# CASE CONCERNING THE WOMEN AND CHILDREN OF THE CIVIL WAR

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# JURISDICTION

Reston and Annolay have agreed to submit their dispute concerning the women and children of the civil war to the International Court of Justice pursuant to Article 36(1) of the Statute of the ICJ. The jurisdiction or competence of the Court has not been qualified or contested. There is no dispute as to the jurisdiction of the Court.

# STATEMENT OF FACTS

In March 1996, a civil war broke out in the Kingdom of Dysfunctia between militias of the two major ethnic groups, Cascadians and Restonians. During the conflict, members of the Restonian militia raped Cascadian women. The extent to which the rapes were condoned by militia commanders was unclear; the leader of the Restonian militia claimed that he was powerless to stop them. On Sept.14, 1999, a peace conference marked the end of the war and the creation of two new States on the territory of the former Dysfunctia: Reston and Cascadia. Reston, the Respondent in this case, is a developing country whose funds were used to foster its ruined economy. On Nov.1, 1999, Reston held its first democratic elections and Raskolnikov was elected president. Emphasizing that it was a time for healing, he established counseling and crisis centers and granted amnesty to all his citizens, regardless of their ethnicity. After Cascadia announced that it would not demand reparations at this point, the president of the developed democracy of Annolay, neighbor to both Reston and Cascadia and Applicant in this case, declared that it would seek reparations for the rape victims.

As the civil war left many without adequate support, thousands of Restonian children were adopted by Annnolaysian citizens. Under Restonian adoption law, the final administrative step for inter-country adoptions is a "fitness interview" to determine if the candidates are suitable parents for the child. Upon successful completion of these interviews, applicants receive a "Certificate of Authorization for Foreign Adoption" which they must present at the border in order to leave Reston with an adopted child. Some Restonian border officials demanded illegal payments of US$500 from adoptive parents before allowing them to cross the border. Those who had failed to produce certificates were also permitted to take children out of Reston upon handing over US$2,500. The Annolaysian border officials allowed them into Annolay, also without certificates. In

response, Raskolnikov reassigned 10% of the border officials involved in the bribery.

The Schmandefare Company, a private company operating numerous brothels throughout Annolay, recruited thousands of Cascadian women, promising them shelter, education and jobs in Annolay, primarily as nannies or domestic servants. These women were issued loans extending over 10 years at a 10% interest rate to pay the costs for their travel to Annolay. In order to reimburse the amount, they were all compelled to work as prostitutes. They were coerced to buy their basic necessities from their employers at unusually high prices. These costs, as well as rent for the dormitory of inhumane conditions where they were held and constantly supervised, were added to their debt. The women were frequently physically and mentally abused. Their complaints to the Annolaysian police and governmental agencies were ignored. After increasing international pressure, the Annolaysian government sent investigators, which have not produced any results after 1½ years. Schmandefare, resident citizen of Annolay, founder and CEO of the Schmandefare Company, was responsible for the recruitment and transportation of the women for employment in the brothels. As Annolay showed no intention to prosecute Schmandefare, Reston announced its readiness to try him.

Annolay and Reston are both members of the UN, the Vienna Convention on the Law of Treaties and expressed their support for the International Law Commission's Articles on State Responsibility. While Annolay is a party to most global human rights instruments including the ICCPR, CEDAW and the Convention on the Rights of the Child, Reston is not party to any of these. Annolay is also party to the Regional Anti-Corruption Convention, which is identical to the Council of Europe's Criminal Law Convention on Corruption; Reston has signed it but not yet ratified.

# QUESTIONS PRESENTED

Reston asks the Court:

(1) whether Annolay has a legal interest to raise a claim on behalf of foreign nationals;

(2) whether there is an international obligation to prosecute war criminals in the aftermath of a civil war;

(3) whether Annolay may claim reparation as a not directly injured State;

(4) whether Reston's obligation not to defeat object and purpose of the RACC requires the fullfillment of obligations arising out of the RACC;

(5) whether there is an obligation under customary international law to prevent bribery;

(6) whether Annolay may demand full restitution for the bribes exacted by Restonian border officials;

(7) whether slavery constitutes a crime against humanity;

(8) whether universal jurisdiction *in absentia* is permissible;

(9) whether Annolay can be held responsible for slavery and trafficking occurring on its territory.

# SUMMARY OF PLEADINGS

1).Annolay has no legal interest to claim repartion on behalf of Cascadian rape victims since a breach of an *erga omnes* obligation must be established at the time of the commission of the acts. As there was only a militia whose few obligations do not possess *erga omnes* character, Annolay does not have standing.

2).As there is no sufficient continuity between the Restonian militia and the new State of Reston, a retroactive attribution of acts committed by militiamen is not possible and Reston cannot be held responsible.

3).Reston cannot be held responsible for the non-prosecution of rapists since there is no international obligation to prosecute in the aftermath of a civil war.

4).Since there is no obligation to prevent bribery under customary international law, Reston cannot be held responsible for bribes exacted by its border officials.

5). Annolay may not demand resistitution of the entire amount of bribes exacted by its nationals since these contributed to their own injury by willful conduct.

6). By trafficking women and subjecting them to sexual slavery as part of his organization, Mr.Schmandefare committed a crime against humanity.

7). Schmandefare may be prosecuted by every State, even *in absentia*, along as the accused is notified of the date of the trial and his attendance is requested.

8). Trafficking for sexual slavery occured in Annolay on a vast scale. Since States have an international obligation to prevent, especially upon obtaining knowledge and Annolay did nothing, Annolay violated international law.

## I. RESTON IS NOT LIABLE TO PAY REPARATIONS TO THE RAPE VICTIMS NOW RESIDENT IN ANNOLAY AND IN ANY EVENT, ANNOLAY HAS NO STANDING TO RAISE SUCH CLAIMS.

### A. ANNOLAY DOES NOT HAVE STANDING.

In order for a State to have standing to invoke a claim, it must prove its legal interest regarding the subject matter of the case.[1] A legal interest may arise on the grounds of either diplomatic protection or an obligation *erga omnes*.[2]

#### 1. Annolay is entitled to raise a claim on the grounds of diplomatic protection.

Generally the invocation of diplomatic protection requires a link of nationality between the individual and the claimant State.[3] The extension of diplomatic protection to stateless persons and recognized refugees, who fulfill the criteria of lawful and habitual residence in the claimant State at the time of the injury, remains controversial and constitutes progressive development.[4] According to the *compromis*, the ethnic Cascadian women were never Annolaysian nationals. Moreover, they were not resident in Annolay at the time of the commission of the rapes, which precludes any extention of diplomatic protection. Hence, Annolay does not have standing on this ground.

#### 2. Annolay cannot base its standing on an obligation *erga omnes*.

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1 *Northern Cameroons*(Cameroon *v.*UK), 1963 ICJ 15, 33-4(Judgm.,Dec.2); *Ibid.* 110(Sep.Op.Fitzmaurice); *S.S. "Wimbledon"*(Gr.Brit.,Fr.,Italy,Japan *v.*Ger.), 1923 PCIJ(Ser.A)No.1, 6, 20(Judgm.Aug.17).

2 I.Brownlie, *Principles of Public International Law*, 469, 480(5th ed.1998).

3 *Panevezys-Saldutiskis Railway*(Est.*v.*Lith.), 1939 PCIJ(Ser.A/B)No.76, 4, 16 (Judgm.,Feb.28); Salvioli, *Problèmes de Procédure dans la Jurisprudence Internationale*, 91 RdC 557, 576(1957-I); Commentary on Art.7, ILC, Draft Articles on Diplomatic Protection, 54th Session, 57 UN-GAOR, Supp.No.10, UN-Doc.A/57/10, para.1(2002); E.M.Borchard, *Diplomatic Protection of Citizens Abroad*, 660(1922).

4 Commentary on Art.7, ILC, Diplomatic Protection, *supra* fn.3, para.2.

In the classical *obiter dictum* of *Barcelona Traction*, the ICJ defined *erga omnes* obligations as "obligations of States owed to the international community as a whole."[5] As inter-State obligations, they protect a common interest and their breach may allow all States to raise a claim against the violating State.[6] To invoke such a claim, however, it is necessary to establish if such obligations *erga omnes* existed at the time when the acts occurred.[7]

The rapes were committed by militiamen, not State organs, before Reston came into existence. Accordingly, it needs to be assessed whether insurrectional or other movements, such as the Restonian militia, can have obligations of an *erga omnes* character. Such movements have limited legal personality and face only few international obligations.[8] These do not include human rights obligations, which are only imposed on States and not enforceable against non-State entities.[9] Moreover, both crimes against humanity and the prohibition of genocide do not address movements as such but lead to individual criminal responsibility.[10] The only provisions that explicitly bind insurrectional or other movements

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5 *Barcelona Traction, Light and Power Company, Limited*(Belg.*v.*Spain), 1970 ICJ 3, 33(Judgm.Feb.5).

6 T.Meron, *Human Rights and Humanitarian Norms as Customary Law*, 194-5(1989); Dinstein, *The Erga Omnes Applicability of Human Rights*, 30 AVR 16, 18(1992).

7 *Island of Palmas*(US *v.*Neth.) 2 RIAA 829, 845(Award,Apr.4,1928); *Aegean Sea Continental Shelf*(Greece *v.*Turk.) 1978 ICJ 3, 29-32(Judgm.Dec.19); Elias, *The Doctrine of Intertemporal Law*, 74 AJIL 285, 286-8(1980); Commentary on Art.13, ILC, Articles on Responsibility of States for Internationally Wrongful Acts, 53rd Session, 56 UN-GAOR, Supp.No.10, 59, UN-Doc.A/56/10, para.1(2001).

8 A.Cassese, *International Law in a Divided World*, 84(1986); Fitzmaurice, *The General Principles of International Law Considered from the Standpoint of the Rule of Law*, 92 RdC 5, 10(1957-II); R.Jennings&A.Watts, *Oppenheim's International Law*, 162(9thed. 1992); Mugerwa, *Subjects of International Law* in *Manual of Public International Law*, 247, 265(M.Sorensen,ed.1968).

9 McCorquodale, *Overlegalizing Silences: Human Rights and Nonstate Actors*, 96 ASILProc. 384, 384-5(2002); Hadden&Harvey, *The Law of Internal Crisis and Conflict* 833 IRRC 119, 130(1999); Meron, *Human Rights*, *supra* fn.6, 162.

10 *Application of the Convention on the Prevention and Punishment of the Crime of*

are common Art.3 of the Geneva Conventions,[11] and Protocol II Additional to the Geneva Conventions, which is intended to develop and supplement the former.[12] However, the enforcement mechanism of these rules, in particular those contained in common Art.3, remains unsettled.[13] Finally, State practice reveals that claims raised against insurrectional or other movements as such are unknown to international law aside from claims raised by a State on behalf of its own nationals.[14] For all these reasons, the obligations imposed on such movements are not obligations *erga omnes*.

B. EVEN IF ANNOLAY HAD STANDING RESTON IS NOT RESPONSIBLE FOR THE RAPES.

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*Genocide*(Prel.Obj.)(Bosn.&Herz.*v.*Yug), 1996 ICJ 595, 631(Judgm.Jul.11)(Joint Decl. Shi&Vereshchetin); Jorgensen, *State Responsibility and the 1948 Genocide Convention*, in *The Reality of International Law-Essays in Honour of Ian Brownlie,* 273, 275(G.S.Goodwin-Gill&S.Talmon,eds.,1999); Art.6, Statute of the International Criminal Tribunal for the former Yugoslavia, UNSC-Res 827(1993), 32 ILM 1303(1993); Art.5, Statute of the International Criminal Tribunal for Rwanda, UNSC-Res 955(1994), 33 ILM 1598(1994); Art.1, Rome Statute of the International Criminal Court, Jul.17,1998, 37 ILM 999(1998).

[11] Art.3, Geneva Convention [I] for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug.12,1949, 75 UNTS 31; Art.3, Geneva Convention [II] for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug.12,1949, 75 UNTS 85; Art.3, Geneva Convention [III] relative to the Treatment of Prisoners of War, Aug.12,1949, 75 UNTS 135; Art.3, Geneva Convention [IV] relative to the Protection of Civilian Persons in Time of War, Aug.12,1949, 75 UNTS 287.

[12] Art.1(1), Protocol II Additional to the Geneva Conventions of Aug.12,1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Jun.8,1977, 1125 UNTS 609; Lysaght, *The Scope of Protocol II and its Relation to Common Article 3 of the Geneva Conventions of 1949 and other Human Rights Instruments*, 33 AmericanULR 9, 25(1983).

[13] Draper, *The Geneva Conventions of 1949*, 114 RdC 64, 97(1965-I); Abi-Saab, *Human Rights and Humanitarian Law in Internal Conflicts* in *Human Rights and Humanitarian Law-The Quest for Universality*, 107, 119(D.Warner,ed.,1997); Lysaght, *Scope of Protocol II, supra* fn.12, 25.

[14] ILC, Report to the General Assembly, 1975-II YILC, 98-9; Rousseau, *La Non-Intervention en Espagne*, 19 Révue de Droit International et de Législation Comparée 218, 277-8(1938).

Generally, a State is only responsible for its own wrongful conduct.[15] As an exception to this rule, a State may be held responsible for the conduct of an insurrectional or other movement which succeeded in establishing that State.[16] However, this rule of retroactive attribution does not apply in this case for the following arguments. Firstly, the rule only covers "the case of the formation of the new State by means of secession or decolonization"[17] and does not encompass cases of dismemberment,[18] *i.e.* when a predecessor State disappears and two new States are created on its territory.[19] Such situations contend with the unsettled complexities of State succession.[20] Dysfunctia disappeared with the end of the civil war which marked "the creation of two new states".[21] Thus, neither secession nor decolonization are conceivable. Secondly, the decisive criterion for the rule of retroactive attribution to apply is that of continuity between the organization of the movement and the organization of the new State.[22] After the civil war, democratic

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15 Commentary on Part One, Chapter IV, ILC, State Responsibility, *supra* fn.7, para.1; G.Schwarzenberger, *A Manual of International Law*, 82(4th ed.,1960); Czaplinski, *State Succession and State Responsibility*, 28 CanadianYIL 339, 340(1990).

16 Art.10(2), ILC, State Responsibility, *supra* fn.7; Jennings&Watts, *Oppenheim*, *supra* fn.8, 554; M.Diez de Velasco, *Instituciones de Derecho Internacional Publico*, 648(9th ed.,1991).

17 ILC, Report to the GA, *supra* fn.14, 100, 101, 105; Commentary on Art.10, ILC, State Responsibility, *supra* fn.7, para.8; Atlam, *National Liberation Movements and International Responsibility* in *United Nations Codification of State Responsibility* 35, 37, 53(M.Spinedi&B.Simma eds.1987).

18 E.Castrén, *Civil War*, 235(1966).

19 Schloh, *Dismemberment* in 1 EPIL 1083, 1084(R.Bernhardt,ed.,1992).

20 *Brown Claim*(US *v.*Gr.Brit.), 6 RIAA 120, 129(Award, Nov.23,1923); *Hawaiian Claims*(Gr.Brit.*v.*US) 6 RIAA 157, 158(Award Nov.10,1925); Czaplinski, *State Succession*, *supra* fn.15, 353; J.Dugard, *International Law: A South African Perspective*, 232(2nd ed.,2000); C.Rousseau, 3 *Droit International Public*, 505(1977).

21 *Compromis*, para.1.

22 Commentary on Art.10, ILC, State Responsibility, *supra* fn.7, para.6; ILC Report to the GA, *supra* fn.14, 100, 101, 105.

elections were held. There is no indication in the *compromis* that, apart from Raskolnikov, any member of the militia is now represented in the new democratic government. Since there is no sufficient indication of continuity between the Restonian militia and the State of Reston, the rule of retroactive attribution is inapplicable.

C. RESTON IS NOT RESPONSIBLE FOR THE NON-PROSECUTION OF THE RAPES.

As no specific humanitarian or human rights treaty regime is applicable between Annolay and Reston, it remains to be determined whether customary international law foresees an obligation to prosecute alleged criminals of civil wars. Customary international law is defined as "evidence of a general practice accepted as law".[23] It is comprised of two elements, namely, "a constant and uniform usage practiced by States",[24] and *opinio juris*, *i.e.* the belief that the practice is rendered obligatory by the existence of a rule of law requiring it.[25] There is no constant and uniform usage of prosecuting war criminals in the aftermath of civil wars, as indicated by the various amnesties granted in over 32 nations, including Sierra Leone, El Salvador, Haiti and South Africa.[26] The lack of *opinio juris* is evidenced by Article 6(5) of Protocol II to the Geneva Conventions which provides that "the authorities in power shall endeavor to grant the broadest possible amnesty to persons who

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[23] Art.38(1)(b),ICJ-Statute.

[24] *Asylum*(Colom.*v.*Peru), 1950 ICJ 266, 276-7(Judgm.Nov.20).

[25] *Military and Paramilitary Activities in and Against Nicaragua*(Merits)(Nicar.*v.*US), 1986 ICJ 14, 108-9(Judgm.Jun.27); M.Villiger, *Customary International Law and Treaties*, 13(1985).

[26] A.O'Shea, *Amnesty for Crime in International Law and Practice*, 22(2002); Stahn, *United Nations Peace-Building, Amnesties and Alternative Forms of Justice: A Change in Practice?*, 845 IRRC 191, 193-4(Mar.2002); Berat, *South Africa: Negotiating Change* in *Impunity and Human Rights in International Law and Practice*, 267, 271(N.Roth-Arriaza ed.,1995); Peace Agreements Between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, Nov.30,1996, UN-Doc.S/1996/1034, http://www.usip.org/library/pa/sl/sierra_leone_10301996.html.

participated in the armed conflict".[27] Moreover, it is generally held that the duty to prosecute crimes committed in international armed conflicts[28] does not extend to internal strife.[29] When it aids in furthering the reconciliation process and restoring political balance after a civil war, the granting of amnesty to all combatants is given priority over systematic prosecutions.[30]

After years of civil war, Reston's newly elected President Raskolnikov granted amnesty to alleged war criminals of both Restonian and Cascadian ethnicity. Conveying that, "now is a time for healing",[31] he did this in an effort of establishing lasting peace, restoring political balance and coming to terms with a brutal past, alongside the installation of counseling and crisis centers for the war victims. Since there is no customary obligation to prosecute in the aftermath of a civil war, Reston's amnesty does not violate international law.

D. ANNOLAY CANNOT CLAIM REPARATION.

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[27] Art.6(5), Protocol II, *supra* fn.12; Junod, *Commentary on Art.6(5) Protocol II* in *Commentary on the Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Conflicts (Protocol II)*, 1305, 1402(Y.Sandoz *et al.* eds. 1987).

[28] Arts.49,50, Geneva Convention I, *supra* fn.11; Arts.50,51, Geneva Convention II, *supra* fn.11.

[29] Simma&Paulus, *The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View*, 93 AJIL 302, 311(1999); Meron, *International Criminalization of Internal Atrocities*, 89 AJIL 554, 559, 569(1995);Greenwood, *International Humanitarian Law and the Tadic Case*, 7 EJIL 265, 276(1996).

[30] O'Shea, *Amnesty*, *supra* fn.26, 23-6; *Azanian Peoples Organization(AZAPO) and others v. President of the Rep. S.Afr.*, Case CCT 117/96, para.3, 19(S.Afr.Const.Ct., Judgm.,Jul.25,1996); Roth-Arriaza, *Conclusion: Combating Impunity* in *Impunity and Human Rights in International Law and Practice*, *supra* fn.26, 296; Stahn, *UN Peace-Building*, *supra* fn.26, 193; Lloret, *Impunity in Cases of Serious Human Rights Violations: Argentina and Chile*, 3 SpanishYIL 4, 6(1993-4).

[31] *Compromis*, para.20.

The ILC proposed the right to claim reparation for violations of obligations *erga omnes* in Art.48 of its Articles on State Responsibility.[32] However, the idea that a not directly injured State could claim reparation was met with a great deal of criticism by various governments and scholars.[33] Since the co-ordination of multiple claims has not been institutionalized,[34] an international vigilantism[35] would eventuate and the respondent State would suddenly face differing claims put forward by a multitude of applicants.[36] Also, third States could easily hamper the relations between the affected States.[37] These views show that there is no *opinio juris* to the effect that reparation can be claimed by a not directly injured State on the grounds of breaches of obligations *erga omnes*. The ILC itself clearly stated that the remedy laid down in Art.48 merely constitutes progressive development.[38] Hence, under customary international law, the indirectly injured States may only claim cessation, whereas the right to claim reparation is reserved for the State that has suffered actual material damage.[39]

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[32] Art.48(2b), ILC, State Responsibility, *supra* fn.7.

[33] ILC, State Responsibility: Comments and Observations Received from Governments, UN-Doc.A/CN.4/488, 96, 101(1998); J.Crawford, *Third Report on State Responsibility*, UN-Doc.A/CN.4/507, paras.77,81(2000); Simma, *Bilateralism and Community Interest in the Law of State Responsibility* in *International Law at a Time of Perplexity*, 821, 832(Y.Dinstein ed.,1989).

[34] Simma, *Community Interest*, *supra* fn.33, 843.

[35] ILC, Comments and Observations, *supra* fn.33, 101; Simma, *Community Interest*, *supra* fn.33, 832.

[36] ILC, Comments and Observations, *supra* fn.33, 96; Hutchinson, *Solidarity and Breaches of Multilateral Treaties*, 59 BYIL 151, 205(1988); A.de Hoogh, *Obligations Erga Omnes and International Crimes*, 27(1996).

[37] Frowein, *Reactions By Not Directly Affected States to Breaches of Public International Law*, 248 RdC 345, 431(1994-IV); Hutchinson, *Multilateral Treaties*, *supra* fn.36, 161-162.

[38] Commentary on Art.48, ILC, State Responsibility, *supra* fn.7, para.12.

[39] *Wimbledon, supra* fn.1, 33; Commentary on Art.48, ILC, State Responsibility, *supra*

Annolay has not been directly injured by the wrongful act since the rape victims were at no time Annolaysian nationals and consequently cannot claim reparation.

## II. RESTON HAS NOT BREACHED ANY INTERNATIONAL OBLIGATION OWED TO ANNOLAY WITH RESPECT TO THE BRIBES EXACTED BY ITS BORDER OFFICIALS, AND IS UNDER NO OBLIGATION TO PAY RESTITUTION.

### A. LOCAL REMEDIES IN RESTON HAVE NOT BEEN EXHAUSTED.

Under international law a State which espouses an international claim must establish that local remedies have been exhausted.[40] This rule applies where there is some voluntary connection of the alien to the State in which the alleged violation occurred.[41] The Annolaysians who wished to adopt Restonian children voluntarily traveled to Reston. They have not initiated judicial proceedings there. Thus, local remedies have not been exhausted and Annolay's claim is to be declared inadmissible.

### B. RESTON HAS NOT BREACHED ITS OBLIGATIONS AS A SIGNATORY TO THE REGIONAL ANTI-CORRUPTION CONVENTION (RACC).

A State cannot be bound to the provisions in a treaty prior to having ratified it.[42] In the intermediate stage between signature and ratification, States are solely obliged to refrain

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fn.7, para.12; Comments and Observations, *supra* fn.33, 95,99,100; J.Crawford, *Third Report*, *supra* fn.33, paras.109,113; Crawford, *The Standing of States: A Critique of Article 40 of the Draft Articles on State Responsibility* in 2 *Judicial Review in International Perspective, Liber Amicorum in Honour of Lord Slynn of Hadley*, 23, 41(M.Andenas ed. 2000).

[40] *Interhandel* (Switz.*v.*US), 1959 ICJ 6, 46(Prel.Obj.,Judgm.,Mar.21); *Ambatielos Claim* (Greece *v.*UK) 12 RIAA 83, 118-9(Award, Mar.6,1956); Art.44(b), ILC, State Responsibility, *supra* fn.7.

[41] ICJ Pleadings, *Aerial Incident of 27 July 1955* (Isr.,US,UK *v.*Bulg.) 531-2, 590(1959); C.F.Amerasinghe, *Local Remedies in International Law*, 145 (1990); Meron, *Incidence of the Local Remedies Rule,* 35 BYIL 83, 94(1959).

[42] Art.28, Vienna Convention on the Law of Treaties, May 23,1969, 1155 UNTS 331; *Ambatielos Case*(Greece *v.*UK), 1952 ICJ 28, 43 (Judgm.,Jul.1); *Iloilo Claims Case* (Gr.Brit.*v.*US), 3 AD 336(Award,Nov.19,1925).

from acts which would defeat object and purpose of the treaty.[43] Accordingly, a State is not required to fulfill the obligations arising out of the treaty before ratification, since it must have time to reflect upon the full implications of the treaty obligations.[44] In effect, requiring a State to fulfill the obligations arising out of the treaty would render ratification useless.[45] Finally, the wording of this obligation "to refrain from acts", as explicitly laid down in Article 18 of the Vienna Convention on the Law of Treaties (VCLT),[46] suggests that only positive measures taken by a State during this period are likely to impair future performance of the treaty rather than mere passivity. A wealth of authority confirms this interpretation by referring to acts rather than omissions.[47]

A treaty's preamble provides an indication of its object and purpose.[48] The Preamble to the RACC, which is identical in content to the Council of Europe's Criminal Law Convention on Corruption (CLCC), states that "as a matter of priority, a common criminal policy"[49] should be pursued.[50]

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[43] Art.18, VCLT, *supra* fn.42; ILC, First Report on the Law of Treaties by Sir Humphrey Waldock, Special Rapporteur, 1962-II YILC, 47; I.Sinclair, *The Vienna Convention on the Law of Treaties*, 86(2nd ed. 1984).

[44] ILC, Summary Records of the First Part of the Seventeenth Session, 788th and 789th Meetings, 1965-I YILC, 90 para.27; J.L.Brierly, *Law of Nations*, 320(1963); A.Aust, *Modern Treaty Law and Practice*, 82(2000).

[45] Aust, *Modern Treaty*, *supra* fn.44, 94.

[46] Art.18, VCLT, *supra* fn.42.

[47] ILC, Summary Records of the Fourteenth Session, 644th Meeting, 1962-I YILC, 89, 90, 93; ILC, Summary Records, 17th Session, *supra* fn.44, 92, 95; A.McNair, *Law of Treaties*, 199 (1961); *Iloilo*, *supra* fn.42, 336.

[48] *Territorial Dispute* (Libya *v.*Chad), 1994 ICJ 6, 25-6(Judgm. Feb.3); *Rights of Nationals of the United States of America in Morocco* (Fr.*v.*US), 1952 ICJ 176, 196-7(Judgm.Aug.27); Sinclair, *Vienna Convention*, *supra* fn.43, 130.

[49] Preamble para.3, Council of Europe Criminal Law Convention on Corruption [CLCC], Jan.27,1999, ETS No.173.

[50] Criminal Law Convention on Corruption, Summary, Explanatory Report,

Reston has not adopted any specific anti-bribery laws yet. However, it must only fulfill this obligation upon ratification of the RACC. Meanwhile, it has neither expressly permitted corruption on its territory nor in any way actively encouraged it. On the contrary, Reston has even taken preventive measures to put an end to the corruption at its borders by reassigning alleged offenders. Therefore, Reston has not violated object and purpose of the RACC.

C. THERE IS NO CUSTOMARY OBLIGATION TO PREVENT BRIBERY.

According to Art.34 VCLT, "a treaty does not create either obligations or rights for a third State without its consent."[51] Only in the exceptional event that a convention enjoys very widespread and representative participation, treaty provisions may give rise to rules of customary international law.[52] In other circumstances, a non-party to the convention may not be bound by the rules contained therein unless these are declaratory of customary international law.[53] Where a treaty provides for its amendment or renunciation there is an indication against the declaratory character of its rules.[54]

On the universal level, up to date merely the UN Convention Against Transnational Organized Crime (CATOC) was drawn up.[55] However, the Convention does not deal specifically with corruption of domestic officials but is primarily concerned with combating transnational crime and, besides, it has not entered into force as of the beginning of the

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http://conventions.coe.int/treaty/en.

51 Art.34, VCLT, *supra* fn.42.

52 *North Sea Continental Shelf* (FRG *v.*Den.,FRG *v.*Neth.), 1969 ICJ 3, 42(Judgm.,Feb.20); *Ibid.*, 227(Diss.Op.Lachs).

53 Villiger, *supra* 25, 258; Baxter, *Multilateral Treaties as Evidence of Customary International Law*, 41 BYIL 275, 277(1965-6).

54 *North Sea Continental Shelf*, *supra* fn.52, 87(Sep.Op.Padilla Nervo); *Nuclear Tests* (Austl.*v.*Fr.), 1974 ICJ 298, 305(Judgm.,Dec.20)(Sep.Op.Petrén); H.Thirlway, *International Customary Law and Codification*, 94(1972).

55 United Nations Convention against Transnational Organized Crime[CATOC], UNGA-Res. 55/25, Annex I, Nov.15, 2000, 55 UN-GAOR, Supp.No.49, 44, UN-Doc.A/55/49.

present dispute.[56] A specific UN Convention concerning corruption does not yet exist.[57] Such specific conventions were adopted only on the regional plane, including the aforementioned CLCC, the Convention on the Fight Against Corruption involving Officials of the European Communities or Officials of Member States of the European Union,[58] and the Inter-American Convention Against Corruption (IACAC).[59] Since the number of ratifications of these regional conventions does not exceed ten, fifteen and twenty-four, respectively, and no African or Asian States are among the State parties,[60] these conventions do not enjoy the widespread and representative participation required for the formation of customary law. The customary nature of an obligation to criminalize bribery is also difficult to maintain in view of the fact that until the 1990s corruption was largely not perceived to be an international issue.[61] Moreover, a variety of multilateral conventions, the IACAC, the

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[56] Arts.1,36,38, UN Organized Crime Convention, *supra* fn.55; UN Office on Drugs and Crime, Centre for International Crime Prevention, CATOC, http://www.undcp.org/odccp/crime_cicp_signatures_convention.html.

[57] UN Office on Drugs and Crime, *Corruption, About the Global Programme Against Corruption*, http://www.undcp.org/odccp/corruption.html; Report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument Against Corruption, UN-Doc.A/AC.260/2, http://www.undcp.org/pdf/crime/expertmtg_corruption/2E.pdf.

[58] CLCC, *supra* fn.49; Convention on the Fight Against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, Jun.25,1997, Off. Jl., Ser.C 195,1.

[59] Inter-American Convention Against Corruption [IACAC], Mar.29,1996, 35 ILM 724(1996).

[60] Council of Europe, Criminal Law Convention on Corruption, Chart of Signatures and Ratifications, http://conventions.coe.int/treaty/EN; Council of the European Union, Bureau des Accords, Etats des Notifications, http://ue.eu.int/ejn/data/vol_a/4a_conv.../interets_financiers/acc26051997en.html; Organization of American States, Technical Secretariat for Legal Cooperation Mechanisms, General Information on the Inter-American Convention Against Corruption, http://www.oas.org/juridico/english/Sigs/b-58.html.

[61] Harms, *Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption*, 33 CornellILJ 169, 173(2000); Nichols, *The*

CLCC, as well as the CATOC contain express provisions for the possibility of an amendment or denunciation.[62] For all these reasons, criminalizing bribery has not yet hardened into an obligation under customary international law and Reston is therefore under no obligation to adopt specific anti-bribery laws.

D. EVEN IF RESTON WERE HELD RESPONSIBLE, ANNOLAY WOULD NOT BE ENTITLED TO THE ENTIRE AMOUNT OF THE BRIBES.

**1. The Annolaysian couples contributed to the losses.**

Under international law, when determining the amount of restitution, account shall be taken of the injured persons' contribution to the injury by their own willful or negligent conduct.[63]

Some Annolaysian couples themselves consented to exacting bribes to Restonian border officials. As they could have rejected the payment they contributed to their own loss. Furthermore, in conformity with the principle of the best interests of the child,[64] inter-country adoptions shall only be carried out upon authorization of the State of origin of the child.[65] Where there is no such authorization, no valid inter-country adoption ensues and the act of transferring a child from one country to another for personal reasons constitutes illicit

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*Myth of Anti-Bribery Laws as Transnational Intrusion*, *ibid.* 627, 638.

62 Arts.39,40, CATOC, *supra* fn.55; Art.26, IACAC, *supra* fn.59; Arts.39,41, CLCC, *supra* fn.49.

63 Art.39, ILC, State Responsibility, *supra* fn.7; Graefrath, *Responsibility and Damages Caused: Relationship between Responsibility and Damages*, 185 RdC 95 (1984-II); B.Bollecker-Stern, *Le Préjudice Dans La Théorie De La Responsabilité Internationale*, 310-2(1973).

64 Art.21, Convention on the Rights of the Child, Nov.20.1989, 1577 UNTS 3; Preamble, paras.4,5, Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May,29,1993, 32 ILM 1139(1993).

65 Art.21(a),(c), CRC, *supra* fn.64; Art.4(b), Hague Convention, *supra* fn.64; van Loon, *International Co-operation and Protection of Children*, 244 RdC 191, 288-91(1993-VII).

transfer, which Art.11 of the Convention on the Rights of the Child explicitly prohibits.[66]

Some Annolaysian couples failed to obtain official authorization from the Restonian authorities for adoption, others did not even bother to attend their fitness interviews, "and simply agreed to pay whatever bribe might be required by border officials".[67] Nevertheless, they transferred Restonian children to Annolay. Thus, in these cases no valid adoption occurred on Restonian territory and the transfer of children was illegal. As these Annolaysians contributed willfully to the payment of the bribes, Annolay cannot demand restitution in the same amount.

**2. Annolay has not complied with its duty to mitigate losses.**

Where a State has not taken reasonable steps to counter the aggravation or further multiplication of losses sustained by its nationals it is precluded to demand reparation with regard to damages that could otherwise have been prevented.[68]

Over an entire year, Annolaysian border officials did not bother to question whether the Annolaysians, who sought to reenter Annolay with a Restonian child, held the necessary Restonian authorization. Further undue payments by Annolaysians could have been prevented if the Annolaysian officials had been more diligent and conducted more thorough controls. Thus, Annolay has not prevented the illicit transfer of children and thereby has not complied with its duty to mitigate losses incurred by its own nationals. Consequently, it is precluded from demanding restitution in relation to those losses it could have prevented.

## III. RESTON IS ENTITLED TO EXERCISE UNIVERSAL JURISDICTION OVER

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[66] Art.11, CRC, *supra* fn.64; R.Hodgkin&P.Newell, *Implementation Handbook for the Convention on the Rights of the Child,* 139, 275(1998).

[67] *Compromis*, para.13.

[68] *Gabcikovo-Nagymaros*, (Hung.*v.*Slovk.), 1997 ICJ 7, 55(Judgm.,Sept.25); *Well Blowout Control Claim* (Kuwait Oil Co.*v.*Iraq), UNCC, 109 ILR 502-3(Report of Nov.15,1996); Commentary on Art.31, ILC, Articles, *supra* fn.7, para.11; C.D.Gray, *Judicial Remedies in International Law*, 24(1987).

**MR. SCHMANDEFARE.**

A. SCHMANDEFARE IS RESPONSIBLE FOR SLAVERY.

The generally accepted definition of slavery is contained in the 1926 Slavery Convention, as the "status or condition of a person over whom any or all of the powers attaching to ownership are exercised".[69] The essence of ownership over persons is manifested in their absolute control by others, resulting in exploitation, extreme personal dependence and lack of free will.[70] These features also appear in debt bondage, forced prostitution and forced labor,[71] causing each of these practices on their own to constitute slavery.[72] Debt bondage occurs when personal services are provided as a pledge for a debt and the length and nature of these services is not defined.[73] Forced prostitution is where

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[69] Art.1(1), Slavery Convention, Sept.25,1926, 60 LNTS 253; Art.7, Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Sept.7,1956, 226 UNTS 3; Art.7, Rome-Statute, *supra* fn.10; *Prosecutor v. Kunarac*, ICTY, Case IT-96-23-T, http://ww.un.org/icty/foca/trialc2/judgement/kun-tj010222e.pdf,(Trial Chamber II, Judgm.Feb.22,2001), para.539; Lenzerini, *Suppressing Slavery under Customary International Law*, 10 ItalianYIL 145, 159(2000); Dottridge&Weissbrodt, *Review of the Implementation of and Follow-up to the Conventions on Slavery*, 42 GermanYIL 242, 247(1999).

[70] Rassam, *Contemporary Forms of Slavery and the Slave Trade Under Customary International Law*, 39 VirginiaJIL 303, 320(1998-9); M.Nowak, *CCPR Commentary*, 144(1993); Lenzerini, *Suppressing Slavery*, *supra* fn.69, 160; Gallagher, *Sexual Exploitation: A Form of Slavery?*, http://derechos.org/koaga/viii/gallagher.html; Dottridge&Weissbrodt, *Review, supra* fn.69, 248; ICTY, *Kunarac*, *supra* fn.69, para.542.

[71] Neary, *Seeking Reparations in the New Millennium: Will Japan Compensate the "Comfort Women" of World War II?*, 15 TempleICLJ 121, 132(2001); Rassam, *Contemporary Slavery, supra* fn.70, 320.

[72] Report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/1999/17; Report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/1995/28; Dottridge&Weissbrodt, *Review*, *supra* fn.69, 270; Lassen, *Commentary on Art.4 of the Universal Declaration of Human Rights* in *The Universal Declaration of Human Rights*, 103(G.Alfredsson&A.Eide eds. 1999); Rassam, *Contemporary Slavery, supra* fn.70, 305; Hatyal, *Men Who Own Women: A 13th Amendment Critique of Forced Prostitution*, 103 YaleLJ 791, 796(1993).

[73] Art.1(a), Supplementary Convention, *supra* fn.69.

person is compelled under duress to engage in sexual acts in return for payment,[74] and forced labor refers to "all work or services which are exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[75] Since prostitution is recognized as a form of labor, forced prostitution also falls under the definition of forced labor.[76]

The Schmandefare Company issued the Cascadian women loans extending over 10 years at a 10% interest rate. The Company, directed by Schmandefare, compelled the women to afford sexual services in return for money in order to reimburse the loans. The costs for their rent and basic goods, which they were coerced to buy from their employers at unreasonably high prices, were added to their ever-increasing debt, keeping them in a constant state of poverty and indebtedness. They were severely restricted in their freedom of movement, constantly supervised and frequently abused.

Not only are the components of slavery found in the treatment of the Cascadian women, which Schmandefare instigated, the criteria of forced labor, debt bondage and forced prostitution are also fulfilled, each of which on their own make Schmandefare responsible for slavery.

B. SCHMANDEFARE IS RESPONSIBLE FOR TRAFFICKING IN WOMEN.

The international community has agreed on defining the term "trafficking in persons" to

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[74] Dottridge&Weissbrodt, *Review*, *supra* fn.69, 269; Gallagher, *Sexual Exploitation*, *supra* fn.70.

[75] ILO Convention Concerning Forced or Compulsory Labour No.29, Jun.28,1930, 39 LNTS 55.

[76] Case Inglis, *Expanding International and National Protection Against Trafficking For Forced Labor Using a Human Rights Framework*, 7 BuffaloHRLR 89(2001); ILO 1998, Press Releases, *Sex Industry Assuming Massive Proportions in Southeast Asia*, ILO/98/31, http://www.ilo.org/public/english/bureau/inf/pr/1998/31.htm#note1; Chuang, *Redirecting the Debate over Trafficking in Women: Definition, Paradigms and Contexts*, 11 HarvardHRJ 65, 65(1998).

include the recruitment or transportation by means of fraud, deception or abuse of a position of vulnerability for the purpose of sexual exploitation or forced labor.[77]

Schmandefare organized the recruitment of Cascadian women with promises of jobs, shelter and education. The women were deceived to believe that they would work as nannies or domestic servants. In reality, they were lured to Annolay to work as prostitutes at the employer's profit under constant abuse. Schmandefare is thus responsible for trafficking women for the purpose of prostitution.

C. RESTON IS ENTITLED TO EXERCISE UNIVERSAL JURISDICTION.

The concept of universal jurisdiction, which has long been accepted in international law,[78] provides each State with jurisdiction to try particular offenses recognized as being of universal concern, regardless of the *locus delicti*, or victims' or perpetrators' nationality.[79] Universal jurisdiction is justified when the suspect is alleged to have committed crimes against humanity or other egregious offenses that are condemned by the international

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[77] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, UNGA-Res.55/25, Annex II, Nov.15, 2000, 55 UN-GAOR, Supp.No.49, 60, UN-Doc.A/55/49; Dunbar, *The Past, Present, and Future of International Trafficking in Women for Prostitution*, 8 BuffaloWLJ 103, 105-7(2000); Trapalis, *Extraterritorial Jurisdiction: A Step Towards Eradicating the Trafficking of Women into Greece for Forced Prostitution*, 32 GoldenGateULR 207, 209(2002).

[78] *S.S."Lotus"*(Fr.*v.*Turk.), 1927 PCIJ (Ser.A)No.10, 4, 18-9(Judgm.,Sept.7); *Arrest Warrant of 11 April 2000* (Congo *v.*Belg.), 2002 ICJ para.46(Judgm.); *Ibid.*, para.8, 46 (Sep.Op.Higgins,Kooijmans,Buergenthal); Steven, *Genocide and the Duty to Extradite or Prosecute: Why the US is in Breach of its International Obligations*, 39 VirginiaJIL 425, 429(1999); *Attorney General of the Government of Israel v. Eichmann*, 36 ILR 5, 299(Isr.Dist.Ct., Jerusalem Dec.2,1961); *Demjanjuk v. Petrovsky*, 79 ILR 534, 545(US Ct. of Appeals, 6$^{th}$Circ., Judgm.,Oct.31,1985); Scharf, *Application of Treaty-Based Universal Jurisdiction to Nationals of Non-Party States*, 35 NewEnglandLR 363, 363(2001).

[79] Scharf, *Application*, *supra* fn.78, 368; M.N.Shaw, *International Law*, 470(4$^{th}$ ed.,1997); M.C.Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 VirginiaJIL 81, 88(2001).

community.[80]

**1. The acts constitute crimes against humanity.**

Slavery[81] and, more specifically, sexual slavery and enforced prostitution,[82] are crimes against humanity when they are committed as part of a widespread or systematic attack against a civilian population.[83] An "attack" in this context is defined as "a course of conduct involving the commission of acts of violence"[84] by either a State or a non-State group or organization.[85] It is "widespread" when committed against a manifold of victims;[86] it is

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[80] Randall, *Universal Jurisdiction under Interntional Law*, 66 TexasLR 785, 788(1988); *Prosecutor v.Furundzija*, ICTY Case No. IT-95-71/I-T, 121 ILR 213, 262 (Judgm. Dec.10,1998); Strapatsas, *Universal Jurisdiction and the International Criminal Court*, 29 ManitobaLJ 14, 15(2002).

[81] Art.6(c), Charter of the IMT (Nuremberg Charter), Aug.8,1945, 82 UNTS 279; ILC, Report to the General Assembly, Art.18(d), Draft Code of Crimes Against Peace and Security of Mankind, 1996-II YILC, 47; Art.5(c), ICTY-Statute; *supra* fn.10; Art.3(c), ICTR-Statute, *supra* fn.10; *Prosecutor v.Kunarac*, *supra* fn.69, para.537; Art.7(1)(c), Rome-Statute, *supra* fn.10.

[82] Art.7(1)(g), Rome-Statute, *supra* fn.10; Art.18(i), ILC, Crimes Against Peace, *supra* fn.81; Art.5(i), ICTY-Statute, *supra* fn.10; Art.3(i), ICTR-Statute, *supra* fn.10; *Prosecutor v.Kayishema*, ICTR Case No. ICTR-95-I-T, para.151, http://ww.ictr.org, (Judgm.,May 21,1999); *Prosecutor v.Akayesu*, ICTR Case No. ICTR-96-4-T, para.688, http://www.ictr.org, (Judgm.,Sept. 1998).

[83] *Prosecutor v.Blaskic*, ICTY, Case IT-95-14, 122 ILR 1, 90, para.244(Trial Chamber Judgm.Mar.3,2000); *Prosecutor v.Kordic*, ICTY, Case IT-95-14/2, http://www.un.org/icty/kordic/trialc/judgement/index.htm, para.178 (Trial Chamber Judgm.,Feb.26,2001); *Prosecutor v.Tadic*, ICTY, Case IT-94-1-AR72, http://www.un.org/icty/tadic/appeal/judgement/index.htm, (Appeals Chamber, Jul.15,1999), para.271; *Prosecutor v.Kunarac*, *supra* fn.69, para.417; *Prosecutor v.Tadic*, ICTY, Case IT-94-1, 112 ILR 1, 217, para.649(Trial Chamber II, Judgm. May 7,1997).

[84] *Prosecutor v.Kunarac*, *supra* fn.69, para.415; *Prosecutor v.Krnojelac*, ICTY, Case IT-97-25, http://www.un.org/icty/krnojelac/trialc2/judgement/index.htm, (Trial Chamber II Judgm.Mar.15,2000), para.54.

[85] M.C.Bassiouni, *Crimes Against Humanity in International Criminal Law*, 85-6(2nd ed. 1999); Art.18, ILC, Crimes Against Peace, *supra* fn.81.

[86] Commentary on Art.18, ILC, Crimes Against Peace, *supra* fn.81, para.3; Art.3, ICTR-Statute, *supra* fn.10; Art.7, Rome-Statute, *supra* fn.10; 1996 Prep.Com.Report, A/AC.249/1997/L.2, Feb.21,1997; *Prosecutor v.Kunarac*, *supra* fn.69, para.429.

"systematic" when pursuant to a preconceived plan.[87] The existence of an armed conflict is no longer a requirement for the commission of crimes against humanity.[88] Those who instigate, plan, order, aid or abet the crimes are held directly responsible even without themselves physically perpetrating.[89]

Schmandefare's organization held the women in brothels where they were subjected to sexual violence and other forms of slavery as part of the company's strategy of drawing profit from them. The number of women victimized, over 2500, demonstrate the vast scale on which the attack was carried out. Schmandefare is not only CEO of the company that operates hundreds of brothels, he also planned and instigated the involuntary employment of the women as prostitutes. He is thereby directly responsible for the commission of slavery within a context that raises it to a crime against humanity and, thus, justifies the exercise of universal jurisdiction.

**2. The acts constitute other egregious offenses.**

Crimes that are universally condemned give every State the right to prosecute and punish the authors.[90] A vast amount of treaties and conventions, dating back approximately 200 years, denounce slavery and particular forms of slavery.[91] Slave traders have been

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87 *Prosecutor v.Kunarac*, *supra* fn.69, para.429; Commentary on Art.18, ILC, Crimes Against Peace, *supra* fn.81, para.3; Art.3, ICTR-Statute, *supra* fn.10; Art.3, Rome-Statute, *supra* fn.10; 1996 Prep. Com. Report, A/AC.249/1997/L.2, Feb.21,1997.

88 Commentary on Art.18, ILC, Crimes Against Peace, *supra* fn.81, para.6; Bassiouni, *Crimes*, *supra* fn.85, 86; Simma&Paulus, *The Responsibility of Individuals*, *supra* fn.29, 309-10.

89 Art.7(1), ICTY-Statute, *supra* fn.10; Art.6(1), ICTR-Statute, *supra* fn.10; *Prosecutor v.Akayesu*, *supra* fn82, para.692; *Prosecutor v.Kunarac*, *supra* fn.69, para.656.

90 *Prosecutor v.Furundzija*, *supra* fn.80 para.156; *Eichmann*, *supra* fn.78, 298; *Demjanjuk*, *supra* fn.78, 545.

91 Arts.1,6, Supplementary Convention, *supra* fn.69; Art.5, African Charter on Human and Peoples' Rights, Jun.27,1981, 1520 UNTS 217; Arts.2,8, International Covenant on Civil and Political Rights, Dec.19,1966, 999 UNTS 171; Art.4, European Convention on

labeled as *hostes humani generis*, which every State may try and punish.[92] The prohibition of slavery has been listed in the ICJ's catalogue of *erga omnes* obligations.[93] It also amounts to a *jus cogens* norm,[94] a rule of such overriding importance that it permits no derogation.[95] One of the consequences of the *jus cogens* character bestowed by the international community is that every State is entitled to investigate, prosecute and punish or extradite accused individuals.[96] Virtually all States prohibit slavery in their national legislation, either explicitly or implicitly.[97] The trafficking of women has also been denounced as a criminal offense requiring punishment in a multitude of international instruments of global representation.[98] The justification of universal jurisdiction follows from the common interest

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Human Rights and Fundamental Freedoms, Nov.4,1950, 213 UNTS 221: Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade, Feb.8,1815, 63 CTS 473; Treaty of London, 1841, 92 CTS 437; General Act of Brussels, 1890, 173 CTS 293.

92 Steven, *Genocide*, *supra* fn.78, 434; Randall, *Universal Jurisdiction*, *supra* fn.80, 788; Schachter, *International Law in Theory and Practice*, RdC 9, 262(1982-V); Sahovic&Bishop, *The Authority of the State: Its Range with Respect to Persons and Places* in *Manual* (Sorensen), *supra* fn.8, 365-7; Martin-Martinez, *Jurisdiccion Universal y Crimenes Internacionales*, 9 MiamiICLR 171, 175(2000).

93 *Barcelona Traction*, *supra* fn.5, 33.

94 L.Hannikainen, *Peremptory Norms (Jus Cogens) in International Law*, 75-81(1988); Brownlie, *Principles, supra* fn.2, 515; M.Nowak, *CCPR Commentary*, 146(1993); Zoglin, *United Nations Action Against Slavery: A Critical Evaluation*, 8 HRQ 306, 308 (1986); ILC, Report to the GA, 1966 YILC, vol.2, 248, 261; Art.4, Universal Declaration of Human Rights, UNGA-Res.217A(III), 3 UN-GAOR, 71, UN-Doc.A/810(1948); Arts.4(2),8, ICCPR, *supra* fn.91.

95 Hannikainen, *Jus Cogens*, *supra* fn.94, 1-2; C.Annacker, *Die Durchsetzung von erga omnes Verpflichtungen vor dem Internationalen Gerichtshof*, 37(1994).

96 *Furundzija*, *supra* fn.80, para.156; *Regina v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte(No.3)*, 119 ILR 136, 149(Eng., House of Lords Judgm.,Mar.24,1999); *Demjanjuk*, *supra* fn.78, 545.

97 Lenzerini, *Suppressing Slavery*, *supra* fn.69, 149; Bassiouni, *Crimes*, *supra* fn.85, 305.

98 International Convention for the Suppression of the White Slave Traffic, May 4,1910, 3 LNTS 278; International Convention for the Suppression of the Traffic in Women and Children, Sept 30,1921, 9 LNTS 416; Art.1, International Convention for the

that all States have in the suppression of these crimes.[99]

Both slavery and trafficking, being unequivocally condemned by the entire international community, give rise to universal jurisdiction. Since Schmandefare's conduct amounts to each of these, Reston is entitled to try him for these offences.

**3. Schmandefare may be tried *in absentia*.**

As this Court held in the *Lotus* case, the exercise of jurisdiction may only be invalidated if there is a rule of law prohibiting it.[100] There is no customary international law to the effect that universal jurisdiction *in absentia* is prohibited.[101] Article 14(3) of the International Covenant on Civil and Political Rights, guaranteeing everyone the right to be tried in his presence and to defend himself in person or through legal assistance,[102] does not present a bar to trials *in absentia*.[103] As long as all due notifications have been made to inform the accused of the date and place of his trial and to request his attendance, "proceedings *in absentia* are [...] permissible in the interest of proper administration of justice".[104] Schmandefare may therefore be tried without being present during proceedings.

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Suppression of Traffic in Women of Full Age, Oct.11,1933, 150 LNTS 431; Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, Dec.2,1949, 96 UNTS 271; Art.6, Convention on the Elimination of All Forms of Discrimination Against Women, Dec.18,1979, 19 ILM 33(1980); Protocol to Prevent Trafficking, *supra* fn.77.

[99] Steven, *Genocide*, *supra* fn.78, 442-3; M.C.Bassiouni&E.M.Wise, *Aut Dedere Aut Judicare*, 24(1995); Randall, *Universal Jurisdiction*, *supra* fn.80, 829.

[100] *Lotus*, *supra* fn.78, 18-9; Strapatatsas, *supra* fn.80, 29.

[101] *Arrest Warrant*, *supra* fn.78 paras.54-5(Diss. Op. Van der Wyngaert).

[102] Art.14(3), ICCPR, *supra* fn.91.

[103] *Mbenge v.Zaire*, 78 ILR 18, 24(UNHRC, Communication No.R.3/16, Mar.25,1983); Schwartz, *Trials In Absentia*, http://www.american.edu/projects/mandala/TED/hpages/human/schwar41.htm.

[104] ICCPR, *supra* fn.91, Art.14(3)(a); Cf., D.McGoldrick, *The Human Rights Committee: It Role in the Development of the International Covenant on Civil and Political Rights*, 425(1994); *Mbenge, supra* fn.103.

## IV. ANNOLAY HAS VIOLATED INTERNATIONAL LAW REGARDING THE CASCADIAN WOMEN WORKING IN ANNOLAYSIAN BROTHELS.

### A. RESTON HAS STANDING TO RAISE A CLAIM.

A State's failure to abide by its obligations *erga omnes* generates a legal interest of all other States of the international community,[105] allowing them to demand a declaration of wrongfulness from this Court.[106] The assumption that a conduct is in breach of an obligation *erga omnes* and attributable to a State suffices in giving rise to such a legal interest.[107] The circumstances described in the *compromis* engender the educated presumption that Annolay has violated its obligations *erga omnes* to prevent slavery and trafficking. Reston thus has standing to bring the claim before the ICJ in a community interest.

### B. LOCAL REMEDIES NEED NOT BE EXHAUSTED.

Under international law the exhaustion of local remedies rule need not be satisfied if domestic remedies are ineffective.[108] This is the case where undue delay in the administration of justice occurs on the part of the responding State, especially with regard to human rights.[109] The time required to elapse before an undue delay ensues is determined by the nature of the wrong.[110] Recognizing that the prohibition of slavery is an imperative norm

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[105] *Barcelona Traction, supra* fn.5, 33; 2 Restatement, *supra* fn.6, §703, 179; Meron, *Human Rights*, *supra* fn.6, 194-5; Dinstein, *supra* fn.6, 18; Rassam, *Contemporary Slavery*, *supra* fn. 70, 307.

[106] *Supra I.D.*

[107] Hoogh, *Obligations*, *supra* fn.36, 26.

[108] D.P.O'Connell, *International Law*, 1143-4(1965); C.Rousseau, *Droit international public*, 366-7 (1953); Jiménez de Aréchaga, *International Responsibility* in *Manual*, *supra* fn.8, 588, 590.

[109] Art.49, ICCPR, *supra* fn.91; Art.46, American Convention on Human Rights, Nov.22,1969, 1144 UNTS 123; Amerasinghe, *Local Remedies*, *supra* fn.41, 203-206(1990).

[110] Amerasinghe, *Local Remedies*, *supra* fn.41, 205.

of international law protecting fundamental human rights,[111] the permitted delay must be correspondingly brief. Moreover, where there are continuous, widespread violations of human rights, it also not required to exhaust local remedies.[112]

Thousands of Cascadian women in Annolay were made to prostitute their bodies for the profit of others while being systematically subjected to violent abuse and restrictions in their freedom. Despite being terrorized into submission, many Cascadian women managed to lodge written complaints to the police and at least three governmental agencies, yet their complaints were routinely met with a lack of response and no formal investigation was ever initiated. A panel of investigators and prosecutors was ultimately established in response to increasing international pressure but it had still not produced any results, let alone cease the illegal activities, after one and a half years.

In view of the fact that such a long time has elapsed without a reaction by the Annolaysian government, it is unwarranted to hold that the Cascadian women may still have recourse to an effective remedy. However, local remedies need not even be exhausted in this case since the practices alleged represent such a massive scale of human rights violations.

C. ANNOLAY IS TO BE HELD RESPONSIBLE FOR PERMITTING SLAVERY ON ITS TERRITORY.

As explicitly stated by this Court in the *Barcelona Traction* case, the prohibition of slavery is an obligation *erga omnes*.[113] Every State is obliged to take effective, positive

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[111] *Supra* fn.94.

[112] *First Cyprus Case* (Greece *v.*UK), Application No.176/56, 2 YECHR 182, 184(1958-9) (Dec.Jun.2,1956); *Ireland v.UK*, Application No.531071, 25 Publications of the Eur.Ct.HR 64, para.159 (Judgm.Jan.18,1978); Amerasinghe, *Local Remedies*, *supra* fn.41, 208-9.

[113] *Barcelona Traction*, *supra* fn.5, 33; M.Ragazzi, *The Concept of International Obligations Erga Omnes*, 116(1997).

measures to suppress all forms of private slavery and to prosecute the perpetrators.[114] If a State obtains knowledge of acts contrary to the rights of other States occurring on its territory and fails to take action against them, the State's international responsibility is involved.[115]

Although the police and at least three governmental agencies were informed of these crimes, no agency ever reacted to this information about the treatment of women at the hands of Schmandefare, a man who, according to the *compromis*, enjoys close ties to police and government officials. Despite being informed of these atrocities, it did nothing to stop them or to prevent further abuse of Cascadian women. No effective investigation was completed, the functioning of the brothels was not ceased, nor were the people in charge of them prosecuted. These grave omissions involve the international responsibility of Annolay; it has failed in its *erga omnes* obligations to protect its inhabitants from slavery.

D. ANNOLAY IS RESPONSIBLE FOR THE TRAFFICKING OF WOMEN FOR THE PURPOSE OF FORCED PROSTITUTION ON ITS TERRITORY.

When determining customary international human rights law, relying on the traditional methodology of state practice and *opinio juris* is insufficient.[116] Waiting for a practice to develop would mean legally to step in only after a multitude of human rights violations have taken place.[117] Furthermore, States are reluctant to denounce human rights abuses occurring

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[114] Arts.1,6, Supplementary Convention, *supra* fn. 69; Art.2, Slavery Convention, *supra* fn.69; Arts.2,8, ICCPR, *supra* fn.91; H.J.Steiner&P.Alston, *International Human Rights in Context: Law, Politics, Morals*, 183(2nd ed.,2000); Lenzerini, *Suppressing Slavery*, *supra* fn.69, 157; Rassam, *Contemporary Slavery*, *supra* fn. 70, 315; Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law* in *Human Rights of Women: National and International Perspectives*, 85, 99(R.J.Cook ed.,1994).

[115] *Corfu Channel* (UK *v.*Alb.), 1949 ICJ 4, 22-3(Judgm.,Apr.9).

[116] L.Henkin, *International Law: Politics and Values*, 39(1995); Rassam, *Contemporary Slavery*, *supra* fn.70, 311-3.

[117] A.Cassese, *International Law*, 122(2001).

in their own territory.[118] Instead, treaty law and UN practice are to be used to define customary international human rights law.[119] Also, a series of General Assembly resolutions express *opinio juris* accepting a rule as customary international law.[120]

The need to subdue the transnational phenomenon of trafficking, especially in connection with forced prostitution, has been articulated in a plethora of treaties, UN practice, including a sequence of General Assembly resolutions, and other international instruments.[121] The Convention on the Elimination of Discrimination Against Women, for instance, to which 170 States are a party, explicitly obliges States to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women".[122]

Having allowed thousands of Cascadian women to be trafficked to Annolaysian brothels for the purpose of forced prostitution, Annolay has failed to enforce laws or to take other preventative measures to contain the trafficking in women across its borders. Seeing as the

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[118] Steven, *Genocide*, *supra* fn.78, 429; Rassam, *Contemporary Slavery*, *supra* fn.70, 313.

[119] Rassam, *Contemporary Slavery*, *supra* fn.70, 314.

[120] *Legality of the Threat or Use of Nuclear Weapons,* 1996 ICJ 226, 254(Adv.Op. Jul.8); *Nicaragua,* 100, *supra* fn.25; M.E.Villiger, *Customary International Law and Treaties*, 125(2nd ed.,1997).

[121] International Agreement for the Suppression of the White Slave Traffic, May,18,1904, 1 LNTS 83; White Slave Traffic Convention, *supra* fn.98; Traffic in Women of Full Age Convention, *supra* fn.98; Art.1,Trafficking Convention, *supra* fn.98; Art.6,CEDAW, *supra* fn.98; European Parliament Resolution on the Exploitation of Prostitution and the Traffic in Human Beings, Off.Jl. Ser.C 120/352(A2-52/89)(1989); European Parliament Resolution on Traffic of Human Beings, Off.Jl. Ser.C 32/88, 88(1996); UNGA-Res.51/66, Traffic in women and girls, Dec.12, 1996, 51 UN-GAOR, Supp.No.49, 195, UN-Doc.A/51/49(1996); UNGA-Res.52/98, Traffic in women and girls, Dec.12,1997, 52 UN-GAOR, Supp.No.49, 229,UN-Doc.A/52/49(1997); UNGA-Res.53/116, Traffic in women and girls, Dec.9,1998, 53 UN-GAOR, Supp.No.49, 210, UN-Doc.A/53/49(1998); UNGA-Res.55/67, Traffic in women and girls, Dec.4, 2000, 55 UN-GAOR, Supp.No.49, 320,UN-Doc.A/55/49(2000).

[122] Art.6,CEDAW, *supra* fn.98.

obligation to suppress trafficking is customary international law, since UN practice and treaties of widespread ratification prescribe it, Annolay has not acted in compliance with its international legal obligations. Reston urges this Court to assist the universal fight against trafficking by declaring Annolay's treatment of the Cascadian women as internationally wrongful.

May it therefore please the Court to:

declare that, Reston is not liable to pay reparation to the rape victims no resident in Annolay, and that Annolay does not have standing to make the claim in any case;

declare that Reston has not breached any international obligation with respect to the bribes exacted by its border officials, and is under no obligation to pay restitution;

declare that Reston is entitled to exercise universal jurisdiction over Mr. Schmandefare;

declare that Annolay has violated international law with regard to the Cascadian women working in the brothels in Annolay and that Annolay does not have standing to make this claim.