

国際法模擬裁判  
「2019年アジア・カップ」  
報告書

# Asia Cup 2019

International Law Moot Court Competition



共催：国際法学会、外務省

後援：日本財団



このイベントは、海と日本 PROJECT の一環で実施しています

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# 1. 背景

## (1) 概観

ここにいう模擬裁判は、あらかじめ出題されている架空の紛争事案について、参加者が、原告・被告の立場に分かれ、実際の裁判所に準じた手続に従い、書面陳述および口頭陳述を行い、その優劣を競う競技である。勝敗は、裁判官（審査員）の判定によって決定される。この模擬裁判大会は、欧米では、学生が日頃大学で学んでいる法律・法学が、実践の場においてどのように運営され活用されるのかを実体験から学ぶことができる有意義な教育手段と考えられている。日本においても、学部の演習、法科大学院や公共政策大学院の授業などにおいて実践的な法教育の一環として取り入れられてきている。

国際法模擬裁判は、国際法を素材とする模擬裁判であり、架空の国際紛争事案について、国際司法裁判所の手続に準じた一定の競技手続に従い、法的議論の優劣を競う模擬裁判である。国際法模擬裁判は、特定国家の国内法ではなく国際社会において一般に妥当すると考えられている国際法を素材として取り扱うため、国籍の異なる参加者が共通の土台の上で議論を展開できるという特性を有する。また、国際法に関する共通理解を培う場としても意義あるものである。このような国際法模擬裁判大会の性質から、大会には多数の国からの参加を得て、その大会には教育的効果はもちろん、国際親善・国際交流といった効果も期待することが出来る。実際、世界各国で開催されている国際法模擬裁判大会は、このような効果を狙って、様々な国からの参加を呼びかけ、開催されている。

日本では、法学教育はもっぱら講義が中心となってきたが、1979年に東京大学の学生が、アメリカで開催されている Philip C. Jessup 国際法模擬裁判大会（Philip C. Jessup International Law Moot Court Competition）に参加して以来、模擬裁判の存在が次第に知られるようになった。同大会には当初、東京大学だけが参加していたが、その後参加希望校が複数となったため、1986年より、国内予選を経て代表校を選出するようになった。1990年から、国内では、問題文・弁論とも日本語によるジャパン・カップが行われるようになっていたが、アジア・カップの開催に及んで、その国内予選ジャパン・ラウンドと位置付けられることになった。なお、後述するように、2013年より、アジア・カップとジャパン・カップはそれぞれが独立した大会として開催されることとなったため、現在は、ジャパン・カップを通じた国内選考は行われていない。

## (2) 海外の状況

アメリカにおいて、毎年3～4月に開催される Philip C. Jessup 国際法模擬裁判 (Philip C. Jessup International Law Moot Court Competition) は、参加国・参加校も多く、最も知られた伝統のある大会である。ある時期まで米国国務省が主催していたが、現在ではワシントンに事務所を有する国際法学生協会 (International Law Students Association (ILSA)) が主催している。

ヨーロッパでは、1977年から開催され、国内予選を勝ち抜いた二十数校が参加しているテルダース国際法模擬裁判 (Telders International Law Moot Court Competition) が知られている。オランダのライデン大学に事務所があり、大会はオランダのヘーグ平和宮で行われている。

また、法分野を限定した大会としては WTO 法模擬裁判大会 (Moot Court Competition on WTO Law) が 1995 年から、欧州法学生協会 (ELSA) 主催でジュネーブ WTO センターにおいて行われている。また、マンフレッド・ラックス宇宙法模擬裁判大会 (The Manfred Lachs Space Law Moot Court Competition) が 1992 年から国際宇宙法学会 (IISL) の主催で行われている。これには、宇宙航空研究開発機構 (JAXA・旧宇宙開発事業団・NASDA) が資金援助を行い、日本でも、若干の大学がアジア太平洋予選に参加している。また、赤十字国際委員会の支援で、アジア地域では、香港国際人道法模擬裁判が行われるようになっており、2006 年から、ジャパン・カップの結果により、日本代表がこれに招待されることになっている (2008 年よりジャパン・ラウンドに「香港人道法模擬裁判代表選出手続」が設けられ、2010 年より同手続は「香港人道法模擬裁判代表推薦手続」へと改編された)。人権法分野の展開としては、2009 年から国際連合欧州本部にてネルソンマンデラ世界人権法模擬裁判 (The Nelson Mandela World Human Rights Moot Court Competition) が開催されている。また、海洋法分野に特化した模擬裁判として、2019 年からユトレヒト大学 (オランダ) の主催により、国際海洋法模擬裁判 (International Law of the Sea Moot Court Competition) が開催されている。

## (3) 国内の状況

1979 年以来、日本の代表もほぼ毎年 Jessup 国際法模擬裁判に参加してきている。1984 年からは参加希望校が複数になり、国内予選によって代表の決定を行ってきた。この大会では、問題、書面、弁論のすべてにおいて英語が使われている。このような状況の中、国内において模擬裁判参加者の裾野を広げること、国際法意識の普及・浸透を計ること等を目的として、日本語で行われる大会の開催が望まれるようになった。こうして、1990 年から、日本語の規則・問題を独自に作成し、夏に国際法模擬裁判 (ジャパン・カップ)

が開催されるようになり、今日では Jessup 国際法模擬裁判の国内予選とほぼ同数の大学が参加するようになっている。なお、ジャパン・カップ、Jessup 国際法模擬裁判国内予選は、ほぼ毎年、外務省の後援や協力を得て開催されてきた。

こうして、1999 年にアジア・カップ国際法模擬裁判が開催された。この大会は、社団法人日本外交協会が、ジャパン・カップを運営する学生たちの協力を得て主催したものである。アジア・カップは、ASEAN 各国を中心に参加を呼びかけ、ジャパン・カップの問題、規則等の英語版を用いて行われた。この大会は 1999 年から 2001 年まで 3 度開催されたが、2002 年同協会の手を離れ、2003 年から 2012 年まで、国際人権・人道法の知識を普及させ、及び理解を増進させるとともに、有望なアジアの学生間に人的ネットワークを形成・拡充しながら、地域の人権意識の中長期的な向上を図ることを目的として、外務省（国際社会協力部人権人道課、現・総合外交政策局人権人道課）に引き継がれた。2013 年より、アジア・カップは国際法学会と外務省の共催となり、同学会内部の実行委員会が運営に参画することとなった。2014 年度以降、本大会を所管する外務省内の部署が同省国際法局国際法課へ、さらに、2016 年度以降、同局国際裁判対策室へと変更されたことに伴い、多数の現役外交官や国内外の法律実務家等を招へいし、国際大会の名に恥じない質・規模の裁判官陣を確保して大会を実施してきた。21 回目のアジア・カップとなる 2019 年には、これまでの開催実績を踏まえて本事業を益々発展させるべく、前年に大幅に増えた大会参加国・参加校数の維持ないしいっそうの拡大を図り、後述のとおり、参加登録国数は 2018 年と比べて 1 か国減ったものの、参加登録校数は過去最多の大会となった。また、アジア・カップは従来、外務省内で行われていたが、予選ラウンドのみイイノホール&カンファレンスセンター（決勝ラウンドおよび表彰式・レセプションは外務省内）で開催した 2018 年の経験をふまえて、2019 年は、予選ラウンドから決勝ラウンド、表彰式・レセプションを通して、すべてイイノホール&カンファレンスセンターで開催することになった。

## 2. 国際法模擬裁判「2019年アジア・カップ」の意義

### (1) 意義

「2019年アジア・カップ」の主要な意義として次の諸点が挙げられる。

#### a) 国際法に対する理解の増進

アジア地域の将来を担う同世代の学生らが、国際法をテーマとした設問に真剣に取り組み、国際法という共通の法言語によって討論を行うことで、国際法に関する意識を相互に高め、理解を深めることができる。

#### b) 「法の支配」の啓発

本模擬裁判大会に参加する大学の中には、参加者だけでなく、サークル単位で模擬裁判の準備を行う大学もある。模擬裁判大会を通じてより多くの学生が、国際法による紛争解決を学ぶ機会を持つことは、国際法を軸に据えた「法の支配」の啓発につながる。また、本大会を通じて、法的知識、論理的な思考を競い合い、国際法を学ぶ知的な喜びに触れた学生の中には、大学院に進学し、国際法の実務家あるいは研究者を目指す者も少なくない。本大会が、国際法そのものに対する啓発効果のみならず、将来の国際法学を担う若い人材に対して、国際法を深く学ぶための貴重なきっかけを提供している。

#### c) 日本理解の促進

各国から参加する学生は、大会に参加する日本人学生のみならず、参加運営にボランティアとして関わる数多くの日本人学生と交流を深める機会を持つことができる。参加学生が実際に日本を訪問し、体験したことは、日本を理解していく上で、貴重な経験となるはずである。

#### d) 将来への影響

大会に参加する各国代表は、それぞれの国における主要大学から参加しており、今後、東アジア、東南アジアおよび南アジアを含め世界的に広く活躍することが見込まれる。また、日本側から参加する学生の中にも将来、政府機関、法曹界、国際企業で活躍することになる学生が少なからず含まれている。将来、政治、外交、司法、ビジネスの各分野においてリーダーとして活躍することが見込まれる彼らが相互について理解を深めることは、将来にわたって日本とアジア地域諸国との関係に好影響をもたらすものと期待される。

## (2) 実施体制

国際法学会と外務省が共催した「2019年アジア・カップ」では、以下のような体制の下で大会の準備・運営を行った。

### a) 国際法学会内の実行委員会

国際法学会では、若手研究者育成委員会の国際法分野の委員により「2019年アジア・カップ」実行委員会を組織し、大会の実施にあたった。構成は以下のとおりである。

委員長	小畑郁（名古屋大学）
幹事	水島朋則（名古屋大学）
委員	坂巻静佳（静岡県立大学）
〃	坂本一也（岐阜大学）
〃	二杉健斗（岡山大学）
〃	根岸陽太（西南学院大学）
〃	樋口恵佳（東北公益文科大学）
〃	松田浩道（国際基督教大学）

### b) 外務省国際法局

外務省国際法局では、岡野正敬国際法局長が決勝裁判官を務めるとともに、複数の職員が予選裁判官を務めた。また、長沼善太郎国際裁判対策室長の下、北川剛史首席事務官以下同室職員が、国際法学会内の実行委員会と綿密な連携の下に、大会準備・運営にあたった。また、同局国際法課所属の吉田暁永国際法調査員は、外務省と実行委員会との連絡・調整業務などを務め、大会実施の中核的な役割を果たした。

外務省からは、国際法学会に対し、「2019年アジア・カップ」の運営業務一式として、総額3,800,000円が支払われた。これは会場費や問題作成謝金、印刷製本費等にあてられた。また、決勝終了後の表彰式・レセプションにおいては、山田賢司外務大臣政務官が優勝チームに対し外務大臣賞を授与するとともに、アジアにおける法の支配の促進・強化の重要性についてスピーチを行った。

### c) 日本財団からの助成

「2019年アジア・カップ」に対して、日本財団より助成金（総額5,000,000円）の交付を受けた。この助成金は、海外から参加した14チームに対する渡航費支援、裁判官謝金（書面・弁論）、学生アルバイト代等にあてられた。

### d) 裁判官

国際法、国際関係一般に知見を有する有識者等が書面裁判官および弁論裁判官を務めた（具体的な名簿は後述のとおり）。国内外で幅広く活躍し多忙な状況にあるにもかかわらず、これらの方々からは、「2019年アジア・カップ」の意義にご理解をいただき、



大切な時間を割いて惜しみない協力をいただいた。決勝裁判官は、浅田正彦京都大学大学院法学研究科教授・国際法学会代表理事、岡野正敬外務省国際法局長および根岸陽太西南学院大学法学部准教授（アジア・カップ実行委員）が務めた。

#### **e) 学生アルバイト**

「アジア・カップ」およびその予選であるジャパン・ラウンドの運営のための大学生による運営機関として、2004年に国際法学生交流会議(International Law Student Exchange Council (ILSEC))が設立されている(2013年以降は、アジア・カップからは独立した「ジャパン・カップ」を運営)。「2019年アジア・カップ」では、ILSECのメンバーの学生に対して、その模擬裁判運営のノウハウを活かした協力をお願いした。当日までの諸々の準備を担当していただいたほか、当日は、他の学生アルバイトの中心となって運營業務を行っていただいた。当日の運営にあたっては、各法廷の廷吏やタイムキーパーとして、より多くの人員を必要とするため、弁論大会に出場することができなかった日本の参加登録チームの学生十数名に協力をお願いした。なお、前年までは、外国チームの参加者をそれぞれに手配させた宿泊先から会場までの案内等を行うためにリエゾンとして学生アルバイトを雇用し、各外国チームに1人ずつリエゾンを付けていたが、今年は近畿日本ツーリストを通じてホテルと会場までの往復のためのバスを手配したため(14チームのうち10チームが利用)、リエゾンとしての学生アルバイトは雇用しなかった。

#### **f) 参加登録校数および書面予備審査の実施について**

本大会の開催に際しては、アジア各国の大学に対して広く参加を呼びかけた。その結果、17か国73校(2018年は19か国65校)から参加登録があったが、アジア・カップ実行委員による書面予備審査に基づいて、弁論大会に出場する15か国16校(後述)を決定した。なお、ミャンマー(ヤンゴン大学)から2019年に初めて参加登録があった。他方で、2018年には参加登録があったブルネイ、モンゴル、ウズベキスタンからは、2019年は参加登録がなかった。なお、会場のキャパシティ等のため、スリランカとトルクメニスタンからは、参加登録があったものの弁論大会に出場することはできなかった。

#### **g) 決勝ラウンドの傍聴者**

前述のとおり、「2019年アジア・カップ」においては決勝ラウンドを初めて外務省外のイイノホール&カンファレンスセンターで行うことにしたため、一般の傍聴が可能となった。アジア・カップ、国際法学会、外務省それぞれのホームページで案内を行い、決勝ラウンドでは、日本経済新聞と読売新聞の記者を含めて30名を超える傍聴者が参加した。「2019年アジア・カップ」参加者、外務省の新入省員を含め、200名以上が決勝ラウンドを傍聴した。

### 3. 日程およびタイムテーブル

#### (1) 開催準備からプログラム終了まで

##### a) 日程

2018年12月	問題文作成開始
2019年3月	公式スケジュール発表
4月8日(月)	公式規則・問題文発表
4月15日(月)	チーム登録開始
5月31日(金)	チーム登録〆切
6月21日(金)	書面提出〆切 書面予備審査開始
7月1日(月)	書面予備審査通過／弁論大会出場チームの発表 書面審査開始
7月12日(金)	弁論大会登録〆切
7月19日(金)	弁論サマリー提出〆切
8月6日(火)	弁論大会第1日：予選ラウンド
8月7日(水)	弁論大会第2日：準決勝・決勝・レセプション（表彰式）

##### b) 概評

例年は弁論大会を8月下旬に開催しているが、2019年はアフリカ開発会議（TICAD）の開催（8月28～30日、横浜）等のため8月上旬に弁論大会を開催した。そのため、書面の提出〆切から弁論大会出場チームの発表までの期間が例年より短くなり、前述の書面予備審査方式を導入した。また、2018年は第2日の午前まで予選ラウンドを行い、その上位2チームによる決勝ラウンドを第2日の午後に行っていたが、2019年は、予選ラウンドをすべて第1日に終え、第2日の午前は、2019年に初めて実施することにした予選上位4チームによる準決勝ラウンド(2法廷)を行い、午後の決勝ラウンドに進む2チームを決定した。

## (2) 国際法模擬裁判「2019年アジア・カップ」当日タイムテーブル

会場： イイノホール&カンファレンスセンター

### 【第1日目】 8月6日（火）

10:00～10:30	開会式
11:00～12:30	予選法廷第1ラウンド（4法廷）
13:00～14:30	予選法廷第2ラウンド（4法廷）
15:00～16:30	予選法廷第3ラウンド（4法廷）
17:00～18:30	予選法廷第4ラウンド（4法廷）

### 【第2日目】 8月7日（水）

9:30	準決勝ラウンド進出4チーム発表
10:20～12:00	準決勝ラウンド（2法廷）
（10:00～12:00	国会議事堂（衆議院）見学ツアー）
13:00	決勝ラウンド進出2チーム発表
14:00～16:00	決勝ラウンド
16:30～18:30	表彰式・レセプション



**International Law Moot Court Competition**  
**“Asia Cup 2019”**

**The Case Concerning**  
**the Maritime Operation “Sheer Cliff”**  
**and Certain Criminal Proceedings**

**The Kingdom of Amphit (Applicant)**

**vs.**

**The Republic of Rhea (Respondent)**

(1) The Kingdom of Amphit is a developed country located on the Nereus continent, with a population of 80 million people. Until the independence of the Republic of Rhea and the State of Theseus in 1965, Amphit was the colonial ruler of the two countries. The Kingdom of Amphit continues to achieve stable economic growth as a technologically advanced country that is at the cutting edge in the world. The Prime Minister, Mr. Poseidon, advocates human rights diplomacy and aims to achieve “positive peace” in the international community.

(2) The Republic of Rhea is a developing country on the Gaia continent to the north of Nereus and faces the Sea of Labyrinthos on the eastern side. It was a non-self-governing territory administered by Amphit but joined the United Nations after its independence (in 1965). The current population is about 10 million people. While its economy was supported by the traditional fishery at the time of independence, it has been gradually industrializing and its economy is growing.

(3) The State of Theseus is an archipelagic nation in the Sea of Labyrinthos, located more than two hundred and fifty (250) nautical miles away from the eastern coast of Rhea. It was also a non-self-governing territory administered by Amphit but joined the United Nations after independence (in 1965). Although the State has more than three hundred (300) islands, the Island of Theseus is the only island suitable for the majority of the current population, which is approximately five (5) million, to inhabit. The eastern part of the island is a political center where the Government, the Parliament, and the Supreme Court are located. However, surrounded by mountains, the district is sparsely inhabited. As a result, most of the population live in the western area, which is rapidly developing due to the increasing foreign investment by major resort companies.

(4) While Theseus attracted foreign visitors from around the world and its economy was growing, illicit drug trade and human trafficking began to spread in the country from around the year 2000. The main culprit is the Minotauros, a criminal organization that has been influential in resort development. Despite massive investment of resources to curb the crimes, it was quite difficult for the Government to detect and arrest the criminals who were using many remote islands as trading places, and they became increasingly active.

(5) At the beginning of December 2016, the Minotauros, which had become resourceful by their illicit drug trade and human trafficking, armed themselves and effectively occupied the western area of Theseus, and entered into an armed conflict with the National Defense Forces of Theseus. Due to the armed conflict, the traffic between the western and eastern sides of the island of Theseus became totally blocked, and the living conditions across the island sharply deteriorated. As a result, many Theseus islanders were forced to escape from the island by their own boats, and they fled to the Republic of Rhea. In response to the massive outbreak of displaced people, the Rhean Government enacted the Emergency Protection Act for Theseusians (EPAT) as a temporary measure. The Act granted a 5-year residence

permit to the evacuees from the State of Theseus while reserving the Government's discretion to respond to future changes of circumstances.

(6) In March 2017, Delphinus, an international non-governmental organization (NGO) established under the laws of the Kingdom of Amphit released a survey, reporting that more than one hundred thousand (100,000) people had left Theseus since the armed conflict started. It also stated that more than five thousand (5,000) people had been killed by drowning before reaching the Rhean coast. It warned that the rampant human smuggling and human trafficking targeting the evacuees were causing the increase in the death toll.

(7) At the end of March, Ms. Arion, the Head of Delphinus Headquarters in the Kingdom of Amphit, announced the launch of Humanitarian Operation "Ariadne's Thread," a humanitarian rescue mission at the Sea of Labyrinthos. The operation is to dispatch the Amphit-registered vessel M/V Dignitas, owned by the Delphinus Headquarters, to the Sea of Labyrinthos, rescue the Theseusians on to the vessel, and escort them to a port in the Republic of Rhea, the closest and safest country in the area. The Rhean Government granted residence permits under the EPAT to those rescued.

(8) As the influxes of refugees from Theseus continued, there was increase in number of reports that the rate of drug-related crimes was on the rise and that the safe living environment was being jeopardized. According to a survey conducted by one of the biggest Rhean newspaper, as the drug trafficking affected Rhean citizens more, they showed more frustration with the immigrants from Theseus as well as with the continuation of the rescue operation by Delphinus. Correspondingly, the election in January 2018 resulted in the victory of President Skyros, who advocates the anti-drugs and anti-immigrants policy. The Skyros administration abolished the EPAT and tightened the enforcement of the Drugs Regulation Act. As a part of this policy, the Minister of National Defense was authorized to order "necessary measures" to ensure effective immigration control against vessels sailing to the port of Rhea without an entry permit.

(9) On 1 April 2018, Mr. Lycomedes, the Minister of National Defense of the Republic of Rhea, held a press conference and announced to initiate the Maritime Operation "Sheer Cliff" to eradicate drug trafficking disguised as humanitarian rescues. In this operation, as soon as the Marine Security Bureau, an intelligence agency, confirms a vessel with Theseusians on board approaching the territorial sea of Rhea, a warship issues a warning by radio, approaches to the vessel, and instructs it to stop at a place more than thirty (30) nautical miles remote from the baseline and to change the route. M/V Dignitas has also been forced to change the course several times by this procedure and unable to enter the port of Rhea since then. In addition, other countries on the Gaia continent expressed the same concern as the Rhean Government had over the Operation "Ariadne's Thread." As a result, M/V Dignitas had no choice

but to make a significantly longer journey to the flag State, Amphit, as it was unrealistic to send victims back to Theseus in the middle of the armed conflict.

(10) According to a report issued later in April 2019 by the Ministry of National Defense of the Republic of Rhea, the Maritime Operation “Sheer Cliff” prevented since its launch at least 50 suspicious vessels carrying refugees from entering into territorial sea of the Republic of Rhea. However, according to a survey conducted by Delphinus in collaboration with several international NGOs, the number of casualties at the Sea of Labyrinthos in April 2018 had doubled compared to the month in which the worst number of deaths had been reported during the period between the beginning of the armed conflict and March 2018.

(11) On 30 April 2018, in response to the re-increase of the victims after the Maritime Operation “Sheer Cliff” started, Prime Minister of Amphit, Mr. Poseidon, notified the Republic of Rhea as follows:

The noble spirit that the Republic of Rhea once manifested as a member of the international community has proved to be fake in a blink of our eye. Now, the Republic of Rhea has built a “sheer cliff” on the sea that recklessly blocks the innocent people risking their lives to cross the sea. The Republic of Rhea should immediately dismantle this ruthless sea wall and save the lives from the labyrinth on the sea in order to return to a faithful compliance with international law.

(12) The next day, Mr. Lycomedes, the Rhean Defense Minister, criticized the remarks of Mr. Poseidon as “irresponsible” and responded as follows:

People in the safe area far away from the tragedy should shut up. It is “We the People,” the Republic of Rhea, who is actually suffering. We have accepted a large number of immigrants without certificates, whose number has grown to even one-fiftieth of our population. If this continues to grow, we cannot secure our own survival. In order to maintain the security of ourselves, it is necessary to stop drug trade and human trafficking at the edge of our territorial sea, and the Maritime Operation “Sheer Cliff” forms the core mission for achieving this end.

(13) On the same day, in a press conference, Ms. Arion, the Delphinus headquarters chief, criticized the Maritime Operation “Sheer Cliff” as follows:

We are highly proud of our Humanitarian Operation “Ariadne’s Thread” through which we have saved innocent lives escaping from the ravage of armed conflict in Theseus. Its success was owed to the generous cooperation on the opposite side of the sea, namely, the Republic of Rhea. Now that the people of the Republic of Rhea have sold their souls to the devil, we are

forced to go through a different long-distance route to Amphit, the only brave country that shows the willingness to support our Operation. Despite its support, the number of operations we can pursue has been excessively reduced, and we are witnessing a nightmare in which innocent evacuees we could save before are drowning to death. Nevertheless, what we should do at present is not to be disappointed but to keep dropping the life-saving thread in the Sea of Labyrinthos.

(14) On 8 September 2018, twenty (20) staffs of Delphinus branch office in Rhea, all having the nationality of Amphit, were charged with the allegation of drug trafficking through the Humanitarian Operation “Ariadne’s Thread.” Although Delphinus headquarters denied the allegations as groundless, those staffs were forced to leave the building and deported to the outside of the territorial sea of the Republic of Rhea on a boat of the Ministry of National Defense. Also on board were sixty-three (63) Theseusian immigrants deprived of the residence permit for the allegation of drug trafficking. M/V Dignitas was dispatched to the site and rescued all persons on the boat on the edge of territorial sea of the Republic of Rhea. These people were escorted to Amphit.

(15) According to a report of a human rights NGO based in the Republic of Rhea, the deportation on 8 September 2018 was conducted under the direction of the Minister of National Defense, Mr. Lycomedes. Asked about the report, Mr. Lycomedes admitted that he did order the deportation as part of the policy pursued since 1 April 2018 and stated that Rhea just expelled criminals.

(16) On 15 December 2018, the Prosecutor’s Office of the Kingdom of Amphit, based on testimonies from the deported Delfinus staffs and immigrants as well as other evidences obtained through its own investigation, requested the court in Amphit to issue an arrest warrant to Mr. Lycomedes for ordering “deportation or forcible transfer of population,” which constitutes a “crime against humanity” under the Act on Criminal Proceedings.

(17) The next day, immediately after the arrest warrant was issued, Mr. Skyros, the President of the Republic of Rhea, protested against the Amphittan Government in a diplomatic note as follows:

Our Minister of National Defense faithfully performed his task of ensuring the security and order of our nation. Subjecting senior officials of another sovereign State to the criminal proceedings of the Kingdom of Amphit’s is an unjustified ignorance of international law, destroying the principle of sovereign equality which lied at the core of the international relations, and is a new form of colonialism.

(18) The next day, Mr. Poseidon, Prime Minister of the Kingdom of Amphit, sent to the Rhean Government a reply as follows:



Our judiciary cannot overlook international crimes attacking our own nationals and does exercise criminal jurisdiction on behalf of the international community to eradicate such cruelties. Those who committed to the absolute insane evil must be brought to justice, whoever they are, and even if they are government officials of an equally sovereign State.

(19) On 1 April 2019, after diplomatic negotiations, the Governments of the Kingdom of Amphit and the Republic of Rhea agreed to refer to the International Court of Justice under Article 36 (1) of the Court's Statute the dispute concerning:

- The Maritime Operation "Sheer Cliff" initiated by the Republic of Rhea on 1 April 2018; and
- Criminal proceedings initiated by the Kingdom of Amphit against Mr. Lycomedes, the Minister of National Defense of the Republic of Rhea, on 15 December 2018.

Both parties have made clear that they will not dispute the Court's jurisdiction over the dispute and the admissibility of the other party's claims.

(20) The status of treaty ratification of the parties is as follows:

- Both parties are Members of the United Nations (UN) and are parties to the Vienna Convention on the Law of Treaties.
- Both parties signed and ratified the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, and established the territorial seas of twelve (12) nautical miles, the contiguous zones of twenty-four (24) nautical miles, and exclusive economic zones of two-hundred (200) nautical miles from the baseline of each.
- The Kingdom of Amphit is a party to the International Convention on Search and Rescue at Sea and the International Convention on the Safety of Life at Sea (SOLAS Convention), but the Republic of Rhea has not signed these Conventions and not a party to them.
- The Kingdom of Amphit is a party to all major UN human rights treaties, while the Republic of Rhea is a party only to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).
- Although the Kingdom of Amphit is a party to the Refugee Convention and its Protocol, the Republic of Rhea has not signed or ratified them although the former administration had taken preparatory steps for concluding them.
- Both parties are preparing to ratify the Rome Statute of the International Criminal Court (ICC) but have not signed or ratified it yet. Although the Kingdom of Amphit has ratified the UN Convention against Transnational Organized Crime and all protocols thereto, the Republic of Rhea has only started preliminary examinations for concluding the Convention under the Skyros administration.

- There is no regional economic integration community or regional human rights convention applicable to the Gaia continent.

(21) The Kingdom of Amphit (the Applicant) respectfully requests that the Court to adjudge and declare:

1. That Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018 has violated international law, and therefore, the Republic of Rhea must take necessary measures to put an end to the Operation; and
2. That the criminal proceedings initiated by the Kingdom of Amphit against Mr. Lycomedes, the Minister of National Defense of the Republic of Rhea, on 15 December 2018 do not violate international law.

(22) The Republic of Rhea (the Respondent) respectfully requests that the Court to adjudge and declare:

1. That the Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018 has not violated international law; and
2. That the criminal proceedings initiated by the Kingdom of Amphit against Mr. Lycomedes, the Minister of National Defense of the Republic of Rhea, on 15 December 2018 violate international law, and therefore, the Kingdom of Amphit must take necessary measures to put an end to the proceedings.

*International Law Moot Court Competition, “Asia Cup 2019”*

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Supplement

*Paragraph (5)*

According to reports in the mainstream media in Rhea, some immigrants from Theseus were confirmed to have been on durable boats made of resin materials. On the other hand, the report published by Delfinus in March 2017 included pictures of children and women on wooden boats and a large number of people crammed into rubber boats.

*Paragraph (9), 1st & 2nd sentences*

In the Maritime Operation “Sheer Cliff”, the Marine Security Bureau of the Republic of Rhea immediately relays information to a warship on all ships for which permission to enter their territory cannot be confirmed, including ships apparently carrying evacuees.

*Paragraph (9), 5th sentence*

The Government of Theseus succeeded in arresting several leaders after violent military clashes with the Minotauros. However, as a result of losing its head, the Minotauros was divided into smaller factions and their internal struggles rather made the armed conflict stalemated.

*Paragraph (16)*

The Act on Criminal Proceedings of the Kingdom of Amphit was adopted in the course of preparation to ratify the Rome Statute of the International Criminal Court (ICC).

*Paragraph (20)*

Both parties are parties to the 1958 Geneva Conventions on the Law of the Sea including the Convention on the Territorial Sea and the Contiguous Zone (CTS) and the Convention on the High Seas (CHS).

# Official Rules of Asia Cup 2019

8 April 2019

Asia Cup 2019 Organizing Committee

## Chapter I General Rules

### Article 1 Purpose

The International Law Moot Court Competition, “Asia Cup 2019”, is co-hosted by the Japanese Society of International Law and the Ministry of Foreign Affairs of Japan and administered by the Asia Cup 2019 Organizing Committee. The purpose of Asia Cup 2019 is to raise awareness regarding international law and the rule of law among students in Asia through academic exchange. It is hoped that Asia Cup 2019 will foster friendship among Asian students.

### Article 2 Structure

Asia Cup 2019 consists of written pleadings (Memorials) and oral pleadings (Oral Rounds).

### Article 3 Official Language and Venue

- (1) The official language of Asia Cup 2019 is English.
- (2) Asia Cup 2019 is held in Tokyo, Japan.

### Article 4 Competition Problem and Supplementation

- (1) The Organizing Committee publishes the Competition Problem of Asia Cup 2019.
- (2) The Organizing Committee may publish supplementation if it is deemed necessary.

### Article 5 Detailed Regulations

The Organizing Committee may add detailed regulations if they are deemed necessary.

### Article 6 Interpretation of Rules

The Organizing Committee shall serve as final arbiter of implementation and interpretation of these Rules and regulations.

## **CHAPTER II PARTICIPATION AND ELIGIBILITY**

### **Article 7 Team Eligibility and Composition**

(1) Each school in Asia may enter one team. A school may petition the Organizing Committee, in writing, to allow the participation of multiple teams from the school. Additional teams may be allowed if the teams represent different colleges, faculties, branches, departments, or campuses of the same school and will be participating independently of each other.

(2) A team may be composed of two to four team members who shall be the only individuals contributing to the work product of the team in Asia Cup 2019. Conducting research for a team's written and/or oral arguments, writing any part of a team's Memorial, and presenting any of a team's oral arguments are examples of activities that contribute to a team's work product.

(3) Team members may be chosen by any method within the school.

### **Article 8 Team Member Eligibility**

(1) A team member must be officially enrolled as an undergraduate student in a university or equivalent program.

(2) A student enrolled in a graduate degree program in the field of international law, an undergraduate student who has previously graduated from a university with a law degree, and an individual who has worked as a legal professional may not be a team member.

## **CHAPTER III TEAM REGISTRATION**

### **Article 9 Registration**

(1) Every team must register with the Organizing Committee online at <http://www.asiacup.sakura.ne.jp> by the deadline in the Official Schedule.

(2) Every student who contributes to the work product of the team must be registered as a team member.

### **Article 10 Team Number**

Once a team has completed registration, the Organizing Committee will assign the team a team number.

### **Article 11 Changes of Team Members**

Once team members are registered, teams may not make changes, whether additions or substitutions, of team members, without permission from the Organizing Committee. Any request to make a change must be submitted to the Organizing Committee with an explanation of the reason for the requested change.

## **CHAPTER IV MEMORIAL**

### **Article 12 Submission of Memorial**

- (1) Each team shall submit a Memorial for Applicant to the Organizing Committee online at <http://www.asiacup.sakura.ne.jp> by the deadline in the Official Schedule.
- (2) Unless otherwise agreed in advance and in writing by the Organizing Committee, a team will be disqualified from Asia Cup 2019 if it does not submit its Applicant Memorial by the deadline.

### **Article 13 Memorial Formatting**

- (1) File Type: An Applicant Memorial must be in Microsoft Word format.
- (2) Paper Size/Margins: The Memorial must be typed in black on white international standard A4 paper (21 x 29.75 centimeters), with margins of not less than 1 inch or 2.6 centimeters on all four sides.
- (3) Font, Font Size and Line Spacing: The font and size of the text of the Memorial, excluding the Cover Page and page numbers but including footnotes, must be in either Times New Roman 12-point or Courier 10-point. The line spacing for the Memorial must be double-spaced, with the exception of footnotes.

### **Article 14 Memorial Content**

- (1) The Memorial must consist of the following parts and be saved in a single file.
  - (i) Cover Page, which must include a statement indicating that what follows is the Memorial for Asia Cup 2019 and the team number in the upper right-hand corner;
  - (ii) Table of Contents;
  - (iii) Summary of Pleadings, which must not exceed 2 pages;
  - (iv) Pleadings, which must not exceed 10 pages, including footnotes; and
  - (v) Conclusion/Prayer for Relief
- (2) Parts not enumerated in paragraph 1 should not be contained.

### **Article 15 Anonymity in Memorial**

Names of team members, and the country or school name of the team, may not appear on or within the Memorial, even by implication.

## **CHAPTER V TEAMS PARTICIPATING IN ORAL ROUNDS**

### **Article 16 Qualifying Teams**

(1) The Organizing Committee will select teams participating in the Oral Rounds of Asia Cup 2019 on the basis of the preliminary Memorial examination. In principle, one team from each Asian country other than Japan and one or two teams from Japan may participate in the Oral Rounds.

(2) In the preliminary Memorial examination, the evaluation criteria provided in Article 34 will be utilized.

(3) The Organizing Committee will inform all teams of the outcome of the preliminary Memorial examination, but no information about the score or ranking in this examination will be given.

### **Article 17 Team Registration for Oral Rounds**

Each member of the teams qualified for the Oral Rounds must submit an official document which certifies that he/she meets the requirements provided in Article 8, by the deadline in the Official Schedule.

### **Article 18 Observers**

(1) Persons other than those registered in accordance with Article 9 are regarded as observers, subject to an approval by the Organizing Committee.

(2) Observers may not act as an oralist at the Oral Rounds.

### **Article 19 Financial Support**

(1) The Organizing Committee may offer financial support for participating in the Oral Rounds.

(2) In order to receive the financial support for travel expenses, a team must apply by the deadline in the Official Schedule.

## **CHAPTER VI ORAL ROUND PROCEDURES**

### **Article 20 Summary of Oral Pleadings**

Each team participating in the Oral Rounds must submit to the Organizing Committee a Summary of Oral Pleadings both for Applicant and Respondent by the deadline which will be announced by the Organizing Committee.

### **Article 21 General Procedures**

Each Oral Round consists of 60 minutes of oral pleadings. Applicant and Respondent are each allotted 30 minutes. Oral presentations must be made by two members from each team. Prior to the beginning of the Oral Round, each team must indicate to the bailiff how it wishes to allocate 30 minutes among (a) its first oralist, (b) its second oralist, and (c) rebuttal (for Applicant) or sur-rebuttal (for Respondent). The team may not allocate more than 20 minutes, including rebuttal or sur-rebuttal, to either oralist. Any team member may act as an oralist.

### **Article 22 Extension of Time at Judges' Discretion**

Judges may, at their discretion, extend total team oral argument time beyond the 30-minute allocation, and oralists asked by the judges to expand upon arguments may, in this instance, exceed the 20-minute individual limit.

### **Article 23 Three Judge Panels**

In each Oral Round, the Organizing Committee in principle employ three judges whenever possible, and may employ more than three judges in the Semifinal Rounds and the Final Round. In extenuating circumstances, the Organizing Committee may authorize panels of two judges.

### **Article 24 Oral Rounds**

The order of the pleadings in each Oral Round is:

Applicant 1 → Applicant 2 → Respondent 1 → Respondent 2 → Rebuttal (Applicant 1 or 2) →  
Sur-rebuttal (Respondent 1 or 2).

### **Article 25 Rebuttal and Sur-rebuttal**

Each team may reserve up to five minutes for rebuttal or sur-rebuttal. Only one of the two oralists participating in the Oral Round may deliver the rebuttal or sur-rebuttal, but the team need not



indicate in advance which of the pleading team members will do so. Teams may waive their rebuttal or sur-rebuttal.

#### **Article 26 Scope of Pleadings**

(1) Oral pleadings at each Oral Round should in principle be made on the basis of Memorials and Summaries of Oral Pleadings of both teams. The scope of Applicant's rebuttal is limited to responding to Respondent's primary oral pleadings, and the scope of Respondent's sur-rebuttal is limited to responding to Applicant's rebuttal. If Applicant waives rebuttal, Respondent's sur-rebuttal is automatically waived as well.

(2) Oral judges may take any non-compliance with this principle into account in evaluating an oralist's performance.

#### **Article 27 Communication and Electronic Devices in Courtrooms**

(1) Communication at the counsel table shall be limited to written communication among team members seated at the counsel table.

(2) During an Oral Round, oralists may not operate, for any purpose, mobile phones, laptop computers, or any other computing or electronic devices.

#### **Article 28 Timekeeping Devices in Courtrooms**

The official time of the match shall be indicated by the bailiff or the timekeeper. No one other than the bailiff or the timekeeper may display timecards or otherwise signal to the oralist how much time is left.

### **CHAPTER VII COMPETITION PROCEDURES**

#### **Article 29 Preliminary Rounds**

Each team participating in the Oral Rounds shall participate in Preliminary Rounds consisting of two Oral Rounds, once as Applicant and once as Respondent.

#### **Article 30 Pairing**

(1) The pairing of teams for Preliminary Rounds shall be done by a random draw. The Organizing Committee will distribute to each team the Memorials and Summaries of Oral Pleadings of opposing teams on or prior to the first day of Asia Cup 2019.

(2) The Organizing Committee may modify the pairing to account for absent teams or other unforeseeable contingencies. If teams must be newly paired, they must be provided the Memorial and Summary of Oral Pleadings of their new opposing team as soon as reasonably possible.

### **Article 31 Preliminary Round Rankings**

(1) Teams shall be ranked by Total Asia Cup Scores provided in Article 36, paragraph 4, from highest to lowest.

(2) If two or more teams are tied after application of paragraph 1 of the present Article, and the outcome of determination does not affect (a) any team's entry into the Semifinal Rounds, or (b) the pairing of any teams in the Semifinal Rounds, the teams shall be ranked equally. If, however, further determination is necessary to determine advancement or pairings, the Organizing Committee shall break the tie according to the following methods, starting with the first and working down only if the prior method does not break the tie:

- (i) the team with the higher Total Oral Score wins;
- (ii) the team with the higher Respondent Oral Score wins; or
- (iii) the Organizing Committee determines a method to break the tie, taking into account the interests of the teams and Asia Cup 2019 as a whole.

### **Article 32 Semifinal Rounds**

(1) The Semifinal Rounds consist of two pairings of the four highest-ranked teams in accordance with Article 31.

(2) The pairings in the Semifinal Rounds shall be determined as follows: the first-ranked team versus the fourth-ranked team; and the second-ranked team versus the third-ranked team.

(3) In each Semifinal Round, the higher-ranking team shall have the pleading option, or the right to choose which side it will argue.

### **Article 33 Final Rounds**

(1) The two winning teams from the Semifinal Rounds advance to the Final Round of Asia Cup 2019.

(2) The pleading option for the Final Round shall be determined by drawing lots or any other means the Organizing Committee chooses.

## **CHAPTER VIII Competition Scoring**

### **Article 34 Scoring of Memorials**

Each judge will score each Memorial on a scale of 50 to 100 points. A Memorial judge may utilize the following evaluation criteria.

- (i) Knowledge of facts and law
- (ii) Proper and articulate analysis
- (iii) Extent and use of research
- (iv) Clarity and organization
- (v) Style, formatting, grammar, and citation of sources

### **Article 35 Scoring of Preliminary Rounds**

Each judge will score each oralist on a scale of 50 to 100 points. An Oral judge may utilize the following evaluation criteria.

- (i) Knowledge of the law
- (ii) Questions and answers
- (iii) Knowledge of the facts
- (iv) Style, pose and demeanor
- (v) Organization and time management

### **Article 36 Scores**

The calculation of scores shall be subject to the deduction of Penalties under Chapter IX.

(1) Each team's Total Memorial Score is the sum of the three Memorial judges' scores. This score shall be used to determine the Best Memorial Award.

(2) Each oralist's Individual Oral Score is the sum of the scores of the three Oral judges for the oralist. This score shall be used to determine the Best Oralist Awards

(3) Each team's Total Oral Score is the sum of the scores of the three Oral judges for each of its four oralists.

(i) Each team's Applicant Oral Score is the sum of the scores of the three Oral judges for each of its two oralists arguing Applicant.

(ii) Each team's Respondent Oral Score is the sum of the scores of the three Oral judges for each of its two oralists arguing Respondent.

(4) Each team's Total Asia Cup Score is the sum of the team's Total Memorial Score and the team's

Total Oral Score.

### **Article 37 Two-Judge Panels**

If only two judges score a given Memorial or a given Oral Round, the Organizing Committee shall create a third score by averaging the scores of the two judges.

### **Article 38 Scoring Procedures for Semifinal and Final Rounds**

Judges of the Semifinal and Final Rounds shall make an independent review of the oral arguments. The decision regarding the winner of the Round shall be by majority vote of the judges. No ties are allowed.

## **CHAPTER IX PENALTIES**

### **Article 39 Memorial Penalties**

- (1) Memorial Penalties shall be deducted from each judge's score on a team's Memorial.
- (2) Penalties shall be assessed for violations of the Rules concerning Memorial as follows.
  - (i) Failure to include all parts of Memorial (Article 14): 5 points for each part
  - (ii) Excessive length of Summary of Pleadings (Article 14(1)(iii)): 5 points per page
  - (iii) Excessive length of Pleadings (Article 14(1)(iv)): 5 points per page
  - (iv) Violation of anonymity in Memorial (Article 15): disqualification or up to 10 points

### **Article 40 Oral Round Penalties**

- (1) Oral Round Penalties shall be deducted from each judge's score for each oralist.
- (2) Penalties shall be assessed for violations of the Rules concerning Oral Rounds as follows.
  - (i) Tardiness in submitting a Summary of Oral Pleadings (Article 20): 5 points per day
  - (ii) Improper communication in courtrooms (Article 27): up to 10 points
- (3) In addition, the Organizing Committee may assess up to 10-point penalties for other violations of the letter or spirit of the Rules.
- (4) If a team believes that an infraction of the Rules has occurred during an Oral Round, the team may notify the bailiff or the Organizing Committee within five minutes of the conclusion of that Oral Round.

## **CHAPTER X      AWARDS**

### **Article 41 The Asia Cup Championship Award**

The Asia Cup Championship Award is presented to the team that wins the Final Round of Asia Cup 2019.

### **Article 42 The Best Memorial Award**

The Best Memorial Award is presented to the team with the highest Total Memorial Score.

### **Article 43 The Best Oralist Awards**

- (1) The Best Applicant Oralist Award is presented to the oralist with the highest Individual Oral Score among the oralists arguing Applicant.
- (2) The Best Respondent Oralist Award is presented to the oralist with the highest Individual Oral Score among the oralists arguing Respondent.

## 5. 裁判官

### (1) 書面予備審査

参加登録チームの増加と弁論大会出場チーム決定までの期間の短さを考慮して、昨年までのように提出されたすべての書面を複数の書面裁判官が採点して弁論大会出場チーム（予選通過チーム）を決定する方式ではなく、基本的には国別のグループ分けに基づく書面予備審査を導入し、アジア・カップ実行委員による審査結果をふまえて弁論大会出場チームを決定した。

### (2) 書面裁判官 (50音順、敬称略)

江藤淳一（上智大学）

坂巻静佳（静岡県立大学、アジア・カップ実行委員）

坂本一也（岐阜大学、アジア・カップ実行委員）

佐藤智恵（明治大学）

高田陽奈子（京都大学）

竹内真理（神戸大学）

寺本和泉（日本貿易振興機構（JETRO））

天神毅（JXTG エネルギー）

中里祐太（財務省）

マンスフィールド・デビッド宥雅（東京大学大学院）

森肇志（東京大学）

吉田咲耶（西村あさひ法律事務所）

若狭彰室（東京大学）

渡邊剛央（岡山理科大学）

### (3) 弁論裁判官（予選・準決勝ラウンド） (50音順、敬称略)

秋山卓也（外務省）

阿部克則（学習院大学）

石井由梨佳（防衛大学校）

石戸信平（西村あさひ法律事務所）

ト部晃史（瓜生・糸賀法律事務所）

金子亮（外務省）

北川剛史（外務省）

久保裕司（法務省）  
佐伯徳彦（クールジャパン機構）  
坂口研（外務省）  
佐俣紀仁（東北医科薬科大学）  
澤田聡子（外務省）  
清水茉莉（経済産業省）  
鈴木悠（群馬県立女子大学）  
関善貴（法務省）  
瀬田真（横浜市立大学）  
高嶋卓（法務省）  
竹村仁美（一橋大学）  
ドゥーネンブルグ, アネマリー (Anne-Marie Dörnenburg) (西村あさひ法律事務所)  
中村秀之（日本海事センター）  
長沼善太郎（外務省）  
二杉健斗（岡山大学、アジア・カップ実行委員）  
根岸陽太（西南学院大学、アジア・カップ実行委員）  
樋口恵佳（東北公益文科大学、アジア・カップ実行委員）  
平野実晴（日本学術振興会特別研究員）  
福永有夏（早稲田大学）  
松田浩道（国際基督教大学、アジア・カップ実行委員）  
和光真理江（西村あさひ法律事務所）  
渡辺翔太（野村総合研究所）

**(4) 決勝ラウンド裁判官** (50音順、敬称略)

浅田正彦（京都大学、国際法学会代表理事）  
岡野正敬（外務省国際法局長）  
根岸陽太（西南学院大学、アジア・カップ実行委員）

## 6. 弁論ラウンド参加チーム

AC11	Ho Chi Minh City University of Law	Viet Nam
AC19	Thammasat University	Thailand
AC28	National University of Singapore	Singapore
AC29	Handong Global University	Republic of Korea
AC31	Purbanchal University	Nepal
AC35	University of Yangon	Myanmar
AC40	Universitas Padjadjaran	Indonesia
AC41	National Law University	India
AC45	University of Malaya	Malaysia
AC46	Lahore University of Management Sciences	Pakistan
AC48	BRAC University	Bangladesh
AC59	Kyoto University (京都大学)	Japan
AC65	Russian State University of Justice	Russia
AC66	Sophia University (上智大学)	Japan
AC67	The Chinese University of Hong Kong	China
AC82	University of the Philippines	Philippines



## 7. 結果

### (1) 総合順位

Asia Cup 2019: Overall Rankings

Rank	Team	Team Number	Total Scores
<b>Champion</b>	<b>University of the Philippines</b>	<b>AC 82</b>	---
<b>Runner-up</b>	<b>Russian State University of Justice</b>	<b>AC 65</b>	---
3rd	Thammasat University (Thailand)	AC 19	1261 points
4th	Handong Global University (Republic of Korea)	AC 29	1221 points
5th	University of Malaya (Malaysia)	AC 45	1220 points
6th	Universitas Padjadjaran (Indonesia)	AC 40	1217 points
7th	National University of Singapore	AC 28	1209 points
8th	Chinese University of Hong Kong	AC 67	1204 points
9th	Purbanchal University (Nepal)	AC 31	1197 points
10th	Ho Chi Minh City University of Law (Viet Nam)	AC 11	1138 points
11th	Sophia University (Japan)	AC 66	1120 points
12th	Kyoto University (Japan)	AC 59	1096 points
13th	Lahore University of Management Sciences (Pakistan)	AC 46	1084 points
14th	BRAC University (Bangladesh)	AC 48	1055 points
15th	National Law University (India)	AC 41	1046 points
16th	University of Yangon (Myanmar)	AC 35	1029 points

### (2) 書面順位

Asia Cup 2019: Memorials Rankings

Rank	Team	Team Number	Score
<b>Best Memorial</b>	<b>Russian State University of Justice</b>	<b>AC 65</b>	263 points
2nd	Sophia University (Japan)	AC 66	258 points
3rd, tie	Kyoto University (Japan)	AC 59	247 points
3rd, tie	University of the Philippines	AC 82	247 points
5th	Chinese University of Hong Kong	AC 67	241 points
6th, tie	Thammasat University (Thailand)	AC 19	240 points
6th, tie	National University of Singapore	AC 28	240 points
8th	Ho Chi Minh City University of Law (Viet Nam)	AC 11	238 points
9th	Handong Global University (Republic of Korea)	AC 29	231 points
10th	Purbanchal University (Nepal)	AC 31	229 points
11th	BRAC University (Bangladesh)	AC 48	226 points
12th	University of Malaya (Malaysia)	AC 45	222 points
13th	National Law University (India)	AC 41	209 points
14th	Lahore University of Management Sciences (Pakistan)	AC 46	206 points
15th	Universitas Padjadjaran (Indonesia)	AC 40	197 points
16th	University of Yangon (Myanmar)	AC 35	183 points

### (3) 弁論順位（原告・被告、各 10 位まで）

Asia Cup 2019: Top 10 Applicant Oralists				
Rank	Name	Team	Team Number	Score
<b>Best Applicant Oralist</b>	<b>TORRES, Leslie Diane D.</b>	<b>University of the Philippines</b>	AC 82	268 points
2nd, tie	Prajwol Bickram Rana	Purbanchal University (Nepal)	AC 31	264 points
2nd, tie	Jessica Lim Wei Zhen	University of Malaya (Malaysia)	AC 45	264 points
4th	Caysseny Tean Boonsiri	University of Malaya (Malaysia)	AC 45	262 points
5th, tie	Dipti Paudel	Purbanchal University (Nepal)	AC 31	259 points
5th, tie	SISON, Anton Miguel A.	University of the Philippines	AC 82	259 points
7th	Yelin Yu	Handong Global University (Republic of Korea)	AC 29	258 points
8th, tie	Dollada Kasarn	Thammasat University (Thailand)	AC 19	255 points
8th, tie	Leung Hoi Ming	Chinese University of Hong Kong	AC 67	255 points
10th	Natada Suvanprakorn	Thammasat University (Thailand)	AC 19	250 points

Asia Cup 2019: Top 10 Respondent Oralists				
Rank	Name	Team	Team Number	Score
<b>Best Respondent Oralist</b>	<b>Naila Amatullah</b>	<b>Universitas Padjadjaran (Indonesia)</b>	AC 40	288 points
2nd	ESTIOCO, Marianne Angeli B.	University of the Philippines	AC 82	276 points
3rd	HERNANDEZ, Abelardo G.	University of the Philippines	AC 82	273 points
4th	Elizabeth Calista Nawangsari	Universitas Padjadjaran (Indonesia)	AC 40	270 points
5th	Ong Kye Jing	National University of Singapore	AC 28	264 points
6th	Natada Suvanprakorn	Thammasat University (Thailand)	AC 19	259 points
7th	Natchanan Buaphin	Thammasat University (Thailand)	AC 19	257 points
8th	Aleksandra Mazka	Russian State University of Justice	AC 65	255 points
9th	Jaewoo Sung	Handong Global University (Republic of Korea)	AC 29	253 points
10th, tie	Young-hun Liu	Handong Global University (Republic of Korea)	AC 29	251 points
10th, tie	Maria Alieva	Russian State University of Justice	AC 65	251 points

### (4) 準決勝・決勝ラウンドの結果

#### Results of the Semifinal & Final Rounds

Semifinal Rounds	Applicant	Respondent
[1]	Handong Global University (Republic of Korea) AC 29	<b>University of the Philippines</b> <b>AC 82</b>
	By a decision of 2 to 1, University of the Philippines won the match and advanced to the Final Round.	
[2]	Thammasat University (Thailand) AC 19	<b>Russian State University of Justice</b> <b>AC 65</b>
	By a unanimous decision, Russian State University of Justice won the match and advanced to the Final Round.	

## Results of the Semifinal & Final Rounds

<b>Final Round</b>	Applicant	v.	Respondent
	<b>University of the Philippines</b> <b>AC 82</b>		Russian State University of Justice <b>AC 65</b>
By a unanimous decision, University of the Philippines won the Final Round and received the Asia Cup Championship Award. Congratulations!			

### (5) 参考：予選ラウンド組み合わせ

Preliminary Rounds 1 11:00-12:30		Applicant	v.	Respondent
	Room B1	AC 11	v.	AC 19
	Room B2	AC 59	v.	AC 45
	Room B3	AC 67	v.	AC 66
	Room C	AC 82	v.	AC 29
Preliminary Rounds 2 13:00-14:30		Applicant	v.	Respondent
	Room B1	AC 31	v.	AC 35
	Room B2	AC 40	v.	AC 46
	Room B3	AC 41	v.	AC 28
	Room C	AC 65	v.	AC 48
Preliminary Rounds 3 15:00-16:30		Applicant	v.	Respondent
	Room B1	AC 19	v.	AC 67
	Room B2	AC 29	v.	AC 59
	Room B3	AC 45	v.	AC 82
	Room C	AC 66	v.	AC 11
Preliminary Rounds 4 17:00-18:30		Applicant	v.	Respondent
	Room B1	AC 28	v.	AC 31
	Room B2	AC 35	v.	AC 41
	Room B3	AC 46	v.	AC 65
	Room C	AC 48	v.	AC 40

## (6) 参考：過去の優勝チーム

2018	National University of Singapore
2017	National University of Singapore
2016	National University of Singapore
2015	University of Malaya
2014	Singapore Management University
2013	Ateneo Law School
2012	Ateneo Law School
2011	Singapore Management University
2010	Singapore Management University
2009	University of the Philippines
2008	Ateneo de Manila University
2007	University of the Philippines
2006	University of Indonesia
2005	National University of Singapore
2004	National University of Singapore
2003	University of Philippines
2002	Ateneo de Manila University
2001	National University of Singapore
2000	University of Philippines
1999	Ateneo de Manila University

## 8. 総括

### (1) 成果

#### a) 国際法・海洋法に関する実践的知識および英語での弁論技術の涵養

本大会では、避難民に対する海上作戦および国防大臣に対する刑事手続をテーマとして、海洋法を含む国際法の現代的な問題を取り上げたため、模擬裁判に参加する学生は、国内外を問わず、最新の判例、関連する条約等の規定、解釈およびその国家実行を中心に、国際法の先端的な問題について調査・学習を進めることになった。参加学生の質の高い議論に反映されているように、参加学生はこのような経験を通じて、既存の国際法制度の最先端の知識と同時に、そこに残された未解決の課題についての的確に学びとっており、国際法に対する理解の促進という本事業の目的は十二分に達成されたと考える。

さらに、参加学生は、調査・学習の成果を英語での法廷弁論を通じて発表し、相手方の議論に反駁し、ひいては裁判官を担当した優れた実務経験者・研究者を説得するという貴重な機会を得た。こうした経験は、国際社会で活躍しうる有為な人材にとって今日不可欠となっている英語での交渉・説得の技術を養う上で、学生にとって日常得難い有意義なものであったといえよう。

#### b) アジア地域における法意識の向上・「法の支配」の強化

参加学生たちは、出題された問題の解決のために、海洋法を含む国際法について調査し、解釈して出題された問題の事実にあてはめるという作業を通して、国際法規範を実際に運用することを疑似体験した。このような経験は参加学生の国際法に対する知識・理解を豊かにすることはもとより、参加学生の国際法学への継続的なコミットメントを促したという意味で、本事業は国際社会における法意識の向上、ひいてはアジア地域における「法の支配」の強化に貢献したといえる。

#### c) アジアの将来を担う若者の間のネットワーク形成

本大会の参加学生は、将来的に母国の政府機関や国際機関等の公的機関、法曹、経済、教育・研究界において国際的な活躍が見込まれる有為な人材である。本大会では、模擬裁判での対戦のみならず、第2日午前のエクスカージョン（衆議院見学）やレセプション等、参加チーム同士の交流の機会を設けた。本大会を通じて出合った参加学生達の交流が一層深まることが予想される。国際平和の発展のためには、このようなそれぞれの国の将来を担う人材の交流は、彼らが将来自国の意思決定の重要な部分に携わるという意味で大変重要な意義を持つ。今回の一連の企画で醸成されたアジア地域の学生の相互理解および交流の輪は、将来のこの地域における平和・友好関係の礎となるものである。

#### **d) 若手外務省員のキャパシティビルディング**

外務省における国際法研修の一環として、前年度に引き続き、外務省新入省員全員が同じ問題文を使って模擬裁判演習を実施、決勝法廷も傍聴した。本大会は、外務省のキャパシティビルディングを通じて、日本における国際裁判対策の強化にも貢献している。

## **(2) 今後の課題**

### **a) 参加登録チームの増加への対応**

「2019年アジア・カップ」においては、参加登録国数は2018年より2国減ったものの、参加登録チーム数は、前年比1.8倍の急増が見られた2018年よりもさらに8チーム増え、73チームであった。そのうち63チームが、弁論大会出場チームを決める基礎となる書面（メモリアル）を提出している。参加登録国・チーム数が増えること自体は望ましいことであるが、同時に、会場のキャパシティ等のため現状では16チームに限られる弁論大会出場チームを短期間のうちに決めることが困難になることを意味している。中には、インドネシアのように10チーム以上が参加登録をし、書面を提出している国もある。2019年は、アジア・カップ実行委員が書面予備審査を行って弁論大会出場16チームを決定したが、このように参加登録チーム数が増加する中で、弁論大会出場の機会を逃したチームを納得させるような、より適切な方法がないかどうか、引き続き検討する必要がある。

### **b) 審査のあり方**

アジア・カップにおいては、さまざまな事情を考慮して、従来から書面（メモリアル）は原告側のもののみを作成し、提出することになっているが、これは模擬裁判としては異例である。弁論大会出場チームには、原告・被告両方の側の弁論要旨を提出させているが、それぞれ原告・被告として1度ずつ弁論を行う予選ラウンドにおいてはともかく、いずれか一方の側でしか弁論を行わない準決勝・決勝ラウンドでは、被告チームは相手チーム（原告）の原告側書面を見ることができるのに対し、原告チームは相手チーム（被告）の被告側書面を見ることができないという不均衡が生じている。そのような不均衡を審査にあたってどのように反映させるか、あるいは被告側の書面も提出させることにするか、それぞれのデメリットも考慮しながら検討する必要がある。

また、日本の国際法学会と外務省が共催し、日本で開催していることから、ある程度はやむを得ない面もあるが、裁判官の圧倒的多数が日本人であることも、審査のあり方に関わる課題と言える。アジア・カップのネットワーク形成の意味でも、例えば、過去のアジア・カップに出場した外国チームのメンバーに、弁論裁判官を務めてもらうことも考えられるかもしれないが、渡航費等の問題を含めて考える必要がある。



## **Annex I**

### **「2019年アジア・カップ」決勝進出チーム弁論要旨**

原告（Applicant） AC 82: University of the Philippines

被告（Respondent） AC 65: Russian State University of Justice





**I. The Republic of Rhea violated international law.**

*A. The Respondent violated the fundamental human rights of the Theseusians.*

The right to life is guaranteed to the Theseusians by the International Covenant on Civil and Political Rights. The Respondent is obligated to guarantee this right as it exercised effective control over the Theseusians. It failed to fulfill this obligation when it caused harm and death to the Theseusians it turned back.

*B. The Respondent violated duty to rescue under the UNCLOS.*

Article 98 of the UNCLOS requires flag States to rescue persons in distress at sea. As the Theseusians were persons in distress, the Respondent was obligated to rescue them. The Respondent violated this obligation when it pushed back the Theseusian vessels.

*C. The Respondent violated the customary duty of non-refoulement.*

As the Theseusians qualify as refugees, the Respondent has a duty of non-refoulement. This duty is extraterritorial in scope and applies to any place where refugees will be subjected to harm. The Respondent violated this obligation when it turned back and redirected the Theseusian vessels.

**II. Amphit's issuance of a warrant against Defense Minister Lycomedes does not violate international law**

*A. The deportation of the 83 workers and refugees constitutes crimes against humanity.*

The forcible displacement of the 20 Delphinus workers and 63 refugees, who are legally present in the territory, and without due process of law, constitutes crimes against humanity of deportation or forcible transfer of population.

*B. Defense Minister Lycomedes is not immune for crimes against humanity.*

Lycomedes does not enjoy neither immunity *ratione personae*, nor immunity *ratione materiae*. A defense minister does not enjoy immunity *ratione personae* since only heads of state or government and ministers of foreign affairs are entitled to it. While immunity *ratione materiae* does not apply when an official is suspected of having committed an international crime such as a crimes against humanity.

*C. Amphit may issue a warrant pursuant to the passive personality principle and rule on universal jurisdiction over international crimes.*

Amphit invokes the passive personality principle on behalf of the 20 Amphitian humanitarian NGO workers, and universal jurisdiction, on behalf of the international community for all 83 victims. The passive personality principle allows states to claim jurisdiction over crimes committed abroad that affect its own citizens. On the other hand, universal jurisdiction allows states to exercise jurisdiction over international crimes since these are acts deemed by international law as universally punishable wherever they are committed.

**SUMMARY OF ORAL PLEADINGS FOR THE RESPONDENT**

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**THE “SHEER CLIFF” OPERATION DOES NOT VIOLATE INTERNATIONAL  
LAW**

Any wrongfulness of the Respondent’s “Sheer Cliff” Operation is precluded under customary rule of the state of necessity since the large influx of asylum-seekers has threatened preservation of internal order and security of Rhea.

Alternatively, permissible under refugee law limitations of non-refoulement are applicable in the present case as *lex specialis*, as a causal link between the influx of refugees and the increase of drug-related crimes is a reasonable ground for regarding mass influx of refugees as a danger to the security of the country.

**THE CRIMINAL PROCEEDINGS INITIATED BY THE KINGDOM OF AMPHIT  
IN VIOLATION OF INTERNATIONAL LAW**

Having initiated the criminal proceedings against Mr. Lycomedes, the Minister of National Defence of the Republic of Rhea, on 15 December 2018, Amphit violated its international obligations since its national courts cannot exercise criminal jurisdiction under the passive personality principle. The court in Amphit cannot invoke universal jurisdiction either since it is not permitted under customary international law, and the deportation ordered by Mr. Lycomedes on 8 September 2018 does not suffice preliminary requirements to be considered as a crime against humanity.

In any case, Amphit is precluded from exercising its criminal jurisdiction over the act on 8 September 2018 since it is covered by personal immunity of the Rhean Minister of National Defense. Alternatively, the deportation on 8 September 2018 falls within the scope of immunity *ratione materiae* granted to Mr. Lycomedes.

Therefore, being contrary to international law the criminal proceedings initiated by Amphit must be put to an end.



## Annex II

### 「2019年アジア・カップ」優秀書面

第1位 AC 65: Russian State University of Justice

第2位 AC 66: Sophia University (上智大学)

第3位 AC 59: Kyoto University (京都大学)

第3位 (同点) AC 82: University of the Philippines



TEAM AC 65

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THE “ASIA CUP 2019” INTERNATIONAL LAW  
MOOT COURT COMPETITION

---

THE CASE CONCERNING THE MARITIME OPERATION “SHEER CLIFF” AND  
CERTAIN CRIMINAL PROCEEDINGS



THE KINGDOM OF AMPHIT

APPLICANT

v.

THE REPUBLIC OF RHEA

RESPONDENT

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

---

MEMORIAL FOR THE APPLICANT

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**SUMMARY OF PLEADINGS**

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**THE “SHEER CLIFF” OPERATION INITIATED BY RHEA IN VIOLATION OF  
ITS INTERNATIONAL OBLIGATIONS**

Rhea’s “Sheer Cliff” Operation is contrary to the Law of the Sea since it precluded M/V Dignitas, registered in Amphit, from enjoying its right to freedom of navigation and was in violation of Rhea’s obligations to search and rescue those in distress and allow them disembarkation and to cooperate.

As the Applicant has standing, it claims that having initiated “Sheer Cliff” Rhea is in breach of the non-refoulement principle established under international refugee and human rights law since the Operation violates the Theseusian immigrants’ rights to life and to be free from inhumane and degrading treatment.

Consequently, the Republic of Rhea is obliged to cease these wrongful acts.

**LAWFULNESS OF THE CRIMINAL PROCEEDINGS INITIATED IN AMPHIT ON  
15 DECEMBER 2018**

The Kingdom of Amphit was entitled to initiate criminal proceedings against Mr. Lycomedes, the Rhean Minister of National Defence, pursuant to the passive personality principle.

In the alternative, the arrest warrant issued against Mr. Lycomedes was lawful under the universality principle since the deportation committed on 8 September 2018 *prima facie* constituted a crime against humanity.

Furthermore, the court of Amphit was not precluded by immunities guaranteed to state officials from foreign criminal jurisdiction under customary international law since neither *ratione personae* nor *ratione materiae* immunities are applicable to the deportation conducted by the Minister of Defence on 8 September 2018.

## PLEADINGS

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### I. MARITIME OPERATION “SHEER CLIFF” INITIATED BY THE REPUBLIC OF RHEA ON 1 APRIL 2018 HAS VIOLATED INTERNATIONAL LAW, AND THEREFORE, THE REPUBLIC OF RHEA MUST TAKE NECESSARY MEASURES TO PUT AN END TO THE OPERATION

Initiated by Rhea “Sheer Cliff” operation establishes 30 miles barrier at sea for vessels carrying Theseusians<sup>1</sup> and thus violates (A) Law of the Sea, (B) international refugee and (C) international human rights law and (D) must be ceased.

#### A. Rhea’s “Sheer Cliff” contradicts its Law of the Sea obligations

##### 1. Rhea has violated freedom of navigation

Since freedoms of the high sea are preserved in the exclusive economic zone [hereinafter “EEZ”],<sup>2</sup> M/V Dignitas, subject to Amphit jurisdiction,<sup>3</sup> should have enjoyed the right to traverse.<sup>4</sup> As a state may not assert its jurisdiction for immigration control in high seas<sup>5</sup> and as there was no evidence<sup>6</sup> that approaching vessels were engaged in piracy,<sup>7</sup> no non-consensual boarding was permitted for Rhea.<sup>8</sup>

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<sup>1</sup> *Compromis*, §9.

<sup>2</sup> International Tribunal for the Law of the Sea [ITLOS], *M/V “Saiga” (No 2) (Saint Vincent and the Grenadines v. Guinea)*, Merits, Judgment, 1999, Case No. 2, ICGJ 336, §127 [hereinafter “*M/V Saiga*”]; Permanent Court of Arbitration [PCA], *Arctic Sunrise Arbitration (Netherlands v Russia)*, Merits, Award, 2015, Case No. 2014-02, ICGJ 511 (PCA 2015), §§228, 229 [hereinafter “*Arctic Sunrise*”].

<sup>3</sup> UN General Assembly, *Convention on the Law of the Sea*, 1982, Art. 92(1) [hereinafter “UNCLOS”]; Permanent Court of International Justice, *S.S. “Lotus” (France v. Turkey)*, Judgement, 1927, series A.-№10, p. 25 [hereinafter “*Lotus*”]; *Compromis*, §7.

<sup>4</sup> UNCLOS, Art. 58(2), 87(1)(a).

<sup>5</sup> UNCLOS, Art. 87(2).

<sup>6</sup> UNCLOS, Art. 111(1).

<sup>7</sup> UNCLOS, Art. 105, A. J. Hoffmann, *Navigation, Freedom of*, Max Planck Encyclopaedia of Public International Law, 2011, §23 [hereinafter “Hoffman”].

<sup>8</sup> *Ibid.*

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Neither Rhea could enjoy the right of hot pursuit since no violation of the applicable to the EEZ laws and regulations have occurred.<sup>9</sup> Therefore, Rhea is in violation of its obligations under the Law of the Sea.

### **2. Rhea failed to observe its duty to search and rescue those in distress**

As a coastal state,<sup>10</sup> Rhea has an obligation<sup>11</sup> to develop adequate search and rescue operation which will be terminated only when those who are found in distress<sup>12</sup> within all maritime zones<sup>13</sup> regardless nationality, legal status or activities they might be engaged in<sup>14</sup> are delivered to a safety place.<sup>15</sup> Considering the fact that Rhea was the nearest and safest place,<sup>16</sup> those who approached the barrier should have been delivered to its territory<sup>17</sup> where their basic human needs can be met and transportation arrangements can be made.<sup>18</sup> Rhea failed to comply with its obligations since even though the number of death is increasing<sup>19</sup> no search and rescue operations are established.

### **3. Rhea failed to comply with its duty to co-operate**

Rhea should have assisted Amphit in its search and rescue operation<sup>20</sup> to prevent deaths on the sea. However, to the contrary, Rhea established policy precluding Amphit from

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<sup>9</sup> UNCLOS, Art. 111(2); *M/V Saiga*, §127.

<sup>10</sup> *Compromis*, §2.

<sup>11</sup> UNCLOS, Art. 98(2).

<sup>12</sup> *Ibid.*

<sup>13</sup> D.Guilfoyle, *UNCLOS Commentary*, 1st edition 2017, Monash University, Art. 98, p. 729 [hereinafter “*UNCLOS Commentary*”].

<sup>14</sup> International Maritime Organization (IMO), *Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, Doc. MSC/Circ.896/Rev.1, 2001, §11.

<sup>15</sup> *UNCLOS Commentary*, Art. 98, p. 729; UNHCR, *Legal Brief on International Law and Rescue at Sea*, §6, available at: <https://www.unhcr.org/487b47f12.pdf> [hereinafter “*Legal Brief on International Law and Rescue at Sea*”].

<sup>16</sup> *Compromis*, §7.

<sup>17</sup> *Legal Brief on International Law and Rescue at Sea*, §6.

<sup>18</sup> UNHCR, *General legal considerations: search-and-rescue operations involving refugees and migrants at sea*, 2017, §15; IMO, Resolution MSC.167(78), *Guidelines on the Treatment of Persons Rescued At Sea*, 2004, §6.12.

<sup>19</sup> *Compromis*, §10.

<sup>20</sup> UNCLOS, Art. 98(2).

safe and fast transporting of the Theseusian immigrants to its territory<sup>21</sup> and as a result, caused numerous deaths.<sup>22</sup> Therefore, the Responded acted in violation of international law.

**B. Rhea’s “Sheer Cliff” violates international refugee and human rights law**

International refugee and human rights law [hereinafter “IHRL”] contains a *jus cogens* norm providing an *erga omnes* obligation of non-refoulement,<sup>23</sup> *i.e.* any state, including Amphit, may submit claims to this Court. Since non-refoulement principle is applicable in areas where states exercise their authority,<sup>24</sup> Rhea is in violation of (1) refugee and (2) IHRL by the establishment of the effective control over 30 miles barrier.<sup>25</sup>

**1. Rhea violated international refugee law**

***a. The Theseusians approaching Rhea are refugees***

Both *opinio juris*<sup>26</sup> and state practice<sup>27</sup> support that those who are compelled to leave the occupied country due to the external aggression and serious disturbance of public order<sup>28</sup> are refugees. The Theseusians are refugees as the occupation of the western area of Theseus

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<sup>21</sup> *Compromis*, §13.

<sup>22</sup> *Compromis*, §10.

<sup>23</sup> C. Trindade, *Jus Cogens: The Determination and the Gradual Expansion of its Material Content in Contemporary International Case-Law*, XXXV Course of International Law, Inter-American Juridical Committee, Brazil, 2008, p.13, [hereinafter “C.Trindade”]; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ICJ Reports 2012, p. 422, §99 [hereinafter “*Belgium v. Senegal*”].

<sup>24</sup> UNHCR, *UNHCR intervention before the European Court of Human Rights in the case of Hirsi and Others v. Italy*, 2011, Application no. 27765/09, §4.3.3; UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 2004, CCPR/C/21/Rev.1/Add.13, §1.

<sup>25</sup> European Court of Human Rights, *M.A. and Others v. Lithuania*, 2018, Application No. 59793/17; *Compromis*, §5.

<sup>26</sup> M. Sharpe, *the 1969 OAU Refugee Convention in the Context of Individual Refugee Status Determination*, Division of International Protection UNHCR, PPLA/2013/01, 2013, p.1; *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 1984, III (3).

<sup>27</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 1951, Art. 1(1) [hereinafter “*Refugee Convention*”]; *Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969, Art. 1(2) [hereinafter “*OAU Convention*”]; Inter-American Commission on Human Rights, *Cartagena Declaration on Refugees*, 1984, Art. 3 [hereinafter “*Cartagena Declaration on Refugees*”].

<sup>28</sup> *OAU Convention*, Art.1(2); *Cartagena Declaration on Refugees*, Art. 3.

by the criminal organization “Minotauros” deprives the government of any ability to protect its inhabitants and puts latter to the risk of being persecuted.<sup>29</sup>

***b. Rhea violated non-refoulement obligation under international refugee law***

Customary non-refoulement obligation<sup>30</sup> prohibits any forcible return of refugees to a place where their fundamental rights and freedoms would be threatened<sup>31</sup> and is applicable to rejection at the State border.<sup>32</sup> Due to the “Sheer Cliff”, Theseusians, being deprived of entering the closest safest place,<sup>33</sup> are exposed to death from human smuggling and human trafficking.<sup>34</sup> Rhea, thus, is in violation of its non-refoulement obligation.

**2. Alternatively, Rhea violated IHRL**

Rhea has violated its more extensive non-refoulement obligation<sup>35</sup> under IHRL by (i) endangering their life and (ii) exposing them to inhuman and degrading treatment.

***a. Rhea violates the Theseusians’ right to life***

Since any acts of States that “may be expected to cause unnatural or premature death”<sup>36</sup> are prohibited,<sup>37</sup> Rhea has an obligation to protect refugees<sup>38</sup> and their children,<sup>39</sup>

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<sup>29</sup> *Compromis*, §5.

<sup>30</sup> C. Trindade, p.13; *Belgium v. Senegal*, §99.

<sup>31</sup> *Refugee Convention*, Art. 33.

<sup>32</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 2007, §7.

<sup>33</sup> *Compromis*, §7.

<sup>34</sup> *Compromis*, §6.

<sup>35</sup> UN Human Rights Committee (HRC), General Comment No. 20, *Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 1992, §9 [hereinafter “CCPR GC 20”].

<sup>36</sup> UNHRC, General Comment No. 36, *on art. 6 of the ICCPR, on Right to Life*, CCPR/C/GC/36 (2018), §3 [hereinafter “HRC GC 36”].

<sup>37</sup> International Covenant on Civil and Political Rights, 999 UNTS 171, 1966, art. 6, [hereinafter “ICCPR”]; *Convention on the Rights of the Child*, UNTS 1577, 1989, art. 6 [hereinafter “CRC”].

<sup>38</sup> HRC GC 36, §23; UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6, 2005, §23 [hereinafter “CRC GC 6”].

<sup>39</sup> HRC GC 36, §23.

ensuring “to the maximum extent possible the survival”<sup>40</sup> of the latter. After the establishment of the “Sheer Cliff” the number of deaths of the Theseusians has doubled in a month.<sup>41</sup> Therefore, Rhea, by preventing them from entering, violated Theseusians’ right to life.

***b. Rhea violated the prohibition of inhuman and degrading treatment***

States are found in violation of the protected under international law<sup>42</sup> absolute right<sup>43</sup> to humanity and respect<sup>44</sup> when individuals are exposed to degrading treatment by way of their refoulement.<sup>45</sup> Though Theseusians are escaping armed conflict,<sup>46</sup> Rhea continues to stop them at sea,<sup>47</sup> exposing them to “dehydration, hypothermia and chemical burns caused by fuel mixed with the sea water.”<sup>48</sup> Thus, Rhea is in violation of their rights.

**C. Rhea is obliged to cease its wrongful act**

The state responsible for the internationally wrongful act is obliged to cease this act if it is continuing.<sup>49</sup> Since the violation of the Theseusian people’s human rights as well as of non-refoulement and law of the sea obligations is still being performed until today,<sup>50</sup> Rhea has an obligation to end the “Sheer Cliff” Operation.

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<sup>40</sup> CRC, Art. 6(2).

<sup>41</sup> *Compromis*, §10.

<sup>42</sup> ICCPR, Art. 7.

<sup>43</sup> CCPR GC 20, §3.

<sup>44</sup> CCPR GC 20, §2.

<sup>45</sup> CCPR GC 20, §9; UN Commission on Human Rights, *Kindler v. Canada*, Communication, UN Doc. No. CCPR/C/48/D/470/1991, §13.2.

<sup>46</sup> *Compromis*, §5.

<sup>47</sup> *Compromis*, §10.

<sup>48</sup> Medecins Sans Frontieres, *Mediterranean migration in depth*, available at: <https://www.msf.org/mediterranean-migration-depth>.

<sup>49</sup> UN General Assembly, Responsibility of States for Internationally Wrongful Acts, UN Doc. No. A/RES/56/83, 2002, Art. 30(a).

<sup>50</sup> *Compromis*, §21.



**II. THE CRIMINAL PROCEEDINGS INITIATED BY THE KINGDOM OF AMPHIT AGAINST MR. LYCOMEDES, THE MINISTER OF NATIONAL DEFENCE OF THE REPUBLIC OF RHEA, ON 15 DECEMBER 2018 DO NOT VIOLATE INTERNATIONAL LAW**

As neither relevant treaty<sup>51</sup> nor customary law prohibits trial *in absentia*,<sup>52</sup> the proceedings initiated by the Kingdom of Amphit are lawful since (A) the deportation on 8 September 2018<sup>53</sup> falls under its jurisdiction and (B) Mr. Lycomedes, the Minister of National Defence of Rhea, enjoys no immunity.

**A. Amphit has jurisdiction over the deportation on 8 September 2018**

Amphit may prosecute Mr. Lycomedes either under (1) the passive personality or (2) the principle of universal jurisdiction as both *opinio juris*<sup>54</sup> and state practice<sup>55</sup> support it as customary<sup>56</sup> over a crime against humanity,<sup>57</sup> an “attack on the very quality of being human.”<sup>58</sup>

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<sup>51</sup> *Compromis*, §20.

<sup>52</sup> International Law Commission (ILC), Draft articles on crimes against humanity with commentaries, UN Doc. A/72/10, 2017, p.79, §10; *See e.g.* New Zealand International Crimes and International Criminal Court Act, 2000 (as at 2018), Section 8 (1)(c)(iii), available at: <http://www.legislation.govt.nz/act/public/2000/0026/latest/whole.html>, [hereinafter “International Crimes Act”]; Canada, Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, (as at 2019), Section 9(1), [hereinafter “Crimes Against Humanity Act”]; *Lotus*, p. 19. ILC, Immunity of State officials from foreign criminal jurisdiction, Memorandum by the Secretariat, UN Doc. A/CN.4/596, 2008, Footnote 26, [hereinafter “Immunity of State officials”].

<sup>53</sup> *Compromis*, §§14, 16.

<sup>54</sup> UN General Assembly, Report of the Secretary-General on the scope and application of the principle of universal jurisdiction, UN Doc. A/65/181, 2010, §54.

<sup>55</sup> International Crimes Act, Section 8 (1)(c); Crimes Against Humanity Act, Section 9(1); The Code of Criminal Procedure of Morocco, Crimes against humanity: Comments and observations received from Governments, international organizations and others, UN Doc. A/CN.4/726. 2019. p.81 [Hereinafter “Comments on crimes against humanity”].

<sup>56</sup> *North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, ICJ Reports, 1969, p. 3. §77.

<sup>57</sup> *Compromis*, §16.

<sup>58</sup> S. D. Murphy, First Report on crimes against humanity, UN Doc. A/CN.4/680, 2015, §27.

### 1. Amphit has jurisdiction under the passive personality principle

Since state practice<sup>59</sup> and *opinio juris*<sup>60</sup> indicate a customary norm that Amphit is entitled to prosecute perpetrators when the injured persons are its nationals,<sup>61</sup> which are all 20 staffs of Delphinus deported by Mr. Lycomedes,<sup>62</sup> the arrest warrant in question<sup>63</sup> is lawful.

### 2. The principle of universal jurisdiction bestows Amphit with jurisdiction as deportation on 8 September 2018 is *prima facie* a crime against humanity

The universality principle permits Amphit to prosecute for crimes against humanity<sup>64</sup> regardless of any jurisdictional connection to it,<sup>65</sup> and it had “reasonable grounds”<sup>66</sup> to consider the act of Mr. Lycomedes on 8 September 2018 as such crime,<sup>67</sup> since necessary “preliminary requirements”<sup>68</sup> had been met: the deportation (a) constituted a widespread attack against a civilian population<sup>69</sup> and (b) was carried out with the perpetrator’s knowledge of such attack.<sup>70</sup>

<sup>59</sup> Terrorist Bombings Convention Implementation Act, Pub. L. 107–197, title I, §101, 2002, 116 Stat. 721, §2332f(b)(2)(B); The Criminal Code of Finland, 1889, amend. 766/2015, Section 5, available at: <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.

<sup>60</sup> *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, ICJ Reports, 2002, p. 3 [hereinafter “*Arrest Warrant*”], Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, §47 [hereinafter “*Arrest Warrant, Joint Separate opinion*”]; Australia, Comments on crimes against humanity, p.79.

<sup>61</sup> Immunity of State officials, Footnote 24.

<sup>62</sup> *Compromis*, §14.

<sup>63</sup> *Compromis*, §16.

<sup>64</sup> ILC, Report on the Work of the Seventieth Session, Official Records of the General Assembly, Supplement No. 10, UN Doc. A/73/10, p.307. §3.

<sup>65</sup> *Ibid*, p. 307, §1.

<sup>66</sup> International Criminal Court (ICC), Situation in the Central African Republic in the case of *the Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, Warrant of Arrest for Jean-Pierre Bemba Gombo replacing the warrant of arrest issued on 23 May 2008, §18 [hereinafter “*Jean-Pierre Bemba Gombo case, Arrest Warrant*”].

<sup>67</sup> *Compromis*, §16.

<sup>68</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Karadzic*, Judgement, Case No. IT-95-5/18-T, 2016, §441.

<sup>69</sup> ICTY, *Prosecutor v. Stanisic et al.*, Judgement, Case No. IT-08-91-T, 2013, Vol. 1, §23.

<sup>70</sup> *Ibid*.

***a. The deportation formed a widespread attack against a civil population***

As a crime against humanity, the deportation<sup>71</sup> shall amount to mistreatment<sup>72</sup> carried out against a distinguished civil population<sup>73</sup> on a “widespread scale,”<sup>74</sup> while neither minimum number of the victims<sup>75</sup> no state policy to pursue such conduct<sup>76</sup> are required.

Hence, having authorised<sup>77</sup> deportation of exclusively the Theseusian immigrants and Delphinus’ staffs<sup>78</sup> (83 persons overall),<sup>79</sup> *i.e.* of only those supporting the “Ariadne’s Thread” Operation,<sup>80</sup> Mr. Lycomedes *prima facie* constituted a crime against humanity.

***b. The deportation was conducted with the Minister’s knowledge of the attack***

Mr. Lycomedes knew exactly which Theseusians and Delphinus’ staff were targeted by deportation,<sup>81</sup> were deprived of their residence with no due process<sup>82</sup> and displaced on his boat to the outside the Rhean territorial sea<sup>83</sup> being exposed to the risk of human smuggling<sup>84</sup> or an armed conflict.<sup>85</sup> Hence, he knew or at least took the risk<sup>86</sup> that this displacement could amount to the mistreatment discussed *supra*<sup>87</sup> and, therefore, allegedly committed a crime against humanity.

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<sup>71</sup> *Compromis*, §14.

<sup>72</sup> ICTY, *Prosecutor v. Kunarac et al.*, Appeal Judgment, Case No. IT-96-23; IT-96-23/1-A, 2002, §86 [hereinafter “*Kunarac*”].

<sup>73</sup> ICC, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, ICC-01/09, 2010, §81.

<sup>74</sup> *Jean-Pierre Bemba Gombo case*, Arrest Warrant, §17.

<sup>75</sup> ICTY, *Prosecutor v. Krajišnik*, Appeal Judgement, IT-00-39, 2009. §309.

<sup>76</sup> *Kunarac*, §98.

<sup>77</sup> *Compromis*, §15.

<sup>78</sup> *Compromis*, §14.

<sup>79</sup> *Compromis*, §14.

<sup>80</sup> *Compromis*, §7.

<sup>81</sup> *Compromis*, §§14, 15.

<sup>82</sup> ICCPR, Article 14.

<sup>83</sup> *Compromis*, §14.

<sup>84</sup> *Compromis*, §6.

<sup>85</sup> *Compromis*, §5.

<sup>86</sup> ICTY, *Prosecutor v. Šainović et al.* Appeal Judgement, IT-05-87-A, 2014. §270.

<sup>87</sup> See Memorial, sub. II (A)(1)(a).

## **B. Mr. Lycomedes has no immunity against criminal jurisdiction of Amphit**

A foreign court is precluded from exercising its jurisdiction against a state official who enjoys immunity under international customary law.<sup>88</sup> Mr. Lycomedes enjoys neither (1) personal, (2) nor functional immunity for a crime against humanity and (3) *ultra vires* expulsion.

### **1. Minister of Defence has no personal immunity**

Personal immunity debars any foreign proceedings against an official during the term of his service.<sup>89</sup> Only a narrow range of state officials enjoy personal immunity – *i.e.*: Head of State, Prime Minister, Foreign Minister, consuls, and diplomats, while, despite seniority of his rank, the Minister of Defence is not listed as such.<sup>90</sup> Further, he does not represent Rhea at international level so actively that the need in smooth international communication could justify his entire immunity from any foreign proceedings.<sup>91</sup> Even being prosecuted abroad, the Minister is still fully able to maintain the military system within the national borders. In turn, the Minister’s wide powers to apply force and coercion pose the risk of extremely grave violations. Thus, it is not necessary and even destructive to accord personal immunity to Mr. Lycomedes.

### **2. Prosecution for a crime against humanity excludes any functional immunity**

A state official, committing a crime in his official capacity, is immune from the jurisdiction of foreign national courts.<sup>92</sup> However, this immunity does not cover crimes

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<sup>88</sup> ILC, Immunity of State officials from foreign criminal jurisdiction, Text of draft articles 1, 3 and 4 provisionally adopted by the Drafting Committee at the sixty-fifth session of the ILC, UN Doc. A/CN.4/L.814, 2013, Art. 1 [hereinafter “UN Doc. A/CN.4/L.814”].

<sup>89</sup> *Arrest Warrant*, §54.

<sup>90</sup> R. A. Kolodkin, Preliminary Report on Immunity of State officials from foreign criminal jurisdiction, UN. Doc. A/CN.4/601 [hereinafter “Kolodkin, Preliminary Report”], §§23,78,82; UN Doc. A/CN.4/L.814, Art. 3.

<sup>91</sup> Kolodkin, Preliminary Report, §§85, 96; *Arrest Warrant*, §53-55, *Arrest Warrant*, Joint Separate Opinion, §75; United Kingdom Court of Appeal, *The Parlement Belge* case, 1880, LR 5 PD 197, pp. 207, 208.

<sup>92</sup> *Arrest Warrant*, §54.

against humanity, which by definition lie beyond normal State functions.<sup>93</sup> As discussed *supra*, Mr. Lycomedes unlawfully deported the Theseusians and the staff of Delphinus, thus committed a crime against humanity.<sup>94</sup> Thus Mr. Lycomedes may not rely on his functional immunity.

### **3. Mr. Lycomedes deporting the civilians acted beyond his official capacity**

Functional immunity does not cover an official's *ultra vires* conduct.<sup>95</sup> Expulsion of the Theseusians and Delphinus staff falls beyond the "necessary measures" aimed "to ensure effective immigration control against vessels sailing to the port of Rhea without an entry permit."<sup>96</sup> The expelled had already passed the migration control, obtained the residence permit,<sup>97</sup> and did not approach Rhea without an entry permit.<sup>98</sup> Their deportation could scarcely impact the effectiveness of the policy directed against the new vessels. Thus, the deportation could not aim, even least be necessary for Mr. Lycomedes to effect the migration control over the new vessels.

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<sup>93</sup> C. E. Hernández, Fifth Report on Immunity of State officials from foreign criminal jurisdiction, UN. Doc. A/CN.4/701, §20(f), (g); *Arrest Warrant*, Joint Separate opinion, p. 88, §85; The Court of Appeal for Ontario, *Bouzari and others v. Islamic Republic of Iran*, Judgement, 2004, Case No. C38295, §91; Italy, Court of Cassation, *Ferrini v. Germany*, Judgement, 2004, Case No. 5044/04, §10.1; Federal Criminal Court of Switzerland, *A. v. Office of the Public Prosecutor of the Confederation (Nezzar case)*, Decision, Case No. BB.2011.140, 2012, §5.4.3.

<sup>94</sup> Memorial, Sub. II (A)(2).

<sup>95</sup> United States Court of Appeals, Ninth Circuit, *Hilao, et al v. Marcos*, Judgement, 1994, Case No. 92-15526, p. 3; United States District Court, Northern District of California, *In Re Doe I, et al. v. Liu Qi, et al., Xia Deren et. al.*, 349 F.Supp.2d, 2004, p. 1283; Legal Advisory Committee to the Minister of Foreign Affairs of the Republic of Poland, Opinion on immunities of State officials from foreign criminal jurisdiction, 2015, pp. 10, 11, available at: [http://legal.un.org/ilc/sessions/67/pdfs/english/iso\\_poland.pdf](http://legal.un.org/ilc/sessions/67/pdfs/english/iso_poland.pdf); C. E. Hernández, Fourth Report on Immunity of State officials from foreign criminal jurisdiction, UN. Doc. A/CN.4/686, §55.

<sup>96</sup> *Compromis*, §8.

<sup>97</sup> *Compromis*, §5.

<sup>98</sup> *Compromis*, §5,7.

**PRAYER FOR RELIEF**

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For the foregoing reasons, the Kingdom of Amphit requests this Honourable Court to adjudge and declare that:

- 1) The Republic of Rhea initiated the “Sheer Cliff” Operation contrary to its international obligations and, consequently, shall take necessary measures to cease this wrongful act; and
- 2) Having initiated on 15 December 2018 criminal proceedings against Mr. Lycomedes, the Rhea Minister of National Defence, the Kingdom of Amphit complied with international law.

Respectfully submitted,

**AGENTS FOR AMPHIT**



ASIA CUP 2019  
INTERNATIONAL LAW MOOT COURT COMPETITION  
IN THE INTERNATIONAL COURT OF JUSTICE  
THE PEACE PALACE, THE HAGUE, THE NETHERLANDS



**CASE CONCERNING THE MARITIME OPERATION “SHEER CLIFF”  
AND CERTAIN CRIMINAL PROCEEDINGS**

THE KINGDOM OF AMPHIT

(APPLICANT)

v.

THE REPUBLIC OF RHEA

(RESPONDENT)

MEMORIAL FOR APPLICANT



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## SUMMARY OF PLEADINGS

### Request I

Maritime Operation “Sheer Cliff” has violated international law for following reasons. First, the Operation has violated international obligations under the International Covenant on Civil and Political Rights [“ICCPR”], required by Article 2(1) of the Covenant in respect of Article 6 and 7 of the Covenant. Second, the Operation has violated Article 87(1) and 98(1) of the United Nations Convention on the Law of the Sea [“UNCLOS”]. Third, the Operation has violated international obligations required by the temporary refuge principle and the *Non-Refoulement* principle under customary international law. Furthermore, Rhea cannot justify the Operation by state of necessity as it does not meet a prerequisite criterion, or alternatively, the obligations which are violated in the present case are peremptory norms under international law. Rhea therefore is under the obligation to take necessary measures to put an end to the Operation pursuant to customary international law.

### Request II

The criminal proceedings initiated by Amphit do not violate international law because Amphit is justified in initiating those proceedings based on established international law principles on jurisdiction. In the present case, Amphit has jurisdiction pursuant to the passive personality principle and the universality principle. Besides, the

customary rules on immunity do not prohibit Amphit from exercising jurisdiction because, firstly, Mr. Lycomedes is not entitled to immunity *ratione materiae* (personal immunity), and secondly, Amphit is entitled to deny immunity *ratione materiae* (functional immunity) to Mr. Lycomedes consistently with international law.

## PLEADINGS

### I. Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018

has violated international law, and therefore, the Republic of Rhea must take necessary

measures to put an end to the Operation.

#### A. “Sheer Cliff” has violated ICCPR.

##### **1. Rhea has duties under ICCPR concerning refugees from Theseus.**

A State Party to ICCPR has duties to respect and ensure to all individuals subject to its jurisdiction, or within its effective control, the right laid down in the Covenant.<sup>1</sup> Immigration and border control is a primary State function and all forms of this control result in the exercise of the State’s jurisdiction.<sup>2</sup> Here, Rhea exercises its jurisdiction by conducting such control over the refugees intercepted by “Sheer Cliff”.<sup>3</sup>

Furthermore, refugees intercepted by Rhea’s warship by “Sheer Cliff” are under *de facto* effective control of the warship as the warship has every ability to blow them out of water.<sup>4</sup> These facts entail Rhea’s obligations under ICCPR.

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<sup>1</sup> International Covenant on Civil and Political Rights (1996), 999 UNTS 171, art. 2(1) [ICCPR]; U.N.Doc. CCPR/C/21/Rev.1/Add. 13 (2004), ¶10.

<sup>2</sup> *Hirsi Jamaa and others v. Italy*, ECtHR App.No.27765/09 (2012), Con. Opi. Pinto de Albuquerque, pp. 78-79 [*Hirsi*]; Parliamentary Assembly of the Council of Europe, Resolution 1821 (2011), ¶9.

<sup>3</sup> *Compromis*, ¶9.

<sup>4</sup> MILANOVIC, EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 170 (OXFORD, 2011); *Hirsi, supra* note 2, ¶81; *Case of Medvedyev and others v. France*, ECtHR App.No.3394/03 (2010), ¶67.

## **2. Article 6 of ICCPR.**

Article 6 of ICCPR obliges States Parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk due to specific threats, such as asylum seekers or refugees.<sup>5</sup> Hence States Parties are under due diligence obligations to undertake reasonable positive measures to protect such persons.<sup>6</sup> Here, refugees from Theseus are manifestly exposed to threats to their lives as evidenced by the survey indicating that many people had been killed by drowning.<sup>7</sup> However, Rhea does not take any measure towards the refugees and contravenes ICCPR.

## **3. Article 7 of ICCPR.**

Article 7 of ICCPR obliges States Parties not to take cruel, inhuman or degrading treatments.<sup>8</sup> Rhea intentionally has rejected to give any aid to refugees from Theseus whilst recognizing the subjection of refugees to physical and mental suffering aggravated by their particular vulnerability as migrants.<sup>9</sup> It does exceed the threshold of cruel, inhuman or degrading treatment and therefore contravene ICCPR.<sup>10</sup>

### **B. “Sheer Cliff” has violated UNCLOS.**

As internal armed conflict in Theseus does not exist at the time of initiation of “Sheer Cliff”

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<sup>5</sup> ICCPR, *supra* note 1, art. 6(1); U.N.Doc. CCPR/C/GC/36 (2018), ¶23 [GC36].

<sup>6</sup> GC36, *supra* note 5, ¶21.

<sup>7</sup> *Compromis*, ¶6; *See also* Section B.

<sup>8</sup> ICCPR, *supra* note 1, art. 7.

<sup>9</sup> CAT, Communication No. 368/2008, CAT/C/47/D/368/2008 (2012), ¶10.4.

<sup>10</sup> *Id.*

due to lack of sufficient organization of the Minotauros,<sup>11</sup> UNCLOS applies to the present case. Alternatively, UNCLOS remains in force regardless of the existence of armed conflict since it does not mean *ipso facto* termination or suspension of treaties.<sup>12</sup>

First, “Sheer Cliff” has violated the freedom of navigation enjoyed by Amphit in respect of M/V Dignitas under Article 87(1) of UNCLOS since any act of interference with navigation constitutes a breach of that freedom.<sup>13</sup>

Second, Rhea as a State Party to UNCLOS shall require the master of its warship to render assistance to any person found at sea in danger of being lost,<sup>14</sup> without any discrimination of persons to be rescued.<sup>15</sup> Here, there are enough facts to show that refugees from Theseus were in danger of being lost based on the unseaworthiness of the vessels, existence of women and children, and survey concluding that considerable persons had been killed by drowning.<sup>16</sup> However, the warship did not give refugees any assistance. Given that “Sheer Cliff” is conducted as a part of national policy and under surveillance of Maritime

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<sup>11</sup> *Compromis*, ¶9; *Clarification* to ¶9.

<sup>12</sup> U.N.Doc. A/66/10 (2011), p. 183; Pedrozo, “*Duty to Render Assistance to Mariners in Distress During Armed Conflict at Sea: A U.S. Perspective*”, 94 ILS 102, at 114-116 (2018); ICRC, COMMENTARY ON THE SECOND GENEVA CONVENTION (CAMBRIDGE, 2017), ¶775.

<sup>13</sup> United Nations Convention on the Law of the Sea (1982), 1833 UNTS 3, art. 87(1); *The M/V “Norstar” Case (Panama v. Italy)*, ITLOS No. 25 (10 Apr. 2019), ¶222.

<sup>14</sup> United Nations Convention on the Law of the Sea (1982), 1833 UNTS 3, art. 98(1)(a).

<sup>15</sup> PROELSS ED., UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A COMMENTARY 728 (2017); IMO Doc. MSC/Circ.896/Rev.1, (2001), Annex, ¶3.

<sup>16</sup> *Compromis*, ¶6; *Clarification* to ¶5; PAPASTAVRIDIS, THE INTERCEPTION OF VESSELS ON THE HIGH SEA: CONTEMPORARY CHALLENGE TO THE LEGAL ORDER OF THE OCEAN 295 (HART, 2014).

Security Bureau, it is established that there is no require to the master to render assistance by Rhea. This contravenes Article 98(1) of UNCLOS.

**C. “Sheer Cliff” has violated customary international law.**

**1. “Sheer Cliff” has violated the temporary refuge principle.**

Under customary international law [“CIL”], persons who seek refuge due to violence or other threats caused by internal armed conflict within their own State shall be protected by the temporary refuge principle.<sup>17</sup> This principle imposes States obligations of at least temporary admission and non-return of those persons.<sup>18</sup>

The temporary refuge principle has now attained customary status because of inconsiderable body of long-standing State practice combined with numerous statements on the rules to be followed,<sup>19</sup> which also can be found in declarations and resolutions adopted in the UN General Assembly and the UNHCR Executive Committee.<sup>20</sup>

Here, although refugees from Theseus seek refuge in Rhea who were displaced due to violence or other threats caused by internal armed conflict in Theseus, Rhea has rejected any admission of them by the Operation. This therefore contravenes the customary

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<sup>17</sup> Perluss & Hartman, “*Temporary Refuge: Emergence of a Customary Norm*”, 26 VJIL 551, at 624 (1986).

<sup>18</sup> CANTOR & DURIEUX EDS., REFUGE FROM INHUMANITY?: WAR REFUGEES AND INTERNATIONAL HUMANITARIAN LAW 444 (NIJHOFF, 2014) [Cantor].

<sup>19</sup> Cantor, *supra* note 18, at 446, 458; EU, Council Directive 2001/55/EC (2001) [EUCD]; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), 1001 UNTS 45; Cartagena Declaration on Refugees (1984).

<sup>20</sup> Cantor, *supra* note 18, at 446, 458; U.N.Doc. A/RES/68/143 (2013); U.N.Doc. A/AC.96/601 (1981), ¶57(2)II.

international norm of temporary refuge.

## 2. “Sheer Cliff” has violated the *Non-Refoulement* principle.

The *Non-Refoulement* [“NR”] principle has attained customary status owing to general State practice with *opinio juris*.<sup>21</sup> This principle comprises the procedural obligation of States to provide an individual, fair and effective refugee status determination and assessment procedure.<sup>22</sup> Accordingly States cannot return intercepted migrants without such procedure.<sup>23</sup> However, here, Rhea has forced intercepted refugees to change the route without any prior procedure.<sup>24</sup> Rhea therefore contravenes NR principle.

Besides, NR principle prohibits any act of *refoulement* or *de facto refoulement*, including rejection at the frontier that would have effect of exposing refugees to threats to life.<sup>25</sup> Here, Rhea’s rejection on the high seas leaves refugees with no alternative but to return home since other countries on the Gaia continent are not reasonably expected to accept rejected refugees.<sup>26</sup> This results in *de facto refoulement* and contravenes NR principle.<sup>27</sup> Also, Rhea’s rejection on the high seas results in exposing refugees to threats to their lives.<sup>28</sup> This

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<sup>21</sup> *North Sea Continental Shelf Cases (Germ. v. Denm. & Neth.)*, 1969 ICJ 3 (Feb. 20), ¶¶74, 77; FELLER ET AL., *REFUGEE PROTECTION IN INTERNATIONAL LAW* 148 (CAMBRIDGE, 2003) [Lauterpacht].

<sup>22</sup> *Hirsi*, *supra* note 2, Con. Opi. Pinto de Albuquerque, at 75.

<sup>23</sup> Pallis, “*Obligations of States towards Asylum Seekers at Sea*”, 14 INT’L J REF L 329, at 330 (2002) [Pallis].

<sup>24</sup> *Compromis*, ¶9.

<sup>25</sup> Lauterpacht, *supra* note 21, at 113.

<sup>26</sup> *Compromis*, ¶9; ZIMMERMANN ED., *THE 1951 CONVENTION RELATING TO THE STATUS OF THE REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* 1385 (OXFORD, 2011).

<sup>27</sup> Pallis, *supra* note 23, at 349.

<sup>28</sup> *See* Section B.



also contravenes NR principle.

#### **D. State of necessity does not justify “Sheer Cliff”.**

Rhea cannot justify “Sheer Cliff” by relying upon state of necessity under CIL. This Operation does not meet a prerequisite criterion of “only means” of safeguarding the interest concerned.<sup>29</sup>

There are alternatives to protect Rhea’s interest, including to conclude transfer arrangements of refugees or give refugees temporary protection.<sup>30</sup>

Furthermore, state of necessity does not preclude wrongfulness of “Sheer Cliff” as the Operation constitutes violations of peremptory norms under international law,<sup>31</sup> which are, here, the violations of Article 6 and 7 of ICCPR,<sup>32</sup> and NR principle.<sup>33</sup>

#### **E. Rhea must take necessary measures to put an end to “Sheer Cliff”.**

CIL obliges States responsible for the internationally wrongful act to cease that act, if it is continuing.<sup>34</sup> Since “Sheer Cliff” is internationally wrongful and continuing to the present day, Rhea is obliged to take necessary measures to put an end to that Operation.

### **II. The criminal proceedings initiated by the Kingdom of Amhit against Mr.**

#### **Lycomedes, the Minister of National Defense of the Republic of Rhea, on 15 December**

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<sup>29</sup> *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*, 1997 ICJ 7 (Sep. 25), ¶51.

<sup>30</sup> EUCD, *supra* note 19, *e.g.* art. 26.

<sup>31</sup> *Draft Article of Responsibility of States for Internationally Wrongful Acts*, U.N.Doc. A/56/10 (2001), art. 26 [ASR].

<sup>32</sup> GC36, *supra* note 5, ¶68; U.N.Doc. CCPR/C/21/Rev.1/Add.6 (1994), ¶8.

<sup>33</sup> Allain, “*The Jus Cogens Nature of Non-Refoulement*”, 13 INT’L J REF L 533, at 539-541 (2001); *Hirsi*, *supra* note 2, Con. Opi. Pinto de Albuquerque, at 67.

<sup>34</sup> *Jurisdictional Immunities of the State (Germ. v. Ital.: Gree. intervening)*, 2012 ICJ 58 (Feb. 3), ¶137 [*Immunities Case*]; ASR, *supra* note 31, art. 30.

**2018 do not violate international law.**

**A. Amhit is justified in initiating the criminal proceedings against Mr. Lycomedes**

**based on established international law principles on jurisdiction.**

**1. Amhit has jurisdiction pursuant to the passive personality principle.**

Passive personality principle entitles a State to exercise criminal jurisdiction over a person for his acts that are harmful to nationals of that State.<sup>35</sup> Recent national courts have relied upon this principle with regard to crimes against humanity.<sup>36</sup> Further, this principle “today meets with relatively little opposition” in relation to serious crimes.<sup>37</sup> Here, Amhit is entitled to exercise passive personality jurisdiction in relation to crimes against humanity, which is serious crimes,<sup>38</sup> ordered by Mr. Lycomedes.

**2. Amhit has jurisdiction pursuant to the universality principle.**

Universal jurisdiction entitles every State to have jurisdiction and try crimes that are particularly offensive to the international community as a whole.<sup>39</sup> It is well established under CIL that universal jurisdiction is triggered by the commission of crimes against humanity,<sup>40</sup>

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<sup>35</sup> Jennings, “*Extraterritorial Jurisdiction and the United States Antitrust Laws*”, 33 BYIL 144, at 154-155 (1957); *United States v. Yunis*, U.S. District Court, 681 F.Supp. 896, at 901-903 (1988).

<sup>36</sup> CASSESE, INTERNATIONAL CRIMINAL LAW 337-338 (2<sup>ND</sup> ED. OXFORD, 2008) [Cassese]; *Suarez Mason and others*, Rome Court of Assizes (2000), p. 84.

<sup>37</sup> *Case Concerning the Arrest Warrant of 11 April 2000 (D.R.C. v. Belg.)*, (Judges Higgins, Kooijmans & Buergenthal), 2002 ICJ 3 (Feb. 14), ¶¶46-47 [*Arrest Warrant*].

<sup>38</sup> U.N.Doc. A/72/10 (2017), pp. 22-24 [ILC 69th].

<sup>39</sup> SHAW, INTERNATIONAL LAW 500 (8<sup>TH</sup> ED. CAMBRIDGE, 2017).

<sup>40</sup> U.N.Doc. A/73/10 (2018), pp. 307-308; Princeton Project on Universal Jurisdiction, *The Princeton Principles on Universal Jurisdiction*, Principles, 1-2; O’KEEFE, INTERNATIONAL CRIMINAL LAW 23 (OXFORD, 2015).

as evidenced in a number of national laws.<sup>41</sup> As Mr. Lycomedes committed “deportation or forcible transfer of population” which constitutes a crime against humanity under both municipal law and CIL,<sup>42</sup> Amphit is entitled to exercise universal jurisdiction over that crime.

**B. The rules on immunity do not prohibit Amphit from exercising jurisdiction.**

**1. Mr. Lycomedes is not entitled to immunity *ratione personae*.**

CIL does not accord immunity *ratione personae* to Ministers of National Defense as its scope is limited to the *troika*.<sup>43</sup> Expansion of immunity *ratione personae* beyond the *troika* is not acceptable as it lacks consistent State practice and has a drawback of depriving other States of a competent power to exercise their jurisdiction which is an aspect of sovereignty.<sup>44</sup>

**2. Immunity *ratione materiae* does not bar the claims against Mr. Lycomedes.**

Assuming, *arguendo*, that the deportation order by Mr. Lycomedes is an act performed in his official capacity,<sup>45</sup> Amphit is entitled to deny immunity *ratione materiae* to Mr. Lycomedes consistently with international law.

Immunity as well as other international law rules must be interpreted and applied in

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<sup>41</sup> Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World – 2012 Update*, Index No.53/019/2012 (2012), p. 13.

<sup>42</sup> *Compromis*, ¶16; *Clarification to ¶16*; Rome Statute of the International Criminal Court (1998), 2187 UNTS 3, art. 7(1)(d); ICC, *Elements of Crimes*, Article 7(1)(d); Cassese, *supra* note 36, at 123-126.

<sup>43</sup> *Arrest Warrant*, *supra* note 37, ¶51; U.N.Doc. A/CN.4/661 (2013), ¶67 [*Second Report*]; Akande & Shah, “Immunities of States Officials, International Crimes, and Foreign Domestic Courts”, 21 EJIL 815, at 825 (2011) [Akande].

<sup>44</sup> *Second Report*, *supra* note 43, ¶¶63-66.

<sup>45</sup> FOX & WEBB, *THE LAW OF STATE IMMUNITY* 564 (3<sup>RD</sup> ED. OXFORD, 2013).

consistent with developments of international law.<sup>46</sup> Immunity is an exception to a normative rule of jurisdiction which otherwise applies,<sup>47</sup> and thus an interest of its own must always be balanced against the interest of excepted norms.<sup>48</sup> Considering the increasingly recognized interest of international community to prevent impunity for perpetrators of grave crimes against its members,<sup>49</sup> Amphit is entitled to deny immunity *ratione materiae* to Mr. Lycomedes in respect of crimes against humanity.

Indeed, immunity does not mean impunity in respect of crimes.<sup>50</sup> However, where there is no reasonable alternative to prosecute the perpetrator, immunity leads to *de facto* impunity.<sup>51</sup> Here, Rhea cannot be reasonably expected to prosecute Mr. Lycomedes in domestic courts as he was acted under the national policy.<sup>52</sup> Amphit therefore is entitled to deny immunity to Mr. Lycomedes who otherwise will enjoy *de facto* impunity.

Additionally, a number of national and international cases prove that a customary rule has established that all State officials are not entitled to immunity *ratione materiae* in national

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<sup>46</sup> U.N.Doc. A/CN.4/701 (2016), ¶142 [*Fifth Report*]; U.N.Doc. A/CN.4/L.682 (2006), ¶¶410-412; Akande, *supra* note 43, at 840; Bianchi, “Immunity versus Human Rights: The Pinochet Case”, 10 EJIL 237, at 256 (1999).

<sup>47</sup> Higgins, “Certain Unresolved Aspects of the Law of State Immunity”, 29 NETH INT’L LR 265, at 271 (1982); *Arrest Warrant*, *supra* note 37, (Judges Higgins, Kooijmans & Buergenthal), ¶71.

<sup>48</sup> *Arrest Warrant*, *supra* note 37, (Judges Higgins, Kooijmans & Buergenthal), ¶71.

<sup>49</sup> *Id.*, (Judges Higgins, Kooijmans & Buergenthal), ¶¶73-75.

<sup>50</sup> *Id.*, ¶60.

<sup>51</sup> *Id.*, (Judge Wyngaert), ¶¶34-38.

<sup>52</sup> *Compromis*, ¶15; CASSESE ET AL., THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY: VOLUME I, 983 (OXFORD, 2002) [Gaeta].

criminal proceedings if charged with crimes against humanity.<sup>53</sup>

Furthermore, given that prohibition of crimes against humanity is a *jus cogens*,<sup>54</sup> invocation of immunity to Mr. Lycomedes conflicts with violations of *jus cogens* because the former will impede the latter's enforceability.<sup>55</sup> Alternatively, immunity to Mr. Lycomedes conflicts with access to justice which is a peremptory norm when the substantive rights violated were *jus cogens*.<sup>56</sup> As the rules on immunity conflict with hierarchically higher *jus cogens* norms, the procedural bar of immunity must be lifted.<sup>57</sup>

This honorable Court's recent judgement in *Jurisdictional Immunities* case does not preclude these arguments above because of the legal and factual difference between that case and the present case in that the former addressed issues on State immunity and the latter addresses issues on immunity of State officials.<sup>58</sup>

Therefore, Amphit correctly recognized that it is entitled to deny immunity and lawfully exercise jurisdiction over Mr. Lycomedes. This interpretation reflects the growing importance of human rights law in the conduct of inter-State relations.

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<sup>53</sup> Cassese, "When May Senior State Officials Be Tried for International Crimes? Some Comments on the Congo v. Belgium Case" 13 EJIL 853, at 870 (2002); *Fifth Report, supra* note 46, ¶189; Gaeta, *supra* note 52, at 982.

<sup>54</sup> ILC 69th, *supra* note 38, p. 23.

<sup>55</sup> Orakhelashvili, "State Immunity and the Hierarchy of Norms: Why the House of Lords Got It Wrong", 18 EJIL 955, at 957 (2007); *Fifth Report, supra* note 46, ¶205.

<sup>56</sup> *Case of Goiburu et al. v. Paraguay*, Judgment, IAmCtHR Ser. C-153 (2006), ¶131.

<sup>57</sup> *Al-Adsani v. U.K.*, ECtHR App.No.35763/97 (2001) (Joi. Dis. Opi. Rozakis, Caflisch, Costa, Wildhaber, Cabral Barreto & Vajic), ¶3; *Arrest Warrant, supra* note 37, (Judge Al-Khasawneh), ¶7.

<sup>58</sup> *Immunities Case, supra* note 34, ¶91; *Fifth Report, supra* note 46, ¶¶155, 186.

## **PRAYER FOR RELIEF**

For the foregoing reasons, the Applicant respectfully requests this honorable Court to adjudge and declare as follows:

- I. Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018 has violated international law, and therefore, the Republic of Rhea must take necessary measures to put an end to the Operation; and
- II. The criminal proceedings initiated by the Kingdom of Amphit against Mr. Lycomedes, the Minister of National Defense of the Republic of Rhea, on 15 December 2018 do not violate international law.

Respectfully submitted,  
  
Agent for the Applicant.



**ASIA CUP 2019**  
**INTERNATIONAL LAW MOOT COURT COMPETITION**



**International Court of Justice**

at the Peace Palace  
The Hague, the Netherlands

*The Case Concerning  
the Maritime Operation “Sheer Cliff” and Certain Criminal Proceedings*

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The Kingdom of Amphit  
*(Applicant)*

v.

The Republic of Rhea  
*(Respondent)*

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**Memorial for Applicant**



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## SUMMARY OF PLEADINGS

### **I . That Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018 has violated international law, and therefore, the Republic of Rhea must take necessary measures to put an end to the Operation.**

With admissibility, Amphit submits Rhea’s “Sheer Cliff” violated;

[1] *non-refoulement* obligation under CIL, since rejection against Theseusian asylum seekers to enter Rhea territory on the Labyrinthos sea breaches procedural obligation on refugee status determination and amounts to substantive return (“refoulement”) to life threatening State, Theseus.

[2] Article 6 (1) and 7 of the ICCPR, since Rhea owed obligation to respect and ensure the Covenant rights for *de facto* jurisdiction over sailing Theseusian and infringed right to life and freedom from ill-treatment with border control activity which exposes Theseusian real peril of drowning, armed conflict and human trafficking.

[3] Article 58 (1) of the LOSC, since maritime intervention against M/V Dignitas in “Sheer Cliff” impedes freedom of navigation of Amphit, and the operation itself deters exercise of freedom of navigation with “chilling effect”.

Therefore, Rhea must cease maritime operation “Sheer Cliff”.

### **II . That the criminal proceedings initiated by the Kingdom of Amphit against Mr. Lycomedes, the Defense Minister of the Republic of Rhea, on 15 December 2018 do not violate international law.**

Amphit initiated criminal proceedings against Mr. Lycomedes in accordance with well-established rule, the *Lotus* principle.

[A] As for an extraterritorial arrest warrant, mere issuance of an arrest warrant does not violate no existing prohibiting international law, since arrest warrant itself has not coercive character.

[B] Additionally, initiating criminal proceedings against Mr. Lycomedes, who is Defense Minister of the Republic of Rhea does not conflict either immunity *ratione personae* and immunity *ratione materiae*. This is because Defense Ministers are excluded from subjects of immunity *ratione personae* under CIL and, in addition, immunity *ratione materiae* cannot be applicable when the acts in question are crimes against humanity.

## PLEADINGS

### **I. Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018 has violated international law, and therefore, the Republic of Rhea must take necessary measures to put an end to the Operation.**

Amphit submits, [A] Amphit has *locus standi*. Furthermore, [B] Rhea violates international law and thus, [C] Rhea shall cease its operations.

#### **A. Amphit has *locus standi* in this case.**

Despite the agreement between the parties, this Court can examine *proprio motu* jurisdiction of each case.<sup>1</sup> *Locus standi* is found when the allegedly violated obligation has *erga omnes* (*partes*) character, which all States (all parties) has common interests for compliance with it.<sup>2</sup>

In this vein, customary *non-refoulement* obligation is *erga omnes*,<sup>3</sup> and Articles 6 (1) and 7 of the International Covenant on Civil and Political Rights [“ICCPR”]<sup>4</sup> and Article 58 (1) of the United Nations Convention on Law of the Sea [“LOSC”]<sup>5</sup> are *erga omnes partes*.

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<sup>1</sup> *Compromis*, ¶ 19; Jurisdictional Immunities of the State (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, ¶¶ 39-40 (Feb. 3) [hereinafter “jurisdictional immunity case”].

<sup>2</sup> Questions Relating to the Obligation to prosecute or extradite (Belg. v. Sen.), Judgment, 2012, I.C.J. 422, ¶ 69 (July 20); Rep. of the Int’l Law Comm’n, 53d Sess., Apr. 23-June 1 and July 2-Aug. 10, 2001, at 56, U.N. Doc. A/56/10; GAOR, 56th Sess., Supp. No. 10 (2001).

<sup>3</sup> Convention Relating to the Status of Refugees Preamble, ¶ 2, July 28, 1951, 189 U.N.T.S. 137 (“Considering that the United Nations has manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms”, which means that *all States has common interests* for compliance with non-refoulement obligation under Article 33 as the custom today.).

<sup>4</sup> Hum. Rts. Comm., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 2, U.N. Doc. CCPR/C/21/Rev. 1/Add. 13 (May 26, 2004).

<sup>5</sup> Int’l law Comm., *Memorandum présenté par le Secrétariat*, U.N. Doc. A/CN.4/32 (11 July

## **B. Rhea violates international law by “Sheer Cliff”.**

Amphit submits that Rhea violates [1] CIL expressed in Article 33 of the Convention Relating to the Status of Refugees [“Refugee Convention”], [2] Articles 6 (1) and 7 of the ICCPR, and [3] Article 58 (1) of the LOSC.

### ***1. “Sheer Cliff” violates non-refoulement obligation under CIL.***

*Non-refoulement* obligation originated from Article 33 of the Refugee Convention has customary status.<sup>6</sup> Amphit submits, “Sheer Cliff” infringes [a] the customary obligation expressed in Article 33 (1) and [b] the infringement cannot be justified by customary rule reflected in Article 33(2).

#### **a. “Sheer Cliff” breaches the *non-refoulement* obligation under CIL.**

Amphit submits the violations of [i] procedural, and [ii] substantial obligation under CIL.

#### ***i. “Sheer Cliff” is inconsistent with the procedural obligation under CIL.***

Under CIL rooted in Article 33 (1) of the Refugee Convention, States have the obligation to examine whether he or she falls within “refugee” towards every asylum seeker even in mass influx.<sup>7</sup> Otherwise States could intentionally ignore the existence of “refugees”.<sup>8</sup>

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1950).

<sup>6</sup> Sir Elihu Lauterpacht CBE QC & Daniel Bethlehem, Barrister., *The Scope And Content of The Principle of Non-refoulement*, United Nations High Commissioners [UNHCR], ¶¶ 217-253, (June 20, 2001) [hereinafter “Lauterpacht/Bethlehem”]; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (Ser. A) No. 21, ¶ 221 (Aug. 19, 2014) [hereinafter “Advisory Opinion 2014”].

<sup>7</sup> WALTER Kälin et al., *THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* 1376 (Andreas Zimmermann et al., eds., 2011) [hereinafter “Zimmermann Commentary”]; Lauterpacht/Bethlehem, *supra* note 6, at 119.

<sup>8</sup> Lauterpacht/Bethlehem, *supra* note 6, at 119.

In this case, “Sheer Cliff” expels Theseusian asylum seekers without any exhaustion of the required procedure to determine the “refugee” status. Thus, Rhea is in the violation of the procedural obligation, and cannot excuse this by mass influx of asylum seekers.

ii. “*Sheer Cliff*” is contrary to the substantive obligation under CIL.

Under CIL derived from Article 33 (1) of the Refugee Convention, States shall not return “refugees” to the State of origin. Thus, Amplit submits that (1) Theseusians as “refugees” are (2) compelled to return to the State of origin, Theseus.

(1) Unlike the definition set up in Article 1 (A) (2) of the Refugee Convention, CIL protects individuals escaped from armed conflicts as “refugees”.<sup>9</sup> Since 1951, State practices indicate the demand to protect them because they need the same international protection, regardless of persecution.<sup>10</sup> In this case, since Theseusians flee from the armed conflict led by Minotauros, they enjoy “refugee” status under the substantial obligation of *non-refoulement*.

(2) Furthermore, even outside its territory,<sup>11</sup> Rhea shall not compel Theseusian “refugees” to return to the land of armed conflict, Theseus island.<sup>12</sup> “Sheer Cliff”, nevertheless, leaves them no choice but to return considering also the reluctance of Gaia continent States.<sup>13</sup> In conclusion, Rhea violated *non-refoulement* obligation under CIL.

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<sup>9</sup> *Compromis*, ¶ 9.

<sup>10</sup> *Hirsi Jamaa and Others v. Italy*, Ap. No. 27765/09. Eur.H.R. 62 (2012) (Pinto, A., concurring); *Continental Shelf (Libya/Malta)*, Judgment, 1985h I.C.J. 13, ¶ 27 (June 3); *See, e.g.*, OAU Convention Governing the specific aspects of Refugee Problems in Africa, art. 4, Sept. 10, 1969, 1001 U.N.T.S. 45; Colloquium on the International Protection of Refugees in Latin America, Mexico and Panama, *Cartagena Declaration on Refugees*, art. III (3).

<sup>11</sup> Advisory Opinion 2014, *supra* note 6, ¶¶ 224-227.

<sup>12</sup> Zimmermann Commentary, *supra* note 7, at 1369.

<sup>13</sup> *Compromis*, ¶ 9; *See, e.g.*, *F.G. v. Sweden*, Ap. No. 43611/11 Eur.H.R. ¶¶ 143, 158 (2016), *Babar Ahmed and Others v. U.K.* Ap. Nos. 24027/07, 11949/08 and 36741/08 Eur. H.R. ¶ 119 (2010) (dec.) (ECtHR scrutinizes surrounding circumstance in examining extradition.).

b. Moreover, Rhea cannot derogate this obligation by invoking CIL reflecting Article 33 (2) of the Refugee Convention.

Firstly, when *refoulement* violates non-derogable human rights norm, the plea of exception is precluded.<sup>14</sup> As in below, *refoulement* in this case incurred the violation of non-derogable norms, or Articles 6 (1) and 7 of the ICCPR.<sup>15</sup> In any event, *refoulement* lacking personal examination is impossible to determine the “reasonable ground” to deport.<sup>16</sup> Therefore, *refoulement* in this case lacks due process and is not justifiable.

## **2. “Sheer Cliff” violates Articles 6 and 7 (1) of ICCPR.**

a. Rhea had the obligation to respect human rights under the ICCPR.

Article 2 (1) of the ICCPR provides, even outside its territory, the parties shall respect the Covenant rights of individuals subject to its jurisdiction.<sup>17</sup> Jurisdiction is found when a State exercises “full and exclusive” control over individuals.<sup>18</sup> For instance, border control activities which is quintessential exercise of jurisdiction upon territory.<sup>19</sup>

In this case, through the warship’s coercive power, Rhea diverted the ship’s courses, and excludes Thesusian from the 30 nautical mile point.<sup>20</sup> In this situation, Rhea leaves no room for them but to follow the border security order, thus they are under “full and exclusive” control. Therefore, Rhea shall respect Theseusians’ Covenant rights.

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<sup>14</sup> Advisory Opinion 2014, *supra* note 6, ¶¶ 224-227.

<sup>15</sup> *Infra* Memorial I-B-2-b-i.

<sup>16</sup> Lauterpacht/Bethlehem, *supra* note 6, at 118.

<sup>17</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 107 (July 9).

<sup>18</sup> *Medvedyev and Others v. France*, Ap. No. 3394/03, Eur. Ct. H.R. 384, ¶ 73 (2010).

<sup>19</sup> *Hirsi Jamaa and Others v. Italy*, Ap. No. 27765/09. Eur. Ct. H.R. ¶¶ 178-180 (2012).

<sup>20</sup> *Compromis*, ¶ 9.

b. Rhea violates Articles 6 (1) and 7 of the ICCPR.

Article 6 of the ICCPR prohibits States from arbitrary deprivation of life, which is found where there is (1) substantial grounds to believe (2) the existence of real risk.<sup>21</sup> (1) In the present case, Rhea ought to have known the following risks given the repeated alarm by Delphinus.<sup>22</sup> (2) Real risk is found without personal examination when the continuing violence is occurring.<sup>23</sup> *In casu*, not only Theseus is a hub of armed conflict, but Labyrinthos sea is also a hot bed of human trafficking.<sup>24</sup> These extreme circumstances as a whole constitutes real risk where it is too obvious to examine in personal basis.

Moreover, as in above, since it is reasonably foreseeable that inhumane treatment, in this case human trafficking,<sup>25</sup> will occur, there exists a violation of Article 7 of the ICCPR.<sup>26</sup>

**3. Rhea violates Article 58 (1) of LOSC and “detering effect” under CIL.**

(1) Firstly, any acts of interference constitute impediment on freedom of navigation under Article 58.1 of LOSC.<sup>27</sup> Rhea made M/V Dignitas divert in “Sheer Cliff” and intervened the

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<sup>21</sup> Hum. Rts. Comm., General Comment No.36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, ¶ 30, U.N. Doc., CCPR/C/GC/36 (Oct. 30, 2018).

<sup>22</sup> *Compromis*, ¶¶ 6, 10; *See*, (HRC examines foreseeability on risk of *refoulement* with widely known report.) Hum. Rts. Comm., *Maksudov and others v. Kyrgyzstan*, Comm. No. 1461,1462, 1476& 1477/2006 ¶ U.N. Doc. CCPR/C/93/D/1461/1462/1476/1477 (16 July 2008); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.), Merits, 2015 I.C.J. 3, ¶¶ 239, 249 (In the context of awareness, not fact-finding, NGO reports has value for the existence of degree of State’s awareness.).

<sup>23</sup> *See*, *Saadi v. Italy*, Ap. No. 37201/06, Eur.H.R. § 132 (2008); *See also*, *Salah Sheekh v. Neth.*, Ap. No. 1948/04 Eur.H.R. ¶ 148 (2007).

<sup>24</sup> *Compromis*, ¶ 6.

<sup>25</sup> The Office of High Commissioner for Human Rights [OHCHR], Fact Sheet No. 36, Human Rights and Human Trafficking, 2014, at 4, 5, <https://www.refworld.org/docid/5566d0e84.html>.

<sup>26</sup> Hum. Rts. Comm., *Z v. Denmark*, Comm. No. 2422/2014 ¶ 7.2 U.N. Doc. CCPR/C/116/D/2422/2014 (24 May 2014) (Article 6 and 7 is judged on the same grounds.).

<sup>27</sup> M/V “Norstar” (Panama v. Italy), Case No. 25, Judgment, 2019 Apr. 10, 62 ¶ 222.



freedom of Amhit. (2) Secondly, the operation which deters rightful exercise of liberty of other Parties is prohibited under CIL as operation *itself* causing “detering effect”.<sup>28</sup> In this case, widespread wrongful intervention under “Sheer Cliff” by Rhea suppress the exercise of freedom of navigation under the LOSC by all States Parties in coastal sea of Rhea. Hence, Rhea violates the customary rule of “detering effect” by the operation itself.

**C. Under CIL, Rhea must cease its continuing wrongful acts, or “Sheer Cliff”.**

Under CIL codified in Article 30 (a) of Draft Articles on State Responsibility, a State shall cease continuing internationally wrongful act.<sup>29</sup> Reflecting this case, “Sheer Cliff” is under the operation, and thus Rhea has the obligation to cease it.

**II. The criminal proceedings initiated by the Kingdom of Amhit against Mr. Lycomedes, the Defense Minister of the Republic of Rhea, on 15 December 2018 do not violate international law.**

Amhit submits that Amhit does not violate the principle of sovereign equality enshrined in Article 2 (1) of the Charter of United Nations.<sup>30</sup> This is because [A] States can issue an extraterritorial arrest warrant under international law. Additionally, [B] the present issue of the arrest warrant does not violate Rhea’s immunities from other State’s criminal jurisdiction under CIL.

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<sup>28</sup> See, South China Sea Arbitration (Philippines v. China.), 2013-19 Award 215 ¶¶ 712-715 (P.C.A. 2016) (The Tribunal found no “detering effect” of China’ Hainan Regulation because [1] its content itself was not contrary to LOSC and [2] there existed no practices to be prevented Pilipino vessels from fishing. This case fulfills, however, both aspects.).

<sup>29</sup> Jurisdictional Immunities of State (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, ¶ 137 (Feb. 3).

<sup>30</sup> U.N. Charter art. 2, ¶ 1.

### **A. States can issue an extraterritorial arrest warrant under international law.**

According to the *Lotus* principle, States can exercise its jurisdiction extraterritorially unless prohibited by international law.<sup>31</sup> In this regard, States cannot enforce its rules such as arresting individuals in another territory since coercion infringes territorial sovereignty.<sup>32</sup> Thus, coerciveness is the indicator for whether the invoked jurisdiction is permissible.

In the present case, arrest warrant itself does not accompany the coercive power.<sup>33</sup> This is because the mere issue of the arrest warrant does not compel another State to enforce it, *i.e.* its implementation depends upon the State.<sup>34</sup>

Therefore, based on the *Lotus* principle, extraterritorial issuance of arrest warrant is permissible under international law.<sup>35</sup>

### **B. The criminal proceedings are not in the violation of Rhea' immunities before the courts of another State under CIL.**

Under CIL, Rhea enjoys two types of immunities from other States' criminal jurisdiction: [1] immunity *ratione personae*; and [2] immunity *ratione materiae*. However, the present criminal proceedings do not conflict with either of the immunities.

#### ***1. Mr. Lycomedes does not enjoy immunity ratione personae.***

The Head of State, Head of Government and Foreign Ministers are, under CIL, completely<sup>36</sup>

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<sup>31</sup> S.S. *Lotus* (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 19 (Sept. 7).

<sup>32</sup> C. Ryngaert, *Jurisdiction in international law* 23 (1st ed. 2008).

<sup>33</sup> Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 46, ¶13 (dissenting opinion of Judge Oda).

<sup>34</sup> *Ibid.*, ¶13.

<sup>35</sup> Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 63, ¶53 (joint separate opinion of Judges Higgins, Kooijmans & Buergenthal).

<sup>36</sup> Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. 3, ¶¶51, 54, 58 (Feb. 14) [hereinafter "Arrest Warrant case"]; Certain Questions of Mutual

immune from other State's criminal jurisdiction.<sup>37</sup> Defense Ministers are, however, excluded from this special group because of (1) the lack of State practices and (2) the function in the international level.

(1) Rhea must establish "extensive and uniform State practices accompanied by *opinio juris*" as the proof of CIL.<sup>38</sup> However, only three countries are approving: U.K.; Switzerland; and France.<sup>39</sup> By contrast, many States such as U.S., Italy, Jamaica, Australia and Malaysia are objecting to this position.<sup>40</sup> This fragment division indicates the non-crystallization of the alleged custom.

(2) Our position is in line with the rationale of immunity *ratione personae*. In *Arrest Warrant*, this Court emphasized the Foreign Minister's representative character of the State in international relations under international law.<sup>41</sup> This is reflected in, for instance, Article 7 (2) of the Vienna Convention on Law of the Treaties.<sup>42</sup> Pursuant to this, only the Head of State, Head of Government, and Foreign Minister represent internationally their States, and thus exclude the Defense Ministers from immunity *ratione personae*. If the mere frequency of foreign visits, as may Rhea allege, were crucial for the determination of this immunity, almost

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Assistance in Criminal Matters (*Djib. v. Fr.*), Judgment, 2008 I.C.J. 177, ¶ 170 (June 4); Concepción Escobar Hernández (Special Rapporteur), *Fifth Rep. on immunity of State officials from foreign criminal jurisdiction*, ¶ 20 (e), U.N. Doc. A/CN.4/701 (June 14, 2016).

<sup>37</sup> *Arrest Warrant case*, *supra* note 36, ¶ 54.

<sup>38</sup> *North Sea Continental Shelf (Ger. v. Neth.)*, Judgment, 1969 I.C.J. 3, ¶ 74 (Feb. 20).

<sup>39</sup> *See*, Cour de cassation [Cass.] [supreme court for judicial matters] crim., Jan. 19, 2010, Bull. crim., No. 09-84.818 (Fr.); *See*, *Re General Shaul Mofaz (Minister of Defense of Israel)*, (Bow Street Magistrates' Ct., 2004) (U. K.) ¶ 14, <https://www.dipublico.org/1825/application-fhor-arrest-warrant-against-general-shaul-mofaz-first-instance-unreported-bow-street-magistrates-court/>; *See*, Federal Criminal Court July 25, 2012, TPF 2012, 97 ¶ 5.4.2 (Switz.) [hereinafter "Switz. Criminal case"].

<sup>40</sup> *See, e.g.*, U.N. GAOR Sixth Committee, 63rd Sess., 24th mtg. U.N. Doc. A/C.6/63/SR.24 (Nov. 21, 2008), ¶ 18 (Austl.), ¶ 78 (Jam.); U.N. GAOR, Sixth Committee, 63d Sess., 23d mtg. ¶¶ 71-74, U.N. Doc. A/C.6/63/SR.23 (Nov. 21, 2008) (Malay.).

<sup>41</sup> *Arrest Warrant case*, *supra* note ¶ 53.

<sup>42</sup> *See also*, *Armed Activities on the Territory of the Congo (New Application: 2002)*, Preliminary Objection, 2006 I.C.J. 6, ¶ 46.

all Ministers would enjoy it. Given today's globalized world, this will lead to States abusing immunity for evading criminal responsibilities.<sup>43</sup>

From the above, Amphot concludes that Defense Ministers do not fall within the scope of immunity *ratione personae*, and thus there is no immunity *ratione personae* to be violated by our criminal proceedings.

## ***2. Mr. Lycomedes is not entitled to immunity ratione materiae in the prosecution for crimes against humanity.***

It is a well-accepted principle under CIL that State officials are immune from other State's criminal jurisdiction for their "acts performed in an official capacity."<sup>44</sup> Although admitting that Mr. Lycomedes deported the victims in his official capacity,<sup>45</sup> Amphot contends that immunity *ratione materiae* never allow him to evade criminal jurisdiction for crimes against humanity.

This exception has crystalized into the custom. Firstly, domestic courts have adopted this exception in the jurisdiction for the crimes against humanity.<sup>46</sup> Secondly, ILC inserted this

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<sup>43</sup> Roman Anatolevich Kolodkin (Special Rapporteur), *Preliminary Rep. on immunity of State officials from foreign criminal jurisdiction*, ¶ 121, U.N. Doc. A/CN.4/601 (May 29, 2008).

<sup>44</sup> JAMES. CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 488 (8th ed. 2012); Arthur. Watts, *The legal position in international law of Heads of States, Heads of Governments and foreign ministers*, 247 RECUEIL DES COURS 9, 89 (1994) [hereinafter "Watts"]; *See, e.g.*, Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, ¶ 38 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 29, 1997).

<sup>45</sup> Dapo. Akande & Sangeeta Shah, *Immunities of State Officials*, 21 EUR. J. INT'L L. 815, 832 (2010); S. Wirth, *Immunity for Core Crimes? The ICJ's Judgment in the Congo v. Belgium Case*, 13 EUR. J. INT'L L. 877, 891(2002); Watts *supra* note 44 at 46-47 (Officiality of official acts is judged by whether the acts in question were implemented through institutions of their states in line with their states policies.).

<sup>46</sup> HB Jan. 29, 2007 (Public Prosecutor/H.) ¶ 5.4.5 (Neth.), <https://www.asser.nl/upload/documents/20120601T050027Court%20of%20Appeal%2029%20January%202007%20English.pdf>; Switz. Criminal case, *supra* note 39, ¶ 5.4.3; Doe I v. State of Israel, 400 F. Supp. 2d

exception into the draft Article 7 of “Immunity of State Officials from foreign criminal jurisdiction”.<sup>47</sup> Considering the inherent official nature of the crime against humanity, the negative answer to this exception would allow perpetrators to circumvent permanently their criminal responsibility notwithstanding the fact that international community has consensus not to overlook it.<sup>48</sup>

Therefore, Mr. Lycomedes, who is alleged to have committed crime against humanity,<sup>49</sup> does not enjoy immunity *ratione materiae* under CIL, and thus the criminal proceedings does not conflict with the immunity.

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86, 105 (D.D.C. 2005), <https://www.courtlistener.com/opinion/-2414050/does-i-v-state-of-israel/>.

<sup>47</sup> Concepción Escobar Hernández (Special Rapporteur), *Sixth Rep. on immunity of State officials from foreign criminal jurisdiction*, ¶¶ 14, 15, U.N. Doc. A/CN.4/722 (June 18, 2018) (The criticism from some States does not deny the customary character of Draft Article 7 since they merely opposed the way ILC considered.).

<sup>48</sup> Concepción Escobar Hernández (Special Rapporteur), *Fourth Rep. on immunity of State officials from foreign criminal jurisdiction*, ¶¶ 92, 93, U.N. Doc. A/CN.4/686 (May 29, 2015) (Since crimes against humanity will be committed under state policy systematically according to the Rome Statute Article 7, the subjects are limited to officials of their state.).

<sup>49</sup> *Compromis*, ¶ 16.

## CONCLUSION

The Kingdom of Amphit (the Applicant) respectfully requests that the Court to adjudge and declare:

I . That Maritime Operation “Sheer Cliff” initiated by the Republic of Rhea on 1 April 2018 has violated international law, and therefore, the Republic of Rhea must take necessary measures to put an end to the Operation; and

II . That the criminal proceedings initiated by the Kingdom of Amphit against Mr. Lycomedes, the Minister of National Defense of the Republic of Rhea, on 15 December 2018 do not violate international law.

*Respectfully Submitted,*

**AGENTS OF THE AMPHIT**



ANNÉE · YEAR

2019

COUR INTERNATIONALE

DE JUSTICE



INTERNATIONAL COURT

OF JUSTICE

**THE CASE CONCERNING THE MARITIME OPERATION “SHEER CLIFF”**

**AND CERTAIN CRIMINAL PROCEEDINGS**

**(THE KINGDOM OF AMPHIT/THE REPUBLIC OF RHEA)**

**L’AFFAIRE CONCERNANT L’OPÉRATION MARITIME “SHEER CLIFF” ET**

**CERTAINES PROCÉDURES PÉNALES**

**(ROYAUME D’AMPHIT/LA REPUBLIQUE DE RHEA)**

**MEMORIAL FOR THE APPLICANT**

**MÉMORIAL POUR LE DEMANDEUR**



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## SUMMARY OF PLEADINGS

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### **Operation Sheer Cliff violates international law and must be ended forthwith.**

The Republic of Rhea (“Rhea”) violated the various international conventions and customary international law by preventing the safe passage of Theseusian refugees. First, Operation Sheer Cliff (“the Operation”) violated the customary duty of non-refoulement, which obliges States to allow refugees access to their territory. Rhea cannot invoke national security to justify the Operation. This exception cannot be used to justify refoulement, as the persons concerned should still be provided provisional asylum.

Further, Rhea also violated its obligations under the International Covenant for Civil and Political Rights (“ICCPR”), the UN Convention on the Rights of the Child (“CRC”), and the United Nations Convention on the Law of the Sea (“UNCLOS”). Under the ICCPR, Rhea is obliged to protect the right to life of individuals, including refugees. It cannot expel or otherwise remove refugees from its territory where there is a real risk of irreparable harm to their life. Under the CRC, Rhea is bound to protect children seeking refugee status and provide them with humanitarian assistance. Finally, Rhea is bound under the UNCLOS to rescue distressed persons at sea. Rhea violated its international obligations by launching Operation Sheer Cliff and blocking the safe passage of Theseusians.

### **The criminal proceedings initiated by the Kingdom of Amphit against Minister Lycomedes do not violate international law.**

The Kingdom of Amphit (“Amphit”) may initiate criminal proceedings and issue a warrant under the customary rule giving states universal jurisdiction over international crimes. The deportation of Delphinus staff and Theseusian refugees constitutes crimes against humanity of deportation or forcible transfer of population — an international crime. Therefore,

Amphit is justified in issuing a warrant against Minister Lycomedes for acts in Rhea which constitutes an international crime, despite it having been perpetrated outside its territory.

Finally, State officials may not invoke either immunity *rationae personae* or immunity *rationae matiriae*. For the former, this immunity has only been recognised for a certain class of state officials which does not include ministers of defense. Moreover, there is a customary rule which disallows State officers from invoking their official positions as a means of avoiding criminal responsibility. This exclusion from immunity of officials who have perpetrated crimes against humanity has been confirmed by the decisions of domestic courts and local legislation of states which have ratified the Rome Statute and those which have opposed its ratification.

Thus, Amphit's exercise of its universal jurisdiction in issuing a warrant against Rhea's defense minister Lycomedes for an international crime did not violate international law.

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## PLEADINGS AND AUTHORITIES

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### I. Operation Sheer Cliff violates International Law and must be ended forthwith.

#### A. *The Theseusians are protected as refugees under international law.*

Refugees are individuals who are outside their State of nationality and are unable or unwilling to return due to a well-founded fear of persecution.<sup>1</sup> A well-founded fear exists when continued stay in the state of origin has become intolerable<sup>2</sup> due to the threat of persecution.<sup>3</sup> Acts of persecution include threats to life and other human rights violations.<sup>4</sup> In armed conflict, persecution arises from consequences of violence, such as abject poverty and the loss of government services. Hence, people fleeing armed conflict are refugees.<sup>5</sup>

Refugees are protected under international conventions<sup>6</sup> and customary international law.<sup>7</sup> Theseus is engulfed in armed conflict, pushing citizens to flee in great numbers. Rhea violated its obligations by launching the Operation and blocking the passage of Theseusians.<sup>8</sup>

#### B. *Rhea violated the customary duty of non-refoulement.*

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<sup>1</sup> Convention Relating to the Status of Refugees, July 28, 1959 189 U.N.T.S. 87, [“1951 Convention”], art. 1(A)(2).

<sup>2</sup> United Nations High Commissioner for Refugees [“UNCHR”], Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status [“Handbook”], Dec. 2011, HCR/IP/4/ENG/REV.3, ¶42.

<sup>3</sup> *Id.* at ¶38-40; UNHCR, Intervention before the House of Lords in the case of R v. Secretary of State for the Home Department, 1987.

<sup>4</sup> Handbook, ¶51; UNHCR, Guidelines on International Protection No. 12: Claims for refugee status in armed conflict [“Guidelines No. 12”], Dec. 2, 2016, HCR/GIP/16/12, ¶11.

<sup>5</sup> *Id.* at ¶19, ¶22; UNHCR, Note on International Protection, Sept. 7, 1994, A/AC.96/830, ¶32.

<sup>6</sup> 1967 Protocol to the 1951 Convention [“1967 Protocol”], Jan. 31, 1967, 606 U.N.T.S. 267; Convention on the Rights of the Child [“CRC”], Nov. 27, 1989, 1577 U.N.T.S. 3; Convention on Specific Aspects of Refugee Problems in Africa [“OAU Convention”], 10 Sept. 1969, 1001 U.N.T.S. 4.

<sup>7</sup> Guy Goodwin-Gill, G. *The International Law of Refugee Protection*. THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES (2014), 37-45.

<sup>8</sup> *Problem*, ¶5 & ¶9.

Refugees have the right not to be forcibly returned when this would threaten their life or freedom.<sup>9</sup> This is known as non-refoulement, which forms part of customary international law.<sup>10</sup> This obligation has been upheld by various international tribunals<sup>11</sup> and domestic courts in numerous states.<sup>12</sup> It is also embodied in local legislation<sup>13</sup> and various international covenants<sup>14</sup> and declarations,<sup>15</sup> showing its general acceptance by States.<sup>16</sup> Where a State is not prepared to grant asylum, it must adopt a course of action that does not amount to refoulement.<sup>17</sup> States should always admit refugees, even temporarily.<sup>18</sup>

Refoulement covers rejection at the frontier.<sup>19</sup> Without such a rule, the principle of non-refoulement will be meaningless.<sup>20</sup> Moreover, refusal of entry into the territorial sea constitutes refoulement.<sup>21</sup> It is the humanitarian obligation of coastal States to allow distressed vessels to

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<sup>9</sup> 1951 Convention, art. 33.

<sup>10</sup> UNHCR, Non-Refoulement 6 [“Conclusion No. 6”] Oct. 12, 1977, (A/32/12/Add.1); UNHCR, Non-Refoulement as a Norm of Customary International Law [“Non-Refoulement as Custom”], Jan. 31, 1994, 2 BvR 1954/93; LAUTERPACHT & BETHLEHEM, SCOPE AND CONTENT OF NON-REFOULEMENT IN REFUGEE PROTECTION IN INTERNATIONAL LAW, 140 (2003).

<sup>11</sup> *Jamaa v. Italy*, ECHR, Feb. 23, 2012; *M.A. v. Lithuania*, ECHR, Dec. 11, 2018.

<sup>12</sup> *Abdi v. Minister of Home and Others*, South African Supreme Court of Appeal, Feb. 15, 2011; *M70/2011 v. Minister*, HCA 32, Australian High Court, Aug. 31, 2011.

<sup>13</sup> United Kingdom: Human Rights Act 1998; Canada: Immigration and Refugee Protection Act (IRPA) 2001; Germany: Asylum Act 2008.

<sup>14</sup> OAU Convention, *supra*; OAS, American Convention on Human Rights, Nov. 22, 1969; UN Convention Against Torture, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>15</sup> UNGA, *Universal Declaration of Human Rights*, Dec. 10, 1948, 217 A (III); UNHCR, Cartagena Declaration on Refugees, Nov. 22, 1984.

<sup>16</sup> Conclusion No. 6, *supra* note 10.

<sup>17</sup> Lauterpacht and Bethlehem, *supra* note 10 at ¶76.

<sup>18</sup> UNHCR, Protection of Asylum-Seekers in Situations of Large-Scale Influx. No. 22 (XXXII) [“Conclusion No. 22”] 1981, A/36/12/Add.1 ¶A(1).

<sup>19</sup> *Id.* at ¶II(a)2; Sternberg, *Reconfiguring the Law on Non-Refoulement*, *Journal on Migration and Human Security* 332, 2014; Weis (ed.), *The Refugee Convention, 1951: The Travaux Préparatoires Analysed*, Cambridge University Press 1995, p.342.

<sup>20</sup> UNHCR, *Note on Non-Refoulement* [“Note on Non-Refoulement”], Nov. 1997.

<sup>21</sup> Seline Trevisanut, *The Principles of Non-Refoulement at Sea and the Effectiveness of Asylum Protection*, MAX PLANCK YEARBOOK OF UNITED NATIONS LAW, Volume 12, 222, (2008).

seek haven in their waters and grant refuge to persons on board.<sup>22</sup>Rhea violated this by blocking distressed vessels, pushing casualties to a record high.<sup>23</sup>

Rhea invokes national security as an exception to its duty.<sup>24</sup> While national security is a recognized exception to this principle,<sup>25</sup> this exception may only be invoked if there is a genuine and serious threat to society.<sup>26</sup> Isolated threats to law and order do not provide sufficient basis for an exception.<sup>27</sup> Further, this exception cannot be used to justify refoulement, as the persons concerned should still be provided provisional asylum.<sup>28</sup>

*C. Rhea violated international human rights treaties.*

International human rights law complements refugee law.<sup>29</sup> Rhea is a party to various human rights covenants,<sup>30</sup> and must extend protection under these covenants to Theseusians.

1. Rhea violated the ICCPR and the CRC.

Rhea is obliged to protect the right to life<sup>31</sup> of individuals within its jurisdiction or effective control.<sup>32</sup> The ICCPR and the CRC apply to acts done by a State in the exercise of jurisdiction outside its territory,<sup>33</sup> such as acts committed by a State's armed forces.<sup>34</sup> In this case, a Rhean warship approaches refugee boats to prevent entry.<sup>35</sup> This is an act of jurisdiction over Theseusians and places them within the ambit of the ICCPR and the CRC.<sup>36</sup>

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<sup>22</sup> UNHCR, Refugees Without an Asylum Country, 1979. (A/34/12/Add.1).

<sup>23</sup> *Problem*, ¶10.

<sup>24</sup> *Problem*, ¶12.

<sup>25</sup> 1951 Convention, art. 33(2).

<sup>26</sup> *Regina v. Pierre Bouchereau*, ECJ 27 Oct 1977 ¶35.

<sup>27</sup> Note on Non-Refoulement, *supra* note 22.

<sup>28</sup> Non-Refoulement as Custom, *supra* note 12.

<sup>29</sup> UNHRC, General Comment No. 31 (2004) CCPR/C/21/Rev.1/Add. 13; UNHCR, General Conclusion on International Protection. 2003. (A/58/12/Add.1).

<sup>30</sup> *Problem*, ¶20.

<sup>31</sup> ICCPR, art 2(1); ICCPR, art. 6(1).

<sup>32</sup> General Comment No. 31, *supra* note 29, ¶10.

<sup>33</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136, ¶111.

<sup>34</sup> General Comment No. 31, *supra* note 29 ¶10.

<sup>35</sup> *Problem*, ¶9.

<sup>36</sup> *Trevisanut*, *supra* note 21.

Article 2 of the ICCPR obliges a State not to expel or otherwise remove a person from its territory where there is a real risk of irreparable harm to their life. This obligation extends even to aliens not entitled to refugee status.<sup>37</sup> Therefore, Rhea may not expel Theseusians and force them to return to a place where there is a real risk of violation of their right to life.<sup>38</sup>

Further, Rhea must protect child refugees and provide them with humanitarian assistance. Rhea must cooperate in efforts by NGOs to assist such children.<sup>39</sup> As a party to the CRC, Rhea cannot return a child to a country where he or she faces a real risk of irreparable harm.<sup>40</sup> In this case, children are at particular risk of harm as they cross the open sea in wooden boats.<sup>41</sup> Sending child refugees back to Theseus will expose them to recruitment by armed groups,<sup>42</sup> sexual exploitation,<sup>43</sup> and irreparable physical and psychological injury.<sup>44</sup>

*D. Rhea violated its obligation to assist the Theseusian migrants in distress at sea.*

Under the UNCLOS,<sup>45</sup> Rhea is obliged<sup>46</sup> as a flag state to rescue persons in distress. The obligation, likewise founded on customary international law,<sup>47</sup> is affirmed by various

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<sup>37</sup> General Comment No. 31, *supra* note 29, ¶10-11.

<sup>38</sup> UNHRC, General Comment 36, On Art. 6 of ICCPR, 2018, CCPR/C/GC/36, ¶31.

<sup>39</sup> CRC, art. 22.

<sup>40</sup> CRC; General Comment No.6 CRC/GC/2005/61 Sept. 2005, ¶27.

<sup>41</sup> *Supplement to the Problem*, ¶1.

<sup>42</sup> UNGA SC, Children and Armed Conflict, A/72/361–S/2017/821 (2017) ¶6.

<sup>43</sup> Graca Machel, *Impact of Armed Conflict on Children*, UNICEF 1996, ¶67.

<sup>44</sup> A. Kadir, *Effects of conflict on child health and development*, PLOS One (2019).

<sup>45</sup> United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 UNTS 3 [“UNCLOS”], art. 98(1); Convention on the High Seas, Sept. 30, 1962, 450 UNTS 11.

<sup>46</sup> *Problem*, ¶20.

<sup>47</sup> ILC, ‘Commentary on Draft Article. 12 of the United Nations Convention on the High Seas’, UN Doc. A/3179, 1956; G. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* (1996), 157.



conventions.<sup>48</sup> Rhea violated this obligation<sup>49</sup> when it intercepted and redirected vessels with Theseusian refugees on board.<sup>50</sup>

1. The Theseusians are persons in distress.

The state of distress requires reasonable certainty that a person or vessel is threatened by grave and imminent danger and needs immediate assistance.<sup>51</sup> It is not necessary that the danger be life-threatening.<sup>52</sup> Theseusians use wooden and rubber boats to flee their country,<sup>53</sup> placing thousands of lives in great danger and costing the lives of thousands more.<sup>54</sup>

2. Rhea is duty-bound under the UNCLOS to rescue the Theseusian refugees.

The duty to assist people in distress at sea applies to ships flying a State's flag not only in the High Seas, but also within the State's exclusive economic zone.<sup>55</sup> An alleged commission of an unlawful activity does not negate the right to be rescued.<sup>56</sup> Rhea's warship blocked the refugees<sup>57</sup> within its EEZ.<sup>58</sup> Rhea violated its obligation when instead of intercepting and disembarking the Theseusians to a place of safety,<sup>59</sup> it blocked and redirected their passage, further subjecting them to the perils of the sea.

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<sup>48</sup> International Convention for the Safety of Life at Sea, May 25, 1980, 1184 UNTS 278, as amended; International Convention on Salvage, July 14, 1996, 1953 UNTS 165; International Convention on Maritime Search and Rescue ["SAR"], June 22, 1985, 1405 UNTS 97.

<sup>49</sup> IMO Council, C 54/17(d), 1985; Addendum to the Report of UNCHR, 40 GAOR Supplement No.12A (A/40/12/Add.1), para. 115(3) at 32. *See also*: EXCOM No.23 (XXXII) 1981.

<sup>50</sup> *supra* note 35.

<sup>51</sup> SAR, Annex, Para 1.3.13. *See also*: *The Eleanor (1809)*, Edwards Admiralty Reports 135, pp. 159-161.

<sup>52</sup> Yearbook of the International Law Commission, Vol. II (1973), ¶4.

<sup>53</sup> *Supplement to the Problem*, ¶5.

<sup>54</sup> United Nations High Commissioner for Refugees, 'Mediterranean: Dead and Missing at Sea, January 2015 - 31 December 2016'.

<sup>55</sup> UNCLOS, art. 58(2).

<sup>56</sup> Tullio Scovazzi, "*Human Rights and Immigration at Sea*" in R. RUBIO-MARTIN, HUMAN RIGHTS AND IMMIGRATION, Oxford University Press (2014), 225.

<sup>57</sup> *supra* note 35.

<sup>58</sup> UNCLOS, art. 57.

<sup>59</sup> SAR Annex, Ch. 1, para. 1.3.2; Guidelines on the Treatment of Persons Rescued at Sea (International Maritime Organization: 20 May 2004).

### 3. Rhea can not suspend the right of innocent passage in light of its duty to rescue

Rhea may not intercept and push back the distressed refugee vessels to control immigration.<sup>60</sup> To interdict refugee vessels once they enter the territorial sea would render the duty to rescue ineffective.<sup>61</sup> Hence, the right of a coastal State to regulate migration in its territorial sea<sup>62</sup> does not displace its obligation to assist persons in distress.<sup>63</sup>

## **II. The criminal proceedings initiated by the Kingdom of Amhit against Minister Lycomedes do not violate International Law.**

*A. Amhit may initiate criminal proceedings and issue a warrant under the customary rule giving States universal jurisdiction over international crimes.*<sup>64</sup>

### 1. Amhit may exercise its universal jurisdiction over an international crime.

While Amhit and Rhea are not parties to the Rome Statute, states have an *erga omnes* obligation to prosecute international crimes<sup>65</sup> or acts deemed by international law as universally criminal.<sup>66</sup> States must exercise their criminal jurisdiction over those responsible for international crimes.<sup>67</sup> It is only when States fail to fulfill their duty that the ICC steps in to ensure that the most serious crimes of international concern do not go unpunished.<sup>68</sup>

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<sup>60</sup> *Problem*, ¶8.

<sup>61</sup> Mark Pallis, *Obligations of States towards Asylum Seekers at Sea: Interactions and Conflicts Between Legal Regimes*, International Journal of Refugee Law Vol. 14 at 337.

<sup>62</sup> UNCLOS, art. 19(2)(g) and 21(1)(h).

<sup>63</sup> Anne T. Gallagher and Fiona David, *The International Law of Migrant Smuggling* (2014) at 406.

<sup>64</sup> Resolutions of the General Assembly of the United Nations (resolution 2840 (XXVI) of 18 December 1971, paragraph 4; resolution 3074 (XXVIII) of 3 December 1973, paragraph 1) and of the Economic and Social Council (resolution 1986/65 of 29 May 1989, Principle 18).

<sup>65</sup> *Id.*

<sup>66</sup> Kevin Heller [“Heller”], *What is an International Crime? (A Revisionist History)*, 58 HARV. L. REV. 353, 354 (2017).

<sup>67</sup> OTTO TRIFFTERER & AMBOS [“Triffterer”], COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (2016), 786; *See Rome Statute pmbl.*, ¶6; *See also*: Tuiloma Neroni Slade & Roger Clark, *Preamble and Final Clause*, in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE 421 (Lee ed., 1999).

<sup>68</sup> Triffterer, *supra* note 67, at 786; *See Rome Statute pmbl.*, ¶ 4.

State practice and *opinio juris* affirm that international crimes are criminal no matter where they are committed.<sup>69</sup> States, international tribunals, and scholars emphasize universal criminality as essential in defining international crimes.<sup>70</sup> States such as Belarus,<sup>71</sup> Italy,<sup>72</sup> Brazil,<sup>73</sup> and South Africa<sup>74</sup> deem these acts universally condemned based on their nature. Other States, such as Kenya<sup>75</sup> and Argentina,<sup>76</sup> focus on universal punishability, noting that universality exists to permit the trial of international crimes by anyone, anywhere in the world.<sup>77</sup> Meanwhile, States such as Belgium<sup>78</sup> emphasize both by arguing that since international crimes are universally condemned, they cannot go unpunished and should be universally suppressed.<sup>79</sup> Even the Spanish Supreme Court exercised universal jurisdiction over an international crime when it upheld the conviction of an Argentinian naval officer for crimes against humanity committed in Argentina.<sup>80</sup> Therefore, Amphit may investigate and issue an arrest warrant against Minister Lycomedes even if the acts were committed in Rhea.

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<sup>69</sup> Heller, *supra* note 66, at 357.

<sup>70</sup> Heller, *supra* note 66, at 356.

<sup>71</sup> Submitted by Belarus, reply to U.N. Secretary-General, The Scope and Application of the Principle of Universal Jurisdiction, Sixty-Fifth Session of the General Assembly U.N. Doc. A/65/181 (July 29, 2010) [“Sixty-Fifth U.N. G.A. on Universal Jurisdiction”] at 1.

<sup>72</sup> Statement Submitted by Italy, reply to U.N. Secretary-General, The Scope and Application of the Principle of Universal Jurisdiction, Sixty-Sixth Session of the General Assembly U.N. Doc. A/66/93 (June 20, 2011) [“Sixty-Sixth U.N. G.A. on Universal Jurisdiction”] at 2.

<sup>73</sup> U.N. GAOR, 69th Sess., 11th mtg. of the 6th Comm. at 6, U.N. Doc. A/C.6/69/SR.11 (Nov. 6, 2014).

<sup>74</sup> Statement Submitted by South Africa, reply to Sixty-Fifth U.N. G.A. on Universal Jurisdiction, *supra* note 72, at 2.

<sup>75</sup> Statement Submitted by Kenya, reply to Sixty-Fifth U.N. G.A. on Universal Jurisdiction, *supra* note 72, at 1.

<sup>76</sup> Statement Submitted by Argentina, reply to Sixty-Sixth U.N. G.A. on Universal Jurisdiction *supra* note 73, at 1.

<sup>77</sup> Heller, *supra* note 66, at 358.

<sup>78</sup> Statement Submitted by Belgium, reply to Sixty-Fifth U.N. G.A. on Universal Jurisdiction, *supra* note 7, at 1.

<sup>79</sup> Heller, *supra* note 66, at 358.

<sup>80</sup> Scilingo Manzorro (Adolfo Francisco) v. Spain, Supreme Court (Spain), No. 798, ILDC 1430, Oct. 1, 2007.

2. Rhea’s deportation of staff and refugees constitutes crimes against humanity of deportation or forcible transfer of population—an international crime.

This international crime is defined as the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.<sup>81</sup> It has five elements,<sup>82</sup> which may be simplified into three: (i) the forcible character of the displacement, (ii) the lawful presence of the deportee, and (iii) the absence of a permitted ground under international law.<sup>83</sup>

*i. The displacement is forcible in character.*

The displacement of persons is illegal when it is forced.<sup>84</sup> The term *forcibly* contemplates not only physical force, but also threats of force or coercion.<sup>85</sup> Force and threats were used when the Delphinus branch staff in Rhea and 63 Theseusian refugees were deported without due process based on unsubstantiated allegations of drug trafficking.<sup>86</sup>

*ii. The presence of the deportees is lawful.*

The legality of the presence of the refugees in Rhea is supported by the protection act enacted by the Rhean Government which granted refugees 5-year residence permits.<sup>87</sup> Rhea’s allegation of change of circumstances cannot justify the deportations as these are subject to strict limitations such as that provided in Article 13 of the ICCPR.

*iii. The deportation or forcible transfer is not permitted under international law.*

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<sup>81</sup> Rome Statute, art. 7(2)(d).

<sup>82</sup> Elements of Crimes, art. 7(1)(d).

<sup>83</sup> Vincent Chetail, *Is There any Blood on My Hands? Deportation as a Crime of International Law*, 29 LEIDEN J. OF INT’L LAW 924.

<sup>84</sup> Prosecutor v. Simić, Tadić, & Zarić, TC II, Case No. IT-95-9-T, ¶ 125 (Oct. 17, 2003); Chetail, *supra* note 83, at 924.

<sup>85</sup> Elements of Crimes, art. 7(1)(d) & fn. 12.

<sup>86</sup> *Problem*, ¶ 14.

<sup>87</sup> *Problem*, ¶ 7.

The ICCPR provides that an alien lawfully present in the territory of a State may be expelled only pursuant to a decision reached in accordance with law. Such alien shall further be allowed to submit the reasons against his expulsion and to have his case reviewed.<sup>88</sup> The provisions preclude any measure of collective or mass expulsion.<sup>89</sup> Even if the expulsion is not deemed to be collective, the deportation is nevertheless subject to procedural rules provided in Article 13. This has not been observed by the Rhen Government. The staff and refugees were expelled without the benefit of any lawful proceedings.<sup>90</sup>

*B. State officials are not immune from prosecution for crimes against humanity.*

There are two categories of immunity from foreign criminal jurisdiction; the first is *rationae personae* or those which cover any act that some classes of state officials perform while in office.<sup>91</sup> This immunity has only been recognized for a State's international representative such as heads of state or government, diplomatic officers and recently to ministers of foreign affairs.<sup>92</sup> Thus, Defense Minister Lycomedes cannot claim personal immunity.

The second category is immunity *rationae matirae* or those which cover any state official, for any official act.<sup>93</sup> As early as the *Nuremberg Trials*, it was already stated that perpetrators of international crimes cannot invoke their official capacity to evade prosecution.<sup>94</sup> This was affirmed by the ICTY when it held that the exclusion from immunity applies even to

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<sup>88</sup> ICCPR, art. 13. (Emphasis supplied.)

<sup>89</sup> Human Rights Committee (HRC), General Comment No. 15: The Position of Aliens Under the Covenant, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (1986), ¶ 10.

<sup>90</sup> *Problem*, ¶ 14.

<sup>91</sup>Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), 2002 I.C.J Rep 3 (February 14) [“Arrest Warrants Case”] ¶ 60; ILC, Report on the 69th Session of the International Law Commission, A/72/10 (1 May-2 June and 3 July-4 August 2017), p. 175; Antonio Casse, *When May Senior State Officials Be Tried for International Crimes? Some Comments on the Congo v. Belgium Case*, 13 EJIL. 820 (2002).

<sup>92</sup> Arrest Warrant case, ¶ 53.

<sup>93</sup> Supra note 91.

<sup>94</sup> Judgments of 30 Sept. and 1 Oct. 1946, Off. Doc., v. I, p.235,

heads of state.<sup>95</sup> In the *Arrest Warrant case*, the ICJ confirmed that immunity does not apply in prosecutions done in international tribunals.<sup>96</sup> This rule, previously held applicable only to international tribunals,<sup>97</sup> now applies to national jurisdictions due to the development of custom.<sup>98</sup> While the Rome Statute does not provide for the rule's domestic application, it has been applied by both state<sup>99</sup> and non-state parties<sup>100</sup> in their local decisions and national legislations.

Hence, Minister Lycomedes, may be validly prosecuted for committing a crime against humanity.

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<sup>95</sup> ICTY, Furundzija, Case no. IT-95-17/1-T, 10 December 1998, at paragraph 140.

<sup>96</sup> *Arrest Warrant case*, ¶ 61

<sup>97</sup> *id.*, ¶ 58.

<sup>98</sup> ILC Report, *supra* note 90 at 169-175.

<sup>99</sup> *For Domestic courts, see:* Butare case (Belgium: Court of Assizes) 1 J Int'l Criminal Justice (2003) p. 428; Munyeshyaka case (France: CA), 1996 4 RGDIPp.1084 ; Knesević, 1 Yrbk Int'l Humanitarian L. 599.(1998); (Netherlands: Sup. Ct); Grabež, 18 Apr. 1997; Switzerland: Military Tribunal at Lausanne, May 26. 2000 (Niyontese v Public Prosecutor', 96 AJIL. 232 (2002); *For Local legislation, see* (i) s. 8(b), Canadian Crimes Against Humanity and War Crimes Act 2000,(ii) s. 8(1)(c), New Zealand International Crimes and International Criminal Court Act 2000, (iii) s. 268.117, Australian Criminal Code Act 1995 (Act No. 12 of 1995) (together with s. 15(4)); (iv) Art. 1 German Code of Crimes Against International Law 2002, 42 ILM (2003) 995; (v) s. 4(3)(c), South African Implementation of the Rome Statute of the International Criminal Court Act 2002 (27/2002); (vi) s. 2(1)(a), Netherlands International Crimes Act 2003.

<sup>100</sup> *For Court decisions See* Judgment of the US Supreme Court in L. Friedman, The Law of War, A Documentary History, Vol. II, (1972), at 1599 et seq.; Attorney General of Israel v. Eichmann, 36 ILR (1962) 5, at 287. *For Local legislation See:* (i) Article VIII of the Chinese Law of 24 Oct. 1946; (ii) US Genocide Accountability Act 2007, amending s. 1091 of title 18 of the US Code.

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**PRAYER FOR RELIEF**

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For the foregoing reasons, the Kingdom of Amphit requests the Court to declare that:

The Maritime Operation “Sheer Cliff” violated international law and must be ended forthwith.

The criminal proceedings initiated by Amphit against Mr. Lycomedes do not violate international law.

Respectfully submitted,

Agents of Amphit