Table of Contents

[INDEX OF AUTHORITIES:- 4](#_Toc473707321)

[LIST OF ABBREVIATIONS:- 7](#_Toc473707322)

[STATEMENT OF JURISDICTION:- 8](#_Toc473707323)

[STATEMENT OF FACTS 9](#_Toc473707324)

[ARGUMENTS PRESENTED: 11](#_Toc473707325)

[SUMMARY OF ARGUMENTS: 12](#_Toc473707326)

[ARGUMENTS ADVANCED:- 13](#_Toc473707327)

[ISSUE 1: 13](#_Toc473707328)

[DOES INTERNATIONAL COURT OF JUSTICE HAVE JURISDICTION OVER THE PRESENT DISPUTE? 13](#_Toc473707329)

[The local remedies available were not exhausted:- 13](#_Toc473707330)

[Gholum, the respondent state, did not give consent to be bound by the jurisdiction of International Court of Justice:- 14](#_Toc473707331)

[ISSUE 2: 15](#_Toc473707332)

[WHETHER SECTION 12 EITHER BY APPLICATION OR BY ACTION OF THE STATE OF GHOULUM VIOLATES INTERNATIONAL LAW? 15](#_Toc473707333)

[There is no Bilateral Investment Treaty between the state of Ghoulum and Turencia: 15](#_Toc473707334)

[Application of section 12 does not violate international law as it imposes reasonable restrictions on the rights of the people:- 16](#_Toc473707335)

[The actions of the state of Ghoulum are completely justified as they were done in pursuance of a legitimate aim. 17](#_Toc473707336)

[ISSUE 3:- 18](#_Toc473707337)

[WHETHER ILAI LAW VIOLATES HUMAN RIGHTS LAW AND BREACHES ITS OBLIGATION UNDER INTERNATIONAL LAW? 18](#_Toc473707338)

[The restrictions Ilia law impose on the rights of the people are reasonable in nature and were in pursuance of legitimate aims:- 18](#_Toc473707339)

[The measures undertaken by the state of Ghoulum under Ilia law are necessary and does not constitute breach of Ghoulum’s obligation under international law:- 20](#_Toc473707340)

[ISSUE 4: 22](#_Toc473707341)

[WHETHER THE COMMENT MADE BY ROBIN PESTOS BE CONSIDERED AS SEDITIOUS? 22](#_Toc473707342)

[Right to freedom of speech and expression is subject to certain restrictions: 22](#_Toc473707343)

[Robin Pestos’s comments amount to threat to national security and peace; 23](#_Toc473707344)

[ISSUE 5:- 24](#_Toc473707345)

[WHETHER ROBIN PESTOS SHOULD BE EXTRADITED TO TURENCIA? 24](#_Toc473707346)

[There is no extradition treaty between Ghoulum and Turencia and so Ghoulum is not obliged to extradite him:- 24](#_Toc473707347)

[Robin Pestos has committed the offence within the domestic territory of Ghoulum so his trial should take place in Ghoulum only:- 25](#_Toc473707348)

[Robin Pestos is accused of a pure political offence:- 25](#_Toc473707349)

[PRAYER 27](#_Toc473707350)

# INDEX OF AUTHORITIES:-

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Case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras) 10

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Statutes

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# LIST OF ABBREVIATIONS:-

¶…………………………………………...... Paragraph

ACHR………………………………..... African Convention on Human and Peoples’ Rights

ACHPR………………………………….…. African Court of Human and Peoples’ Rights

ACHR………………………………………..American Convention on Human Rights

Art…………………………………………....Article

cl…………………………………………….. Clause

EC…………………………………………… European Council

EU…………………………………………… European Union

ECHR ………………………………………..European Convention on Human Rights

ECtHR………………………………………. European Court of Human Rights

ECmHr………………………………………..European Commission of Human Rights

EHRR………………………………………... European Human Rights Reports

HRC ………………………………………….Human Rights Committee

IACHR……………………………………… Inter-American Court of Human Rights

ICCPR ………………………………...International Covenant on Civil and Political Rights

TNN……………………………………………Turencia News Network

UDHR………………………………………....Universal Declaration of Human Rights

UK………………………………………….... United Kingdom

UN…………………………………………… United Nations

US……………………………………………. United States of America

# STATEMENT OF JURISDICTION:-

The Republic of Turencia and the State of Ghoulum have agreed to submit the present dispute to the International Court of Justice in compliance with Article 40(1) and Article 36(1) of the Statute of this Court. The jurisdiction of the Court is being contested by the State of Ghoulum. This court is competent to determine its own jurisdiction in accordance with Article 36(6) of its Statute.

# STATEMENT OF FACTS

**BACKGROUND-**

The Kingdom of Ghoulum is a country in the Southern hemisphere which is ruled by King(military monarch) and as per Illia religion, which is professed in the kingdom, he is the representative of God on Earth. The Democratic Republic of Turencia is a country in the Northern hemisphere which is an ethnically diverse and secular nation, staunchly advocating individual liberty.

**INVESTMENT IN GHOULUM**

On 21st April, 2010 King Praksheshi had a fruitful meeting with the head of TNN News network and Robin Pestos perceived Ghoulum as an excellent investment destination after an assurance by the King on his baseless assumptions, moreover Kingdom gave him a plot of 45 acres of land to him to set up his office and conduct his business.

**DISREGARD OF THE LAW OF GHOULUM**

In return of the friendship gesture of the kingdom of Ghoulum TNN stabbed the respondents on the back when on 1st January 2016 News network broadcasted a programme which was prima facie violative of Section 12 of IT Act of Ghoulum and the anchor of the programme Robin Pestos committed an offence of Sedition under Section 23B of Ghoulum Criminal Code(GCC) by exciting disaffection towards King.

**LEGAL ACTION OF GHOULUM**

Law took its own course after the sheer violation of the laws of the Ghoulum and as per IT Act of the kingdom offices and the property of the accused was sealed and the head of the organization was arrested on the ground of the offence of sedition, this action was in consonance of the law of the land to which the native state of the offending organization and the individual terms as in derogation of International Laws and therefore the Kingdom of Ghoulum as respondents asks this Hon’ble court to adjudge the matter.

# ARGUMENTS PRESENTED:

1. The International Court of Justice does not have jurisdiction over the current dispute.
2. Application of section 12 and Ghoulum’s action under it do not violate human rights law.
3. Ilia law in Ghoulum does not violate international customary law.
4. Comments by Robin Pestos amount to sedition under section 23B of Ghoulum criminal code.
5. Robin Pestos should not be extradited to Turencia for fair trial.

# SUMMARY OF ARGUMENTS:

1. It is contended that International Court of Justice does not have jurisdiction over the present dispute because the local remedies available were not exhausted and Gholum, the respondent state, did not give consent to be bound by the jurisdiction of International Court of Justice.
2. It is contended that the application of section12 and the actions by the state of Ghoulum do not constitute as breach of international law because there is no Bilateral Investment Treaty between the state of Ghoulum and Turencia, application of section 12 does not violate international law as it imposes reasonable restrictions on the rights of the people and the actions of the state of Ghoulum are completely justified as they were done in pursuance of a legitimate aim.
3. It is contended before the court that that Ilia law does not violate and its continuous application does not breach any of Gholum’s international obligation because the restrictions it impose on the rights of the people are reasonable in nature and were in pursuance of legitimate aims and the measures undertaken by the state of Ghoulum under Ilia law are necessary and does not constitute breach of Ghoulum’s obligation under international law
4. . It is contended that the comment made by Robin Pestos are seditious in nature because right to freedom of speech and expression is subject to certain restrictions and Robin Pestos’s comments amount to threat to national security and peace.
5. It is contended before the court that Robin Pestos should not be extradited to Turencia in because there is no extradition treaty between Ghoulum and Turencia and so Ghoulum is not obliged to extradite him, Robin Pestos has committed the offence within the domestic territory of Ghoulum so his trial should take place in Ghoulum only, and Robin Pestos has committed a pure political offence.

# ARGUMENTS ADVANCED:-

## ISSUE 1:

## DOES INTERNATIONAL COURT OF JUSTICE HAVE JURISDICTION OVER THE PRESENT DISPUTE?

It is contended that International Court of Justice does not have jurisdiction over the present dispute because *the local remedies available were not exhausted* **[1]***, and Gholum, the respondent state, did not give consent to be bound by the jurisdiction of International Court of Justice* **[2]***.*

### The local remedies available were not exhausted:-

It is submitted before the court that the state of Turencia is approaching the International Court of Justice without prior exhaustion of local remedies available at Gholum.[[1]](#footnote-1) In the current dispute Turencia is advocating the claim of its subjects by exercising diplomatic protection which enables a state to take up the claims of its subjects when the rights of its subjects are violated by another state.[[2]](#footnote-2)

Non-exhaustion of domestic remedies is a ground for inadmissibility of a matter in international courts according to the rules of customary international law.[[3]](#footnote-3) Also it must be noted that exhaustion of domestic remedies is an essential which shall be satisfied before diplomatic protection is sought.[[4]](#footnote-4) If we go into the jurisprudence of International Court of Justice it will be found that there have been cases where the court dismissed the matter on the basis of jurisdiction because the applicant state exercised diplomatic protection without the exhaustion of domestic remedies available in the respondent state.[[5]](#footnote-5)

From the facts of the case it can be concluded that after failure of ministerial level talks and growing pressure from international community to resolve the dispute expeditiously[[6]](#footnote-6) Turencia and Gholum agreed to refer the dispute to the International Court of Justice. Here neither any of the local legal remedies available were exhausted nor did the state of Gholum expressly waive the requirement that local remedies must be exhausted. Thus, the International Court of Justice does not have jurisdiction over the current dispute.

### Gholum, the respondent state, did not give consent to be bound by the jurisdiction of International Court of Justice:-

The jurisdiction of the ICJ depends on the consent of the States.[[7]](#footnote-7) In its previous holdings too this esteemed court has declared lack of jurisdiction on its part because one of the parties to the dispute did not give its consent to be bound by court’s jurisdiction.[[8]](#footnote-8)

A special agreement must be read in light of Article 31(1) of the Vienna Convention on the Law of Treaties which provides that it must be interpreted in good faith.[[9]](#footnote-9) Also it must be noted that both Turencia and Gholum are parties to Vienna Convention on the Law of Treaties.[[10]](#footnote-10)

Gholum consented to adjudication upon the matter of preliminary objections and not upon the jurisdiction of the ICJ in itself. In light of the principle of good faith the special agreement must be interpreted according to the object and intention of the parties[[11]](#footnote-11) which included contesting upon the jurisdiction of this esteemed Court. Thus, it is submitted before this hon’ble court that Gholum did not consent to be bound by its jurisdiction and accordingly the International Court of Justice should pronounce lack of jurisdiction in accordance with the article 36(6) of its statute.[[12]](#footnote-12)

Therefore, the International Court of Justice lacks jurisdiction in the current dispute because the local remedies available in Gholum were not exhausted before the International Court of Justice was approached and Gholum did not give its consent to be bound by the jurisdiction of International Court of Justice.

## ISSUE 2:

## WHETHER SECTION 12 EITHER BY APPLICATION OR BY ACTION OF THE STATE OF GHOULUM VIOLATES INTERNATIONAL LAW?

It is contended that the application of section12 and the actions by the state of Ghoulum do not constitute as breach of international law because *there is no Bilateral Investment Treaty between the state of Ghoulum and Turencia* **[1]**, *application of section 12 does not violate international law as it imposes reasonable restrictions on the rights of the people* **[2]** and *the actions of the state of Ghoulum are completely justified as they were done in pursuance of a legitimate aim* **[3]**.

### There is no Bilateral Investment Treaty between the state of Ghoulum and Turencia:

Bilateral investment treaties are signed between two countries, which enumerate the terms and conditions of investment and trade of one state in another one.[[13]](#footnote-13) Bilateral treaty will create treaty obligation on both the parties and as it is established principle of international law that a treaty is legally binding upon its parties.[[14]](#footnote-14) According to the international customs, all terms and conditions of investment and trade are written and accepted in the Bilateral Investment Treaty including the clause protecting the alien investors from expropriation.[[15]](#footnote-15)

It is submitted before the court that there is no Bilateral Investment Treaty between Turencia and Ghoulum and so it did not violate any of its obligations under international law. There was no legal force which could have restrained Ghoulum from taking necessary steps under a demanding situation. It is brought to the court’s attention that absence of Bilateral Investment Treaty implies that there is no treaty obligation upon Ghoulum and it is empowered to do what it deemed to be suitable in the interest of public security and safety.

Therefore, since there is no Bilateral Investment Treaty between Ghoulum and Turencia, Ghoulum is not under any treaty obligation to not to expropriate Turencia’s property.

### Application of section 12 does not violate international law as it imposes reasonable restrictions on the rights of the people:-

Firstly, the court’s attention is invited to the principle of international law according mere failure to conform to international standards in a legislation in itself is not breach of international obligation but to not to observe those standards on a specific occasion is.[[16]](#footnote-16)

In the light of this, even if it assumed that the section 12 of Information and Broadcasting Act failed to meet the international standards it is submitted that the state of Ghoulum did not breach any of its international obligation as in this case it imposed reasonable restrictions and undertook necessary steps in the interest of public order and national security. These are considered as legitimate aims to impose a restriction.[[17]](#footnote-17)

Also a government is empowered to take necessary steps to maintain the peace and functioning of the nation. In this case to the state of Ghoulum was justified in undertaking such restrictive measures because the aftermath of Robin Pestos’s show telecast was massive uproar and the people even sought after violent measures[[18]](#footnote-18) which threatened the public order and safety. In that situation the state of Ghoulum undertook the necessary measure to avoid more harm and thus they are justified in their actions.

Also, freedom of expression may be infringed where there is an imminent probability that the statement will cause real and severe damage to public order.[[19]](#footnote-19) Under American Jurisprudence, prior restraint is not unconstitutional.[[20]](#footnote-20) A journalist might be asked to corroborate his source of information, if it doesn’t place any unreasonable restriction on the right to freedom of speech and expression.[[21]](#footnote-21)

The way in which section 12 was applied is justified because there was an imminent danger to public order as the telecast of the Pestos’s speech was followed by an unprecedented series of violent protest and there was an imminent threat to public security and the freedom was curbed to avoid more chaos.

Therefore, it is submitted before the court that the restriction imposed by section 12 and the measures which the government undertook through the means of this legislation are justified as they were undertaken to avoid greater harm which could have been caused. Clearly there was a threat to nation’s stability and such restrictive measures were called for.

### The actions of the state of Ghoulum are completely justified as they were done in pursuance of a legitimate aim.

A restriction imposed on the human rights of the people is justified if it is done in pursuance of a legitimate aim.[[22]](#footnote-22) An action taken in the interest of national security, public order and territorial integrity is considered to be an action in pursuance of a legitimate aim.

In this case, it submitted before the court that there was an imminent threat to the national security, territorial integrity and public order in Ghoulum. As apparent from the facts of the case, that the speech delivered by Robin Pestos caused a lot of disruption and distress. People in Ghoulum went violent and burned effigies of the king.[[23]](#footnote-23) There were even demands by a sector of population for the king to step down which might lead to political unstability in Ghoulum. There were instances of stone pelting at the law enforcement units and on two separate occasions there vehicles were torched. All of these facts signify that Ghoulum was left in a volatile situation which demanded for immediate actions from government’s part.

Therefore, the actions of Ghoulum are completely justified as they were done in pursuance of legitimate aims in the interest of public order, national security and territorial integrity.

Thus, it can concluded that the state of Ghoulum was reasonable in its action and the application of section 12 does not breach any of the Ghoulum’s obligations under international law neither does it violate any principle of human right law.

## ISSUE 3:-

## WHETHER ILAI LAW VIOLATES HUMAN RIGHTS LAW AND BREACHES ITS OBLIGATION UNDER INTERNATIONAL LAW?

It is contended before the court that that Ilia law does not violate and its continuous application does not breach any of Gholum’s international obligation because *the restrictions it impose on the rights of the people are reasonable in nature and were in pursuance of legitimate aims* **[1]** *and the measures undertaken by the state of Ghoulum under Ilia law are necessary and does not constitute breach of Ghoulum’s obligation under international law* **[2]***.*

### The restrictions Ilia law impose on the rights of the people are reasonable in nature and were in pursuance of legitimate aims:-

It is contended that the restrictions imposed by Ilia law are reasonable in nature and were in pursuance of legitimate because it pursues the legitimate aims of (a) national security (b) public order.

#### The restriction is in the interest of national security:-

The consideration of national security justifies a restriction on free speech[[24]](#footnote-24) which even includes prior restraint.[[25]](#footnote-25) National security is defined as the measurable state of the capability of a nation to overcome the multi-dimensional threats to the apparent well-being of its people and its survival as a nation-state at any given time, by balancing all instruments of state policy through governance.[[26]](#footnote-26) Restriction of freedom of speech and expression is also justified if it restricts a speech which may threaten national security and may incite violence.

It is submitted before the court that there was threat to political stability of the state in this matter and well-being of its people in this case. The restriction imposed should be assessed after considering the content and context.[[27]](#footnote-27) As apparent from the facts of the case that the speech by Robin Pestos followed an unprecedented reaction by the crowd and some of the people were even demanding that the king should step down.[[28]](#footnote-28) Even if we consider that this law not in conformity with international standards, it does not constitute breach of obligation and failure to observe that obligation on a specific occasion constitutes a breach.[[29]](#footnote-29) In this case the measures undertaken by the state of Ghoulum were called for, as there was a threat to national security of Ghoulum.

Therefore, it is concluded that the restriction imposed by Ilia law are justified as they are in pursuance of the legitimate aim in the interest of national security. Clearly, there was a threat to national security and the restrictions hence imposed are justified and in this situation were called for.

#### The restriction is in the interest of public order:-

Public order is a legitimate aim for restricting the rights guaranteed under Articles 19 and 20.[[30]](#footnote-30) Broadly, it includes the ‘sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded’.[[31]](#footnote-31)

In this case, it is submitted that the functioning of the society was disrupted in this case and a pandemonium broke after the Robin Pestos’s show got telecasted. The people adopted violent means and even stoned pelted the police officers in the course of protest.[[32]](#footnote-32) The measures undertaken by the state were clearly in the interest of public order and the restrictions imposed by the legislation were in pursuance of this aim only.

In the times of distress the state is empowered to undertake necessary measures and impose restriction to safeguard the public order and avoid more violence. In this case, the measures which were undertaken by the state of Ghoulum were a means to avoid more violence and to maintain public order.

Therefore, the restriction imposed by the state of Ghoulum were justified on the ground that those restrictions were imposed in the interest of public order and to avoid worsening of the situation which came into existence after Robin Pestos’s speech.

Therefore, after taking into account the above submissions according to which the restrictions imposed and measures undertaken were in pursuance of legitimate aims and were in the interest of national security and public order. The speech delivered by Robin Pestos’s was followed by an episode of protests which were violent in nature and which disrupted the functioning of the society and in order to avoid further chaos the measures undertaken were justified.

### The measures undertaken by the state of Ghoulum under Ilia law are necessary and does not constitute breach of Ghoulum’s obligation under international law:-

It is contended that the measures undertaken by the state of Ghoulum under Ilia law are necessary and the state is empowered to take necessary steps if the situation is such which poses an imminent threat. Imminent threat in this context is defined as being "*instant, overwhelming, and leaving no choice of means, and no moment for deliberation.*"[[33]](#footnote-33) It must also be noted that the steps undertaken under necessity should be such that the harm caused due to that must be to avoid a greater harm.[[34]](#footnote-34)

In this case it is submitted before the court that the measures undertaken by Ghoulum are justified as there was an imminent threat to public order and national security. The government of Ghoulum was left in a situation where it had to take immediate actions to curb the massive chaos which followed the speech of Robin Pestos. The people sought after violent measures and this situation was caused instantaneously.

Also it is submitted before the court that the steps undertaken by the state of Ghoulum were justified as they were done to prevent further chaos which could have happened. The situation in which those measures were undertaken demanded immediate action and it was done to prevent a greater harm and to avoid more violence. If the proportionality of the measure is considered then it will be found that to avoid violence and violent protest the measures undertaken were completely proportionate and nothing was done in excess.

Therefore, it is submitted that the measures undertaken by the state of Ghoulum through the means of Ilia law were justified as they were performed under necessity. The government in order to avoid greater harm took those steps and these steps were proportionate.

Thus, based on above submission it is concluded that Ilia law does not violate the human rights of its subject and do not breach its obligation under international law because they were done in the interest of public order and national security and the steps undertaken through the means of Ilia law were necessary keeping in mind the pandemonium which broke out after Robin Pestos’s show was telecasted.

## ISSUE 4:

## WHETHER THE COMMENT MADE BY ROBIN PESTOS BE CONSIDERED AS SEDITIOUS?

It is contended that the comment made by Robin Pestos are seditious in nature because *right to freedom of speech and expression is subject to certain restrictions* **[1]** and *Robin Pestos’s comments amount to threat to national security and peace* **[2]**.

### Right to freedom of speech and expression is subject to certain restrictions:

It is submitted before this court, that the freedom of speech guaranteed is not an absolute right, and is subject to a few restrictions. The right to freedom of speech and expression is subject to certain restrictions in the interest of rights and reputations of others[[35]](#footnote-35) or if there is a threat to public order and national security.[[36]](#footnote-36)

In this case, it is submitted before the court that Robin Pestos’s comment are not covered under right to freedom of speech and expression because his speech sparkled the protest which over the time grew violent in nature and caused threat to national security and public order. Also in the course of his speech he even personally attacked the king based on an unauthentic report. He in his comments made some derogatory remarks about the king which did bring *‘hatred and disaffection[[37]](#footnote-37)’* towards him. This can be deduced from the fact that in the course of protest his effigies were burned and a section of people wanted him to step down.[[38]](#footnote-38)

Therefore, the comments made by Robin Pestos do not come under the purview of right to freedom of speech and expression because his comments disturbed public stability and due to the reason that he personally attacked king Praksheshi.

### Robin Pestos’s comments amount to threat to national security and peace;

It is of essential importance to note that a person will exceed his right to free speech if the if his speech incites violence.[[39]](#footnote-39) The consideration of national security even empowers the government of a state to impose certain restrictions of the right of the people.[[40]](#footnote-40)

The UN Special Rapporteur set out four categories of content, that must be prohibited and states are required to do that domestically on of them being: ‘Advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.’[[41]](#footnote-41)

In this case, it is submitted before this court, that after the comments made by Mr. Pestos were broadcasted, there was a wave of discontent amongst the citizens of the Kingdom of Ghoulum who protested against the government and King Praksheshi. At some instances the protests turned violent, posing a threat to the security of the Kingdom.

Therefore, comments made by Robin Pestos can be considered as threat to national security and peace as his comment caused a lot of disruption and violence.

Thus, Robin Pestos is liable for sedition under Article 23B of Ghoulum Criminal Code as his speech is not covered under right to free speech and his comment can be considered as threat to national security and peace.

## ISSUE 5:-

## WHETHER ROBIN PESTOS SHOULD BE EXTRADITED TO TURENCIA?

It is contended before the court that Robin Pestos should not be extradited to Turencia in because *there is no extradition treaty between Ghoulum and Turencia and so Ghoulum is not obliged to extradite him* **[1]**, *Robin Pestos has committed the offence within the domestic territory of Ghoulum so his trial should take place in Ghoulum only* **[2]**, and *Robin Pestos has committed a pure political offence* **[3]**.

### There is no extradition treaty between Ghoulum and Turencia and so Ghoulum is not obliged to extradite him:-

Extradition is the formal surrender of a person by one State (the 'requested State') to the authorities of another (the 'requesting State') for the purpose of criminal prosecution or the enforcement of a sentence.[[42]](#footnote-42) It is a form of legal assistance between States, granted on the basis of a bilateral or multilateral treaty or by ad hoc agreement and does not exist as an obligation upon states in customary law.[[43]](#footnote-43) International Law does not establish a general duty to extradite.[[44]](#footnote-44) Such obligation exists only on the basis of bilateral or multilateral extradition agreements, or if the requested State is a party to an International Instrument which institutes a duty to extradite.[[45]](#footnote-45)

In the current dispute there is no extradition treaty between Turencia and Ghoulum[[46]](#footnote-46) and they are also not part of any multilateral treaty which might impose such obligation on them. Therefore, Ghoulum is not under an obligation to extradite Robin Pestos to Turencia.

### Robin Pestos has committed the offence within the domestic territory of Ghoulum so his trial should take place in Ghoulum only:-

In Lotus Case[[47]](#footnote-47), PCIJ in its judgement laid down certain principles for the purpose of determination of jurisdiction over a particular matter. One of those principles was territorial principle of jurisdiction according to which a sovereign state can prosecute criminal offences that are committed within its borders.[[48]](#footnote-48)

In this case, the speech which was delivered by Robin Pestos is the cause of action. This speech was delivered by Robin Pestos in the domestic territory of Ghoulum.[[49]](#footnote-49) If the territorial principle of jurisdiction is applied in this case it will be concluded that Robin Pestos’s trial should take place in Ghoulum as the crime he is accused of was committed by him within the domestic territory of Ghoulum and subsequently should not be extradited to Turencia.

Therefore, in the light of territorial principle of jurisdiction, it is concluded that Robin Pestos should not be extradited to Turencia and his trial should take place in Ghoulum itself.

### Robin Pestos is accused of a pure political offence:-

Since the mid-19th century, bilateral agreements and national legislation have regularly incorporated the notion that extradition shall be refused if the requested State considers that the offence for which it is sought is of a political nature.[[50]](#footnote-50) Political offence includes acts such as treason, sedition, lèse-majesté, espionage and it gives rise to the refusal of extradition, as are direct assaults on the integrity or security of the State.[[51]](#footnote-51) It has now become a binding rule of customary international law.[[52]](#footnote-52) Such offences impose an obligation on the requested state to not extradite the offender to the requesting state because of fear of political persecution.[[53]](#footnote-53)

It is submitted before the court that Robin Pestos is accused under section 23 of Ghoulum Criminal Code which defines the offence of sedition.[[54]](#footnote-54) As previously noted that the crime of sedition is considered as a pure political crime and extradition for it cannot be sought.

Therefore, it is concluded that Robin Pestos cannot be extradited to Turencia as he is accused of a pure political crime which is a ground for refusal of extradition.

# PRAYER

In the light of the issues raised, arguments advanced authorities cited the agent for the Respondent humbly prays that the Hon’ble Court be pleased to adjudge and declare:

1. That the court does not have jurisdiction over the present dispute OR
2. That IT Act of Ghoulum is in consonance of International Law,
3. That Illia law in Ghoulum does not violates its obligations of International Law,
4. That the speech by Robin Pestos amounts to sedition AND
5. That Robin Pestos should not be extradited to Turencia.

And pass any order it may deem fit in the interest of justice, equity and good conscience.

1. James Crawford and Ian Brownlie, Brownlie’s Principles of Public International Law (Oxford University Press, 8th ed. 2012). [↑](#footnote-ref-1)
2. United Nations, *Draft Articles on Diplomatic Protection, with Commentaries, Adopted in 2006* (2006). [↑](#footnote-ref-2)
3. Switzerland v. U.S., 1959 I.C.J. 6 (Interhandel Case); Greece v United Kingdom, 1952 ICJ 1(Ambatielos Case); Finland v. United Kingdom (1934) 3 R.I.A.A. 1479; United Nations, *Draft Articles on Diplomatic Protection, with Commentaries, Adopted in 2006* (2006). [↑](#footnote-ref-3)
4. *supra* note 2. [↑](#footnote-ref-4)
5. ¶ 21, Moot Problem. [↑](#footnote-ref-5)
6. ¶ 18, Moot Problem. [↑](#footnote-ref-6)
7. Case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras) (Jurisdiction and Admissibility), 1988 I.C.J 69 at 109 [hereinafter Armed Action case]; The case of the Monetary Gold Removed from Rome (Italy v. France, UK and USA) (Preliminary Question) 1954 I.C.J 19. [↑](#footnote-ref-7)
8. Legality of Use of Force (Yugoslavia v. United States of America) 1999 I.C.J 33. [↑](#footnote-ref-8)
9. Vienna Convention on the Law of Treaties, 1969, 1155 U.N.T.S. 331. [↑](#footnote-ref-9)
10. ¶ 20,Moot Problem. [↑](#footnote-ref-10)
11. Case of the Free Zones of Upper Savoy and the District of Gex (France v. Switzerland), PCIJ, Ser. A., No. 22 at 13; Question concerning the Acquisition of Polish Nationality, PCIJ (1923), Series B, No. 7 at 16-17, Exchange of Greek and Turkish Population (Greece v. Turkey), PCIJ (1925), Series B, No. 10, p. 25. Norman Kogan, United Nations—Agent Of Collective Security?, 61 Yale L.J. 1. [↑](#footnote-ref-11)
12. Statute of the International Court of Justice, Oct. 24, 1945, 832 U.S.T.S. 993. [↑](#footnote-ref-12)
13. Jarrod Wong, "Umbrella Clauses In Bilateral Investment Treaties: Of Breaches of Contract, Treaty Violations, and the Divide Between Developing and Developed Countries In Foreign Investment Disputes", George Mason Law Review (14 Geo. Mason L. Rev. 135) (2007). [↑](#footnote-ref-13)
14. Vienna Convention on Laws of Treaties, Article24. [↑](#footnote-ref-14)
15. Article 4, Egypt-Germany BIT (2005), Article 7 Mexico-UK BIT (2006), . [↑](#footnote-ref-15)
16. *Supra* note 1. [↑](#footnote-ref-16)
17. Douwe Korff, THE STANDARD APPROACH UNDER ARTICLES 8 – 11 ECHR AND ARTICLE 2 ECHR (2009); Lau San Ching v Apollonia Liu, (1995) 5 HKPLR 23, ¶ 67 [↑](#footnote-ref-17)
18. ¶ 14, Moot Problem. [↑](#footnote-ref-18)
19. Meir Kahane and Others v. Board of Directors of the Broadcasting Authority, Israeli Supreme Ct, 41(3) P D 255 (1987); International Covenant on Civil and Political Rights, Article 19. [↑](#footnote-ref-19)
20. Organization for a Better Austin v. Keefe, 402 US 415, 419 (1971). [↑](#footnote-ref-20)
21. French Law on protection of sources and confidential information, Article 56(2) [↑](#footnote-ref-21)
22. *Supra* note 17. [↑](#footnote-ref-22)
23. ¶ 14, Moot Problem. [↑](#footnote-ref-23)
24. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3)(b); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) (ACHR) art 13(2)(b); European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) (ECHR) art 10(2); Near v Minnesota 283 US 697 (1931); The Observer and The Guardian v United Kingdom (1991) Series A no 216. [↑](#footnote-ref-24)
25. Near v Minnesota 283 US 697 (1931); New York Times Co v United States 403 US 713 (1971). [↑](#footnote-ref-25)
26. [Prabhakaran](https://en.wikipedia.org/wiki/Prabhakaran_Paleri) (2008). [National Security: Imperatives And Challenges](https://books.google.com/books?id=DMzcGe0-HQwC). New Delhi: Tata McGraw-Hill. p. 521 [↑](#footnote-ref-26)
27. Zana v Turkey (1997) 27 EHRR 667. [↑](#footnote-ref-27)
28. ¶ 13, Moot Problem. [↑](#footnote-ref-28)
29. *Supra* note 1. [↑](#footnote-ref-29)
30. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 29(2); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) (ACHR) art 13(2)(b); European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) (ECHR) art 10(2). [↑](#footnote-ref-30)
31. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN 4/1985/4, cl I(B)(iii)(22). [↑](#footnote-ref-31)
32. ¶ 13, Moot Problem. [↑](#footnote-ref-32)
33. Webster, Daniel. 'Letter to [Henry Stephen Fox](https://en.wikipedia.org/wiki/Henry_Stephen_Fox)', in K.E Shewmaker (ed.). *The Papers of Daniel Webster: Diplomatic Papers, vol. 1. 1841-1843* (1983) 62. [↑](#footnote-ref-33)
34. Francois.Bailet, *Sovereignty vs. Trans-Boundary Environmental Harm: The Evolving International Law Obligations and the Sethusamuduram Ship Channel Project Chinthaka Mendis -United Nations / Nippon Foundation Fellow 2006* (2007). [↑](#footnote-ref-34)
35. ICCPR, Article 19(3) (a). [↑](#footnote-ref-35)
36. ICCPR, Article 19(3) (b). [↑](#footnote-ref-36)
37. ¶ 13, Moot Problem. [↑](#footnote-ref-37)
38. ¶ 12, Moot Problem. [↑](#footnote-ref-38)
39. Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996) [↑](#footnote-ref-39)
40. *supra* note 43. [↑](#footnote-ref-40)
41. La Rue, Frank, 2011, pp.8-13. [↑](#footnote-ref-41)
42. Sibylle Kapferer,*The Interface between Extradition and Asylum*, Legal And Protection Policy ResearchSeries, UNHCHR (November 2003). [↑](#footnote-ref-42)
43. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incidentat Lockerbie (Libyan Arab Jamahiriya v. United States of America) 1998 ICJ ¶34, Feb. 27 [↑](#footnote-ref-43)
44. M. CHERIF BASSIOUNI, INTERNATIONAL CRIMINAL LAW, p.3, 4 (Third Edition, Volume 1, Martinus Nijhoff Publishers, 1937); G. GILBERT, TRANSNATIONAL FUGITIVE OFFENDERS ININTERNATIONAL LAW, p. 47 (Martinus Nijhoff Publishers, 1998) [↑](#footnote-ref-44)
45. *supra* note 1. [↑](#footnote-ref-45)
46. ¶ 22, Moot Problem. [↑](#footnote-ref-46)
47. S.S. Lotus (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) [↑](#footnote-ref-47)
48. *Id.* [↑](#footnote-ref-48)
49. ¶ 11, Moot Problem. [↑](#footnote-ref-49)
50. *supra* note 49. [↑](#footnote-ref-50)
51. Manuel R. Garcia Mora,*Treason, Seditions and Espionage as political offenses under the Law Extradition*,65 PITT. L. REV. 26 (1964). [↑](#footnote-ref-51)
52. Garcia-Mora,*The Nature of Political Offenses: A knotty Problem of Extradition Law,*48 V.A. L.REV. 1226(1962) [↑](#footnote-ref-52)
53. Antje C. Petersen,*Extradition and the Political Offence Exception*, 67 Ind. L. J. 767 (1992) [↑](#footnote-ref-53)
54. ¶ 13, Moot Problem. [↑](#footnote-ref-54)