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Court Competition
20-27 May 2022 and 18-21 July 2022
Geneva, Switzerland

IN THE MATTER BETWEEN

SEAGULL, CIOPPINO & QUEEN MELLISSA REFUGEES

VERSUS

THE REPUBLIC OF LARIDAE

MEMORIAL FOR THE RESPONDENT

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LIST OF ABBREVIATIONS

AC	Armed conflict
ACHR	American Convention on Human Rights
AG	Laridae's Attorney General
Applicants	Named applicants in the proceedings
ArCh	Archelon Charter
AS	Admiral Seagull
CEDAW	Committee on the Elimination of Discrimination against Women
CJ	Laridae's Chief Justice
DC	Dr Cioppino
FoE	Freedom of expression
GCs	Geneva Conventions

HRIW	Human Rights in International Waters
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
IHRL	International human rights law
IRL	International refugee law
LAA	Laridae Abortion Act
LAFDRA	Laridae Armed Forces Discipline and Regulation Act
LCC	Laridae Constitutional Court
LIO	Laridae Intelligence Organisation
LMP	Laridae Magistrates Court

LSC	Laridae Supreme Court
MHA	Minister for Home Affairs
MPA	Marine Private Army
NIAC	Non-international armed conflict
NS	National security
QM	The Queen Mellissa
QMR	The Queen Mellissa Refugees
RC	Refugee Convention
RoP	Inter-American Commission on Human Right's Rules of Procedure
RtFT	Right to fair trial
RtH	Right to health
RtL	Right to life

RtW	Right to work
SASA	Sternidae Anti-enablers and Sanctions Act
SMoD	Sternidae Ministry of Defense
SRA	Save Refugees Association
UN	United Nations
UNHCR	UN High Commissioner for Refugees

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ACHR	African Charter of Human and Peoples' Rights (Banjul Charter), 27/06/1981
ECHR	European Convention on Human Rights, 04/11/1950
IACHR	Inter-American Convention on Human Rights, 22/11/1969
ICCPR	International Covenant on Civil and Political Rights, 16/12/1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 16/12/1996
RC	Convention and Protocol Relating to the Status of Refugees, 22/04/1954 and 4/10/1967
UNCLOS	United Nations Convention on the Law of the Sea, 10/12/1982

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GC36	General Comment No. 36 on Article 6, Right to Life, 30 October 2018

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SUMMARY OF FACTS

Laridae is a country on the Archelon Continent, most of the inhabitants of which adhere to the Arc religion. It has been subject to repeated attacks by Rhakha-Rhaka, an armed group from Sternidae on the Crocodilos Continent. Rhakha-Rhaka seek to impose their radical interpretation of the Khara religion and has attacked targets in Laridae and Sternidae in pursuit of this aim. As a result of Sternidae's alleged failure to protect Arc believers, Laridae passed SASA in 1993. SASA imposes economic sanctions on Sternidae and sanctions individuals considered to be key actors of oppression. From 1996-1999, there was an armed conflict between Laridae and the Rhakha-Rhaka, followed by an occupation by Laridae of parts of Sternidae from 1999 to 2021. After Laridae withdrew its troops from Sternidae in August 2021, Rhakha-Rhaka recommenced attacks across Sternidae on land and at sea.

AS is a former Admiral of the Laridae navy who is also a citizen of Sternidae. She is married to DC, a physician who owns a private medical practice. In summer of 2021, the couple visited Sternidae on the cruise ship QM. During this trip, AS met with GT, DC's uncle. GT is a Sternidaen politician who opposed the military occupation by Laridae and is on the SASA sanctions list due to his alleged association with Rhakha-Rhaka. During their meeting, AS and GT discussed how to influence Laridaen politicians to repeal SASA.

After Laridae soldiers departed, Rhakha-Rhaka attacked the QM in port, but were fought off by employees of MPA, a private military company which has frequently been employed by Laridae. AS and DC were at the scene and boarded the QM together with the MPA men and a large number of civilians, most of whom were *Khara*-adherent Sternidae nationals. AS took control of QM, setting sail to Laridae.

On the High Seas, the MPA men detained Cindy Smpimpinto on suspicion of being a member of the Rhakha-Rhaka. They subjected her to prolonged interrogation and acts of torture. She later discovered that she was 5 weeks pregnant as a result of alleged rape by one of the men. DC performed an abortion on her, although this was prohibited under the LAA. Smpimpinto subsequently became weak and died.

While on the High Seas, some persons onboard the QM died as a result of a missile attack by Laridae on Rhakha-Rhaka controlled boats which were attempting to capture the QM. After the QM reached Laridae's contiguous zone, it was denied entry into its territorial waters for over a week because of Laridae's fear that Rhakha-Rhaka terrorists were onboard. During this time, 48 persons died due to food, water and medicine shortages. After the QM was allowed to dock, foreigners were put in immigration camps, where families were separated, and many people were taken by the LIO for questioning and allegedly never seen again. Persons with criminal records of violence were deported back to Sternidae, after declining the alternative of being sent to Wahala. Local NGOs have brought several cases to the Laridaen courts on behalf of the refugees, but there is a significant backlog.

As a result of her association with GT, AS was charged under SASA which criminalises acting on behalf of Sternidae and aiding a sanctioned individual. She was found guilty of both of these offences, as well as offences under Laridaen maritime law, after a trial in camera in a military court and sentenced to 43 years in prison. Due to the abortion, DC was stripped of his practicing license under the LAA.

SUMMARY OF ARGUMENTS

- A. Laridae denies any violations of AS' FoE, RtW or RtFT. There was no violation of AS' FoE as SASA is justified on the basis of NS and constitutes a proportionate restriction. The limitation on her RtW was justified for the same reasons. AS' RtFT was not violated: Laridae was entitled to conduct her trial in camera on the basis of NS; the military court was the only court able to try her while protecting Laridae's NS interest; the CJ's statement was not prejudicial; and AS was punished lawfully for different offences.
- B. The interference with DC's RtW was justified and proportionate. Firstly, it was determined by law as Laridae was permitted to apply prescriptive jurisdiction over DC's acts based on the domicile principle or the effects doctrine. The LAA is also proportionate as Laridae is not bound by Smpimpinto's right to privacy because of its interpretative declaration of Art.17 ICCPR. In any event, a proportionate balance between Smpimpinto's rights and the protection of the foetus was struck.
- C. Laridae did not commit any rights violations in respect of the QMR. The extraterritorial events on the High Seas and in the contiguous zone fall outside its jurisdiction. Acts of MPA are also not attributable to Laridae. Furthermore, the firing of missiles did not constitute a sufficient exercise of control to create a jurisdictional link. In any event, the right to life of the QMR who died on the High Seas was not violated because the deprivation of life complied with IHL. Moreover, there was no violation of the right to life of the QMR who died in the contiguous zone as the deaths were not caused by Laridae and its positive obligations were not engaged. No IRL provisions were violated as QMR are not 'refugees' within the meaning of IRL. Laridae did not violate the right to religion as it did not exercise any coercion over the persons who converted to Arc. Any

interference with the rights to liberty, privacy and protection of the family was proportionate.

PLEADINGS

I. Jurisdiction

Laridae accepts the jurisdiction of this Court.

II. Locus standi

Applications may be lodged by persons or nongovernmental entities recognised under domestic law.¹ Victims must be fully identified and affected by the relevant State action so as not to permit *actio popularis*.²

Regarding **Claim A**, while AS is a named applicant, the abstract class of individuals affected by SASA sanctions are not. Applicants are concerned only with alleged violations arising from the 'Queen Mellissa debacle'³ and not sanctions preceding this, so cannot represent the sanctioned individuals. As such, there is no standing for claims in relation to SASA sanctions other than s.6 SASA as it affects AS.

Regarding **Claim C**, the express inclusion of a provision for delay in Art.31 RoP in relation to exhaustion of domestic remedies underscores the decision not to provide a similar exception in respect of standing under Art.23 RoP. HRIW, which represents the QMR, is not registered under Laridaen law⁴ and consequently has no standing.⁵ In any event, HRIW ought to have applied to renew its certificate well before its expiry.⁶

¹ Art.23 RoP, which is substantively similar to the ArCh (Facts¶2).

² *Demeneck*¶20; *Sierra*.

³ Facts¶33.

⁴ Facts¶29.

⁵ *Aguacate*¶90.

⁶ Facts¶29.

III. Admissibility

1. Exhaustion of domestic remedies

Applicants must have exhausted domestic remedies⁷ by presenting essential aspects of their claims to domestic courts,⁸ such that Laridae was given the opportunity to provide a remedy.⁹

Regarding **Claim A**, AS did not claim before the LCC¹⁰ which was the only court competent to review SASA.¹¹ Petition before the LCC was effective as there is no indication of an absence of due process.¹² The CJ's statement was restricted to the *morality* of AS' actions rather than their *lawfulness*.¹³ This isolated comment is insufficient to impugn the independence of the Laridaen judiciary.

In relation to the SASA sanctioned individuals, even if there is standing there is certainly no exhaustion of remedies as *no attempt* has been made to challenge these sanctions before Laridaen courts.

Regarding **Claim B**, DC did not appeal to LSC.¹⁴ The decision of the LMC to extend the prescriptive jurisdiction of the LAA extraterritorially was novel and challengeable on appeal to the LSC.¹⁵ There is therefore no exhaustion.

⁷ Art.31(1) RoP; *Interhandel* p.27.

⁸ *Nieto* ¶10.

⁹ *Martínez* ¶34.

¹⁰ Facts ¶30.

¹¹ Facts ¶3.

¹² Art.31(2)(a) RoP.

¹³ Facts ¶22.

¹⁴ Facts ¶¶31,32.

¹⁵ *Juvenile* ¶47.

Regarding **Claim C**, no claims were argued before Laridaen courts and there was no denial of access or unwarranted delay.¹⁶ In respect of the LCC proceedings, HRIW's failure to apply for renewal of its registration in good time¹⁷ should not prevent Laridaen courts from hearing the claim. Smpimpinto's rights could be vindicated by SRA.¹⁸ Furthermore, the delay to SRA's cases is reasonable.¹⁹ Asylum processing times are typically longer than five months.²⁰ In respect of the alleged disappearances, investigations typically take a long time.²¹ As Laridaen has not had the chance to remedy these claims, they are inadmissible.

2. Expiry of claim

Regarding **Claim B** as it relates to SASA sanctioned individuals, the individuals have been sanctioned since 1993,²² so any claims will have expired.²³

¹⁶ Art.31(2)(b),(c) RoP; *Ballesteros*¶28,29; *Torres*¶10; *Fuentes*¶68; *Barão*¶22.

¹⁷ Facts¶29.

¹⁸ Rodríguez-Pinzón p.73.

¹⁹ Facts¶28.

²⁰ Bertoli p.15.

²¹ *Sánchez*¶67.

²² Facts¶7.

²³ Art.32(1) RoP.

IV. Merits

CLAIM A – Laridae did not violate Admiral Seagull’s human rights and SASA is consistent with Laridae’s obligations

Laridae denies any violation of AS’: (1) FoE; (2) RtW; or (3) RtFT.

1. Freedom of expression

The interference AS’ FoE²⁴ was justified (a) and proportionate (b).

(a) Interference justified by NS

FoE can be limited on the basis of NS,²⁵ including combating terror²⁶ by limiting statements that facilitate violence.²⁷

AS has agreed to represent the views of Sternidae and GT, which are associated with Rhakha-Rhaka.²⁸ SASA prevents Rhakha-Rhaka from buying political influence in Lardiaen affairs and infiltrating its political processes to undermine counterterrorism efforts. AS acts as a conduit for their views and this threatens NS.

(b) SASA strikes proportionate balance

²⁴ Art.19(2) ICCPR; Art.9(2) ACHPR, which is similar in substance to the ArCh (Facts¶2).

²⁵ Art.19(3)(b) ICCPR; Art.27 ACMHPR; IACmHR-Terrorism¶277; J-Principles; Good¶187.

²⁶ Leroy¶36.

²⁷ Zana¶¶58-60; MAA¶102; ACmHPR-FoE,¶XIII; Janowiec¶213; CG¶43.

²⁸ Facts¶7,9.

In addition, the limitation was a proportionate means to achieve legitimate NS aims.²⁹ The partial interference with AS' expression is warranted. Firstly, SASA does not ban lobbying but merely requires registration.³⁰ Secondly, various aggravating factors warranted AS' higher sentence: she is a former admiral of Laridae in possession of confidential military information;³¹ and she violated Laridaen maritime law.³² AS' conviction was therefore proportionate.

2. Right to work

The RtW can be limited by law for NS reasons.³³ The interference by SASA was justified for the reasons explained in Section IV.A.1.a above. The balance struck by SASA was proportionate for the reasons mentioned in Section IV.A.1.b.

3. Right to fair trial

There was no violation of AS' RtFT through her: trial in camera; trial by military court; the CJ's statement; or her multiple convictions

(a) Trial in camera

The right to a public trial is subject to a NS exception.³⁴ A private hearing was proportionate because of NS implications. Firstly, state secrets were involved as the offences related to

²⁹ ZLHR¶176.

³⁰ s.6(a),(b) SASA.

³¹ Facts¶4; *Bojolyan*¶57.

³² Facts¶30.

³³ Art.4 ICESCR; Art.15 ACHPR; Saul p.250; *Elgak*¶131; CESSR-GC21¶4; ZLHR¶176.

³⁴ ACmHPR-FT s.A.3(f)(ii); Art.14(1) ICCPR; *Janowiec*¶213; *Yam*¶¶56,58; *MRA*¶53.

AS' role as an Admiral.³⁵ Secondly, disclosure on the surveillance and sanctions regime employed by the LIO was required.³⁶ Thirdly, the intelligence-gathering methods of the LIO in relation to AS' associations with GT were live evidence.³⁷ Fourthly, AS was able to challenge the jurisdiction and procedures of the military court.³⁸

(b) Trial by military court

Military personnel can be tried in military courts for offences relating to their service.³⁹ Civilians can permissibly be tried by military courts for offences which ordinary courts are unable to try.⁴⁰

The conduct for which AS was tried and convicted was her relationship with GT extending to her time in the Navy.⁴¹ This includes the maritime offences as these were committed on the QM, a ship partly owned by GT. Even if she was a civilian, the military court was the only court able to try her while protecting NS as AS' offences related to highly sensitive actions concerning LIO intelligence.⁴² Relevant due process safeguards were implemented as AS was able to appeal to the LSC.⁴³

(c) Statement of the CJ

³⁵ Facts¶4; *M.*¶¶84,103,109; *Jianghua*¶85.

³⁶ *Kennedy*¶¶186-191; Facts¶7.

³⁷ *M.*¶¶103,109; Facts¶7.

³⁸ Facts¶30.

³⁹ *CLO*¶27; Art.7(1)(d) ACMHPR; Art.14(1) ICCPR; *Egypt*¶9.

⁴⁰ *GC32*¶22.

⁴¹ Facts¶4,9,10.

⁴² s.17(b) LAFDRA.

⁴³ Facts¶30.

To be prejudicial,⁴⁴ a statement by a public official must declare the guilt of the accused⁴⁵ rather than merely express condemnation.⁴⁶

The CJ's statement separates 'matters of...law' from 'issues of morality' and comments on AS' actions only in respect of the latter.⁴⁷ In any event, this statement *precedes* AS' relevant actions and so cannot amount to an accusation of guilt.⁴⁸ As such, this statement was not prejudicial.

(d) Multiple convictions

Finally, there was no double jeopardy.⁴⁹ The prohibition on double jeopardy applies only to multiple convictions for the same *offence* rather than the same *conduct*.⁵⁰ In any event, her conviction under s.6(a) SASA was for acting as an agent for *Sternidae* whereas her conviction under s.6(b) was for lobbying on behalf of *GT*.⁵¹

CLAIM B – Laridae did not violate DC's human rights and LAA is consistent with Laridae's international obligations.

1. Right to work

The interference with DC's RtW⁵² was both justified (a) and proportionate (b).

⁴⁴ Art.14(2) ICCPR; Art.7(1)(b) ACHPR.

⁴⁵ *Gebre-Sellaise* ¶193; GC32 ¶30; *Zhuk* ¶8.4.

⁴⁶ *Garycki* ¶71; *J.* ¶24; *Krause* ¶3.

⁴⁷ Facts ¶22.

⁴⁸ Facts ¶25.

⁴⁹ Art.14(7) ICCPR; ACmHPR-FT s.N6–9.

⁵⁰ Art.14(7) ICCPR; GC3 ¶54.

⁵¹ Annex A.

⁵² Art.6(1) ICESCR; Art.15 ACHPR.

(a) Punishment justified

The limitation of DC's RtW was determined by law.⁵³ International law places no limits on the exercise of extraterritorial prescriptive jurisdiction by States absent rules to the contrary.⁵⁴ In any event, Laridae has prescriptive jurisdiction over DC's acts as he is a Laridaen resident.⁵⁵ Alternatively, Laridae has jurisdiction as there was a close connection between QM and Laridae due to prior registration⁵⁶ and the relevant acts has substantial effects in Laridae,⁵⁷ undermining the integrity of s.35(a) LAA.⁵⁸

(b) Proportionate balance

Furthermore, the limitation was proportionate. Smpimpinto's rights are not engaged by the LAA (*i*), and in any event a proportionate balance was struck (*ii*).

i. Smpimpinto's rights not engaged by LAA

As the 'basic foundations of the Laridae legal system' and 'values of AC's human rights system' prioritise of the foetus,⁵⁹ they cannot permit abortions after a foetal heartbeat if mandated by Smpimpinto's right to privacy. Consequently, Laridae's interpretative declaration has the effects of a reservation⁶⁰ and Laridae is not bound by Art.17 ICCPR.

⁵³ Art.4 ICESCR.

⁵⁴ *Lotus* p.19.

⁵⁵ Facts¶6; Brownlie p.443; *Lotus* p.92.

⁵⁶ Facts¶19.

⁵⁷ *Lotus* p.23; *Arrest Warrant* p.77; *Morrison*; *Gencor*.

⁵⁸ Facts¶24.

⁵⁹ Facts¶5; ACmHPR-MM.

⁶⁰ ILC¶1.3.1.

ii. LAA strikes proportionate balance

In any event, the LAA proportionately balances competing rights. There is no general right to an abortion.⁶¹ The denial of abortion is unlawful only where the balance struck between the protection of the foetus⁶² and the rights of the woman is arbitrary.⁶³ This is only in the most exceptional circumstances such as: refusal to apply domestic law permitting an abortion;⁶⁴ forcing a woman to carry an unviable pregnancy to full term;⁶⁵ or criminalising abortion.⁶⁶

The LAA strikes a proportionate balance between the protection of the foetus, a legitimate public morals aim,⁶⁷ and the rights of women. Firstly, the LAA does not prohibit abortions but merely imposes a time limit.⁶⁸ Secondly, it imposes no criminal sanction and no sanction at all on women undergoing the procedure.⁶⁹ Thirdly, a physician may receive civil punishment only in aggravating circumstances as determined by a competent court.⁷⁰ DC's punishment – the cancellation of his practising license but *not* the closure of his practice⁷¹ – was warranted given the abortion's effect in undermining the authority of the LAA.⁷² The limitation of DC's RtW was consequently proportionate.

CLAIM C – Laridae did not violate the human rights of the QMR and its actions are consistent with its international obligations.

⁶¹ GC36¶8; *Mellet(Dis-Op)*¶6.

⁶² ACmHPR-MM.

⁶³ *Mellet*¶7.8.

⁶⁴ *VDA*.

⁶⁵ *Mellet; Whelan*.

⁶⁶ *Mellet*.

⁶⁷ GC34¶25; Saul p.250.

⁶⁸ Annex C.

⁶⁹ contra *Mellet*¶7.4.

⁷⁰ s.35(c) LAA, Annex C.

⁷¹ Facts¶31.

⁷² Facts¶24.

Laridae did not violate IHRL and IRL rights of QMR: on the High Seas (A); in its contiguous zone (B); or within its territory (C).

1. No violations on the High Seas

Laridae did not violate the rights of QMR on the High Seas as it did not have jurisdiction.

(a) Actions of MPA

Jurisdiction is primarily territorial,⁷³ and none of the tests for extraterritorial application are satisfied by the MPA's interrogation and alleged rape of Smpimpinto.⁷⁴ Firstly, at the relevant time, Laridae was not QM's flag state.⁷⁵ Secondly, the personal model is not satisfied because the acts of MPA are not attributable to Laridae. The MPA are not an organ of Laridae⁷⁶ but a private military contractor.⁷⁷ Laridae did not have effective control over the MPA's actions⁷⁸ as the MPA detained Smpimpinto while on holiday, without any instruction.⁷⁹ Mere expression of approval⁸⁰ is insufficient to constitute acknowledgment and adoption.⁸¹

Due to the lack of jurisdiction, Laridae also did not violate the procedural right to redress for victims of torture.⁸² In any event, the AG's refusal to prosecute the alleged perpetrators is

⁷³ Art.2(1) ICCPR; *Al-Asad* ¶134; *Bankovic* ¶59.

⁷⁴ Cf Arts.5,6 ACHPR; Arts.7,9 ICCPR.

⁷⁵ Facts¶19, Art.91(1) UNCLOS.

⁷⁶ Art 4.1 ARSIWA.

⁷⁷ Facts¶16.

⁷⁸ *Nicaragua*¶115; *Bosnia*¶400; Art.8 ARSIWA.

⁷⁹ Facts ¶¶16,18.23.

⁸⁰ Facts¶32.

⁸¹ *Tehran* ¶¶73-4; Art.11 and Commentary ¶6 ARSIWA.

⁸² Art.5 ACHR; Art.7 ICCPR.

lawful. National authorities are entitled to consider the prospect of success of any prosecution.⁸³ On the facts, a prosecution would likely face difficulty due to: the victim's death; the extraterritorial nature of the acts; and the fact that the acts were carried out by non-nationals against a non-national in a flagless vessel.⁸⁴ The AG was accordingly entitled, taking into account expert advice, to decline to take the case forward.

(b) Deaths by drowning

Laridae did not have jurisdiction over QMR at the time of their death by drowning. The firing of missiles does not constitute an exercise of personal control.⁸⁵ Even assuming that Laridae has obligations to all those whose rights it impacts in a direct and foreseeable manner,⁸⁶ jurisdiction cannot be established. The deaths of QMR did not occur due to the aerial attack but indirectly⁸⁷ and so were not reasonably foreseeable.

Even if Laridae had jurisdiction, there was no violation of the RtL.⁸⁸ In a NIAC, the deprivation of life is arbitrary only if it violates IHL.⁸⁹ Laridae and Rhakha-Rhaka were engaged in a NIAC.⁹⁰ IHL therefore applied, and the missile strikes conformed with it. Firstly, the attacks did not target civilians.⁹¹ Secondly, the attack was not indiscriminate⁹² as hell-fire missiles are precision strike weapons.⁹³ Thirdly, the strike was not disproportionate⁹⁴ as the loss of

⁸³ *Brecknell* ¶71; *Armani* ¶238.

⁸⁴ *Facts* ¶¶16-19,29.

⁸⁵ *Bankovic* ¶74-75; *Georgia* ¶132-133.

⁸⁶ GC36 ¶63; OC-23/17 ¶101; ACmHPR-GC3 ¶14.

⁸⁷ Kalshoven, p.45.

⁸⁸ Art.4 ACHR; Art.6 ICCPR.

⁸⁹ GC36 ¶64; ACmHPR-GC3 ¶32.

⁹⁰ *Facts* ¶¶8,10,44,20; *Tadic* ¶70.

⁹¹ Rule.1 ICRC-CS.

⁹² Rule.11 ICRC-CS.

⁹³ Schmitt p.448.

⁹⁴ Rule.14 ICRC-CS.

civilian life was indirect.⁹⁵ In any case, the loss was not excessive in relation to the military advantage gained by recapturing the ships in light of Rhakha-Rhaka's threat to Laridae.⁹⁶

Even if there was no NIAC at the relevant time, Laridae did not violate the RtL. The missile strike was a necessary and proportionate action taken by Laridae to meet its obligations to protect the RtL of Laridaen citizens.⁹⁷

2. No violations in contiguous zone

Laridae did not violate the RtL⁹⁸ or RtH⁹⁹ of QMR affected by food and medical shortages.

Firstly, Laridae does not have jurisdiction. Laridae has insufficient spatial control over its contiguous zone.¹⁰⁰ Jurisdiction cannot be established under the causal test as the deaths were not caused by Laridae in a direct and reasonably foreseeable manner.¹⁰¹

In any event, the claims concern omissions rather than acts, and the positive obligation under the RtL is limited.¹⁰² Even if a positive obligation exists, there is no direct causal link between Laridae and the deaths.¹⁰³ The more direct cause was AS' refusal to travel to Wahala.¹⁰⁴ Laridae's positive obligations under the RtH are limited by practical realisability,¹⁰⁵ and the delay was necessary to safeguard Laridae's NS.

⁹⁵ Gillard p.13; Kalshoven p.45.

⁹⁶ Facts¶¶8,14,32.

⁹⁷ GC36¶21; Facts¶¶8,20,32.

⁹⁸ Art.4 ACHR; Art.6 ICCPR.

⁹⁹ Art.16 ACHR; Arts.11,12 ICESCR.

¹⁰⁰ Art 33(1) UNCLOS.

¹⁰¹ GC36¶63; OC-23/17¶101; ACmHP-GC3¶14; Facts¶21.

¹⁰² *Molie*¶44.

¹⁰³ *Scavuzzo-Hager*¶¶55-63.

¹⁰⁴ Facts¶26.

¹⁰⁵ *Purohit*¶74.

3. No violations in Lardiae's territory

There were no violations of IRL or IHRL in Laridae's territory.

(a) QMR are not IRL refugees

Firstly, Laridae did not violate IRL because "QMR" are not 'refugees' under the RC.¹⁰⁶ Any fear of persecution of Sternidae nationals is not for a reason listed in the RC. A fear of indiscriminate violence arising from civil conflict is not covered.¹⁰⁷ In any event, there is an internal protection alternative.¹⁰⁸ Secondly and in any event, those persons with criminal records of violence¹⁰⁹ are excluded from refugee status.¹¹⁰ Therefore, Laridae did not *refoul* the individuals by deporting them to Sternidae.

(b) No IRL or IHRL violations

Alternatively, even if those aboard QM were refugees, Laridae did not violate their rights under IRL. There were also no IHRL violations.

i. Non-refoulement and mass expulsion

The persons with serious criminal records who were deported were not *refouled*¹¹¹ as they were given the option to go to Wahala.¹¹² Alternatively, the deportation was covered by the

¹⁰⁶ Art.1A RC.

¹⁰⁷ *Adan* pp.311-312.

¹⁰⁸ Facts¶8; *Januzi*¶63.

¹⁰⁹ Facts¶27,32.

¹¹⁰ Art.1F(b) RC.

¹¹¹ Art.33(1) RC.

¹¹² UNHCR-HB¶54.

exceptions to the prohibition.¹¹³ Firstly, some of the persons on board the QM were members of Rhakha-Rhaka,¹¹⁴ and thus threatened Laridae's NS.¹¹⁵ Secondly, violent offences and particularly terrorist activities fall within the public order exemption.¹¹⁶ The deportations accordingly did not constitute *refoulement*. They also did not constitute a mass expulsion.¹¹⁷

ii. Religion and non-discrimination

Laridae did not violate the right to free practice of religion¹¹⁸ of QMR who converted to Arc. Those who converted did so independently and without coercion.¹¹⁹

Laridae also did not violate the non-discrimination principle¹²⁰ by releasing only Arc convertees from immigration camps. The difference in treatment between the two groups is justified,¹²¹ as it is a proportionate means of preserving Laridean NS by detaining potential Khara terrorists while ensuring that other individuals are detained no longer than necessary.¹²²

iii. Right to liberty

The placement of QMR in immigration camps does not constitute a violation of the right to liberty.¹²³ Both IHRL and IRL allow for the use of immigration detention¹²⁴ so long as it is not

¹¹³ Art.33(2) RC.

¹¹⁴ Facts¶20.

¹¹⁵ *Suresh*¶¶88, 90; Facts¶¶8,14,20,32.

¹¹⁶ *Zaou*¶42; Hathaway pp.413ff.

¹¹⁷ Art.12(5) ACHR; *OMC*¶33,

¹¹⁸ Art.8 ACHR; Art.18 ICCPR.

¹¹⁹ *GC22*¶5; *Joseph*¶¶2.2, 7.2; *Kokkanis*¶31; *Kang*¶7.3.

¹²⁰ Art.3 RC; Arts.2,3 ACHR; Art.26 ICCPR.

¹²¹ *INTERRIGHTS*¶¶147-148.

¹²² *Markin*¶137.

¹²³ Art.6 ACHR, Art.9 ICCPR.

¹²⁴ *Khalifa*¶89; Art.31(2) RC.

arbitrary.¹²⁵ The interference with the right is not arbitrary as detention: has not been indefinite or prolonged;¹²⁶ has occurred in response to a heightened arrival of asylum seekers;¹²⁷ and is designed to protect NS.¹²⁸

iv. Privacy and family rights

Laridae does not violate the rights to privacy¹²⁹ and protection of the family¹³⁰ of QMR. The interference with the right is justified due to the need to ensure the safety of the camp residents. The child's interests are particularly relevant in the proportionality assessment,¹³¹ and it may be necessary to separate children from adult detainees for their safety.¹³² Given that Rhakha-Rhaka¹³³ members are present in the camp, separating men, women and children temporarily is proportionate.¹³⁴

¹²⁵ *Saad* ¶¶64-66.

¹²⁶ *A* ¶9.2; *Facts* ¶27.

¹²⁷ *ZA* ¶162.

¹²⁸ *Art.9 RC*; *UNHCR-DG* ¶30; *Facts* ¶¶18, 20.

¹²⁹ *Art.17 ICCPR*.

¹³⁰ *Art.18 ACHR*; *Art.23 ICCPR*.

¹³¹ *Popov* ¶140.

¹³² *HRC-Greece* ¶31.

¹³³ *Facts* ¶¶18,20.

¹³⁴ *Facts* ¶28.

V. REMEDIES

Considering that Laridae is not responsible for any alleged violation of IHRL, it humbly requests this Court to declare that no reparations be awarded.

VI. PRAYER FOR RELIEF

The applicant humbly prays that the Court:

- a) Declare the claims to be inadmissible; or
- b) Declare that
 - a. Admiral Seagull's conviction did not violate her human rights and SASA is consistent with Laridae's international obligations;
 - b. the cancellation of Dr Cioppino's practicing license did not violate his human rights and the LAA is consistent with Laridae's obligations; and
 - c. Laridae did not violate the rights of the Queen Mellissa Refugees under either IHRL or IRL.

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- Summary of Arguments: 340
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