

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iv

STATEMENT OF JURISDICTION.....viii

QUESTIONS PRESENTED.....ix

STATEMENT OF FACTS.....x

SUMMARY OF THE PLEADINGS.....xiv

PLEADINGS.....1

I. RESTON HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE CASCADIAN RAPE VICTIMS NOW RESIDING IN ANNOLAY.....1

A. Annolay Does Not Possess the Necessary Standing to Assert Claims on Behalf of the Cascadian Women Raped During the Dysfunction Civil War.....1

1. The Cascadian Women Are Not Nationals of Annolay.....1

2. Annolay cannot derive standing based on obligations *erga omnes*.....1

B. The Doctrine of Laches Prevents Annolay From Bringing This Suit.....2

C. The Newly Formed Republic of Reston Is Not Responsible For The Rapes Of The Cascadian Women.....2

1. The Rape of Cascadian Women Cannot Be Attributed To Reston.....3

2. Assuming, *Arguendo*, That The Rapes Can Be Attributed To Reston, Rape Is Still Not An Internationally Wrongful Act.....5

D. Reston Has Not Violated International Law By Granting full National Amnesty to All Persons Within Reston.....7

1. Reston Is Not Under An International Obligation To Prosecute The Individuals Who Raped Cascadian Women During The Civil War.....7

II. RESTON HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE BRIBES EXACTED BY ITS BORDER OFFICIALS.....8

A. Annolay Has Not Satisfied Its Duty To Exhaust Local Remedies.....8

1.	The Annolaysian Adoptive Parents Have Not Brought Any Claims In Restonian Courts.....	8
2.	The “Futile” Exception To The Rule of Local Remedies Does Not Apply.....	9
B.	Reston Has Not Violated International Law With Respect To The Annolaysian Adoptive Parents.....	10
C.	Principles of Equity Bar Annolay From Bringing This Claim.....	10
III.	RESTON HAS STANDING TO BRING A SUIT AGAINST ANNOLAY.....	12
A.	Reston Has Legal Standing To Bring This Claim Pursuant To Its Obligations <i>Erga Omnes</i>	12
IV.	ANNOLAY HAS VIOLATED ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE TREATMENT OF THE CASCADIAN WOMEN IN ITS BROTHELS.....	14
A.	By Trafficking the Cascadian Women, The Schmandefare Company and Fred Schmandefare Have Committed A Crime Against Humanity.....	14
1.	Trafficking Women For Purposes Of Forced Prostitution Is A Violation Of International Law.....	14
2.	The Schmandefare Company’s Conduct As To The Cascadian Women Satisfies The Elements of Trafficking In Persons.....	16
a)	The Schmandefare Company misrepresented information to Cascadian women, forcing them to engage in sexual slavery via debt bondage.....	16
b)	Negotiations between the Cascadian women and the Schmandefare Company were unconscionable.....	17
B.	Annolay Is Responsible For The Schmandefare Company and Fred Schmandefare’s Internationally Wrongful Acts And Should Be Made to Compensate The Cascadian Women Working in its Brothels.....	17

1.	The Acts of the Schmandefare Company Are Attributable To Annolay.....	18
2.	By Failing to Take Appropriate Action On Behalf of The Cascadian Women, Annolay Breached Its International Obligations.....	18
3.	Even Though the Schmandefare Company is a Private Actor, Annolay is Still Liable for the Company's Acts by failing to exercise due diligence....	19
V.	RESTON IS ENTITLED TO UNIVERSAL JURISDICTION OVER FRED SCHMANDEFARE.....	20
A.	Reston Should Be Afforded Universal Jurisdiction Over Fred Schmandefare As Trafficking Women Is A Crime Against Humanity.....	20
1.	Exhaustion Of Local Remedies Is Not A Prerequisite To Adjudication In The Present Case.....	20
2.	The Principle of State Sovereignty Does Not Bar Reston's Intervention to Protect the Human Rights of the Cascadian Women.....	21
B.	Reston Is Entitled To Universal Jurisdiction Because Annolay Failed To Prevent and Investigate The Activities of Fred Schmandefare As To The Cascadian Women.	22
1.	Annolay Has An International Obligation To Prevent Human Rights Violations.....	22
2.	This Court Should Allow Universal Jurisdiction Over Mr. Schmandefare To Prevent Further Human Rights Violations In Annolay.....	23
VI.	CONCLUSION AND PRAYER FOR RELIEF.....	25

TABLE OF AUTHORITIES

TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. NO. 993 (entered into force Oct. 14, 1945).....	16
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).....	23
Convention on the Elimination of All Forms of Discrimination Against Women, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).....	19
Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, August 12, 1949, 75 U.N.T.S. 31.....	22,23
International Covenant on Civil and Political Rights, U.N. Doc. A/6316, 999 U.N.T.S. 171, (entered into force March 23, 1976).....	15,18
Regional Anti-Corruption Convention, Jan. 7, 1999 (entered into force June 1, 1999).....	10,11
Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, T.S. NO. 933 (entered into force Oct. 24, 1945).....	3,6
Slavery Convention, 46 Stat. 2183, 60 L.N.T.S. 253 (1926).....	14
1956 Slavery Convention, 266 U.N.T.S. 41 (1956).....	17
Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969).....	6, 9, 10,13

UN RESOLUTIONS AND DOCUMENTS

INTERNATIONAL LAW COMMISSION, Articles on Responsibilities of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56 th Sess., U.N. Doc. A/RES/56/83 (2001).....	passim
INTERNATIONAL LAW COMMISSION, Commentaries on the Articles on Responsibility of States for Internationally Wrongful Acts (2001).....	4,5
Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II), U.N. Doc. A/32/144, Annex II (entered into force Dec. 7, 1978).....	8

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organizations Crime, G.A. Res. 55/25, U.N. GAOR 55 th Sess., U.N. Doc. A/RES/55/25 (2000).....	16,17
Rome Statute of the International Criminal Court, U.N. GAOR, 53 rd Sess., U.N. Doc. A/CONF.183/9 (1998), reprinted in 39 I.L.M. 999 (1998).....	21
United Nations High Commissioner for Human Rights, A/AC. 254/16.....	19
United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action, U.N. Doc. A/Conf./157/24 (Part I) (1993).....	15
Universal Declaration of Human Rights, U.N. Doc. A/810 (1948).....	15
JUDICIAL AND ARBITRAL DECISIONS	
INTERNATIONAL CASES	
<i>Barcelona Traction, Light and Power Co., Ltd.</i> , (Belg. v. Spain), 1970 I.C.J. 3 (Feb. 5).....	1,2,13
<i>Chorzow Factory Case</i> , 1927 P.C.I.J. (ser. A) No. 17 (Sept. 13).....	1
<i>Corfu Channel</i> , (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9).....	20
<i>Diversion of Water From Meuse Case</i> , (Neth. v. Belg.), 1937 P.C.I.J. (ser. A/B) No. 70 (June 28).....	11
<i>Electronica Sicula S.p.A.</i> , (U.S. v. Italy), 1989 I.C.J. 15 (Jul. 20).....	8
<i>Finish Ships Case</i> , 3 R. Int'l Arb. Awards 1479 (1934).....	9
<i>Interhandel Case</i> , (Switz. v. U.S.), 1959 I.C.J. 6 (Mar. 21).....	8, 21
<i>Mavromatis Palestine Concessions</i> , (Gr. v. U.K.), 1924 P.C.I.J. (ser. A) No. 2.....	1, 21
<i>Military and Paramilitary Activities In and Against Nicaragua</i> , (Merits) (Nicar. v. U.S.), 1986 I.C.J. 14 (Nov. 26).....	13
<i>North Sea Continental Shelf Case</i> , (W. Ger. v. Den., W. Ger. v. Neth.), 1969 I.C.J. 3 (Feb. 20).....	25
<i>Norwegian Loans Case</i> , (Fr. v. Nor.), 1957 I.C.J. 9 (Jul. 6).....	7
<i>Nottebohm Case</i> , (Liech. v. Guat.) 1955 I.C.J. 4 (Apr. 6).....	1
<i>South West Africa Case</i> , (Eth. v. S. Afr., Lib. v. S. Afr.), 1962 I.C.J. 319 (Jul. 18).....	12,13

<i>The Lotus Case</i> , (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).....	24
<i>United States Diplomatic and Consular Staff in Tehran</i> , (Iran v. U.S.), 1980 I.C.J. 4 (May 24)	20

MUNICIPALS CASES, STATUTES AND RESTATEMENTS

American Law Institute, Restatement Third of the Foreign Relations Law of the United States §102 (2) (1987).....	7
<i>Attorney General of Israel v. Eichmann</i> , 36 I.L.R. 18 (Isr. 1962).....	24
<i>Filartiga v. Pena-Irala</i> , 630 F. 2d 876 (2nd Cir. 1980).....	24

WORKS OF PUBLICISTS

ARTICLES

Bassiouni, <i>Unlawful Seizures and Irregular Rendition Devices As Alternatives to Extradition</i> , 7 VAND. J. OF TRANSNAT'L L. 25 (1973).....	11
Beth Stephens, <i>Translating Filartiga: A Comprehensive and International Law Analysis of Domestic Remedies for International Human Rights Violations</i> , 27 YALE J. INT'L L. 1 (2002)...	22
Kenneth C. Randall, <i>Universal Jurisdiction Under International Law</i> , 66 TEX. L. REV. 785 (1988).....	23
Lee A. Steven, <i>Genocide and the duty to extradite or prosecute: Why the United States is in breach of its international obligations</i> , 39 VA. J. INT'L L. 425 (1999).....	23,24
Michael Scharf, <i>Swapping Amnesty for Peace: Was There A Duty to Prosecute International Crimes in Haiti?</i> , 31 TEX. INT'L L.J. 1 (1996).....	8
Michael Scharf, <i>Universal Jurisdiction: Myths, Realities, And Prospects Panel Three: Contemporary Developments</i> , 35 NEW ENG. L. REV. 363 (2000).....	23
Michelle O.P. Dunbar, <i>The Past, Present and Future of International Trafficking of Women for Prostitution</i> , 8 BUFF. WOMEN'S L.J. 103 (1999-2000).....	16
Naomi Roht-Arriaza, <i>State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law</i> , 78 CALIF. L. REV. 449 (1990).....	22
Nora V. Demleitner, <i>Forced Prostitution: Naming an International Offense</i> , 18 FORDHAM INT'L L.J. 163 (1994).....	14

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 (2000)8,24

Rhonda Copelon, *Women's Rights as International Human Rights*, 69 ST. JOHN'S L. REV. 61 (1995).....15

Sarnata Reynolds, *Deterring and Preventing Rape and Sexual Slavery During Periods of Armed Conflict*, 16 LAW & INEQ. 601 (1998).....15

Theodor Meron and Allan Rosas, "A Declaration of Minimum Humanitarian Standards," 85 AM. J. INT'L L. 375 (1991).....15

Theodor Meron, *International Crimination of Internal Atrocities*, 89 AM. J. INT'L L. 554 (1995).....21

Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L 303 (1999).....13,14, 16

Yoram Dinstein, *International Criminal Law*, 20 ISR. L. REV. 206 (1985).....21

Youngik Yoon, *International Sexual Slavery*, 6 TOURO J. TRANSNAT'L L. 417 (1995).....16

TREATISES AND BOOKS

Aristotle, NICOMACHEAN ETHICS (bk. 5, ch. 10) (Otswald trans. 1962).....10

Black's Law Dictionary 808 (6th ed. 1990).....4

Damrosch, et al., INTERNATIONAL LAW: CASES AND MATERIALS (4th ed. 2001)..... 2, 3, 8, 10

E. de Vattel, THE LAW OF NATIONS, OR PRINCIPLES OF THE LAW OF NATURE, APPLIED TO CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS XV (1797).....6

H. Grotius, DE JURE BELLI AC PACIS LIBRI TRES (bk. 1, ch. 1, section 14).....6

Ian Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (4th ed. 1992).....23

Jennings and Watts, OPPENHEIM'S INTERNATIONAL LAW (9th ed. 1992).....13

Mark Janis, AN INTRODUCTION TO INTERNATIONAL LAW (3rd ed. 1990).....11,23

Maurizio Ragazzi, THE CONCEPT OF INTERNATIONAL OBLIGATIONS ERGA OMNES (Clarendon press, 1997).....13

Steven R. Ratner and Jason S. Abrams, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW 113 (Oxford University Press, 2001).....	17,24
THE NEW SHORTER OXFORD DICTIONARY (Thumb Index ed. 1993).....	4
Oscar Schachter, INTERNATIONAL LAW IN THEORY AND PRACTICE (1991).....	21

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 parties. The parties have agreed to waive objections to the jurisdiction of this Court.

QUESTIONS PRESENTED

1. Whether Reston is liable for reparations to the rape victims now resident in Annolay?
2. Whether Annolay has standing to raise the claims of Cascadian women now residing in Annolay?
3. Whether Reston has breached any international obligations owed to Annolay with respect to the bribes exacted by its border officials and is obligated to pay restitution?
4. Whether Reston is entitled to exercise universal jurisdiction over Mr. Fred Schmandefare?
5. Whether Annolay has breached its international legal obligations with respect to the treatment of Cascadian women working in brothels in Annolay?

STATEMENT OF FACTS

In 1996 a full scale civil war divided the Kingdom of Dysfuncntia into two distinct ethnic groups, the Cascadians and the Restonians.¹ Embattled over a struggle for control, both sides formed militias to support their claim to the throne.² A year into the Dysfuncntian civil war, War-Time Relief International (hereinafter WRI), an international human rights and relief agency, and the United Nations Human Rights Commission (UNHRC) accused the Restonian militia of raping Cascadian women. The UNHCR also reported that Restonian militia leader Colonel Georg Raskolnikov had not taken steps to stop the rapes.³ Three years later, Annolay, a State bordering Dysfuncntia, offered assistance in organizing a peace conference.⁴ As a result of these negotiations, two independent States, Reston and Cascadia, were created.

While Cascadia is culturally conservative with laws and customs dating back to the 10th century, Reston is an emerging industrial State that held its first democratic election immediately following the peace treaty.⁵ Colonel Raskolnikov campaigned for President on a platform of “National Healing” promising amnesty to any person accused of crimes committed during the Dysfuncntian civil war. He was overwhelmingly elected president and as promised he granted full national amnesty to all persons, Cascadian and Restonian.⁶

¹ Compromis at ¶ 1.

² Compromis at ¶ 2.

³ Compromis at ¶ 4.

⁴ Compromis at ¶ 6.

⁵ Compromis at ¶¶ 7-8.

⁶ Compromis at ¶ 7.

Shortly after the peace treaty was signed, representatives of an Annolaysian domestic services company, the Schmandefare Company, traveled to Cascadia to recruit Cascadian women who were victims of war-time rape.⁷ The Schmandefare Company is owned and operated by Fred Schmandefare, an Annolaysian citizen who is known to be well-connected to local police and government officials as well as international organized crime groups.⁸ Mr. Schmandefare personally made several trips between Annolay and Cascadia following the peace treaty.⁹ The Schmandefare Company promised the Cascadian women jobs as domestic servants or nannies and assistance with visas and travel/work permits. The women were charged a fee of US \$10,000 and were loaned the amount of money they could not afford.¹⁰ The term of the loan was such that the amount to be eventually repaid was more than double the amount loaned. By December of 2000, the Schmandefare Company had resettled nearly 2,500 Cascadian women into Annolaysian brothels.¹¹

A report issued by the Institute for Labor Studies and Advancement (hereinafter “ILSA”) reported in 2001 that many of the Cascadian women working in the Schmandefare brothels were subject to physical and mental abuse as well as restraints on their freedom.¹² The report stated that while the women had filed complaints with the government, no formal investigation had

⁷ Compromis at ¶ 22.

⁸ Compromis at ¶ 26.

⁹ Id.

¹⁰ Compromis at ¶ 24.

¹¹ Compromis at ¶ 25.

¹² Compromis at ¶¶ 27-28.

been made.¹³ After the report was issued, Mary Q. Contrary, Annolay's President, formed a panel to investigate the allegations made in the report.¹⁴

While the Schmandefare Company was recruiting Cascadian women to work in Annolay, WRI began to promote the adoption of Restonian children by Annolaysian parents.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, Annolaysian parents were required to travel to Reston for "fitness interviews" with Restonian officials. Once the parents passed the interview, they were given a certificate, which was required at the border to leave Reston with a Restonian child.

In January 2001, the *International Times Picayune* published a story alleging that Restonian border officials exacted bribery payments from Annolaysian parents leaving Reston with their child, including parents who had failed their fitness interviews.¹⁷ Once the parents arrived on the Annolaysian side of the border, certificates were not checked and the parents were seldom questioned by border officials.¹⁸ After WRI later published a letter in a newspaper, the government of Reston reassigned the border officials accused in the letter.¹⁹

¹³ Compromis at ¶ 28.

¹⁴ Compromis at ¶ 30.

¹⁵ Compromis at ¶ 9.

¹⁶ Compromis at ¶ 10.

¹⁷ Compromis at ¶ 13.

¹⁸ Compromis at ¶ 13.

¹⁹ Compromis at ¶ 17.

In March of 2001, President Contrary announced that Annolay would begin to investigate the reports of rape during the Dysfunctionian civil war.²⁰ She asked both Cascadia and Reston to punish those responsible for the rapes. Both countries, in the midst of struggling to become independent nations, responded with negative answers.²¹ President Contrary then issued a statement that 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.

²⁰ Compromis at ¶ 18.

²¹ Compromis at ¶¶ 19-20.

SUMMARY OF PLEADINGS

The Republic of Reston argues that Annolay does not have legal standing to bring a claim on behalf of the Cascadian women in Annolay because a State can only espouse the claim of a national against a foreign state. The Cascadian women's mere legal presence in Annolay does give them Annolaysian nationality. An exception to the requirement of nationality for legal standing exists for those obligations considered to be *erga omnes*. However, because rape is not considered *erga omnes*, Annolay still does not have standing.

Reston is not liable for reparations to Cascadian rape victims because the rapes are not attributable to the newly formed state of Reston nor to the war-time militia's conduct because it was not an insurrectional movement. Reston is not in violation of any international obligation by granting amnesty to all of its residents in the civil war because no duty exists to prosecute individuals who have committed crimes against humanity, if rape is a crime against humanity.

Reston has not violated international law because of the bribes taken by its border officials from Annolaysian parents. Under the principles of equity, Reston is not liable to Annolay on behalf of the Annolaysian adoptive parents because Annolay's own border officials violated their treaty duty and civil liability should be imposed upon the state of Reston for the actions of its border officials. Furthermore, Restonian courts can provide an adequate remedy for the Annolaysian adoptive parents if they were to bring a valid claim for relief thus satisfying the local remedies requirement.

Reston has standing to bring this claim because Annolay has violated its international obligations by refusing to prevent the conduct of both Fred Schmandefare and the Schmandefare Company as to the Cascadian women in Annolay. The Schmandefare Company violated

international law when it trafficked Cascadian women into Annolay to work in brothels creating a situation of sexual slavery, thus violating an *erga omnes* obligation. By failing to take the appropriate measures to protect the Cascadian women within in their territory, Annolay breached its international obligations. While a State is not responsible for the conduct of private actors however, States do have a duty to exercise due diligence to stop internationally wrongful act committed by private actors. Therefore, Annolay is responsible for the heinous treatment Cascadian women in Annolay and should be made to compensate the Cascadian women working in Schmandefare brothels.

Finally, Reston is entitled to universal jurisdiction over Fred Schmandefare for his trafficking of the Cascadian women for the purpose of sexual slavery because trafficking of women is a crime against humanity. Because crimes against humanity give rise to a grant of universal jurisdiction over the perpetrator, the principle of State sovereignty does not prevent application of universal jurisdiction even if Fred Schmandefare's offenses occurred within the territory of Annolay.

PLEADINGS

I. RESTON HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE CASCADIAN RAPE VICTIMS NOW RESIDING IN ANNOLAY.

A. Annolay Does Not Possess the Necessary Standing to Assert Claims on Behalf of the Cascadian Women Raped During the Dysfunction Civil War.

1. The Cascadian Women Are Not Nationals of Annolay.

Customarily, a State can only espouse the claim of a national against a foreign State because in doing so, it actually asserts its own rights against that foreign State.¹ The Cascadian women's mere legal presence in Annolay does not suffice to bestow upon them Annolaysian nationality. For the women to become nationals there must be both an express affirmation of nationality championed by Annolay, as well as a nexus between the women and the State.² Annolay has made no declaration regarding the nationality of the Cascadian women. While Annolay granted the women permanent resident status and allowed them to work, Annolay never guaranteed the women nationality. Without a bond of nationality, a nexus between Annolay and the Cascadian women does not need to be established and Annolay must be precluded from bringing this suit on the women's behalf.³

2. Annolay Cannot Derive Standing Based on Obligations *Erga Omnes*.

An exception to the requirement of nationality for legal standing exists for those obligations that this Court considers to be *erga omnes*.⁴ Obligations *erga omnes* are those that a state owes to the international community as a whole. However, as this Honorable Court noted

¹ See *Mavromatis Palestine Concessions* (Gr. v. U.K.), 1924 P.C.I.J. (ser. A) No. 2, at 12; see also *Chorzow Factory Case*, 1927 P.C.I.J. (ser. A) No.17, at 25.

² See *Nottebohm Case* (Lich. v. Guat.), 1955 I.C.J. 4 (Apr. 6).

³ See *Mavromatis Palestine Concessions*, *supra* note 1, at 12.

⁴ See *Barcelona Traction, Light, and Power Co. Ltd.*, (Belg. v. Spain) 46 I.L.R. 1 (1973) at 514.

in the *Barcelona Traction* case, obligations *erga omnes* are limited to a very few instances, such as genocide and slavery.⁵ Rape is not among said obligations. Thus, Annolay cannot use the principle of obligations *erga omnes* to claim standing on behalf of the Cascadian women.

B. The Doctrine of Laches Prevents Annolay From Bringing This Suit.

The principle of laches prevents States from raising stale claims as extensive passage of time introduces the potential for grave inequities.⁶ Annolay's delay essentially renders their claim, vis-à-vis the rape of Cascadian women, stale. Moreover, Annolay's motives for now bringing this claim stems from a need to divert attention away from its own international delicts.

The rape of Cascadian women was first reported by the international agency, War-Time Relief International [hereinafter WRI], in April of 1997. However, Annolay waited until four years later to make its first official comments regarding the rapes. This came a mere one month prior to the issuance of the Institute for Labor Studies and Advancement [hereinafter ILSA] report regarding the plight of Cascadian women forced to work in Annolaysian brothels. Clearly, these facts evidence Annolay's ulterior motives in now raising the claim: to divert attention away from its own wrongdoings as to these women suffering in its own country. Because this flagrant delay in raising the rape issue has given rise to inequities, Annolay must be precluded from raising the claim.

C. The Newly Formed Republic of Reston Is Not Responsible For The Rapes of The Cascadian Women.

⁵ *Id.*

⁶ Damrosch, et al., INTERNATIONAL LAW: CASES AND MATERIALS 733 (4th Ed. 2001).

Reston does not dispute the authority of the International Law Commission's Articles on State Responsibility (hereinafter "ILC Articles") as a source of international law.⁷ Although resolutions made by the United Nations General Assembly, even unanimous ones, do not have the same binding effect as treaties, they are nonetheless considered evidence of customary international law,⁸ and thereby designated as a valid source of international law.⁹

According to the ILC Articles, "[e]very internationally wrongful act of a State entails the international responsibility of that State."¹⁰ Pursuant thereto, two requirements must be satisfied before a State will be held responsible for an internationally wrongful act: (1) the act or omission must be "attributable to the State under international law;" and (2) the act or omission must constitute a "breach of an international obligation of the State."¹¹

1. The Rape of Cascadian Women Cannot Be Attributed To Reston.

To be liable for reparations to the Cascadian rape victims, the rapes must be attributable to the newly-formed State of Reston.¹² Generally, for acts or omissions to be attributable to Reston, it must have existed when they occurred. However, when the Cascadian women were raped, Reston did not formally exist as a State and cannot therefore be held responsible.

⁷ INTERNATIONAL LAW COMMISSION, Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., U.N. Doc A/RES/56/83 (2001) [hereinafter ILC Articles].

⁸ Damrosch, *supra* note 6, at 146.

⁹ Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, T.S. No. 933, 3 Bevans 1179, art. 38(1)(b). [hereinafter ICJ Statute]

¹⁰ ILC Articles, *supra* note 7, at art. 1.

¹¹ *Id.* at art. 2.

¹² *Id.* at art. 2(a).

Annolay may argue to the contrary, with attempted support from the exception offered in article 10 of the ILC Articles. Pursuant to said exception, the conduct of a movement, insurrectional or other, may be attributable to a State under certain specific circumstances.¹³ However, there is a vital distinction between an insurrectional movement, which establishes a new government in an existing State,¹⁴ and an insurrectional or other movement, which succeeds in establishing a new State in part of an pre-existing State.¹⁵ Since Reston is a new State, Annolay would have to rely upon the latter for the acts of the war-time militia to be considered those of the new State under international law.

Insurrectional movements are generally defined as those movements, such as revolutions, which rise up against authority or government.¹⁶ ‘Other movements,’ refer only to those which are contrary to an established authority or government, including uprisings, and rebellions.¹⁷ To categorize the Restonian militia as an insurrectional, or other, movement Annolay must conclusively show that the militia’s goals were to rise up against and overthrow the then current government. In fact, this militia was not established in opposition to, nor did it rise up against, any existing Dysfunctionian authority, as none existed at the time the militia formed.

Even assuming, *arguendo*, that the war-time militia was part of an insurrectional movement, its conduct still cannot be attributed to the government of the newly-formed State of

¹³ *Id.* at art. 10.

¹⁴ *Id.* at art. 10(1).

¹⁵ *Id.* at art. 10(2).

¹⁶ See BLACK’S LAW DICTIONARY 808 (6th Ed. 1990); See also, e.g., THE NEW SHORTER OXFORD DICTIONARY 1385 (Thumb Index Ed. 1993).

¹⁷ INTERNATIONAL LAW COMMISSION, Commentaries on the Articles on Responsibility of States for Internationally Wrongful Acts (2001), at Commentary to Article 10, [hereinafter ILC Commentaries] at section 8 of the Commentary to Article 10.

Reston. Under the ILC Articles, the basis for attributing the actions of a successful insurrectional movement to the new State lies in the “continuity between the movement and the eventual government.”¹⁸ There is no continuity between the militia movement during the Dysfunction civil war and the current Restonian State. To the contrary, the militia was nothing more than a renegade band of armed peasantry attempting to support the Restonian claimant to the vacant Dysfunction throne. There is nothing to indicate that said claimant occupies any place in the governmental structure of Reston now or since its formation. In fact, the only link between the current government in Reston and the war-time militia is the former militia commander, Colonel Raskolnikov, who is now the president of Reston.

At first glance, this link between Raskolnikov and Reston may seem substantial, but it is not sufficient to establish the requisite continuity between the alleged insurrectional movement and the formalized, duly elected government of Reston. President Raskolnikov took office following a democratic election. This process was not forced upon the population of Reston by the war-time militia. To the contrary, 85% of the population voted in the State’s first election, resulting with Raskolnikov as President. Furthermore, the power structure within the current government does not in any way resemble that of the war-time militia. Consequently, the lack of continuity between the alleged insurrectional movement and the new Restonian government renders the rules of attribution found in ILC Article 10 inapplicable.

2. Assuming, Arguendo, That The Rapes Can Be Attributed To Reston, Rape Is Still Not An Internationally Wrongful Act.

According to the ILC Articles, State responsibility is only invoked when the accused State has committed an internationally wrongful act.¹⁹ An internationally wrongful act entails a

¹⁸ *Id.* at section 4 of the Commentary to Article 10.

¹⁹ ILC Articles, *supra* note 7, at art. 1.

breach of international obligation(s) attributable to the accused State.²⁰ Assuming, *arguendo*, that the rape of Cascadian women during the Dysfunctionian civil war can be attributed to Reston, then for such conduct to be considered an internationally wrongful act, Reston must have breached some international obligation. Annolay may argue that Reston breached an international obligation by overlooking the rapes committed by the war-time militia. This argument must fail, as international law does not obligate a State to prevent or reimburse victims of acts committed by a civil war militia not under the State's control.

In order for an international obligation to become binding on a State, it must be found in international law sources as defined in this Court's Statute.²¹ Treaties are considered the primary source for legal obligations under international law and Annolay cannot claim that any treaty obligation has been breached here. Reston is not a party to any relevant international instruments and treaties only bind those states which are parties.²²

If such an express international obligation does not exist, then this Court must determine if there has been a violation of customary international law.²³ For a rule to become customary law, it must stem from legally obligatory customs consecrated through widespread use by the nations of the world.²⁴ In the instant case, Reston does not dispute the international concern for the rape of women during times of armed conflicts. However, stating that this concern exists and declaring that it has evolved into an international obligation for purposes of state responsibility is

²⁰ *Id.* at art. 2.

²¹ ICJ Statute, *supra* note 9, at art. 38.

²² *See* Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969), at art 34. [hereinafter Vienna Convention].

²³ ICJ Statute, *supra* note 9, at 38(1)(b).

²⁴ *See* E. de Vattel, THE LAW OF NATIONS, OR PRINCIPLES OF THE LAW OF NATURE, APPLIED TO CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS xv (1797); *See also* H. Grotius, DE JURE BELLI AC PACIS LIBRI TRES 44 (bk. 1, ch. 1, section 14).

not synonymous. For it to rise to the level of customary law, it must have widespread state practice, accompanied by a sense of legal obligation or *opinio juris vel necessitatis*.²⁵

Annolay has not pursued the customary law concept of individual criminal responsibility for violations of human rights during times of armed conflict. Annolay seeks, instead, to hold the new State of Reston responsible for the acts of those individuals who raped Cascadian women during the Dysfunctionian civil war. To do so would run contrary to State practice and customary law, this has traditionally only held individuals, and not States, responsible for these acts.

D. Reston Has Not Violated International Law by Granting Full National Amnesty to All Persons Within Reston.

1. **Reston Is Not Under An International Obligation To Prosecute The Individuals Who Raped Cascadian Women During the Civil War.**

President Raskolnikov's grant of full civil and criminal amnesty is not intended to protect mere individuals from the threat of future prosecution. Its goal was only to protect Reston's general interest in national healing and reconciliation. Annolay may argue that this grant of amnesty was contrary to an international duty to prosecute human rights violators. However, no such duty exists under customary international law, even as to individuals who have committed crimes against humanity. Therefore, amnesty remains an effective international positive legal and political tool.

Even if this Honorable Court determines that rape is a crime against humanity, Reston has not violated any international obligation by granting amnesty to all of its residents who

²⁵ See American Law Institute, *Restatement Third of the Foreign Relations Law of the United States* § 102(2) (1987); see also *North Sea Continental Shelf* (W.Ger. v. Den., W.Ger. v. Neth.) 1969 I.C.J. 3 (Feb.20).

participated in the civil war.²⁶ Many conventions expressly allow for grants of amnesty where a fragile new democracy emerges out of the ashes of a civil war.²⁷ Amnesty serves as an effective tool for reconciliation in countries which have been torn apart by civil war or similar internal conflict. A newly formed democratic State stands little chance of successful rehabilitation without the ability or right to grant amnesty. Reston is an emerging free-market economy whose democracy was born out of a need to bring an end to internal conflict. To hold this new State responsible for not prosecuting the actions of individuals during the Dysfunctionian civil war would be to condemn its new democratic structure to certain failure.

II. RESTON HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE BRIBES EXACTED BY ITS BORDER OFFICIALS.

A. Annolay Has Not Satisfied Its Duty To Exhaust Local Remedies.

1. The Annolaysian Adoptive Parents Have Not Brought Any Claims in Restonian Courts.

A well-established principle of customary international law is that, before a State institutes international proceedings on behalf of one of its nationals against a foreign State, the various local remedies available to the injured party must have been exhausted.²⁸ Moreover, a State must be afforded some degree of flexibility by which to remedy local problems.²⁹ This principle allows States to resolve international problems within their own domestic legal system,

²⁶ See, e.g., 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, 314-18 (2000); see also Michael Scharf, *Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?*, 31 TEX. INT'L L.J. 1, 36 (1996).

²⁷ See, e.g., Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), entered into force, Dec. 7, 1978, U.N. Doc. A/32/144, Annex II (1977), article 6(5). [hereinafter Protocol II].

²⁸ See *Interhandel* (Switz. v. U.S.), 1959 I.C.J. 6, 19 (Mar. 21); see also, e.g., Damrosch, *supra* note 6, at 734.

²⁹ See *Electronica Sicula S.p.A.* (U.S. v. Italy), 1989 I.C.J. 15, 52 (Jul. 20).

thereby limiting the number of unnecessary international claims. Reston has attempted, on its own accord, to address the problem of alleged bribery at its borders by permanently reassigning some of the officials accused of corrupt practices. As these allegations have yet to be officially confirmed, this shows Reston's good faith and commitment to fix a potential problem once it was notified. By contrast, Annolay has not established any evidence demonstrating that the Annolaysian adoptive parents have attempted to litigate this matter in either Annolaysian or Restonian courts. Therefore, local remedies have not been exhausted and this Honorable Court cannot accept jurisdiction to hear this claim.

2. The "Futile" Exception to the Rule of Local Remedies Does Not Apply.

Annolay may try to avail itself of the futility exception to the local remedies rule, whereby an injured party need not first exhaust local remedies if any such attempt to do so would prove futile.³⁰ There is nothing to indicate that Restonian courts would not provide an adequate remedy for the Annolaysian adoptive parents if they brought a valid claim for relief.

Annolay may also try to argue that no specific anti-bribery laws exist under Restonian law, and therefore, that no attendant remedy exists for the adoptive parents. However, although Reston has not ratified the Regional Anti-Corruption Convention [hereinafter RACC], it has an international obligation not to frustrate the object and purpose thereof as a signatory.³¹ Reston takes its international obligations very seriously and would fairly adjudicate any claim brought by a foreign State or its nationals. Since futility cannot be proven, the Annolaysian adoptive parents must attempt to bring this claim locally before this Honorable Court can hear Annolay's claims on their behalf.

³⁰ See *Finnish Ships Case*, 3 R. Int'l Arb. Awards 1479 (1934); See also Damrosh, *supra* note 6, at 735.

³¹ Vienna Convention, *supra* note 22, at art 18.

B. Reston Has Not Violated International Law With Respect To The Annolaysian Adoptive Parents

According to the RACC, a State that signs the treaty subject to ratification will be bound only when ratification occurs.³² Since Reston has not yet ratified the RACC as a reflection of its consent, this Honorable Court should find that Reston is not bound to the treaty.³³

Annolay may also argue that the RACC binds Reston as a matter of customary international law, as a treaty may bind even non-parties to its general rules, if they are evidence of a customary law.³⁴ However, the RACC's provisions are not evidence of customary international law. First, the RACC is a regional treaty, whereas, treaties encompassing general principles of customary law are multilateral treaties open to the world in general.³⁵ Secondly, treaties, as codification of customary law, are only binding on non-parties as to the general principles of international law, which the treaties stand for, and not as to its specific provisions.

C. Principles of Equity Bar Annolay From Bringing This Claim.

According to Aristotle, "in a situation in which the law speaks universally, but the case at issue happens to fall outside the universal formula, it is correct to rectify the shortcoming, in other words, the omission and mistake of the lawgiver due to the generality of his statement."³⁶ This principle, that equity must be used to fill the voids where the law as applied lends itself to an injustice, is supported in international law by interpretation of this Court's Statute.³⁷ In

³² Regional Anti-Corruption Convention, Jan. 7, 1999 (entered into force June 1, 1999) [hereinafter RACC].

³³ *Id.* at art. 34.

³⁴ Vienna Convention, *supra* note 22, at art. 38.

³⁵ *See* Damrosch, *supra* note 6, at 110.

³⁶ Aristotle, NICOMACHEAN ETHICS 141-142 (bk. 5, ch. 10) (Ostwald trans. 1962).

addition to express inclusion in article 38(2) of said Statute, equity's solid place in international law is further supported by acceptance as a general principle of international law under article 38(1)(c).³⁸

This Court should use the principles of equity to find that Reston is not liable for the bribes exacted by Restonian border officials as Annolay brings suit with "unclean hands." Annolay seeks to protect those parents who did not pass Restonian mandated fitness interviews and further seeks to protect those parents who failed to attend the fitness interviews. Clearly, these two groups of adoptive parents participated in corruption involved in the adoption of Restonian children. They knowingly removed the children without any regard for Restonian law, which mandates very specific processes with which prospective adoptive parents must comply. Ordering Reston to pay restitution to these parents would serve as implicit approval of their unlawful actions in the State of Reston, thus undermining the stability of the international legal system. This is supported by the general principle of law that no benefit may be received from an illegal act.³⁹

Annolay's own border officials violated their duties arising from under the RACC.⁴⁰ They failed to inform Reston that Annolaysian parents were returning to Annolay with Restonian children, despite lacking the requisite certificates of fitness. Even those parents who did pass the fitness interviews should have informed the Annolaysian border officials of the bribes being

³⁷ See generally, e.g., Mark Janis, AN INTRODUCTION TO INTERNATIONAL LAW 67-79 (3rd Ed. 1990).

³⁸ See *The Diversion of Water From the Meuse Case* (Neth. v. Belg.), 1937 P.C.I.J. (Ser. A/B) No. 70, at 76.

³⁹ Bassiouni, *Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition*, 7 VAND. J. OF TRANSNAT'L L. 25, 45 (1973).

⁴⁰ See RACC, *supra* note 32, at art. 21.

exacted by the Restonian officials. If such notice had been given, the onus would have properly been upon the Annolaysian officials to inform Reston about these alleged crimes. If the adoptive parents did not inform the Annolaysian border officials, then this Court, in keeping with principles of equity, must at least question why they did not do so. These parents cannot be allowed to benefit from the illegality of their own acts and then claim restitution for any sums they expended in the course of committing those acts.

Annolay may argue that civil liability should be imposed upon Reston for the actions of Reston's border officials. These individuals solicited payments from the Annolaysian adoptive parents of their own accord and kept the money solicited for their own personal use. If it is found that the Restonian border officials acted in a corrupt manner, any such actions clearly exceeded the scope of their authority and duties. In addition, Reston has not been allowed a reasonable opportunity to deal with these internally corrupt manners domestically. Mere allegations will not suffice to indict all border officials and render the entire State of Reston responsible at international law. Without the testimony of the Annolaysian adoptive parents, Reston cannot effectively impose civil or criminal liability upon any of its border officials. Thus, to impose liability upon Reston where no one has stepped forward to initiate such proceedings would not only violate the principle of "exhaustion of local remedies," but would also violate general principles of equity.

III. RESTON HAS STANDING TO BRING SUIT AGAINST ANNOLAY.

A. Reston Has Legal Standing To Bring This Claim Pursuant to its Obligations *Erga Omnes*.

International law has consistently recognized legal interests distinct from direct and physical interests.⁴¹ Accordingly, States that may not have been directly injured can still have a valid, enforceable legal interest in protecting the observance of certain obligations.⁴² When a case involves the violation of basic human rights, these are considered obligations *erga omnes*. In the *Barcelona Traction* case, this Court held that principles and rules concerning *erga omnes* are binding on all states, thereby obligating the entire international community to observe and protect human rights.⁴³ As international treaty and customary law prohibit slavery and slave trade, States have a legal interest in protecting the members of the international community from violations of the attendant fundamental human rights.⁴⁴ This creates a legal obligation *erga omnes*. More importantly, under international law, rules of *jus cogens* refer to “peremptory principles or norms from which no derogation is permitted, and which may therefore operate to invalidate a treaty or agreement between States to the extent of the inconsistency with any of such principles or norms.”⁴⁵ The observance of human rights constitutes a rule of *jus cogens*.⁴⁶

In the instant case, when the Schmandefare Company trafficked Cascadian women for purposes of forced prostitution, it created a situation of sexual slavery. The protection from

⁴¹ *South West Africa* (Eth. v. S. Afr.; Lib. v. S. Afr.), 1962 I.C.J. 319, at 425 (Jul. 18).

⁴² *Id.* at 425; *See also Military and Paramilitary Activities in and around Nicaragua* (Nicar. v. U.S.), 1984 I.C.J. 4, at 190 (Nov. 26).

⁴³ *See Barcelona Traction*, *supra* note 4, at 32.

⁴⁴ Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT’L L. 303, 306 (1999); *see also Barcelona Traction*, *supra* note 4, at 33-34.

⁴⁵ Vienna Convention, *supra* note 22, art. 53.

⁴⁶ Jennings and Watts, *OPPENHEIM’S INTERNATIONAL LAW* 7-8 (9th ed. 1992).

slavery is an example of obligations *erga omnes* illustrated in the *Barcelona Traction* case⁴⁷ and sexual slavery is considered part of slavery, as discussed below. The binding effect of *erga omnes* places the obligation on Annolay to protect the human rights of the Cascadian women living within its borders. Annolay cannot claim a sufficient connection to these women to bring suit on their behalf before this Court for alleged violation of some fundamental rights and then refute its own responsibility for protecting them as to other such rights. When there is a violation of these rights, every other State similarly bound by these rules must necessarily be considered an “injured” state. Reston falls within this category and consequently has standing to bring this claim on behalf of the Cascadian women working in the Annolaysian brothels.

IV. ANNOLAY HAS VIOLATED ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE TREATMENT OF THE CASCADIAN WOMEN IN ITS BROTHELS.

A. By Trafficking the Cascadian Women, The Schmandefare Company and Fred Schmandefare Have Committed A Crime Against Humanity.

1. Trafficking Women For Purposes Of Forced Prostitution Is A Violation Of International Law.

The United Nation’s Working Group has classified trafficking in people for purposes of forced prostitution as slavery.⁴⁸ The United Nations Commission on the Status of Women also considers forced prostitution slavery.⁴⁹ Slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”⁵⁰ When

⁴⁷ Maurizio Ragazzi, *THE CONCEPT OF INTERNATIONAL OBLIGATIONS ERGA OMNES* 105 (Clarendon Press, 1997).

⁴⁸ Rassam, *supra* note 44, at 317.

⁴⁹ Nora V. Demleitner, *Forced Prostitution: Naming An International Offense*, 18 *FORDHAM INT’L L.J.* 163, 192 (1994).

⁵⁰ Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253.

based on fraudulent promises of employment and resultant inability to escape their servitude, the procurement of women into forced prostitution falls within this definition.

In this case, the Institute for Labor Studies and Advancement report established that the Schmandefare Company has restrained the liberty of the Cascadian women working in its brothels. They are exposed to repeated physical and emotional abuse and degrading living conditions. Article 4(4) of the Declaration of Minimum Humanitarian Standards provides that “[a]ll persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water . . . be afforded safeguards as regards . . . working and social conditions.”⁵¹ Considering these factors, the dormitory housing in the Annolaysian brothels is not an appropriate place to live and the women are not allowed to leave their dormitory except under certain, limited circumstances. Therefore, this situation is an analogous form of slavery as the Cascadian women are held captive and are compelled to work off their debt by engaging in forced prostitution.

Sexual slavery is prohibited throughout international human rights law.⁵² The International Covenant on Civil and Political Rights (hereinafter ICCPR) provides that “no one shall be held in slavery: slavery and slave-trade in all their forms shall be prohibited”⁵³ and the Universal Declaration of Human Rights expands that definition to servitudes.⁵⁴ The Vienna

⁵¹ Theodor Meron & Allan Rosas, “*A Declaration of Minimum Humanitarian Standards*,” 85 AMERICAN JOURNAL OF INT’L L. 375, 379 (1991).

⁵² Sarnata Reynolds, *Deterring and Preventing Rape and Sexual Slavery During Periods of Armed Conflict*, 16 LAW & INEQ. 601, 621(1998).

⁵³ International Covenant on Civil and Political Rights, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1976), at arts. 8(1).

⁵⁴ Universal Declaration of Human Rights, Dec. 10, 1948, U.N. Doc. A/811, art 4.

Declaration also recognizes that violence against women, such as sexual slavery, violates their human rights and must be eliminated.⁵⁵

In 1995, the Convention Against Sexual Exploitation established the principle that trafficking women violates international law as to their right to sexual equality.⁵⁶ And most globally, the U.N. Charter promotes “universal respect for, and observance of, human rights and fundamental freedoms.”⁵⁷ The fundamental social, cultural, and economic rights of the Cascadian women working in Annolay’s brothels have been and still are being violated because they are compelled to engage in involuntary prostitution.

2. The Schmandefare Company’s Conduct As To The Cascadian Women Satisfies The Elements of Trafficking In Persons.

- a) *The Schmandefare Company misrepresented information to Cascadian women, forcing them to engage in sexual slavery via debt bondage.*

Trafficking in persons is defined as “the recruitment, transportation . . . by means of the threat or use of force or other forms of coercion . . . of fraud, of deception . . .”⁵⁸ Offering a false promise of employment is one way of trafficking women into forced prostitution in a foreign country.⁵⁹ The Schmandefare Company’s representatives recruited Cascadian women

⁵⁵ U.N. World Conference on Human rights: Vienna Declaration and Programme of Action, U.N. Doc. A/Conf. 157/24 (Part I) (1993), reprinted in 32 I.L.M. 1661, 1678 (1993); *see also* Rhonda Copelon, *Women’s Rights As International Human Rights*, 69 ST. JOHN’S L. REV. 61, 64 (1995).

⁵⁶ Rassam, *supra* note 40, at 308.

⁵⁷ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. NO. 993 (entered into force Oct. 14, 1945).

⁵⁸ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organizations Crime, G.A. Res. 55/25, U.N. GAOR 55th Sess., U.N. Doc. A/RES/55/25 (2000).

⁵⁹ Michelle O. P. Dunbar, *The Past, Present, and Future of International Trafficking in Women for Prostitution*, 8 BUFF. WOMEN’S L. J. 103, 107 (1999-2000); *See also* Youngik Yoon, *International Sexual Slavery*, 6 TOURO J. TRANSNAT’L L. 417 (1995).

who had been displaced by the civil war, offering them jobs as nannies or domestic servants, lodging and education if they would relocate to Annolay. Specifically, Fred Schmandefare organized the recruiting and transportation of the Cascadian women to Annolay for employment in his brothels. Ensnared by these tactics, the Cascadian women relocated to Annolay in the hopes of obtaining remunerative employment. The Schmandefare Company misled these women by misrepresenting information about the type of work they would undertake and the conditions they would suffer once there.

Moreover, the Schmandefare Company charged the Cascadian women a fee of US \$10,000 in exchange for assistance with relocation. It loaned each woman the money, knowing that they absolutely could not afford to pay it themselves. The Slavery Convention supplemented in 1956 requires for “the elimination of practices similar to slavery including debt bondage and various types of exploitation of women.”⁶⁰ The Schmandefare Company clearly used debt bondage as a method to more efficiently enslave these women.

b) *Negotiations between the Cascadian women and the Schmandefare Company were unconscionable.*

Trafficking in persons is also defined as exercising the “abuse of power or of a position of vulnerability”⁶¹ As the Cascadian society is based on 10th century custom and culture, it is arguably a very conservative, underdeveloped society. The Cascadian women, having been raped during the civil war, have since suffered extreme shame and could not have remained in their homeland without constant rejection and the deterioration of their private lives and family relationships. The Schmandefare Company took advantage of the excruciatingly vulnerable

⁶⁰ 1956 Slavery Convention, art.1, 266 U.N.T.S. 41; Steven R. Ratner and Jason S. Abrams, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW 113 (Oxford University Press, 2001).

⁶¹ See Protocol, *supra* note 58.

position of these women in the Cascadian society by offering them sham employment via unconscionable negotiations, thereby violating international obligations.

B. Annolay Is Responsible For The Schmandefare Company and Fred Schmandefare's Internationally Wrongful Acts And Should Be Made to Compensate The Cascadian Women Working in its Brothels.

An internationally wrongful act of a State consists of “an action or omission that: 1) is attributable to the State under international law, and 2) constitutes a breach of an international obligation of the State.”⁶²

1. The Acts of the Schmandefare Company Are Attributable To Annolay.

The ILC Draft Articles were intended to codify the principles of State responsibility as they relate to international law. Article 4 specifically provides that, “[c]onduct of any state organ . . . shall be considered an act of that State under international law . . . whatever position it holds in the organization of the State and whatever its character. . .”⁶³ Here, three Annolaysian governmental departments, Immigration, Services to Children and Families, and Worker Safety and Compensation, as well as the local police, all received written complaints from women working in local brothels. However, neither the governmental agencies nor the police investigated the allegations. As a matter of fact, there was an opportunity for the police to save one woman from continued of violations and the officer simply returned her to the Schmandefare Company’s brothel. Since these governmental agencies and police officials hold positions in its State organization, their failure to investigate the conditions in the brothels renders Annolay responsible for the attendant violations suffered by the Cascadian women while there.

2. By Failing to Take Appropriate Action On Behalf of The Cascadian Women, Annolay Breached Its International Obligations.

⁶² ILC Articles, *supra* note 7.

⁶³ *Id.* art. 4.

Pursuant to the ICCPR, State parties have an obligation to “ensure to all individuals within their territory their rights recognized.”⁶⁴ As well as prohibiting the slave trade, this Covenant obligates State parties to protect people from things such as being trafficked for prostitution. Thus, a State violates its obligations under the ICCPR if it fails to exercise due diligence to end slavery and the slave trade engaged in by private actors within that State’s jurisdiction. The Convention on the Elimination of all Forms of Discrimination Against Women also requires that State parties “take all appropriate measures, including legislation, to suppress all forms of traffic in women and the exploitation of prostitution of women.”⁶⁵ If a State takes inadequate measures, or no measures at all, to eliminate trafficking by either the State or private actors, it violates its treaty obligations. All States are under an obligation to ensure respect for and protection of the rights of victims of trafficking under applicable international law.⁶⁶ Therefore, by failing to take the appropriate measures to protect the Cascadian women within in its territory, Annolay has breached its international obligations.

3. Even Though the Schmandefare Company is a Private Actor, Annolay is Still Liable for the Company’s Acts by failing to exercise due diligence.

Under international law, a State is not generally responsible for the conduct of private actors. However, all States have a duty to exercise due diligence to stop internationally wrongful acts committed by private actors, with a failure to do so rendering States responsible for such conduct.⁶⁷

⁶⁴ International Covenant on Civil and Political Rights, *supra* note 53, at art. 2.

⁶⁵ Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13 (1979).

⁶⁶ Informal note by the United Nations High Commissioner for Human Rights, A/AC. 254/16, p.2.

⁶⁷ See Jennings, *supra* note 46, at 549.

In the instant case, the Annolaysian governmental agencies were, and are, aware of the Schmandefare Company's treatment of the Cascadian women in its brothels. It is therefore responsible for said treatment as a result of its knowledge thereof and failure to prevent further violations of the women's rights.⁶⁸ The *International Times-Picayune* reported that Fred Schmandefare has influence over local police and government officials and it is widely known that he is connected with organized crime groups. At a minimum, based on the facts of this case, actual and implied knowledge can be attributed to Annolay for the acts of the Schmandefare Company and Fred Schmandefare.

In the *Diplomatic and Consular Staff in Tehran Case*, this Court held that, although the initial takeover was conducted by Iranian students, the Iranian government was ultimately responsible for students' acts because they were subject to the control of their government and would obey its instructions.⁶⁹ Similarly, the Schmandefare Company is subject to the laws and authority of the Annolaysian government. Therefore, if the Annolaysian government had exercised due diligence to initiate an investigation into the brothel conditions and affirmatively taken action to correct any violations, it could have already reprimanded the Schmandefare Company for its conduct as to the Cascadian women. Annolay's failure to exercise due diligence, taken *in toto*, rises to a level that justifies holding this State accountable for the Company's violations.

V. RESTON IS ENTITLED TO UNIVERSAL JURISDICTION OVER FRED SCHMANDEFARE.

A. Reston Should Be Afforded Universal Jurisdiction Over Fred Schmandefare As Trafficking Women Is A Crime Against Humanity.

⁶⁸ *Corfu Channel (Merits)*, (UK v. Alb.), 1949 I.C.J. 4 (1949).

⁶⁹ *United States Diplomatic and Consular Staff in Teheran* (Iran v. U.S.), 1980 I.C.J. 4 (May 24).

1. Exhaustion of Local Remedies Is Not A Prerequisite to Adjudication In The Present Case.

As a general rule, exhaustion of local remedies mandates that, where the acts complained of occurred within its territory, the accused state must have a chance to address the complaint before its own courts before the victim's state may espouse the claim on behalf of its national.⁷⁰ This rule is usually applied in cases where a State tries to exercise diplomatic protection for its nationals whose rights have been violated by another State.⁷¹ It is inapplicable in this case because Reston is not claiming the right of diplomatic protection over its nationals. Rather, Reston is pursuing relief on behalf of the Cascadian women in Annolay's brothels on the basis of violation of their human rights. Consequently, since the complaint is breach of international law, not of domestic law, the local remedies rules do not apply here.⁷²

2. The Principle of State Sovereignty Does Not Bar Reston's Intervention to Protect the Human Rights of the Cascadian Women.

Crimes against humanity include sexual slavery and forced prostitution.⁷³ Pursuant to international customary law, it is widely accepted that crimes against humanity give rise to a grant of universal jurisdiction over the perpetrators.⁷⁴ As reflected in international agreements, this principle is the result of universal condemnation of specified offenses and a general interest

⁷⁰ See *Mavromatis Palestine Concessions*, *supra* note 1 at 12; see also *Interhandel*, *supra* note 28 at 27; See also Oscar Schachter, INTERNATIONAL LAW IN THEORY AND PRACTICE 213 (1991).

⁷¹ See *Mavromatis Palestine Concessions Case*, *supra* note 1 at 12; *Norwegian Loans Case* (Fr. v. Nor.), 1957 I.C.J. 9 (Jul. 6).

⁷² Schachter, *supra* note 70, at 213 (1991).

⁷³ Rome Statute of the International Criminal Court, U.N. GAOR, 53rd Sess., U.N. Doc. A/CONF. 183/9 (1998), reprinted in 39 I.L.M. 999 (1998).

⁷⁴ Theodor Meron, *International Crimination of Internal Atrocities*, 89 AM. J. INT'L L. 554 at 568 (1995); Oppenheim, *supra* note 46, at 998; Yoram Dinstein, *International Criminal Law*, 20 ISR. L. REV. 206, 211-212 (1985).

in cooperating to suppress them for the protection of the international community. Therefore, the principle of State sovereignty does not prevent application of universal jurisdiction, even if Fred Schmandefare's offenses occurred within the territory of Annolay.

B. Reston Is Entitled To Universal Jurisdiction Because Annolay Failed To Prevent and Investigate the Activities of Fred Schmandefare as to the Cascadian Women.

1. Annolay Has An International Obligation To Prevent Human Rights Violations.

Both the Geneva Convention and the Convention against Torture require that State parties exercise universal jurisdiction where a perpetrator is physically present in a State's territory and prosecution is not possible.⁷⁵ Customary international law also permits all States to exercise universal jurisdiction over crimes against humanity, war crimes, and torture.⁷⁶ In order for a rule to become customary international law, it must have the support of significant State practice and *opinio juris*, or the general recognition on the part of States that a legal obligation is involved when they undertake such practice.⁷⁷ The obligation to investigate serious human rights violations and to take action against perpetrators is explicit or implicit in every international human rights instrument. An obligation to prevent and to prosecute the said conduct is therefore part of customary law and binding upon all States, including Annolay.

⁷⁵ Beth Stephens, *Translating Filartiga: A Comprehensive and International Law Analysis of Domestic Remedies for International Human Rights Violations*, 27 YALE J. INT'L L. 1, 42-43 (2002); Naomi Roht-Arriaza, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," 78 CALIF. L.R. 449 (1990); Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, August 12, 1949, 75 U.N.T.S. 31, 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).

⁷⁶ *Id.* at 43.

⁷⁷ *North Sea Continental Shelf* (W.Ger. v. Den., W.Ger. v. Neth.) 1969 I.C.J. 3 (Feb.20).

Although Annolay's president established a panel of alleged experts to investigate the claims of the Cascadian women working in the Schmandefare Company brothels, it has not released any results or proposals for correcting any violations. There was no affirmation given that Fred Schmandefare would be prosecuted in Annolay upon a finding of liability. Rather, Annolay has simply made excuses that it did not have knowledge of a widespread course of the Schmandefare Company's conduct as to the brothels in order to avoid its own responsibility, rather than actively undertaking a good faith investigation.

2. This Court Should Allow Universal Jurisdiction Over Fred Schmandefare To Prevent Further Human Rights Violations.

Even though protecting a State's territorial jurisdiction is a well-established general rule of international law,⁷⁸ universal jurisdiction has forged an exception. The principle of universal jurisdiction is based on the premise that some crimes including those against humanity are so offensive to the international community that all states are empowered to enact and to enforce laws that proscribe them.⁷⁹ For this reason, universal jurisdiction is applied regardless of the venue of the crime itself or of the nationality of the alleged perpetrator or victim.⁸⁰ When violations of basic human rights are breaches of obligations *erga omnes*, it follows that they may be punishable by any State pursuant to the principle of universal jurisdiction. The principle *aut dedere aut judicare*, which applies to crimes entitled to universal jurisdiction is included in

⁷⁸ Ian Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* at 298 (4th ed. 1992); *See also* Mark W. Janis, *supra* note 37, at 329-330.

⁷⁹ Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 *TEX. L. REV.* 785, 788 (1988); Michael P. Scharf, *Universal Jurisdiction: Myths, Realities, and Prospects Panel Three: Contemporary Developments*, 35 *NEW ENG. L. REV.* 363, 369-370 (2001).

⁸⁰ *Id.*

several international treaties.⁸¹ Offenses that undermine the goal of the international community are the concern of all States; therefore, all States have a legal interest to bring suit against those who commit such offenses.⁸² The “Lotus Principle” also established the legitimacy of a State’s exercise of extraterritorial jurisdiction.⁸³ Since Fred Schmandefare violated the human rights of the Cascadian women, Reston has a legitimate interest in applying universal jurisdiction under the “Lotus Principle.”

The application of universal jurisdiction in the cases of crimes against humanity is a well-established doctrine supported by State practice. For example, it was recently granted in both the *Eichmann* case and the prosecution of Bosnian war criminals.⁸⁴ A State can therefore exercise valid extraterritorial jurisdiction based on universal jurisdiction as a matter of customary law for crimes against humanity. This is permissible even where the offense is committed by aliens abroad and the State lacks any direct link to locality of the offense, or nationality of the offender.⁸⁵ In the case of Adolf Eichmann, the Supreme Court of Israel held that, since the case dealt with crimes against humanity, there was full justification for applying universal jurisdiction.⁸⁶ Similarly, as an example of municipal law, the United States recognizes a jurisdictional basis for certain human rights violations in U.S. courts under the Alien Tort Claims

⁸¹ Lee A. Steven, *Genocide and the duty to extradite or prosecute: Why the United States is in breach of its international obligations*, 39 VA. J. INT’L L. 425, 441-442 (1999); Genocide Convention, 1949 Geneva Conventions, and Torture Convention.

⁸² *Id.*

⁸³ *The Lotus Case* (Fr. v. Turk.), 1927 P.C. I.J. (ser. A) No. 10 (Sept. 7).

⁸⁴ Ratner, *supra* note 60, at 141.

⁸⁵ *See e.g.*, Roman Boed, *supra* note 26, at 297.

⁸⁶ *Attorney Gen. of Isr. v. Eichmann*, 36 I.L.R. 18, 299 (Isr. 1962).

Act.⁸⁷ Primarily, the landmark *Filartiga* case asserted a claim against foreign defendants for violations committed in a foreign country.⁸⁸

Universal jurisdiction should apply in the instant case because trafficking of women for purposes of sexual slavery qualifies as a crime against humanity, as discussed above. Fred Schmandefare's conduct as to trafficking the Cascadian women was heinous and condoned by Annolay. Limiting the application of jurisdiction available to Annolay would significantly undermine the effectiveness of justice and render the international community essentially helpless to take legal measures against violators of international human rights. Therefore, this Court should permit Reston to exercise universal jurisdiction over Fred Schmandefare in order to prevent further violations.

VI. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Respondent, the Republic of Reston, respectfully requests this Honorable Court to find, adjudge, and declare as follows:

1. That Reston is not liable for reparations to the Cascadian rape victims.
2. That Reston is not responsible for the actions of its border officials where the Annolaysian adoptive parents were complicit in the wrong doing.
3. That Reston is entitled to exercise universal jurisdiction over Mr. Schmandefare.
4. That Annolay has breached its international obligations with respect to the treatment of Cascadian women working in Annolaysian brothels.

Respectfully submitted,
Agents for the Respondent

⁸⁷ 28 U.S.C. § 1350 (1994).

⁸⁸ *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2nd Cir. 1980).

**The 2003 Philip C. Jessup
International Law Moot Court Competition**

Republic of Annolay

v.

Republic of Reston

The Case Concerning The Women and Children of the Civil War

**BEST MEMORIAL – NATIONAL/REGIONAL COMPETITIONS
(Applicant)**

Memorial contained in Evans Award section

Second Place
Hardy C. Dillard Award

University of Texas
United States (Team #689)

**The 2003 Philip C. Jessup
International Law Moot Court Competition**

Republic of Annolay

v.

Republic of Reston

The Case Concerning The Women and Children of the Civil War

**BEST MEMORIAL – NATIONAL/REGIONAL COMPETITIONS
(Respondent)**

Memorial contained in Evans Award section

Second Place
Hardy C. Dillard Award

University of Texas
United States (Team #689)

