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THE AMITY INTERNATIONAL MOOT COURT COMPETITION 2018

BEFORE THE HON'BLE

INTERNATIONAL COURT OF JUSTICE,

THE PEACE PALACE,

THE HAGUE, NETHERLANDS

STATE OF ANTOLIA
(APPLICANT)
V.
STATE OF VARYS
(RESPONDENT)

CASE CONCERNING THE ORUKAIN REFUGEES

MEMORANDUM OF THE APPLICANTS

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STATEMENT OF JURISDICTION

The State of Antolia (Applicant) and State of Varys (Respondent) have agreed to submit this dispute concerning the Orukain Refugees to the International Court of Justice pursuant to Article 40, paragraph 1 of the Statute of this Court and by virtue of a Special Agreement (Compromis) signed in The Hague, The Netherlands, on the twenty ninth day of July in the year two thousand and eighteen and jointly notified to the Court on the thirty first day of July in the year two thousand and eighteen, such agreement is without prejudice to any question of the burden of proof. In accordance with Article 36, paragraph 1 of the Statute, the Court has jurisdiction to decide all matters referred to it for decision and each party shall accept the judgment of this Court as final and binding and shall execute it in good faith in its entirety.

QUESTIONS PRESENTED

1. Whether the Notification dated 6th June 2018 passed by the Varysian Government is in violation of international law?
2. Whether the Orukains who entered Varys from Antolia are refugees under international law irrespective of their nationality, and whether Varys is obliged to grant asylum to them?
3. Whether Antolia is liable to accept the Orukains being deported by Varys?

STATEMENT OF FACTS

1. The State of Tahoma, situated in the southeast part of the continent of Laasa, is a multi-religious nation with majority of its population following Orukai, an ancient fire worshipping religion. Because of their beliefs, most of the Orukains prefer profession like agriculture, animal husbandry, teaching etc. another religion followed in Tahoma is Phikam, which constitutes 10 percent of the population but hold approximately 90 percent of government offices, judicial posts and major businesses
2. The Government's move to develop tourism in Tahoma was not welcomed by the Orukains, as they felt that it went against their belief in simplicity and austerity. Hence A group of Orukains protested peacefully against the policy. A group of non Orukains launched a campaign against them through social media which led to a minor scuffle between the Orukains and non-Orukains on 6/01/2018. Subsequently there was a major riot on 05/02/2018 in the capital city of Tahoma.
3. The Orukains were arrested and charged with non-bailable offence of rioting and causing damage to public property. The accused Orukains were denied the right to defend themselves. Some were even awarded death sentence.
4. Tahoma shares its western border with Republic of Antolia, an underdeveloped nation. It has been getting substantial amount of financial assistance from Varys, a developing nation. Tahoma, Antolia and Varys have several cultural similarities.
5. Varys is a rapidly developing with highest population in the world, yet facing shortage of natural resources. Varys is a multi-religious, secular nation with majority of the population consisting of Phikams and Orukains. The current Varysian government has enacted legislations with regard to population control and strengthening of national security.
6. On 24/04/2018, illegal migration of Orukains from Antolia was reported in Varys and most of these immigrants were said to be from Tahoma ,who fled to Antolia fearing persecution in their country. However, owing to the lack of employment opportunity and resource scarcity, they were forced to leave Antolia also and to enter Varys' border in search for better opportunities.
7. On June 6, 2018, the Government of Varys issued a notification setting up tribunals to detect and deport all illegal immigrants in the country. Pursuant to it, illegal immigrants were detected, passed orders for deportation of thousands of undocumented persons within a span of 1 month. Over 98% of undocumented persons were Orukains. Some of them claimed that they are

Varysians, living in Varys for decades, but possessing no documentation as to their nationality. Another set of alleged foreigners also claimed that they were Tahomian refugees and sought asylum from the Varysian government. The government of Varys, however, clarified that according to the findings of the tribunals, all of these people had entered Varys from Antolia and therefore, they will only be deported to Antolia and not to Tahoma.

8. Antolian government was unhappy with the Varysian government's decision to deport thousands of people to Antolia. They contended that there no concrete proof that they are Antolian citizens or had entered through Antolian borders, and that these immigrants would qualify to be refugees and Varys has the obligation to protect them.
9. The Varysian Minister of External Affairs stated in a press conference that Antolia is responsible for allowing its territory to be used for illegal immigration and is obliged to grant asylum to them.
10. Meanwhile, UNHCR and several other international NGOs had set up relief camps in Antolia to help these refugees. However, these refugees lacked basic right to life, food and shelter. They were constantly harassed by the local authorities.
11. Some refugees who were pregnant gave birth in Varys. According to their new policy the Varysian government refused citizenship to such children.
12. Concerned with the aggravating situation, Varys and Antolia initiated several diplomatic negotiations to settle their disputes and as a result the Parties agreed to submit the matters of disputes to the International Court of Justice under a special agreement.

SUMMARY OF PLEADINGS

1. **THAT THE NOTIFICATION DATED 6TH JUNE 2018 ISSUED BY THE VARYSIAN GOVERNMENT IS IN VIOLATION OF INTERNATIONAL LAW AND IS THUS UNSUSTAINABLE**.

Firstly, International law supersedes domestic laws of the country. Varys has attempted to absolve from such obligation by placing reliance on their domestic laws, i.e., the Notification dated 6th June 2018.

Secondly, the Notification dated 6th June 2018 aimed at identifying and deporting illegal immigrants, including children and women who gave birth in Varys and also decided to deport their own nationals based on arbitrary findings. This would amount to a gross violation of their human rights and also is violative of the Convention of Rights of the Child, to which Varys is a signatory. The best interest of children as envisaged under the Child Rights Convention was not considered and the Government was inconsiderate by failing to recognize the same.

2. **THAT ORUKAINS, IF ANY, WHO ENTERED VARYS FROM ANTOLIA, ARE REFUGEES UNDER INTERNATIONAL LAW, IRRESPECTIVE OF THEIR NATIONALITY, AND VARYS OUGHT TO HAVE GRANTED ASYLUM TO THEM.**

Firstly, the Orukain who entered Varys from Antolia are refugees under International Law. The traditional definition of include different dimensions to the concept of refugees. The Orukains who were already situated in Antolia, were not receiving adequate access to even their basic rights such as the right to life, food and shelter. Furthermore, these refugees were facing harassment by the local government authorities and were left stateless. Also, the persons who are now situated in Varys, considered as refugees, has no evidence whatsoever as to prove their nationality. Statelessness is a serious concern under international law, and therefore people who are left stateless ought to be protected.

Secondly, Varys ought to have granted asylum to the refugees. The Refugee Convention is applicable to Varys, by the exercise of customary principles on international law, even though it

has not been ratified it or signed by Varys and that the actions by Varys is not in consonance with its obligations under the said Convention. The 1951 UN Convention lays down certain duties upon Varys, since the Convention is binding on the Country. If the people qualify to be refugees, they are bound to be protected by Varys, under the Convention, regardless of their country of origin. Varys has a duty of Non- Refoulement towards the Orukains. This principle covers not only expulsion and return but also measures such as rejection at the frontier. The application of the principle of non refoulement is independent from any formal determination of refugee status and is regarded as forming part of customary international law. Thus, persons who, while meeting the criteria of the refugee definition, have not formally been granted refugee status, are protected by the non-refoulement principle.

3. **THAT ANTOLIA IS NOT LIABLE TO ACCEPT THE ORUKAINS BEING DEPORTED BY VARYS.**

Firstly, there is no substantial evidence that the Orukain refugees fled to Varys through Antolia and even if they did, it was voluntarily and Antolia is merely a transit country and hence have no obligation towards them as they denounced the asylum that was provided to them in Antolia and sought the same in Varys. This shows their intention to live within the territories of Varys. The decision not to apply for asylum or any other form of protection that a country may offer should be seen as the key difference between countries of transit and destination. Therefore in the eyes of Antolia, these Orukains can no longer be claimed of status of refugees, since they moved out of Antolia voluntarily. This implies that, since they are devoid of status of refugees, Antolia is not under any obligation to take them back or grant them protection under the 1951 Refugee Convention.

Secondly, Varys is bound by the customary international law principle of non-refoulement and cannot forcibly deport Orukain refugees to Antolia.

Thirdly, Varys is a third safe country.

Fourthly, Antolia is a developing country and the burden should be shared by developed country.

PLEADINGS

1. THAT THE NOTIFICATION DATED 6TH JUNE 2018 ISSUED BY THE VARYSIAN GOVERNMENT IS IN VIOLATION OF INTERNATIONAL LAW AND IS THUS UNSUSTAINABLE.

1. It is the humble submission by the Applicant that the notification dated 6th June 2018 issued by the Government of Varys pertaining to the setting up of tribunals to detect and deport illegal immigrants in the country is in violation of international law and is therefore unsustainable. The reasons are twofold:*firstly*, International law supersedes domestic laws of the country **(1.1)**; and *secondly*, the notification is in violation of rights of children and human rights**(1.2)**.

1.1. INTERNATIONAL LAW SUPERSEDE DOMESTIC LAWS OF THE COUNTRY

2. It is humbly submitted that Varys has an *erga* omnes obligation to protect the life of its people under the international law.
3. *Firstly*, Varys is under a humanitarian obligation to provide protection to the refugees and asylum seekers. The draft General Comment No. 36 to Article 6[1] of the International Covenant on Civil and Political Rights makes specific reference to asylum seekersand refugees, and has noted that "the duty to protect the right to life requiresStates parties to take exceptional measures of protection towards vulnerablepersons". The provision of humanitarian assistance to all vulnerable migrants, regardless of their status under international law, cannot therefore beregarded as purely a matter of policy considerations for any country (transitones included), but rather a legal obligation that needs to be adequatelyimplemented in practice.[2]
4. *Secondly*, it is submitted that the Convention of the Refugees is applicable to Varys, by virtue of application of principles of customary international law.

[1] Article 6. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

[2] Human Rights Council, Draft General Comment No. 36, "Article 6: Right to Life", UN Doc. CCPR/C/GC/ R.36, 1 April 2015, para. 26. Pavle Kilibarda, Migration and displacement, International Review of the Red Cross, (2017).

5. With the existence of such *erga omnes* obligation on the part of Varys, it is needless to say that Varys has attempted to absolve from such obligation by placing reliance on their domestic laws.
6. The notification dated 6th June 2018 constitutes municipal law of the State of Varys. The well recognized and fundamental principle in international law that international obligations prevail over domestic law was underlined by this Court in the *Applicability of the obligation to arbitrate*case,[3]while Judge Shahabudeen emphasized in the Lockerbie case[4] that inability under domestic law to act was no defence to non-compliance with an international obligation. This was further reinforced in the *La Grand* case. [5]
7. In the instant case, Varys has failed to perform its international obligation by adopting a law that in effect violated the principle of humanitarian law.
8. Nevertheless, regardless of the many functions that municipal law performs within the sphere of international law, it must be emphasised that the presence or absence of a particular provision within the internal legal structure of a State, including its Constitution if any, cannot be applied to evade an international obligation.[6]

1.2. THE NOTIFICATION IS IN VIOLATION OF RIGHTS OF CHILDREN AND HUMAN RIGHTS

9. The notification dated 6th June 2018 aimed at identifying and deporting illegal immigrants, including children. These immigrants also included women who were in their late stages of pregnancy, and gave birth to their children in Varys.[7] The deportation of such a class of people would amount to a gross violation of their human rights. The deportation of children is violative of the Convention of Rights of the Child, to which Varys is a signatory. This Convention is

[3] Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, I.C.J.Rep, pp.12,34 (International Court of Justice.: 1988).

[4]Case Concerning Questions of Interpretation and Application of the 197 1 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) I.C.J.Rep, pp. 3,32(International Court of Justice.: 1998).

[5]LaGrand Case (Germany v. United States of America) I.C.J.Rep, pp. 466,497-8 (International Court of Justice.: 2001).

[6] Malcolm. N. Shaw, International Law, 98(7th ed.2014).

[7]*Compromis* ¶19.

applicable because the principles enshrined under it have become a part of customary international law.

10. It is one of the fundamental principles embodied in the Child Rights Convention that the best interests of children must be the primary concern of decision making in a country,[8] which particularly applies to budget, policy and law makers. The notification which qualifies as a policy and law in Varys is therefore violative of such best interests of new born babies, and is inconsiderate as such.

11. Secondly, under Article 4of the Child Rights Convention,[9] the Governments have a responsibility to take all available measures to ensure children's rights are respected, protected and fulfilled. Under the Convention, the States agree to review their existing laws relating to children. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. On this ground, the notification is void of any particular provisions relating to protection of children.

12. Thirdly, the Convention specifically provides for protection of refugee children. Children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), in addition to other rights provided for in the Convention.[10]Consequently, other rights such as the right to survival and development,[11]registration and nationality[12] and protection from all forms of violation[13]become

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[8]Article 3(1). In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

[9]Article 4: States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

[10] Article 22 (1). States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

[11] Article 6 (1). States Parties recognize that every child has the inherent right to life.

(2). States Parties shall ensure to the maximum extent possible the survival and development of the child.

[12] Article 7 (1). The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, and the right to know and be cared for by his or her parents.

applicable to refugee children. It is submitted that the notification is violative of the aforementioned rights.

13. Furthermore, the Committee on the Rights of the Child asserted that, in the case of a displaced child, the best interests' principle must be respected during all stages of the displacement cycle. At any of such stages, a best interest determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.[14]

14. In the instant case, forceful deportation of Orukains from Varys is violative of the *erga omnes* obligation to protect human rights. As the factual matrix points out, thousands of undocumented persons were ordered to be deported, which even included persons who claimed that they were Varysians who did not possess governmental cards.[15] The Varysian Government has ignored these claims and ordered for their deportation. This action taken by the Varysian Government is arbitrary and breach of human rights of the said Orukains because no further investigation was madeto prove their nationality. Thus, the Varysian Governmentdecided to deport their own nationals based on arbitrary findings.

15. Furthermore, a significantly large number of the alleged foreigners claimed that they were Tahoman refugees who sought asylum from the Varysian government.[16]Both these claims were clarified by the Tribunal which held that all these people had entered Varys from Antolia. However, such findings of the Tribunal set up by the Varysian Government lacked authenticity and these issues were not examined in detail by an impartial authority, and sudden action was taken by the Varysian Government for deportation.

16. International human rights law limits the sovereign entitlement of States to remove migrants from their territory when the migrant would be at risk of serious harm upon return.[17]In the instant

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[13] Article 19 (1). States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

[14] Committee on the Rights of the Child, General Comment No. 6 (2006) on the treatment of unaccompanied and separated children outside their country of origin, Para. 19.

[15]*Compromis* ¶15.

[16]*Compromis* ¶15.

[17] N.D. and N.T. v. Spain, 8675/15, 8697/15. (European Council for Human Rights: 2017), www.ohchr.org/Documents/Issues/Migration/ThirdPartyIntervention.pdf.

case, the Orukains who sought shelter in Varys, did seek such protection in Varys since there were no adequate facilities in Antolia. It is submitted that Antolia is an underdeveloped nation,[18]with a scarcity of employment opportunities and financial resources. The Orukain refugees in Antolia did not have access to basic rights to life, food and shelter.[19] Therefore,deportation of these refugees to Antolia would deny their access to basic needs as Antolia is not in a position to afford to take care of them.

17. The international obligation that each country has towards protection of human rights, specifically regarding protection of refugees,encompasses securing admission, asylum, and respect for basic human rights, including the principle of non-refoulement, by States. It further includes supervising the application of international conventions for the protection of refugees at the global and regional level, promoting legislation and other measures at the national and regional levels.[20]

18. The most common reference point for human rights is concluded in the Universal Declaration of Human Rights. By virtue of its moral force and increasing invocation across the world, is broadly considered to have become a part of customary international law, and is thus applicable in the instant case.

19. All persons, regardless of where they are, their legal status, nationality or mode of travel, are entitled to protection of their right to life.[21]Hence, in the instant case, most of the illegal immigrants in Varys had entered into the country due to a severe threat to their lives, and Varys ought to have considered such claims, before ordering any sudden action against them.

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[18]*Compromis* ¶7.

[19]*Compromis* ¶18.

[20]Volume 4 – 2, Chapter II, EUROPEAN SERIES, Manual on International and Regional Instruments Concerning Refugees and Human Rights (1998).

[21]Article 3, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948)., - Everyone has the right to life, liberty and security of person.; and Article 6(1), International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 17, - Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

20. Article 14 of the Universal Declaration of Human Rights[22] specifically deals with rights vested with the refugees. It proclaims in its first paragraph that, "Everyone has the right to seek and to enjoy in other countries asylum from persecution".[23]

21. Moreover collective expulsions are prohibited as a principle of general international law.[24] The procedural safeguards against arbitrary expulsions of aliens[25] under various international[26] as well as regional[27] human rights instruments demonstrate that mass or collective expulsions of aliens are prohibited under international law.[28] The Human Rights Committee noted that mass or collective expulsions are incompatible with Article 13 of ICCPR because the said provision entitles each alien to a decision in his own case.[29] The principles of Article 13 may only be

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[22] Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

[23] United Nations General Assembly Resolution. 217A (III), (10th Dec 1948).

[24]See, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 22 (1) Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually

as well as Human Rights Committee, General Comment No. 15 (1986) on the position of aliens under the Covenant, para. 10; Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of Article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of Article 13.

and Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 (2005) on discrimination against non-citizens, para. 26.Ensure that non-citizens are not subject to collective expulsion in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account;

[25]Affaire Ahmadou Sadio Diallo (Republique De Guinee C. Republique Democratique Du Congo) Merits Judgment, I.C.J. Rep. 639 (I.C.J: 2010).

[26] Art. 13 ICCPR; Art. 22 MWC.

[27]Art. 1 ECHR; Art. 22(6) ACHR; African Charter on Human Rights art. 12 (4), Oct. 21 1986, 21 I.L.M. 58.

[28] OHCHR, Discussion Paper, Expulsion of aliens in international human rights law (Sept. 2006).

[29]*See* UNHRC, CCPR General Comment 15/27, ¶ 10 (July 22 1986).

departed from when 'compelling reasons of national security' so require. In the present case, however, no such reasons exist and therefore requirements under Article 13 cannot be departed from. Furthermore, the Committee on the Elimination of Racial Discrimination recommended that foreigners not be subject to collective expulsions.[30]

22. In addition, collective or mass expulsions of aliens are unequivocally prohibited under Article 4 of Protocol No. 4 to the ECHR,[31] Article 22(9) of American Convention on Human Rights[32] and Article 12(5) of African Charter[33] on Human and Peoples' Rights. Draft articles on the expulsion of aliens, 2014[34] is also relevant in this context. They codify as well as develop fundamental rules on the expulsion of aliens. Article 9 of the said draft articles prohibit collective expulsion.[35] Therefore, the collective expulsion of Orukains by State of Varys is not permitted under international law.

2. ORUKAINS, IF ANY, WHO ENTERED VARYS FROM ANTOLIA, ARE REFUGEES UNDER INTERNATIONAL LAW, IRRESPECTIVE OF THEIR NATIONALITY, AND VARYS OUGHT TO HAVE GRANTED ASYLUM TO THEM.

23. It is humbly submitted before this Hon'ble court that the Orukains, if any, who entered Varys from Antolia are refugees under International Law, irrespective of their nationality, and Varys ought to have granted Asylum to them.

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[30] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, ¶ 26 (Nov. 2013).

[31] *See* Andric v. Sweden, App.No.45917/99, Decision, European Court of Human Rights [Eur. Ct. H.R.], ¶ 1 (Feb. 23 1999); Conka v. Belgium, App.No.51564/99, Judgment, European Court of Human Rights [Eur. Ct. H.R.], ¶ 63 (Feb. 5 2002).

[32] Art. 22(9) ACHR.

[33] *See*Rencontre Africaine pour la Défense des Droits de l'Homme c. Zambia, Communication No. 71/92, Decision, African Commission on Human and People's Rights [Afr. Comm'n H.P.R.] (Oct. 31 1997).

[34] Int'l Law Comm'n, Rep. on the Work of its Sixty-Sixth Session, U.N. Doc. A/69/10 at ¶ 44 (2014).

[35] *Id.* art 9.

2.1. THE ORUKAINS WHO ENTERED VARYS FROM ANTOLIA ARE REFUGEES UNDER INTERNATIONAL LAW

24. Firstly, it is submitted that the Orukains who entered Varys from Antolia qualify to be refugees under international law. The traditional definition of refugee has been now expanded significantly in various circumstances to include different dimensions to the concept of refugees.

25. One prominent proposal from scholars and activists has been to classify all those are unable to meet their basic needs on their own as 'refugees', and to extend them the sorts of protections established under the United Nations Refugee Convention.

26. The definition of 'refugee' by UNHCR covers only those who have a well-founded persecution on the basis of one of the so-called 'protected ground'. Those who do not fear persecution, even if they are in quite desperate straits, do not fall within the ambit of 'refugees'as defined by UNHCR.

27. Given that the UNHCR definition of 'refugees' does not cover a significant portion of those who need help from the international community, a call for a much wider definition has been put into effect by some regional agreements such as the definition of 'refugees' in the Organization of African Unity 1969 Convention on the Specific Aspects of Refugee Problems in Africa.[36] This agreement first incorporates the UNHCR definition but then goes further, stating that:

> *The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*.[37]

28. Micheal Dummett argues that'all conditions that deny someone the ability to live where he is in minimal conditions for a decent human life ought to be grounds for claiming refuge elsewhere'.[38]

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[36]Organization of African Unity 1969 Convention on the Specific Aspects of refugee Problems in Africa. Article I section 2- The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. Goodwin-Gill, The Refugee in International Law, pp. 429-434 (2, Clarendon Press, 1996)

[37]*Id.*

[38]Micheal Dummett, On Immigration and Refugees, p. 37 (1, Rutledge, 2001)

29. According to Shacknove, the heart of a proper refugee definition, is the absence of state protection. To lack state protection, he argues, is to be deprived of basic needs.[39] Refugees are persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible.[40]

30. Thus,in light of the aforementioned grounds, it is submitted that all Orukains, who entered Varys from Antoliaqualify to be 'refugees' under international law. The Orukains who were already situated in Antolia, were not receiving adequate access to even their basic rights such as the right to life, food and shelter.[41] Furthermore, these refugees were facing harassment by the local government authorities and were left stateless.[42] Statelessness is a serious concern under international law, and therefore people who are left stateless ought to be protected.

31. Moreover, in regard to the persons who are now situated in Varys, considered as refugees, there is no evidence whatsoever as to prove their nationality. The Ambassador of Antolia had conveyed that there is no concrete proof that they are citizens of Antolia.[43] Under such circumstances, where nationality of the refugees cannot be identified, the country in which they have sought asylum ought to provide them with such asylum.

2.2. VARYS OUGHT TO HAVE GRANTED ASYLUM TO THE REFUGEES

32. The reasons to state that Varys ought to have granted asylum to the refugees, are three-fold.

2.2.1. The 1951 UN Convention on Refugees is Applicable to Varys.

33. It is the humbly submitted that the Refugee Convention is applicable to Varys, by the exercise of customary principles on international law, even though it has not been ratified it or signed by Varys and that the actions by Varys is not in consonancewith its obligations under the said Convention.

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[39]Shacknove, 'Who is a Refugee?' , Ethics p274, 277 (1985), http://www.jstor.org/stable/2380340.

[40]*Id.*

[41]*Compromis* ¶18.

[42]*Compromis* ¶18.

[43]*Compromis* ¶16.

34. The existing legal rules and practices of States which are so prevalent and generally recognized that they have become the usual norms of civilized States even in cases where those rules are not codified in international treaties or conventions constitute customary international law. It is binding upon all States in their relations with other States. Customary international law can be derived from the general practice of a majority of States, judicial or other legally authoritative decisions, and the opinion of scholars.

35. The fundamental importance and enduring relevance of the Refugee Convention and the Protocol is widely recognized. In 2001, State parties issued a Declaration reaffirming their commitment to the 1951 Convention and the 1967 Protocol, and they recognized in particular that the core principle of non-refoulement is embedded in customary international law.[44]

36. Although most States have not acceded to the conventions, the general principles embodied in these instruments are drawn from basic provisions of citizenship legislation and practice in the majority of states. The Convention istherefore reference point for determining customary international law and reflects an international consensus on minimum legal standards to be applied to nationality. Based in part on thisConvention and the practice of many States, the right to acquire a nationality and the right not to be deprived arbitrarily of one's nationality are now recognized as basic human rights under international law. Although a State may not be required to grant its citizenship to an applicant, States have a general duty not to create a situation resulting in statelessness.

2.2.2. The 1951 UN Convention lays down certain duties upon Varys, since the Convention is binding on the Country.

37. Firstly, the Preamble of the 1951 UN Convention on Refugees itself recognizes the duty that each State has towards protection of refugees. It states thus:

> *Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.*

[44] Declaration of States parties to the 1951 Convention and its1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, Geneva, Switzerland, 12-13 December 2001: UN Doc. HCR/MMSP/2001/09, 16 January 2002. The Declaration was welcomed by the UN General Assembly in resolution A/RES/57/187, para. 4, adopted on 18 December 2001.

38. Thus the preamble casts the power on states to do take actions for the protection of refugees.

39. Secondly, Article 3 of the Convention[45]stipulates that the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin. Therefore, the duties that are vested upon Varys has to be fulfilled regardless of whether the refugees are from Antolia or Tahoma. If the people qualify to be refugees, they are bound to be protected by Varys, under the Convention, regardless of their country of origin.

2.2.3. Varys has a duty of Non- Refoulement towards the Orukains

40. Article 33 of the Refugee Convention[46] reflects a fundamental norm of international refugee law which is the principle of non-refoulement. It prohibits the expulsion or return of a refugee, in any manner whatsoever, to a territory where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. This principle covers not only expulsion and return but also measures such as rejection at the frontier. It applies to persons who have a well-founded fear of persecution under the 1951 Refugee Convention as well as to persons fleeing situations of violence and armed conflict. The application of the principle of non refoulement is independent from any formal determination of refugee status and is regarded as forming part of customary international law. Thus, persons who, while meeting the criteria of the refugee definition, have not formally been granted refugee status, are protected by the non-refoulement principle.

41. It is generally accepted that the prohibition of refoulement is a norm of customary international law, thus binding on all states irrespective of whether or not they have acceded to international instruments recognizing this principle.

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[45] Article 3 Convention Relating to the Status of Refugees,1951:

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

[46]Article 33 Convention Relating to the Status of Refugees,1951:

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

42. This duty to allow entrance is an aspect of the generally accepted duty to refugees, the duty of non-refoulement, or the duty to not return a refugee to a country where he or she will face danger. Non-refoulement is accepted as a duty owed to refugees by all liberal countries, as well as by many non-liberal ones.[47]

43. In the light of the afore-mentioned arguments, it is humbly submitted that the people under contention qualifies as 'refugees' under International Law and therefore Varys ought to have granted asylum to them.

[47]Goodwin-Gill, The Refugee in International Law, pp. 117-139 (2, Clarendon Press, 1996)

3. ANTOLIA IS NOT LIABLE TO ACCEPT THE ORUKAINS BEING DEPORTED BY VARYS.

44. It is humbly submitted that the Applicant State is not liable to accept the Orukains being deported by Varys. The argument is four-fold:*firstly*, there is no evidence that the Orukain refugees fled to Varys through Antolia and even if they did, it was voluntarily and Antolia is merely a transit country**(3.1)**; *secondly*, Varys is bound by the customary international law principle of non-refoulement and cannot forcibly deport Orukain refugees to Antolia**(3.2);***thirdly*, Varys is a third safe country **(3.3)**; and *fourthly*, Antolia is a developing country and the burden should be shared by developed country**(3.4)**.

3.1. THERE IS NO EVIDENCE THAT THE ORUKAIN REFUGEES FLED TO VARYS THROUGH ANTOLIA AND EVEN IF THEY DID, IT WAS VOLUNTARILY AND ANTOLIA IS MERELY A TRANSIT COUNTRY

45. Firstly, there is no substantial evidence to show that the Orukain refugees entered Varys through Antolia. The Ambassador of Antolia had conveyed that there is no concrete proof that the refugees have entered Varys through the Antolian Borders.[48]

46. Secondly, the Orukain refugees in Antolia left to the neighbouring country of Varys voluntarily. International law recognizes the right of an individual to leave a country. The right is enshrined in the Universal Declaration of Human Rights[49]and the International Covenant on Civil and Political Rights.[50] Everyone lawfully within the territory of a State enjoys, within that territory,

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[48]*Compromis* ¶16.

[49]Article 13, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).,

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

[50] Article 12 International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 17,

(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave any country, including his own.

the right to move freely and to choose his or her place of residence.[51] The Human Rights Committee has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of Article 12 of the ICCPR.52 Freedom to leave the territory of a State may not be made dependent on any specific purpose. The right of the individual to determine the State of destination is part of the legal protection.[53] An alien being legally expelled from the country is likewise entitled to elect the State of destination under the scope of article 12.[54] Therefore, it is humbly submitted that the Orukains were well within their rights in undertaking a voluntary decision to leave to Varys.

47. Thirdly, Antolia is merely a transit country and have no obligations towards the refugees. The refugees who are to be deported from Varys, denounced the asylum that was provided to them in Antolia, and instead sought the same in Varys. This infact shows their intention to live within the territories of Varys and the intention not to live within Antolia. Concepts such as asylum and refugee status are to understood with regard to intention of refugees, rather than depending on evidential requirements as in the café of nationality or citizenship. The decision not to apply for asylum or any other form of protection that a country may offer should be seen as the key difference between countries of transit and destination.[55]

48. In UNHCR's view, transit alone is not a 'Sufficient Connection' or meaningful link, unless there is a formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards.

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[51] Article 12, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 17, General Comment No. 27: (Freedom of Movement)

[52], Celepli v. Sweden, U.N.H.C.R., CCPR/C/51/D/456/199,Communication No. 456/1991,para 9.2(United Nattions Human Rights Council: 1991)

[53] Supra note 2

[54] General comment No. 15, paragraph 9, p. 21, HRI/GEN/1/Rev.3, 15 August 1997.

[55]Pavle Kilibarda, Obligations of transit countries under refugee law: A Western Balkans case study, 99 INTERNATIONAL REVIEW OF THE RED CROSS , 211-239 (2017).

49. Transit is often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection. Neither does a simple entitlement to entry without actual presence constitute a meaningful link.[56]

50. Moreover, in the instant case, the Orukains from Tahoma, who were identified as refugees in Antolia, and provided asylum and protection within the territory of Antolia, left their country of asylum and sought for the same in another country, Varys. It is a well-accepted principle under international refugee law, that once a refugee voluntarily moves out of the country where he is recognized as a refugee, in search of better prospects or for whatsoever reason, his refugee status is lost, and he is no longer identified as a refugee of that country.

51. Therefore in the eyes of Antolia, these Orukains can no longer be claimed of status of refugees, since they moved out of Antolia voluntarily. This implies that, since they are devoid of status of refugees, Antolia is not under any obligation to take them back or grant them protection under the 1951 Refugee Convention.

52. Hence, it is humbly submitted that deportation of Orukain refugees from Varys to Antolia cannot be termed as voluntary and that Antolia is not under an obligation to accept them. Any expulsion of the refugees would be in contravention to the customary international law principle of non-refoulement.

3.2. VARYS IS BOUND BY THE CUSTOMARY INTERNATIONAL LAW PRINCIPLE OF NON-REFOULEMENT AND CANNOT FORCIBLY REPATRIATE ORUKAIN REFUGEES TO ANTOLIA.

53. The Government of Varys made their intention clear to deport the Orukain refugees in Varys back to Antolia. However, it is humbly submitted that considering that the Orukains do not have a right to return to Antolia, such deportation can only be termed as refoulement. The principle of non-refoulement constitutes the cornerstone of international refugee protection. It is enshrined in Article 33 of the 1951 Convention[57], which is also binding on States Party to the 1967

[56]UNHCR,UNHCR Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection,p.34 (2010), http://www.refworld.org/docid/4c63ebd32.html

[57] Article. 33(1), Convention Relating to the Status of Refugees, July 28th, 1951, 189 U.N.T.S. 137

Protocol.[58]Numerous scholars such as Goodwin-Gill, Stenner, Mushkat, Lieber, Weis and Stenberg believe that the principle of non-refoulement is well established in customary international law,[59] and some even elevate it to the status of a *jus cogens* norm.[60]

54. The 1951 Refugee Convention establishes an objective regime of refugee protection which is independent of the will of the receiving State Party – once a person meets the requirements for refugee status, they are to benefit from its protection, regardless of whether they have been granted asylum by any country.[61]

55. Moreover, the prohibition of refoulement to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or "renditions", and non-admission at the border in the circumstances described below. This is evident from the wording of Article 33(1) of the 1951 Convention, which refers to expulsion or return (refoulement) "in any manner whatsoever".[62] The application of the non-refoulement protection to migrants does not depend on their ability to gain or maintain refugee status. The European Court of Human Rights in *Ahmed* v. *Austria* ruled that the protection of non-refoulement applied even when the applicant had lost his refugee status due to a conviction.[63] The Inter-American Court of Human Rights has maintained that the Inter-American System recognizes the right of every foreign person regardless of legal or migratory status, and

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> (1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

[58] Article 1(1), 1967 Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, 4 October 1967

> (1) The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

[59] Joan Fitzpatrick, Revitalizing the 1951 refugee convention, 9 harv. Hum. Rts. J., 229, at 235(1996); Suzanne Gluck, Intercepting Refugees at Sea: An Analysis of the United States, Legal and Moral Obligations, 61 fordham l. Rev. at 865(1993); James Hathaway and John Dent, Refugee Rights: Report on a Comparative Survey 5-17 (1995).

[60] U.N. Doc. A/40/12, Supp. No. 12, Report of U.N. High Commissioner for Refugees, (1985) at 6.

[61]Pavle Kilibarda, Obligations of transit countries under refugee law: A Western Balkans case study, 99 INTERNATIONAL REVIEW OF THE RED CROSS , 211-239 (2017).

[62] UN High Commissioner for Refugees (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*, 26 January 2007

[63]Ahmed v. Austria, 24EHRR 278 (European Court of Human Rights: 1996)

not only of asylum seekers and refugees, not to be returned to a place where his/her life, integrity and/or liberty risk being violated.[64]

56. The UNHCR is of the opinion that the principle of non-refoulement satisfies this requirement and constitutes a rule of international customary law.[65] Cases in which a Government has stated that it is unwilling to react positively to its representations on the simple ground that it does not recognize any obligation to act in accordance with the principle of non-refoulement have been extremely rare. On the other hand, Governments of States not parties to the Convention or the Protocol have frequently reaffirmed that they recognize and accept the principle of non-refoulement. Thus, according to the experience of UNHCR, there is either an express or tacit understanding on the part of Governments that the principle has a normative character. The principle has also been recognized at regional levels by theOrganization of African Unity,[66] the

[64] Caso Familia Pacheco Tineo v. Estado Plurinacional de Bolivia, IACrtHR 135 (Inter- American Court of Human Rights: 2013)

[65] UNHCR, T*he Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases* 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, at Paragraph 1.

[66]Art. 2(3), Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45, 10 September 1969 (entered into force 20 June 1974),

> (3) No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

American Convention of Human Rights,[67] the Cartagena Declaration[68] and the Bangkok Principles.[69]

57. In the present case, Varys has violated the principle of non-refoulement which is a part of customary international law. It is therefore submitted that Varys is bound by the customary international law principle of non-refoulement and cannot forcibly deport Orukain refugees to Antolia.

3.3. THAT VARYS IS A THIRD SAFE COUNTRY

58. Firstly, A country can be considered to be a first country of asylum for a particular applicant if:
    a) he/she has been recognized in that country as a refugee and he/she can still avail himself/herself of that protection; or
    b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non- refoulement; provided that he/she will be re-admitted to that country.[70]
59. In the instant case, Antolia had recognized the Orukain refugees, as relief camps were set up within the country for their betterment. However, as soon as the refugees voluntarily left Antolia, the status they have as refugees of Antolia ceases to exist, since they denounced the protection

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[67] Art.icle 22(8) American Convention on Human Rights, 22 November 1969 (entered into force 18 July 1978),

> (8) In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

[68] Article. III(3). Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984 (Cartagena Declaration),

> (3) To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

[69] Article III(1) Bangkok Principles on the Status and Treatment of Refugees (Bangkok Principles), 24 June 2001,

> (1) No one seeking asylum in accordance with these Principles shall be subjected to measures such as rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin, membership of a particular social group or political opinion.

[70] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

offered in Antolia. Therefore they are no longer refugees in Antolia, even though would constitute to be refugees in international law context.

60. Secondly, eventhough Antolia is a signatory to the Refugee Convention, there is no obligation to readmit these people into the country, since there is no compulsion under International Law to abide by the Convention. The internal situations in Antolia is that the country is under developed and cannot afford to provide betterment in terms of economic prospects.

61. The concept of first country of asylum, or protection elsewhere, has initially been limited to cases where refugees had already found effective protection in a specific country and had moved on in an irregular manner in search of a new country of asylum.[71] The reason for voluntary movement by the refugees to Varys was because the protection granted in Antolia wasn't effective and hence it would be illogical to send them back to where there is lack of effective protection.

62. Thirdly, The responsibility of a State under the 1951 Convention is engaged whenever that State is presented with a request for asylum involving a claim of refugee status by a person either at its borders or within its territory or jurisdiction. In all such cases, States parties are required, *inter alia*, to observe the principle of non-refoulement. The fact that a refugee has found or could have found protection elsewhere does not remove the obligation of other States to respect the principle of non-refoulement, even though it may be agreed that the primary responsibility for providing international protection, including asylum, lies with another State. Furthermore, the Office discourages unilateral action by States to return asylum-seekers to countries through which they passed without the countries' agreement, because of the risk of chain deportations, forcible returns to situations of persecution, and of orbit situations as well as the need for international solidarity and burden-sharing. [72]

63. The UNHCR has identified some factors for consideration in determining whether the return of a refugee or an asylum-seeker to a particular country can take place. Some of these factors, which include both formal aspects and the practice of the State concerned, are:

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[71] UN High Commissioner for Refugees (UNHCR), *Considerations on the "Safe Third Country" Concept*, July 1996, available at: http://www.refworld.org/docid/3ae6b3268.html [accessed 2 October 2018]

[72] UN High Commissioner for Refugees (UNHCR), Considerations on the "Safe Third Country" Concept, July 1996, available at: http://www.refworld.org/docid/3ae6b3268.html [accessed 2 October 2018]

- Adherence to recognized basic human rights standards for the treatment of asylum-seekers and refugees;
- The State's willingness and practice to accept returned asylum-seekers and refugees, consider their asylum claims in a fair manner and provide effective and adequate protection.

64. In the instant case, Antolia being an under-developed nation is already under crisis of lack of employment opportunities and economic scarcity. In such state of affairs, it is not practicable for Antolia to adhere to basic human rights standards for the treatment of a huge number of asylum seekers.

65. Furthermore, according to UNHCR, the primary responsibility to provide protection rests with the State where asylum is sought. UNHCR EXCOM Conclusion No. 15 (XXX) calls on States to take asylum seekers' intentions as to the country in which they wish to request asylum "as far as possible into account", while "regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State".[73]

66. Therefore,in light of theaforementioned grounds, it is submitted that Antolia is not liable to accept the Orukains being deported by Varys.

[73] European Council on Refugees and Exciles, Debunking the "Safe Third Country" Myth, October 2017, available at https://www.ecre.org/wp-content/uploads/2017/11/Policy-Note-08.pdf.

PRAYER

WHEREFORE, IN LIGHT OF FACTS STATED, QUESTIONS PRESENTED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, STATE OF ANTOLIA MOST RESPECTFULLY REQUESTS THIS HONOURABLE COURT TO ADJUDGE AND DECLARE THAT:

1. The Notification dated June 6, 2018 issued by the Varysian government is in violation of the international law and thus, unsustainable.
2. Alternatively, the Orukains, if any, who entered Varys from Antolia, are refugees under international law, irrespective of their nationality, and Varys ought to have granted asylum to them.
3. Antolia is not liable to accept the Orukains being deported by Varys.

AND TO PASS ANY SUCH OTHER ORDER & JUDGMENT AS THIS HON'BLE COURT MAY DEEM FIT IN THE INTEREST OF JUSTICE, EQUITY AND GOOD CONSCIENCE.

All of which is respectfully submitted

Place: The Hague, Netherlands ***Sd/-*** _____

Ambassador of the State of Antolia