye said she had a passenger with her who intended to seek asylum. The Mantyan Airways aircraft took off, with Vormund and Hye inside. They concluded that the messages were not received, because the airplane's radio was not functioning. In any event, two bodies were recovered and were identified as Vormund and Hye.

SUMMARY OF PLEADINGS

I. Ranovstayo breached its obligations under the IHR, since its restrictions were arbitrarily and unjustifiably discriminatory and they were more restrictive of international traffic than reasonably available alternatives that would achieve the appropriate level of health protection, insofar as it did not have scientific basis nor scientific evidence. Ranovstayo could not demonstrate that its evidence was gathered with scientific methods, the evidence presented was not sufficient to demonstrate the extent of the risk, and it contradicted important evidence, available information and the WHO advice. Ranovstayo also went against the General Principle of Abuse of Rights since it used its territory contrary to Aprepluyans rights and did not take all necessary measures to prevent harm. Ranovstayo did not minimize the harm from activities on its own territory; and is obligated to compensate for the resulting economic losses, since the measures are attributable to Ranovstayo and the damage suffered was a product of an internationally wrongful act.

II. Ranovstayo was not entitled to grant asylum since Vormund is a fugitive and is not considered an asylum seeker nor a refugee, insofar as she does not fulfil the requirements because she was not being persecuted; her crimes were common and non-political due to the seriousness and purpose of the offenses; and her fear was not well founded. Vormund was not entitled to receive protection and Ranovstayo was not entitled to give it since Ranovstayo had no obligation of non-refoulement insofar as refugee protection cannot come into play as long as a person is within the territorial jurisdiction of his nationality. Vormund has committed a serious non-political crime and she was not at risk of death or injury. Ranovstayo also violated its obligations under International law since it went against General Principles of Sovereignty and Non-intervention since it obstructed regular application of laws, and withdrew Vormund, as offender, from Aprepluya´s jurisdiction without legal basis. Ranovstayo also violated its obligations since it did not respect Aprepluya´s laws, it interfered with its internal affairs, it used its consular premises in a manner incompatible with the exercise of consular functions, and it abused its privileges and immunities.

III. Ranovstayo´s counter-claim is inadmissible under the rules of Court, particularly under article 80, since Aprepluya made a specific reservation, concerning military activities,

to the acceptance of jurisdiction made under article 36 (2) of the Statue, and the aircraft accident is strongly related to such activities. Moreover, even if the Court finds a basis of jurisdiction, there is no legal and factual relation between Ranovstayo´s counter-claim and Aprepluya´s principal claim, particularly considering: *i)* the moment of the events; *ii)* the spatial relation between the facts; *iii)* the legal instruments relied upon; and *iv)* the legal aims of the Parties. Consequently, the Court must decline to entertain the counter-claim. Furthermore, there is a jurisdiction overlap, and the aircraft issue, following the *lex specialis* principle, must be first brought to the International Civil Aviation Organization ("ICAO") Council under article 84 of the Convention on International Civil Aviation ("ICAO Convention").

IV. Aprepluya did not violate international law by shooting down the aircraft, under Article 3 *bis* of the ICAO Convention. This provision is meant to apply to international circumstances since the article codifies the prohibition contained in article 2 (4) of the United Nations Charter (UN Charter). Moreover, even if article 3 *bis* were applicable, Aprepluya´s actions were taken against a suspected terrorist aircraft under a reasonable mistake of fact in self-defence. In addition, Aprepluya´s actions were taken under the exception brought by the same provision in which, "[it shall not] be interpreted as modifying in any way the rights […] set forth in the Charter". Finally, even if the Court fails to accept the self-defence argument, the shoot-down of the aircraft was taken under an innocent mistake of fact, where the wrongfulness of the conduct is precluded by distress. Therefore, Aprepluya did not violate international law when forcing the landing of the aircraft A7P-BB4.

PLEADINGS

I. RANOVSTAYO VIOLATED INTERNATIONAL LAW BY APPLYING ITS ENTRY REGULATION TO APREPLUYA, AND IS THUS OBLIGATED TO COMPENSATE IT FOR THE RESULTING ECONOMIC LOSSES.

A. Ranovstayo violated international law by applying its entry regulation to Aprepluya

1. Ranovstayo breached its obligations under IHR

Ranovstayo breached its obligations under IHR, since (a) the restrictions were discriminatory and (b) were more restrictive of international traffic than reasonably available alternatives that would achieve the appropriate level of health protection.

a. Ranovstayo's restrictions were discriminatory

Ranovstayo's restrictions were discriminatory, and as such are in breach of the IHR. Pursuant to article 42, health measures shall be applied in a non-discriminatory manner.[1] Rights must be exerciced without discrimination of any kind[2] and discrimination on ground in national origins is prohibited.[3] "Discrimination" implies any distinction, exclusion, restriction, or preference based on the prohibited grounds which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons, on an equal footing, of all rights and freedoms.[4] "Discrimination" refers to "results of the unjustified imposition of differentially disadvantageous treatment."[5] Therefore, a determination that 'discrimination' exists rest on

[1] World Health Assembly. 2006. *International Health Regulations* (2005). Geneva: World Health Organization, article 42. (hereinafter "IHR").

[2] United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, article 2(2).

[3] United Nations General Assembly. *International Covenant on Civil and Political Rights*. Treaty Series, vol. 999, Dec. 1966, p. 171. Article 26. Article 2.

[4] UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights, art. 2, ¶ 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20 ¶ 7; Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994). ¶ 7.

[5] World Trade Organization (WTO) Panel Report, US – Poultry (China), WT/DS392/R, adopted 29 September 2010. ¶ 7.291. (hereinafter "Us - Poultry")

whether the different treatment applied is "justified".[6] A measure is arbitrarily and unjustifiably discriminatory if it treats differently two products that present the same level of risk.[7] The term "justifiable" means "capable of being legally or morally justified or shown to be just, righteous, innocent, defensible"[8] or capable of making good.[9] Ranovstayan measures were unjustified since they were not legally or morally justified or shown to be just, righteous, or innocent because they caused harm[10] and they did not consider the same level of risk, given the human-to-human transmission of the virus.[11] The imposition was unjustified since Aprepluya was added to the list of "high-risk countries"[12] without reported the cases stipulated in the regulation,[13] which resulted in differentially disadvantageous treatment for Aprepluya.[14] Therefore, Ranovstayo's restrictions were discriminatory since they based on nationality a criterion for prohibiting people from entering its territory,[15] prohibited the entry of Aprepluyans who had been in their own country within the past 18 days,[16] treated Ranovstayans and Aprepluyan differently, and impaired the latter´s exercise of freedoms.[17] Thus, it constitutes a breach of its obligation under international law.

---

[6] World Trade Organization, WTO Analytical Index: Guide to WTO Law and Practice, SPS Agreement. Article 5 (Jurisprudence). ¶ 125. (hereinafter "WTO index article 5")

[7] World Trade Organization, WTO Analytical Index: Guide to WTO Law and Practice, SPS Agreement. Article 2 (Jurisprudence). ¶ 66. (hereinafter "WTO index article 2"); World Trade Organization. Panel Report, Russia – Pigs (EU), WT/DS475/R, adopted 19 August 2016 ¶ 7.1322; World Trade Organization (WTO) Appellate Body Report, Australia – Salmon, WT/DS18/AB/R, adopted 6 November 1998, ¶ 158

[8] US – Poultry, supra note 5, ¶ 7.259.

[9] WTO index article 5, supra note 6. ¶ 113.

[10] Statement of Agreed Facts, ¶¶ 30, 46.

[11] Statement of Agreed Facts, ¶ 7.

[12] Statement of Agreed Facts, ¶ 29.

[13] Statement of Agreed Facts, ¶¶ 23, 24.

.

[14] Statement of Agreed Facts, ¶¶ 10, 30, 46.

[15] Statement of Agreed Facts, ¶ 10.

[16] Statement of Agreed Facts, ¶¶, 29. 10.

[17] Statement of Agreed Facts, ¶ 10.

b. Ranovstayo´s restrictions were more restrictive of international traffic than reasonably available alternatives that would achieve the appropriate level of health protection

Ranovstayo's restrictions did not comply with standards set forth in Article 43 (1), (2). The latter states the obligation to base its determinations upon: (a) scientific principles; (b) available scientific evidence, or where such is insufficient, the available information; and (c) guidance or advice from the WHO.[18]

Scientific basis must have "the necessary scientific and methodological rigor to be considered reputable science"[19] and be "a respected and qualified source".[20] The views must be considered to be legitimate science according to the standards of the relevant scientific community.[21] "A risk assessment must be supported by coherent reasoning and respectable scientific evidence and will be in this sense objectively justifiable.[22] Ranovstayo had no scientific basis with methodological rigor nor a respected qualified source, and its studies were not considered to be legitimate science according to the standards of the relevant scientific community.[23]

Scientific evidence should be gathered through scientific methods,[24] excluding information not acquired through it.[25] To maintain a measure with sufficient scientific evidence, it must bear a

[18] IHR, *supra* note 1, article 43 (2).

[19] World Trade Organization (WTO) Appellate Body Report, India – Agricultural Products, WT/DS430/AB/R, adopted 4 June 2015. ¶ 5.28.

[20] World Trade Organization. Appellate Body Report, Canada/US - Continued Suspension of Obligations in the EC - Hormones Dispute. WT/DS321/AB/R (Oct. 16, 2008). ¶¶ 591 and 598 (hereinafter "Hormones Dispute")

[21] WTO index article 2, *supra* note 7. ¶ 21.

[22] World Trade Organization. Appellate Body Report, Australia-Apples. WT/DS367/AB/R, adopted 29 November 2010. ¶ 213. (hereinafter "Australia - Apples"); Hormones Dispute, *supra* note 21, ¶ 590.

[23] Statement of Agreed Facts. ¶ 10, 26.

[24] World Trade Organization (WTO) Panel Report, Japan – Apples, WT/DS245, adopted 26 November 2003, ¶¶ 8.92-8.93 and 8.98.

[25] WTO index article 2, *supra* note 7. ¶ 11.

rational relationship to the measure,[26] be sufficient to demonstrate the extent of the risk, and be of the kind necessary for a risk assessment.[27]

Evidence shows that restricting the movement of people during a PHEIC is ineffective:[28] it may divert resources from other interventions,[29] may have a significant economic and social impact,[30] does not prevent the importation of the disease,[31] only lead to aggravating the living standards already compromised by the disease,[32] can negatively affect the movement of "health staff",[33] and may contribute to persons carrying infectious diseases trying to immigrate clandestinely at the border.[34] Travel restrictions are a barrier weighing on the slow virus containment.[35] Evidence shows that rapid response at the source is the most effective way to secure maximum protection against international spread of diseases.[36]

---

[26] World Trade Organization (WTO) Panel Report, Japan – Agricultural Products II, WT/DS76/AB/R, adopted 22 February 1999, ¶ 73; WTO index article 2, *supra* note 7. ¶ 7.

[27] Us - Poultry, *supra* note 5, ¶ 7.200; WTO index article 2, *supra* note 7. ¶ 4.

[28] Bulletin of the World Health Organization. Effectiveness of travel restrictions in the rapid containment of human influenza: a systematic review. 29 September 2014. Available at: https://www.who.int/bulletin/volumes/92/12/14-135590/en/

[29] World Health Organization. Updated WHO recommendations for international traffic in relation to COVID-19 outbreak. 29 February 2020 COVID-19 Travel Advice. Available at: https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak

[30] World Health Organization, *Ibid.*

[31] World Health Organization. Coronavirus disease 2019 (COVID-19) Situation Report – 39. 28 February 2020. Page 2. Available at: https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200228-sitrep-39-covid-19.pdf?sfvrsn=5bbf3e7d_4

[32] United Nations press release issued on the 25 August 2014: Flight restrictions hamper ability to battle Ebola, UN cautions, available at www.un.org/apps/news/story.asp?NewsID=48555#.WYCiioiLR9A.

[33] World Health Organization. Statement on the 2nd meeting of the IHR Emergency Committee regarding the 2014 Ebola outbreak in West Africa, 22 September 2014, available at www.who.int/mediacentre/news/statements/2014/ebola-2nd-ihr-meeting/en/.

[34] Andreas Schloenhardt, Immigration and Refugee Law in the Asia Pacific Region, 32 *Hong Kong Law Journal* 519, 526-30 (2002)

[35] World Tourism Organization. Impact Assessment Of The Covid-19 Outbreak On International Tourism. Updated December 2020. Available at: https://www.unwto.org/impact-assessment-of-the-covid-19-outbreak-on-international-tourism

[36] World Health Organization. Frequently asked questions about the International Health Regulations (2005). ¶ 15. Available at: https://www.who.int/ihr/about/faq/en/#faq07

Ranovstayo did not comply with such standard since it could not demonstrate its evidence with scientific methods[37] and the evidence presented was not sufficient to demonstrate the extent of the risk, since there was not an adequate relationship between the measure and the evidence, and since it contradicted the important available information.[38] Ranovstayo also failed to take the guidance and advice from the WHO.[39]

Ranovstayo also breached Article 43 (1), which imposes a ban on adopting measures more restrictive of international traffic than reasonably available alternatives that would achieve the appropriate level of health protection. [40]

To show that the distinction in "appropriate level of protection" is not arbitrary or unjustifiable, the state must demonstrate differing levels of risk[41] with scientific evidence.[42] Ranovstayo´s distinction was arbitrary and unjustifiable because, as it has been proven, such restrictions did not fulfil standard of scientific evidence. However, states should not be allowed to hide behind a generically stated appropriate level of protection[43] and Ranovstayo hid behind it without scientific evidence, which, given the lack of compliance with the standards, constituted a breach under its international law obligation.

2. Ranovstayo went against the General Principle of "Abuse of Rights."

Ranovstayo violated International Law by using its territory in a manner contrary to the rights of other states. As a principle of customary international law, every State has the obligation not to use its territory contrary to the rights of other states[44] because no state has the right to use it

[37] Statement of Agreed Facts. ¶¶ 10, 26.

[38] Statement of Agreed Facts. ¶¶ 8, 10, 12.

[39] Statement of Agreed Facts, ¶¶ 8, 10.

[40] IHR, *supra* note 1, article 43 (1).

[41] US – Poultry , *supra* note 5, ¶ 7.263.

[42] WTO index article 5, *supra* note 6. ¶ 115.

[43] Australia – Apples, *supra* note 22, ¶ 7.970-7.971; WTO index article 5, *supra* note 6. ¶ 102.

[44] *Corfu Channe*l (United Kingdom v. Albania), [1949], I.C.J. Reports, 4, 22 (Apr. 9) (determination on the merits) (hereinafter "Corfu").

in such a manner as to cause injury to another.[45] Furthermore, states are obliged to take all necessary measures to prevent or minimize the risk of harm from activities on its own territory to the territory of another state.[46]

Ranovstayo committed an abuse of rights insofar as it used its territory contrary to the rights of Aprepluya in such a manner as its restrictions had an impact on Aprepluyas economy quantified at €130 million in revenue lost,[47] and it did not take all necessary measures to prevent or minimize the risk of economic harm from activities on its own territory[48] which constituted a violation under international law.

Ranovstayo could not assert sovereignty to justify its harm since there are limits to national sovereignty when health crises reach across borders.[49] It requires international collective action and governance of the global health system.[50] Countries must have a notion of "shared sovereignty".[51]

B. <u>Ranovstayo is obligated to compensate for the resulting economic losses</u>

States are entitled to compensation for breaches of international law resulting in harm to property.[52] States that commit an internationally wrongful act are obligated to make full reparation for the injury caused by the act.[53] Because the measures are attributable to

[45] *Trail Smelter* (United States of America v. Canada.), 3 R. Int'l Arb. Awards 1905 (1938) (initial decision), further proceedings, 3 R. Int'l Arb. Awards 1938 (1941) (final decision).

[46] Draft Articles on Prevention of Transboundary Harm from Hazardous Activities 2001, text adopted by the International Law Commission at its fifty-third session in 2001 (A/56/10). Articles 1 and 3.

[47] Statement of Agreed Facts, ¶ 46.

[48] Statement of Agreed Facts.

[49] World Health Organization, Report of the Ebola Interim Assessment Panel (2015). ¶ 10. Available at: https://www.who.int/csr/resources/publications/ebola/report-by-panel.pdf (hereinafter "Ebola report")

[50] Ebola report, *ibid*. ¶ 9.

[51] Ebola report, *supra* note 49. ¶ 10.

[52] Corfu, *supra* note 44. at 23..

[53] International Law Commission. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Volume 2, Yearbook of the International Law Commission 31 (2001), art. 31; *Factory at Chorzòw* (Ger. v. Pol.), 1926 P.C.I.J. (ser. A) No. 7, at 44 (May 25). (hereinafter "ILC")

Ranovstayo and the damage suffered was a product of an internationally wrongful act, Ranovstayo must make reparations to account for all the consequences of the illegal act.[54]

II. RANOVSTAYO VIOLATED INTERNATIONAL LAW BY FAILING TO HAND OVER MS. KEINBLAT VORMUND TO THE APREPLUYAN AUTHORITIES AFTER THEY REQUESTED HER SURRENDER ON 9 JUNE 2018

A. Ranovstayo was not entitled to grant asylum:

1. Vormund is a fugitive and is not considered an asylum seeker nor a refugee.

Vormund does not fulfil the requirements to be considered asylum seeker or refugee under the Universal Declaration of Human Rights[55] nor the Convention Relating to the Status of Refugees (CRSR)[56] as (a) she was not being persecuted; (b) her crimes were common and non-political; and (c) her fear was not well founded.

a. Vormund was not being persecuted.

Vormund was not being persecuted. There is no universally accepted definition of "persecution.[57] However, a refugee is not a fugitive from justice,[58] persons fleeing from prosecution or punishment for a common law offence are not normally refugees.[59] If the prosecution pertains to a punishable act committed out of political motives, and if the anticipated punishment is in conformity with the general law of the country concerned, fear of such prosecution will not in itself make the applicant a refugee.[60] The right to seek asylum may

[54] *Factory at Chorzòw* (Ger. v. Pol.), Jurisdiction, 1927 P.C.I.J. (ser. A) No. 9 (July 26); *Factory at Chorzów* (Ger. v. Pol.), Merits, 1928 P.C.I.J (ser. A) No. 13 (Dec. 16); *Rainbow Warrior* (New Zealand v. France), 20 R.I.A.A. 215, ¶110 (1990).

[55] United Nations General Assembly. 2010. Universal Declaration of Human Rights, UN Doc. A/810., article 14. (hereinafter "UDHR")

[56] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (hereinafter "Refugee Convention"), art. 1.

[57] United Nations High Commissioner for Refugees (UNHCR). (1979, re-edited 1992). *Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCP/IP/4/Eng/REV.1, ¶ 51 (hereinafter "Refugees Handbook")

[58] Refugees Handbook, *ibid*, ¶ 56.

[59] Refugees Handbook, *Ibid.*

[60] Refugees Handbook, *supra* note 57, ¶ 84

not be invoked in the case of prosecutions genuinely arising from non-political crimes.[61] Therefore, Vormund could not seek asylum since she was fleeing from prosecution charged by Aprepluyan Prosecutor's Office with three common offenses in conformity with the Aprepluya´s National Penal Code,[62] and the non-disclosure agreement was previously signed at the time of her hiring.[63]

b. Vormund´s crimes were common and non-political

Vormund´s crimes were non-political. Crimes are considered political offenses as long as they do not involve the most serious crimes.[64] In determining such character: (i) its nature and purpose should have been committed out of genuine political motives and not merely for personal reasons or gain; (ii) there should be a close and direct causal link between the crime committed and its alleged political purpose and object; and (iii) the political element of the offence should also outweigh its common-law character.[65] This would not be the case if the acts committed are grossly out of proportion to the alleged objective[66] and the political nature of the offence is more difficult to accept if it involves acts of an atrocious nature.[67] However, in the *Asylum Case,* The Court held that the sending state did not have the unilateral right to determine the nature of the offense.[68]

Vormund´s crimes were non-political since the "violation of a governmental non-disclosure agreement" is the most serious crime[69] The political element of the crimes is missing since she

---

[61] UDHR. *supra* note 55; Refugee Convention, supra note 56, art. 1

[62] Statement of Agreed Facts, ¶ 32.

[63] Statement of Agreed Facts, ¶ 6.

[64] Institute of International Law., Scott, J. Brown., Carnegie Endowment for International Peace. Division of International Law. (1916). Resolutions of the Institute of international law dealing with the law of nations, with an historical introduction and explanatory notes. New York: Oxford University press, ¶ 103.

[65] Refugees Handbook, *supra* note 57, ¶ 152

[66] Refugees Handbook, *Ibid.*

[67] Refugees Handbook, *Ibid.*

[68] *Asylum Case* (Colombia/Peru), Merits, [1950] ICJ Reports. p. 276, 279. (hereinafter "*Asylum Case*").

[69] Clarifications, ¶4.

intentented someone to release the information concerning the vaccine project;[70] the crimes were committed for personal reasons since her conscience told her that she had to let someone know the information due to the risks for her friends, her workmates and their families;[71] and there was not a close and direct causal link between the crime and its alleged political purpose. Then, Vormund could not seek asylum since the crimes were non-political, were grossly out of proportion to the alleged objective and, in any event, Ranovstayo did not have the unilateral right to determine the nature of the offense.

c. Vormund´s fear was not well founded

Vormund´s fear was not well founded. Fear is well-founded if the individual can establish, to a reasonable degree, that their continued stay in their country of origin has become intolerable to him for reason of race, religion, nationality, membership of a particular social group or political opinion, or would for the same reasons be intolerable if he returned there.[72] An applicant for refugee status must normally show good reason why he fears persecution.[73] Fear of prosecution pertains to a punishable act committed out of political motives, and with anticipated punishment in conformity with the general law of the country concerned will not in itself make the applicant a refugee.[74] Vormund´s continued stay in Aprepluya was not intolerable; she committed three offenses punished beforehand under Aprepluya´s National Penal Code, and she was being legally prosecuted for such offenses.[75] Vormund had no good reason why she feared persecution since she said her fear was from being arrested,[76] which means she had fear of prosecution, which pertains to a punishable act committed out of political motives. Therefore, Vormund could not seek asylum since her fear was not well founded.

2. Vormund is not entitled to receive protection.

[70] Statement of Agreed Facts, ¶ 21.

[71] Statement of Agreed Facts, ¶ 21.

[72] Refugees Handbook, *supra* note 57, ¶ 42; Refugee Convention, *supra* note 56, art. 1 (A) 2.

[73] Refugees Handbook, *supra* note 57, ¶ 45

[74] Refugees Handbook, *supra* note 57, ¶. 84

[75] Statement of Agreed Facts, ¶ 32.

[76] Statement of Agreed Facts, ¶ 21.

Ranovstayo is not entitled to give Vormund protection since (a) Ranovstayo has not obligation of non-refoulement; (b) Vormund has committed a serious non-political crime; and (c) Vormund was not at risk of death or injury.

a. Ranovstayo has not obligation of non-refoulement

Even if Vormund met the requirements to be considered an asylum seeker, Vormund is not a refugee and Ranovstayo has no obligation of non-refoulement. Article 33 (1) of the CRSR only applies to refugees.[77] Only persons outside their country of nationality can be defined as refugees and only if the country is unable or unwilling to avail itself of the protection.[78] It cannot apply to persons who remain inside their country of origin.[79] The applicant must be outside their State of nationality.[80] There are no exceptions to this rule.[81] International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country.[82] Mission premises are still considered territory of the receiving state.[83]

Vormund must not receive protection from the non-refoulement obligation since she was inside her country of nationality,[84] within its territorial jurisdiction, and there is no evidence of the unwillingness of Aprepluya to avail her the protection.[85] Therefore, Vormund was not protected by such prohibition.

---

[77] Refugee Convention, *supra* note 56, art. 33 (1).

[78] Refugee Convention, *supra* note 56, art. 1 (A) 2.

[79] Refugees Handbook, *supra* note 57, ¶ 88.
House of Lords 9 December 2004, Regina v Immigration Officer at Prague Airport and another ex parte European Roma Rights Centre and others, [2004] United Kingdom House of Lords 55, ¶ 64; Refugee Convention, *supra* note 56, art. 1 (A) 2.

[80] Refugees Handbook, *supra* note 57, ¶ 88.

[81] Refugees Handbook, *Ibid.*

[82] Refugees Handbook, *Ibid.*

[83] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Volume 2, Yearbook of the International Law Commission 31 (2001). Article 40.

[84] Statement of Agreed Facts, ¶ 20.

[85] Statement of Agreed Facts.

b. Vormund has committed a serious non-political crime

Even if Vormund were considered a refugee, she committed a serious non-political crime. The provisions of CRSR shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a serious non-political crime.[86] A "serious" crime must be a capital crime or a very grave punishable act.[87] The very rationale of the article is to not shield persons accused of serious crimes against criminal prosecution.[88] Vormund does not deserve international protection insofar as she committed a serious non-political crime since its "violation of a governmental non-disclosure agreement" is the most serious crime.[89]

c. Vormund was not at risk of death or injury

Even if she met all the requirements for protection, since Vormund was not at risk of death or injury, Ranovstayo cannot grant her protection. The granting of diplomatic asylum is possible if the fugitive faced the "risk of death or injury as the result of lawless disorder".[90] There is not a requirement under human rights law to grant diplomatic asylum to persons outside situations in which they faced serious injury.[91] Even a threat of indefinite detention is not enough to justify or require such a grant.[92] International law "permits" the granting of asylum if it was clear that the receiving state intended to subject the refugee "to treatment so harsh as to constitute a crime against humanity".[93]

---

[86] Refugee Convention, *supra* note 56, art. 1 (F)

[87] Refugees Handbook, *supra* note 57, ¶ 155

[88] UNHCR Resettlement Handbook: Chapter 3 - Refugee Status and Resettlement, ¶ 3.6.6, available at: https://www.unhcr.org/protection/resettlement/3d464c954/unhcr-resettlement-handbook-chapter-3-refugee-status-resettlement.html; See also UNHCR, 'Addressing Security Concerns without Undermining Refugee Protection, UNHCR's Perspective', Position Paper, 29 November 2001, ¶ 3.

[89] Clarifications, ¶4.

[90] "B" & Others v. Secretary of State for the Foreign & Commonwealth Office, [2004] EWCA Civ 1344, United Kingdom: Court of Appeal (England and Wales), 18 October 2004., ¶ 88. (hereinafter "B & Others").

[91] "B" & Others, *ibid*., ¶ 89.

[92] "B" & Others, *supra* note 90, ¶¶ 95, 88.

[93] "B" & Others, *supra* note 90, ¶ 88.

Ranovstayo was not entitled to give Vormund protection since Vormund did not face the risk of death or injury as the result of lawless disorder[94] and Aprepluya´s treatment was not harsh.[95] Therefore, the granting of asylum constituted a breach under international law.

B. Ranovstayo violated it obligations under International law

1. Ranovstayo went against General Principles of Sovereignty and Non-intervention

Ranovstayo´s granting of asylum constitutes a breach of the principles of non-intervention and sovereignty recognized under the UN Charter.[96] Failing the existence of a permissive rule to the contrary, a state may not exercise its power or jurisdiction in any form in the territory of another State[97] and outside its territory except by virtue of a permissive rule derived from international custom or a convention.[98] Restrictions upon the independence of States cannot be presumed.[99] However, asylum cannot be construed as a protection against the regular application of the laws and jurisdiction of the country.[100] It would authorize the diplomatic agent to obstruct its application whereas it is his duty to respect them.[101] In the case of diplomatic asylum, the refugee is within the territory of the State where the offence was committed[102] and such a decision involves a derogation from the sovereignty of that State.[103] It withdraws the offender from its jurisdiction and constitutes an intervention in matters which are exclusively within its competence.[104] Such a derogation from territorial sovereignty cannot

[94] Statement of Agreed Facts, ¶¶ 20, 32.

[95] Statement of Agreed Facts, ¶ 20.

[96] Charter of the United Nations, 24 October 1945, 1 UNTS XVI, article 2(1), 2 (7).

[97] '*Lotus*' (France v Turkey). 7 September 1927, S.S. PCIJ Series A. No. 10, p. 18-19. (hereinafter "*Lotus*")

[98] *Lotus*, *ibid.*, p. 18-19.

[99] *Lotus*, *supra* note 97, 4, p 18.

[100] *Asylum Case, supra* note 68. p. 284

[101] *Asylum Case, Ibid.*

[102] *Asylum Case*, *supra* note 68. p. 274

[103] *Asylum Case, supra* note 68. p. 275

[104] *Asylum Case, Ibid.*

be recognized unless its legal basis is established in each particular case.[105] The sending State owes to the receiving State the obligation not to interfere in the internal affairs of the latter in cases in which refugees sought asylum in embassies.[106] Thus, when states act within the territory of another state, they breach the rule of non-intervention and act beyond their jurisdiction.[107]

To that degree, since, there is not a permissive rule, and since the Consulate and Vormund were in Apreluyan territory,[108] Ranovstayo´s granting of asylum intervened in Aprepluya´s internal matters which are exclusively within its competence,[109] it obstructed regular application of laws[110], and involved a derogation from its sovereignty since it withdrew Vormund, as offender, from Aprepluya´s jurisdiction without legal basis. Therefore, it violated its international law obligations under sovereignty and non-intervention.

2. Ranovstayo violated its obligations under the Vienna Convention on Consular Relations (VCCR) and the Vienna Convention on Diplomatic Relations (VCDR)

Ranovstayo violated its obligations under the VCCR and the VCDR since it (a) did not respect Aprepluya´s laws and interfered with its internal affairs; (b) used its consular premises in a manner incompatible with the exercise of consular functions; and (c) abused its privileges and immunities.

a. Ranovstayo did not respect Aprepluya´s laws and interfered with Aprepluya´s internal affairs

Ranovstayo did not respect Aprepluya´s laws and regulations and interfered with its internal affairs, which constitutes a breach of its obligations. The VCDR and the VCCR states the duty of persons enjoying privileges and immunities to respect the laws of the receiving State and to

---

[105] *Asylum Case, Ibid.*

[106] European Court of Human Rights. Al-Saadoon v. United Kingdom, App. No. 61498/08, 51 Eur. H.R. Rep. 9, ¶ 140 (2010).

[107] den Heijer, Maarten. "Europe and Extraterritorial Asylum." Ph.D. diss., Leiden University, 2011. p. 26.

[108] Statement of Agreed Facts, ¶¶ 3, 20.

[109] Statement of Agreed Facts. ¶¶ 22, 32, 33, 34.

[110] Statement of Agreed Facts, ¶¶ 22, 32.

not interfere in the internal affairs of the State.[111] Since Ranovstayo´s consulate failed to hand over Vormund to the Aprepluyan authorities,[112] it constitutes a breach of its obligation to respect Aprepluya´s laws and to not interfere with its internal affairs. Therefore, Ranovstayo violated international law.

b. Ranovstayo used its consular premises in a manner incompatible with the exercise of consular functions

Ranovstayo used its consular premises in a manner incompatible with the exercise of consular functions, which constitutes a violation under international law. The VCCR states that consular premises shall not be used in any manner incompatible with the exercise of consular functions, while the VCDR further states that they must not be used in any manner incompatible by international law or special agreements.[113] The element of 'incompatibility' has been interpreted as prohibiting activities which fall outside the diplomatic and consular functions[114] and which constitute a crime under the law of the receiving state.[115] Then, such articles preclude the grant of diplomatic asylum[116] since it would violate international law,[117] in particular Article 55 of the VCCR.[118] Ranovstayo violated its treaty's duties under international law since its granting of asylum consisted in offering shelter to a fugitive which is not an act within consular functions.

c. Ranovstayo abused its prerogatives and immunities

---

[111] United Nations. Vienna Convention on Diplomatic Relations. Done at Vienna on 18 April 1961. Entered into force on 24 April 1964. Treaty Series, vol. 500, p. 95, article 41 (1). (hereinafter "VCDR"); United Nations. Vienna Convention on Consular Relations. Done at Vienna on 24 April 1963. Entered into force on 19 March 1967. Treaty Series, vo1. 596, p. 261, article 55 (1). (hereinafter "VCCR")

[112] Statement of Agreed Facts, ¶¶ 22, 32, 34.

[113] VCCR, *supra* note 111, article 55 (2); VCDR, *supra* note 111. article 41 (3).

[114] VCCR, *supra* note 111, article 5; VCDR, *supra* note 111. article 3 (1).

[115] B.S. Murty, *The International Law of Diplomacy, The Diplomatic Instrument and World Public Order*, Dordrecht: Martinus Nijhoff (1989), p. 417.

[116] See, for example, the Bulgarian assertion to this effect: 30 UN GAOR 6th Comm 138 UN Doc A/C 6/SR 1552 (1975).

[117] "B" & Others, *supra* note 90, ¶ 84.

[118] "B" & Others, *supra* note 90, ¶ 88.

Ranovstayo abused its prerogatives and immunities given by the VCDR and the VCCR. Granting asylum constituted an abuse of the inviolability of diplomatic premises and it would have "infringed the obligations under public international law."[119] The rules of diplomatic and consular law constitute a self-contained regime that foresees the possible abuse of diplomatic privileges and immunities.[120] Utilization of an embassy as a sanctuary has been criticized as being an abuse of the diplomatic premises.[121] In that sense, Ranovstayo committed an abuse of its diplomatic privileges and immunities since it used its premises exceeding its authority and using it in a manner incompatible with their functions and the rules of international law analyzed abroad, reason why it constituted a violation of international law.

III. THE COURT MAY NOT EXERCISE JURISDICTION OVER RANOVSTAYO'S COUNTER-CLAIM CONCERNING THE MANTYAN AIRWAYS AIRCRAFT

The counter-claim is inadmissible since (A) the Court has no jurisdiction, regarding Aprepluya´s military reservation; (B) there is no direct relation between the claim and the counter-claim; and (C) the aircraft issue must be brought before the ICAO Council first.

A. Ranovstayo´s Counter-claim is excluded from the Court's Jurisdiction thanks to the Military Activities Reservation

The definition of the term "military activities" involves the facts of the counter-claim. Pursuant to Aprepluya's optional clause, the Court does not have jurisdiction to entertain the claim, since it is a dispute related to military activities, which fall into the scope of the reservation. Disputes concerning military activities are exemplified in article 298(1)(b) of the United Nations Convention on the Law of the Sea as a special category of disputes.[122] Although this article relates to reservations regarding the International Tribunal of the Law of the Sea, and not the Court´s optional clause declaration, both are manifestations of sovereignty. Thus, it seems

[119] "B" & Others, *supra* note 90, ¶ 96.

[120] *United States Diplomatic and Consular Staff in Tehran*, 24 May [1980], I.C.J. Reports 1980, ¶ 86.

[121] Russian and Japanese delegates. Sixth Committee of the U.N., 29 U.N. GAOR. 6th Comm. 247. 250, U.N. Doc. AIC.6ISR.1506 (1974) (remarks of Mr. Yokota. delegate from Japan): 29 U.N. GAOR, 6th Comm. 259. U.N. Doc. AIC.6/SR.1509 (1974) (remarks of Mr. Kolesnik, delegate from the USSR).

[122] Moreover, the UNCLOS dispute settlement is compulsory, just as the optional clause declaration under examination is, therefore, though under a special regime, they are similar sovereign manifestations.

reasonable to consider that, if a reservation concerning military activities or armed forces is valid and expressly recognized by a treaty, a similar manifestation of sovereignty, containing a reservation under article 36(2) of the Statute[123] would be valid. Indeed, this is supported by state practice.[124]

Furthermore, the term "military" can be understood as referring to all branches of the forces, this is, the land forces, the naval forces, and the air forces.[125] This definition would consider military activities, as those activities carried out by the air force and the other forces. However, the Court has previously noted, that when analyzing a declaration of this kind, "it cannot base itself on a purely grammatical interpretation of the [reservation] text". Therefore, the Court must seek a reasonable way of reading the text.[126] Moreover, the Court has noted that, the regime of interpretation of these sorts of declarations made under article 36(2) of the Statute is not identical with the one of the Vienna Convention on the Law of Treaties relevant articles.[127] For that reason, the "most restrictive scope interpretation" of reservations should not be considered.[128]

Aprepluyas´s reservation refers to any disputes "concerning Aprepluyan military activities,[129] which means that the words of the reservation exclude disputes whose subject matter is a military activity and disputes concerning military activities. The shoot-down of the aircraft was

[123] "Statute of the International Court of Justice." *The International Law Quarterly* 1, no. 1 (1947): 117-31. art. 36(2).

[124] C. Tomuschat 'Article 36' in Andreas Zimmermann, Christian Tomuschat and Karin Oellers-Frahm (eds) *The Statute of the International Court of Justice*: A Commentary (OUP Oxford 2012, 2nd ed.) p. 411. Many States avoid submitting to the jurisdiction of the Court any activities related to their military forces, such as Djibouti, Germany, Greece, Honduras, Hungary, India, Kenya,Malawi, Malta, Mauritius, Nigeria, Sudan.

[125] Art. LXI (61) of Hague Rules of Air Warfare, Drafted by a Commission of Jurists at The Hague, December 1922 - February 1923. Although this instrument was never formally adopted, its articles were drafted by an international commission of jurists and military experts and for that reason, it has been recognized as an authoritative approach. Marcus Hanke, Heinz. «The 1923 Hague Rules of Air Warfare.» *International Review of the Red Cross no. 3*, 1991: 139-172, p. 28.

[126] *Anglo-Iranian Oil Co. Case* (United Kingdom v. Iran), [1952] ICJ Reports, p. 105.

[127] *Fisheries Jurisdiction Case* (Spain v. Canada), [1998] ICJ Reports, p. 25,¶ 46.

[128] *Fisheries Jurisdiction Case. Ibid,* p. 25 ¶ 44.

[129] Statement of Agreed Facts, ¶ 49.

executed by an Air Force fighter jet,[130] and it was taken in a context of a possible terrorist attack scenario.[131] Therefore, the shoot-down of the aircraft is in the context and scope of military activities since the Air Force is regarded as part of the military. Furthermore, in the absence of the air-force intervention, no accident would have taken place and no dispute would have arisen. Therefore, the subject matter of this dispute, due to its strong relation to the military activity deployed, is covered by the military reservation, and deprives the Court of jurisdiction.

B. Even if the Court finds a basis for jurisdiction, rejecting Aprepluya´s reservation, the counter-claim has no direct connection with the subject-matter of the claim

Ranovstayo´s counter-claim fails to fulfill the direct connection requirement for its admissibility. As a requirement of admissibility, a counter-claim must have a direct connection with the subject-matter of the claim.[132]

1. There is no direct factual connection between the principal claim and the counter-claim

In order to determine it, The Court has considered in different occasions, (i) the nature of the facts where both claims rest; (ii) if the claim and the counter-claim have the same legal aim, and (iii) that the connection between the claims can be seen, if certain conditions or facts required for the prosperity of the claim are dependent on facts raised by the counter-claim. There are two guiding factors to establish the factual connection: the first considers the moment in time during which the conduct at issue happened, the second considers the geographical location.[133] It will be proven that there is no factual connection between the facts of the principal claim and the counter-claim.

---

[130] The Air Force is widely considered to be a "part of a country's military forces that uses aircraft and fights in the air" *Cambridge Advanced Learner's Dictionary & Thesaurus,* 3rd ed. (Cambridge: Cambridge University Press, 2008), s.v. "air-force".

[131] Statement of Agreed Facts, ¶ 42

[132] Rules of Court: Adopted on 14 April 1978." The American Journal of International Law 73, no. 4 (1979) (hereinafter "Rules of Court"), art. 80.

[133] *Certain Activities Carried out by Nicaragua in the Border Area* (Nicaragua v. Costa Rica), [2013] ICJ Reports, p. 212

a. There is no time and spatial relation between the facts

Ranovstayo´s counter-claim is inconsistent with the procedural rules of Court. Following article 80, there are two basic requirements to follow for a counter-claim admissibility: (i) that the Court finds jurisdiction over the counter-claim; and (ii) that there is direct connection with the subject-matter of the claim. [134] Thus, Ranovstayo´s counter-claim does not comply with the admissibility requirements established in the Rules of Court, and as such, the Court must decline to entertain the counter-claim.

The facts on which Ranovstayo´s counter-claim is based, are not related to the facts of Aprepluya´s claim, neither with the location nor with the time relation. The Court has analyzed considerations of time and space to reveal if there is sufficient connection between the counter-claim and the principal claim.[135] The facts where the respondent had to relied upon, must belong to the same factual complex, which includes "the same geographical area an the same time period".[136] The said area demands a level of specificity and connection that would exclude unrelated facts occurring in the same place, as the Court has established.[137] The Ranovstayo´s entry regulation was taken, even in a broad sense, in Ranovstayo´s territory; in contrast, the aircraft accident happened between Aprepluya´s Segura Province and Aprepluya´s Beauton. Regarding the time requirement, the entry regulation was taken on 22 April 2018 and the crash happened in the morning of 26 June 2018. Thus, although the counter-claim is time related to the principal claim, it fails to pass the location requirement, and is therefore inadmissible according to article 80 of the Rules of Court.

b. The nature of the facts, on which the claims are based, differ

Ranovstayo´s counter-claim is based on facts of a different nature from those of the principal claim. The facts which give basis to the legal ground of the claim and the counter-claim have

[134] "Rules of Court. *supra* note 132, art. 80(1).

[135] *Certain Activities Carried out by Nicaragua in the Border Area (Nicaragua v. Costa Rica)*, [2013] ICJ Reports, p. 212

[136] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, (Nicaragua v. Colombia), [2017], ICJ Reports p. 297 ¶ 24.

[137] *Construction of the Road in Costa Rica Along the San Juan River*, (Costa Rica v. Nicaragua). [2013], ICJ Reports p. 213, ¶ 24. Where even if the facts relied upon happened near the *San Juan* River "the geographical point of reference of each Party´s claims is different".

different nature. This requirement implies that the facts must be "similar types of conduct".[138] Ranovstayo´s entry regulation is an act of the state, while Aprepluya´s aerial incident is a civil/military accident, both of which in nature are not related, nor in the voluntary nor in their internal law category. Therefore, there is a very little factual connection indeed, and the inadmissibility of the counter-claim appears to be conclusive.

2. The claim and counter-claim have no legal connection nor do they pursue the same legal aim

a. The counter-claim relies on different and unrelated legal instruments

Besides concluding the lack of factual connection, there is no legal connection between Ranovstayo´s counter-claim and Aprepluya´s principal claim. The Court has stated that the legal principles or instruments relied upon for the claims must be directly related.[139] The first claim is related to a sanitary measure (governed by the WHO´s IHR), while the second claim is related to an aircraft accident resulting from a possible security threat (governed by internal law and multilateral aerial legal instruments), the invocation of an entirely new instrument in the counter-claim, as in this case, may be a basis for rejecting a sufficient connection of the counter-claim.[140] Thus, the counter-claim and the principal claim are not based on the same corpus of law, and the counter-claim fails to fulfill the admissibility requirements.

b. The counter-claim and the principal claim do not have the same legal aims

Aprepluya´s principal claim and Ranovstayo´s counter-claim do not have the same legal aims, and as such, are not legally related. When determining the legal connection of the principal claim and the counter-claim, it has to be seen if the claims pursue the same legal aim.[141] The legal aim, appears to comprise, according to the Court, two elements: the legal purpose (e.g.

---

[138] *Certain Activities Carried out by Nicaragua in the Border Area, supra* note 135. p. 212

[139] *Certain Activities Carried out by Nicaragua in the Border Area*, *ibid*. p. 212

[140] S. Murphy 'Counter-claims Article 80 of the Rules' in Andreas Zimmermann, Christian Tomuschat and Karin Oellers-Frahm (eds) *The Statute of the International Court of Justice: A Commentary* (OUP Oxford 2012, 2nd ed.) p. 1011.

[141] *Case Concerning Armed Activities on the Territory of the Congo*, (DRC v. Uganda), [2005] ICJ Reports, p. 259.

establish responsibility) and the same legal basis of that legal purpose.[142] Whereas both Aprepluya and Ranovstayo seek a declaration of responsibility, the first claim seeks the declaration of responsibility for infringement of the IHR, and the consequent damages. The second claim seeks a declaration of responsibility for a possible multilateral treaty breach, which caused no direct harm to Ranovstayo. Therefore, the parties are not seeking the same legal aims. Both of which rely on different instruments and principles, besides the secondary norms of responsibility. Therefore, there is no legal direct relation.

C. There is a jurisdiction overlap, and the aircraft issue must be brought before the ICAO Council first

The Court has no jurisdiction since the ICAO Council has a more specific -consented- base for jurisdiction. If Aprepluya´s reservation does not to apply, there are two sources of jurisdiction which appear to be overlapping, the ICJ´s jurisdiction and the ICAO Council jurisdiction; and the latter must prevail. The Court[143] has recognized in various occasions[144] the *lex specialis* conflict solution rule. When there are two applicable provisions, the special one will prevail against the general one.[145] The first source of jurisdiction is the optional clause declaration, while the other is article 84 of the Convention on International Civil Aviation,[146] by virtue of which the ICAO Council has jurisdiction to decide disputes relating to the interpretation or

[142] For instance, in the *Oil Platforms case* (Islamic Republic of Iran v. United States of America), [1998] ICJ Reports, p. 205, para 38 the same legal end was to establish legal responsibility for violations of the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran of 1955. Whereas, in the *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Yugoslavia) Order of 17 December 1997, [1997] ICJ Reports, p. 258 ¶ 35 the "same legal aim" was to establish legal responsibility for violation of the Genocide Convention. It is clear that the simple declaration of responsibility is not enough to establish the relationship.

[143] Before the ICJ´s recognition, the PCIJ acknowledged the *lex specialis maxim* in *Mavrommatis Palestine Concessions case* (Greece v. Great Britain), [1924], PCIJ Series A, No. 2, p. 31. Where it, precisely, applied the principle to a jurisdiction conflict, p. 31.

[144] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996], ICJ Rep. 226, ¶ 25 p. 240; *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America) [1986], ICJ Reports, p. 137. The *maxim* has even been expressly recognized in the Article 55 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts.

[145] *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), [2007] ICJ Reports, ¶ 401 p. 209.

[146] Convention on International Civil Aviation (signed 7 December 1944, entered into force 4 April 1947) [1947], United Nations, Treaty Series, vol. 15, No. 102, art. 44 [hereinafter ICAO Convention].

application of the Convention. In this case, this provision, although posterior, would modify[147] the general acceptances of jurisdiction of both parties under article 36(2) of the Statue. Therefore, following the *lex specialis* principle, article 84 of the ICAO Convention would prevail as the more specific source in this case, and both States are bound to follow the special jurisdictional rule, implying the no jurisdiction of the Court.

IV. EVEN IF THE COURT WERE TO EXERCISE JURISDICTION OVER THE COUNTER-CLAIM, APREPLUYA DID NOT VIOLATE INTERNATIONAL LAW BY SHOOTING DOWN THE AIRCRAFT

A. Aprepluya did not violate the article 3 *bis* of the ICAO Convention

1. The Article 3 *bis* of the ICAO Convention is not applicable

Aprepluya did not violate the ICAO Convention since the Convention was not applicable in the aircraft incident. Article 44 of the ICAO Convention states as an objective of the Organization to develop the principles and techniques of international aviation, to ensure the safe and orderly growth of international civil aviation throughout the world, and to promote safety of flight in international aviation.[148] According to the Montreal Convention, international flights can be defined as those which are flying from or to the State of registration via another State.[149] Article 3 bis has codified the rule that prohibits States from the use of force against a foreign State registered civil aircraft,[150] the article establishes that States "recognize" because it implies the prohibition of use of force against other State´s civil aircrafts that would consequently breach article 2(4) of the UN Charter. Further, article 1 of the ICAO Convention states that every State has complete and exclusive sovereignty over the airspace above its

[147] Modify, although not overrule the general rule as explained in the ILC, 'Report of the Study Group of the International Law Commission, Fragmentation of International Law: difficulties arising from the diversification and expansion of international law' (1 May-9 June and 3 July-11 August 2006) UN Doc A/CN.4/L.682. p. 49 ¶ 88.

[148] Convention on International Civil Aviation (signed 7 December 1944, entered into force 4 April 1947) [1947], United Nations, Treaty Series, vol. 15, No. 102, art. 44

[149] Trapp, Kimberley. «Uses of Force against Civil Aircraft.» *European Journal of International Law Blog*, 2011. (hereinafter "Trapp")

[150] It came precisely after the former USSR shot-down of the Korean Boeing 747-200. Konert, Anna. «The Development of Civil Aviation and Its Impact on Sovereignty.» In Behind and Beyond the Chicago Convention The Evolution of Aerial Sovereignty, Pablo Mendes de Leon y Niall Buissing (eds.), 45-51. Alphen aan den Rijn: Wolters Kluwer, 2019.

territory.[151] It has been further said that, when interpreting a treaty obligation, if the intention of the Parties remains doubtful, a provision shall be interpreted in the way most favorable to the freedom of States.[152] This interpretation, however, must not go against "plain terms of the article".[153] Nonetheless, the interpretation of a treaty provision, has to consider the principle of effectiveness, by virtue of which treaties should be interpreted in consideration of the objects and purposes of the treaty, "not to supplementing the product of agreement by whatever would make it more effective".[154]

Article 3 bis does not define the scope to which the article has to be applied as it considers the prohibition to apply to "civil aircraft in flight". Facing this interpretative problem, the effectiveness interpretation could be applied. Since the ICAO Convention is intended to develop principles and techniques of international aviation,[155] while respecting the exclusive sovereignty of states over their airspace, it appears that the intention of the Parties was to codify the prohibition of article 2(4) of the UN Charter, which means that the prohibition would make sense only if the use of force is against a foreign State registered civil aircraft. In the Aprepluya´s Aircraft incident, the A7P-BB4 belonged to an Aprepluyan private airline. It was piloted by Hye, an Aprepluyan national, and its interception and accidental shoot-down occurred on Aprepluya´s territory. Furthermore, if the effectiveness fails to establish the scope of article 3 bis, restrictive interpretation is applied. Thus, the prohibition must be interpreted to apply only to foreign State registered civil aircrafts and in international aviation. Therefore, Aprepluya´s incident would not fall under the scope of the article 3 bis.

2. Even if article 3 *bis* (2) were applicable, Aprepluya acted under a circumstance precluding wrongfulness

a. Aprepluya´s shoot-down was taken as a self-defence measure under article 51 of the UN Charter

---

[151] Convention on International Civil Aviation (signed 7 December 1944, entered into force 4 April 1947) [1947], United Nations, Treaty Series, vol. 15, No. 102, art. 1.

[152] *Territorial Jurisdiction of the International Commission of the River Oder* (United Kingdom v. Poland), [1929], PCIJ Series A, No. 23, p. 26.

[153] *Wimbledon case*, (United Kingdom and others v. Germany), [1923], PCIJ Series A, No. 1, p. 23.

[154] Orakhelashvili, Alexander. *The Interpretation of Acts and Rules in Public International Law*. New York: Oxford Monographs in International Law, 2008. p. 397.

[155] ICAO Convention, *supra note 146.* art. 44.

Aprepluya´s behaviour of forcing the landing of the A7P-BB4 and the subsequent accident does not breach article 3 *bis* (2) since Aprepluya acted under self-defence. The wrongfulness of a State act is precluded if the act constitutes a measure of self-defence.[156] Since no subject of self-defence is mentioned[157] in article 51 of the UN Charter, a State can use force in self-defence against nonstate actors[158] if it is lawful. The term lawful on the article 21 implies that the requirements of proportionality and necessity must be observed.[159] The latter prescribes that self-defence must be used only where no peaceful alternatives[160] exists,[161] and immediate notification to the Security Council must take place. Further, it is required that the threat be imminent. This implies that it is about to materialize,[162] or will materialize in a short period of time, and further, that the threat is grave and likely to occur.[163] Self-defense against a nonstate actor would also require a proportional response. Proportionality implies that the defensive force must not go beyond what is necessary to repeal the attack.[164] An armed attack under article 51, can be understood as an attack "presently taking place",[165] from "wherever they may come",[166] and even with devices as hijacked civil airlines, where the intention fulfills the

[156] ILC, *supra* note 53, art. 21.

[157] "There is, with respect, nothing in the text of Article 51 that thus stipulates that self-defence is available only when an armed attack is made by a State" *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Separate Opinion of Judge Higgins, [2004], ICJ Rep., ¶ 33.

[158] Trapp, Kimberley. «Back to Basics: Necessity, Proportionality, and the Right of Self-Defence against NonState Terrorist Actors.» *The International and Comparative Law Quarterly* (Cambridge University Press) 56, nº 1 (2007): 141-156, p. 145.

[159] Crawford, James. *State Responsibility: the general part*. New York: Cambridge University Press, 2013. p. 289. (hereinafter "Crawford, S*tate Responsibility: the general part")*

[160] So that there are no peaceful or diplomatic mechanisms to avoid the threat.

[161] Akande, Dapo, & Thomas Lieflämder. «Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense.» *The American Journal of International Law* (Cambridge University Press) 107, nº 3 (July 2013): 563-570.

[162] Akande, D. & Liefländer T., *ibid*. p. 565.

[163] Akande, D. & Liefländer T., *ibid*. p. 566.

[164] Trapp*, supra* note 158, (2007), p. 146.

[165] Zemanek, Karl. «Armed Attack.» *Max Planck Encyclopedia of Public International Law*. October de 2013. (Hereinafter "Armed Attack")

[166] Murphy, Sean. «Terrorism and the Concept of "Armed Attack" in Article 51 of the U.N. Charter.» *Harvard International Law Journal* 43, nº 1 (2002).

requirement of "arms".[167] In the framework of self-defence against nonstate actors, article 2(4) of the UN Charter has to be respected in the sense that there cannot be a violation of a State's territorial integrity.[168] Furthermore, article 3 bis (2) states that although States must refrain from resorting to the use of weapons against civil aircraft, the provision shall not "be interpreted as modifying in any way the rights […] set forth in the Charter". This final provision includes an exception to the prohibition when considering self-defence, which is not only a circumstance precluding wrongfulness according to the ILC articles[169] and is a right according to the UN Charter.[170] Besides, a reasonable mistake of fact, when deciding to use force in self-defence, would excuse that mistaken use of force.[171] Finally, these determinations must be made "*ex ante"*.[172]

Aprepluya´s behaviour regarding the aircraft, examined beforehand of the event, is covered by a reasonable mistake of force in self-defence, and therefore precluded of wrongfulness. The measure was taken against a suspected terrorist aircraft, presumably flying against the government buildings[173] just after the INTERPOL alerted on possible terrorist attack. The measure was necessary, since the short burst was intended to force landing,[174] and all forms of communication failed.[175] The suspected aircraft was stopped just 12 km before the presidential palace and Aprepluya´s decision was imminent since there was no other option before the apparent attack. Lieutenant Defesas´s order was moreover proportional insofar as the order of fire was intended to force landing, and never to harm the crew. Moreover, Aprepluya did not violate article 2(4) of the UN Charter since the aircraft incident never left Aprepluya´s territory and therefore there was no use of force against any other State´s territorial integrity.

---

[167] Zemanek, Armed Attack, *supra* note 165, ¶ 21.

[168] Trapp*, supra* note 158., (2007), p. 145.

[169] ILC, *supra* note 53, article 21.

[170] Crawford, *State Responsibility: the general part. supra* note 159 p. 290.

[171] Schmitt, Michael (ed.). *Tallinn Manual 2.0 On the International Law Applicable to Cyber Operations.* Cambridge: Cambridge University Press, 2017.

[172] Schmitt, *Tallinn Manual 2.0, Ibid.* p. 347.

[173] Statement of Agreed Facts, ¶ 42.

[174] Statement of Agreed Facts, ¶ 42.

[175] Statement of Agreed Facts, ¶ 43.

Furthermore, Aprepluya notified the Security Council about the incident, following article 51 procedure.[176] Aprepluya acted in exercise of the caveat made at the final part of article 3 *bis* (a). In conclusion, Aprepluya did not violate art. 3 *bis* since Aprepluya acted under a reasonable self-defence mistake.

b. Even if the Self-defence argument were rejected, the wrongfulness of the shoot-down of the aircraft is precluded by distress

The interception of the unauthorized civilian aircraft, which raised serious suspicions of a terrorist attack, does not constitute a breach of the obligation contained in article 3 *bis* of the ICAO Convention. A breach of an international obligation occurs when an act of that State is not in conformity with what is required by the obligation.[177] Although, to conclude whether there was a breach, the analysis must take in consideration the circumstances that may preclude the wrongfulness of that act of the State.[178] Article 3 *bis* sets certain standards, which are necessary to verify if a State has acted according to the provision. Art. 3 *bis* (b) establishes that in the exercise of its sovereignty, States can require the landing of civil aircrafts that fly above the territory without authorization. Furthermore, under the same rule, it authorizes the affected State to take any appropriate means consistent with the prohibition of using weapons against civil aircrafts. Therefore, Aprepluyan Aircraft incident is precluded by Distress.

When an individual, whose acts are attributable to a State, is in a situation of peril, personally or in relation to persons under his care, it is considered that the apparent breach of his conduct in respect to the obligation is precluded of wrongfulness.[179] Distress as a circumstance precluding wrongfulness is concerned with the objective of "saving people's lives".[180] Furthermore, it can only preclude wrongfulness when the goal of protecting lives outweighs the other interests in the circumstances. The Draft articles on Responsibility of States for Internationally Wrongful Acts must be read "in the light of the accompanying commentary,

[176] Clarifications, ¶ 5.

[177] ILC, *supra* note 53, commentary to article 12.

[178] ILC, *supra* note 53, commentary to article 12.

[179] ILC, *supra* note 53, commentary to article 24.

[180] ILC, supra note 53, commentary to article 24 para 10, p. 80.

and preferably alongside the preparatory work".[181] In the context of circumstances precluding wrongfulness it has been said that "an innocent mistake of fact" might qualify as a circumstance precluding wrongfulness.[182]

Under the circumstances surrounding the accident, the requirements of distress are fulfilled. The danger of a terrorist attack was apparently real.[183] Seven days before the accident, Aprepluya was warned by INTERPOL that a clandestine organization was planning a terror attack on the national capital.[184] The aircraft was flying in the direction of Beauton[185], what seemed like a possible target of the terrorist attack. There were no other solutions available and "no other reasonable way"[186] for preventing, what it was considered at that moment, a possible terrorist attack. When the decision to force the landing of the aircraft was made, the possibility of a terrorist attack against a civilian building clearly outweighed the possibility of the tragic accident, which was not intended. Therefore, Aprepluyan acts did not breach the obligation of article 3 *bis* (b) insofar as distress precludes the wrongfulness of that conduct.

[181] Crawford, *State Responsibility: the general part. supra* note 159, p. 87.

[182] UN General Assembly, *Report of the International Law Commission, Second report on State responsibility*, 17 March 1999, A/CN.4/498 and Add.1–4, ¶ 262, p. 66.

[183] Statement of Agreed Facts, ¶ 39.

[184] Statement of Agreed Facts, ¶ 38.

[185] Statement of Agreed Facts, ¶ 41.

[186] ILC, *supra* note 53, article 24(1).

PRAYER FOR RELIEF

The State of Aprepluya respectfully requests this Court to declare that:

I. Ranovstayo´s entry regulation violated international law and Aprepluya is entitled to compensation; and

II. Ranovstayo´s refusal to hand Vormund to the Aprepluyan authorities violated international law; and

III. The Court may not exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft; and

IV. In any event, Aprepluya did not violate international law by shooting down the aircraft.

Respectfully submitted,

Agents of the Government of the State of Aprepluya

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE, THE NETHERLANDS

THE 2021 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

CASE CONCERNING THE J-VID-18 PANDEMIC

UNITED REPUBLIC OF APREPLUYA

(APPLICANT)

v. **DEMOCRATIC STATE OF RANOVSTAYO**

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

I. TREATIES, CONVENTIONS AND OTHER INTERNATIONAL INSTRUMENTS

II. INTERNATIONAL COURT OF JUSTICE AND PERMANENT COURT OF INTERNATIONAL JUSTICE

III. INTERNATIONAL DECISIONS AND ARBITRAL AWARDS

IV. DOMESTIC DECISIONS AND STATUES

V. UNITED NATIONS DOCUMENTS

VI. TREATISES AND ARTICLES

VII. INTERNATIONAL MATERIALS

STATEMENT OF JURISDICTION

By virtue of the Declarations deposited in the Secretary-General of the United Nations on the 10 March 2003 and 7 January 2002 respectively, the Democratic Republic of Ranovstayo ["**Ranovstayo**"] and the United Republic of Aprepluya ["**Aprepluya**"], under Article 36 (2) of the Statute of the International Court of Justice ["**ICJ**"],, recognized the compulsory jurisdiction of this Honorable Court on the following terms:

> The Government declares, with immediate effect, that it recognizes as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to the Secretary-General of the United Nations withdrawing or modifying this Declaration.

Aprepluya's Declaration included the following reservation:

> This Declaration shall not apply to any dispute concerning Aprepluyan military activities, or to any dispute with regard to matters which are essentially within the domestic jurisdiction of the United Republic of Aprepluya, as determined by the Government of the United Republic of Aprepluya.

QUESTIONS PRESENTED

I. WHETHER THE DEMOCRATIC REPUBLIC OF RANOVSTAYO VIOLATED INTERNATIONAL LAW BY APPLYING ITS ENTRY REGULATION TO APREPLUYA, AND THEREFORE, WHETHER RANOVSTAYO IS OBLIGATED TO COMPENSATE IT FOR THE RESULTING ECONOMIC LOSES;

II. WHETHER THE DEMOCRATIC REPUBLIC OF RANOVSTAYO VIOLATED INTERNATIONAL LAW BY REFUSING TO HAND OVER MS. KEINBLAT VORMUND TO THE APREPLUYAN AUTHORITIES;

III. WHETHER THE COURT HAS JURISDICTION OVER THE DEMOCRATIC REPUBLIC OF RANOVSTAYO COUNTER-CLAIM CONCERNING THE MANTYAN AIRWAYS AIRCRAFT; and

IV. WHETHER THE UNITED REPUBLIC OF APREPLUYA VIOLATED INTERNATIONAL LAW BY SHOOTING DOWN THE AIRCRAFTS.

STATEMENT OF FACTS

I. BACKGROUND

A. THE PARTIES

Ranovstayo is a developed democratic nation, with an economy centered around its oil, agricultural and manufacturing sectors. Aprepluya on the other hand, is a State which historically held an active tourism industry.

B. THE J-VID 18 PANDEMIC

In March 2018, the health authorities of Hadbard reported many cases of a respiratory condition resembling pneumonia. The disease was named 'J-VID-18', an unknown viral strain. By 15 April 2018, Ministry scientists of Hadbard determined that the virus was capable of human-to-human transmission. Experts discovered that this transmission was possible during the incubation period (7 to 14 days), and that infected individuals who never developed symptoms could propagate the virus to others. Due to the infectiousness of the J-VID-18, on 20 April 2018, the Director-General of the World Health Organization ["**WHO**"] declared that this disease constituted a public health emergency of international concern ["**PHEIC**"]. One month later, the WHO announced that this virus constituted a pandemic. According to the WHO's Situation Report, 65 countries reported a total of 15,274 confirmed cases and 212 deaths related to J-VID-18. On 20 November 2018, the WHO declared that the J-VID-18 was no longer a pandemic.

II. RANOVSTAYO´S INTERNAL ENTRY REGULATIONS DUE TO THE J-VID-18 VIRUS

Due to the rapid spread of J-VID-18, from 15 to 22 April 2018, the Ranovstayo Ministry of Health carried out an emergency and intensive risk assessment. Based on that study, and in order to address the J-VID-18 public health emergency, the Government published a regulation which:

- ✓ Restricted the entry of all non-Ranovstayan nationals who have spent the last 18 days in a "high-risk country". The Ministry of Health must maintain a list of "high-risk countries" on its website which includes any country with at least 50 confirmed cases of J-VID-18.
- ✓ Imposed a mandatory quarantine of 18 days for all Ranvostayan nationals who have visited "high-risk countries".

The regulations came into force between April 25 and July 20, 2018.

On 23 April 2018, Ranovstayo informed the WHO of its entry regulations, and provided to the Organization the public health rationale and relevant scientific information upon which the government relied on. On 27 April 2018, the WHO sent a communication to the Ranovstayan Ministry of Health asking to reconsider its application. However, Ranovstayo declined to modify or revoke its entry regulations, arguing that the control of its borders was a matter that falls exclusively within their national sovereignty. Later, on 6 June 2018, Ranovstayo's Ministry of Health announced on its website that Aprepluya was added to the list of "high-risk countries" because, as Ranovstayo's Ministry of Foreign Affairs explained, Aprepluya did not adopt any precautionary measures.

III. MS. KEINBLAT VORMUND

The National Bioresearch Laboratory ["**NBL**"] was Aprepluya's State-owned and State-run laboratory located in Segura Province, which was attempting to develop a vaccine for J-VID-18. Ms. Keinblat Vormund, an Aprepluya national, was part of the NBL personnel. She was asked to sign a non-disclosure agreement that prohibited the disclosure or divulgation of information concerning their work at the Laboratory, unless required to do so by a court of law. The breach of this agreement could result in termination and possible prosecution.

Despite being bound to a confidentiality clause, Ms. Keinblat Vormund created, on 3 June 2018, a Twitter account with false personal information where she posted the following tweet, which was re-published by thousands of other social media accounts: *"Over the past week, eight lab technicians working on the J-VID-18 vaccine project at NBL have developed symptoms of the disease, but this news is being kept secret. Why don't our superiors care about our lives? And why does the government keep denying that anyone has the virus?"*

Given the relevance of the information disclosed in the tweet, the Aprepluyan Police arrived at Ms. Vormund's home for questioning on this post. However, she departed from her home and arrived at the Ranovstayan consulate in Segura Province.

Once inside the consulate, Ms. Keinblat indicated her intention to provide a written statement requesting protection and assistance. She explained that the Aprepluyan authorities were not sincere about the J-VID-18 situation because at the NBL, eight of her

colleagues reported symptoms of the virus, but their superiors never alerted the health authorities, nor closed the NBL or interrupt the project.

At that time, the Consul of Ranovstayo was not in the office, but agreed to let Ms. Vormund remain in the building until a decision could be made on her request for asylum. He reported to his superiors in the Foreign Ministry.

A few days later, President Ranovstayan Kalkan acknowledged that his government had chosen to take Ms. Vormund to be an applicant for asylum, allowing her to remain at the consulate while her legal situation was solved.

On 8 June 2018, the Aprepluya Prosecutor's Office formally accused Ms. Vormund with three offenses under the National Penal Code: (i) causing public disorder; (ii) violation of a governmental non-disclosure agreement; and (iii) interference with a police investigation. The Office of the Prosecutor also issued a public statement asking the Ranovstayan Consulate to surrender Ms. Vormund.

The next day, Aprepluya requested the surrender of Ms. Vormund. However, Ranovstayo's Ministry of Foreign Affairs declined to hand her over to the Aprepluyan authorities.

IV. THE MANTYAN AIRWAYS AIRCRAFT

Mantyan Airways is an airline privately owned by Aprepluyan Nationals. On 26 June 2018, a Mantyan Airways aircraft was shot down by Aprepluya's Air Force and crashed

on its territory, between Segura Province and Beauton. Ms. Vormund, who on board, and its pilot, Ms. Gwo Hye, died in the incident.

The International League for Safety in Aviation ["**ILSA**"], a private company regularly engaged by airlines and governments to investigate aircraft disasters, reviewed the cockpit voice recorder of the Mantyan Airways plane.

ILSA's 2 July 2018 report stated that:

i. Ms. Hye and Ms. Vormund intended to fly to the international airport at Bogpadayo because Ms. Vormund was an asylum-seeker.
ii. Prior to boarding the plane, Ms. Hye placed a voice recording to the Mantyan Airlines office at the Bogpadayo Airport to report their flight, without answer.
iii. Even though visual sings were sent, they never received any radio communications. Therefore, as they neared Ranovstayo airspace, they continued their route.
iv. There were no radio messages sent from the Beauton Area Air Force Base, from Bogpadayo Airport or from the fighter jet recorded in the cockpit voice recorder.
v. The messages were not received as the Mantyan Airways aircraft radio was not functional.
vi. No explosives or firearms were found in the plane wreckage.

On 4 July 2018, Ranovstayo's President's Office issued a statement where they condemned Aprepluya for shooting down the Mantyan Airways aircraft, as well as the lawless killing of Ms. Keinblat Vormund.

SUMMARY OF PLEADINGS

-I-

Ranovstayo did not violate international law by applying its entry regulations to Aprepluya, as they were adopted in compliance with all the requirements of the 2005 International Health Regulations ["**IHR**"]. They reached the level of health which Ranovstayo considered necessary and were based on the scientific evidence available to a risk to human health. Therefore, as the differential treatment granted to Aprepluyan nationals was justified, it did not discriminate against them. Also, Ranovstayo informed the additional measures to the WHO in less than 48 hours and provided the Organization the public health rationale and relevant scientific information which the Government relied on. Furthermore, if Aprepluya maintains that Ranovstayo failed to comply with its obligation of cooperation under international law, the wrongful acts are justified by a state of necessity. Finally, Ranovstayo may rely on Aprepluya's reserve of jurisdiction to limit the jurisdiction of the Court.

-II-

Ranovstayo did not break international law by declining to hand over Ms. Keinblat Vormund to the Aprepluyan authorities because, as she was being persecuted by the Aprepluyan Government, she had a right to seek asylum and Ranovstayo was entitled to consider her an asylum-seeker. Later, when she stayed at the Ranovstayan Consulate at the Segura Province, she fell under Ranovstayo's jurisdiction and therefore, the State had the duty to protect her. Consequently, since the consular premises were used to carry out the International Covenant on Civil and Political Rights ["**ICCPR**"] and the 1991

Refugee Convention [“**Refugee Convention**”], they were not used in a manner incompatible with the exercise of consular functions.

-III-

The Court has jurisdiction over Ranovstayo´s counterclaim since it fulfills the requirements established by the Rules of Court. The counterclaim is within the jurisdiction of the Court because it is consistent with the Applicant's declaration of jurisdiction. Additionally, the counterclaim is directly connected with the subject matter of the claim since the facts of the principal claim and the counterclaim are related, they are all part of the same factual complex. Finally, the counterclaim has not been related to the reservation of jurisdiction since shooting down a civil aircraft is not a military activity, neither a domestic matter. Endangering the safety of civil aircraft is a breach of an international obligation; therefore, the Court may exercise jurisdiction over the defendant's counterclaim.

-IV-

Aprepluya violated international law by shooting down a civil aircraft. As a contracting state, Aprepluya has the obligation of ensuring the safety of its national civil aircrafts. This includes banning the use of weapons against these aircraft and taking action to the highest standards of civil aviation protection. The Applicant violated international law by not fulfilling such obligations. They did not abstain from the use of arms, nor did they act according to the most rigorous practices. The highest standards imposed the State to communicate with the aircraft to alert its shootdown, this means request other aeronautical stations to render assistance in a communication failure or try to use a

subsidiary frequency communication. Aprepluya failed to comply with the standard requirements to shootdown a civilian aircraft, which is a violation of international law.

PLEADINGS

I. RANOVSTAYO DID NOT VIOLATE INTERNATIONAL LAW BY APPLYING ITS ENTRY REGULATION TO APREPLUYA, AND EVEN IF IT DID, IT SHOULD NOT BE REQUIRED TO COMPENSATE APREPLUYA FOR ANY CLAIMED ECONOMIC LOSSES

Ranovstayo did not violate international law by applying it entry regulation to Aprepluya because Ranovstayo **(A)** did not breach any of its obligations under the IHR, since all measures were in conformity with the relevant requirements; **(B)** even if it did breach its obligation of cooperation, Ranovstayo's wrongful acts are precluded by a state of necessity. Moreover, **(C)** its entry regulation did not discriminate Aprepluyans; and **(D)** Ranovstayo can invoke the reservation of jurisdiction made by Aprepluya in order to limit the Court's jurisdiction.

A. Ranovstayo did not violate any of its obligations under the IHR, as all measures conform to the relevant requirements

Ranovstayo adopted its entry regulation following of the IHR[1] procedures and requirements because their measures **(1)** achieve a greater level of protection that the ones recommended by the WHO and the appropriate level of health protection that the State deemed necessary; and **(2)** their adoption was based on the available scientific evidence of a risk to human health. Furthermore, Ranovstayo **(3)** provided the WHO with the public health justification and relevant scientific information for the additional measures and reported their measures to the Organization in less than 48 hours.

1. The travel restrictions achieved a greater level of protection and the appropriate level of health protection that the State deemed necessary

The travel restrictions adopted by Ranovstayo achieved a greater level of protection that the ones recommended by the WHO and the appropriate level of health protection that the State deemed necessary.

Article 43 (1)[2] of the IHR[3] affirms that when facing a PHEIC, State parties can adopt additional health measures when they achieve the same or greater level of protection that the ones recommended by the WHO[4], and are not more restrictive to persons than other

[1] World Health Assembly. 2006. *International health regulations (2005).* Geneva: World Health Organization. [hereinafter IHR].

[2] World Health Assembly, *Ibid*. article 43 (1).

[3] World Health Assembly, *Ibid*.

[4] World Health Assembly, *Ibid*. article 43 1 (a).

reasonable available alternatives that would achieve the appropriate level of health protection[5]. The jurisprudence of the World Trade Organization ["**WTO**"] is relevant in order to interpret the IHR[6] because as Article 57 (1)[7] of the IHR[8] recognizes, the IHR is an instrument that must be compatible with other international agreements, such as the international trade law instruments[9] - for example, the Agreement on the Application of Sanitary and Phytosanitary Measures ["**SPS**"][10] - because they are compatible[11]. The jurisprudence of the WTO has held that when a State imposes a trade restriction, it can determine[12] the "appropriate level of protection"[13] as it deems appropriate[14] because it is

[5] World Health Assembly, *Ibid*. article 43.

[6] World Health Assembly, *Ibid*.

[7] World Health Assembly, *Ibid*. article 53 (1).

[8] World Health Assembly, *Ibid*.

[9] World Health Organization Intergovernmental Working Group on revision of the International Health Regulations, *Review and approval of proposed amendments to the International Health Regulations: relations with other international instruments*, 30 September 2002, A/IHR/IGWG/INF.DOC./1, pp. 2-3.

[10] World Trade Organization. 1995. *Agreement on the Application of Sanitary and Phytosanitary Measures*. 1867 U.N.T.S. 493. [hereinafter SPS Agreement].

[11] World Health Organization Intergovernmental Working Group on revision of the International Health Regulations, *supra note* 9, ¶ 2.

[12] World Trade Organization (WTO) Appellate Body Report, *Australia – Salmon*, WT/DS18/AB/R, adopted 6 November 1998, ¶ 203-204.

[13] World Trade Organization (WTO), *Ibid*. ¶ 199.

[14] World Trade Organization (WTO) Appellate Body Reports, *US/Canada – Continued Suspension*, WT/DS321/AB/R, adopted 16 October 2008, ¶ 523. World Trade Organization (WTO) Panel Report, *Japan – Agricultural Products,* WT/DS76/R, adopted 27 October 1998, ¶. 8.81.

a prerogative[15]. Thus, the level of protection reflected in a measure imposed by a WTO Member is at least as high as the level of protection that Member considers appropriate[16].

In this case, it was determined that the J-VID-18 was capable of transmission between humans, even when individuals did not have symptoms[17] and was declared as a PHEIC by the WHO Director-General[18]. In adopting the additional measures[19], although this was not recommended by the WHO[20], Ranovstayo determined the appropriate level of health protection that, in light of the circumstances and the characteristic of the virus, considered necessary in order to address the J-VID-18 health emergency[21] even if it was different as the one considered by the WHO. Ranovstayo considered that due to the characteristics of the virus, their measures would achieve a greater level of protection as the ones recommended by the WHO and they did because as of 20 November 2018, Aprepluya – that did not adopt entry restrictions[22] following the WHO recommendations – had 2,445 confirmed cases of J-VID-18[23].

[15] World Trade Organization (WTO), *supra note* 12, ¶ 199.

[16] World Trade Organization (WTO), *supra note*, fn 1088.

[17] Statement of Agreed Facts, ¶ 7.

[18] Statement of Agreed Facts, ¶ 8.

[19] Statement of Agreed Facts, ¶ 10.

[20] Statement of Agreed Facts, ¶ 12.

[21] Statement of Agreed Facts, ¶ 10.

[22] Statement of Agreed Facts, ¶ 13.

[23] Corrections and Clarifications, ¶ 7.

The entry regulation adopted by the State of Ranovstayo achieved the appropriate level of health protection desired, and did not create an unnecessary burden, which entails that they were in compliance with the entry regulations.

2. Ranovstayo based their determination on the available scientific evidence of a risk to human health

Ranovstayo relied on the available scientific evidence available from 22 April 2018 that demonstrated that the J-VID-18 was a risk to human health.

In case States adopt additional measures as the ones recommended by the WHO, Article 43 (2)[24] establishes that they shall base their determinations upon, for example, on the available scientific evidence of a risk to human health[25]. The WTO held that "scientific evidence" – that is determined on a case-by-case basis[26] - refers to the evidence obtained only through scientific methods[27]. Moreover, the "sufficiency" of the scientific evidence must be assessed at the time the measure was adopted[28] and taking into account that representative and responsible governments usually act cautiously and prudently where

[24] World Health Assembly, *supra note 1*, article 43 (2).

[25] World Health Assembly, *Ibid*, article 43 (2).

[26] World Trade Organization (WTO) Panel Report, *Japan – Agricultural Products II*, WT/DS76/AB/R, adopted 22 February 1999, ¶ 84.

[27] World Trade Organization (WTO) Panel Report, *Japan – Apples*, WT/DS245, adopted 26 November 2003, ¶¶. 8.92, 8.93, 8.98.

[28] World Trade Organization (WTO) Panel Report, *EC – Approval and Marketing of Biotech Products,* WT/DS291/R WT/DS292/R WT/DS293/R, adopted 29 September 2006, ¶¶ 7.3253, 7.3255.

the risk of irreversible damage to human health are troubled[29]. In addition, the need for further investigation or the existence of scientific controversy does not mean that there is insufficient scientific evidence[30]. Finally, scientific evidence is "sufficient" when it has the scientific and methodological rigor to be considered as reputable science[31].

In this case, by 22 April 2018, Ranovstayo had less, but sufficient scientific evidence to conclude that the J-VID-18 was a threat to human health. The scientist of Hanbard's Health Ministry, though their scientific procedures, determined the J-VID-18 basic reproduction rate and that it was capable of human-to-human transmission even in asymptomatic persons or in its prolonged incubation period[32]. This data can be qualified as scientific evidence because despite the existence of a scientific controversy or the need of further investigations, it was accepted by both Ranovstayo and Aprepluya as accurate[33] and was obtained by the scientific methods of Hanbard's Health Ministry[34], a third-party and trustworthy authority that had no interest in this controversy.

[29] World Trade Organization (WTO) Appellate Body Report, *EC – Hormones*, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, ¶ 124.

[30] World Trade Organization (WTO), *supra note* 14, ¶ 677.

[31] World Trade Organization (WTO) Appellate Body Report, *India – Agricultural Products,* WT/DS430/AB/R, adopted 4 June 2015, ¶. 5.28.

[32] Statement of Agreed Facts, ¶ 7.

[33] Statement of Agreed Facts, ¶ 7

[34] Statement of Agreed Facts, ¶ 7.

Additionally, the rapid spread of the J-VID-18 is a risk to human health; by 15 May 2018, almost two months after the virus was discovered, although Ranovstayo nor Aprepluya had confirmed cases, 65 other countries reported 15,274 cases and 212 deaths[35].

Ranovstayo adopted its entry regulations based on the scientific evidence about the J-VID-18 available at the time that demonstrated that the J-VID-18 was a threat to human health.

3. Ranovstayo provided the WHO with the public health justification and relevant scientific information for the additional measures and reported their measures to the Organization in less than 48 hours

When a State adopts additional measures, Article 43 (3) and (5) imposes two obligations respectively: first, the duty to inform the WHO the health rationale upon with they relied on[36]; and second, the duty to inform the Organization within the 48 hours of their implementation[37].

Ranovstayo published the additional measures on 22 April 2018[38], and at the next day, it provided the WHO the public health rationale and other relevant information that were

[35] Statement of Agreed Facts, ¶ 15.

[36] World Health Assembly, *supra note 1*, article 43 (3).

[37] World Health Assembly, *supra note 1*, article 43 (5).

[38] Statement of Agreed Facts, ¶ 10.

used by the government in order to structure and justify the measures[39]. On 23 April 2018[40], the day that Ranovstayo informed the WHO, 48 hours had not passed since the implementation of the measures. In other words, Ranovstayo informed the WHO before the notification deadline expired.

Therefore, Ranovstayo complied with the relevant obligations required under international law, as it provided the WHO the public health and the scientific evidence that motivated the adoption of its travel restrictions and notified the Organization on time.

B. Even if Ranovstayo breached its international obligations of cooperation, their wrongful acts are justified by a state of necessity

Generally, and under the IHR[41], States must cooperate[42] with one another, especially when facing an event regulated under the IHR[43]. However, the wrongfulness of a conduct act due a breach of an international obligation can be shield by a state of necessity[44]. That is when the State, in order to safeguard an essential interest against an imminent and grave

[39] Statement of Agreed Facts, ¶ 12.

[40] Statement of Agreed Facts, ¶ 12.

[41] World Health Assembly *supra note 1*.

[42] United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV), pp. 4, 8.

[43] United Nations General Assembly, *Ibid*.

[44] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries.* Volume 2, Yearbook of the International Law Commission 31 (2001), article 25.

peril[45] and without affecting an essential interest of other States or of the international community[46], act in the only way possible[47] and does not perform other international obligation of lesser weight or urgency[48]. That essential interest may be, for example, preserving the existence of the State and is people or its safety in cases of a public emergency[49].

In this case, when Ranovstayo adopted its entry regulations, it did not report any confirmed or suspected cases of J-VID-18[50]. However, Ranovstayo preferred not to cooperate because the only way that it could avoid the spread of the J-VID-18 in its territory and to safeguard the health of its citizens from the imminent and grave peril presented by J-VID-18 was by adopting its entry regulations[51].

C. Ranovstayo's entry regulation did not discriminate Aprepluyans

Ranovstayo's travel restrictions were not discriminatory since they were justified on the basis of scientific evidence and did not constitute arbitrary treatment.

[45] International Law Commission, *Ibid*, article 25 (a).

[46] International Law Commission, *Ibid*, article 25 (b).

[47] United Nations, *Yearbook of the International Law Commission 2001, Vol. II Part. 2***,** ¶15, p. 83.

[48] United Nations, *Ibid*, ¶ 1, p. 80.

[49] United Nations, *Ibid*, ¶ 14, p. 83.

[50] Statement of Agreed Facts, ¶ 10.

[51] Statement of Agreed Facts, ¶ 10.

According to the WTO, in order to determine if a trade restriction involves an 'arbitrary or unjustifiable discrimination'[52], the rational connection between the reasons that justified the discriminatory treatment and the objectives of the measure must be analyzed[53]. For example, discrimination results when two countries with the same conditions are treated differently[54] or from the results of an '*unjustified imposition of differentially disadvantageous treatment*'[55]. However, a justified treatment[56] does not constitute discrimination, so a different treatment between products is not necessary an arbitrary or unjustifiable discrimination[57].

The travel restrictions adopted by Ranovstayo[58], as described above, were based on scientific evidence[59] and its aims were to avoid the spread of the J-VID-18 on Ranovstayan territory.

---

[52] World Trade Organization (WTO), *supra note* 10.

[53] World Trade Organization (WTO) Appellate Body Report, *Brazil– Retreaded Tyres*, WT/DS332/AB/R, adopted 3 December 2007, ¶¶ 226-227.

[54] World Trade Organization (WTO) Panel Report, *US – Poultry (China),* WT/DS392/R, adopted 29 September 2010, ¶ 7.292.

[55] World Trade Organization (WTO) Panel Report, *Canada – Pharmaceutical Patents*, WT/DS114/R, adopted 17 March 2000, ¶ 7.94.

[56] World Trade Organization (WTO), *supra note* 54, ¶ 7.291.

[57] World Trade Organization (WTO) Panel Report, *US – Animals*, WT/DS447/R, adopted 24 July 2015, ¶. 7.573.

[58] Statement of Agreed Facts, ¶ 10.

[59] Statement of Agreed Facts, ¶ 10.

As Aprepluya has an active tourism industry in two of its big cities[60], although it did not report any confirmed cases[61] outside of the Segura Province until mid-June 2018[62], the proximity between the two states positioned Aprepluya in a specific position that is not comparable to other countries. Beauton[63], Segura Province[64] and Bogpadayo[65] are at a considerable distance and, in light of the rapid spread of the J-VID-18 and its features[66], it should be taken into account to stop the spread of the virus.

In conclusion, the travel restrictions did not discriminate against the Aprepluyans as they were neither arbitrary nor unjustifiable and were necessary to prevent the Ranovstayans from being infected.

D. Ranovstayo can invoke the reservation of jurisdiction made by Aprepluya in order to limit the Court's jurisdiction.

As Aprepluya made a reservation regarding disputes concerning their military activities or any dispute regarding two matters which are essentially within their domestic

[60] Statement of Agreed Facts, ¶ 3.

[61] Statement of Agreed Facts, ¶ ¶15, 24.

[62] Statement of Agreed Facts, ¶ 36.

[63] Statement of Agreed Facts, ¶ ¶1,3.

[64] Statement of Agreed Facts, ¶ 3.

[65] Statement of Agreed Facts, ¶ 2.

[66] Statement of Agreed Facts, ¶ 7.

jurisdiction[67], in virtue of the principle of reciprocity, Ranovstayo can invoke that declaration in order to limit the Court's jurisdiction on the same basis.

Article 36 (3) of the Statue of the ICJ[68] recognizes the principle of reciprocity[69] that allows litigant parties to invoke their opponents' reservations[70]. In the *Norwegian Loans case*, the ICJ accepted that if a State limits the compulsory jurisdiction of the Court by excluding the disputes regarding the matters related to their national jurisdiction, the opponent may as well except from the compulsory jurisdiction of the Court their disputes understood to be within its national jurisdiction[71]. Furthermore, Article 3(4) of the IHR stipulates that Contracting Parties have the sovereign right to legislate and implement legislation regarding their health policies.

In this case, the State of Aprepluya made a reservation regarding any dispute concerning Aprepluyan military activities or any dispute related to matters which essentially are within their domestic jurisdiction[72]. As the adoption of health measures is a matter that falls essentially with the domestic jurisdiction of Ranovstayo, if the validity of

[67] Statement of Agreed Facts, ¶ 49.

[68] "Statute of the International Court of Justice." *The International Law Quarterly* 1, no. 1 (1947): 117-31.

[69] United Nations, *Ibid*, article 36 (3).

[70] Tomuschat, C. (2019). Part Three Statute of the International Court of Justice, Ch.II Competence of the Court, Article 36. In A. Zimmermann, C. Tams, K. Oellers-Frahm, C. Tomuschat, A. Zimmermann, C. J. Tams, K. Oellers-Frahm, & C. Tomuschat (Eds.), *The Statute of the International Court of Justice: A Commentary (3rd Edition).* Oxford Commentaries on International Law, para. 29, p. 735.

[71] *Certain Norwegian Loans Case* (Norway v. France), Merits, [1957] ICJ Reports, p. 24.

[72] Statement of Agreed Facts, ¶ 49.

Aprepluya´s reservation is not rejected by the Court, Ranovstayo, under a basis of reciprocity, will serve itself and exclude the entry regulation matter, as it is understood to be within its Ranovstayo´s domestic jurisdiction.

In conclusion, Ranovstayo is entitled, on the basis of reciprocity, to exclude this matter from the mandatory jurisdiction of the Court because of the reservation of the Aprepluya.

II. RANOVSTAYO DID NOT VIOLATE INTERNATIONAL LAW BY REFUSING TO HAND OVER MS. KEINBLAT VORMUND TO THE APREPLUYAN AUTHORITIES

Ranovstayo did not infringe international law by refusing to hand over Ms. Keinblat Vormund to the Aprepluyan authorities since according to international law **(A)** she was entitled to seek asylum, (**B**) the state of Ranovstayo was entitled to consider her as an asylum seeker, (**C**) and had the duty to protect Ms. Keinblat Vormund. Finally, **(D)** Ranovstayo acted according to international law by fulfilling the obligation of non-refoulement of an asylum seeker.

A. Ms. Keinblat Vormund was entitled to seek asylum

Ms. Vormund was being persecuted, and as such had the right to seek asylum.

When a person is persecuted, he or she has the right to seek and enjoy asylum[73], except in cases of prosecutions "genuinely arising from to non-political crimes or from acts contrary to the purposes and principles of the United Nations"[74]. Censorship of opposing political views peacefully expressed[75] may be regarded as persecution[76] and a subsequent prosecution may be a pretext for punishing that person for their beliefs or expression[77]. In order to determine whether a prosecution amounts to a persecution, it is necessary to consider the laws of the country because they could not be in conformity with the accepted human rights standards or their application could be discriminatory[78]. Even for common offences, an excessive or arbitrary punishment can be considered a persecution[79] and asylum could be allowed if the organization of justice is clearly determined by political

[73] United Nations General Assembly. 2010. *Universal Declaration of Human Rights*, UN Doc. A/810, article 14 (1).

[74] United Nations General Assembly, *Ibid*, article 14 (2).

[75] Steinbock, Daniel J. 1981. *Interpreting the Refugee Definition*. UCLA Law Review 45, no. 3, p. 760.

[76] Zimmermann, Andreas & Mahler, Claudia. 2011. *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary.* Oxford Commentaries on International Law, para. 255. Steinbock, Daniel J. 1981. *Interpreting the Refugee Definition*. UCLA Law Review 45, no. 3, p. 760.

[77] Office of The High Commissioner for Refugees (UNHRC). (1979, re-edited 1992). *Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCP/IP/4/Eng/REV.1 (1979, re-edited 1992), ¶ 85.

[78] Office of The High Commissioner for Refugees (UNHRC), *Ibid*, ¶ 59

[79] Office of The High Commissioner for Refugees (UNHRC), *Ibid*, ¶ 85.

aims, in a manner that the political offender is protected against the arbitrary actions of the regime[80].

In this case, the Aprepluyan authorities initiated a persecution; they tracked Ms. Vormund until she entered the Ranovstayan Consulate at the Segura Province[81]. The prosecution initiated by the Aprepluya's Prosecutor Office[82] is a persecution because it is an attempt to censor an unfavorable political opinion that was Ms. Vormund peacefully expressed on a Tweet[83] and its purpose is to punish her by seeking the maximum penalty on all charges[84]. Also, there is an excessive and arbitrary punishment because the charge "violation of a governmental non-disclosure agreement", besides being the most serious[85], is not in conformity with Article 11[86] of the ICCPR[87] because it is grounded on the breach of the non-disclosure agreement that she signed as an NBL employee[88].

Since the Aprepluyan authorities were persecuting Ms. Keinblat Vormund, she had the right to seek asylum.

---

[80] *Asylum Case (Colombia v. Peru)*, International Court of Justice (ICJ), 20 November 1950, p. 284.

[81] Statement of Agreed Facts, ¶ 20.

[82] Statement of Agreed Facts, ¶ 32.

[83] Statement of Agreed Facts, ¶ 18.

[84] Corrections and Clarifications, ¶ 4.

[85] Corrections and Clarifications, ¶ 4.

[86] United Nations General Assembly. *International Covenant on Civil and Political Rights*. Treaty Series, vol. 999, Dec. 1966, p. 176, article 11.

[87] United Nations General Assembly, Ibid, p. 171.

[88] Statement of Agreed Facts, ¶ 6.

B. Ranovstayo was entitled to consider Ms. Keinblat Vormund an asylum-seeker

Ranovstayo was entitled determine whether or not Ms. Vormund's claim for political asylum is based on the grounds permitted pursuant to international law[89].

The State to which asylum is requested must decide, according to the facts of the case, if a persecution is feared and if the asylum-seeker satisfies requirements set forth in the Refugee Convention, including whether or not the individual seeking asylum has a well-founded fear of being persecuted, caused by one or more of the grounds recognized in the Convention[90]. According to its national procedures, each government decides which asylum-seekers will be granted asylum[91].

Ranovstayo, was entitled to consider Ms. Keinblat Vormund an asylum-seeker. This means that only Ranovstayo, and not Aprepluya, had the right to assess the reasons behind Ms. Vormund's request to take refuge at the Ranovstayan Consulate at the Segura

[89] Office of The High Commissioner for Refugees (UNHRC), *supra note* 77, ¶ 67.

[90] Office of The High Commissioner for Refugees (UNHRC), *Ibid.* Zimmermann, Andreas & Mahler, Claudia. 2011. *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary.* Part Two General Provisions, Article 1 A, para. 2. Oxford Commentaries on International Law, ¶ 324.

[91] United Nations High Commissioner for Refugees (UNHCR) Statistical Yearbook. *Asylum and Refugee Status Determination,* 2004. chapter V. United Nations High Commissioner for Refugees (UNHCR). 2002. *Protecting Refugees: questions and answers.*

Province. As the Foreign Ministry of Ranovstayo said on June 10, 2018, Ranovstayo took Ms. Vormund's statement very seriously[92].

It was an exclusive right of Ranovstayo to evaluate Ms. Vormund's asylum application and determine if the requirements were fulfilled.

C. Ranovstayo had a duty to protect Ms. Keinblat Vormund

The consular premises of a State should not be used in a manner incompatible with the exercise of consular functions[93] and must perform other functions referred on international arrangements in force between the sending and receiving the State, or the ones that are not forbidden or objected by the receiving state[94].

The UN Human Rights Committee ["**HRC**'] has affirmed that regarding the Article 2 of the ICCPR[95], which applies to acts carried out by the State in the exercise of its legal power outside its own territory[96], States party must guarantee and respect the Covenant

[92] Statement of Agreed Facts, ¶ 36.

[93] United Nations, *Vienna Convention on Consular Relations.* Done at Vienna on 24 April 1963. Entered into force on 19 March 1967. Treaty Series, vo1. 596, p. 261, article 55 (2).

[94] United Nations, *Ibid*, article 5 (m).

[95] United Nations General Assembly *supra note* 86.

[96] *Case Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, [2004] ICJ Reports, ¶ 111.

rights to all individuals that come under its legal power or their efficient control, whether or not they're located in their territory[97].

Granting to the personal scope of human rights protection, it is relevant whether the connection between the individual affected and the province is close enough that obliges the State to ensure the rights of the individual affected[98]. So as to when authorized state agents (including consuls and diplomats) exercise authority over other persons, they bring that person within the jurisdiction of their State, in a manner that if their actions or omissions affect such persons, the responsibility of the State is engaged[99]. Likewise, applicants for asylum fall under the jurisdiction of the states consulate if they are given protection even for a very short time[100] or they are assured that they will be protected by the State[101].

[97] United Nations Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13.

[98] Maarten Den Heijer. 2012. Europe and Extraterritorial Asylum. Studies in International Law. Oxford, England: Hart Publishing, pp. 33-34.

[99] *W.M. v. Denmark*, No. 17392/90, [1992], ECHR, ¶ 1.

[100] *"B" & Others v. Secretary of State for the Foreign & Commonwealth Office*, [2004] EWCA Civ 1344, United Kingdom: Court of Appeal (England and Wales), 18 October 2004, ¶ 64.

[101] United Kingdom Court of Appeal, *supra note* 100, ¶ 64.

In this case, as Aprepluya has been at all relevant times a Contracting party of the ICCPR[102] and the Refugee Convention[103], it recognizes two things: the human rights of the ICCPR[104] and the right to seek and enjoy asylum. Therefore, by letting Ms. Vormund stay at the Ranovstayan consulate in the Segura Province until a decision could be made on her asylum application[105], the consular premises were not used in a way incompatible with the exercise of consular functions because they performed a function covered by the ICCPR[106] and the Refugee Convention[107]: to protect Ms. Vormund's human rights, including her right to seek and enjoy asylum. Furthermore, as Ranovstayo expressively recognized that it wanted to protect Ms. Vormund[108] and as she continued at the Ranovstayan Consulate at the Segura Province for approximately 21 days[109], she fell under Ranovstayo's jurisdiction.

As Ms. Vormund fell under Ranovstayo's jurisdiction, the State had a duty to protect her human rights, including her right to seek and enjoy asylum.

---

[102] Statement of Agreed Facts, ¶ 54. United Nations General Assembly *supra note* 86.

[103] Statement of Agreed Facts, ¶ 54. *Convention relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

[104] United Nations General Assembly *supra note* 86.

[105] Statement of Agreed Facts, ¶ 22.

[106] United Nations General Assembly *supra note* 86.

[107] *Convention relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

[108] Statement of Agreed Facts, ¶ ¶ 25, 36.

[109] Statement of Agreed Facts, ¶ ¶ 22, 43. Corrections and Clarifications, ¶ 9.

D. Ranovstayo acted in accordance with international law by fulfilling the obligation of non-refoulement of an asylum seeker

By not handing Ms. Vormund over to Aprepluya, Ranovstayo acted in compliance with its obligations of non-refoulement, which is applicable to Ms. Vormund, since she is an asylum-seeker.

States parties to the Refugee Convention[110] cannot of return ("refouler") in any way[111] refugees[112] or individuals that have not been formally recognized as refugees[113] while their status is determined[114]. This principle is a mainstay of refugee law[115] that is not subject to derogation[116] that always must be carefully observed[117] and extends to all

[110] *Supra note* 107.

[111] *Supra note* 107, art. 33 (1).

[112] *Supra note* 107, art. 1A (2).

[113] United Nations High Commissioner for Refugees (UNHCR). 2007. *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, ¶. 6.

[114] United Nations High Commissioner for Refugees (UNHCR), *supra note* 113, ¶ 6.

[115] United Nations High Commissioner for Refugees (UNHCR). 1997. *UNHCR Note on the Principle of Non-Refoulement*.

[116] 47th Session of the Executive Committee of the UN High Commissioner for Refugees (UNHCR). General Conclusion on International Protection No. 79 (XLVII). Contained in United Nations General Assembly Document A/AC.96/878 and document No. 12A (A/51/12/Add.1). (11 October 1996).

[117] 32 th Session of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR). 1981. *Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII).* Contained in United Nations General Assembly Document No. 12A (A/36/12/Add.1).

government agents, within or outside the national territory[118]. This is why some academics have stated that the principle of non-refoulement has become a jus cogens standard[119].

President Kalkan admitted that his government had decided to take Ms. Vormund as an asylum seeker, allowing her to stay in the consulate for the time being, until it can be determined whether she was under criminal investigation[120]. Since then, she has been considered an asylum seeker. Therefore, Ms. Vormund was protected by the principle of non-refoulement, protection that she enjoyed until her official status was established. Although it was not possible to clarify her situation and declare her as a refugee due the later events[121], until the morning of 26 June 2018[122], the State of Ranovstayo had the right and the duty not to return her to the Aprepluyan authorities in virtue of the principle of non-refoulement. As a sovereign State, Ranovstayo had no obligation under international law to surrender individuals who seek asylum at a diplomatic or consular mission abroad. On the contrary, Ranovstayo had to comply with the non-refoulement principle.

---

[118] United Nations High Commissioner for Refugees (UNHCR). 2000. *Interception of Asylum-Seekers and Refugees: the International Framework and Recommendations for a Comprehensive Approach*, EC/50/SC/CRP.17, ¶ 23.

[119] J. Allain. 2001. *The Jus Cogens Nature of Non-Refoulement*. International Journal of Refugee Law, 13(4), pp. 537–558.

[120] Statement of Agreed Facts, ¶ 25.

[121] Statement of Agreed Facts, ¶ ¶ 41, 42.

[122] Statement of Agreed Facts, ¶ 41.

In conclusion, by refusing to hand over Ms. Vormund to the Aprepluyan authorities, Ranovstayo fulfilled its obligation of non-refoulement since she was and asylum-seeker.

III. THE COURT MAY EXERCISE JURISDICTION OVER RANOVSTAYO'S COUNTER-CLAIM CONCERNING THE MANTYAN AIRWAYS AIRCRAFT

Ranovstayo´s counterclaim **(A)** fulfills the requirements established by the Rules of Court[123] in order to entertain the claim, and **(B)** is not related with Aprepluya's reservation of jurisdiction. Thus, the Court does have jurisdiction over the claim.

A. Ranovstayo´s counterclaim complied with the requirements set forth in the Rules of the Court

The counterclaim is consistent with the requirements set forth in Article 80 of the Rules of the Court[124] ["**Rules**']. Considering that (1) the counterclaim is within the jurisdiction of the Court[125], and (2) the counterclaim is directly connected with the subject-matter of the Applicant's claim. [126]

1. The counterclaim is within the jurisdiction of the Court

---

[123] United Nations. *Rules of Court.* (signed on 14 Abril 1978, entered into force on 1 July 1978) [1978].

[124] United Nations, *Ibid,* article 80.

[125] United Nations, *Ibid,* article 80 (1).

[126] United Nations, *Ibid,* article 80 (2).

In order for the counterclaim to be admissible, the counterclaim *appears to fall*[127] within the jurisdiction of the Court. The Rules do not require the counterclaim to have exactly the same jurisdictional foundation as the main claims. [128] Indeed, the Court has identified that there is nothing in the Rules or the practice of the Court to suggest that a counterclaimant must establish an *identical* jurisdictional nexus. [129]

The Court has interpreted this requirement as an existing connectivity of the counterclaim to the claim. [130] In this case there is a link between the claim of the Applicant and the counterclaim since they both fall within the jurisdiction recognized to the Court.[131] The Applicant recognized the jurisdiction of the Court[132] under Article 36 (2) of The Rules[133],

[127] *Armed Activities on the Territory of the* Congo (Democratic Republic of the Congo v. Uganda), Jurisdiction and Admissibility, [2001] ICJ Reports. pp. 660, 681, ¶ 45.

[128] S. Murphy '*Counterclaims Article 80 of the Rules'* in Andreas Zimmermann, Christian Tomuschat and Karin Oellers-Frahm (eds) The Statute of the International Court of Justice: A Commentary (OUP Oxford 2012, 2nd ed.).

[129] *Oil Platforms.* (Islamic Republic of Iran v. United States of America), Separate Opinion of Judge Higgins, [1998] ICJ Reports. pp. 217, 218–19.

[130] *Rights of Nationals of the United States of America in Morocco* (France v. United States of America), Judgment, [1952] ICJ Reports, pp. 176, 203–212.

[131] C. Tomuschat 'Article 36' in Andreas Zimmermann, Christian Tomuschat and Karin Oellers-Frahm (eds) *The Statute of the International Court of Justice*: A Commentary (OUP Oxford 2012, 2nd ed.).

[132] Rules of Court, article 68 (2)

[133] Statement of Agreed Facts, ¶ 3.

therefore it should exist a sufficiency of subject-matter connection between the claim, the counterclaim and the declaration of jurisdiction of the Applicant.[134]

Given that Aprepluya´s claim is related to Ms. Keinblat Vormund's legal situation and the counterclaim is related to her death, it is crucial to consider the overall circumstances surrounding her assassination. First, her legal status while she was being prosecuted in her country and the fact that she was subsequently killed in an airplane accident by her own government. Hence, the previous are related to the statement of jurisdiction of the Applicant since neither of the claim nor the counterclaim are related to military activities or involve a domestic matter of Aprepluya.

2. The counterclaim is directly connected with the subject-matter of the claim of Aprepluya

i. The facts supporting the third claim and the Ranovstayo's counterclaim are related

The Court has established that the underlying facts of the principal claim and its counterclaim should be similar and not necessarily identical.[135] Indeed, in most cases, the facts supporting the claim and the counterclaim are not the same, but they are akin.[136]

[134] *Nationality Decrees Issued in Tunis and Morocco,* Advisory Opinion, [1923] PCIJ, Series B, No. 4. pp. 5, 26.

[135] S. Murphy, *supra note* 128.

[136] S. Murphy *Ibíd.*

The relation can be identified through the pursuit of the same legal aim, this means that both the counterclaim and the claim are pursuing the same intention such as a reparation or a breach of an obligation[137].

In this case, the counterclaim has the same legal aim as the principal claims of Aprepluya: the establishment of the responsibility of the State due to a breach of an international obligation and the further reparation. Both the counterclaim and the main claim refer to facts of the same nature[138] as they form part of the same "factual complex" [139] of the principal claim.

If Aprepluya´s second claim is related with the legal situation of Ms. Keinblat Vormund, therefore, since the counter claim relates to the incident in which Ms. was killed, her death is relevant for the factual complex of one the principal claims of the Applicant.

ii. The period of time during which the conduct at issue occurred

The Court has recognized the element of period of time as a key factor to identify whether the counterclaim is directly connected with the subject matter of the Applicant's claim. [140]

[137] *Land and Maritime Boundary case* (Cameroon v. Nigeria), Order of 30 June 1999, [1999] ICJ Reports, pp. 983, 985.

[138] *Armed Activities on the Territory of the Congo Supra* note, 127. pp. 660, 678, ¶ 37.

[139] *Armed Activities case*, *supra note* 127, pp. 660, 680, ¶42.

[140] S. Murphy, supra note 128.

In this case, both the principal claim and the counterclaim rely on the same historical background, within a framework of the same political development [141] and are alleged to have occurred in the same period of time. [142] As mentioned, the factual complex of this controversy occurred in the same time span of the J-VID-18 pandemic. Which can be seen further in the fact that the factual complex occurred within the time frame in which the WHO declared the J-VID-18 as a pandemic, from the 15th of May to the 20th of November of the year 2018. [143] Therefore, it is clear that both the facts supporting the Applicant's allegations and Ranovstayo's counterclaim are highly related to the political management of pandemic J-VID-18.

iii. The geographical location of the facts

In addition, the Court also recognized the geographic location component as a key factor in establishing the link between the counterclaim and the principal claim. [144] In view of the above, the counterclaim should be supported by facts occurred in the same geographical region as the conduct at issue in the principal claim.[145]

---

[141] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*),* Judgment, [1996] ICJ Reports ICJ*,* pp. 243, 252, ¶13–14.

[142] *Oil Platforms case,* (Islamic Republic of Iran v. United States of America), Preliminary Objection, [1996] ICJ Reports, pp. 803.

[143] Statement of Agreed Facts, ¶ ¶ 15,52.

[144] S. Murphy, *supra note* 128.

[145] *Armed Activities case supra note 127,* p. 679 , ¶ 40.

This is evident within the controversy as Aprepluya´s claims are supported by facts that occurred in their territory, and the counterclaim is also based on an accident that took place in the Applicant's territory - the air crafted shootdown. This means that the required geographical location is filled since the whole factual complex took place in the same location: within the state of Aprepluya.

iv. There is a current controversy between the parties

The purpose of the Court is to state the law; however, it may pronounce judgment only in connection with concrete cases where, at the time of the adjudication, an actual controversy involving a difference of legal interests between the parties exists.[146]

Between the Applicant and the Respondent there is an existing disagreement on a point of law or fact, a conflict of legal views or interests between the two parties. [147] Considering that Aprepluya and Ranovstayo have an ongoing controversy, that started with the political management of the pandemic and continued due to Ms. Keinblat Vormund's dead, it can be affirmed that as there is an active controversy between these two states. Therefore, the Court can pronounce judgement.[148]

---

[146] *Northern Cameroons case, (Cameroon v. United Kingdom) Judgment, [1963] ICJ Reports,* pp. 6, 18 ¶ 24.

[147] *The Mavrommatis Palestine Concessions* (Greece v. United Kingdom), Objetion of the Jurisdiction of the Court, [1924] PCIJ , Series A, No. 2, pp. 6, 11.

[148] *Armed Activities on the Territory of the Congo supra note* 127, pp. 6, 40, ¶ 90.

B. Ranovstayo's counterclaim is not related with Aprepluya's reservation of jurisdiction

1. The Mantyan Airway's aircraft shootdown cannot be considered a military activity

There is not a proper and a unanimous definition of military activities. However an approximation to this term can be found within international law.[149] The precedent can be seen in the definition provided by the United Nations Convention on the Law of the Sea ["**UNCLOS**"][150], which is universally accepted by many States[151], and has been applied in various decisions[152] of International Courts. The definition states that "*military activities are those performed by governments in aircrafts engaged in non-commercial services*"[153], in other words, state aircrafts. The International Civil Aviation Organization

---

[149] United Nations, Convention on the Law of the Sea *Convention on the Law of the Ses.* (signed 10 December 1982, entered into force 16 November 1994) [1994], article 298(b): *Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, ¶ 2.*

[150] United Nations, *supra note* 149, article 298(b).

[151] United Nations, *supra note* 149.

[152] *The Detention of Three Ukrainian Naval Vessels case*, (Ukraine v. Russian Federation) [2019], ITLOS Case No. 26, pp. 2-32.

[153] United Nations, *supra note* 149, article 298(b).

["**ICAO**"][154] defines state aircraft as the ones used in military, customs and police services.[155]

The previous definition can be applicable to this case since the ICJ´s judgments have undoubtedly played a crucial role in the process of codification and progressive development of the International Tribunal of Law of the Seas ["**ITLOS**"], and therefore, to the UNCLOS. Hence, the definitions provided by the ITLOS are the result of a more comprehensive legal regime of what the ICJ ruled in previous cases. [156]

Operations in non-commercial state aircraft are considered military activities.[157] Taking into account that the Mantyan Airway's aircraft belongs to a low-cost charter airline privately owned by Aprepluyan nationals, exclusively for civil transportation it can be affirmed that it is a commercial flight.[158] Therefore, as the aircraft is not and was not being used at the time of the incident in military, customs or police activities, it cannot be considered a state aircraft.[159] Consequently, its shootdown cannot be classified as a military activity of the Applicant.

---

[154] United Nations, *Convention on International Civil Aviation* (signed 7 December 1944, entered into force 4 April 1947) [1947], Treaty Series, vol. 15, No. 102.

[155] United Nations, *Ibid*, article 3(b).

[156] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania*) Merits, [1949] ICJ Reports.

[157] United Nations *supra note* 179, article 298(b).

[158] Statement of Agreed Facts, ¶ 41.

[159] United Nations *supra note* 154, article 3(b)

Additionally, according to international law, military activities are the actions that provide a "military advantage" to a party.[160] The purpose of the term "military advantage" is to exclude any non-military advantage, whether economic or political.[161] Moreover, the military nature of an action consists on a defensive measure designed to eliminate a specific source of threat or harm.[162]

Bearing this in mind, the Mantyan Airways plane shootdown did not represent a military advantage to the Applicant since it´s shootdown did not represent a military advantageousness towards the State of Aprepluya. Having noted that military advantages are those excluded from being political advantages, in this case we are in the presence of a political advantage since in the incident Ms. Vormund, a prosecuted female for crimes against the State of Aprepluya, was murdered. The Mantyan Airway's plane was a civil aircraft that did not represent a harm or threat to the Applicant, therefore it shootdown did not represent a military nature action.

---

[160] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, [1986] ICJ Reports.

[161] T Michael N. Schmitt. 2013. *Tallinn Manual on The International Law Applicable to Cyber Warfare.* Cambridge University Press. Hague Rules of Air Warfare, Drafted by a Commission of Jurists at The Hague, December 1922 - February 1923, article 24(1).

[162] *Oil Platforms.* (Islamic Republic of Iran v. United States of America), Separate Opinion of Judge Simma, [1998] ICJ Reports.

Having noted that Ranovstayo's counterclaim is not regarded as a military activity, the Court may exercise jurisdiction over the shooting of the Mantyan Airway's airplane.

2. The Mantyan Airways aircraft shootdown cannot be considered a domestic matter of the Applicant

The shooting of the Mantyan Airway's airplane is not an internal matter of Aprepluya, as it constitutes a violation of an international obligation.

Both Aprepluya and Ranovstayo are contracting parties of the Convention on International Civil Aviation ["**Chicago Convention**"].[163] Hence, Ranovstayo as a contracting State has the legal interest in its observance.[164] Presently, Article 3bis of the Chicago Convention establishes an obligation concerning aviation safety.[165] As stated by the Convention on International Civil Aviation[166], all contracting States must refrain from using weapons against civil aircrafts in flight and that in case of interception the lives of the persons on board must not be endangered.[167] The Applicant and the Respondent are contracting parties of the Chicago Convention[168] which involved international obligations

[163] Statement of Agreed Facts, ¶ 54.

[164] International Law Commission, *supra note* 44.

[165] United Nations *supra note* 154, article 3bis (a).

[166] United Nations, *Ibid*.

[167] United Nations, *Ibid*.

[168] Statement of Agreed Facts, ¶ 54.

concerning the safety and security of civil aircrafts. Therefore, the Applicant cannot argue a domestic matter concerning the shootdown.[169]

According to the estoppel principle, a State is considered to be bound by its own conduct expectations.[170]Aprepluya will be acting against its own acts by being part of the Convention [171] which purpose is to guarantee the safety of civil aviation, and later arguing that the shootdown of a civil aircraft is a domestic matter.[172]

Finding that Aprepluya violated an international obligation by shooting down Mantyan Airways' plane, it should not be considered a domestic matter in Aprepluya.

IV. APREPLUYA VIOLATED INTERNATIONAL LAW BY SHOOTING DOWN THE AIRCRAFT

Aprepluya violated international law by **(A)** not complying with the obligations under the Chicago Convention[173], and (**B)** by not following the standards imposed by the Convention on International Civil Aviation[174].

---

[169] *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada v United States), Judgment, [1984] ICJ Reports, ¶ 130.

[170] *Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand*).* Merits, [1962] ICJ Reports

[171] United Nations, *supra note* 154.

[172] *Appeal Relating to the Jurisdiction of the ICAO Council,* Judgment, [1972] ICJ Reports, ¶ 46.

[173] United Nations, *supra note* 154, article 15, 3bis (a).

[174] Convention on International Civil Aviation , article 37.

A. Aprepluya did not comply with the obligations under the Convention on International Civil Aviation

The primary objective of the Chicago Convention[175] is to ensure the safety of international civil aviation on a world-wide basis. [176] Consequently, all Contracting States must comply with certain international obligations in order to ensure the safety of civilian aircraft..

1. The State obligations according to the Chicago Convention

Aprepluya and Ranovstayo are parties of the Convention on International Civil Aviation.[177] This Convention shall be interpreted including its preamble[178], where it is noted that its objective is to ensure the safety of the international civil aviation[179]. The contracting States have an obligation to guarantee the safety and security of civil

[175] United Nation, *supra note* 154.

[176] 38th ICAO Session Assembly. Regional cooperation and assistance to resolve safety deficiencies, establishing priorities and setting measurable targets. (Resolution A38-5).

[177] Statement of Agreed Facts, ¶ 54.

[178] *North Sea Continental Shelf Case* (Federal Republic of Germany v. Netherlands), Judgment, [1969] ICJ Resports. United Nations, *Vienna Convention on the Law of Treaties.* (signed at Vienna on 22 May 1969, entered into force on 27 January 1980) [1980], article 31 ¶ 2.

[179] United Nations, *supra note* 154, ¶ 3.

aircrafts.[180] Aprepluya violated this obligation as a result of **(a)** not providing air navigation facilities to its national aircrafts[181], and **(b)** by using weapons against civil aircrafts in flight.[182]

i. The obligation to provide air navigations facilities to national aircrafts

According to the ICAO, the contracting States have the obligation to provide air navigation facilities to their domestic aircrafts[183], including radio and meteorological services. [184] Since the Mantyan Airway's aircraft is registered in Aprepluya, they have the obligation to guarantee radio services to this local airplane. [185] The radio services provided by the States should be in corrective support of the system of communications[186], and should be adequate and appropriate regarding functions such as properly receiving radio signals for aviation safety and efficient aircraft operations.[187]

---

[180] United Nations, *supra note* 154, preamble.

[181] United Nations, *supra note* 154, article 15.

[182]United Nations, *supra note* 154, article 3bis (a).

[183] 7th ICAO Session Assembly. Report of the Council to the Assembly on the Activities of the Organization in 1952, p. 29.

[184]United Nations, *supra note* 154, article 15, ¶ 1.

[185] United Nations, *supra note* 154, article 17.

[186] 24th ICAO Session Assembly. Plenary Meetings. Montreal, 20 September- 7 October 1983. (Doc. 9415), p. 59.

[187] ICAO. *Handbook on Radio Frequency Spectrum Requirements for Civil Aviation* – Chapter 8: Spectrum Strategy and Vision ICAO, pp. 8-1.

According to the ILSA, the radio of the Mantyan Airway's airplane was not working properly[188]. In fact, their sending signals were not received by the Station Manager, the radio was in inappropriate conditions and was insufficient for guaranteeing the safety of the aircraft. [189] Therefore, Aprepluya failed with the obligation of facilitating proper radio services to their local aircrafts.

ii. Avoid the use of weapons against civil aircrafts in flight

In accordance with Article 3bis of the Chicago Convention, the contracting States must refrain from using weapons against civil aircrafts in flight and that in case of interception the lives of the civilians on board must not be endangered.[190] Which is furtherly explained trough the fundamental principle of general international law that establishes that States must abstain from resorting to the use of weapons against civil aircraft. [191] The ICAO has recognized that such acts are contrary to the letter and spirit of the Chicago Convention, in particular its preamble and Articles 4 and 44, and that they constitute grave offences in violation of international law. [192]Aprepluya failed to comply with this obligation since

[188] Statement of Agreed Facts, ¶ 43.

[189] Statement of Agreed Facts, ¶ 43.

[190] United Nations, *supra note* 154, article 3bis (a).

[191] Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America). Observations of the ICAO, [1992] ICJ Reports.

[192] 33th ICAO Session Assembly. Declaration on misuse of civil aircraft as weapons of destruction and other terrorist acts involving civil aviation (Resolution A33-1).

they shot down a commercial airplane with two private citizens on board: Ms. Keinblat Vormund and Ms. Gwo Hye.

B. Aprepluya omitted the standards imposed by the Convention on International Civil Aviation

The improvement of the safety of international civil aviation on a world-wide basis requires that the contracting States to act in accordance with the highest standards possible.[193] Therefore, all contracting States have the obligation to act with the highest diligence in order to guarantee the safety and security of civil aviation.[194]

The Chicago Convention[195] requires Contracting States to adopt the highest possible degree of uniformity in regulations, standards and procedures to ensure the safety of civilian air transport.[196] The recommended standards are stable provisions specifying functional and performance requirements that provide specific safety, efficiency and interoperability parameters for technical specifications for civil aviation. [197]

[193] ICAO 38th Session Assembly , *supra note* 176.

[194] ICAO, *Ibid.*

[195] United Nations, *supra note* 154.

[196] United Nations, *supra note* 154, article 37.

[197] ICAO - Consolidated Statement of Continuing Policies and Associated Practices Related Specifically to Air Navigation. (Resolution A21-21).

According to the ICAO before shooting down an aircraft it must exist **(1)** a radio communication with the airplane intercepted, and in case this one fails **(2)** a subsidiary frequency communication.

1. Radio Communication

The Applicant was expected to take action in accordance with ICAO standards for intercepting civilian aircraft. The communication requirement is one of the uniformed standards in Civil Aviation.[198] Communications with air traffic control centers are essential for any interception.[199] Therefore, no pilot of a civilian airliner should expect to be shot down without being first offered some safe alternative and without an adequate opportunity to preserve himself, its passengers, and its crew.[200]A secure alternative means that the airplane should either have been told from the ground, by voice radio, or by Continuous Wave ["**CW**'] transmission[201], on an international radio frequency used by airplanes in flight, or it should have been told by the fighters intercepting it, that it was off course. [202]

---

[198] United Nations, *supra note* 154. ICAO Support of the ICAO policy on radio frequency spectrum matters. (Resolution A38-6).

[199] ICAO, Decision 14 July 1988 adopted at its Extraordinary Session concerning the shooting dom, on 3 July 1988, of Iran Air Airbus A300 on flight IR655.

[200] *Aerial Incident of July, 1955.* Memorial of the United States of America (United States of America v. Bulgaria), Pleadings, [1958] ICJ Reports. p. 210.

[202] *Aerial Incident of July, 1955. supra note* 201. p. 210.

In this case, Aprepluya did not offer the Mantyan Airways a safe alternative before shooting it down. [203] Notwithstanding, the State of Aprepluya failed to maintain voice radio communication or a CW transmission from the Mantyan Airway's aircraft. As a result, there was no communication between the aircraft and the land base. Despite this, the Aprepluya authorities should have provided understandable communications to drive the aircraft to ground safety. In conclusion, Aprepluya failed to act with the highest practicable degree of uniformity.

2. Subsidiary frequency communication

According to the ICAO when an aircraft station fails to establish contact with the designated frequency, it shall attempt to establish contact on another frequency appropriate to the route. [204] If the communication failure continues, the aircraft that is trying to communicate with another shall request other aeronautical stations to render assistance by calling the aircraft and relaying traffic if necessary; and/or request aircraft on the route to establish communication with the aircraft and relay messages, if necessary.[205]

Aprepluya had to comply with the most stringent civil aviation standards before endangering aircraft safety[206]. The Applicant violated international law by omitting the

[203] Statement of Agreed Facts, ¶ 43.

[204] ICAO, *Manual of Radiotelephony.* 2007 (Doc. 9432), ¶ 9.5.1.

[205] ICAO. *supra note* 204, ¶ 9.5.6.

[206] ICAO 38th Session Assembly, *supra note* 176.

procedures imposed by the ICAO for communication failures.[207] The applicant never attempted to communicate with the Mantyan Airways aircraft through another frequency, nor did he seek the assistance of other aircraft in flight.

Therefore, Aprepluya violated international law by omitting the standards established by international law before shooting down an aircraft.

[207] ICAO, *supra note* 198.

PRAYER FOR RELIEF

Ranovstayo respectfully requests this Court to adjudge and declare that:

I. Ranovstayo did not violate international law by applying its entry regulation to Aprepluya, and even if it did, it should not be required to compensate Aprepluya for any claimed economic losses;

II. Ranovstayo did not violate international law by refusing to hand over Ms. Keinblat Vormund to the Aprepluyan authorities;

III. The Court may exercise jurisdiction over Ranovstayo's counter-claim concerning the Mantyan Airways aircraft; and

IV. Aprepluya violated international law by shooting down the aircraft.

Respectfully submitted,

AGENTS FOR THE RESPONDENT