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STATEMENT OF JURISDICTION

In accordance with Article 40(1) of the Statute of the International Court of Justice, the Republic of Annolay and the Republic of Reston have submitted a special agreement to this Court for the settlement on the differences between them concerning the women and children of the civil war. Pursuant to Article 36(1) of the Statute, this court has jurisdiction over such disputes referred to it by the parties. The parties have agreed to waive objections to the jurisdiction of this Court.

QUESTIONS PRESENTED

1. Whether 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 Dysfunctian civil war now resident in Annolay?

2. Whether 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?

3. Whether Reston is entitled to exercise universal jurisdiction over Mr. Fred Schmandefare, a citizen of Annolay?

4. Whether Annolay has breached any international obligations deriving from the alleged treatment of Cascadian women working in brothels in Annolay and whether Reston has standing to enforce such obligations?

STATEMENT OF FACTS

In 1996 a full scale civil war divided the Kingdom of Dysfunctia as two distinct ethnic groups, the Cascadians and the Restonians. Embattled over a struggle for control, both sides formed militias to support their claim to the throne. A year into the Dysfunctian civil war, War-Time Relief International (WRI) and the United Nations Human Rights Commission (UNHRC), exposed the use of systematic rape of ethnic Cascadian women by the Restonian militia as a means of coercion and intimidation against the Cascadians.[1] The organizations further reported that Restonian militia leader Colonel Georg Raskolnikov had not taken action to stop the rapes despite his knowledge of their systematic practice.[2] Finally, in 1999 the Republic of Annolay, which borders Dysfunctia, offered assistance in organizing a peace conference to end the violence. As a result of these negotiations, two independent States, Reston and Cascadia, were created.

Cascadia is an agrarian, culturally ultra-conservative country with laws and customs dating back to the 10th century.[3] Within this culture women who have been raped are ostracized without any family of friends to help or support them.[4] The UNHRC estimated in 1999 that 4,000-7,000 Cascadian women were living without the means to support themselves.[5] This problem was compounded by the slow development of the Cascadian economy.

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[1] Compromis ¶ 3.

[2] Compromis at ¶ 4.

[3] Compromis at ¶ 8.

[4] Compromis at ¶ 22.

[5] Compromis at ¶ 22.

Reston, on the other hand, is an emerging industrial State that held its first democratic election immediately following the peace treaty.[6] Colonel Raskolnikov campaigned for President on a platform of "National Healing" promising amnesty to any person accused of crimes committed during the Dysfunctian civil war.[7] Upon election, Raskolnikov granted full national amnesty to all persons within Reston, Cascadian and Restonian.[8]

Shortly after the peace treaty was signed, representatives of the privately-owned Annolaysian domestic services company, the Schmandefare Company [hereinafter Company], traveled to Cascadia to assist women who were victims of war-time rape. The Company is owned and operated by Mr. Fred Schmandefare, a citizen and resident of Annolay.[9] Schmandefare and his company have no formal ties to the government of Annolay or its public agencies.[10] The Cascadian women were promised jobs and assistance obtaining visas and travel/work permits. The Company made loans available to the women who chose to relocate to Annolay.[11] In May 2001 allegations were made by the Institute for Labor Studies and Advancement (ILSA) that the Company had resettled Cascadian women into Annolaysian brothels.[12] Immediately upon hearing the ILSA report Mary Q. Contrary, Annolay's President, formed a panel of criminal-law and women's rights experts to investigate the accusations against

[6] Compromis at ¶¶ 7,8.

[7] Compromis at ¶ 7.

[8] Compromis at ¶ 7.

[9] Compromis at ¶ 26.

[10] Compromis at ¶ 23.

[11] Compromis at ¶ 24.

[12] Compromis at ¶ 27.

Mr. Schmandefare and his company.[13] Within a few days of this announcement, President Raskolnikov announced his intention to prosecute Fred Schmandefare for the international crime of trafficking women.[14]

While the Schamandefare Company was assisting Cascadian women, WRI addressed the issue of Restonian children orphaned during the Dysfunctian civil-war. A month after the 1999 elections in Reston, WRI began a campaign in Annolay encouraging Annolaysian citizens to adopt the thousands of orphaned Restonian children living in make-shift camps.[15] The adoptions were facilitated by the Annolaysian Regional Adoption Society (ARAS), which provided travel and clerical support for Annolaysian families wishing to adopt Restonian children.[16] In order to adopt a Restonian child, Annolyasian parents were required to travel to Reston for "fitness interviews" with Restonian officials. Once the parents passed the interview, they were given a certificate required at the border in order to leave Reston with a child.

In January 2001, the *International Times-Picayune* published a story revealing that Restonian border officials were routinely requiring bribery payments to permit adoptive Annolaysian parents to leave Reston with their child.[17] Under pressure from ARAS board members and Annolaysian adoptive parents, President Contrary sent a diplomatic message to President Raskolnikov requesting that he address the corruption occurring at the borders. After ignoring the issue for two months, the Restonian government finally took action by reassigning

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[13] Compromis at ¶¶ 30,31.

[14] Compromis at ¶ 33.

[15] Compromis at ¶ 9.

[16] Compromis at ¶ 10.

[17] Compromis at ¶ 13.

10% of the border officials implicated in the bribery efforts without prosecution or any other disciplinary actions.[18]

In March of 2001, President Contrary announced that Annolay would begin to investigate the reports of ethnic rape during the Dysfunctian civil war.[19] She requested that both Cascadia and Reston take steps to punish those responsible for the systematic use of rape. Both countries refused to address the issue.[20] President Contrary then issued a statement that due to the inaction of Cascadia and Reston, Annolay would seek reparations on behalf of the women raped during the war.

During the summer of 2001, after failed attempts to diplomatically resolve the issues in the Compromis and failed mediation by the United Nations Secretary General, the parties agreed to submit these issues to the International Court of Justice.

[18] Compromis at ¶¶ 16, 17.

[19] Compromis at ¶ 18.

[20] Compromis at ¶¶ 19,20.

SUMMARY OF PLEADINGS

Annolay argues that it has standing to bring a claim for reparations on behalf of the Cascadian rape victims in Annolay. The retention of Cascadian citizenship by the victims of systematic rape now resident in Annolay does not destroy Annolay's right to bring this suit. Also, Annolay is entitled to bring this claim due to its *erga omnes* obligations. Annolay has not bypassed its obligation to pursue local remedies because the seeking such remedies would be futile. Also, the equitable principle of laches does not apply due to the seriousness of the crimes alleged and the passage of a mere two years since their perpetration.

Annolay further contends that Reston is responsible for failing to prevent the systematic rapes of Cascadian women during the Dysfunctian civil war and later failing to punish those responsible. The rapes are attributable to Reston because the Restonian militia was an insurrectional movement, there is continuity between the leadership of the militia and the leadership of the new Republic, and the failure of Colonel Raskolnikov to prevent the perpetration of crimes against humunity is a violation of Reston's international obligations. Reston's grant of amnesty after the war is inconsistent with the international customary practice and it is therefore not relieved of its international obligation to punish acts of torture. Reston is therefore obligated to make reparations on behalf of the rape victims now resident in Annolay.

Reston is also obligated to make restitution to the Annolaysian adoptive parents for failing to enact and enforce bribery laws. Annolay is not complicit in the border corruption because the actions of the government officials sitting on the Board of the Annolaysian Regional Adoption Society (ARAS) constitute conduct carried out in their private capacity. Nor is complicit since the actions of the Annolaysian border officials were consistent with both

domestic and international law.Reston is therefore fully obligated to make reparations for its failure to address the problem of corruption at its borders.

Annolay maintains that Reston should be barred from bringing its claims before this Court because Reston lacks a genuine link to the Cascadian women. Nor does Reston have an *erga omnes* right to bring this suit as no such responsibility exists for the domestic crime of prostitution. The equitable principle of unclean hands also bars the Republic of Reston from bringing this suit because of its abhorrent conduct during the Dysfunctian civil war.

The Republic of Annolay is not liable for the acts of Fred Schmandefare, or the Company, involving the Cascadian women in Annolay because it cannot be held responsible for the actions of private actors. Due to a lack of any formal ties to the State of Annolay, Annolay is not liable for the acts of Fred Schmandefare or the Company. The Republic of Annolay is therefore not in breach of any international obligation with respect to the Cascadian women living there.

Finally, Reston is not entitled to universal jurisdiction over Fred Schmandefare for his alleged crimes. Reston does not offer any valid evidence of an international crime committed by Fred Schamandefare; rather, it offers only unsubstantiated allegations against him. The Republic of Reston has failed to negotiate the extradition of Mr. Schmandefare, contrary to its obligation to do so. Furthermore, any extradition request offered by Reston will be denied because of insufficient evidence that the accused has committed the alleged crime. Thus, the Republic of Annolay retains its sovereign right to prosecute Fred Schmandefare, if sufficient evidence develops, because it has a more profound interest in exercising jurisdiction over the offender.

I. RESTON HAS BREACHED ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE RAPE OF CASCADIAN WOMEN DURING THE DYSFUNCTIAN CIVIL WAR AND MUST MAKE REPARATIONS TO ANNOLAY ON BEHALF OF THOSE VICTIMS RESIDENT IN ANNOLAY.

A. Annolay has standing to bring this claim on behalf of its resident Cascadian women.

1. Annolay has standing because it is the State of effective nationality.

The retention of formal Cascadian citizenship by the victims of systematic rape now resident in Annolay does not destroy Annolay's right to assert their claims before this Court. Determination of nationality for the purposes of State protection involves a "search for the real and effective nationality based on the facts of a case, instead of an approach relying on more formalistic criteria."[1] Real and effective nationality includes: habitual residence, participation in public life, family ties and attachment shown for a given country.[2] The Cascadian women have resided in Annolay for three years, their participation in public life is limited only by the right to vote, and their family and personal ties to Cascadia have been severed. Annolay is therefore the State of effective nationality for purposes of representation before this Court.

2. Annolay has standing because the prohibition of torture is an obligation *erga omnes.*

All States have a legal interest in the enforcement of obligations *erga omnes.*[3] These obligations derive *inter alia* "from the principles and rules concerning the basic rights of the human person."[4] There is worldwide agreement that such rights include being free from torture[5]

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[1] *Iran-U.S. Claims Tribunal: Decision in Case No. A/18 Concerning the Question of Jurisdiction over Claims of Persons With Dual Nationality*, Apr. 6, 1984, 5 Iran-U.S. Claims Trib. Reports 25, 23 I.L.M. 489, 499-500 (1984)..

[2] *Nottebohm Case* (Liecht. v. Guat.), 1955 I.C.J. 4, 24-25 (Apr. 6).

[3] *Barcelona Traction, Light & Power Co.* (Belg. v. Spain), 1970 I.C.J. 3, at ¶ 33 (Feb. 5). *See generally* Alfred P. Rubin, *Actio Popularis, Jus Cogens, and Offenses Erga Omnes?*, 35 NEW ENG. L. REV. 265 (2001).

[4] *Id.* at ¶ 34.

and the analogous violation of systematic or "political" rape.[6] Thus, Annolay is entitled to bring this claim on behalf of the Cascadian victims of systematic rape due to its attendant *erga omnes* interest to prohibit these violations.

B. The systematic rape of Cascadian women by the Restonian militia constitutes an internationally wrongful act for which the Republic of Reston is responsible.

"There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) [i]s attributable to the State under international law; and (b) [c]onstitutes a breach of an international obligation of the State."[7]

1. The actions and omissions of the Restonian militia are attributable to Reston.

President Raskolnikov has denied that Reston owes a duty to make reparations for the Cascadian rapes, as they took place before the State came into existence. However, "[t]he conduct of a movement, insurrectional or other, 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."[8] Since the Restonian militia qualifies as an "insurrectional or other movement" and it succeeded in establishing a new republic, its conduct is attributable to Reston.

[5] *See* Universal Declaration of Human Rights, art. 5, U.N. Doc. A/810 (1948)[hereinafter UDHR]; *Filartiga v. Pena-Irala,* 630 F.2d 876, 880-81 (2d Cir.1980).

[6] *See* Theodor Meron, *Rape as a Crime under International Humanitarian Law,* 87 AM. J. INT'L L. 424, 426 (1993).

[7] Responsibility of States for internationally wrongful acts, art. 2, U.N. Doc. A/Res/56/83 (2001) [hereinafter ILC Articles].

[8] ILC Articles, *supra* note 7, art. 10(2).

To define an insurrectional movement, the threshold test for the applicability of the laws of armed conflict[9] draws a distinction between "dissident armed forces or organized armed groups which, under responsible command, exercise such control over a part of [the relevant State's] territory as to enable them to carry out sustained and concerted military operations" and "situations of internal disturbances . . . such as riots [or] isolated and sporadic acts of violence."[10]

The armed movement of the Restonian militia during the Dysfunctian civil war satisfies this test. Colonel Raskolnikov, in an interview with the international press, held himself out as the leader and, therefore, responsible head of the movement. The displacement of refugees indicates control over a part of Dysfunctia's territory and, finally, what started as a series of skirmishes developed into a full-scale civil war. The hostilities therefore cannot be viewed as merely "isolated and sporadic acts of violence." Accordingly, the essential idea of an "insurrectional movement" hereby is satisfied.

Attributing the conduct of an insurrectional movement to a newly formed State is based on "continuity between the movement and the eventual government."[11] As Colonel Raskolnikov is now Reston's President, continuity exists between the leadership of the militia and the new Republic. Although the latter involved an election, rather than force, Raskolnikov ran practically

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[9] Commentaries to the draft articles on Responsibility of States for internationally wrongful acts 115, Report of the International Law Commission, Fifty-Third Session, U.N. Doc. A/56/10 (2001) [hereinafter ILC Commentaries].

[10] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 1(1),(2), June 8, 1977, 1125 U.N.T.S. 609.

[11] *Id.* at 113.

unopposed which demonstrates a lack of any real democratic choice. Continuity between the militia and the new government therefore remains unbroken.

It is also important that the conduct in question be that "of the movement as such and not the individual acts of members of the movement, acting in their own capacity."[12] In the *Diplomatic and Consular Staff* case, the Iranian government's failure to act where an insurrectional student movement would have obeyed transformed the actions of the movement into those of the State.[13] Similarly, Colonel Raskolnikov failed to act regarding the rapes in Cascadia. As nothing indicates that the militia would not have obeyed his order, the rapes constitute "conduct of the movement as such" and are accordingly attributable to Reston.

2. <u>Raskolnikov's failure to prevent the systematic rape of the Cascadian women by the Restonian militia constitutes a violation of customary international law.</u>

The second element of State responsibility is also satisfied, as the actions of the militia constitute a breach of Reston's customary international obligations[14] regarding systematic rape as a crime against humanity.[15] The elements of a crime against humanity are: 1) nexus to armed conflict; 2) the mass or systematic nature of the acts; 3) grounds for the commission based on a

[12] *Id.*

[13] *United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran), 1980 I.C.J. 3, at 29 (May 24) [hereinafter *Diplomatic and Consular Staff*].

[14] ILC Articles, *supra* note 7, art. 2(b).

[15] *See, e.g.*, Ratner and Abrams, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW BEYONG THE NUREMBERG LEGACY, 73 (Oxford University Press 2001); Meron, *supra* note 6, at 427-28; Statute for the International Criminal Tribunal for the Former Yugoslavia (ICTY), in Report of the Secretary-General pursuant to paragraph 2 of the Security Council Resolution 808 (1993), May 3, 1993, UN Doc. S/25704. Statute of the International Criminal Tribunal for Rwanda (ICTR), in Security Council Resolution 955, UN SCOR, 49th Year, Res. and Dec., at 15, UN Doc. S/INF/50 (1994).

character trait of the victim; and 4) state or organizational action.[16] The sexual violence of the Restonian militia satisfies this definition. The rapes occurred during a civil war, they were systematic, and they victimized thousands of women, they were only committed against Cascadian women and they are attributable to the State of Reston.

Crimes against humanity specifically include war crimes committed within the territory of the perpetrating state against it own citizens.[17] Rape is specifically included "when committed as part of a widespread or systematic attack directed against any civilian population"[18] and the ICTY has held that the element of state or organizational action can be satisfied by "entities exercising *de facto* control over a particular territory but without . . .formal status of a *de jure* state."[19] These rapes were carried out deliberately to intimidate and coerce the ultra conservative The Cascadian rapes therefore fully satisfy the customary definition for crimes against humanity.

Under international law, military commanders have an affirmative duty to control troops to prevent of crimes against humanity.[20] Since the acts or omissions of the militia are attributable to Reston, Raskolnikov's failure to take actions to prevent the systematic rapes violates that duty and renders Reston liable thereof.

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[16] Ratner and Abrams, *supra* note 15, at 50-69; *See also* Charter of International Military Tribunal, art. 6(c), August 8, 1945, 82 UNTS 279.

[17] *See* John H.E. Fried, TOWARD A RIGHT TO PEACE, 48-49 (Aletheia Press 2001).

[18] Statute of the International Criminal Court (ICC), art. 7(1)(g), July 17, 1998, UN Doc. A/CONF.183/9; 15 United Nations War Crimes Commission, Law Reports of Trials of War Criminals 121, 134- 36 (1949).

[19] *Prosecutor v. Tadic*, Case No. IT-94-1-A, Opinion and Judgment, paras. 654, 655, Int'l Crim. Trib. For Former Yugoslavia (July 15, 1999); *Prosecutor v. Kupreskic*, Case No. IT-95-16-A, Opinion and Judgment, paras. 551-52, Int'l Crim. Trib. For Former Yugoslavia (Jan. 14, 2000).

[20] *Kadic v. Karadzic*, 70 F.3d 232, 242 (2d Cir. 1995)(citing *In re Yamashita,* 327 U.S. 1, 15-16 (1946)); *Doe v. Karadzic*, 192 F.R.D. 133 (S.D.N.Y 2000).

C. **<u>Reston has also breached its international obligations by failing to punish those responsible for the Cascadian rapes.</u>**

Rules of *jus cogens*, including the observance of human rights constitute non-derogable general principles of international law which are.[21] to take actions to prevent the systematic rapes violates that duty Freedom from torture is classified as a basic human right[22] under numerous human rights[23] the prohibition against which constitutes rule of *jus cogens*, which all States must observe.[24] Because systematic rape is a form of torture, Reston has an obligation to punish those responsible.

1. <u>Systematic rape, the equivalent of torture, constitutes a violation of *jus cogens*.</u>

Systematic rape is defined as torture, as used by governments to coerce, humiliate, punish and intimidate women.[25] It traumatizes women physically, mentally, emotionally, ethnically and socially necessitates its treatment as a form of torture particularly when used as a political weapon. [26] The Inter-American Commission on Human Rights has recognized rape as a form of

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[21] Jennings and Watts, OPPENHEIM'S INTERNATIONAL LAW, 8 (9th ed. 1992).

[22] International Covenant on Civil and Political Rights, art. 7, U.N. Doc. A/6316 (1966); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/39/51, 1465 U.N.T.S. 85 (1987) [hereinafter Torture Convention];Declaration on the Protection of All Persons from Being Subjected to Torture, U.N. Doc. A/1034 (1975); American Convention on Human Rights, Nov. 22, 1969, 36 O.A.S.T.S. 1, O.A.S. Official Records OEA/Ser. 4 v/II 23, doc 21, rev. 2 (1975).

[24] *Cf.*, *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th. Cir 1992); *Committee of U.S. Citizens Living in Nicaragua v. Reagan,* 859 F.2d 929, 941-942 (D.C.Cir.1988).

[25] Amnesty International, *Women in the Frontline: Human Rights Violations against Women* 18 (1991).

[26] *See*, Sarnata Reynolds, *Deterring and Preventing Rape and Sexual Slavery during Periods of Armed Conflict*, 16 LAW & INEQ. 60, 627 (1998); Deborah E. Anker, *Women Refugees: Forgotten No Longer?*, 32 SAN DIEGO L. REV. 771 (1995); Michael P. Scharf, *Swapping*

torture[27] and following the lead of Canada, the United States recognizes politically motivated rape as a form of persecution constituting grounds for asylum.[28]

Torture is defined as: 1) the intentional infliction of severe pain and suffering; 2) based on discrimination; 3) for the purpose of coercion and intimidation; 4) committed with the acquiescence of a public official.[29] The Cascadian rapes satisfy these elements. Aware of the ultra-conservative nature of Cascadian culture, their perpetration constitutes an intentional infliction of severe and traumatic suffering. They were carried out only against ethnic Cascadian women, for purposes of coercion and intimidation . And finally, the rapes were perpetrated with the acquiescence of the militia leader.

"Even before the entry into force of the [Torture Convention], there existed a general rule of international law which should oblige all States to take effective measures...to punish acts of torture."[30] Reston has failed to live up to this obligation since it has not punished those responsible for the systematic rapes of Cascadian women.

Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti? 31 TEX. INT'L L.J. 1, 23 (1996).

[27] Inter-American Commission On Human Rights, Organization Of American States, Report On The Situation Of Human Rights In Haiti 39-47 (1995).

[28] *See* Immigration And Naturalization Service, Considerations For Asylum Officers Adjudicating Asylum Claims From Women (May 26, 1995).

[29] Torture Convention, *supra* note 22, at art. 1(1).

[30] Decisions of the Committee against Torture under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in Report of the Committee against Torture, U.N. Doc. A/45/44 (1990).

2. <u>Reston's comprehensive amnesty is not a valid exception to its obligation to punish acts of torture.</u>

A domestic grant of amnesty may nonetheless breach customary international law[31] as obligatory to those who follow it.[32] Customary international law is found primarily in the practice and *opinio juris* of States.[33] Amnesties are typically granted only in the interest of national unity after a civil war when the former enemy faction of a new government remains at large in the territory and punishment of atrocities could lead to renewed violence.[34] Over the past two decades, thirteen nations have traded amnesty for peace in this manner.[35] Here, Reston's enemy has established its own republic in a separate territory. As a result, no faction of the former Cascadian militia remains at large in Reston. The likelihood of renewed unrest is nonexistent. Thus, although Reston claims that it granted its comprehensive amnesty in the interest of national healing, there was, in fact, no threat to national unity. As such, the grant is inconsistent with prevailing State practice. It would therefore be an anomaly to recognize this amnesty at the international level as an exception to Reston's obligation to punish acts of torture. Reston's amnesty therefore does not constitute a valid exception to its international obligation to punish those responsible for the systematic rapes.

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[31] *See* Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 Yale L.J. 2537, 2553 (1991).

[32] J. Brierly, THE LAW OF NATIONS 60 (4th ed. 1949).

[33] *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. V. U.S.), 1984 I.C.J. 14, at ¶ 183 (Nov. 26)[hereinafter *Military and Paramilitary Activities in Nicaragua*](citing Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. 13, at ¶ 27 (June 3)).

[34] *See, e.g.*, Scharf, *supra* note 26, at 4-9.

[35] *See* Roman Boed, *The Effect of a Domestic Amnesty on the Ability of Foreign States to Prosecute Alleged Perpetrators of Serious Human Rights Violations*, 33 CORNELL INT'L L.J. 297, 297-98 (2000)

Some have argued that amnesties constitutes a lack of *opinio juris* regarding a duty to punish crimes against humanity.[36] However, "instances of State conduct inconsistent with a given rule should . . .[be] treated as breaches of that rule, not as indications of . . . a new rule."[37] Amnesties represent a duty that is excepted only in the interests of national unity. Thus, "the international community undoubtedly agrees in principle with the proposition that the core crimes of international criminal law should not remain unpunished"[38] because such crimes are now prohibited under customary international law.[39]

D. <u>Reston must make reparations for the breach of its international obligations.</u>

Annolay is entitled to seek such reparations for Reston's internationally wrongful acts since any State may invoke responsibility vis-à-vis *erga omnes* obligations and claim from the responsible State "[p]erformance of the obligation of reparation . . . in the interest of . . . the beneficiaries of the obligation breached."[40] The essential obligation required by reparation is to make the injured party whole.[41] Monetary compensation is the appropriate remedy since actual the women cannot be returned to their *status quo ante*.[42] Awards for personal injury include in

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[36] *See, e.g.,* Scharf, *supra* note 26, at 36.

[37] *Military and Paramilitary Activities in Nicaragua*, *supra* note 33, at ¶ 186 (Nov. 26).

[38] Declarations of Judge Van Den Wyngaert, *Case Concerning the Arrest Warrant of 11 Apr. 2000* (Congo v. Belgium) 2000 I.C.J. 182 ( )

[39] *See, e.g.,* American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States, § 404, Reporter's notes, p. 257 (1987) [hereinafter Restatement (Third)]; ILC, Draft Code of Crimes against the Peace and Security of Mankind, Yearbook of the ILC, vol. II (2), doc. A/51/10 (1996).

[40] *Id.* at art. 48(2)(b).

[41] *See Chorzów Factory Case* (Merits)(Ger. v. Pol.), 1928.

[42] *See* ILC Articles, *supra* note 7, art. 36 and Commentaries, *supra* note 9, at 244.

human rights cases include non-material damages.[43] Given the ultra-conservatism of the Cascadian society, the mental anguish and humiliation suffered by the Cascadian women is especially severe and deserving of such compensation.

By holding Reston responsible for the abuses of its former militia, this Court will affirm the global condemnation of wartime rape. Many human rights activists have argued that if Japan had been held accountable for its crimes of sexual slavery committed during World War II, we may not be faced today with the same atrocities in the countries of Rwanda, Yugoslavia[44] and Dysfunctia. The U.N. Protection Force (UNPROFOR) cited the prevailing attitude in Yugoslavia toward international accountability when he stated:[45]

> In Belgrade and Zagre, they usually preserved the diplomatic niceties and kept straight faces, but often the sneer around the table was nearly audible. In less sophisticated circles, when we spoke directly with those we knew had been the instigators and warned them that justice would some day come, the local establishment and its forces of law and order *often snickered aloud.*[46]

Such behavior exemplifies an impunity of the darkest nature. It is an impunity intolerable to the conscience of civilized nations.

II. AS RESTON HAS BREACHED ITS INTERNATIONAL OBLIGATIONS PURSUANT TO THE REGIONAL ANTI-CORRUPTION CONVENTION, IT IS OBLIGATED TO MAKE REPARATIONS TO ANNOLAY IN THE FORM OF RESTITUTION ON BEHALF OF THE ANNOLAYSIAN ADOPTIVE PARENTS.

A. Reston has defeated the object and purpose of the Regional Anti-Corruption Convention.

[43] *See* Commentaries, *supra* note 9, at 254.

[44] Reynolds, *supra* note 26, at 622-23.

[45] *Id.* at 623.

[46] *Id.* (citing Cedric Thornberry, *Saving the War Crimes Tribunal: Bosnia- Herzegovina*, FOREIGN POL. 72, 77 (Sept. 1996)(emphasis added)).

Reston is obligated to refrain from defeating the "object and purpose"[47] of the Regional Anti-Corruption Convention (RACC).[48] The fundamental principle of *pacta sunt servanda* requires Reston to respect its agreements with States.[49] The RACC's object is to pursue the protection of society against corruption, including the adoption of appropriate legislation and preventive measures.[50] The RACC obligates its parties to provide effective and dissuasive sanctions ."[51] Reston has failed to enact anti-corruption legislation and it has failed to take effective measures against the border corruption.

B. Except for those parents who failed their fitness interview, Reston is obligated to make full reparations to Annolay on behalf of the Annolaysian adoptive parents.

Annolay and its adoptive parents were not complicit in the border corruption problem. Therefore any reparations Reston is obligated to make should not be reduced or suspended. Since. the equitable principle of "clean hands" relates only to issues of admissibility,[52] Reston is precluded from making such an argument. The amount of any sums owed may only be reduced if Annolay or the parents actually contributed to the losses resulting from Reston's failure to enact domestic bribery laws.[53]

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[47] Vienna Convention on the Law of Treaties, art. 18, U.N. Doc. A/CONF. 39/29, 1155 U.N.T.S. 331 (1969).

[48] Regional Anti-Corruption Convention, Jan. 7, 1999 (entered into force June 1, 1999) [hereinafter RACC].

[49] *See*, Mark W. Janis, AN INTRODUCTION TO INTERNATIONAL LAW, 9 (3d ed. 1999).

[50] RACC, *supra* note 48, Preamble.

[51] RACC, *supra* note 48, art. 19(2).

[52] Commentaries, *supra* note 9, at 173.

[53] ILC Articles, *supra* note 7, at art. 39.

1. The actions of the Annolaysian Regional Adoption Society are not attributable to the State of Annolay.

Prominent members of the Annolaysian Regional Adoption Society Board had no knowledge of any corrupt activities taking place in the adoption process. More importantly, their work on the board was not undertaken in their official capacity. In order for the actions of a State official to be attributable to the State itself they must be conducted pursuant to an official capacity.[54] The ARAS does not exercise any public function on behalf of the Annolaysian government, it is not an "organ of the state,"[55] it does not exercise any State authority over adoptions, and it is not subject to control from the Annolaysian government.[56] Since the ARAS does not carry on any activities that are a function of the State, any actions or omissions on the part of the government officials who sit on its board constitute private conduct.

2. The actions of the Annolaysian border officials are consistent with both domestic and international standards of adoption law.

Reston may cite the failure of the Annolaysian border officials to check for fitness certificates as an act of complicity on the part of Annolay. However, the Annolaysian border officials were not under any duty to check for these certificates. As immigration officials, their primary duties concern the regulations of entry and exit, not adoption. The requirement of a fitness certificate is a Restonian law necessary for leaving Reston, not entering Annolay. Annolay has its own procedures for the conclusion of foreign adoptions, which comport with international standards. Absent a directive from this Court to the contrary, Annolay reiterates that it is under no obligation to check for Restonian fitness certificates.

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[54] *Id.* at art. 4 and Commentaries, *supra* note 9, at 91.

[55] ILC Articles, *supra* note 7, at art. 4.

[56] *Id.* at art 8.

3. Except for the parents who failed their fitness interview, the Annolaysian adoptive parents share no culpability with the Restonian border officials.

The element of intent is an essential factor in determining culpability for the commission of both active and passive bribery.[57] For the Annolaysian parents who received fitness certificates, there is no culpability, as it is not their intention to "promise, offer, or give" any undue advantage to any public official for the performance of State functions.[58] Rather, the intent lies with the Restonian border official who required it.

The fact that this group gave the required payment is excusable as a "facilitation" payment.[59] Where a payment is made to "expedite or . . . secure . . .a routine governmental action," such as a check for adoption fitness certificates, it is common practice to excuse such behavior.[60] There is no agreement as to the acceptable cap on such payments, but as an example, all such payments allowed under the FCPA have been less than $1,000.[61] Also taken into account is the seriousness of the action the public official in exchange for the payment.[62] The parents who made the $500 payments were already authorized to take the children out of Annolay and thus broke no laws. The parents who made whatever bribe was required also share no culpability with the Restonian officials. Their statements indicate that it was not their intention to break any laws. Their intent was to simply help the children of Reston regardless of the cost imposed. This

[57] RACC, *supra* note 48, at arts. 2, 3.

[58] *Id.* at art. 2.

[59] *See* Melysa Sperber, *Foreign Corrupt Practices Act*, 39 AM. CRIM. L. REV. 679 (2002); *see also* OECD, Commentaries on the Convention of Combating Bribery of Foreign Public Officials in International Business Transactions, S. Treaty Doc. No. 105-43, Nov. 21, 1997.

[60] Foreign Corrupt Practices Act,15 U.S.C. § 78dd- 2(b) (2000).

[61] *Id.* at 691.

[62] *See* Steven R. Salbu, *Transnational Bribery: The Big Questions*, 21 Nw. J. Int'l L. & Bus. 435, 450 (2001).

sort of acceptance of the prevalent bribery scheme for the greater good of the human beings involved is not morally unsound.[63] The ultimate culpability lies with the Restonian government. If the proper anti-bribery laws had been in place, these parents would gone to a fitness interview.

Annolay concedes that those parents failing their fitness interview may be guilty of wrongdoing. The parents in this group made payments to the border officials in full knowledge of their failure to pass the interview. However, if Reston had enacted the proper laws, the opportunity to make payments would have been greatly reduced Thus, Reston still shares in the culpability the actions of this group and is therefore required to make at least partial reparations.

III. THE REPUBLIC OF RESTON HAS NO RIGHT TO BRING THIS SUIT.

A. Reston Has Not Satisfied the Necessary Procedural Requirements for Bringing Suit.

1. The Republic of Reston Has Not Satisfied the Rule of Exhausting Local Remedies.

It is a well-established rule of customary international law that a State must first exhaust the remedies available in local courts before bringing international proceedings on behalf of a private party whose interests or rights have been derogated in a foreign jurisdiction.[64] The rule is designed to prevent the erosion of State sovereignty by halting the extraterritorial advances of aggrieved States.[65] Before an international claim is brought, States should have an opportunity to redress the problem locally.[66] This provision requires that remedies be diligently pursued in

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[63] *Id.*

[64] See *Interhandel Case*, (Switz. v. U.S.), 1959 I.C.J. 6, 27 (Mar. 21).

[65] *Id.* at 45.

[66] *Id.* at 27.

local courts "until the highest court within that State has ruled on the issue."[67] Thereafter, States may pursue international remedies for redress.[68]

A State is not required to first pursue local remedies when to do so would be futile.[69] However, this exception does not apply here because opportunities to redress the alleged harms suffered by Cascadian women living in Annolay are neither precluded nor foreclosed in the courts of Annolay. The only impediment to seeking a local remedy has been Reston's own failure in seeking one.

2. Reston Lacks Legal Standing to Bring this Suit Against the Republic of Annolay.

In the *Lotus* case, this Court's predecessor held that:

> [t]he first and foremost restriction imposed by international law upon a State is that, failing the existence of a permissive rule to the contrary, it may not exercise its power in any form in the territory of another [sovereign] State. [As a result,] jurisdiction... cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international [law].[70]

International law recognizes several basic principles by which States can achieve standing,[71] none of which are available to Reston with regard to the Cascadian women living in Annolay. First, the territorial principle provides for a State's jurisdiction over "transactions, persons, things... within [its] territory..."[72] The territorial principle is not applicable here, as

[67] Damrosch, et al., *International Law: Cases and Materials*, 735 (4th ed. 2001).

[68] *See Panevezeys-Saldutiskis Railway Case*, 1939 P.C.I.J. (ser. A/B) No. 76, 18 (Feb. 18).

[69] *Id.*

[70] *The Lotus Case,* (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

[71] *See generally*, Janis, *supra* note 57, at 321-30 ; Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L .REV. 785, 787-88 (1988); Vicki Trapalis, *Extraterritorial Jurisdiction: A Step Towards Eradicating the Trafficking of Women into Greece for Forced Prostitution*, 32 GOLDEN GATE U.L. REV. 207, 231-34 (2002).

[72] Damrosch, *supra* note 67, at 1093.

Reston's benefactors live and are allegedly being harmed outside of its own sovereign territory. Second, Reston cannot apply the protective principle, because the alleged activity does not threaten State security interests within Reston's borders.[73] Because the Republic of Annolay is allegedly responsible for the wrongs allegedly suffered by Cascadian women living there, Reston is likewise unable to apply either the nationality or passive personality principles. These principles create jurisdiction in a State over "persons or things that possess [its] nationality..."[74] Next, Reston cannot rely on the effects principle because any conceivable harm stemming from the alleged activity would not be felt within the Republic of Reston.[75] Arguably, some effects may reach family members in Cascadia but not Reston. Lastly, and most crucial to this case, the domestic crime of prostitution does not justify Reston's attempt to invoke the universality principle of standing where "certain activities are so universally condemned that any State has an interest in exercising jurisdiction to combat them."[76]

Furthermore, standing requires the existence of a "genuine link" between private parties and a State that attempts to protect their interests or rights.[77] Reston lacks such a genuine link to the Cascadian women living in Annolay. As previously established, Annolay is the State of effective nationality for these women and thus the only State with a sufficient bond of

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[73] *Id.* at 1090-91.

[74] *Id.* at 1090.

[75] Janis, *supra* note 49, at 326-28.

[76] Damrosch, *supra* note 67, at 1091.

[77] *See Nottebohm Case*, *supra* note 2, at 23.

attachment to bring this suit on their behalf. Therefore, the principle that "the sovereignty of other States should be respected,"[78] precludes Reston's pursuit of this claim

The extraordinary principle of *erga omnes* obligation, discussed earlier, is likewise unavailable to Reston with respect to the Cascadian women living in Annolay. Like the principle of universality, certain crimes are considered so egregious that every State has standing to bring suit on behalf of humanity.[79] It is incumbent upon third party States to bring suit for such heinous acts pursuant to said *erga omnes* obligation.[80]

Reston brings its suit against Annolay merely on the basis of unsubstantiated public accusations made by a non-governmental organization. The alleged violative activity would, if proven, constitute nothing but the domestic crime of prostitution. While prostitution is illegal in Annolay, it is not a crime against all humanity. Consequently, the world's oldest profession is not an *erga omnes* crime and does not therefore render a State within whose borders it may take place subject to international jurisdiction or prosecution on that basis. Additionally, "no jurisdictional or arbitral proceeding has been identified where the claimant's standing was based on the *erga omnes* concept,"[81] thereby illustrating its extraordinary nature. Under the instant circumstances, Reston's claims do not therefore warrant such grounds for standing.

B. <u>The Equitable Doctrine of Unclean Hands Precludes Reston from Bringing this Suit.</u>

This Court should employ the equitable principle of unclean hands to bar Reston from bringing this suit. Justice Hudson, in the *Meuse* Case, acknowledged the Court's "recognition of

[78] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion), 1996 I.C.J. 226, 35 I.L.M 809, 903 (Jul. 8).

[79] *See Barcelona Traction,* supra note 3, at ¶ 33.

[80] *Id.*

[81] Damrosch, *supra* note 67, at 733.

equity as a part of international law."[82] He stated that Article 38 of the ICJ Statute "expressly directs the application of 'general principles of law recognized by civilized nations,' and in more than one nation principles of equity have an established place in the legal system."[83] This court has consistently decided that "equity forms part of the International Law; therefore, the Parties are free to present and develop their cases with reliance on principles of equity."[84] This authority provides ample evidence that principles of equity are readily available to this Court and are left to its discretion, even to the extent of *sua sponte* application. Considering the abhorrent conduct of Reston's militia during the Dysfunctian Civil War and the subsequent amnesty President Raskolnikov issued, Reston should not be allowed to bring this suit as if it sincerely had the interests of the Cascadian women at heart.

III. ANNOLAY IS NOT RESPONSIBLE FOR THE ACTS OF FRED SCHMANDEFARE INVOLVING THE CASCADIAN WOMEN IN ANNOLAY.

It is a basic premise of international law that a State is not responsible for the conduct of private actors. Accordingly, the State of Annolay is not responsible for the conduct of Fred Schmandefare as an employer of Cascadian women. The controlling principles governing the responsibility of states have been set forth by the United Nations.[85] For a State to be considered as having committed an internationally wrongful act, the conduct involved must be attributable to a State and must have breached an international obligation.[86] Both elements are required to

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[82] *Diversion of Water From Meuse*, (Neth. v. Belg.), 1937 P.C.I.J. (ser. A/B) No. 70, at 73 (June 28).

[83] *Id.*

[84] *Indo-Pakistan Western Boundary Tribunal*, 17 Reports of Int'l Arbitral Awards 1, at 11 (*Awards of* Feb. 19, 1968; *citing decision of* Feb. 23, 1966).

[85] ILC Articles, *supra* note 7.

[86] *Id.* at art. 2.

find Annolay responsible for the alleged conduct of Fred Schmandefare and Reston will fail in its attempt to meet this high standard.

A. <u>Neither the Alleged Acts of the Schmandefare Company, Nor Those of Fred Schmandefare, Are Attributable to the Republic of Annolay.</u>

The United Nations has delineated very precisely that conduct which can be attributed to a State.[87] Only five factors are potentially applicable to this case[88] and despite Reston's claims, none of them can attribute the alleged conduct of Fred Schmandefare to of Annolay. First, "[t]he conduct of any State organ shall be considered an act of that State under international law..." with a State organ defined as "any person or entity which has that status in accordance with the internal law of the State."[89] Here, the Company is a privately owned company with no official association to the Annolay government or any public agency. Second, where "... a person or entity which is not an organ of the State is... empowered by the law of that State to exercise elements of the governmental authority, [such conduct] shall be considered an act of the State under international law...."[90] The Company has not been empowered by Annolay to act with any governmental authority. Third, conduct "shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities...."[91] The Company and Fred Schmandefare have never acted in any way which could be construed as on behalf of the Republic of Annolay and there has been no period of absence or default of official authority

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[87] *Id.* at art. 4-11.

[88] *Id.*

[89] *Id.*

[90] *Id.* at art. 5.

[91] *Id.* at art. 9.

in Annolay. Fourth, "[c]onduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of the State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own."[92] The Republic of Annolay has never, nor will it now, acknowledge or adopt the conduct of the Company or Fred Schmandefare regarding the transportation, relocation or subsequent condition of the Cascadian women or anything related thereto as its own. Finally, and most relevant to the instant case, pertains to conduct that "shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."[93] Without any formal ties to the Annolaysian government or its public agencies, Schmandefare's alleged actions are not, nor have they ever been, conducted under such requisite direction or control. Consequently, none of the alleged conduct of Fred Schmandefare or his Company is attributable to Annolay under any of the attribution factors established by the United Nations and recognized under international law.

Reston must fail as to attribution and the test specifically mandates that both elements must be satisfied to find a State responsible for the conduct of private actors. Where no attribution can be found, the question of a breach of obligation is moot. However, if this Court does find grounds upon which to attribute the conduct of this private actor to Annolay, the State of Annolay has not breached any international obligations regarding the Cascadian women residing therein and Reston's claim will still fail due to the second prong for State responsibility.

B. The Acts Allegedly Committed by Fred Schmandefare do not Constitute a Breach of an International Obligation by the Republic of Annolay.

[92] *Id.* at art. 11.

[93] *Id.* at art. 8.

There are three principles under which Reston may claim that Annolay has breached its international obligation. First, "[t]here is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation...."[94] This principle requires that the breach be derived from an act of the State, which was rejected in earlier analysis as to the conduct of Fred Schmandefare and his company.

Second, Reston may try to claim that Annolay had an international obligation to prevent the alleged conduct from occurring.[95] However, as previously discussed and refuted, the alleged acts, if proven, would result in nothing more than to subject Fred Schmandefare or his company to prosecution for the domestic crime of prostitution. President Raskolnikov even acknowledged Schmandefare's alleged actions as such in a memorandum to his Justice Minister.

Lastly, a series of actions or inactions of a State may be tallied up *in toto*, to determine whether an international obligation has been breached.[96] Even a sum total of alleged transgressions by Annolay cannot create a breach of international obligation for prostitution. With respect to the Cascadian women, Reston cannot show a breach of an international obligation nor attribute the alleged acts of Schmandefare to Annolay.

IV. RESTON IS NOT ENTITLED TO UNIVERSAL JURISDICTION OVER FRED SCHMANDEFARE FOR HIS ALLEGED CRIMES.

The issue is whether a State may prosecute a foreign national despite a lack of any real link or connection to either the individual or the alleged criminal acts. In this case, Reston claims that universal jurisdiction is an appropriate basis for such prosecution and it is entitled to a grant of this broad authority to prosecute Fred Schmandefare. Therefore, Reston's assertion

[94] *Id.* at art. 12.

[95] *Id.* at art. 14.

[96] *Id.* at art. 15.

that the alleged prostitution involving the Cascadian women in Annolay gives rise to universal jurisdiction and a corresponding right to prosecute on behalf of non-nationals must fail.

A. Reston Has No Right To Universal Jurisdiction Without Evidence Of An International Crime.

Reston has no concrete evidence of criminal activity involving the Cascadian women in Annolay. Reston is relying entirely upon unsubstantiated public accusations, the validity of which has not been verified by any governmental investigation. Relying solely upon the Institute for Labor Studies and Advancement's (hereinafter ILSA) unpublished background research, apparently Reston places its trust in non-governmental journalism. Annolay will not make such a mistake in the attempt to publicly garner international favor. Following ILSA's media announcement, the Annolay immediately convened a panel of experts to investigative Schmandefare's alleged criminal activities. As the panel's in-depth investigations have not yet concluded, there is no formal basis upon which to assert any jurisdiction over Fred Schmandefare, and certainly not universal. Reston has no evidence and therefore, no case.

Universal jurisdiction confers upon all States the right to prosecute crimes against humanity.[97] Reston cannot show evidence of any crime having been committed, let alone one of this magnitude. Once again, the unsubstantiated allegations against Fred Schmandefare, if valid, indicate only the domestic crime of prostitution, which does not fall within the anticipated or intended parameters of a crime against humanity.[98] Consequently, without an international crime, universal jurisdiction does not apply.

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[97] *See generally*, Oscar Schachter, INTERNATIONAL LAW IN THEORY AND PRACTICE, 240-65 (1991); Boed, *supra* note 41, at 298-308; Randall, *supra* note 83, 786-90; Michael Scharf, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes*, 59 LAW & CONTEMP. PROB. 41, 52-60 (1996).

[98] *See* Ratner and Abrams, *supra* note 16, at 50-69.

B. Reston's Claim of Universal Jurisdiction to Prosecute Schmandefare is Blocked.

Under the general principle of international law *aut dedere aut judicare*, the Republic of Annolay has the option to extradite or prosecute Fred Schmandefare.[99] Under this principle, Reston's feeble attempt to subject Schmandefare to its jurisdiction fails. Furthermore, Annolay's interest in prosecuting its own citizen for wrongdoing will fulfill its *aut dedere* obligation. Thus, Reston's only recourse is a veiled attempt to have this Honorable Court try Fred Schmandefare for them due to their lack of proper standing.

1. Reston's Demands for Extradition are Ineffectual.

Reston has failed to negotiate the extradition of Mr. Schmandefare in the absence of a bilateral extradition treaty. Reston's remarks to Annolay to "make Mr. Schmandefare available for trial"[100] do not equal an international request for extradition. "Usually [extradition] follows receipt of a letter *rogatory*, or letter of request, wherein the foreign court asks the [host State's] court to do or permit some judicial act within its territory."[101]

If, however, this Court finds that Reston's ambiguous statement is in fact a formal request for the extradition of Fred Schmandefare, there is an exception available in this case.[102] Logically, there is an exception to extradition when there is insufficient evidence that the accused has committed the alleged crime.[103] Annolay has aptly demonstrated Reston's lack of evidence, thus frustrating any interpreted demand for the extradition of Fred Schmandefare.

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[99] M. Cherif Bassiouni, CRIMES AGAINST HUMANITY IN INTERNATIONAL LAW, 500 (1992).

[100] Compromis at ¶ 33.

[101] Janis, *supra* note 49, at 347.

[102] Restatement (Third), *supra* note 46, at § 476 (1987).

[103] *Id.*

It should also be noted that Reston has brought this matter before this Honorable Court for the sole purpose of political maneuvering. Reston is using this case to curry international favor and distract the world community from the heinous international crimes committed by President Raskolnikov and his militia during the Dysfunctian civil war. In the *Tehran* case, this Court specifically acknowledges that political issues are underlying factors in a suit.[104] While that legal dispute was political in nature, under the circumstances the Court could not "decline to resolve for the parties the legal question at issue between them."[105] However, *Tehran* is distinguishable, from the case at bar because the U.S. and Iran were parties to a treaty addressing the contested issue, Annolay and Reston are not.[106] The Republic of Annolay humbly asks this Court to prevent the Republic of Reston from exploiting the International Court of Justice as its personal soapbox. To allow it would undermine the principles of international law and the integrity upon which this Court and respect for the world community are founded.

2. Annolay has a Sovereign Right to Prosecute Schmandefare if He Committed a Crime.

The case of *Barcelona Traction* places limitations on extraterritorial jurisdiction that creates in "every State an obligation to exercise moderation and restraint as to the extent of the jurisdiction assumed by its courts in cases having a foreign element, and to avoid undue encroachment on a jurisdiction more properly appertaining to, or more appropriately exercisable by, another State."[107] When determining the suitability of extraterritorial jurisdiction under the universality principle, the rule of reasonableness ensures that "even where a State enjoys a

[104] *Diplomatic and Consular Staff, supra* note 13, at 19-20.

[105] *Id.*; *see also, Military and Paramilitary Activities in Nicaragua*, supra note 37, at 439-40

[106] *Diplomatic and Consular Staff, supra* note 13, 19-20.

[107] *Barcelona Traction, supra* note 3, at 105.

recognized basis for asserting jurisdiction, its exercise of that jurisdiction will not be proper if another State has a more profound interest in exercising jurisdiction over the offender."[108] Therefore, a State cannot exercise its jurisdiction when concurrently held with another State, if exercising such jurisdiction would be "unreasonable".[109] This restriction should apply here, as Annolay has a sovereign right to investigate and prosecute its own citizen. Given the circumstances, Annolay is the only proper party to bring suit against Fred Schmandefare or the Company if the investigation uncovers sufficient evidence.

V. PRAYER FOR RELIEF

Applicant Annolay respectfully requests this Honorable Court to find, adjudge, and declare that:

1. Reston has breached its international obligations and must pay damages to Annolay to be distributed as reparations to those Cascadian victims of systematic rape.
2. 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;
3. Annolay has not breached any international obligations regarding the Cascadian women residing in Annolay and Reston has no standing to enforce any such obligations;
4. Reston is not entitled to exercise universal jurisdiction over Mr. Fred Schmandefare.

Respectfully Submitted,

Agents for the Applicant

[108] Ratner and Abrams, *supra* note 16, at 141.

[109] Restatement (Third), *supra* note 46, at §403(1).