

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

**IN THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS**

THE CASE CONCERNING THE WOMEN AND CHILDREN OF THE CIVIL WAR

**THE STATE OF ANNOLAY
APPLICANT**

v.

**THE STATE OF RESTON
RESPONDENT**

MEMORIAL FOR THE RESPONDENT

SUBMITTED TO THE COURT ON 21 JANUARY 2003

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INDEX OF AUTHORITIES

TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

- The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85. 27, 32
- Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277. 27
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 December 1949, 96 U.N.T.S. 271. 35
- Council of Europe Criminal Law Convention on Corruption*, 1 July 2002, E.T.S. No. 173. 21
- Hague Convention for the Suppression of Unlawful Seizure of Aircraft*, 16 December 1970, 10 I.L.M. 133. 32
- Inter-American Convention Against Corruption*, 29 March 1996, 35 I.L.M. 724. 21
- International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195. 27
- International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171. 27
- United Nations Convention on the Law of the Sea*, 10 December 1982, 33 I.L.M. 1309. 32, 33
- Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331. 20, 21, 27

UN RESOLUTIONS AND DOCUMENTS

- The Charter of the United Nations*. 27, 31
- Draft Articles on Nationality of Natural Person in Relation to the Succession of States*, UN Doc. A/CN.4/L.573 27 (1999). 25

<i>Final Report of the Special Rapporteur of the Working Group on Contemporary Forms of Slavery, on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict</i> , UN Doc. E/CN.4/Sub.2/1998/13 (1998).	33
<i>Fundamental Standards of Humanity</i> , UN Doc. E/CN.4/2002/103 (2001).	37
<i>Responsibility of States for Internationally Wrongful Acts</i> , UN GAOR, 56th Sess., Annex, Agenda Item 162, UN Doc. A/RES/56/83 (2002).	20, 22, 24, 26, 27, 37, 38
<i>The Rome Statute of the International Criminal Court</i> , UN Doc. A/CONF.183-9TH (2002).	32, 34, 35, 36
<i>The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development</i> , GA Res. 51/197, UN GAOR, 51st Sess., Supp. No. 49, UN Doc. A/51/49 (2003).	30
<i>Statement of the President of the Security Council</i> , UN Doc. S/INF/49 (1993).	31
<i>Statute of the International Court of Justice</i> , 26 June 1945, Can. T.S. 1945 No. 7.	21, 32
<i>Statute of the International Tribunal for Rwanda</i> , UN Doc. S/RES/955 (1994).	36
<i>Statute of the International Tribunal for the Former Yugoslavia</i> , UN Doc. S/RES/827 (1993).	36
<i>Universal Declaration of Human Rights</i> , GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).	27, 31

JUDICIAL AND ARBITRAL DECISIONS

International Cases

<i>A.A. Megalidis v. Turkey</i> , (1928) 4 A.D.I.L. 395.	21
<i>Arrest Warrant of 11 April 2000 (Congo v. Belgium)</i> (2002), online: International Court of Justice < http://www.icj-cij.org/icjwww/idocket/iCOBE/iCOBEframe.htm >.	31, 32, 33
<i>Case of Certain Norwegian Loans (France v. Norway)</i> , [1957] I.C.J. Rep. 8.	20

<i>Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)</i> , [1970] I.C.J. Rep. 3.	27, 33, 37
<i>Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States)</i> , [1984] I.C.J. Rep. 246.	24
<i>Case Concerning Certain German Interests in Polish Upper Silesia (1925)</i> , P.C.I.J. (Ser. A) No. 6.	38
<i>Case Concerning the Factory at Chorzow (1927)</i> , P.C.I.J. (Ser. A) No. 9.	38
<i>Case Concerning United States Diplomatic and Consular Staff in Tehran (United States v. Iran)</i> , [1980] I.C.J. Rep. 3.	28, 39
<i>The Case of the S.S. "Lotus" (France v. Turkey) (1927)</i> , P.C.I.J. (Ser. A) No. 10.	22, 32
<i>The Corfu Channel Case (Great Britain v. Albania)</i> , [1949] I.C.J. Rep. 4.	39, 41
<i>The Diversion of Water from the Meuse (Netherlands v. Belgium) (1937)</i> , P.C.I.J. (Ser. A/B) No. 70.	24
<i>In re Roehling and Others</i> , (1948) 15 A.D.I.L. 398.	36
<i>In re Tesch and Others (Zyklon B Case)</i> , (1946) 13 A.D.I.L. 250.	32, 33
<i>Massey v. United Mexican States</i> , (1927) 4 R.I.A.A. 155.	38
<i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) (Merits)</i> , [1986] I.C.J. Rep. 14.	28
<i>North Sea Continental Shelf (Federal Republic of Germany v. Denmark and Netherlands), Judgment</i> , (1969) I.C.J. Rep. 3.	21
<i>Nottebohm Case (Liechtenstein v. Guatemala)</i> , [1955] I.C.J. Rep. 4.	25
<i>Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania) (1939)</i> , P.C.I.J. (Ser. A/B) No. 76.	25
<i>Prosecutor v. Delalic and Others ("Celebic") (1998)</i> , Case No. IT-96-21-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber).	36
<i>Prosecutor v. Furundzija (1998)</i> , Case No. IT-95-17/1-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber).	31, 33

<i>Prosecutor v. Kunarac et al.</i> ("Foca") (2001), Case No. IT-96-23-T & IT-96-23/1-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber).	34
<i>Prosecutors v. Kunarac and Others</i> (2002), Case No. IT-96-23 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber).	34
<i>Quintanilla v. United States</i> , (1926) 4 R.I.A.A. 101.	40
<i>Roper v. United Mexican States</i> , (1927) 4 R.I.A.A. 145.	40
<i>The S.S. Wimbledon</i> (1923), P.C.I.J. (Ser. A) No. 1.	37
<i>Short v. Iran</i> , (1987) 17 Iran-U.S. C.T.R. 135.	28
<i>Velasquez Rodriguez Case (Honduras)</i> , (1988) 9 Hum. Rts. L. J. 212.	39, 40
<i>Yeager v. Iran</i> , (1987) 17 Iran-U.S. C.T.R. 92.	28
<i>Youmans v. United Mexican States</i> , (1926) 4 R.I.A.A.	40
<i>Yukon Lumber Case (Great Britain v. United States)</i> , (1913) 6 R.I.A.A. 17.	23

Municipal Cases

<i>Azanian Peoples Organization v. President of the Republic of South Africa Case</i> , (1996) CCT 17/96 (Const. Ct. S.A.).	30
<i>Demjanjuk v. Petrovsky</i> , (1985) 776 F.2d 571.	32
<i>Eichmann v. Attorney General Israel</i> , (1962) 36 I.L.R. 277.	32
<i>Reg. v. Bow Street Metropolitan Stipendiary Magistrate Ex parte Pinochet Ugarte</i> , [1999] 2 All E.R. 97.	32, 33
<i>United States v. Diekelman</i> , (1875) 92 U.S. 520.	23

TREATISES, DIGESTS AND BOOKS

Akehurst, M., <i>A Modern Introduction to International Law</i> , 6th ed., (London: Unwin Hymer, 1987).	32, 33
---	--------

Amerasinghe, C. F., <i>Local Remedies in International Law</i> , (Cambridge: Grotius Publications Limited, 1990).	38
American Law Institute., <i>Restatement of the law, third: Foreign Relations Law of the United States</i> , vol. 2, (St. Paul, Minn.: American Law Institute Publishers, 1987).	32, 33, 40
Bassiouni, M. C., <i>International Criminal Law: A Draft International Criminal Code</i> , (Germantown, MD: Sijthoff & Noordhoff, 1980).	34
Bassiouni, M. C., <i>Crimes Against Humanity in International Criminal Law</i> , (Dordrecht: Kluwer Academic Publishers, 1992).	31
Bassiouni, M C, "The Sources and Content of International Criminal Law: A Theoretical Framework" in M. C. Bassiouni, ed., <i>International Criminal Law</i> , 2d ed., vol. 1 (Ardsey, N.Y.: Transnational Publishers, Inc., 1999) 3.	33
Boot, M., <i>Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court</i> , (Ardsey, N.Y.: Intersentia Publishers, 2002).	34
Borchard, E. M., <i>The Diplomatic Protection of Citizens Abroad</i> , (N.Y.: The Banks Law Publishing Co., 1915).	24
Brownlie, I., <i>System of the Law of Nations: State Responsibility (Part I)</i> , (Oxford: Clarendon Press, 1983).	38, 39
Brownlie, I., <i>Principles of Public International Law</i> , 5th ed., (Oxford: Clarendon Press, 1998).	22, 26, 32, 33, 39
Brownlie, I., <i>The Rule of Law in International Affairs</i> , (Boston: Martinus Nijhoff Publishers, 1998).	38, 39
Caron, D D, "The Basis of Responsibility: Attribution and other Trans-Substantive Rules" in R. Lillich & D. Magraw, eds., <i>The Iran-United States Claims Tribunal: Its Contribution to the Law of State Responsibility</i> (Irvington: Transnational Publishers, Inc., 1998) 109.	29
Crawford, J., <i>The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries</i> , (New York: Cambridge University Press, 2002).	22, 33, 35, 37
Garcia-Amador, F. V., Sohn, L. B., & Baxter, R. R., <i>Recent Codification of the Law of State Responsibility for Injuries to Aliens</i> , (Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1974).	22, 24

Harris, D. J., <i>Cases and Materials on International Law</i> , 5th ed., (London: Sweet & Maxwell, 1998).	27
Lauterpacht, H., <i>Oppenheim's International Law: A Treatise</i> , 8th ed., (New York: David McKay Company Inc., 1963).	41
Malanczuk, P., <i>Akehurst's Modern Introduction to International Law</i> , 7th ed., (New York: Routledge, 1997).	22, 25
Meron, T., <i>Human Rights in International Law</i> , vol. 1, (Oxford: Clarendon Press, 1984).	33
Schachter, O., <i>International Law in Theory and Practice</i> , (London: Martinus Nijhoff Publishers, 1993).	39
Wallace, R. M. M., <i>International Law</i> , (London: Sweet & Maxwell, 2002).	33
Whiteman, M. M., <i>Damages in International Law</i> , vol. 1, (Millwood, N.Y.: Kraus Reprint Co., 1976).	23
Zalaquett, J., <i>Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints in State Crimes: Punishment or Pardon</i> , (Aspen, CO: Aspen Institute, 1989).	30

LEGAL ARTICLES AND YEARBOOKS

Bassiouni, M. C., "Enslavement as an International Crime" (1991) 23 N.Y.U.J.Int'l L.& Pol. 445.	33
Bassiouni, M. C., "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice" (2001) 42 Va.J.Int'l L. 81.	33
Carnegie, A. R., "Jurisdiction Over Violations of the Laws and Customs of War" (1963) 39 Brit.Y.B.Int'l L. 402.	31
Fawcett, J. E. B., "The Exhaustion of Local Remedies: Substance of Procedure?" (1954) 31 Brit.Y.B.Int'l L. 452.	38
Lowe, V., "The Role of Equity in International Law" (1992) 12 Aus.Y.B.Int'l L. 54.	24
Meron, T., "International Responsibility of States for Unauthorized Acts of their Officials" (2003) Brit.Y.B.Int'l L. 85.	23

Randall, K. C., "Universal Jurisdiction Under International Law" (1988) 66 Tex.L.Rev. 785.	33
Rassam, A. Y., "Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law" (1999) 39 Va.J.Int'l L. 303.	37
Scharf, M., "Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?" (1996) 1 Tex.Int'l L.J. 1.	30
Weiner, R., "Trying to Make Ends Meet: Reconciling the Law and Practice of Human Rights Amnesties" (1995) 26 St.Mary's L.J. 857.	30

OTHER DOCUMENTS AND MICELLANEOUS

<i>Miller Incident (Statement of the Second Assistant to the U.S. Secretary of State, (1918) 5 Dig. Int'l L. 655.</i>	23
<i>Vienna Declaration and Program of Action, World Conference on Human Rights, (1993) 32 I.L.M. 1661.</i>	31

STATEMENT OF JURISDICTION

Pursuant to Article 40(1) of the Statute of the Court, the Republic of Reston and the Republic of Annolay, by a special agreement dated 15 October 2002, have agreed to submit their present dispute concerning the women and children of the civil war to the jurisdiction of the International Court of Justice under Article 36(1) of the Statute of the Court.

STATEMENT OF FACTS

From March 1996 through September 1999, civil war between Cascadian and Restonian militias ravaged the former Kingdom of Dysfuncunia. A peace conference was organized, and the two militias agreed to a cease-fire, which by March 1999, resulted in a negotiated partition of Dysfuncunia into two republics: Reston and Cascadia. Bordering the two newly formed republics is the Republic of Annolay (“Annolay”).

During the war, members of the Restonian militia reportedly committed rapes of Cascadian women. The leadership of the militia did not have first-hand knowledge of these acts, and were powerless to intervene. On November 1, 1999, Reston held its first democratic election. After election to office on a platform of “National Healing,” Restonian President and former militia head Georg Raskolnikov granted a general amnesty in recognition of the need to move beyond the events of the war.

At the conclusion of the civil war, representatives from an Annolaysian corporation, the Schmandefare Company (“the Company”), recruited and facilitated the movement of over 2,500 marginalized and vulnerable Cascadian women from Cascadia to Annolay. The Annolaysian Department of Immigration promptly granted permanent residence status to the Cascadian women.

In return for their services, the Company charged each Cascadian woman \$10,000 US. Since the women were unable to pay this debt, they were given loans from the Company at exorbitant interest rates. Although the Cascadian women were recruited based on promises of legitimate employment, education and shelter, most of them were sent to one of the many brothels operated by the Company in Annolay. Mr. Fred Schmandefare (“Schmandefare”), the

founder and CEO of the Company, reportedly organized the recruitment and transportation of the women.

Once in the Company's brothels, the Cascadian women were subject to restrictions on movement, restraints on liberty, mental and physical abuse, and unsanitary living conditions. By subjecting the women to a system of financial penalties and imposing exorbitant prices for basic food, clothing and shelter, the Company made it difficult if not impossible for the women to retire their debt.

Although several Annolaysian government agencies, including the police, the Department of Immigration, Department for Services to Children and Families, and the Department of Worker Safety and Compensation, were contacted for help by Cascadian women, no formal investigations were conducted. In one case, the police received custody of a Cascadian woman who had fled her brothel, but returned her to the Company after contacting Schmandefare.

Cascadian women were not the only victims of the civil war. Thousands of Restonian children were orphaned. Annolaysian parents adopted nearly 2,000 of these children. Under Restonian law, parents receive fitness certificates after passing the interview process. These certificates are required in order to leave Reston with an adopted child.

According to reports, Restonian border officials, acting without authority, were seeking payments from Annolaysian adoptive parents. Some Annolaysian citizens chose to ignore Restonian law altogether and bypassed the interview process by simply opting to pay at the border. Annolaysian border officials permitted these parents to essentially kidnap Restonian children by failing to check for fitness certificates. In response to a March 1, 2001 letter

published in the press criticizing Reston's system, President Raskolnikov permanently re-assigned ten accused officials to other posts.

A series of heated public statements followed:

On April 20, 2001, Annolaysian President Contrary publicly stated Annolay's intention to seek reparations for the Cascadian women raped during the civil war.

On May 19, 2001, Reston voiced its intention to prosecute Schmandefare for the illegal trafficking and sexual enslavement of Cascadian women.

After unsuccessful mediation by representatives of the United Nations Secretary General, Reston and Annolay agreed to submit the issues at dispute to this Court.

QUESTIONS PRESENTED

1. Whether Annolay has standing to bring a claim for reparations on behalf of Cascadian rape victims of the civil war.
2. Whether Reston has breached its obligations with respect to the Cascadian rape victims of the civil war.
3. Whether Reston has breached its obligations with respect to the conduct of Restonian border officials.
4. Whether Reston is obligated to pay restitution to Annolaysian adoptive parents with respect to the conduct of Restonian border officials.
5. Whether Reston is entitled to exercise universal jurisdiction over Mr. Fred Schmandefare.
6. Whether Reston has standing to seek a declaratory judgment against Annolay.
7. Whether Annolay has breached its obligations with respect to the treatment of Cascadian women working in Schmandefare brothels in Annolay.

SUMMARY OF PLEADINGS

Annolay does not have standing to bring a claim against Reston with respect to the activities of Restonian border officials. Annolaysian nationals have not exhausted local remedies.

No state responsibility accrues to Reston as a result of the border officials' activities. Reston is not bound to combat corruption under convention, nor under customary international law. The actions of the officials were committed while acting in an unofficial capacity and are not attributable to Reston. Annolaysian parents could have avoided injury. However, they voluntarily assumed the risk of injury, and moreover, many of them violated the laws of Reston in doing so.

Annolay does not have standing to bring a claim against Reston with respect to the Cascadian women. The women concerned are not nationals of Annolay and were not nationals at the time the injury occurred, precluding Annolay from relying upon nationality as a basis for standing. Prohibitions against rape are not basic human rights to which *erga omnes* obligations attach, nor are they *jus cogens* norms. Thus, Annolay cannot bring this claim on those grounds. Further, Annolay cannot bring this claim against Reston because the injured party, Cascadia, has validly waived the claim.

No state responsibility accrues to Reston as a result of the conduct of the rapists towards the Cascadian women. The actions of the rapists were not effectively controlled by the militia, and thus do not form acts of the movement itself for which Reston as successor state is responsible. There was no support or direction given for the acts of the individual rapists. Reston owes no conventional or customary duty to prosecute ordinary human rights violations.

International law permits the grant of impunity through amnesty. Reston's amnesty was validly granted by its President as part of a national campaign of reconciliation and healing.

Reston is entitled to exercise universal jurisdiction over Schmandefare. Universal jurisdiction can be exercised over international crimes that have attained a *jus cogens* status. The international crime of slavery has attained a *jus cogens* status, and includes many contemporary forms that do not require total control. Schmandefare is criminally implicated for organizing acts of slavery, and for failing to halt the enslavement activities of his subordinates.

Given the existence of widespread slavery within Annolay, Reston has standing to seek a declaratory judgment against Annolay. Any state may seek a declaratory judgment from the Court providing that the parties share a legal obligation that is at issue. The duty to provide protection from slavery is owed by each State to all other States. The rule of exhaustion of local remedy does not apply in relation to declaratory judgments

Annolay is in breach of its international obligations. Annolay's police force and government departments are State actors, and have breached Annolay's international obligations by failing to conduct formal investigations of the Company or Schmandefare. The police have further breached international obligations by failing to offer a Cascadian woman adequate protection. Moreover, given the widespread slavery within Annolay, Annolay's overall government system is insufficient for fulfilling its international obligations.

I. RESTON IS NOT RESPONSIBLE FOR ACTIONS RELATED TO ITS BORDER OFFICIALS

A. ANNOLAY DOES NOT HAVE STANDING

The responsibility of a State may not be invoked if any available and effective local remedies have not been exhausted.¹ Annolay must prove that there are no effective remedies to which recourse can be had.² None of the Annolaysian parents sought recourse through Restonian courts. Thus, Annolay has failed to exhaust local remedies.

B. RESTON IS NOT IN BREACH OF ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE BRIBES EXACTED BY ITS BORDER OFFICIALS

1. Reston has not Breached Obligations under the Regional Anti-Corruption Convention (“RACC”) or the Vienna Convention on the Law of Treaties (“VCLT”)

Reston has signed the RACC subject to ratification.³ As Reston is a party to the VCLT,⁴ it only has a conventional obligation to refrain from acts that defeat the object and purpose of the RACC until it has made its intention clear not to become a party.⁵

A treaty is to be interpreted based on the ordinary meaning of its terms.⁶ Therefore, the obligation to refrain from acts that defeat the object and purpose of a signed treaty must be

¹ *Responsibility of States for Internationally Wrongful Acts*, UN GAOR, 56th Sess., Annex, Agenda Item 162, UN Doc. A/RES/56/83 (2002) [*Articles on State Responsibility*], Art. 44(b).

² *Case of Certain Norwegian Loans (France v. Norway)*, [1957] I.C.J. Rep. 8 [*Norwegian Loans*], at 39.

³ *Compromis* at para. 39; *Compromis, Clarifications* at para. 11.

⁴ *Ibid.* at para. 38.

⁵ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331 [*VCLT*], Art. 18(a).

⁶ *Ibid.*, Art. 31(1).

interpreted as implicating only positive acts of State. International tribunals accept this negative obligation between signature and ratification.⁷ Reston is under no obligation to implement provisions of the RACC, as such obligations only attach to ratification.⁸

The object and purpose of the RACC is to combat corruption. Reston has done nothing to undermine this laudable goal. Indeed, Reston, without obligation, has undertaken acts that further this goal. Shortly after learning about the border guard problem, Reston ensured that the implicated border officials could no longer commit corrupt practices on its border with Annolay.⁹

C. THERE IS NO CUSTOMARY INTERNATIONAL LAW OBLIGATION TO COMBAT CORRUPTION

International custom is evidenced by general state practice accepted as law.¹⁰ As such, two elements are required: general State practice and *opinio juris*. *Opinio juris* must be found through positive evidence of a belief that a practice is obligatory.¹¹ Although there may be State practice of anti-corruption activities, there is no evidence that States engage in such practices because they feel bound by an international obligation. Indeed, the recent proliferation of treaties to combat corruption is evidence to the contrary.¹² It is precisely because the rights and

⁷ See *e.g. A.A. Megalidis v. Turkey*, 4 A.D.I.L. 395 (1928) [*Megalidis*] at 395.

⁸ *Regional Anti-Corruption Convention, Compromis, supra note 3 [RACC]* at para. 39, Art. 32(1)(b), 32(4); *VCLT, supra note 5* Art. 14(1)(c), 25.

⁹ *Compromis, supra note 3* at para. 17.

¹⁰ *Statute of the International Court of Justice*, 26 June 1945, Can. T.S. 1945 No. 7 [*ICJ Statute*] Art. 38(1)(b).

¹¹ *North Sea Continental Shelf (Federal Republic of Germany v. Denmark and Netherlands), Judgment*, I.C.J. Rep. 3 (1969) [*North Sea*] at 44, para. 77.

¹² See *e.g. RACC, Compromis, supra note 8* at para. 39; *Council of Europe Criminal Law Convention on Corruption*, 1 July 2002, E.T.S. No. 173 [*COE Corruption Convention*]; *Inter-American Convention Against Corruption*, 29 March 1996, 35 I.L.M. 724 [*IACAC*].

duties set out in these treaties are not part of customary international law that States have signed them.¹³ At any rate, the burden of proving a general custom rests with the applicant.¹⁴

1. The Acts of the Border Officials do not Constitute a Breach of Reston's International Obligations

a. *The Acts of the Border Officials are not Attributable to Reston*

The Restonian border officials acted without authority when they requested and received funds.¹⁵ In order for those *ultra vires* actions to be attributable to Reston, the border guards must have acted in an official capacity.¹⁶ The border guards were not acting in an official capacity when they received bribes. If public officials are not acting in an official capacity, then they are acting as private individuals whose actions are not generally attributable to the state.¹⁷ Therefore, the border officials were acting as private individuals whose actions are not attributable to Reston.

¹³ *The Case of the S.S. "Lotus" (France v. Turkey)* (1927), P.C.I.J. (Ser. A) No. 10 [*Lotus Case*] at 27.

¹⁴ I. Brownlie, *Principles of Public International Law*, 5th ed., (Oxford: Clarendon Press, 1998) at 11; *Lotus Case*, *supra* note 13 at 18.

¹⁵ *Compromis*, *supra* note 3 at para. 13.

¹⁶ *Articles on State Responsibility*, *supra* note 1, Art. 7.

¹⁷ P. Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed., (New York: Routledge, 1997) at 257; J. Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, (New York: Cambridge University Press, 2002) at 110.; F. V. Garcia-Amador, L. B. Sohn, & R. R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, (Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1974) at 26.

Alternatively, a State is not responsible if the alien could, in consequence of an apparent lack of authority of the State official, avoid the damage.¹⁸ Requesting and receiving a bribe is outside the apparent authority of a border official. Annolaysians could have avoided paying bribes and there is no evidence that they paid them under threat. Further, Annolaysians claimed to have known about the border problems¹⁹ and thus could have avoided injury by either not visiting Reston, or not adopting Restonian children.

2. In the Alternative, Reston may rely on the Defence of Contributory Fault

The voluntary conduct of the Annolaysian parents bars recovery for Annolay. Recovery is barred when the claimant voluntarily assumes risk²⁰ or the claimant demonstrates a lack of care.²¹ In this case, the Annolaysian parents knew of corrupt activities occurring at the Reston-Annolay border.²² Therefore, they can be presumed to have voluntarily assumed the risk of paying a bribe when coming into Reston.

This position is further buttressed by equitable considerations concerning the conduct of Annolay and its nationals. Equity, or the “clean hands” doctrine, is a general principle of

¹⁸ T.Meron, "International Responsibility of States for Unauthorized Acts of their Officials" (2003) Brit.Y.B.Int'l L. 85 at 113. See also *Yukon Lumber Case (Great Britain v. United States)*, 6 R.I.A.A. 17 (1913) at 20.

¹⁹ *Compromis*, *supra* note 3 at para. 13.

²⁰ *United States v. Diekelman*, 92 U.S. 520 (1875) at 527; *Miller Incident (Statement of the Second Assistant to the U.S. Secretary of State)*, 5 Dig. Int'l L. 655 (1918) at 655.

²¹ *Andresen Case*, excerpted in M. M. Whiteman, *Damages in International Law*, vol. 1, (Millwood, N.Y.: Kraus Reprint Co., 1976) at 217 (decided January 25, 1930).

²² *Compromis*, *supra* note 3 at para. 13.

international law.²³ Relief may be refused to the claimant whose conduct in regard to the subject matter of the litigation has been improper²⁴ or illegal.²⁵ In this case, some of the Annolaysian parents were involved in the removal of children without legal authority. It is inequitable to require Reston to pay relief to Annolay when Annolaysian nationals were involved in illegal conduct.

D. IN THE FURTHER ALTERNATIVE, THE CONTRIBUTORY FAULT OF ANNOLAY AND ITS NATIONALS REDUCES THE AMOUNT OF REPARATIONS OWED

When determining reparation, the contribution to the injury by wilful or negligent acts or omissions of the injured party must be taken into account.²⁶ Annolaysian nationals had knowledge of corrupt activity at the Reston-Annolay border.²⁷ Not only did these nationals wilfully or negligently proceed into Reston knowing that injury would result, but moreover, in some cases, Annolaysian parents kidnapped Restonian orphans contrary to Restonian law.²⁸ If the Annolaysian nationals had properly adopted these children, the extent of their injury would have been reduced.²⁹

²³ *The Diversion of Water from the Meuse (Netherlands v. Belgium)* (1937), P.C.I.J. (Ser. A/B) No. 70 [*Meuse Case*] at 76-77; *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States)*, [1984] I.C.J. Rep. 246 at 305; E. M. Borchard, *The Diplomatic Protection of Citizens Abroad*, (N.Y.: The Banks Law Publishing Co., 1915) at 718; V.Lowe, "The Role of Equity in International Law" (1992) 12 *Aus.Y.B.Int'l L.* 54 at 55.

²⁴ *Meuse Case*, *supra* note 23 at 77; Borchard, *supra* note 23 at 718.

²⁵ Garcia-Amador, *supra* note at 36.

²⁶ *Articles on State Responsibility*, *supra* note 1, Art. 39.

²⁷ *Compromis*, *supra* note 3 at para. 13.

²⁸ *Ibid.* at paras. 13, 15.

²⁹ *Ibid.* at para. 13.

Finally, the failure of the Annolaysian border officials to question Annolaysian nationals returning with orphans must be taken into account.³⁰ If these officials had not been negligent in their duty, fewer Annolaysians would have attempted to kidnap Restonian orphans.

II. RESTON IS NOT LIABLE FOR REPARATIONS TO CASCADIAN RAPE VICTIMS

A. ANNOLAY DOES NOT HAVE STANDING

1. The Nationality of Claims Rule Prevents Annolay from Bringing this Claim on Behalf of Cascadian Nationals³¹

a. *There is no Genuine Link between Annolay and the Cascadian Women*

Diplomatic protection arises only where there is a “genuine link” between the applicant State and the individuals on behalf of whom the claim is brought.³² There is no such link between the Cascadian women and Annolay. In cases of state succession, there is a presumption that individuals take the nationality of the state in which they were habitually residing at succession.³³ The juridical relationship of nationality is not based on formality or edifice, but rather on real connections binding the individual and the state.³⁴ Ethnic origin and rules of state succession genuinely and effectively link the women to Cascadia. Their presence in Annolay does not constitute “habitual residence” as contemplated by the ILC Articles on Nationality in

³⁰ *Ibid.* at para. 13.

³¹ *Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania)* (1939), P.C.I.J. (Ser. A/B) No. 76 [*Panevezys Case*] at 16; Malanczuk, *supra* note 17 at 262.

³² *Nottebohm Case (Liechtenstein v. Guatemala)*, [1955] I.C.J. Rep. 4 at 22-23.

³³ *Draft Articles on Nationality of Natural Person in Relation to the Succession of States*, UN Doc. A/CN.4/L.573 27 (1999) [*ILC Nationality Articles*], Art. 5.

³⁴ *Ibid.*, Art. 5 (Commentary).

Relation to Succession.³⁵ Moreover, the decision of these women to relocate from Cascadia to Annolay was made under stress and hardship, and was the result of false promise. Significantly, the women have been illegally enslaved from the point of their arrival in Annolay.³⁶ Based on the above criteria, the women are nationals of Cascadia.

b. Additionally, the women were not Annolaysian Nationals at the Time of the Injury

Annolay is further precluded from bringing this claim as the Cascadian women have not continuously been its nationals “*from the time of the occurrence of the injury until the making of the award.*”³⁷ Clearly, the women concerned were not nationals of Annolay at the time of the civil war, nor were any agreements brokered with respect to nationality at the time of cease-fire and partition.

2. Reston has not breached an obligation *erga omnes*

Third party states may make claims on behalf of injured parties where the obligation is one owed to the international community as a whole³⁸, or where a serious breach of a *jus cogens* norm has occurred.³⁹ In *Barcelona Traction*, the Court limited the scope of *erga omnes*

³⁵ See generally *Ibid.*

³⁶ See *infra* section III.D.3.

³⁷ Brownlie, *supra* note 14 at 483.

³⁸ *Articles on State Responsibility*, *supra* note 1, Art. 48.

³⁹ *Ibid.*, Art. 40.

obligations to basic human rights.⁴⁰ *Jus cogens* norms are those accepted and recognized by the international community as norms from which no derogations are permitted.⁴¹

Diplomatic protection is available only as against violations of basic rights, for which *erga omnes* obligations arise, or as against serious breaches of peremptory norms of international law. Prohibitions against rape, unlike those against slavery, cannot be characterized as basic human rights or *jus cogens* norms, as most global human rights instruments have not included them amongst their protections.⁴² Annolay does not have standing on the basis that there has been no breach of an *erga omnes* obligation or *jus cogens* norm.

3. Cascadia, as the injured party, has waived this claim

A claim cannot be brought on behalf of an injured State where the injured state has itself waived the claim.⁴³ Cascadian official sources have, in unequivocal terms, publicly stated that they will not pursue this matter.⁴⁴ The Cascadian statement was not coerced, nor was it made on

⁴⁰ *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, [1970] I.C.J. Rep. 3 [Barcelona Traction Case] at 32, para. 33; D. J. Harris, *Cases and Materials on International Law*, 5th ed., (London: Sweet & Maxwell, 1998) at 729.

⁴¹ *VCLT*, *supra* note 5, Art. 53.

⁴² *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) [*Universal Declaration*]; *The Charter of the United Nations* [*UN Charter*]; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171 [*ICCPR*]; *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277 [*Genocide Convention*]; *The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85; *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195.

⁴³ *Articles on State Responsibility*, *supra* note 1, Art. 45.

⁴⁴ *Compromis*, *supra* note 3 at para. 19.

the basis of a material error regarding the facts. It constitutes a valid waiver of the claim; therefore, Annolay cannot be granted standing in this matter.

B. RESTON IS NOT RESPONSIBLE FOR THE ACTS COMMITTED AGAINST CASCADIAN WOMEN

1. Reston is not Responsible for Acts of the Rapists

In order to attribute acts or omissions to the State, it is essential to identify with certainty the individual actors and their association with the State.⁴⁵ For the actions of the militia body to be attributable to Reston, it must first be established that the actions of the rapists were those of the movement itself.

In *Nicaragua v. United States*,⁴⁶ despite considerable evidence of nexus, the Court held that there was no “clear evidence” showing that the United States exercised “such a degree of control” over the *contras* so as to justify treating them as acting on its behalf.⁴⁷ As such, the *contras* themselves remained responsible for their actions and any resulting violations of humanitarian law.⁴⁸ The Court further stated that, for the United States to be legally responsible, the applicable standard is one of “effective control,” the determination of which is a factual inquiry, as applied in the Iran-United States Claims Tribunal.⁴⁹ In the *Iran Hostages* case⁵⁰, the

⁴⁵ *Yeager v. Iran*, 17 Iran-U.S. C.T.R. 92 (1987) [*Yeager*] at 101-102.

⁴⁶ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) (Merits)*, [1986] I.C.J. Rep. 14 [*Military and Paramilitary Activities Case*].

⁴⁷ *Ibid.* at 62, para. 109.

⁴⁸ *Ibid.* at 64, para. 115.

⁴⁹ See *Short v. Iran*, 17 Iran-U.S. C.T.R. 135 (1987); *Yeager*, *supra* note 45.

⁵⁰ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, [1980] I.C.J. Rep. 3 [*Hostages Case*] at 29.

Court held that the conduct of the militants would have been directly attributable to Iran only if it were established that, in fact, the militants acted on behalf of the State, and were charged by a competent State organ to carry out a specific act.

The actions of individual rapists, particularly in the context of internal strife, cannot be attributed to the movement, and then through the movement to the State where there is no clear evidence of effective control on the facts.

Even in the case of States, presumptions of attribution can be rebutted by showing that the actors were beyond the control of the State.⁵¹ Here, there was no support or direction given for the actions of the individual rapists. Moreover, the chaotic context of the war rendered the militia powerless to stop these individuals. Finally, Annolay has adduced no evidence of effective control as between the individual rapists and the militia. Thus, the actions of the rapists were not those of the militia and do not attach to Reston as successor state.

2. Reston has not breached any duty to prosecute

a. *There is no Conventional Duty for Reston to Prosecute Human Rights Violations*

Reston is not party to any conventions in which a duty to prosecute human rights violations arises, nor do any conventions that have attained customary status pertain to this claim.

b. *There is no Duty in Customary International Law to Prosecute Human Rights Violations*

⁵¹ D. D. Caron, "The Basis of Responsibility: Attribution and other Trans-Substantive Rules" in R. Lillich & D. Magraw, eds., *The Iran-United States Claims Tribunal: Its Contribution to the Law of State Responsibility* (Irvington: Transnational Publishers, Inc., 1998) 109 at 143.

Proof of a duty to prosecute human rights violations does not meet the two-pronged test for customary international law.⁵² Those who advocate that such a duty does exist rely upon non-binding statements and instruments as evidence.⁵³ Reston is not obligated to abide by these statements. Examples of State practice do not envision an affirmative duty to prosecute.⁵⁴ Moreover, a failure to prosecute has been accepted where the transitional State adopts a democratic system of governance.⁵⁵ The Constitutional Court of South Africa held that international law does not require States to prosecute domestic violations, and that legislation pertaining to amnesty in South Africa did not violate international law.⁵⁶ At any rate, the burden of proving a general custom resides with the applicant.

3. Reston's grant of amnesty is valid in international law

International law permits the grant of impunity through amnesty.⁵⁷ In recent years, Argentina, Cambodia, Chile, El Salvador, Guatemala, Haiti, Uruguay, and South Africa have

⁵² See *supra* section I.C. text.

⁵³ See M.Scharf, "Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?" (1996) 1 *Tex.Int'l L.J.* 1 at 35.

⁵⁴ R.Weiner, "Trying to Make Ends Meet: Reconciling the Law and Practice of Human Rights Amnesties" (1995) 26 *St.Mary's L.J.* 857 at 862-64.

⁵⁵ See *e.g.* *The Situation in Central America: Procedures for the Establishment of a Firm and Lasting Peace and Progress in Fashioning a Region of Peace, Freedom, Democracy and Development*, GA Res. 51/197, UN GAOR, 51st Sess., Supp. No. 49, UN Doc. A/51/49 (2003) at para. 8.

⁵⁶ *Azanian Peoples Organization v. President of the Republic of South Africa* Case, CCT 17/96 Const. Ct. S.A. (1996) at para. 2.

⁵⁷ Weiner, *supra* note 54 at 862-64; J. Zalaquett, *Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints in State Crimes: Punishment or Pardon*, (Aspen, CO: Aspen Institute, 1989) at 23, 41-43.

each granted general amnesty as part of peace arrangements. In Haiti, the United Nations was itself involved in and endorsed the granting of amnesty as a means of restoring peace and promoting democratic government.⁵⁸

Reston's amnesty was validly granted by its President as part of a campaign for national reconciliation and healing. It is not the place of Annolay to intervene in matters of Reston's domestic jurisdiction.

III.RESTON IS ENTITLED TO EXERCISE UNIVERSAL JURISDICTION OVER SCHMANDEFARE

A. UNIVERSAL JURISDICTION IS A VALID MEANS OF OBTAINING SUBJECT-MATTER JURISDICTION IN INTERNATIONAL LAW

The principle of universal jurisdiction provides that each State may exercise jurisdiction to combat those offences that all nations have condemned,⁵⁹ irrespective of nationality, place of commission, or link between the prosecuting State and the offender.⁶⁰ It is consistent with the protection of fundamental human rights recognized by the United Nations,⁶¹ and has been approved by jurists in international⁶² and domestic cases,⁶³ and by influential publicists.⁶⁴

⁵⁸ *Statement of the President of the Security Council*, UN Doc. S/INF/49 (1993).

⁵⁹ M. C. Bassiouni, *Crimes Against Humanity in International Criminal Law*, (Dordrecht: Kluwer Academic Publishers, 1992) at 513.

⁶⁰ A.R.Carnegie, "Jurisdiction Over Violations of the Laws and Customs of War" (1963) 39 *Brit.Y.B.Int'l L.* 402 at 405.

⁶¹ *UN Charter*, *supra* note 42, preamble, Art. 55(c), 56; *Vienna Declaration and Program of Action, World Conference on Human Rights*, 32 *I.L.M.* 1661 (1993) [*Vienna Declaration*], Article 1; *Universal Declaration*, *supra* note 42, preamble

⁶² *Arrest Warrant of 11 April 2000 (Congo v. Belgium)* (2002), online: International Court of Justice <<http://www.icj-cij.org/icjwww/idocket/iCOBE/iCOBEframe.htm>> [*Congo Case*] (Separate Opinion of Judges Higgins, Kooijmans and Buergenthal) at para. 58;(Dissenting opinion Van den Wyngaert) at para. 59; *Congo Case* (Judge Al-Khasawneh) at para. 7; *Congo Case* (Judge Koroma) at para. 9; *Prosecutor v. Furundzija* (1998), Case No. IT-95-17/1-T

Universal jurisdiction has also been authorized in widely ratified international conventions,⁶⁵ and legal codifications.⁶⁶ Given the widespread and influential support for the universality principle, it is clearly a valid means of obtaining jurisdiction under s. 38(4) of the Statute of the International Court of Justice.⁶⁷

In the alternative, a state is permitted to extend its jurisdiction beyond its territorial borders unless a rule of international law can be raised to the contrary.⁶⁸ International law does not prohibit universal jurisdiction.⁶⁹

B. UNIVERSAL JURISDICTION APPLIES TO FORMS OF SLAVERY THAT DO NOT REQUIRE TOTAL CONTROL

(International Criminal Tribunal for the Former Yugoslavia, Trial Chamber) [*Furundzija*] at para. 153; *In re Tesch and Others (Zyklon B Case)*, 13 A.D.I.L. 250 (1946) [*Zyklon B Case*].

⁶³ *Demjanjuk v. Petrovsky*, 776 F.2d 571 (1985) at 582; *Eichmann v. Attorney General Israel*, 36 I.L.R. 277 (1962) [*Eichmann*] at para. 13(8)(a); *Reg. v. Bow Street Metropolitan Stipendiary Magistrate Ex parte Pinochet Ugarte*, [1999] 2 All E.R. 97 [*Pinochet*] at 28, 253.

⁶⁴ M. Akehurst, *A Modern Introduction to International Law*, 6th ed., (London: Unwin Hymer, 1987) at 106; Brownlie, *supra* note 14 at 308.

⁶⁵ *The Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183-9TH (2002) [*Rome Statute*], preamble; *United Nations Convention on the Law of the Sea*, 10 December 1982, 33 I.L.M. 1309 [*UNCLOS*], Art. 91,110; *The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85 [*Convention against Torture*], Art. 5; *Hague Convention for the Suppression of Unlawful Seizure of Aircraft*, 16 December 1970, 10 I.L.M. 133, Art. 4.

⁶⁶ See e.g. American Law Institute., *Restatement of the law, third: Foreign Relations Law of the United States*, vol. 2, (St. Paul, Minn.: American Law Institute Publishers, 1987), § 404.

⁶⁷ *ICJ Statute*, *supra* note 10, s. 38(4).

⁶⁸ *Lotus Case*, *supra* note 13 at 18-19; *Eichmann*, *supra* note 63 at para. 9; *Pinochet*, *supra* note 63 at para. 247; *Congo Case*, *supra* note 62 (Judge Van den Wyngaert par. 49).

⁶⁹ *Congo Case*, *supra* note 62 (Separate Opinion of Judges Higgins, Kooijmans and Buergenthal) at para. 45.

1. Universal Jurisdiction Applies to the International Crime of Slavery

Universal jurisdiction applies to international crimes,⁷⁰ especially those that have obtained a *jus cogens* status⁷¹. The international crime of slavery has attained a *jus cogens* status.⁷² The ICJ affirmed in *Barcelona Traction*⁷³ that protection from slavery is an obligation *erga omnes*. By definition, "*obligations erga omnes refer to the legal implications arising out of a certain crime's characterization as jus cogens.*"⁷⁴ International and domestic jurists, publicists, domestic legislation and international conventions have also specifically included slavery as being subject to universal jurisdiction.⁷⁵

⁷⁰ *Congo Case*, *supra* note 62 (Separate Opinion of Judges Higgins, Kooijmans and Buergenthal); Crawford, *supra* note 17 at 114, para. 1; Akehurst, *supra* note 64; R. M. M. Wallace, *International Law*, (London: Sweet & Maxwell, 2002) at 113.

⁷¹ *Pinochet*, *supra* note 63 at 28, 253; *Congo Case*, *supra* note 62 (Judge Al-Khasawneh) at para. 7; *Furundzija*, *supra* note 62 at para. 153; See also K.C. Randall, "Universal Jurisdiction Under International Law" (1988) 66 *Tex.L.Rev.* 785 at 838.

⁷² M.C.Bassiouni, "Enslavement as an International Crime" (1991) 23 *N.Y.U.J.Int'l L.& Pol.* 445 at 445; Brownlie, *supra* note 14 at 515; T. Meron, *Human Rights in International Law*, vol. 1, (Oxford: Clarendon Press, 1984) at 118; *Final Report of the Special Rapporteur of the Working Group on Contemporary Forms of Slavery, on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*, UN Doc. E/CN.4/Sub.2/1998/13 (1998) at para. 30; Crawford, *supra* note 17 at 188, para. 5.

⁷³ *Barcelona Traction Case*, *supra* note 40 at paras 33, 34.

⁷⁴ M. C. Bassiouni, "The Sources and Content of International Criminal Law: A Theoretical Framework" in M. C. Bassiouni, ed., *International Criminal Law*, 2d ed., vol. 1 (Ardsley, N.Y.: Transnational Publishers, Inc., 1999) 3 at 38.

⁷⁵ *Congo Case*, *supra* note 62 (Judge Koroma) at para. 9; American Law Institute, *supra* note 66, s. 404; *UNCLOS*, *supra* note 65, Art. 91, 110; Randall, *supra* note 71 at 788; M.C.Bassiouni, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice" (2001) 42 *Va.J.Int'l L.* 81 at 136.

2. The International Crime of Slavery Includes Forms of Slavery that do Not Require Total Control

In *Prosecutor v. Kunarac*, the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) held that the crime of slavery does not require the extreme degree of control associated with chattel slavery.⁷⁶ The criteria considered by the tribunal to determine the existence of slavery included control of physical environment, psychological control, measures taken to prevent or deter escape, vulnerability of the victim, deception or false promises, subjection to cruel treatment and abuse, and control of sexuality.⁷⁷ The tribunal also found that common indicators of enslavement include sex, prostitution and human trafficking.⁷⁸

Applying the *Kunarac* criteria and reasoning, Reston can exercise universal jurisdiction over contemporary forms of slavery such as debt bondage and traffic in persons that do not require total control.⁷⁹

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⁷⁶ *Prosecutors v. Kunarac and Others* (2002), Case No. IT-96-23 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber) at para. 117.

⁷⁷ *Prosecutor v. Kunarac et al. ("Foca")* (2001), Case No. IT-96-23-T & IT-96-23/1-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber) [*Kunarac*] at para. 543.

⁷⁸ *Ibid.* at para. 542.

⁷⁹ *Rome Statute*, *supra* note 65, Art. 6(2)(c); M. C. Bassiouni, *International Criminal Law: A Draft International Criminal Code*, (Germantown, MD: Sijthoff & Noordhoff, 1980) at 78,79; M. Boot, *Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court*, (Ardsley, N.Y.: Intersentia Publishers, 2002) at para. 487.

1. Jurisdiction may be Exercised where a Court is Satisfied that the Crime in Question Appears to have been Committed⁸⁰
2. The Company Strongly Appears to Have Committed the International Crime of Slavery

Human trafficking, referred to as an indicator of enslavement in *Kunarac*, refers generally to the act of relocating a person for the purposes of prostitution⁸¹. The Company, through the use of deception and false promises, achieved the international trafficking of the especially vulnerable Cascadian women to Annolay.⁸²

Once in the Company's brothels, the Cascadian women were subject to restrictions on movement, restraints on liberty, mental and physical abuse, and unsanitary living conditions⁸³. Despite the legality of the original loan between the Company and the Cascadian women, the system of financial penalties and imposition of exorbitant prices for basic food, clothing and shelter⁸⁴ were part of a clear tactic to immobilize and subjugate the women through a perpetual cycle of debt bondage.

All of these elements of physical and psychological control point strongly to a finding of enslavement under the *Kunarac* criteria and indicia.

3. Schmandefare Strongly Appears to be Criminally Implicated for the Company's Acts in Trafficking and Enslaving Cascadian Women

⁸⁰ *Rome Statute*, *supra* note 65, Art. 13(1)(2) Crawford, *supra* note 17 at 115, para. 5.

⁸¹ *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 December 1949, 96 U.N.T.S. 271, Art. 2.

⁸² *Compromis*, *supra* note 3 at paras. 22, 24.

⁸³ *Ibid.* at paras. 28, 29.

⁸⁴ *Ibid.* at paras. 24, 29.

- a. *Schmandefare strongly appears to be criminally implicated for organizing the recruitment and trafficking of women from Cascadia to Annolay*⁸⁵
- b. *Schmandefare strongly appears to be criminally implicated for the acts of his subordinates in recruiting and trafficking Cascadian women, and enslaving them in Annolayan brothels*

A civilian person in authority is personally responsible for the crimes of his effective subordinates⁸⁶ if the superior knew or had reason to believe that the crime was being committed, and did not take all steps to punish or prevent the crime.⁸⁷ This concept has previously been applied in the context of private enterprise. In *Roechling and Others*, a German industrialist was charged under international law for his company's profiteering activities and use of slave labour.⁸⁸ Similarly, in the *Zyklon B* case, the Judge Advocate was willing to attribute knowledge and criminal responsibility to a head of a company providing toxic gas to the Nazis for the purposes of human extermination.⁸⁹

Schmandefare is the CEO of the Company, and is thus in a position of command over his employees.⁹⁰ Schmandefare had knowledge of the Company's enslavement activities through his receipt of appeals from Cascadian women⁹¹ and through his interactions with the Annolay

⁸⁵ *Ibid.* at paras. 26.

⁸⁶ *Prosecutor v. Delalic and Others ("Celebic")* (1998), Case No. IT-96-21-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber) at para. 356.

⁸⁷ *Rome Statute*, *supra* note 65, Art. 28(b); *Statute of the International Tribunal for the Former Yugoslavia*, UN Doc. S/RES/827 (1993), Art. 7; *Statute of the International Tribunal for Rwanda*, UN Doc. S/RES/955 (1994), Art. 6(3).

⁸⁸ *In re Roechling and Others*, 15 A.D.I.L. 398 (1948) at 399.

⁸⁹ *Zyklon B Case*, *supra* note 62.

⁹⁰ *Compromis*, *supra* note 3 at para. 26.

⁹¹ *Ibid.* at para. 28.

police.⁹² By not exercising his power to prevent or punish the Company's enslavement activities, Schmandefare is criminally implicated.

IV. ANNOLAY HAS BREACHED INTERNATIONAL OBLIGATIONS WITH RESPECT TO CASCADIAN WOMEN

A. RESTON HAS STANDING TO SEEK A DECLARATORY JUDGMENT AGAINST ANNOLAY

1. Reston Has a Legal Interest

Annolay owes Reston, as part of the international community, a duty to provide protection from slavery within its borders.⁹³ This principle is supported by the *jus cogens* status of the prohibition of slavery and the slave trade.⁹⁴ Reston, along with all other States, has a legal right to enforce this obligation *erga omnes*.⁹⁵

Under the ILC Articles, a non-injured State has standing to bring an action against a respondent State provided that the respondent State has allegedly breached an obligation owed to the Applicant State.⁹⁶ All States also have standing to bring an action in response to widespread or systematic breaches of peremptory norms.⁹⁷

⁹² *Ibid.* at para. 29

⁹³ *Barcelona Traction Case*, *supra* note 40 at paras. 33, 34; *Fundamental Standards of Humanity*, UN Doc. E/CN.4/2002/103 (2001) at para. 22; A.Y.Rassam, "Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law" (1999) 39 *Va.J.Int'l L.* 303 at 307.

⁹⁴ See *infra* section IV.

⁹⁵ *Barcelona Traction Case*, *supra* note 40 at para. 33; Crawford, *supra* note 17 at 276-77, paras. 2, 6; *The S.S. Wimbledon* (1923), P.C.I.J. (Ser. A) No. 1.

⁹⁶ *Articles on State Responsibility*, *supra* note 1, Art. 48(1).

⁹⁷ *Ibid.*, Art. 41.

Given that at least 2,500 Cascadian women have been enslaved in the Company's brothels,⁹⁸ a widespread condition of slavery exists within Annolay. This situation, in combination with Reston's legal interest to ensure the protection of slavery, provides Reston with standing to seek a declaratory judgment against Annolay.⁹⁹

2. The Rule of Exhaustion of Local Remedies Does Not Apply When the Applicant seeks a Declaratory Judgment¹⁰⁰

B. ANNOLAY HAS BREACHED ITS INTERNATIONAL OBLIGATION TO PROVIDE PROTECTION FROM SLAVERY

1. States are Responsible for Acts or Omissions that are Attributable to the State and Constitute a Breach of an International Obligation¹⁰¹

A State acts through organs and actors empowered by law to carry out state functions.¹⁰² The rank of an official or state representative within the State's service is inconsequential for determining state responsibility.¹⁰³ High levels of government do not need to have knowledge of the breaches of subordinate officials for a state to be held responsible.¹⁰⁴

⁹⁸ *Compromis*, *supra* note 3 at paras. 24, 25, 27, 31.

⁹⁹ *Articles on State Responsibility*, *supra* note 1, Art. 41, 48.

¹⁰⁰ C. F. Amerasinghe, *Local Remedies in International Law*, (Cambridge: Grotius Publications Limited, 1990) at 270; J.E.B.Fawcett, "The Exhaustion of Local Remedies: Substance of Procedure?" (1954) 31 *Brit.Y.B.Int'l L.* 452 at 457; *Case Concerning Certain German Interests in Polish Upper Silesia* (1925), P.C.I.J. (Ser. A) No. 6 at 18; *Case Concerning the Factory at Chorzow* (1927), P.C.I.J. (Ser.A) No. 9 at 26-27.

¹⁰¹ *Articles on State Responsibility*, *supra* note 1, Art. 1, 2; I. Brownlie, *System of the Law of Nations: State Responsibility (Part I)*, (Oxford: Clarendon Press, 1983) at 132.

¹⁰² *Articles on State Responsibility*, *supra* note 1, Art. 4

¹⁰³ *Massey v. United Mexican States*, 4 R.I.A.A. 155 (1927); I. Brownlie, *The Rule of Law in International Affairs*, (Boston: Martinus Nijhoff Publishers, 1998) at 84-85; Brownlie, *supra* note 101 at 135.

If a State actor or organ commits an act contrary to the State's international obligations, the State will be held responsible. The State will also be responsible if its actors and organs do not exercise due diligence in preventing or responding to the acts of non-state actors that violate the State's international obligations.¹⁰⁵ The duty to exercise due diligence is particularly applicable in this case since the victims were effective foreign nationals.¹⁰⁶

Finally, a State will be in breach of its international obligations if it can be demonstrated that, based on the existence of a pattern or system of breaches, the State's systems are generally insufficient for fulfilling its international obligations.¹⁰⁷

A breach of an international obligation requires objective responsibility, not intention, subjective fault or knowledge.¹⁰⁸ Proof of knowledge or intention is nonetheless sufficient to generate legal responsibility.¹⁰⁹

2. Annolay's State Actors and Organs have Violated International Obligations to Provide Protection from Slavery Within Annolay's Territory

a. *Annolay's Police Force has Breached International Obligations owed by Annolay*

¹⁰⁴ Brownlie, *supra* note 103 at 85.

¹⁰⁵ *Velasquez Rodriguez Case (Honduras)*, 9 Hum. Rts. L. J. 212 (1988) [*Velasquez*] at para. 172; Brownlie, *supra* note 101 at 161 ; O. Schachter, *International Law in Theory and Practice*, (London: Martinus Nijhoff Publishers, 1993) at 340-41.

¹⁰⁶ See *supra* section II.A.1.a.

¹⁰⁷ *Hostages Case*, *supra* note 50 at para. 61; *The Corfu Channel Case (Great Britain v. Albania)*, [1949] I.C.J. Rep. 4 [*Corfu Channel*] at 18; Brownlie, *supra* note 101 at 150.

¹⁰⁸ Brownlie, *supra* note 103 at 84-85; Brownlie, *supra* note 14 at 440-41.

¹⁰⁹ Brownlie, *supra* note 103 at 84.

Annolay's police force is a state organ,¹¹⁰ and must exercise due diligence in carrying out investigations of conduct that breach Annolay's international obligations.¹¹¹ Annolay's police must also exercise due diligence to ensure that Annolay's obligations to protect are upheld.¹¹²

Based on numerous complaints of enslavement and abuse received by the Annolaysian police¹¹³ and their direct contact with Heidi F.,¹¹⁴ the police had or ought to have obtained sufficient information to formally investigate the Company's activities. By not conducting any formal investigation of the Company, the police violated Annolay's international obligations.

They further violated Annolay's international obligations by returning Heidi F. to the Company. This act was done either with full knowledge of Heidi F.'s situation, or without exercising due diligence in determining her circumstances and offering her protection from enslavement. Both interpretations result in a breach of Annolay's international obligations.

b. Responsibility for Acts and Omissions of Annolay's Government Departments

Annolay's Departments of Immigration, Services to Children and Families, and Worker Safety and Compensation are all government organs. Providing that employees within these organs are acting in the context of their official positions, their acts are attributable to the

¹¹⁰ *Quintanilla v. United States*, 4 R.I.A.A. 101 (1926); *Roper v. United Mexican States*, 4 R.I.A.A. 145 (1927) at 147.

¹¹¹ *Velasquez*, *supra* note 105 at 174; *Youmans v. United Mexican States*, 4 R.I.A.A. 1926) at 115.

¹¹² American Law Institute., *supra* note 66, s. 207 (Comment).

¹¹³ *Compromis*, *supra* note 3 at para. 28.

¹¹⁴ *Ibid.* at para. 29.

State.¹¹⁵ All three of these departments received complaints detailing the conditions within the brothels, but no formal investigations were ever conducted.¹¹⁶ None of these departments exercised due diligence in protecting Cascadian women from slavery, thus violating Annolay's international obligations.

c. Annolay's Overall System has Failed to Prevent and Control Slavery Within Annolay's Territory

As a State, Annolay is responsible for taking reasonable measures to provide protection from slavery within its territory. Given the combined and repeated failures of police and government departments to investigate complaints of slavery and provide protection to victims, it is clear that collectively Annolay's system failed its international obligation, regardless of specific attribution.

Applying the evidentiary presumption from *Corfu Channel*,¹¹⁷ it can also be inferred beyond a reasonable doubt that Annolay must have had knowledge of the widespread enslavement within its territory. Despite this knowledge, no measures were taken to address the conditions of slavery within Annolay. Thus, Annolay has breached its international obligations.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Republic of Reston respectfully requests that this Honourable Court:

¹¹⁵ H. Lauterpacht, *Oppenheim's International Law: A Treatise*, 8th ed., (New York: David McKay Company Inc., 1963) at 358.

¹¹⁶ *Compromis*, *supra* note 3 at para. 28.

¹¹⁷ *Corfu Channel*, *supra* note 107 at 18.

1. **Deny** Annolay standing to bring claims with respect to the Restonian border officials and the Cascadian women;
2. **Declare** that Reston has not breached its obligations with respect to the issue of border officials and the issue of Cascadian women;
3. **Declare** that Reston is not obligated to pay restitution to Annolaysian adoptive parents, or reparations to the Cascadian women;
4. **Declare** that Reston is entitled to exercise universal jurisdiction over Mr. Fred Schmandefare; and
5. **Declare** that Reston has standing to seek a declaratory judgement against Annolay.
6. **Declare** that Annolay has breached its obligations with respect to the treatment of Cascadian women working in Annolaysian brothels.