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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 RESPONDENT

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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 the International Law?
2. Whether the Orukains who entered Varys from Antolia are refugees under international law, if they are of Antolian nationality?
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 JUNE 6 2018 ISSUED BY THE VARYSIAN GOVERNMENT IS VALID AND IN CONFORMITY OF ITS OBLIGATIONS UNDER INTERNATIONAL LAW.

Firstly, Domestic Law of the country supersedes international law and that Varys does not have an existing international obligation towards the refugees in the present case. Varys has neither signed nor ratified the 1951 Refugee Convention or its 1967 Protocol. Hence Varys is under no obligation to follow either of them. The said notification is a law and it enjoys the status of the municipal law of the country and is not violative of International law.

Secondly, Varys is an independent sovereign state and interference into the notification would violate the State sovereignty of the country. Any interference into the governance of the state would violate the state sovereignty of Varys and therefore is not permissible. In the instant case the said notification is a valid law created by Varys which is in tangency with the legal competence and domestic policy of that state and therefore cannot be interfered by another country.

Thirdly, the notification has been made to overcome the potential threat to the national security of Varys. It is the obligation of the government to take all the necessary steps to safeguard the security of the nation from any kind of external state or non- state threats. Hence the steps taken are reasonable.

Fourthly, Varys is already facing a crisis of overpopulation and scarcity of natural resources. Varys being the most populated nation has being introducing many measures to curb the menace. In such a situation Varys is unable to grant the Orukains any refuge.

2. ORUKAINS WHO ENTERED VARYS FROM ANTOLIA ARE NOTE REFUGEES IF THEY ARE OF ANTOLIAN NATIONALITY.

The Orukains from Antolia do not qualify as Refugees within international law

It is humbly submitted that the UNHCR as well as Convention relating to the Status of Refugees definition of Refugees calls for a well-founded fear of persecution to qualify one as a Refugee.

Since the Antolian Orukains, if any, who had entered Varys does not satisfy the said criteria, cannot be regarded as Refugees.

Orukains who are of Antolian Nationality can be considered only as migrants.

Secondly, it is the most humble submission that since the Orukains who are of Antolian nationality does not qualify the requirement of having fled from their country of origin due to well-founded fear of persecution, they cannot be regarded as refugees. They can only be regarded as illegal migrants who had entered Varys for better living standards.

3. ANTOLIA IS LIABLE TO ACCEPT THE ORUKAINS BEING DEPORTED BY VARYS

Antolia has violated its obligation under the Refugee Convention and the Orukains have a right to return to Antolia

It is the most humble submission that Antolia has failed to perform its obligations under the 1951 convention. There is no existence in Antolia of any persecution as recognised under international refugee law. Economic persecution and lack of employment opportunities in their host country cannot be qualified as persecution that may force them to seek asylum in another country.

Orukains being deported consists of both Antolian nationals as well as Orukains refugees from Tahoma. The Orukains from Antolia cannot be termed as refugees under international refugee law. Alternatively, they must be classified as undocumented migrants and not refugees. Moreover, the rest of the Orukains from Tahoma has not been granted refugee status within Varys. In such a case illegal immigrants must be sent back to Antolia itself.

Antolia is able to accept the Orukains applying the first country of asylum principle

The First country of Asylum principle means that a country can reject a person's asylum application if they have already been granted protection by another country. By this concept, since Antolia has already granted refugee status to the Orukains from Tahoma, Antolia is liable to accept them.

PLEADINGS

1. THAT THE NOTIFICATION DATED JUNE 6 2018 ISSUED BY THE VARYSIAN GOVERNMENT IS VALID AND IN CONFORMITY OF ITS OBLIGATIONS UNDER INTERNATIONAL LAW.

1. It is humbly submitted that the notification issued by the Varysian government which pertained to the setting up of tribunals to detect and deport illegal immigrants in the country is not in violation of international law. The reasons are four-fold: *firstly*, Domestic Law of the country supersedes International law **(1.1)**; *secondly*, Varys is an independent sovereign state and interference into the notification would violate the state sovereignty of the country **(1.2)**; *thirdly*, The notification has been made to overcome the potential threat to the national security of Varys **(1.3)**; and *fourthly*, Varys is already facing a crisis of over population and depletion of natural resources **(1.4)**.

1.1 DOMESTIC LAW SUPERSEDES INTERNATIONAL LAW

2. At the outset, it is humbly submitted that Varys does not have an existing international obligation towards the refugees in the present case. It is beyond any doubt that Varys has not ratified the 1951 UN Refugee Convention or its 1967 Protocol and is neither a signatory to the same.[1] Therefore, Varys is under no obligation to follow either the Refugee Convention or the Refugee Protocol in the present case.

3. Further, it is submitted that the domestic law of the land supersedes the International Law. The substantive content of International Law is said to be rules regulating relations between states while that of national law is that of rules regulating the affairs within the country[2].

4. In the present case, the Notification dated 6th June, 2018 is a 'law' and it enjoys the status of the municipal law of the country. It is widely accepted that an international law cannot supersede an

[1] *Compromise* ¶22

[2] Cyril. M. Picciotto, Relation of International Law to the Law of England and the United States 10 (1915).

existing municipal law. This was made clear by Prof. Oppenheim when he opined that 'an international law can never per se create or invalidate a municipal law'[3]. Expressions of the supremacy of international law over municipal law in international tribunals do not mean that the provisions of domestic legislation are either irrelevant or unnecessary. [4]

5. It is possible for the Municipal Law of an individual State by custom or by statute to adopt rules of International Law as part of the law of the land, and then the respective rules of International Law become *ipso facto* rules of Municipal Law.[5] However, in the present case, there has been no ratification or usage of any relevant international law to the extent that it enjoys the status of the municipal law of the land.

6. Furthermore, *arguendo*, if international obligations are to be supersede domestic legislations, the violation of such obligation, if any, is saved under Article 25[6] of the Articles on the State Responsibility which provides on the grounds of necessity. It arises where there is an irreconcilable conflict between an essential interest on the one hand and an obligation of the State invoking necessity on the other.[7] Necessity must have been occasioned by an "essential interest" of the State which is the author of the act conflicting with one of its international obligations; the act being challenged must have been the "only means" of safeguarding that interest.[8]

7. In the light of these arguments, it is humbly submitted that the notification dated 6th June 2018 is valid and is not in contravention of any principles of international law.

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[3]Cyril. M. Picciotto, Relation Of International Law To The Law Of England And The United States 10 (1915).

[4] Jenks.C. Wilfred, The Prospects of International Adjudication, 547-603 (1964), K. Marek ,Droit International et Droit Interne,(1961) and Brownlie, Principles of Public International Law,(1st ed. 1966).

[5]Cyril. M. Picciotto, Relation of International Law to the Law of England and the United States 10 (1915).

[6]Art. 25., Int'l Law Comm'n, Rep. on the Responsibility of States for Internationally Wrongful Acts, U.N. GAOR, 56 Sess., Supp. No. 10, U.N. Doc. A/56/10 32 (2001).

[7] ILC Report.

[8] Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia), I.C.J.Rep. 7 40– 41(International Court of Justice: 1996).

1.2 VARYS IS AN INDEPENDENT SOVEREIGN STATE AND INTERFERENCE INTO THE NOTIFICATION WOULD VIOLATE THE STATE SOVEREIGNTY OF THE COUNTRY

8. It is humbly submitted that Varys is an independent sovereign state and its state sovereignty has to be respected. Therefore interference into the notification would violate the state sovereignty of Varys and therefore is not permissible.

9. It is an uncontested principle that every state has its sovereignty under international law and no state shall interfere in the internal matters and policies of another state. The principal of non-intervention has gained much significance in the recent times and is now a widely accepted doctrine.

10. In International law, the principle of non-intervention includes, but is not limited to, the prohibition of the threat or use of force against the territorial integrity or political independence of any state[9].The principle of non-intervention in the internal affairs of States also signifies that a State should not otherwise intervene in a dictatorial way in the internal affairs of other States. The 1970 declaration on principles of international law recalled the 'duty of states to refrain from military, political, economic or any other form of coercion aimed against the political independent or territorial integrity of any state' . This approach was underlined by the general assembly in 1974,[10] which particularly specified that no type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights.[11]

11. The International Court referred in the Nicaragua case to "the element of coercion, which defines, and indeed forms the very essence of, prohibited intervention".[12]

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[9] Article 2(4), UN Charter, 1945.

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

[10]Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States ,1981

[11]Malcolm. N. Shaw, International Law,1125(6th ed.2008).

[12]Case Concerning Military And Paramilitary Activities In And Against Nicaragua (Nicaragua v. United States Of America), I.C.J.Rep 108 (International Court of Justice: 1986).

12. Further, the Draft Declaration on Rights and Duties of State, 1949, which deals with the independence and internal competence of states, widened the concepts of state sovereignty and non-intervention.[13] Article 1 of the said declaration stipulates that 'each state shall have the right to independence and, therefore, the right to freely, without any pressure by any other state, perform its legal competences understanding here the choice and form of its rule'.[14]Further, Article 3 states that 'the duty of each state shall be to refrain from whatever interference in internal or external affairs of some other state'.[15]

13. In the present case, the said notification is a valid law created by Varys which is in consonance with the legal competence and domestic policy of that state and therefore cannot be interfered by another country, since its violation would amount to a violation of the state sovereignty of Varys.

14. The exercise of sovereignty is based on the interests of the people of the States and therefore it is the duty of every State, being the Superior authority, to protect such interests.

15. The Competence of States to regulate the entry of non-citizens is traditionally considered as a well-established principle of positive International law restated in treaties,[16] declarations[17] and jurisprudence.[18] The customary international law nature of this sovereign prerogative has been

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[13]Momir Milojević, The Principle Of Non-Interference In The Internal Affairs Of States (2000).

[14]Article 1, Draft Declaration on Rights and Duties of State, 1949.

Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.

[15]Article 2, Draft Declaration on Rights and Duties of State, 1949.

Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

[16]Havana Convention on the status of Aliens, OAS Treaty Series No 34, 20 Feb 1928, Art 1: States have the right to establish by means of law the conditions under which the foreigners may enter and reside intake territory. See as well Art 79, ICRMW

[17]Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which they Live, Art 2(1): Nothing in this declaration shall be interpreted as legitimising illegal entry into and presence in a State of any Alien, nor shall any provision be interpreted as restricting the right of any state to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens.

[18] Abdulaziz, Cabales and Balkandal v. United Kingdom, Series A No. 33-4, para 67 (European Court of Human Rights; 1985): as a ,after of well-established international law and subject to its treaty obligations, a state has the right to control and entry of non- nationals into its territory.'

conventionally affirmed in textbooks on international law. Along with the writings of Kelson[19], Rousseau,[20] Brownlie,[21] the 1992 edition of Oppenhiem's International Law restates that: "By Customary international law no states can claim the right for its nationals to enter into, and reside on, the territory of a foreign state. The reception of aliens is a matter of discretion and every state is by reason of its territorial supremacy, competent to exclude aliens from the whole or any part, of its territory".[22]

16. The traditional rationale of such competence lies in the very notion of territorial sovereignty which entails the right of the State to regulate and control activities, goods capital and persons within its own territory.[23]

17. Against such traditional frame, a State would possess a primary authority over its territory and population. It may, therefore decide if and how it permits non-citizens to enter its own territory. This convention assertion was formulated in the oft-quoted dictum of the US Supreme Court held in 1892:

> *It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty and essential to its self-preservation, to forbid the entrance of foreigners within its dominions, or to admit only in such cases and upon such conditions as it may see fit to prescribe.*[24]

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[19]H. Kelson, Principles of International Law, 366(The Law book Exchange: 1966),: Under general international law no state is obliged to admit aliens into its territory'.

[20]C Rousseau, Droit international public, T. III, , 15(1977): *'I'admission des etrangers, sauf engagement conventionnel precis, reste encore largement discretionnaire.*

[21]I. Brownlie, Principles of Public International Law , 6th edn , 498 (Oxford Uty Press, 2003),"' In principles this is a matter of domestic jurisdiction: a state may choose not to admit aliens or may impose conditions on their admission.'

[22]Oppenheim, International Law, 9th edn, 897-8 (Longman, 1992).

[23]Research handbook on International Law and Migration Edited by Vincent Chetail and Celine Bauloz, Edward Elgar Publishing House Ltd, 2014pg 28

[24]Nishimura Ekiu v United States, 142U.S 651 [US Supreme Court;1982],. Attorney- General for Canada v. Cain,[AC 542,546 [Canada SC; 1906]: 'One of the rights possessed by the supreme power in every state is the right to refuse to permit an alien to enter that state , to annex what condition it pleases ton the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace order, and good government, or to its social or materials interest'.

18. More recently in 2004, the UK House of Lords reasserted that, 'The power to admit, exclude and expel aliens was among the earliest and most widely recognised powers of the sovereign state'.[25]

19. Therefore in the light of these arguments it is humbly submitted that interference into the notification, which is a municipal law, by Antolia would violate the internationally recognized principles of state sovereignty of Varys.

1.3 THE NOTIFICATION HAS BEEN MADE TO OVERCOME THE POTENTIAL THREAT TO THE NATIONAL SECURITY OF VARYS

20. It is humbly submitted that the notification has been made to overcome a potential threat to the national security of Varys and is therefore reasonable and valid. It is a widely accepted principle that the sovereign states enjoy overwhelming powers when it comes to the matter of national security.

21. In accordance with the principles of International Law, "national security" includes security of the society (regardless of ethnic, ethical, racial and ideological origin or commitment of its members) and security of the state, but also their participation in international and global security. It involves a certain condition of protection of their vital interests and values which is optimized by the function of military and civilian, state and non-state sector of the national security system, with relying on numerous international (non-governmental and inter-governmental) subjects in many aspects of international cooperation in the field of security[26]

22. In addition to traditional national values, modern ones include the survival of the state and nation, the quality of life of the citizens and nations, and social welfare, the constitutional and legal order of the state, public order, economic prosperity, the stability of energy supply and information resources, political stability and national unity, national pride and dignity, i.e. honour and reputation, national identity, healthy environment, and other values. National

[25]European Roma Rights Centre and Others v. Immigration Officer at Prague Airport, UKHL 55, para 11(House of Lords: 2004).

[26] Sasa Mijalković and Nacionalna bezbednost, The Basis of National Security in International Law 52 (2004).

interests are benefits of importance to society and the state and they are related to the attainment, enjoyment and development of national values[27].

23. Article 4(1)[28] of the ICCPR stipulates that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.

24. Furthermore, Article 15(1)[29]of the European Convention on Human Rights provides for derogation in time of emergency and says that in time of public emergency threatening the life of the nation, the State may take measures derogating from its obligations to the extent strictly required by the exigencies of the situation.

25. It is pertinent to note Varys is neither a signatory to the 1951 UN Refugee convention, nor has it ratified the convention and its 1967 Protocol. Therefore, the convention would not be binding on the State of Varys. Even as a matter of arguendo, Article 32 (1) of the 1951 UN Refugee Convention[30]states that 'the Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.' Thus it is beyond any doubt that in the instances of a threat to the national security, a sovereign state is vested with enormous powers in order to protect the interest of the country. Further Article 32(2) says that the expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. In the instant case, the Orukains were ordered to be deported according to a due process of law established by the Varysian Government. Therefore the requirement of the due process of law is clearly served.

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[27]Saša Mijalković and Dušan Blagojević,THE BASIS OF NATIONAL SECURITY IN INTERNATIONAL LAW.

[28] Art 4(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.

[29] Art. 15(1), European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 15(1), Nov. 4, 1950, 213 U.N.T.S. 221.

[30]Art. 32(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

The Contracting States shall not expel a refugee lawfully in their territory saves on grounds of national security or public order.

26. The citizens of Varys have been already victims of continuous terror attacks by foreign non-state actors[31]. In the interest of their national security, Varysian government even had come up with legislation "national security act 2018", under which several guidelines were made to regulate both illegal immigration into the country and granting of citizenship. [32] it was reported in various newspapers that offences were being committed by the immigrants against the local people, thus making clear the picture of intensified threat to national security in the state.[33]There were also intelligence reports that suggested that many of these immigrants may be hatching terrorist plots against the Varysian government, it being a Phikam majority. [34]

27. Therefore it is humbly submitted that the steps taken by was reasonable to maintain the national security.

1.4 VARYS IS ALREADY FACING A CRISIS OF OVER POPULATION AND DEPLETION OF NATURAL RESOURCES

28. It is humbly submitted that there is already a crisis of over population and depletion of natural resources in Varys. It is evident from the facts of the case that Varys is the most populated nation in the world[35]. It is to overcome this crisis that Varysian government came up with the legislation "Population Control Act 2018". The legislation aimed at making one child policy a norm and to tax individuals who chose to have than one child. The Varysian government had also successfully implemented population control measures in the country[36]. To accommodate all illegal immigrants into the country's territory would violate the essence of municipal legislations adopted by Varys. Under international law, there is no absolute compulsion on states to accept illegal immigrants or refugees as for that matter. Every state has its right to use discretion with respect to accepting immigrants or refugees. Since this discretion is not an erga omnes obligation

[31] *Compromise* ¶9.

[32] *Compromise* ¶11.

[33] *Compromise* ¶14.

[34] *Compromise* ¶ 20.

[35] *Compromise* ¶ 8.

[36] *Compromise* ¶10.

on the part of a state, there can be no compulsion laid upon a state to force them to go against their national policy putting the welfare and security of the nation at stake.

2. ORUKAINS WHO ENTERED VARYS FROM ANTOLIA ARE NOT REFUGEES IF THEY ARE OF ANTOLIAN NATIONALITY.

2.1. THE ORUKAINS FROM ANTOLIA DO NOT QUALIFY AS REFUGEES WITHIN INTERNATIONAL LAW.

29. It is humbly submitted that the Orukains who entered Varys from Antolia are not refugees under international law, if they are of Antolian nationality. The Orukains From Antolia Do Not Qualify As Refugees Within International Law

30. The definition of refugee in international law is famously vague. The Convention Relating to the Status of Refugees, 1951 defines "a refugee as an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his/her race, religion, nationality, political opinion or membership in a particular social group."[37]

31. According to UNHCR a refugee is one who "Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."[38]

[37]Art 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

[38]Article 1, 1967 Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, 4 October 1967, section 2, incorporating by reference with modifications article 1 A(2) of the 1951 Convention on the Status of Refugees.

32. In the instant case, according to the reports of times of Varys, out of the thousands of Orukains who entered Varys from Antolia, many of them were Orukain citizens from Tahoma, which means that the rest of them are assumed to be Orukains of Antolian nationality. The Antolians who entered Varys cannot be termed as refugees under international law, since they are nationals of Antolia, taking them outside the ambit of the definition of 'refugees' under International law. These persons, as mentioned in the factsheet entered Varys due to lack of employment in Antolia.

33. Another definition for the term refugees is provided in Article 3 of Cartagena Convention and Article 1(2) of 1969 Organization African Unity Convention which extends refugee status to an individual who "owing to external aggression, occupation, foreign dominion 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." This definition of refugees doesn't include persons who flee out of their home country in need of employment, and hence economic persecution cannot be taken within this sphere.

34. Therefore, even after taking into consideration various definitions of the term refugee given under international law, no such definition includes nationals of a state fleeing from their home country to another only for the reason of economic persecution.

35. These definitions break down into several necessary elements that an asylum seeker must establish. The potential refugee must establish harm that rises to the level of persecution.[39] This persecution must be suffered on account of one of the listed reasons, such as race or religion, and the asylum seeker must have a well-founded fear of suffering actual harm upon returning to his or her native country.[40]

36. The Refugee Convention relies heavily on the concept of persecution, but does not define it. It only gives us two direct indications:

See Goodwin-Gill, The Refugee in International Law, pp. 409-412 (2, Clarendon Press, 1996).

[39] Article 1(a)(2),Convention Relating to the Status of Refugees, July 28th, 1951, 189 U.N.T.S. 137

[40] Article 1(a)(2),Convention Relating to the Status of Refugees, July 28th, 1951, 189 U.N.T.S. 137

37. First, in order to qualify as a refugee, a person must risk persecution for reasons of "race, religion, nationality, membership of a particular social group or political opinion".

38. Secondly, as made clear by Article 33 GC, threats to life or freedom are readily included within the scope of the term 'persecution'. It must be emphasized here that the converse is not true: persecution cannot be defined as including *only* threats to life and freedom. This view, expressed by *AtleGrahl-Madsen* more than forty years ago, has become canonical in the literature and in international practice.[41]

39. In the present case, the Antolian nationals are not qualified with either of these two conditions and therefore it is safe to assume that those people are not refugees and the case was a mere instant of economic persecution.

2.2. ORUKAINS WHO ARE OF ANTOLIAN NATIONALITY CAN BE CONSIDERED ONLY AS MIGRANTS

40. A migrant, is a person who decides to leave their country to seek a better life elsewhere. Refugees however, are forced to leave their country because they are at risk of, or have experienced persecution. The concerns of refugees are human rights and safety, not economic advantage. They leave behind their homes, most of their belongings, family and friends. Some are forced to flee with no warning. They cannot return unless the situation that forced them to leave improves.[42] It is evident from the facts of the instant case wherein Orukains who entered Varys and who are of Antolian nationality do not have per se any such threat to their lives in Antolia, which could possibly drive them out of their home country. Thus they qualify only as migrants under international law.

41. People who choose to migrate for economic reasons are sometimes called 'economic refugees', especially if they are trying to escape from poverty. In the instant case, it is an evident fact that

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[41]I, AtleGrahl-Madsen, The Status of Refugees in International Law,196-197 (1966); UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1 Re edited, Geneva, January 1992, § 51.

[42]Settlement Services International, https://www.ssi.org.au/faqs/refugee-faqs/148-what-is-the-difference-between-a-refugee-and-a-migrant

Antolia was suffering from adverse poverty and that there is lack of employment opportunities in the country. Thus, it is submitted that Antolian nationals are only migrants. Even though such migrants are called as economic refugees, they do not qualify to be refugees under international law. The correct term for people who leave their country or place of residence because they want to seek a better life is 'economic migrant'.

42. In the instant case, Orukains who entered into Varys from Antolia, if they are of Antolian nationality can in no way be classified as refugees, since they had no threat of persecution whatsoever in their own country, and the only reason for which they possibly illegally migrated is in search of better employment opportunities, and such migration does not amount to grant them refugee status.

3. ANTOLIA IS LIABLE TO ACCEPT THE ORUKAINS BEING DEPORTED BY VARYS.

43. It is humbly submitted before this hon'ble court, by the counsel for the Respondent, that Antolia is liable to accept the Orukains being deported by Varys. The reasons to state are four fold: *firstly*, Antolia has violated its obligation under the Refugee Convention and the Orukains have a right to return to Antolia **(3.1)**; *secondly*, Orukains being deported consists of both Antolian nationals as well as Orukain Refugees from Tahoma **(3.2)**; *thirdly*, Antolia is liable to accept the Orukains applying the First Country of Asylum Principle **(3.3)**;*fourthly*, deportation of Orukains by Varys to Antolia does not amount to refoulement under international law.

3.1. ANTOLIA HAS VIOLATED ITS OBLIGATION UNDER THE REFUGEE CONVENTION AND THE ORUKAINS HAVE A RIGHT TO RETURN TO ANTOLIA.

44. Antolia is an under developed country and receives financial support from Varys. In the event that Antolia is unable to bear the burden of Orukains staying in its territory permanently, expulsion is only permitted on the grounds of national security and public order, following which the refugee must be subject to due process of law, and allowed to seek legal admission into a

third country.[43] Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status.[44] It requires active coordination with the third state and may not be effectuated involuntarily. In the instant case, the third state being Varys has not conveyed its intention to grant asylum to the Orukains who fled from Antolia.

45. United Nations High Commissioner for Refugees (UNHCR) and several international NGO's have set up relief camps in Antolia to help these refugees. This means that, the Orukains who fled from Tahoma and came to Antolia, were identified internationally as refugees from Tahoma, and were given the status of refugees in Antolia. Such identification as refugees by Antolia would cast upon the state the duties laid down under the 1951 UN Convention, which would make still liable to grant the protection that the refugees deserve under the Convention.

46. However, according to a 2018 report by International Society of Refugees, an international NGO engaged in rehabilitation of the Orukains, the Orukain refugees did not have access to basic rights to life, food and shelter. They were constantly harassed by the local government authorities and were left stateless. The Orukains then undertook a voluntary decision to move to Varys in search of better life. However it is submitted that, there is no existence in Antolia, of any persecution as recognized under International refugee law, for the refugees to be threatened of. Economic persecution and lack of employment opportunities in their host country cannot be qualified as persecution that may force them to seek asylum in another country.

47. It is therefore humbly submitted that Antolia is under an obligation to accept the Orukain refugees and protect their rights as enshrined in the Refugee Convention.

3.2. ORUKAINS BEING DEPORTED CONSISTS OF BOTH ANTOLIAN NATIONALS AS WELL AS ORUKAIN REFUGEES FROM TAHOMA.

48. As established in the second contention, the Orukains who entered Varys from Antolia cannot be termed as refugees under international law, if they are of Antolian Nationality. In other words, they must be classified as undocumented migrants and not refugees. The International

[43] Convention Relating to the Status of Refugees July 28th art. 32 1951, 189 U.N.T.S. 137

[44] UNHCR Resettlement Handbook, 2011

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines a migrant as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."[45] It also provides a distinction between documented and non-documented migrant workers and families, on the basis of permission to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and international agreements to which it is a party.[46] These Orukains entered Varys without any legal authority. There has been no declaration regarding their authority to remain in Varys and being engaged in a remunerated activity. Under such circumstances, where the status of these illegal immigrants is that of not refugees, but nationals of Antolia, Antolia is bound to take them back.

49. Moreover, the rest of the Orukains being refugees from Tahoma, were already identified as refugees within Antolia. None of these people were given any such status of refugees within Varys. Varys had identified all of these people as only illegal immigrants. As far as Varys is considered, these Orukains are refugees from Tahoma, and illegal immigrants from Antolia, since the refugee status was offered to by Antolia. In such a state of affairs, the illegal immigrants from Antolia must be sent back Antolia itself, since that is where they came from.

3.3. ANTOLIA IS LIABLE TO ACCEPT THE ORUKAINS APPLYING THE FIRST COUNTRY OF ASYLUM PRINCIPLE.

50. The 'first country of asylum' principle often justifies the decision to return asylum seekers to another country. It means that a country can reject a person's asylum application if they have already been granted protection by another country.

51. These principles are based on an interpretation of the 1951 Refugee Convention, and hence applicable to all countries that have acceded to it. The principles are not directly mentioned in the Convention, but derived from Article 31, which states that a refugee should not be punished

[45] Art. 3(1) ,The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990) .

[46] Art. 5 , The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990)

for illegally entering a country if they are arriving directly from a country where they were under threat.

52. There are few examples where western countries have considered countries in other parts of the world as safe third countries, as Norway did with Russia and as the EU considered with Turkey.

53. International cooperation and burden-sharing is a prerequisite for refugee protection, stresses UNHCR, and the country that has received an asylum application has primary responsibility to provide that person with protection. A country can transfer responsibility for processing an asylum application to another safe country if both have asylum systems of the same standard[47]-

54. In Varys, firstly, the Orukains were not identified as refugees, but rather as illegal immigrants, and secondly, since they are illegal immigrants, there is not requirement of the part of Varys to grant asylum or similar protection.

55. Furthermore, 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.

56. Refugees and asylum-seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR.[48]

57. Under international law, States are responsible for examining asylum claims made in their territory or jurisdiction. However, at a procedural level, a number of States deny access to national protection determination processes if an asylum seeker could have obtained effective protection elsewhere.[49] This can be seen from State practice. For instance, Kenya denied entry to Sudanese refugees coming from Uganda in 2004 on the grounds that they were coming from a

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[47]Eirik Christophersen, What is a safe third country?(Mar. 09. 2016),https://www.nrc.no/news/2016/march/what-is-a-safe-third-country/

[48] Executive Committee 40th session. Contained in United Nations General Assembly Document No. 12A (A/44/12/Add.1).,http://www.unhcr.org/excom/exconc/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html.

[49] Goodwin-Gill, The Refugee in International Law, pp. 409-412 (2, Clarendon Press, 1996).

safe country. States have been justifying this practice by arguing that an individual genuinely fleeing persecution would seek asylum in the first non-persecuting State, and that any 'secondary movement' is therefore for migration, rather than protection purposes. The certain identified limitations of this argument are, first, the blanket designation of States as 'safe' ignoring individual circumstances of the asylum seeker, which may in fact make the country unsafe for him or her, for example, by reason of membership of a minority group.[50] It is submitted that, there is no blanket designation of any State as 'safe' in this case and there is no active threat to any persons in Antolia owing to their ethnicity or religious belief. Antolia is also a country with a considerable population of Orukains and therefore is not a minority in that country. It is also pertinent to note that Varys is not denying protection merely on the fact that they have received protection elsewhere. The issues of overpopulation and lack of natural resources have been the primary concern for Varys.

3.4. DEPORTATION OF ORUKAINS BY VARYS TO ANTOLIA DOES NOT AMOUNT TO REFOULEMENT UNDER INTERNATIONAL LAW.

58. Article 2(h) of the Vienna Convention on the law of Treaties defines third state as a State not a party to the treaty[51]. Furthermore, Article 34[52] stipulates the general rule regarding third States and says that "A treaty does not create either obligations or rights for a third State without its consent." This implies that the States which are not a party to a convention or treaty will not be obligated by such convention or treaty without its consent.

59. In the instant case, Varys has not ratified the UN refugee convention, or has it been made signatory to the same, therefore, the convention if not applicable to Varys and they are not bound by any obligations provided for in the same.

60. In arguendo, even if the Refugee Convention applies to Varys, the act of deportation of Orukains from Varys, does not violate the principle of Non-Refoulement.

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[50] UNHCR, 'Asylum Process (Fair and Efficient Asylum Procedures)' UN doc. EC/GC/01/12 (31 May 2001), paras. 12-18 for discussion of best practice.

[51] Art. 2(h) Vienna Convention of Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331b

[52] Art. 4, Vienna Convention of Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331b

61. The Orukains that are being deported by Varys, are not being deported to Tahoma, but to Antolia. The Orukains are facing imminent threat of persecution only in their home country that is Tahoma. In Antolia, there is no threat of persecution on account of race, religion, nationality, or, membership of a particular social group or political opinion. In other words, there is no threat of persecution as identified by International Refugee Law.

62. Article 33 (1) of the 1951 Convention relating to the Status of Refugees, states that:

> *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.*

63. As regards rejection or non-admittance at the frontier, the 1951 Convention and international law generally do not contain a right to asylum. This does not mean, however, that States are free to reject at the frontier, without constraint, those who have a well-founded fear of persecution. What it does mean is that, where States are not prepared to grant asylum to persons who have a well-founded fear of persecution, they must adopt a course that does not amount to *refoulement*. This may involve removal to a safe third country or some other solution such as temporary protection or refuge. No other analysis, in our view, is consistent with the terms of Article 33(1).[53]

64. Nothing in the principle of non-refoulement, however, precludes a state from sending an asylum-seeker to a country in which he would not be persecuted.[54]

65. Therefore, Refoulement would only apply if the Orukains are being deported back to Tahoma. Antolia is a country with camps set up by international organizations for betterment of the Orukains.

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[53], The Scope and Content of the Principle of Non-Refoulement: Opinion, Cambridge University Press, (2003), http://www.refworld.org/docid/470a33af0.html .

[54] Roman Boed, The State of the Right of Asylum in International Law, 5 *Duke Journal of Comparative & International Law* 1-34 (1994), https://scholarship.law.duke.edu/djcil/vol5/iss1/1 .

PRAYER

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

1. The Notification dated June 6, 2018 issued by the Varysian government is valid and in conformity of its obligations under international law.

2. Alternatively, the Orukains who entered Varys from Antolia cannot be termed as refugees under international law, if they are of Antolian nationality.

3. Antolia is 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

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Agents on behalf of

The Respondent State

Place: The Hague, Netherlands