

The Case Concerning the J-VID-18 Pandemic

United Republic of Aprepluya v. Democratic State of Ranovstayo

1. The United Republic of Aprepluya (“Aprepluya”) is a developed parliamentary democracy with a population of 3 million and a gross domestic product of €160 billion. Its capital city, Beauton, is located 50 kilometers West of its Eastern border. The principal contributor to its GDP is the banking and financial services sector, centered in Beauton.

2. The Democratic State of Ranovstayo (“Ranovstayo”) is also a developed, democratic nation. It has a population of 25 million and a gross domestic product of €1 trillion. It lies directly to the east of Aprepluya. Its capital, Bogpadayo, is located 80 kilometers east of the border with Aprepluya and 130 kilometers east of Beauton. Ranovstayo’s economy is centered on its petroleum, agricultural, and manufacturing sectors. Neither Ranovstayo nor Aprepluya permits its nationals to have any other nationality.

3. Aprepluya has historically had an active tourism industry. The city of Beauton features a grand casino, historical and cultural museums, several large parks, and a world-renowned theatre district. Aprepluya’s Segura Province, about 100 kilometers west of Beauton, is also prized by tourists for its mountain villages and folklore. The country drew an average of nine million tourist arrivals and gross tourism receipts of €7.5 billion every year from 2013 to 2017. During this period, approximately 25% of the foreign tourists in Aprepluya were Ranovstayan nationals or residents, and another 40% were third-country nationals who traveled to or from Aprepluya through the Bogpadayo Airport, the busiest airport in the region in terms of total flights and total passengers. Because of the large number of Ranovstayan vacationers in Segura Province, Ranovstayo established a consulate there in 1980. It was the only consulate in the province.

4. Hadbard is a country located eight time zones from Aprepluya and Ranovstayo. In March 2018, the Hadbard health authorities reported that a large number of cases of a respiratory condition resembling pneumonia had been identified in a rural village. Symptoms included uncontrollable coughing, difficulty in breathing, high fever, chills, and listlessness. The Hadbard Ministry of Health quickly identified the cause of the disease as a previously unknown strain of virus, which they named “J-18,” with the disease caused by it called “J-VID-18.” Several of the patients diagnosed with J-VID-18 were reported to be in critical condition, and by 31 March 2018, six of them had died.

5. By 10 April 2018, the genome of the virus had been sequenced by epidemiologists in Hadbard, and the results were made public. Aprepluya’s State-owned and State-run National Bioresearch Laboratory (“NBL”), located in Segura Province, and Ranovstayo’s Central Biodefense Institute, in Bogpadayo, were among 22 research institutes around the world that initiated projects to study the virus with the goal of developing a vaccine. The World Health Organization (“WHO”) coordinated the distribution of live cultures of the virus to all of these institutes.

6. The NBL personnel assigned to its vaccine project consisted of a Director, four research scientists, 16 lab technicians, and seven support staff. All employees of NBL were required to sign, at the time of their hiring, a non-disclosure agreement that read, in relevant part:

Employees agree as a condition of employment that they will not disclose or divulge to anyone not on the Laboratory staff any information concerning their work at the

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Laboratory, unless required to do so by a court of law. Violation of this undertaking may result in termination and possible prosecution.

7. The Hadbard Health Ministry implemented multiple measures to try to contain the virus, to no avail. In the first half of April, reports of J-VID-18 surfaced in other parts of the country, as well as in Tsarote, Hadbard's neighbor to the north. By 15 April 2018, Ministry scientists determined that the virus was capable of human-to-human transmission. They estimated the basic reproduction rate to be 1.2 to 1.4 and the incubation period to be 7 to 14 days. Experts at several of the research facilities studying the virus also determined that human-to-human transmission was possible during the incubation period, and that infected individuals who never developed symptoms were capable of spreading the virus to others. These factual determinations have at all relevant times been accepted as accurate by Aprepluya and Ranovstayo.

8. On 20 April 2018, the WHO Director-General declared the outbreak of J-VID-18 a public health emergency of international concern ("PHEIC"). At the same time, the Director General issued Temporary Recommendations in accordance with Articles 15 and 49 of the 2005 International Health Regulations ("IHR"). The concluding paragraph of the Recommendations stated: "Based upon the current information available, we urge the general observance of social distancing and the use of face coverings in areas reporting infection, and the self-quarantine for at least 14 days of anyone who seems to have symptoms, to combat the spread of the disease. At this time, however, travel and trade restrictions are not recommended." WHO's Situation Report that day stated that three countries (Hadbard, Tsarote, and their common neighbor, Bitsrote) had reported a total of 626 confirmed cases of, and 22 deaths from, J-VID-18.

9. As of 20 April 2018, 12 countries located within 3,000 kilometers of Hadbard (including Tsarote) had implemented measures prohibiting all foreign nationals with symptoms of J-VID-18 from entering their territories. No country, however, had responded to the disease by barring the entry of individuals not manifesting any symptoms.

10. From 15 to 22 April 2018, the Health Ministry of Ranovstayo conducted an urgent and intensive risk assessment, taking into account what it called the best scientific evidence available. Based on that study, on 22 April 2018, the Ranovstayan Home Office published a regulation governing entry into the country, specifically to address the J-VID-18 public health emergency. The regulation was adopted in accordance with national law, and stated in relevant part:

Section 1. All non-Ranovstayan nationals who have been in a "high-risk country" within the past 18 days are prohibited from entering the territory of Ranovstayo.

Section 2. All Ranovstayan nationals entering the territory of Ranovstayo who have been in a "high-risk country" within the past 18 days must be quarantined at a government quarantine center until 18 days have elapsed since they were last in a "high-risk country."

Section 3. The Ministry of Health shall maintain a list of "high-risk countries" on its website, to be updated on a daily basis. This list shall include, but shall not necessarily be limited to, any country in whose territory there have been at least 50 confirmed cases of J-VID-18 over the previous two months.

Section 4. Individuals transiting at one of Ranovstayo's airports are considered to be "entering the territory of Ranovstayo" for the purposes of this regulation.

Section 5. The term “non-Ranovstayan nationals” includes nonRanovstayan nationals with family members who are Ranovstayan nationals, as well as non-Ranovstayan nationals with permanent residence in Ranovstayo. Section 6. This regulation shall be effective from 25 April through 20 July 2018, and is subject to renewal at the discretion of the Ministry of Health.

11. That afternoon, Ranovstayo’s President, Erken Kalkan, explained the regulation in a national address, which began:

My fellow citizens, today, the government adopted restrictions applicable to anyone attempting to enter the territory of Ranovstayo. We did not take this decision lightly. But we need to ensure that the J-18 virus does not spread into our country, putting our well-being and our very lives in jeopardy. Our Health Ministry has carefully reviewed the threat posed to our people if we do nothing. We have now concluded that it is necessary for us to bar the entry of anyone who may be carrying the virus, perhaps without knowing it. We are aware of the inconvenience that this temporary measure may cause, but protecting the lives of all Ranovstayans outweighs this small disruption to our routines.

12. On 23 April 2018, Ranovstayo informed WHO of the entry regulation, and provided to the Organization the public health rationale and relevant scientific information upon which the government relied. At a press conference on 24 April 2018, a reporter asked Ranovstayo’s Health Minister, Mr. Adasap Adapi, whether the Cabinet had taken into account the fact that the WHO Director-General was not recommending travel restrictions. Minister Adapi responded: “We are aware of what WHO has recommended and not recommended. But in light of the scientific evidence, we feel compelled to take these precautions to deal with an unprecedented threat.” He then added: “We cannot afford to get this wrong. No one can. We encourage other countries to follow our lead to prevent the spread of the virus. Only if we act in concert, globally and immediately, can we protect public health, our lives, and our economies.”

13. Aprepluya did not adopt entry restrictions relating to J-VID-18. Instead, on 24 April 2018, the Aprepluyan Ministry of Health began publishing a daily “Public Health Advice,” which contained reminders, but not orders, to use face coverings and to practice social distancing. The daily bulletins also provided updates on the numbers of cases around the world reported by WHO, and regularly contained the recommendation that people experiencing symptoms of J-VID-18 should report themselves to local health authorities and self-quarantine for 18 days.

14. On 27 April 2018, WHO sent a communication to the Ranovstayan Ministry of Health, recalling that the Director-General was not recommending travel restrictions, and requesting that Ranovstayo therefore reconsider the application of its 22 April regulation. On 1 May, Minister Adapi replied, writing in relevant part: “We respectfully decline to modify or revoke our entry regulation. We believe it to be absolutely necessary to have a mechanism in place to protect our nationals and residents from the serious threat posed by J-VID-18 and, in any case, controlling our borders is a matter that falls exclusively within our national sovereignty.”

15. On 15 May 2018, WHO declared that J-VID-18 constituted a pandemic. WHO’s Situation Report that day stated that 65 countries had reported a total of 15,274 confirmed cases of, and 212 deaths from, J-VID-18. As of that date, however, neither Aprepluya nor Ranovstayo, nor any other country in their region, had any suspected or confirmed cases of J-VID-18.

16. Although WHO did not alter its position on travel and trade restrictions, by 15 May 2018, 24 countries (including Ranovstayo) had adopted regulations limiting or barring the entry into their territories of individuals who had recently been in “high-risk countries,” as designated by their own respective authorities. An article in Chile’s *El Mercurio* newspaper summarized the 24 sets of regulations, and concluded that Ranovstayo’s was “the most stringent,” particularly since no other regime applied to individuals who had been in a “high-risk country” more than 14 days earlier. As of 15 May 2018, 52 countries had been designated by the Ranovstayan Health Ministry as “high-risk.”

17. On 20 May 2018, Aprepluya announced that its J-VID-18 vaccine project at NBL had reported “significant progress” in developing a vaccine, and that a further public statement was “forthcoming.” NBL, along with other facilities around the world, was sharing its results with WHO.

18. On the morning of 3 June 2018, a Twitter account under the handle @J18atNBL was created with false personal information, and the account promptly published the following tweet: “Over the past week, eight lab technicians working on the J-VID-18 vaccine project at NBL have developed symptoms of the disease, but this news is being kept secret. Why don’t our superiors care about our lives? And why does the government keep denying that anyone has the virus?” Over the next few hours, the post was re-published by thousands of other social media accounts. Media efforts to interview senior staff at NBL were unsuccessful, and the reported infections were not confirmed by the authorities.

19. Aprepluya’s police traced the original tweet back to a lab technician working on the vaccine project, Ms. Keinblat Vormund, an Aprepluyan national born and raised in Segura Province. Ms. Vormund then fled, seeking refuge in the Ranovstayan consulate.

20. Once inside the Ranovstayan consulate, Ms. Vormund was asked by the consular officer on duty to state her business, and she indicated a desire to make a request in writing. She was directed to a reception area and an hour later, she emerged and handed to the desk officer a letter that read in relevant part:

I posted the tweet concerning the vaccine project, and I am frightened. I do not know what the authorities will do to me if they learn that I am the one who told the world that we have a serious problem, a life-threatening problem, a possibly catastrophic problem, on our hands in Segura Province.

On Monday, 25 May, two lab technicians working on the vaccine project at NBL – two of my friends! – reported symptoms like the ones people have with J-VID-18. When I learned that, I told my director that we had to test them for the virus, suspend the project until we were sure that the disease was not circulating among NBL employees, and temporarily shut down the Lab for deep cleaning. He agreed to order J-VID-18 tests for the two techs, but refused to interrupt the project or to close NBL. He made clear to me that this information should not be publicized.

Over the next three days, six more of our colleagues developed J-VID-18 symptoms. So on Thursday, 28 May, I emailed my director once more to say that we had to alert the health authorities about this situation, suspend the project, and close down NBL, at least until we get a handle on the state of affairs. But he refused again. He told me that he had not yet

received the test results from the first two techs, and he would not take any action until there was actually a confirmed case of J-VID-18 at the Lab. He also said that the NBL Executive Director had ordered him to consider this whole matter to be highly confidential unless and until someone tested positive for the virus. He left no doubt in my mind that if I told anyone about this, I was going to be in deep trouble. But at the same time, my conscience told me that I had to let someone know. The risks were too great. My friends and my workmates might die. And if the virus gets out of the Lab, our families and villages are in danger.

It isn't right that no one knows about this. Our government is telling the whole world that this country has not had a single case of J-VID-18. But that isn't true: I know that. Someone has to make sure that this information gets out. I think they are going to arrest me to shut me up. And I fear that they might do worse. I don't think I have broken the law, but I cannot afford to find out. I am very scared. My friends are dying. I need protection. I beg you to help me.

21. On 4 June 2018, at 16:00 local time, President Kalkan of Ranovstayo and Hanabar Haraka, the Prime Minister of Aprepluya, with members of their staffs, met by videoconference. The Aprepluyan representatives confirmed that, since 25 May, 12 employees at NBL had developed symptoms resembling pneumonia, and they were all tested for J-VID-18. Prime Minister Haraka reported that just a few hours earlier, the results of the first two tests had been received, and both were positive. She noted that her Health Minister would be announcing this publicly the next day. The Ranovstayan side expressed disappointment that they had not been informed of these suspected cases from the very beginning, not least because of the large number of Ranovstayan nationals vacationing in Segura Province.

22. President Kalkan asked for a report on the precautionary measures taken since 25 May to stem the spread of the disease. Prime Minister Haraka responded that the NBL Executive Director had initially declined to take any action because, until just a short time earlier, there had been no confirmed cases

23. President Kalkan also warned her counterpart that her government intended, without further notice, to add Aprepluya to its list of "high-risk countries," unless Aprepluya properly managed the virus outbreak in Segura Province. Prime Minister Haraka noted her "strong objection," on the grounds that there was no scientific basis for what she called "this gross overreaction."

24. The next morning, the Aprepluyan Health Minister, Ms. Raika Pahad, made the following announcement:

I regret to confirm that two individuals affiliated with the J-VID-18 vaccine project at National Bioresearch Laboratory in Segura Province have contracted the disease. We have isolated them and everyone whom we believe may have come into contact with them.

Since there have been reports of suspected cases among other NBL personnel, however, we have decided, as a precaution, to temporarily interrupt operations at NBL, until test results can be received and analyzed. We are very hopeful that this interruption will be brief, and that our skilled and dedicated staff will be able to return to their posts very soon.

We are also, out of an abundance of caution, instituting mandatory social distancing throughout Segura Province and imposing a quarantine, in particular, barring travel into or

out of the Province. The only exceptions are for foreign nationals who are permitted to take evacuation flights organized by their countries of nationality and pre-approved by our Ministry of Foreign Affairs. This emergency measure takes effect immediately. We understand that this will cause significant inconvenience, but everyone will have to make sacrifices like this until we are sure that we have the virus outbreak under control. The government is confident that patriotic Apreluyans in every part of our country will understand, and will rise to the occasion.

25. On 6 June 2018, the leading local newspaper, *The Segura Preso*, published the text of the announcement under a headline reading: “Beauton Locks Us Up in Segura Prison with J-VID-18.” Segura Province’s representatives in the National Parliament demanded an emergency session to discuss the situation, but no legislative action was proposed.

26. Later that day, Minister Pahad announced four more confirmed cases of J-VID-18 in Segura Province, all of whom were employees at NBL. Three more confirmed cases were reported the following day, all of them NBL staff, bringing the total number of confirmed cases to nine. That afternoon, Ranovstayo’s Ministry of Health announced on its website that Aprepluya was added to the list of “high-risk countries” maintained in accordance with Section 3 of the regulation of 22 April, effective at 00:01 local time on 8 June.

27. From 5 to 7 June 2018, approximately 80% of tourists in Aprepluya, including nearly all of those participating in group tours, left the country. Over those three days, Apreluyan border officials administered an optional survey for departing foreign nationals, asking them, among other things, the primary reason they were leaving the country. Two thirds of those responding answered that they were from or had flight connections in Ranovstayo, and were concerned that if Aprepluya were designated a high-risk country, they would be stranded.

28. On 7 June 2018, Ranovstayo recalled all non-essential diplomats and consular officers from Aprepluya, leaving only five at the embassy in Beauton and two at the consulate in Segura Province.

29. On 9 June, Aprepluya’s Ministry of Foreign Affairs delivered a note verbale to Ranovstayo’s embassy in Aprepluya, stating in relevant part:

Aprepluya respectfully objects to Ranovstayo’s listing of Aprepluya as a “high-risk country.” The quarantine on Segura Province ensures that the virus will not spread beyond the Province’s boundaries, and we have reported not a single case elsewhere in our country. There is no reason to exclude Apreluyans who have not been in Segura. And in any event, Aprepluya as a whole, even including Segura Province, has not reported the 50 confirmed cases stipulated in your entry regulation. In these circumstances, we consider the application of your regulation to Aprepluya to be in violation of international law, and we request that Ranovstayo remove Aprepluya from its list of “high-risk countries.”

30. The following day, Ranovstayo’s Ministry of Foreign Affairs responded in a note verbale, as follows:

Ranovstayo is conscious of the many complexities entailed by the need to deal effectively with the outbreak of J-VID-18. We regret the need for us to classify Aprepluya as a “high-risk country.” But we consider this step to be a necessary part of our efforts to protect our own people from the virus. The facts as we know them reveal tremendous uncertainty

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regarding the extent of the virus's spread in Aprepluya's territory, particularly since your government took no precautionary measures when the first suspected cases were reported more than two weeks ago. Even if there are at this moment fewer than 50 confirmed cases of J-VID-18 in Aprepluya, we are still obligated to take special precautions, given the regular exchanges between the people of our two countries. We are confident that the application of our entry regulation in this instance is entirely consistent with international law.

31. By 15 June 2018, 52 individuals in Segura Province were reported to have tested positive for J-VID-18. All of them had been, or lived with someone who had been, on the premises of NBL within the previous 18 days. The roads and streets of the province were mostly empty, with many retail outlets and recreation venues closed and transportation sporadic. Media reported that residents were reluctant to leave their homes, unemployment sharply increased, and residents were stockpiling food and other provisions. The Segura Airport, which previously operated an average of 25 departures daily, was mostly deserted except for occasional evacuation flights.

32. As of mid-June 2018, Aprepluya had no suspected or confirmed cases outside of Segura Province, and Ranovstayo had no cases at all in its territory.

33. On 16 June, the Aprepluyan government ordered all residents of Segura Province displaying J-VID-18 symptoms to self-quarantine for 18 days, and arranged to make testing available for anyone in the Province requesting a test. The authorities also ordered the use of face coverings in public places, the closure of indoor dining and drinking establishments, and the prohibition of gatherings of more than 20 people

34. On 8 July 2018, the Aprepluyan Ministry of Tourism published a study entitled *The Effect of Ranovstayo's Entry Restrictions on Tourism in Aprepluya*. The report concluded that, from its inception through 30 June 2018, the Ranovstayan entry regulation had resulted in over €130 million in revenue lost by Aprepluya and its nationals from hotels, restaurants, tourist venues, souvenir and handicrafts shops, the transportation sector, and related industries. The study also noted that there was no possibility for these losses to be recovered through any domestic judicial or administrative process in either country, a fact that both Aprepluya and Ranovstayo have confirmed.

35. On 12 July 2018, Aprepluya filed an Application with the International Court of Justice instituting the present proceedings against Ranovstayo, alleging that the entry restrictions affecting Aprepluya and its nationals were in violation of international law.

36. Aprepluya and Ranovstayo have at all relevant times been parties to the Charter of the United Nations, the Statute of the International Court of Justice, the Constitution of the World Health Organization, the 2005 International Health Regulations, the Convention on International Civil Aviation, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Relating to the Status of Refugees, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the Vienna Convention on the Law of Treaties. The two States are not parties to any other multilateral or bilateral agreement relevant to the present proceedings.

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Issues:

1. Apreluya requests that the Court adjudge and declare that Ranovstayo violated international law by applying its entry regulation to Apreluya, and is thus obligated to compensate it for the resulting economic losses
2. Ranovstayo requests that the Court adjudge and declare that Ranovstayo did not violate international law by applying its entry regulation to Apreluya, and even if it did, it should not be required to compensate Apreluya for any claimed economic losses.

Directions:

Please prepare a short brief of no more than three (3) pages arguing one of the above issues from the position of either Apreluya or Ranovstayo. Further, please prepare an oral argument of no more than 8 minutes arguing the same position. Note that the relevant materials needed to assist in formulating your arguments may be found at the link below. Please scroll to the bottom of the page where you will find two drop down tabs labeled “First Batch of Basic Materials” and “Second Batch of Basic Materials”.

Link: [Jessup 2021 – International Law Students Association \(ilsa.org\)](https://www.ilsa.org/jessup-2021)

If you have any questions regarding the fact pattern or the tryout process please email imchs@kentlaw.iit.edu.

Good luck!