

TEAM AC 65

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THE “ASIA CUP 2019” INTERNATIONAL LAW  
MOOT COURT COMPETITION

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



THE KINGDOM OF AMPHIT

APPLICANT

v.

THE REPUBLIC OF RHEA

RESPONDENT

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

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MEMORIAL FOR THE APPLICANT

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**SUMMARY OF PLEADINGS**

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

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

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

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

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

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

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

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

## PLEADINGS

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

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

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

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

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

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<sup>1</sup> *Compromis*, §9.

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

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

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

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

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

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

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

## WRITTEN SUBMISSIONS ON BEHALF OF AMPHIT

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

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

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

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

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

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

<sup>10</sup> *Compromis*, §2.

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

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

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

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

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

<sup>16</sup> *Compromis*, §7.

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

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

<sup>19</sup> *Compromis*, §10.

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

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

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

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

**1. Rhea violated international refugee law**

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

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

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<sup>21</sup> *Compromis*, §13.

<sup>22</sup> *Compromis*, §10.

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

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

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

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

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

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

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

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

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

**2. Alternatively, Rhea violated IHRL**

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

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

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

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<sup>29</sup> *Compromis*, §5.

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

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

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

<sup>33</sup> *Compromis*, §7.

<sup>34</sup> *Compromis*, §6.

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

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

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

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

<sup>39</sup> HRC GC 36, §23.



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

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

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

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

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

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

<sup>41</sup> *Compromis*, §10.

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

<sup>43</sup> CCPR GC 20, §3.

<sup>44</sup> CCPR GC 20, §2.

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

<sup>46</sup> *Compromis*, §5.

<sup>47</sup> *Compromis*, §10.

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

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

<sup>50</sup> *Compromis*, §21.

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

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

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

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

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<sup>51</sup> *Compromis*, §20.

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

<sup>53</sup> *Compromis*, §§14, 16.

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

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

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

<sup>57</sup> *Compromis*, §16.

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

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

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

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

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

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

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

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

<sup>62</sup> *Compromis*, §14.

<sup>63</sup> *Compromis*, §16.

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

<sup>65</sup> *Ibid*, p. 307, §1.

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

<sup>67</sup> *Compromis*, §16.

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

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

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

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

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

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

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

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

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<sup>71</sup> *Compromis*, §14.

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

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

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

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

<sup>76</sup> *Kunarac*, §98.

<sup>77</sup> *Compromis*, §15.

<sup>78</sup> *Compromis*, §14.

<sup>79</sup> *Compromis*, §14.

<sup>80</sup> *Compromis*, §7.

<sup>81</sup> *Compromis*, §§14, 15.

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

<sup>83</sup> *Compromis*, §14.

<sup>84</sup> *Compromis*, §6.

<sup>85</sup> *Compromis*, §5.

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

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

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

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

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

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

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

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

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

<sup>89</sup> *Arrest Warrant*, §54.

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

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

<sup>92</sup> *Arrest Warrant*, §54.

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

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

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

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

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

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

<sup>96</sup> *Compromis*, §8.

<sup>97</sup> *Compromis*, §5.

<sup>98</sup> *Compromis*, §5,7.

**PRAYER FOR RELIEF**

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

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

Respectfully submitted,

**AGENTS FOR AMPHIT**