

**THE 2003 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION**

CASE CONCERNING THE WOMEN AND CHILDREN OF THE CIVIL WAR

IN THE INTERNATIONAL COURT OF JUSTICE

BETWEEN:

ANNOLAY

(Applicant)

and

RESTON

(Respondent)

MEMORIAL FOR THE APPLICANT

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STATEMENT OF JURISDICTION

Annolay (Applicant) and Reston (Respondent) submit their dispute by Special Agreement dated November 1, 2002, and without reservation, to the International Court of Justice pursuant to Article 40(1) of the *Statute of the International Court of Justice*. The parties have agreed to the contents of the *Compromis*, subject to the *Corrections and Clarifications* issued November 19, 2002. In accordance with Article 36(1) of the Court's Statute, each party shall accept any Judgment of the Court as final and binding upon them and shall execute in its entirety and in good faith.

QUESTIONS PRESENTED

I

Whether Annolay is entitled to a declaration that Reston has breached its international obligations and must pay damages to Annolay to be distributed as reparations to those victims of systematic rape during the Dysfunctionian civil war who are now resident in Annolay.

II

Whether Annolay is entitled to a declaration that Reston is in breach of its international obligations with respect to the bribes exacted by its border officials from Annolaysian citizens, and is obligated to pay restitution in the amount of the bribes to Annolay on behalf of the Annolaysian adoptive parents.

III

Whether Annolay is entitled to a declaration that Reston is not entitled to exercise universal jurisdiction over Mr. Fred Schmandefare.

IV

Whether Annolay is entitled to a declaration that it has not breached any international legal obligations deriving from the alleged treatment of Cascadian women working in brothels in Annolay, and that, in any event, Reston has no standing to enforce any such obligations.

STATEMENT OF FACTS

For the past 300 years, there has been a rivalry between Cascadians and Restonians, the two principle ethnic groups in the former Kingdom of Dysfuntia. Conflict between the two groups heightened after King Mikhail IV of Dysfuntia died without an heir. Two claimants to the throne emerged after the King's death, one from each ethnic group, with supporters quickly organizing into armed militias. In March 1996, full-scale civil war erupted; on September 14, 1999, the two sides agreed to a partition of Dysfuntia along territorial lines, thereby creating the Republic of Reston, Respondent, and Cascadia, a non-party to this case. Annolay is an immediate neighbor of the former Dysfuntia, now bordering the territories of both Reston and Cascadia.

The systematic rapes of ethnic Cascadian women by members of the Restonian militia were first reported to the international community in April 1997 by War-Time Relief International (WRI) and other international human rights organizations. The leader of the Restonian militia, Colonel Georg Raskolnikov, recalled in a March 1998 interview with the *International Times-Picayune (ITP)*, that he had heard the rapes were being committed, but declared that he was powerless to stop them.

In early 1998, the United Nations Human Rights Commission concluded that “literally hundreds of rapes of Cascadian women are being committed monthly by members of the Restonian militia and observed that Raskolnikov and his deputies had not acted to stop the deliberate use of the rapes as a means of coercion and to spread intimidation and terror among the Cascadian population.”

Reston held its first democratic elections on November 1, 1999, electing Colonel Raskolnikov, the former militia commander. Raskolnikov granted a full amnesty to persons accused of crimes committed during the Dysfunctionian civil war.

The Dysfunctionian civil war left thousands of children orphaned; state-run orphanages and shelters were not capable of adequately providing for the homeless and destitute, resulting in their congregation in makeshift camps with wretched, universally condemned conditions. Annolaysian families opened their hearts and homes to the Restonian children, resulting in nearly 2,000 adoptions over the following year.

Under Restonian adoption law, prospective parents are required to attend “fitness interviews” to satisfy officials of the Ministry of Child Welfare that the applicants are fit to adopt and care for the child; if successful, the applicants receive a “Certificate of Authorization for Foreign Adoption”, which they are required to present at the border in order to leave Reston with a Restonian child. In January 2001 a series of articles published by the *ITP* revealed that Restonian border officials, acting without authority, were requiring payments of up to US\$2,500 to permit adopting parents, with or without Certificates of Fitness, to leave the country with Restonian children, contrary to Restonian law. Some Annolaysian citizens were aware that the Restonian law was not being enforced and instead of attending their fitness interviews, simply agreed to pay whatever bribe might be required by the border officials.

On February 2, 2001, President Contrary requested that President Raskolnikov’s government address the rampant corruption at its border as it was occurring at the expense of Annolaysian citizens who only wanted to help Reston’s children. President Raskolnikov replied that the border issue was a small one. Eventually the government of Reston permanently reassigned approximately 10 border officials, which, according to the *ITP*, represented only

about 10% of the individuals implicated in the bribery and extortion efforts. After the reassignment, an assistant to President Raskolnikov stated that “the problem has been taken care of.” No former border officials have been prosecuted or otherwise disciplined.

On March 21, 2001, President Contrary announced the commitment of Annolay’s government resources to seek justice for the Cascadian rape victims of the Dysfunction civil war. The President called upon the governments of Cascadia and Reston to punish the militiamen who raped the women and to pay reparations to the victims of the brutal crimes.

In response, President Raskolnikov called President Contrary’s attention to the general amnesty declared on his first day in office and denied that his government owed any duty to pay reparations on the grounds that the rapes occurred before Reston came into existence. Cascadia’s Minister of Foreign Affairs expressed that Cascadia would not pursue the matter at that time.

In December 1999, the United Nations Human Rights Commission estimated that approximately 4,000-7,000 Cascadian women claimed to have been the victims of sexual abuse and were living without family or the means to support themselves. The conservative culture of Cascadia ostracizes women known to have been raped; many are cast aside by family and friends and typically have difficulty finding and keeping employment as they are unwelcome in mainstream Cascadian society.

The Schmandefare Company is a privately-owned domestic services and hospitality company incorporated in Annolay, with no ties to any government or public agency. Mr. Fred Schmandefare, an Annolaysian citizen and resident, is the founder and Chief Executive Officer.

According to numerous reports, representatives of the Schmandefare Company traveled to Cascadia shortly after September 1999 and recruited ostracized Cascadian women to work and find new lives in Annolay, primarily as nannies or domestic servants. The representatives

assisted the women in filing visa, travel, and work-permit applications and promised them jobs, shelter, and education in the Annolaysian language. Once in Annolay, the women were promptly granted permanent resident status. In exchange for this assistance, the Schmandefare Company charged the women a fee of US\$10,000, extending loans to each woman if necessary. The loan terms were consistent with the laws of Annolay, Cascadia and Reston. At no time were any of these women Restonian citizens or entitled to Restonian citizenship.

According to the *ITP*, the Schmandefare Company operates brothels in Annolay. On May 1, 2001, the Institute for Labor Studies and Advancement (“ILSA”) published a report on the sex industry. The report alleged that women working in brothels owned by the Schmandefare Company were subject to restraints on their liberty and were mentally and physically abused.

The Report described the case of a Cascadian rape victim working for the Schmandefare Company. The woman’s employer housed her in a dormitory with 19 other women while charging her for food, clothing and housing. When the woman complained to her supervisors, she was temporarily removed from the work schedule. On the occasions when she was unable to pay for her food or clothing, the amount was added to her loan from the company. She was generally permitted to leave the dormitory unsupervised to meet customers, to use the brothel’s exercise room, or to attend medical appointments. The report describes one incident when the woman fled the dormitory and broke her ankle; the police contacted Mr. Schmandefare, he paid the hospital for its services and the police returned her to the brothel. After her return, she was immediately required to return to work and the cost of her medical bills was added to her loan.

The Report noted that according to official records, the police and three Annolaysian governmental agencies had received written complaints from women alleging the conduct

described in the Report, although no Annolaysian agency initiated a formal investigation based upon the allegations.

On May 17, 2001, President Contrary referred to the conduct of the kind alleged in the Report as “reprehensible” and announced that her government was putting together a blue-ribbon panel of criminal-law and women’s-rights experts, including prosecutors from the Annolaysian Ministry of Justice, to investigate the problem thoroughly.

The President asserted that her government is a large organization, with many branches, many agencies, and thousands of employees: “when a few agencies receive isolated complaints from a few individuals, this does not mean the government had knowledge of a widespread course of conduct, much less that it was involved in or responsible for it.” The President stated that there may be private parties whose actions will merit prosecution.

On May 19, 2001, the Restonian Justice Ministry made an announcement that it intended to prosecute Mr. Fred Schmandefare on the basis of universal jurisdiction and *in absentia* if necessary. President Contrary issued a statement disputing Reston’s right to exercise universal jurisdiction over Mr. Schmandefare, an Annolaysian citizen and resident.

The parties have agreed to submit their differences to the International Court of Justice. President Contrary has ordered Mr. Schmandefare not to leave the country, pending the judgment of the Court. Annolay and Reston agree that no other state is a necessary party.

Annolay and Dysfunctia were original members of the United Nations. Reston succeeded to Dysfunctia’s membership upon the conclusion of the September 1999 peace agreement. Both Annolay and Reston are parties to the Vienna Convention on the Law of Treaties, and voted in favor of U.N. General Assembly Resolution 56/83, respecting the final draft of the International Law Commission’s Articles on State Responsibility. Annolay is a party to the International

Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Dysfunctia was not, and Reston is not, a party to any of these instruments.

Annolay is also a party to the “Regional Anti-Corruption Convention” (RACC), which is identical to the Council of Europe’s Criminal Law Convention on Corruption. Reston has signed but not ratified the RACC and has no specific anti-bribery laws.

SUMMARY OF PLEADINGS

When the militia movement became the government of the new state of Reston, the illegal systematic rapes perpetrated by the militia soldiers became attributable to Reston and engaged its responsibility. When the militia movement became the government of the new state of Reston, its acts became attributable to the state and engaged its responsibility. The systematic rapes of the Cascadian women constitute international human rights violations; furthermore they amount to the internationally unlawful acts of torture, war crimes, crimes against humanity and terrorism. Reston cannot argue that Annolay's standing to assert a claim on behalf of the women is precluded by a lack of sufficient interest in the victims; nor can it argue that Annolay lacks capacity as a result of any non-exhaustion of local remedies. The victims are unable to exercise local remedies as a result of the amnesty granted by Raskolnikov to the rapists. As a consequence of its international responsibility, Reston must pay damages to Annolay to be distributed as reparations to the rape victims.

Reston's failure to enact legislation to prevent the exaction of bribes is in violation of customary international law. Moreover, as Reston is a signatory to the Regional Anti-Corruption Convention (RACC) and is a party to the Vienna Convention on the Law of Treaties, the exaction of bribes by its border officials is a violation of its obligation not to defeat the object and purpose of the RACC. Nor can Reston rely on the non-exhaustion of any local remedies to bar this claim; Reston has no effective local remedies. In the result, Annolay is entitled to restitution in the amount of the bribes paid to its border officials.

Mr. Schmandefare's employment of the Cascadian women for the purpose of prostitution is not a crime that gives rise to universal jurisdiction; it does not even constitute a violation of customary international law. Nor can Reston argue that Mr. Schmandefare's treatment of the

Cascadian women amounts to slavery or torture. Even if Mr. Schmandefare's activities do amount to slavery or torture, Reston's exercise of universal jurisdiction is precluded by Annolay's greater interest in his prosecution. Further, Reston cannot exercise universal jurisdiction *in absentia*.

Annolay has not breached any international obligations deriving from the alleged treatment of Cascadian women working in the brothels in Annolay. Reston cannot argue that the alleged treatment of Cascadian women constitutes slavery or torture. In any event, Annolay has exercised due diligence in the prevention of any alleged unlawful acts and the prosecution of those responsible. Furthermore, Reston has no standing because it lacks sufficient interest to assert an international claim on behalf of the Cascadian women. Finally, Reston lacks capacity to assert a claim against Annolay as local remedies have not been exhausted.

I. RESTON HAS BREACHED ITS INTERNATIONAL OBLIGATIONS AND MUST PAY DAMAGES TO ANNOLAY TO BE DISBURSED AS REPARATIONS TO RAPE VICTIMS OF THE DYSFUNCTIONAL CIVIL WAR WHO ARE NOW RESIDENTS OF ANNOLAY.

A. Reston is internationally responsible for the illegal systematic rapes by the militia soldiers.

i. *The actions of the militia soldiers are in violation of international law.*

a. The actions of the militia soldiers are internationally unlawful, as they constitute systematic rapes.

1. All states, including new states, are bound by customary international law.¹ The standard for establishing customary international norms is altered in the case of norms respecting human rights.² For example, learned writers have noted that “the practice of states that is accepted as building customary international law of human rights includes some forms of conduct different from those that build customary international law generally.”³ Similarly, this Court has emphasized that *opinio juris* is the most important consideration in establishing international norms that protect human rights.⁴ Moreover, a state cannot exempt itself from the application of human rights norms; such norms do “not honor or accept dissent, and [bind] particular states regardless of their objection.”⁵

¹ I. Brownlie, *Principles of International Law* (1998) [hereinafter Brownlie]; M. Sorensen, *Manual of Public International Law* (1968) at 295; O. Udokang, *Succession of New States to International Treaties* (1972) at 121; M. N. Shaw, *International Law* (1997) [hereinafter Shaw] at 57.

² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* [1986] I.C.J. Rep.14 [hereinafter *Nicaragua*] at 98-108.

³ American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States* (1987), Vol. 2, 161 [hereinafter *Restatement*].

⁴ *Nicaragua*, *supra*, note 2.

⁵ L. Henkin, “Human Rights and State ‘Sovereignty’” (1994) 25 Ga. J. Int’l & Comp. L. 31 at 38.

2. There is global consensus that systematic rapes are grave violations of human rights, as evidenced by international instruments⁶ and learned writers⁷. The militia soldiers raped the Cascadian women in a systematic fashion⁸. As such, the acts of the militia soldiers are in violation of international human rights norms.

b. The actions of the militia soldiers are internationally unlawful, as they constitute torture.

3. Torture constitutes a grave breach of customary international law.⁹ Torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on persons for punishment, intimidation, coercion or for any reason based on discrimination of any kind, when

⁶ Rome Statute of the International Criminal Court, (1998) U.N. GAOR, 53d Sess., U.N. Doc. A/CONF.183/9, [hereinafter Rome Statute] art. 7(1); Statute of the International Criminal Tribunal for Rwanda, (1994) S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/INF/50 [hereinafter ICC Rwanda] art. 3; Statute of the International Criminal Tribunal for the Former Yugoslavia, (1993) S.C. Res. 827, Chap. vii., U.N. SCOR 48th Sess., U.N. Doc. S/INF/49 [hereinafter ICTY Statute].

⁷ R. Cook, “State Responsibility for Violations of Women’s Human Rights” (1994) 7 Harv. Hum. Rts. J. 125 [hereinafter Cook] at 138; Ratner & Abrams, *Accountability for Human Rights Atrocities in International Law* (2001) [hereinafter Ratner & Abrams]; R. Boed, “The Effect of a Domestic Amnesty on the Ability of Foreign States to Prosecute Alleged Perpetrators of Serious Human Rights Violations” (2000) 33 Cornell Int. 297 at 305; *Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808* (1993) U.N. Doc. S/25704, art. 5, para. 47, at 13.

⁸ *Compromis*, para. 3.

⁹ Ratner & Abrams, *supra* note 7 at 83; *Prosecutor v. Anton Furundzija* (2000) Case No. IT-95-17/1 (ICTY, Appeal Chamber) [hereinafter *Furundzija*] at para. 153; *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (1985) at 714-18; *Universal Declaration of Human Rights*, GA Res. 217(III), UNGAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [hereinafter *UDHR*], art. 5; *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 Nov. 1950, 213 U.N.T.S. 221 [hereinafter *ECHR*] art. 3, at 224; *International Covenant on Civil and Political Rights*, 10 Dec. 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*] art. 7 at 175; *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, 26 Nov. 1987, 27 I.L.M. 1153.

such pain or suffering is inflicted with the consent or acquiescence of a public official.¹⁰ Expert international non-governmental organizations,¹¹ judicial decisions¹² and learned writers¹³ have explicitly noted that rape may amount to torture.

4. The systematic rapes by the militia soldiers caused severe pain and suffering to the Cascadian women. The rapes were used “as a means of coercion, spreading intimidation and terror among the Cascadian population.”¹⁴ Finally, the rapes occurred with the acquiescence¹⁵, if not consent, of Colonel Raskolnikov and the militia commanders who later became the leaders of Reston.¹⁶ Raskolnikov admitted knowledge of the rapes perpetrated by his own soldiers, yet failed to act; he merely commented that he was “powerless to stop them”. In the result, the rapes constitute torture in violation of international law.

- c. The actions of the militia soldiers are internationally unlawful, as they constitute war crimes.

¹⁰ *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 Dec. 1949, 96 U.N.T.S. 271.

¹¹ Amnesty International, *Women in the Frontline: Human Rights Violations Against Women* (1991); Asian Legal Resource Centre, *Recognition of Rape by State Officials as Torture*, (2002) online: <www.alrc.net/mainfile.php/torture/152/>.

¹² *Prosecutor v. Tihomir Blaskic* (2000) Case No. IT-95-14, (ICTY, Trial Chamber) [hereinafter *Blaskic*]; *Prosecutor v. Delalic et al.* (1998) Case No. IT-96-21-T, (ICTY, Trial Chamber) at para 493; *Aydin v. Turkey*, Eur. H. R. Ct. Rep. (1997-VI).

¹³ Cook, *supra* note 7 at 138; D. Blatt, “Recognizing Rape as a Method of Torture” (1992) 19 N.Y.U. Rev. of L. & Soc. Change 821; Kooijmans, “Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict” UN Doc. E/CN.4/1992/SR.21, 21 Feb. 1992 at para. 35.

¹⁴ *Compromis*, para 4.

¹⁵ *Id.*

¹⁶ *Compromis*, para. 7.

5. Violations of the laws or customs of war are considered war crimes.¹⁷ Such violations include the ill treatment of a civilian population of or in occupied territory.¹⁸ International normative instruments¹⁹, international tribunals²⁰ and learned writers²¹ have held rape to be a war crime. The obligations in the Geneva Convention IV have attained the status of customary international norms.²² These norms require the humane treatment of the civilian population with specific reference to women²³ and the prohibition of various inhumane acts, including physical suffering.²⁴ The raping of Cascadian women by the militia soldiers constituted the infliction of physical suffering on members of a civilian population in occupied territory during a civil war.²⁵ Therefore, the rapes constitute war crimes in violation of international law.

¹⁷ Ratner & Abrams, *supra* note 7 at 81; *Charter of the International Military Tribunal, in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis* (London Agreement), 8 August 1945, 82 U.N.T.S. 280, art. 6(b).

¹⁸ *Id.*

¹⁹ *Charter of the International Military Tribunal for the Far East*, 19 Jan.1946, 4 Bevans 20; Rome Statute, *supra* note 6 at art. 7(1); ICC Rwanda, *supra* note 6, art. 3; ICTY Statute, *supra* note 6;

²⁰ *Prosecutor v. Dario Kordic & Mario Cerkez* (2001) Case No. IT-95-14/2 (ICTY, Trial Chamber); [hereinafter Kordic & Cerkez]. *Blaskic*, *supra* note 12; *Prosecutor v. Dusko Tadic* (1995) Case No. IT-94-1 (ICTY, Trial Chamber), *aff'd* (1999) Appeals Chamber [hereinafter *Tadic*].

²¹ Roeling and Ruter, *The Tokyo Judgement: The International Military Tribunal for the Far East* (1977), vol. I, at 385; Ratner & Abrams, *supra* note 7, at 93 and 102; T. Meron, "Rape as a Crime Under International Humanitarian Law" (1993) 87 Am. J. Int'l L. 424 [hereinafter Meron] at 431.

²² Ratner & Abrams, *supra* note 7 at 93.

²³ *Geneva Convention IV*, 75 U.N.T.S. 306 [hereinafter *Geneva*] art. 27.

²⁴ *Id.* at art. 32.

²⁵ *Compromis*, para. 7.

d. The actions of the militia soldiers are internationally unlawful, as they constitute crimes against humanity.

6. Crimes against humanity were first defined in the Charter of the International Military Tribunal²⁶. Customary international law, as confirmed by learned writers²⁷ and recent ICTY judgments,²⁸ has since expanded crimes against humanity to include mass or systematic wrongful acts committed by an organized group against a civilian population during armed conflict with a discriminatory intent or motive.²⁹ Control Council Law No. 10 includes rape as a crime against humanity,³⁰ as do the constituting documents for the International Criminal Tribunals for both Yugoslavia³¹ and Rwanda³² and the Statute of the International Criminal Court.³³ As learned writers³⁴ have recognized, “rape and similar acts have clearly come to

²⁶ Pleadings, note 19 at art. 6(c)

²⁷ J. McHenry, “Justice for FOCA: The International Criminal Tribunal for Yugoslavia’s Prosecution of Rape and Enslavement as Crimes Against Humanity” (1997) 10 *TLSJCIL* 527; *Protocol Additional of the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict*, 12 Dec. 1977, 1125 U.N.T.S. 2 art. 76(1) and at 85.

²⁸ *Kordic & Cerkez*, *supra* note 20; *Blaskic*, *supra* note 20; *Tadic*, *supra* note 20.

²⁹ Ratner & Abrams, *supra* note 7 at 50-69; ICC Rwanda, *supra* note 6; Rome Statute, *supra* note 6 at art. 7.1,7.2.

³⁰ *Control Council Law No. 10*, “Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity,” 10 Dec. 1945, 3 *Official Gazette Control Council for Germany* 50-55, (1946).

³¹ ICTY Statute, *supra* note 6.

³² ICC Rwanda, *surpa* note 6.

³³ Rome Statute, *supra* note 6.

³⁴ P. Viseur Sellers and K. Okuizumi, “International Prosecution of Sexual Assaults” (1997) 7 *Transnat’l L. and Contemp. Probs.* 45; T. Meron, “Rape as a Crime under International Humanitarian Law” (1993) 87 *AJIL* 424 at 427-28.

constitute one of the principal crimes against humanity.”³⁵ Members of the Restonian militia targeted ethnic Cascadian women;³⁶ the mass systematic rape of these women during the Dysfunctionian civil war³⁷ therefore constitute crimes against humanity in violation of international law.

e. The actions of the militia soldiers are internationally unlawful, as they constitute terrorism.

7. Terrorism is prohibited under customary international law, as reflected in international conventions³⁸, resolutions of the United Nations General Assembly³⁹ and Security Council⁴⁰, and the opinions of learned writers⁴¹. Terrorism is a criminal act intended or calculated to provoke a state of terror in the general public or a group of people.⁴² The United Nations Human Rights Commission concluded that the militia soldiers “deliberately”⁴³ committed rapes of the

³⁵ Ratner & Abrams, *supra* note 7 at 73.

³⁶ *Compromis* para.2 and 3.

³⁷ *Id.*

³⁸ *Convention for the Prevention and Punishment of Terrorism*, adopted by the League of Nations on 16 November 1937); *Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons*, [1971] O.A.S.T.S. No. 37, O.A.S. Doc. OEA/Ser.A/17.

³⁹ *Declaration on Measures to Eliminate International Terrorism*, 9 Dec. 1994 U.N. G.A. Res. 49/60 [hereinafter *Terrorism Declaration*].

⁴⁰ *United Nations Security Council Resolution S.C. Res. 1269*; *United Nations Security Council Resolution S.C. Res. 1368*; *United Nations Security Council Resolution S.C. Res. 1373*.

⁴¹ R.B. Lillich & J.M. Paxman, “State Responsibility for Injuries to Aliens Occasioned by Terrorist Activities” (1977) 26 Am. U. L.R. 21 at 246, 269; M.C. Bassiouni, *International Terrorism and Political Crimes* (1975) at 152; K. Kittichaisaree, *International Criminal Law* (2001) at 228.

⁴² *Terrorism Declaration*, 9 Dec. 1994, U.N. G.A. Res. 49/60; *Declaration to supplement the 1994 Declaration*, 17 Dec. 1996, U.N. G.A. Res. 51/210, A/RES/51/210, art. 5.

⁴³ *Compromis*, para. 4.

Cascadian women “as a means of coercion, spreading intimidation and terror among the Cascadian population.”⁴⁴ Therefore, the rapes constitute terrorism in violation of international law.

ii. *The systematic rapes by the militia soldiers are attributable to Reston and engage its responsibility.*

8. Any internationally wrongful act or omission attributable to a state engages its international responsibility.⁴⁵ Moreover, this Court has held that any wrongful acts granted amnesty by a state can be considered condoned by and attributable to that state.⁴⁶ The conduct of an insurrectional movement which succeeds in establishing a new state in part of the territory of a pre-existing state shall be considered an act of the new state under international law.⁴⁷

9. The Restonian militia, led by Colonel Raskolnikov, agreed to the cease fire and participated in the subsequent partition of Dysfuncitia, creating the new Republic of Reston on September 14, 1999.⁴⁸ Raskolnikov was elected President of Reston on November 1, 1999;⁴⁹ as his first act, he effectively condoned the actions of the militia soldiers through the grant of a

⁴⁴ *Id.*

⁴⁵ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its Fifty-third Session*, GAOR, 56th Sess, Supp. No. 10, U.N. Doc. A/56/10 (2001) [hereinafter *ILC Articles*] at arts 1,2; Cook, *supra* note 7 at 142; F.V. Garcia-Amador, *Violations of Human Rights and International Responsibility*, (1956) 2 Y.B. Int'l L. Comm'n 173 at 173

⁴⁶ *United States Diplomatic and Consular Staff in Tehran Case (United States of America v. Iran)* 1980 I.C.J. Rep. 3 [hereinafter *Tehran*] at 35; *ILC Articles*, *supra* note 45, art. 11.

⁴⁷ *ILC Articles*, *supra* note 45 at art. 10; Cook, *supra* note 7 at 142; F.V. Garcia-Amador, *Violations of Human Rights and International Responsibility*, (1956) 2 Y.B. Int'l L. Comm'n 173 at 173.

⁴⁸ *Compromis*, para. 6.

⁴⁹ *Compromis*, para. 7.

general amnesty.⁵⁰ As such, the internationally wrongful acts of the militia soldiers, including the systematic rapes of Cascadian women, are attributable to Reston and engage its international responsibility.

B. Reston cannot argue that Annolay lacks capacity to pursue an action on behalf of the rape victims.

i. *Reston cannot argue that Annolay's right to standing is precluded by a lack of sufficient interest in the victims.*

10. Every state has certain obligations that it owes not only to its citizens, residents and visitors but also to the international community as a collective whole.⁵¹ Breaches of these obligations *erga omnes* give rise to a right on the part of other states to assert a claim on behalf of the victims for reparations.⁵² Recognized obligations *erga omnes* include the protection of human beings from torture⁵³, war crimes⁵⁴, crimes against humanity⁵⁵ and terrorism⁵⁶, as well as a duty not to actively engage such practices.⁵⁷

11. Reston's failure to protect the Cascadian women from systematic violations of their human rights amounts to a breach of its obligations *erga omnes*. Its active engagement in the

⁵⁰ *Compromis*, para. 3,7.

⁵¹ Shaw, *supra* note 1 at 204; D. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations" 100 Yale L.J. 2537 [hereinafter Orentlicher] at 2551-2552; *Restatement*, *supra* note 8; *Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain)* [1970] I.C.J. Rep. 3.

⁵² M. Ragazzi, *The Concept of International Obligations Erga Omnes* (2000); *Barcelona Traction*, *supra* note 51; *ILC Articles*, *supra* note 45 at art. 48(1)(b).

⁵³ Pleadings, para. 3.

⁵⁴ Pleadings, para. 5.

⁵⁵ Pleadings, para. 6.

⁵⁶ Pleadings, para. 7.

⁵⁷ Pleadings, para. 1-2.

systematic rapes is a further breach of these obligations. Annolay is therefore entitled to assert a claim for reparations on behalf of the rape victims.

ii. *Reston cannot argue that Annolay's capacity to pursue this action is precluded by any non-exhaustion of local remedies.*

12. Under international law, the burden is upon the state relying on the principle of non-exhaustion of local remedies to show that local remedies are available and have not been exhausted.⁵⁸ Such remedies must provide an effective resolution of the issues between the parties, including adequate reparations for the victims.⁵⁹

13. Reston has granted an amnesty to persons who committed crimes during the civil war,⁶⁰ precluding civil and criminal liability.⁶¹ As such, any local remedies that would have been available to the Cascadian women prior to the amnesty no longer exist. Therefore, Reston cannot rely on any non-exhaustion of local remedies to deny Annolay's capacity to assert this claim.

C. Reston must pay damages to Annolay to be disbursed as reparations to the rape victims.

14. Customary international law, as reflected in United Nations resolutions⁶², draft articles of the International Law Commission⁶³ and judgments of this Court⁶⁴ and its predecessor⁶⁵, requires

⁵⁸ *Elettronica Sicula S.P.A. (ELSI)* (1989), I.C.J. Rep. 14 [hereinafter *Elettronica Sicula*]; *Robert E. Brown Claim* (1923) 6 R.I.A.A. 120 [hereinafter *Robert E. Brown Claim*]; International Law Commission, *Diplomatic Protection, Report of the International Law Commission on the Work of its 54th Session*, GAOR, 57th Sess., Supp. No. 10, U.N. Doc. A/57/10 at para. 242-243.

⁵⁹ C. Gray, *Judicial Remedies in International Law* (1990) at 77 [hereinafter Gray]; *Robert E. Brown Claim*, *supra* note 58.

⁶⁰ *Compromis*, para. 7.

⁶¹ *Compromis Clarifications*, para. 1.

⁶² *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, 14 Dec. 1974, G.A. Res. 3318(XXIX).

a state responsible for an internationally wrongful act to make full reparations for the injuries suffered. While the preferred remedy is to re-establish the situation *ex ante*, in those situations where this isn't possible, monetary damages are appropriate.⁶⁶ Reston, as the state internationally responsible for the rapes committed by the militia soldiers, has an international obligation to pay damages to Annolay to be disbursed as reparations to the Cascadian women who were the victims of the systematic rapes.

II. RESTON IS IN BREACH OF ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE BRIBES EXACTED BY ITS BORDER OFFICIALS AND MUST PAY RESTITUTION TO ANNOLAY IN THE AMOUNT OF THE BRIBES.

A. Reston is in breach of its international obligations with respect to the bribes exacted by its border officials.

i. *Reston is in breach of its obligations under customary international law.*

15. States have an obligation under customary international law to adopt appropriate legislative and preventive measures to protect society against bribery. This is confirmed by international normative instruments⁶⁷, state practice⁶⁸ and resolutions of international

⁶³ *ILC Articles, supra* note 45 at art. 31.

⁶⁴ *Temple of Preah Vihear* [1962] I.C.J. Rep. 6 [hereinafter *Temple of Preah Vihear*]; *Tehran, supra* note 46.

⁶⁵ *Chorzow Factory* (1928) P.C.I.J. (Ser. A) No. 13 [hereinafter *Chorzow Factory*].

⁶⁶ Gray, *supra* note 59 at 77-92; *ILC Articles, supra* note 45 at art. 34-39.

⁶⁷ *Council of Europe's Criminal Law Convention on Corruption*, E.T.S. No. 173, art 2; OAS, *The Lima Declaration Against Corruption*, 8th International Anti-Corruption Conference, Lima Peru, 7-11 Sept 1997; *United Nations Declaration Against Corruption and Bribery*, 16 Dec. 1996; International Chamber of Commerce (ICC), *Rules Of Conduct To Combat Extortion and Bribery* (1997).

⁶⁸ *Id.*; *Program Of Action Against Corruption, Adopted by the Committee of Ministers of the Council of Europe*, 1996; *The 19th Conference of European Ministers of Justice* (Valletta 1994), *Resolution No.1 Adopted by the European Ministers of Justice*, 21st Conference (Prague, 1997); *Heads of State and Government of the Council of Europe*, (Strasbourg, 1997).

organizations.⁶⁹ Indeed, these obligations may have achieved the status of *jus cogens*.⁷⁰ In assessing the international responsibility of states, actions of state officials are considered actions of the state for the purposes of international law.⁷¹ Moreover, the conduct of a person empowered to exercise elements of governmental authority is considered an act of that state even if the person exceeds his/her authority or contravenes instructions.⁷²

16. Reston has failed to meet its obligation to adopt legislation to protect society against corruption in the form of bribery.⁷³ Moreover, since the border officials were acting as state agents when these bribes were exacted, Reston's international responsibility is further engaged, and continues even if the officials were acting outside their authority or in contravention of instructions.

ii. *Additionally, Reston has breached its international obligation not to defeat the object and purpose of the Regional Anti-Corruption Convention.*

17. Where a state has signed a treaty subject to ratification, and that treaty is in force, the state is obliged to refrain from acts which would defeat the treaty's object and purpose.⁷⁴ The object and purpose of the Regional Anti-Corruption Convention (RACC) is to pursue a common

⁶⁹ J. Wolfensohn, *A Back-To-Basics Anti-Corruption Strategy* presented to the World Bank and the International Monetary Fund; Director J.B. Atwood of The U.S. Agency for International Development (USAID).

⁷⁰ *Id.*; Pleadings, note 67, 68.

⁷¹ *ILC Articles*, *supra* note 45 at art. 4; *Nicaragua*, *supra* note 2; *Rainbow Warrior* Arbitration, 82 I.L.R. 210 at 499; *USS Stark Incident* (1989) 83 A.J.I.L. 561 at 561-564.

⁷² *ILC Articles*, *supra* note 45 at art. 7; *Youmans Claim (United States of America v. Mexico)* (1926) 4 RIAA 110 hereinafter *Youmans*]; *Union Bridge Company Case, (US v. Great Britain)* (1924) 2 ILR 170; *Caire Claim* (1929) 5 R.I.A.A. 516.

⁷³ *Compromis*, para. 39.

⁷⁴ Vienna Convention on the Law of Treaties (1969) 1155 U.N.T.S. 331, [hereinafter *Vienna*] at art. 18(a); A. Aust, *Modern Treaty Law and Practice* (2000) [hereinafter *Aust*].

criminal policy aimed at the protection of society against corruption, and to adopt appropriate legislation and preventive measures.⁷⁵ Not only did Reston fail to adopt legislation as required by the RACC, its state officials demanded bribes from Annolaysian adoptive parents rescuing children from “makeshift camps whose conditions were universally condemned as wretched.”⁷⁶

iii. Reston cannot argue that Annolay’s claim is premature by reason of the non-exhaustion of any local remedies.

18. When a state asserts that a claim is premature by reason of the non-exhaustion of local remedies it bears the burden of proving that the local remedies are available and have not been exhausted.⁷⁷ As Reston has no specific anti-bribery laws, it cannot meet this burden. Therefore, Reston cannot argue that Annolay’s claim is premature.

B. Annolay is entitled to restitution in the amount of the bribes paid to border officials.

19. It is a principle of customary international law that a state which has committed an internationally wrongful act is under a duty to re-establish the situation *ex ante*.⁷⁸ This principle has been confirmed by this Court⁷⁹, its predecessor⁸⁰ and learned writers.⁸¹ With specific respect to international adoptions, the office of the United Nations High Commissioner for Human

⁷⁵ *Compromis* para. 39.

⁷⁶ *Compromis* para. 9.

⁷⁷ Pleadings, note 58.

⁷⁸ *Temple of Preah Vihear*, *supra* note 64.

⁷⁹ *Tehran*, *supra* note 46; *Nicaragua* *supra* note 2.

⁸⁰ *Chorzow Factory*, *supra* note 65.

⁸¹ *ILC Articles*, *supra* note 45 at art.31, 35; Gray, *supra* note 59 at 107; Brownlie, *supra* 1 at 438; Shaw *supra* note 1 at 554.

Rights⁸² has declared that “[i]n no case [of adoption] should the placement result in improper financial gain for those involved in it.” This principle is reflected in the almost universally ratified Convention on the Rights of the Child⁸³ and other international declarations and conventions.⁸⁴ As a result of Reston’s internationally wrongful conduct, Reston’s border officials realized an improper financial gain from their involvement in these adoptions in direct violation of its international obligations. As such, Reston is required to re-establish the situation *ex ante* by paying restitution in the amount of the bribes paid to border officials.

III. MR. SCHMANDERFARE HAS COMMITTED NO ACT THAT WOULD GIVE RISE TO UNIVERSAL JURISDICTION AND, IN ANY EVENT, RESTON IS NOT ENTITLED TO EXERCISE SUCH JURISDICTION IN THESE CIRCUMSTANCES.

A. Mr. Schmanderfare has committed no act that would give rise to universal jurisdiction.

- i. *Reston cannot argue that Mr. Schmanderfare’s mere operation of a brothel gives rise to universal jurisdiction.*

20. Under customary international law, states are only permitted to rely on universal jurisdiction in the event of certain recognized crimes such as piracy, war crimes, and crimes against humanity.⁸⁵ Even writers that argue that forced prostitution should be recognized as an

⁸² Office of the High Commissioner for Human Rights, *Declaration on the Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, U.N. Doc. A/Res/41/85.

⁸³ *The Convention of the Rights of the Child*, 12 Dec. 1989, U.N. Doc. A/RES/44/25 [hereinafter UNCRC] at art. 21(d).

⁸⁴ *Id.*; ICCPR, *supra* note 9 at art. 24. *International Covenant on Economic, Social and Cultural Rights* (1996) 993 U.N.T.S. 3 [hereinafter ICESCR] at art.10.

⁸⁵ Shaw, *supra* note 1 at 470; Brownlie, *supra* note 1 at 307-308; K.C. Randall, “Universal Jurisdiction Under International Law” (1988) *Tex. L. Rev* 785 [hereinafter Randall] at 787; Princeton Project on Universal Jurisdiction, “Princeton Principles on Universal Jurisdiction” (2001) [hereinafter Princeton Principles] at 28-29; *Attorney General of Israel v. Eichmann*, 36 I.L.R. 18, 26 (Isr. Dist. Ct.-Jerusalem 1961), *aff’d*, 36 I.L.R. 277 (Isr. Sup. Ct. 1962) [hereinafter *Eichmann*]; N. Strapatzas, “Universal Jurisdiction and the International Criminal Court” (2002)

international offence have not argued that it currently gives rise to universal jurisdiction,⁸⁶ indeed it is not even clear that mere prostitution constitutes a breach of any customary international norm.⁸⁷ If activities related to prostitution are to attract universal jurisdiction it is only in extreme situations where the activities amount to a serious recognized crime, such as slavery⁸⁸ or torture.⁸⁹ Therefore Mr. Schmandefare's alleged operation of a brothel does not give Reston the right to prosecute him on the basis of universal jurisdiction.

ii. *Reston cannot assert universal jurisdiction on the basis that Mr. Schmandefare's activities amount to slavery.*

21. International treaties define slavery narrowly, requiring that a person exercise total control over another person's life.⁹⁰ Debt bondage and trafficking in women are not considered slavery. For example, these terms have not been equated to slavery in international

29 Man L.J. 1 [hereinafter *Strapatsas*] at 2; *Universal Jurisdiction (Austria) Case*, [1958] 28 I.L.R. 341 [hereinafter *Universal Jurisdiction (Austria) Case*].

⁸⁶N.V. Demleitner, "Forced Prostitution: Naming an International Offense" (1994) *Fordham Int'l L.J.* 163.

⁸⁷ Pleadings, note 27.

⁸⁸ Randall, *supra* note 85 at 798-799; Princeton Principles, *supra* note 85 at 29.

⁸⁹ *Furundzija*, *supra* note 9; *UDHR*, *supra* note 9, Art. 5; Randall, *supra* note 85 at 839; Princeton Principles, *supra* note 85 at 29; Gibney, *supra* note 85 at 47; Shaw, *supra* note 1 at 476; *CAT*, *supra* note 10; *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment*, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) 91, U.N. Doc. A/10034 (1976) (hereinafter *Declaration on Torture*); *Pinochet Case*, Brussels Investigation and Hearing Judges, 6 Nov. 1998, RDPC, 1999 at 278, JT 99 at 308.

⁹⁰ *Convention To Suppress the Slave Trade and Slavery*, Sept. 25, 1926, 60 L.N.T.S. 253, art. 1 [hereinafter *Slavery Convention*]; C. Bassiouni, "Enslavement as an International Crime" (1992) 23 *N.Y.U. Int. Law & Pol.* 445 at 466-7; Ratner & Abrams, *supra* note 7 at 115; N. Lassen, "Slavery and Slave-Like Practices: United Nations Standards and Implementation" (1988) 57 *Nordic J. Int'l L.* 197 at 206.

conventions,⁹¹ including the most recent protocol to prevent, suppress and punish those trafficking in women. Even if debt bondage and trafficking in women do constitute slavery, both terms have been narrowly defined. Trafficking in women occurs when women are recruited or transported by means of threat, force, coercion or deception for the purpose of exploitation.⁹² Debt bondage occurs when a debtor pledges his/her service as security for a debt if the value of the contracted services is not applied towards its liquidation or if the length and nature of the services are not limited or defined.⁹³

22. The Schmandefare Company's alleged operation of brothels does not amount to slavery. The Company does not exercise total control over the women. While there have been allegations in a single non-official report that the women had some restrictions on their liberty, it would be premature to accept the facts of the ILSA Report because they have not been officially confirmed by any U.N. or governmental agency.⁹⁴ Nor did the recruitment and transportation of women from Cascadia to Annolay constitute trafficking in women as it was not accomplished by means of threat, force, coercion or deception.⁹⁵ The women were not deceived; there is no evidence that the Schmandefare Company failed to provide them with jobs, shelter, and education in Annolaysian as promised. While the representatives may have traveled to Cascadia and recruited

⁹¹ *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 Dec. 1949, 96 U.N.T.S. 271; *Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children*, G.A. Res. 55/25, Annex II, 55 GAOR, Supp. No. 49, U.N. Doc. A/45/49 (Vol. I) (2001).

⁹² *Id* at 60.

⁹³ *Supplementary Convention of the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery*, 7 Sept. 1956, 266 U.N.T.S. 3 [hereinafter *Supplementary Slavery Convention*] art.1(a).

⁹⁴ *Compromis*, para. 28, 30.

⁹⁵ *Compromis*, para 24.

women to work primarily as nannies or domestic servants, their only expressed promise regarding employment was to provide “jobs,”⁹⁶ but not in any specific field. Finally, the actions of the Schmandefare Company do not constitute debt bondage; there is no suggestion that the women pledged their services to the Company as security for debt. The Cascadian women were given loans, consistent with the laws of Annolay and Reston, to cover the costs of applying for all necessary permits and travel.⁹⁷ There is no evidence that the women’s earnings were not applied towards the liquidation of their debt.

iii. Reston cannot assert universal jurisdiction on the basis that Mr. Schmandefare’s activities amount to torture.

23. Under customary international law, as confirmed by the torture convention,⁹⁸ judicial decisions⁹⁹ and learned writers,¹⁰⁰ torture occurs only when public officials acquiesce or consent to severe suffering that is intentionally inflicted to intimidate, coerce or punish.¹⁰¹ Mr. Schmandefare’s activities do not amount to torture. He never intentionally inflicted severe pain or suffering on any Cascadian women. There has been no substantiated proof that Schmandefare ever mentally or physically abused the women; any claims are limited only to the unofficial and unconfirmed ILSA Report. Indeed, the only specific case referred to in the Report does not

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 26 June 1987, G.A. Res. 39/46 [hereinafter *CAT*].

⁹⁹ Eichmann, *supra* note 85; *Universal Jurisdiction (Austria) Case*, *supra* note 85.

¹⁰⁰ Shaw, *supra* note 1 at 470; Brownlie, *supra* note 1 at 307-308; Randall, *supra* note 85 at 787; *Princeton Principles*, *supra* note 85 at 28, 29; Strapatsas, *supra* note 85 at 2.

¹⁰¹ *CAT*, *supra* note 100 at art. 1.

contain any clear evidence of mental or physical abuse.¹⁰² Even if Mr. Schmandefare did intentionally mistreat the women, Annolaysian public officials never acquiesced or consented. While there were a “few agencies” that received “isolated reports” from a “few individuals”, the government of Annolay never had any independent knowledge of the facts underlying the report.¹⁰³ Similarly, the police’s mere transportation of an injured woman from the hospital to the brothel¹⁰⁴ cannot constitute acquiescence in the absence of direct knowledge of abuse. Without acquiescence of a public official Mr. Schmandefare’s alleged mistreatment of these women cannot amount to torture.

B. Even if Mr. Schmandefare’s activities amount to slavery or torture, Reston is not entitled to exercise universal jurisdiction in these circumstances.

i. Reston is precluded from exercising universal jurisdiction over Mr. Schmandefare because of Annolay’s greater interest in prosecuting him.

24. When two states may assert jurisdiction over a crime, the state with the lesser interest should yield to the other state.¹⁰⁵ The primary bases for asserting prescriptive jurisdiction in international law are territory¹⁰⁶ and nationality,¹⁰⁷ although international law has recognized the applicability of the universality principle in certain circumstances.¹⁰⁸ If the state with the lesser interest is ever justified in asserting universal jurisdiction, it is only where jurisdiction is

¹⁰² *Compromis*, para 28, 29, 30.

¹⁰³ *Compromis*, para 30.

¹⁰⁴ *Compromis*, para 29.

¹⁰⁵ Strapatsas, *supra* note 85 at 4.

¹⁰⁶ Shaw, *supra* note 1 at 458-459; *The Steamship Lotus (France v. Turkey)* [1927] P.C.I.J. (Ser. A) No. 10.

¹⁰⁷ Shaw, *supra* note 1 at 462-464.

¹⁰⁸ Pleadings, note 85.

exercised so as to avoid interfering in another state's affairs or to prevent the perpetrator from going unpunished.¹⁰⁹

25. Reston must defer to Annolay because it clearly has a greater interest in prosecuting Mr. Schmandefare. The alleged crimes were committed on Annolaysian territory by Mr. Schmandefare, an Annolaysian national.¹¹⁰ Furthermore, Mr. Schmandefare and the alleged victims are currently in Annolay.¹¹¹ In contrast, Reston has no connection to the alleged offender, the victims or the crime. Moreover, Reston's assertion of universal jurisdiction amounts to an interference in Annolay's affairs. It undermines the legitimacy of the Annolaysian judicial system by questioning Annolay's ability to administer justice over its own nationals.¹¹² Finally, Reston cannot argue that Mr. Schmandefare's crimes will go unpunished. The Annolaysian government has created a blue-ribbon panel, including criminal law and women's rights experts and prosecutors from the Annolaysian Ministry of Justice, to investigate the sex industry in Annolay and the validity of the allegations in the ILSA Report.¹¹³ The President of Annolay characterized the conduct alleged in the ILSA report as "reprehensible" and has committed Annolay to prosecute where warranted.¹¹⁴

ii. Further, Reston is not entitled to exercise universal jurisdiction over Mr. Schmandefare in absentia.

¹⁰⁹ Strapatsas, *supra* note 85 at 5; Eichmann, *supra* note 85 at 298-299.

¹¹⁰ *Compromis*, paras 25, 26.

¹¹¹ *Id.*

¹¹² *Compromis*, para 34.

¹¹³ *Compromis*, para 30.

¹¹⁴ *Compromis*, para 31.

26. Under customary international law, a national court may only exercise universal jurisdiction “provided the person is present before such judicial body”.¹¹⁵ The President of this Court¹¹⁶ and learned authors¹¹⁷ have confirmed that it is impermissible for any state to conduct a trial *in absentia* on the basis of universal jurisdiction. For example, the Belgium Court of Appeals¹¹⁸ held that no prosecution can be started against any defendant *in absentia*; while this decision was subsequently quashed by the Court of Cassation, that Court “did not address [the issue of universal jurisdiction in absentia] directly in its ruling”¹¹⁹. Under customary international law every person charged with a crime is entitled to a fair trial,¹²⁰ including the right to be present to make a full defence.¹²¹ Indeed, not requiring the physical presence of a defendant before a trial can begin would raise substantial problems of due process and arbitrariness.¹²² Mr. Schmandefare is presently in Annolay¹²³ and therefore Reston cannot try him.

¹¹⁵ *Princeton Principles*, *supra* note 85 at 28.

¹¹⁶ *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* [2002] I.C.J. General List No. 121 Separate Opinion of President Guillaume.

¹¹⁷ *Princeton Principles*, *supra* note 85; The World Organization Against Torture USA, *Submission to the Court of Appeals of Brussels* (2001) [hereinafter WOATUSA] online: <www.woatusa.org>.

¹¹⁸ “Setback for Belgium War Crimes Moves” *B.B.C. News* (16 April 2002), online: B.B.C News <<http://news.bbc.co.uk/2/hi/europe/1933089.stm>>.

¹¹⁹ C. Mallat et al., “The Case Against the Accused: Court Diary” Press Release, 25 Nov. 2002, online: <<http://www.indictsharon.net/case-frame.html>>.

¹²⁰ *UDHR*, *supra* note 9 at art. 10.

¹²¹ Meron, *supra* note 21; *ICCPR*, *supra* note 9, art. 14(3)(d).

¹²² WOATUSA, *supra* note 117.

¹²³ *Compromis*, para 26.

IV. ANNOLAY HAS NOT BREACHED ANY INTERNATIONAL OBLIGATIONS DERIVING FROM THE ALLEGED TREATMENT OF CASCADIAN WOMEN WORKING IN BROTHELS IN ANNOLAY, AND, IN ANY EVENT, RESTON LACKS CAPACITY TO ENFORCE SUCH OBLIGATIONS.

A. Annolay has not breached any international obligations deriving from the alleged treatment of Cascadian women working in brothels in Annolay.

i. *The alleged treatment of Cascadian women in Annolay is not in breach of international law.*

a. The alleged treatment of the women amounts only to employment for the purpose of prostitution, which is not a breach of any international obligation.

27. The international community is divided on the issue of prostitution. Some states (for example, Australia, Austria, Germany, Greece, The Netherlands, Peru, and Nevada in the United States of America) permit prostitution and the employment of women for the purpose of prostitution.¹²⁴ Other states (for example, Argentina, Brazil, Canada, Iran, Kenya, Senegal, Turkey, and United Kingdom) have criminalized solicitation and the employment of women for the purpose of prostitution while not criminalizing prostitution outright.¹²⁵ Yet other states (for example, Egypt, India and Thailand) have prohibited both prostitution and the employment of women for the purpose of prostitution.¹²⁶ International treaties that contain provisions prohibiting prostitution and the employment of women for the purpose of prostitution¹²⁷ do not provide *opinio juris*. Many parties to the conventions have publicly stated that these instruments

¹²⁴ “Prostitution & The Laws – The Facts,” *New Internationalist*, issue 252 (February 1994) – www.newint.org/issue252/facts.htm.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 Dec. 1979, G.A. Res. 34/180, Art. 6; *CAT*, *supra* note 98; UNCRRC, *supra* note 83 at art. 35.

do not codify of international obligations, but are merely statements of intention.¹²⁸ Given the inconsistent state practice and the lack of *opinio juris*, the employment of women for the purpose of prostitution cannot be considered a customary international norm.

b. Reston cannot argue that the treatment of Cascadian women in Annolay constitutes slavery or torture.

28. The recruitment and employment of women for the purpose of prostitution does not amount to slavery¹²⁹ or torture¹³⁰. The treatment of the Cascadian women working in the brothels does not amount to actions in breach of the prohibition against slavery¹³¹ or torture¹³².

ii. *In any event, any unlawful treatment of Cascadian women does not give rise to a breach of Annolay's international obligations.*

29. The state is not an “insurer or guarantor” of the successful prevention of all human rights violations perpetrated by every private individual.¹³³ This Court,¹³⁴ international human rights courts,¹³⁵ international arbitral tribunals¹³⁶ and learned writers¹³⁷ have confirmed that the only

¹²⁸ J. Connors, “The Women’s Convention in the Muslim World” in *Human Rights as General Norms and a State’s Right to Opt Out* (1997) at 97; B. Clark, “The Vienna Convention Reservations and the Convention on Discrimination Against Women” (1991) 85 A.J.I.L. 281 at 283-289.

¹²⁹ Pleadings, paras 21, 22.

¹³⁰ Pleadings, para. 23.

¹³¹ Pleadings, paras 21, 22.

¹³² Pleadings, para. 23.

¹³³ *Alabama Claims* (1872) Moore’s Arb. 653.

¹³⁴ *Tehran*, *supra* note 46 at paras 61-63, 67; *Barcelona Traction*, *supra* note 52 at 32.

¹³⁵ *Muteba v. Zaire* Comm. No. 124/1982, U.N. GAOR Supp. (No. 40) Annex VIII, U.N. Doc A/39/40 (1984); *X and Y v. The Netherlands* (1985) 91 Eur. Ct. H.R. (Ser. A); *Velasquez Rodriguez Case* (1988), Inter-Am. Ct. H.R. (Ser. C) No. 4.

¹³⁶ *Janes Case (U.S. v. Mexico)* 1926, 3 I.L.R. 218; *Zafiro Case (Great Britain v. U.S.)* (1925) 6 R.I.A.A. 160; *Noyes Claim (U.S. v. Panama)* (1933) 6 R.I.A.A. 308.

duty on a state with respect to the prevention and prosecution of human rights violations is to exercise due diligence. A state is only responsible for the actions of private individuals when the actions are “notorious” or “widespread.”¹³⁸

30. Annolay has not breached any international obligations, as the treatment of the Cascadian women was not perpetrated by an agent of the state and does not constitute abuse “widespread throughout the country”.¹³⁹ Even if the abuse could be considered to be widespread, Annolay has exercised due diligence to prevent and protect the Cascadian women. Annolay has legislation that prohibits prostitution.¹⁴⁰ The Annolaysian President has publicly condemned the alleged mistreatment as “reprehensible” and has committed Annolay to investigating and prosecuting those responsible.¹⁴¹ Further, Annolay has created a blue-ribbon panel to investigate the allegations of mistreatment. Moreover, Annolay reacted to the allegations promptly after obtaining the report from ILSA.¹⁴² Finally, forced prostitution and trafficking of women for the purpose of prostitution occurs in almost every state around the world and no state has ever been prosecuted for failing to exercise due diligence to prevent them.

B. In any event, Reston lacks capacity to enforce any international obligations owed by Annolay to the Cascadian women.

i. *Reston has no standing because it lacks sufficient interest in the Cascadian women.*

¹³⁷ I. Brownlie, *System of the Law of Nations: State Responsibility* (1983) at 161-162; Brownlie, *supra* note 1 at 455-457; Meron, *supra* note 21 at 164.

¹³⁸ Orentlicher, *supra* note 51 at 2582; Meron, *supra* note 21 at 105; *Restatement*, *supra* note 3.

¹³⁹ *Compromis*, paras 30-31.

¹⁴⁰ *Compromis*, para 23.

¹⁴¹ *Compromis*, para 31.

¹⁴² *Compromis*, para 30.

31. A state is not entitled to assert a claim against another state on the basis of injury to individuals unless it is a party to a treaty that grants it standing, has a national interest in the victims¹⁴³ or seeks to enforce an obligation *erga omnes*.¹⁴⁴ Reston is not party to any treaty that gives it standing to pursue a claim against Annolay before this Court.¹⁴⁵ Similarly, Reston has no national interest in the Cascadian women in Annolay as they are not, and never were, its nationals or residents.¹⁴⁶ Finally, any alleged mistreatment of Cascadian women does not constitute a breach of any customary international norm, let alone, an obligation *erga omnes*.¹⁴⁷

ii. As local remedies have not been exhausted, Reston lacks capacity to assert a claim against Annolay.

32. A state may only assert an international claim on behalf of injured individuals against another state after all local remedies of the latter state have been exhausted.¹⁴⁸ Indeed there can be no breach of international law until the local remedies of the state where the breach occurred

¹⁴³ *Kren Claim* 20 I.L.R. 234; *Mergre Case* (1955) 22 I.L.R. 443; Shaw, *supra* note 1 at 563.

¹⁴⁴ Shaw, *supra* note 1 at 204; Meron, *supra* note 21 at 192-199; *Restatement*, *supra* note 3 at s. 703(2).

¹⁴⁵ *Compromis*, para. 38.

¹⁴⁶ *Compromis*, para. 24, 25.

¹⁴⁷ Pleadings, para. 21, 22, 23, 27.

¹⁴⁸ *ILC Articles*, *supra* note 46 at art. 22; Shaw, *supra* note 1 at 567-569; *Ambatielos Case* (1956) 23 I.L.R. 306; *Interhandel Case* [1959] I.C.J. Rep. 6.

has been exhausted.¹⁴⁹ The state rejecting the principle of non-exhaustion of local remedies has the burden of showing that the remedies available under local laws are ineffective.¹⁵⁰

33. The Cascadian women have not pursued all the local remedies available in Annolay. Annolay has effective criminal and civil judicial systems open to the women.¹⁵¹ Furthermore, the Annolaysian government has initiated a blue-ribbon panel to examine the problem in the alleged brothels and to recommend whether parties should be prosecuted.¹⁵² While the Annolaysian police and government agencies may have overlooked “isolated complaints from a few individuals,” there remain effective remedies available in Annolay.

¹⁴⁹ *ILC Articles*, *supra* note 46 at art. 22; J. Dugard, “Second Report on Diplomatic Protection,” 53rd Session of the International Law Commission (2001), U.N. Doc A/CN.4/514; *Mexican Union Railway (U.K. v. Mexico)* (1926) 5 I.L.R. 207.

¹⁵⁰ *Alabama Claims* (1872) Moore’s Arb. 653; Orentlicher, *supra* note 51 at 2581; *Velasquez Rodriguez Case*, *supra* note 137.

¹⁵¹ *Clarifications*, para 8.

¹⁵² *Compromis*, para 30.

CONCLUSION

It is respectfully requested that this Honourable Court:

Declare that Reston has breached its international obligations and must pay pay damages to Annolay to be distributed as reparations to those victims of systematic rape during the Dysfunctionian civil war who are now resident in Annolay;

Declare that Reston is in breach of its international obligations with respect to the bribes exacted by its border officials from Annolaysian citizens and is obligated to pay restitution in the amount of the bribes to Annolay on behalf of the Annolaysian adoptive parents;

Declare that Reston is not entitled to exercise universal jurisdiction over Mr. Fred Schmandefare;

Declare that Annolay has not breached any international legal obligations deriving from the alleged treated of Cascadian women working in brothels in Annolay that, in any event, Reston has no standing to enforce any such obligations.

All of which is respectfully submitted.

Agents for the Republic of Annolay