

MEMORIAL FOR THE APPLICANT

D.M. HARISH MEMORIAL INTERNATIONAL MOOT COURT COMPETITION, 2008

**IN THE INTERNATIONAL COURT OF JUSTICE
LA COUR INTERNATIONALE DE JUSTICE**

**Peace Palace, The Hague
Netherlands**

**CASE CONCERNING THE DIFFERENCES BETWEEN ANGHORE AND RATANKA REGARDING
THE TATT TREATY AND OTHER RELATED MATTERS**

**The Republic of Anghore
Applicant**

v.

**The Republic of Ratanka
Respondent**

**La Republique de Anghore
Requérant**

v.

**La Republique de Ratanka
Repondant**

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REPUBLIC OF ANGHORE

Jointly notified to the International Court of Justice on 11 February, 2007

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STATEMENT OF JURISDICTION

The Republic of Anghore and the Republic of Ratanka have submitted this dispute to the International Court of Justice pursuant to a Special Agreement (*Compromis*), dated February 11, 2007. This Court's jurisdiction is invoked under Article 36(1) read with Article 40(1) of the Statute of the International Court of Justice, 1950. The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

SYNOPSIS OF FACTS

(i) **Background:**

The Republic of Ratanka is a developed country that gained independence 45 years ago from the same colonial power that had ruled Anghore. Over the years Ratanka has built a healthy socialist economy, which has maintained strong international relations. This is demonstrated by the fact that Ratanka jointly formed the TORMAY Union. The Republic of Anghore, by comparison, is a small developing nation, which relies heavily on aid provided by other nations in order to maintain the social well being of its citizens. In the past Anghore had shared strong economic relations with Ratanka. Indeed, many Anghorians worked in Ratankan organisations and many Ratankans had set up businesses in Anghore.

(ii) **Ratanka's Breach of the TATT Treaty:**

After Ratanka's transfer of treaty making powers to the TORMAY Union, Anghore and the TORMAY Union concluded the TORMAY Anghore Trade and Tax (TATT) Treaty, in order to consolidate trade and tax treaties which existed between Anghore and three members of the TORMAY Union and to extend the benefit of a consolidated treaty to all TORMAY Union member nations and to Anghore itself.

Among other provisions, The TATT Treaty granted all members of the TORMAY Union and Anghore 'full and complete access to their economies', as well as provisions concerning taxation, economic aid, and a commitment to human rights protection.

Subsequently, members of foreign states – including TORMAY members – had begun migrating to Ratanka. This created a certain degree of resentment among sections of the

Ratankan population. In response to this disquiet, Mr. Tequila founded the Ratanka League, which by forming a coalition with the Ratanka Congress party, allowed Mr. Tequila to become Prime Minister.

Mr. Tequila challenged the TATT Treaty before the TORMAY International Court on grounds of consent. However, prior to waiting for judgment, the Ratankan Parliament passed the Suspension of Obligations under the “TATT Treaty” Act, breaching all of Ratanka’s responsibilities under the TATT Treaty and imposing obligations on Anghore in an attempt to coerce it into changing its internal laws on the right to abortion and euthanasia. The right to die and the right to an abortion were constitutional amendments that had been enacted following the election of the Anghore Mithati Party in late 2005.

(iii) **Human Rights Issues:**

A number of Ratankans travelled to Anghore to have an abortion and for the sole purpose of dying, following the enactment of such rights. As a result, the Ratankan Government considered invoking its extraterritorial criminal jurisdiction to prosecute women who had gone to Anghore for an abortion, upon their return to Ratanka. Furthermore, the Ratankan Government were also considering prosecuting for criminal conspiracy, those who had aided individuals in flying to Anghore to exercise their human right to die. Following this announcement by the Ratankan Government, Anghore announced that they were granting refugee status to two Ratankan women who had had abortions in Anghore, fearing that the women would be unjustly prosecuted upon their return to Ratanka, and therefore faced a real threat of persecution. Ratanka strongly protested this move and demanded the immediate return of the women.

SUMMARY OF ARGUMENTS

I. THE REPUBLIC OF ANGHORE HAS THE JUS STANDI TO PRESENT THE CLAIM.

- A.** All Effective Local Remedies Have Been Exhausted.
- B.** Alternatively, the Claim Being Made is for Material Damage Resulting in a *Direct* Injury to the Republic of Anghore Attributable to the Wrongful Conduct of the Republic of Ratanka.
 - 1.** The characterization of Anghore’s injury as ‘direct’ affords the Court jurisdiction to entertain Applicants claims.
 - 2.** The nature of the claim for such direct injury renders exhaustion of local remedies unnecessary.
- C.** Alternatively, the Exhaustion of Local Remedies Rule must be Dispensed With in the Present Case because its Application is Futile.

II. THE REPUBLIC OF RATANKA IS INTERNATIONALLY RESPONSIBLE FOR THE PERFORMANCE OF OBLIGATIONS PRESCRIBED UNDER THE TATT TREATY .

- A.** Respondents have Attributed Competence to the TORMAY Union to Conclude International Treaties on Behalf of Respondents.
 - 1.** Respondents have assigned the TORMAY Union with the competence to act in the international sphere pertaining to this dispute and are thus estopped from denying its effectiveness.
- B.** The TATT Treaty Engages Respondents’ Direct Legal Responsibility, Not That of the TORMAY Union.
 - 1.** Respondents are bound by the acts of the TORMAY Union because they delegated these competences to the organization.
 - 2.** Alternatively, the TATT Treaty directly creates rights and obligations for member States of the TORMAY Union under customary international law.
 - 3.** Respondents are responsible for obligations under the TATT Treaty because the TORMAY Union is a collective organ of its member States, thus, an empowered agent of Respondents.
 - 4.** Alternatively, Respondents assume responsibility for the conduct of the T.U. since it exercises elements of governmental authority.

III. THE REPUBLIC OF RATANKA HAS VIOLATED INTERNATIONAL TREATY LAW BY THE ENACTMENT OF DOMESTIC LEGISLATION CONFLICTING WITH ITS INTERNATIONAL TREATY OBLIGATIONS.

- A. Respondents Have No Legal Authority to Invoke Municipal Law Rendering its Obligations under the TATT Treaty Inoperative.**
 - 1. Obligations under the TATT Treaty remained in force vis-à-vis Ratanka and its invocation of municipal law does not constitute repudiation conformant to the terms thereof.**
 - 2. Respondents are precluded from relying on Article 46 V.C.L.T.**

IV. THE CLAIMS PRESENTED BY THE REPUBLIC OF RATANKA ARE ADMISSIBLE.

V. ARGUENDO, THE REPUBLIC OF ANGHORE HAS NOT CLEARLY DEPARTED FROM ACCEPTED NORMS OF INTERNATIONAL HUMAN RIGHTS LAW WITHIN THE MEANING OF THE TATT TREATY WITH REGARD TO ITS CONSTITUTIONAL AMENDMENTS.

- A. Respondents have Violated Customary International Law by Exerting Unlawful Force Contrary to Article 2(4) of the United Nations Charter.**
- B. Respondents have Violated Customary International Law by Imposing Sanctions absent of United Nations Security Council Endorsement.**

VI. ARGUENDO, THE REPUBLIC OF RATANKA HAS NOT VIOLATED INTERNATIONAL TREATY LAW BY THE ENACTMENT OF DOMESTIC LEGISLATION INCONSISTENT WITH THE TERMS OF THE TATT TREATY.

- A. The Court is Not Competent to Entertain Claims Concerning the Policies Adopted Under Applicants' Administration since they Involve Non-justiciable Political Evaluations or Fall Within a States Margin of Appreciation.**
- B. Applicant Has Not Violated Accepted Norms of International Human Rights Law But Has Rather Acted in Consonance With the Obligations Established Thereunder.**
 - 1. Applicant has not violated the International Covenant on Civil and Political Rights by incorporating abortion rights into its constitution.**
 - 2. Applicant has not violated the International Covenant on Civil and Political Rights by articulating the right to die as a natural corollary to the right to life.**
 - 3. Applicant has not violated provisions of the International Covenant on Economic, Social and Cultural Rights.**

VII. THE REPUBLIC OF RATANKA HAS NOT VIOLATED CUSTOMARY INTERNATIONAL LAW BY SUSPENDING AID TO THE REPUBLIC OF ANGHORE.

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- A. Respondents have Applied Lawful Countermeasures in Recognition of Applicants' Breach of Obligations *Erga Omnes*.**

BODY OF ARGUMENTS

I. THE REPUBLIC OF ANGHORE HAS THE *JUS STANDI* TO PRESENT THE CLAIM.

A. All Effective Local Remedies Have Been Exhausted.

Local remedies are deemed to have been exhausted when a decision has been rendered by the highest tribunal which is without appeal prior to submission before this Court.¹ The TORMAY International Court (T.I.C.) has already decided the dispute in question.² The T.I.C. is an organ “placed at the disposal of”³ Ratanka and is acting “with the consent, under the authority of and for the purposes of”⁴ the same. A long-standing example of the attributability to the beneficiary State of conduct of organs placed at their disposal is the Judicial Committee of the Privy Council (PC), which acts as a final appellate court for numerous independent States within the Commonwealth.⁵ The PC role is paralleled by the secondment of judges to foreign jurisdictions and certain appellate courts, analogous to the TORMAY Union (T.U.), acting pursuant to treaty arrangements.⁶

B. Alternatively, the Claim Being Made is for Material Damage Resulting in a *Direct Injury to the Republic of Anghore* Attributable to the Wrongful Conduct of the Republic of Ratanka.

1. The characterisation of Anghore’s injury as ‘direct’ affords the Court jurisdiction to entertain Applicants claims.

When an aggrieved State is injured by a direct breach committed against it, such as when a treaty obligation is breached,⁷ it is entitled to seek declaratory relief as well as reparation.⁸ It is

¹ *Case Concerning Eletronica Sicula S.P.A. (ELSI) (United States of America v. Italy)*, I.C.J. Rep., 1989, 15; *Ambatielos Arbitration*, 23 I.L.R. 306; Trindale, *The Rule of Exhaustion of Local Remedies*, (Cambridge University Press, 1983) at p. 58.

² *Compromis*, ¶ 12 and 13.

³ See, Article 6 of *Draft Articles on State Responsibility for Internationally Wrongful Acts*, G.A. Res. 55/152, 2001 [hereinafter I.L.C. Articles].

⁴ *Ibid.*

⁵ *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, supra n. 3.

⁶ See, *Agreement between Nauru and Australia relating to Appeals to the High Court of Australia from the Supreme Court of Nauru*, United Nations, *Treaty Series*, Vol. 1216, p. 151.

⁷ *Phosphates in Morocco*, PCIJ Ser.A./B., No. 74, 1938; *Aerial Incident of July 27, 1955 (Israel v. Bulgaria)* I.C.J. Pleadings, 1955, 530; *Rainbow Warrior (New Zealand v. France)*, 20 UNRIAA 217, 1990; See also, *Oppenheim’s International Law-Vol. I* (Sir R. Jennings and Sir A. Watts, 9th Edn., New York: Longman, 1996) at 512; I. Brownlie,

humbly submitted that the present dispute pertains to a direct injury sustained by Anghore due to treaty violations and breaches of customary international law imputable to Respondents. It is uncontroverted that the prerogative of States to dictate their economic interests constitutes an “[i]ntrinsic attribute as a State”.⁹ It conclusively follows that Ratanka’s refusal “[t]hrough its lawfully constituted agents to recognise treaty rights constitutes a direct wrong”¹⁰ against the Applicant, and thus affords Anghore submission to the jurisdiction of this Court.¹¹

2. The nature of the claim for such direct injury renders exhaustion of local remedies unnecessary.

The nature of the Applicant’s claim encapsulates the ineffectiveness of due reparation through recourse to municipal Courts. Respondent’s violation of its international obligations cannot be adjudicated in a domestic forum,¹² for domestic Courts are not competent to adjudge international State responsibility.¹³

C. Alternatively, the Exhaustion of Local Remedies Rule must be Dispensed With in the Present Case Because its Application is Futile.

The exhaustion of local remedies rule is not a sacrosanct principle for the interposition of an international claim given the numerous exceptions absolving a claimant from its strict observance, such as evidence of judicial subservience.¹⁴ The dispute in question concerns violative conduct directly attributable to the Government of Ratanka. The futility of municipal means of redressal due to “the determined policy of the Executive to reach the desired result”¹⁵ has been

Principles of Public International Law, (6th Edn., Oxford University Press, 2003) at 472; D.J. Harris, *Cases and Materials on International Law*, (5th Edn., London: Sweet & Maxwell, 1998) at 85.

⁸ Oppenheim, *Ibid.* at 511-512; *The Panevezys Saldustiskis Railway Case (Estonia v. Lithuania)*, P.C.I.J. Rep., 1939, Series A/B, No. 76; *The Mexican Eagle Oil Company Dispute*, *Grotius Socy*, 1957.

⁹ *Aerial incident of July 27 1955 Case (Preliminary Objections)*, I.C.J. Rep. 1959, 127.

¹⁰ *Salem case (Egypt v. United States)*, 2 Rep. I.A.A., 1161, 1932.

¹¹ *Mexico v. USA*, I.C.J. Rep., 1991, 17; *United States Diplomatic and Consular Staff in Tehran Case (United States v. Iran)*, I.C.J. Rep., 1980, 3 at 29; *Heathrow Airport Charges Arbitration*, I.L.R., 102, 215.

¹² *Air Services Agreement of 27 March 1946 Case (United States v. France)*, I.L.R., 54 306.

¹³ *Case Concerning ELSI*, supra n. 1.

¹⁴ Trindale, supra n. 1 at p. 110.

¹⁵ *United States v. Great Britain American and British Claims Arbitration*, 6 I.A.A. 123; David Mummery, “The Content of the Duty to Exhaust Local Remedies”, 58 Am. J. Int’l L. 414, 1964.

addressed in a plethora of international judicial material.¹⁶ Given the Respondent's vociferous insistence to disregard its treaty obligations, Applicants submit that any *available* remedy constitutes "a senseless formality",¹⁷ thus any *effective* remedy is an "unreasonable possibility".¹⁸ *Arguendo*, a judgment decreed in favour of Anghore by an impartial tribunal would still be futile as it is markedly discernable that Ratankan Government policy would avert its enforcement.

II. THE REPUBLIC OF RATANKA IS INTERNATIONALLY RESPONSIBLE FOR THE PERFORMANCE OF OBLIGATIONS PRESCRIBED BY THE TATT TREATY.

A. Respondents have Attributed Competence to the TORMAY Union to Conclude International Treaties on Behalf of Ratanka.

1. Respondents have assigned the TORMAY Union with the competence to act in the international sphere pertaining to this dispute and Respondents are estopped from denying its effectiveness.

The T.U. has been empowered with competence to conclude international agreements by the agreement ratified by all member States in 2000.¹⁹ Express conferment of treaty-making power together with attribution of objective international legal personality allows the T.U. to engage in agreements binding upon the Respondents.²⁰ Under international law, "[t]he capacity of an international organization to conclude treaties is governed by the rules of that organization".²¹ This formulation permits recourse to implied powers and subsequent practice.²²

It is firmly ingrained into the corpus of international customary law that international organisations can derive implied powers subsidiarily, insofar as these are deemed necessary for the

¹⁶ *Greece v. United Kingdom (First Cyprus Case)*, App. No. 176/56, 2 YB 182 ECHR, *Greece v. United Kingdom (Second Cyprus Case)*, App. No. 299/57, 2 YB ECHR 184, 190; *Ireland v. United Kingdom*, App. No. 5310/71, 15 YB ECHR, 120; *Ireland v. United Kingdom*, 19 YB ECHR, 762, 768.

¹⁷ *Velasquez Rodriguez*, Ser. C, No.4, ¶ 68.

¹⁸ *Interhandel Case*, I.C.J., 1959, 27.

¹⁹ *Compromis*, ¶ 3.

²⁰ I. Brownlie, *Principles*, at 651.; D Verwey, *The European Community, The European Union and the International Law of Treaties*, (T.M.C. Asser Press, 2004) at 3; H. Schermers *et al*, *International Institutional Law*, (4th Edn., Cambridge University Press, 2003) at 987-988; J. Klabbbers, *An Introduction to International Institutional Law*, (Cambridge University Press, 2002).

²¹ *Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations*, Art. 6, March 21, 1986, U.N. Doc. A/CONF. 129/15 (1986) [hereinafter V.C.L.T.S.I.O.].

²² *Yearbook of the ILC*, 1982, vol. II, Part 2, p. 41.

attainment of its objectives and the fulfilment of its functions.²³ In the *Effect of Awards of Compensation Made by the UN Administrative Tribunal* case,²⁴ this Court held that the General Assembly could validly establish an administrative tribunal in the absence of an express power since the capacity to do this arose “by necessary intendment” out of the Charter. In the analogous EC context, parliamentary consultation is not mandatory for agreements securing the harmonious development of the Common Commercial Policy, since such external relations constitute the exclusive domain of the Commission.²⁵ This was recognised at the inception of the EC; hence before economic integration had occurred. As the approximation of economic policies is a necessary concomitant to economic integration,²⁶ which is a stated objective of the T.U.,²⁷ the TATT Treaty was executed within the powers necessarily implied out of the terms thereof. Moreover, Respondents bear the insurmountable onus of rebutting the presumption²⁸ that the T.U. has not exceeded its delegation in order to substantiate its *ultra vires* allegation.

Subsequent practice confirms the Respondent’s consent to be bound in the following terms:

(i) remonstrance was only lodged against the TATT Treaty in 2005, as a consequence of a national inflationary trend following its conclusion and implementation in 2000, subsequent to the formation of a coalition led by Mr Tequila,²⁹ (ii) rights under the TATT Treaty have been utilized, evidenced by Ratankan corporations gaining economic access to penetrate the Applicant’s domestic markets,³⁰ (iii) the Ratankan Act of Parliament is only explicable if Respondents were aware that internationally binding relations pre-existed between the disputant States.

²³ See Shaw, *International Law*, (5th Edn., Cambridge University Press, 2003) at 1195; Schermers and Blokker, *International Institutional Law*, (3rd Edn., The Hague, 1995) at 158.

²⁴ I.C.J. Reports, 1954 at 47; See also, *Reparations for Injuries Suffered in the Service of the United Nations*, (Advisory Opinion), I.C.J. Reports 1949, at 174, 179; *Legality of the Use by a State of Nuclear Weapons* case, I.C.J. Reports, 1999 at 66, 78-9.

²⁵ Article 133 (ex Article 113) Treaty establishing the European Union; Verwey, supra n. 20 at 94.

²⁶ See, P. Craig and G. D. Burca, *EU Law, Text, Cases and Materials*, (4th Edn., Oxford University Press, 2008).

²⁷ *Compromis*, ¶ 2 subpara. (a).

²⁸ *Certain Expenses of the UN* case, I.C.J. Reports, 1962, pp. 151, 168.

²⁹ *Compromis*, ¶ 3-8.

³⁰ *Compromis*, ¶ 4 and 5.

Ascertainment of the organization's competence permits recourse to the rules set forth in the Vienna Convention on the Law of Treaties (V.C.L.T.),³¹ for not only do they reflect customary rules of international treaty law,³² they also extend to international organisations' constituent instruments³³ and both parties to this dispute have ratified it.³⁴ That being so, the terms of the delegation must "[b]e interpreted in *good faith* in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."³⁵ As "any subsequent practice in the application of the treaty"³⁶ is a determinant of the interpretative rule, the only plausible explanation is that Respondents intended the transfer of treaty-making power to encompass a command over the economic condition of the T.U. In consonance therewith, the International Law Commission (ILC) has endorsed the principle of effectiveness, enshrined in the maxim, *ut res magis valeat quam pereat*.³⁷

Moreover, Respondents' failure to elucidate the limitations inherent in the delegated authority, or its omission to enter a reservation, precludes the invalidation of its consent to be bound.³⁸ The doctrine of estoppel prevents Respondents from acting inconsistently with its aforementioned representations,³⁹ which "[c]onstitute a valid mode of manifestation of its intent"⁴⁰ to be bound, especially because the Applicant State has been led to rely on such responsibility.⁴¹

³¹ *Vienna Convention on the Law of Treaties*, May 1969, 1155 U.N.T.S. 331, [hereinafter V.C.L.T.]

³² Shaw, *supra* n. 23; *Territorial Dispute (Libya v Chad)*, I.C.J. Reports, 1994, at 6, ¶ 41.

³³ See, Art. 5 V.C.L.T.; See also, *Legality of the Threat or Use of Nuclear Weapons in Armed Conflict*, Adv. Op., I.C.J. 1996, 66, ¶ 19.

³⁴ *Compromis*, ¶ 13.

³⁵ V.C.L.T., Art. 31, (emphasis added); *South West Africa (Ethiopia v. South Africa, Liberia v. South Africa)*, Preliminary Objections, I.C.J. Reports, 1962, 319, 336; H.Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", 26 Brit. Y.B. Int. L. 48 1949, 80.

³⁶ Article 31(3)(b) V.C.L.T.

³⁷ *Yearbook of the International Law Commission*, 1966, Vol. II Part Two, p. 219.

³⁸ See, Art. 47 V.C.L.T.; Art. 47 V.C.L.T.S.I.O.

³⁹ Lauterpacht, *The Development of International Law by the International Court*, 1958, 168-172; *Report of the I.L.C. on the Law of Treaties*, Y.B. I.L.C., 1963, 212-13; *Temple case*, I.C.J. Reports, 1962, 39-51, 61-5.

⁴⁰ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)*, Jurisdictional Phase, I.C.J. Rep. 1984, 392.

⁴¹ *Draft Articles on the Responsibility of International Organisations*, Commentary located in, *Report of International Law Commission on the Work of its Fifty-Eighth Session*, U.N. Doc. A/61/10, at 246-92.

B. The TATT Treaty Engages Respondents' Direct Legal Responsibility, Not That of the TORMAY Union.

1. Respondents are bound by the acts of the TORMAY Union because they delegated these competences to the organization.

Respondents are responsible for the activities of the T.U. in the fields of delegated competences, as States cannot evade their responsibility by delegation.⁴² By assigning the capacity to conclude international treaties and to conduct foreign relations,⁴³ it has entrusted the T.U. to deal with all of its external arrangements necessary for the furtherance of its objectives, including the conclusion of the TATT Treaty. Thus, the Respondent remains liable otherwise this would result in the circumvention of international responsibilities by mere deferral to another legal entity.

2. Alternatively, the TATT Treaty directly creates rights and obligations for member States of the TORMAY Union under customary international law.

Under general principles of international law, as frequently applied by the Court,⁴⁴ unless liability is specifically disclaimed,⁴⁵ member States of an international organization are responsible for agreements it concludes with non-members.⁴⁶ Because States are responsible for bringing into being international organisations charged with specific functions, it would be unacceptable for them to shelter their acts behind the legal personality of the organization for all the resultant responsibility thereof, as expressed at the General Assembly.⁴⁷

The aforementioned rule is in consonance with the practice of States to admit liability when supplying funds to the creditors of liquidated organisations lacking the financial wherewithal to

⁴² I.L.C. Report, 58th Sess., U.N.G.A. A/61/10, 286-291; *Fourth Report on Responsibility of International Organisations*, Addendum, U.N.G.A. A/CN.4/564/Add.2, ¶ 92; P.J. Kuijper & E. Paasivirta, "Further Exploring International Responsibility: the European Community and the ILC's Project on Responsibility of International Organisations", 1 I.O.L.R. 111, 2004, 122-123; *Waite and Kennedy v. Germany*, 2000, 30 E.H.R.R. 261, 287 ¶ 67; *Matthews v. United Kingdom*, 1999, 28 E.H.R.R. 361, 396 ¶ 32; *Bosphorus v. Ireland*, 2006, 42 E.H.R.R. 1, ¶ 154.

⁴³ *Compromis*, ¶ 3.

⁴⁴ *North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.)*, I.C.J. Rep., 1969, 3 46, ¶ 83-84; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.)*, I.C.J. Rep., 1993, 38, ¶ 46-48.

⁴⁵ *Chorzow Factory (Indemnity) Case*, P.C.I.J. Series. A. No.9, 21.

⁴⁶ M. Hirsch, *The Responsibility of International Organisations Toward Third Parties*, 1995; S. Yee, *The Responsibility of States Members of an international organisation for its conduct as a result of membership of their normal conduct associated with membership*, (M. Ragazzi Edn.), *International Responsibility Today Essays in Memory of Oscar Schachter*, 2005 at 435, 454.

⁴⁷ *Summary Rec. of the 11th meeting of the Sixth Committee*, Oct. 24th 2005, U.N.G.A. A/C.6/60/SR.11, ¶ 53.

discharge its obligations.⁴⁸ In recognition of this responsibility, it is also a consistent practice for States to limit their liability in the constituent instruments of the organisation concerned.⁴⁹

Furthermore, it has been internationally endorsed in the EC subsystem, that treaties concluded with non-member States take form as mixed agreements whereby apportionment of responsibility is concurrent and severable.⁵⁰ Under the regime therein, agreements bind all institutions of the organisation *and* the member States.⁵¹ Thus, [t]he member States would still be held subsidiarily liable under general international law for obligations undertaken by the Community”.⁵²

Moreover, the existence of this rule has been affirmed in *Westland Helicopters Ltd. v AOI*, when it was declared that “[i]n the absence of any provision expressly or impliedly excluding the liability of the four States, this liability subsists since as a general rule those who engage in transactions of an economic nature are deemed liable for the obligations which flow therefrom (...) This rule flows from general principles of law and from good faith”.⁵³

3. Respondents are responsible for obligations under the TATT Treaty because the TORMAY Union is a collective organ of its member States, thus, an empowered agent of Respondents.

In consonance with the maxim, *qui facit per alium, facit per se*, it is “a universally recognised principle of international law (...) that the State is responsible for the violations of the law of nations committed by its agents”.⁵⁴ Establishment of a *de facto* agency relationship requires

⁴⁸ Hirsch, *supra* n. 46, 126-127; “Current Developments: Public International Law”, 39 *Int’l & Comp. L.Q.*, 1990, 923-45.

⁴⁹ See, *MacLaine Watson & Co. Ltd. v. International Tin Council* [1989] 1 Ch. 72, 253; C.F. Amerasinghe, *Principles of Institutional Law of International Organisations*, 427, 2005; See also, *United Nations Convention on the Law of the Sea*, 1833 U.N.T.S. 3 1982, Art. 174 (4); *Agreement Establishing the Interamerican Investment Corporation*, available at, <http://www.iic.int>, Art. 2(6); *Convention Establishing the Inter-Arab Investment Guarantee Corporation*, available at, <http://www.iaigc.org>, Art. 7(4); *Agreement of the I.B.R.D.*, at, <http://web.worldbank.org>, Art. 2(6).

⁵⁰ McGoldrick, *EU Law and International Law: The Interface for the New Millennium*, in I. Cameron and A. Simoni (Eds.), *Dealing with Integration*. Vol. 2, 1998, 129.

⁵¹ Article 300(7) EC.

⁵² Stein, “External Relations of the EC: Structure and Process”, *Academy of European Law*, 1990, 115 at 168.

⁵³ *Westland Helicopters Ltd. v. Arab Organisation for Industrialisation*, I.L.R., 80, 1989,596, 613.

⁵⁴ UNRIAA., Vol. XV, pp. 399, 401, 404, 407-9, 411.

Respondent's effective control⁵⁵ over the organisation and consent to an agency relationship.⁵⁶ The latter can arise 'by the operation of law' including conduct,⁵⁷ thus is not susceptible to elaboration.

The member States of the T.U., by virtue of their exclusive membership and mutual desire for regional unification, have *de facto* control over the organisation. The ad-hoc transfer of treaty-making power instructing the T.U. to foster these common objectives is demonstrable of such control as the direction was subsequently followed, although not envisaged by the constituent treaty.⁵⁸ *A fortiori*, the claim of agency is incontrovertible in consideration of the representation of the member States, the existence of a constitutional relationship, and the position of subordination and dependence of the T.U. It is respectfully submitted that the relationship prevailing therein is one of 'factual agency', warranting the inference that the Respondent is an undisclosed principal.

Such imputation of responsibility is envisaged by Article 8 of the I.L.C's codification of customary international law on State responsibility.⁵⁹ Thus Ratanka's, "refusal to fulfill a treaty obligation involves international responsibility".⁶⁰ Moreover, it is firmly established by international jurisprudence that where an agent exceeds its delegated authority or acts in contravention to instructions, even if their superiors countermanded an order, the State cannot exonerate itself from responsibility.⁶¹

4. Alternatively, Respondents assume responsibility for the conduct of the T.U. since it exercises elements of governmental authority.

⁵⁵ *Nicaragua v. United States* I.C.J. Rep., 1986, 14, supra n. 40 at pp. 62, 64.

⁵⁶ D. Sarooshi, *Some Preliminary Remarks on the Conferral by States of Powers on International Organisations*, (J.M.W.P, 2003). See also; International Court of Justice: Rights of United States Nationals In Morocco Case, I.C.J. Rep., 1952, pp. 185, 188; *Expenses Case* supra n. 28 at 168, 292-293; *United States v. Iran*, supra n. 11 at 29; International Law Commission: Yearbook of I.L.C., 1964, Vol. 1, 732nd Meeting, p.58 at ¶ 53; *Yearbook of I.L.C.*, 1964, Vol. 1, 733rd Meeting, p.60 at ¶ 5; *First Report on State Responsibility*, A/CN.4/490/Add.5, 22 July 1998, ¶ 166.

⁵⁷ *United States v. Iran*, supra n. 11 at p. 35.

⁵⁸ *Compromis*, ¶ 2; See also, *Nicaragua case*, supra n. 40 for test on effective control.

⁵⁹ Art. 8 I.L.C. Articles, supra n. 3.

⁶⁰ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, I.C.J. Reports 1950, p. 221.

⁶¹ Article 7, I.L.C. Articles, supra n. 3.

The law of State responsibility declares that “the conduct of a[n] entity (...) which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law”.⁶² Thus, any autonomous institution entrusted to discharge governmental authority does so in representation of the empowering State.⁶³ The T.U. therefore has exercised Ratankan governmental prerogative on behalf of Respondents, who consequently bear responsibility.

III. RATANKA HAS VIOLATED INTERNATIONAL TREATY LAW BY THE ENACTMENT OF DOMESTIC LEGISLATION CONFLICTING WITH ITS INTERNATIONAL TREATY OBLIGATIONS.

A. Respondents Have No Legal Authority to Invoke Municipal Law Rendering its Obligations under the TATT Treaty Inoperative.

1. Respondent’s invocation of municipal law does not constitute repudiation conformant to the terms thereof.

Respondents cannot rely on the terms of the TATT Treaty⁶⁴ itself as justification for denunciation,⁶⁵ because, as established *infra*, that there has been no commission of a “*clear departure from accepted norms of international human rights law*”.⁶⁶ The inclusion of such terms implicitly grants Anghore a margin of discretion, which must be interpreted in good faith, contextually, and in accordance with the common intention of the treaty, its object and spirit.⁶⁷

The presumption of validity and continuance in force of a treaty⁶⁸ and the principle of *pacta sunt servanda*,⁶⁹ pertain to this dispute, requiring Respondents to attempt to “[f]ind solution within the co-operative context of the Treaty” before repudiating their obligations.⁷⁰ In consonance

⁶² Article 5 I.L.C. Articles, *supra*. 3.

⁶³ *Yearbook of the International Law Commission*, Vol. 2, 2001, *supra* n. 5.

⁶⁴ *Compromis*, ¶5, subpara. (e).

⁶⁵ Article 57 V.C.L.T. provides that “[t]he operation of a treaty (...) may be suspended (...) in conformity with the provisions of the treaty (...)”. See also Article 42 V.C.L.T.

⁶⁶ *Supra* n. 64 (emphasis added).

⁶⁷ Article 31, V.C.L.T.

⁶⁸ Art. 42 V.C.L.T.

⁶⁹ Article 26 V.C.L.T. reads: ‘Every treaty in force is binding upon the parties and must be performed by them in good faith’.

⁷⁰ *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, I.C.J. Rep. 1997, 7 at ¶ 142.

therewith, Article 27 of the V.C.L.T. asserts that a State may not invoke provisions of its internal law as justification for its failure to perform an international agreement.⁷¹ As this Court has consistently stated,⁷² any other situation would permit treaty obligations to be evaded by mere enactment of domestic legislation. Moreover, Ratanka may not invoke the independence of its legislative organ on the basis of its sovereignty as a pretext to escape its treaty obligations.⁷³

2. Respondents are precluded from relying on Article 46 V.C.L.T.

Respondents are precluded from invoking Article 46 V.C.L.T. on the basis of a manifest violation of fundamentally important constitutional procedures of its internal law preceding ratification of the TATT Treaty.⁷⁴ The Court can only countenance such a contention when a violation of internal law was “[o]bjectively evident”.⁷⁵ It is respectfully submitted on behalf of the Republic of Anghore that Respondents are unable to discharge this evidentiary burden.

B. The terms of the ‘Suspension of Obligations under the “TATT Treaty” Act’ constitutes a material breach of the TATT Treaty.

Respondents have materially breached the TATT Treaty due to their “[r]epudiation of the treaty not sanctioned by the [VCLT]”⁷⁶ and enactment of provisions which violate “provision[s] essential to the accomplishment of the object or purpose of the treaty”,⁷⁷ as follows:

- (i) Provision (d) of the TATT Treaty obliging the provision of economic aid to Anghore⁷⁸ is violated by the suspension of international aid under provision (a) of the Act.⁷⁹

⁷¹ Article 27 V.C.L.T.; Shaw, *supra* n. 23 at 124; Note also, Article 13 of the *Draft Declaration on the Rights and Duties of States*, 1949, which provides: ‘Every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty’, YB of the I.L.C., 1949, pp. 286, 289.

⁷² Advisory Opinion on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June*, I.C.J. Rep., 1988, p. 12 at 26, pp. 16 and 23; *Case Concerning The Application Of The Convention of 1902 Governing The Guardianship Of Infants*, I.C.J. Rep., 1958, p. 81.

⁷³ Ago, *Fourth Report on State Responsibility*, YB, I.L.C., Vol. II; M. Gomaa, *Suspension or Termination of Treaties on Grounds of Breach*, (Martinus Nijhoff Publishers, 1996) at p. 58.

⁷⁴ See, Article 46(1) V.C.L.T.

⁷⁵ Article 46 (2) reads: ‘A violation is manifest if it would be objectively evident to any State conducting itself in the manner in accordance with normal practice and in good faith’.

⁷⁶ Article 60(3)(a) V.C.L.T.

⁷⁷ Article 60(3)(b) V.C.L.T.

⁷⁸ *Compromis*, ¶ 5 subpara. (d).

- (ii) Provision (a) of the Treaty concerning the bestowal of *full* and *complete* economic access to “persons”⁸⁰ is violated by: (i) the prohibition on new Anghorian corporations from starting business in Ratanka,⁸¹ (ii) the introduction of a life and death corporation tax for businesses already engaged with Anghore corporations,⁸² and (iii) the placing of visa restrictions on Anghorians seeking work in Ratanka.⁸³
- (iii) Provision (c) of the Treaty concerning double taxation relief⁸⁴ is violated by the introduction of a life and death corporation tax under provision (c) of the Act.⁸⁵
- (iv) The freedom of movement of persons under the Treaty⁸⁶ is violated by the placement of visa restrictions on Anghorians seeking work in Ratanka under provision (d) of the Act.
- (v) Provision (b) of the TATT Treaty concerning the ‘Most Favoured Nation’ and national treatment rights accorded to Anghore⁸⁷ was violated by the suspension of international aid, the targeting of Anghore corporations and the subsequent boycotting of their goods.⁸⁸ The imputability test is satisfied through recourse to Article 10 of the ILC Articles, which states that, “the conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law”.⁸⁹

IV. THE REPUBLIC OF RATANKA HAS VIOLATED CUSTOMARY INTERNATIONAL LAW BY SUSPENDING INTERNATIONAL AID TO ANGHORE.

A. Respondents have Violated Customary International Law by Exerting Unlawful Force Contrary to Article 2(4) of the United Nations Charter.

⁷⁹ *Compromis*, ¶ 11 subpara. (a).

⁸⁰ *Compromis*, ¶ 5 subpara. (a). “Persons”, in the context of the TATT Treaty refers to subjects with legal personality, including natural persons and corporations. See, Article 31(1) V.C.L.T.

⁸¹ *Compromis*, ¶ 11 subpara. (b).

⁸² *Compromis*, ¶ 11 subpara. (c): A 5% increase in corporation tax for Ratankan corporations already conducting business with Anghore corporations operates as a disincentive to trade, and thus impedes access to the Ratankan economy.

⁸³ *Compromis*, ¶ 11 subpara. (d). Visa restrictions constitute a hindrance to economic access, since Anghorians, as factors of production, will be impeded from obtaining employment in Ratanka.

⁸⁴ *Compromis*, ¶ 5 subpara. (c).

⁸⁵ *Compromis*, ¶ 11 subpara. (c).

⁸⁶ *Compromis*, ¶ 5; Article 31(2)(a) V.C.L.T.; Goodwin-Gill, *International Law and the Movement of Persons Between States*, (Clarendon Press: Oxford, 1978).

⁸⁷ *Compromis*, ¶ 5 subpara. (b).

⁸⁸ *Compromis*, ¶ 7.

⁸⁹ Article 10 I.L.C. Articles, supra n. 3; *Bolivian Railway Case*, 9 RIAA, P. 445, 1903.

According to Article 2(4) of the United Nations Charter, a provision regarded as a principle of customary international law,⁹⁰ States must “[r]efrain in their international relations from the (...) use of *force* against the territorial integrity or political independence of any State”. Force in this context, it is submitted, subsumes economic measures. This conclusion is adducible from the clarification given by subsequent resolutions passed by the General Assembly declaring the impermissibility of economic coercion.⁹¹ Indeed, they dismiss a “myopic and restrictive approach to the regulation of coercion.”⁹² Furthermore, the Charter explicitly refers to “armed conflict” elsewhere; thus, the absence of a modifier indicates that “force” was intended to encompass non-military modes of coercion.

Applicants respectfully submit that the Ratankan Act of Parliament has the discernible object of economically coercing the Applicant into aborting its revolutionary liberal philosophy. The continuance of suspended aid until Anghore implements an effective public private participation framework for the creation of a social welfare net for its citizens,⁹³ and other measures until Anghore recognises that life begins at conception and ends with natural death,⁹⁴ exhibits their coercive nature and intention to obtain from Anghore “[t]he subordination of the exercise of its sovereign rights”,⁹⁵ namely, the right to criminalize the complained practices. Respondent’s non-economic motivation and desire to perpetuate a negative economic impact⁹⁶ means that they are, with all intent and purpose, economically coercing the Republic of Anghore.

⁹⁰ See: L. Henkin, R. C. Pugh, O. Schachter and H. Smit, *International Law Cases and Materials*, (3rd Edn., St. Paul, 1993), p. 893; Shaw, *supra* n. 23 at 1018.

⁹¹ *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States*, G.A. Res. A/RES/2131 (XX), 1965; *Charter of Economic Rights and Duties of States*, G.A. Res. 3281 (XXIX), U.N. GAOR, 29th Sess., Supp. No. 31, 1974, 50; *Friendly Relations*, G.A. Res. 3171, Dec. 1973; *Permanent Sovereignty over Natural Resources*, G.A. Res. 3281, Dec. 1974.

⁹² J. J. Paust and A.P. Blaustein, *The Arab Oil Weapon- A Threat to International Peace*, in, *Economic Coercion and the New International Economic Order*, pp. 128-132.

⁹³ *Compromis*, ¶ 11 subpara. (a).

⁹⁴ *Compromis*, ¶ 11 subpara. (e).

⁹⁵ *Ibid*: *Declaration on Non-Intervention; Charter of Economic Rights and Duties of States*, Article 32.

⁹⁶ O. Y. Elagab, “Coercive Economic Measures against Developing Countries”, *Int’l. & Comp. L.Q.* Vol. 41 at p. 682; D. Bowett, “Economic Coercion: Past and Present”, 1976, 16, *Virginia J. Int’l. L.* 245-259.

Several General Assembly resolutions⁹⁷ have proscribed the application of coercive economic intervention.⁹⁸ Since the emergence of a customary rule of international law dictates that, “the corresponding practice [need not] be in absolute rigorous conformity with the rule”,⁹⁹ Applicants submit that the unilateral imposition of punitive embargoes violates customary international law.

A fortiori, economic coercion in the sphere of economic aid is impermissible where the donor-recipient relationship is characterized as one of dependency, since the application of aid as leverage against the recipient State constitutes an unlawful reprisal.¹⁰⁰ As the administration of aid was an important rationale for the Applicants acceptance of the TATT Treaty,¹⁰¹ and Ratanka was fixed with this knowledge,¹⁰² there prevails a relationship of dependency.

B. Respondents have Violated Customary International Law by Imposing Sanctions absent of United Nations Security Council Endorsement.

Respondents are obliged, even concerning breaches of obligations owed *erga omnes*,¹⁰³ to submit a dispute to the Security Council for it to “[d]ecide what measures shall be taken (...) to maintain or restore international peace and security”.¹⁰⁴ Only the Security Council may decide to impose measures, pursuant to Article 41, based on a prior finding of a threat to the peace. Applicants submit that there is no threat to the peace to found a cause of action for Respondents, and in any event, Respondents’ economic strangulation of the Applicant State in the absence of a mandate is unlawful *per se*.¹⁰⁵

⁹⁷ Supra n. 91.

⁹⁸ I.L.C. Rep., 1986, U.N. Doc. A/CN.4/L528/Add.2, Article 50.

⁹⁹ *Nicaragua Case*, supra n. 40 at ¶ 186.

¹⁰⁰ O. Y. Elagab, 194, cited in I.L.C. Rep., 1995; I. Brownlie, G. Goodwin-Gill, Stefan Talmon, *The Reality of International Law: Essays in Honour of Ian Brownlie*, (Oxford University Press, 1999).

¹⁰¹ *Compromis*, ¶ 12.

¹⁰² *Compromis*, ¶ 11.

¹⁰³ N. White, A. Abass, *Countermeasures and Sanctions*, cited in M. Evans, *International Law*, (2nd Edn., OUP, 2003).

¹⁰⁴ Article 39 of the U.N. Charter.

¹⁰⁵ *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ¶ 73, Part 1 D, UN doc. E/CN.4/1987/17, Annex; *Human Rights Quarterly*, Vol. 9 (1987), pp. 122–135 [hereinafter *Limburg Principles*].

V. THE REPUBLIC OF RATANKA'S CLAIMS ARE INADMISSABLE SINCE LOCAL REMEDIES HAVE NOT BEEN EXHAUSTED IN ANGHORE.

Where the nature of a claim is not based preponderantly for direct injury to the State, but is brought to secure the interests of its nationals, local remedies must be exhausted.¹⁰⁶ The same is in consonance with the maxim *par in parem non habet imperium non habet jurisdictionem*.¹⁰⁷ Applicants respectfully submit that the preponderance test is satisfied as the real object of Respondents, that “which pervades and colours the claim”,¹⁰⁸ is clearly the interests of its nationals who are exploiting Anghore’s liberal philosophy, and not the alleged violation of obligations under the TATT Treaty or those owed *erga omnes*. More pertinently, the violation of a human rights instrument does not result in direct injury to the State *per se*.¹⁰⁹

Ratanka has not exhausted local remedies available in Anghore, notwithstanding that the President of the T.U. has stated that this is a question to be addressed by domestic courts.¹¹⁰

VI. THE REPUBLIC OF ANGHORE HAS NOT COMMITTED A CLEAR DEPARTURE FROM ACCEPTED NORMS OF INTERNATIONAL HUMAN RIGHTS LAW AS SPECIFIED UNDER THE TATT TREATY.

A. The Court is Not Competent to Entertain Claims Concerning the Policies Adopted Under Applicants’ Administration since they Involve Non-justiciable Political Evaluations or Fall Within a States Margin of Appreciation.

This Court may only decide upon “*legal disputes*” between States.¹¹¹ A dispute is characterized as legal if it does not turn upon political considerations, but rather is “capable of being settled by the application of principles and rules of international law.”¹¹² The question concerning the adequacy of Anghore’s efforts to create a social welfare net and guarantee the economic rights of its citizens, together with its secularist status is not capable of resolution by

¹⁰⁶ *Second Report on Diplomatic Protection, Special Rapporteur Dugart*, ILC, UN Doc. A/CN.4/1514, 2001, 167.

¹⁰⁷ T. Meron, “The Incidence of the Rule of Exhaustion of Local Remedies”, 35 *Brit. Y.B. Int’l L.*, 83 (1959); W.M. Reisman et al., *International Law in Contemporary Perspective* (New York: Foundation Press, 2004) at 461.

¹⁰⁸ *ELSI* case, supra n. 1.

¹⁰⁹ C.F. Amerasinghe, *Local Remedies in International Law*, (Cambridge, 1990).

¹¹⁰ *Compromis*, ¶ 12.

¹¹¹ Statute of the International Court of Justice, Art. 36, ¶ 2, June 26, 1953 U.N.T.S. 993 [hereinafter I.C.J. Statute] (emphasis added). See also, *Northern Cameroons (Cameroon v. United Kingdom)*, I.C.J. Reports 15, 1963 at 33-34.

¹¹² *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, I.C.J. Reports, 1988, 69, 91.

legal principles. The same is confirmed by the absence of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Thus, the Court is not competent, and indeed lacks accountability, to make political resource allocation decisions. With regard to all Respondents' allegations, this Court must exercise due deference, since States uncontrovertibly enjoy a wide margin of discretion as to the implementation of their respective obligations.¹¹³

Indeed, many international multilateral treaties are couched in imprecise language in order to accommodate political compromises, but nonetheless, performance by a party in a mode not envisioned by the other parties does not entitle the instigation of countermeasures.¹¹⁴

B. Applicant Has Not Violated Accepted Norms of International Human Rights Law.

- 1. Applicant has not violated the International Covenant on Civil and Political Rights by incorporating abortion rights into its constitution.**

Anghore's constitutional liberalisation of abortion laws is not violative of international human rights law, but rather in consonance with the duties imposed thereunder. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by both States,¹¹⁵ provides that "[e]very human being has the inherent right to life", without reference to the unborn.¹¹⁶ In fact, provisions stating that life begins at the moment of conception were deliberately omitted because of disparities in State practice and a lack of clear consensus.¹¹⁷ In this regard, Applicants humbly submit that the recognition of abortion rights by numerous States¹¹⁸ confirms that, "[t]he legal status of abortion is the sovereign right of each nation".¹¹⁹

¹¹³ *Limburg Principles*, ¶ 71; *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, ¶ 8, Part 1, *Human Rights Quarterly*, Vol. 20, 1998, at 691-705 [hereinafter *Maastricht Guidelines*].

¹¹⁴ S. Rosenne, *Developments In the Law Of Treaties 1945-1986*, (Cambridge, 1989) at p. 59.

¹¹⁵ *Compromis*, ¶ 13.

¹¹⁶ International Covenant on Civil and Political Rights, Art. 6 (1), G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966).

¹¹⁷ See, M.J. Bossuyt, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights*, (Dordrecht, 1987), pp. 113-26; D. McGoldrick, *The Human Rights Committee*, (Oxford, 1991), p. 330.

¹¹⁸ Approx. 90 per cent of States, representing 96 percent of the world's population, have policies which permit abortion to save the life of a woman: See, *Programme of Action of the United Nations International Conference on Population and Development*, p. 55.

¹¹⁹ UN Dept. of Public Info., *U.N. Fact Sheet No. 6*, Oct. 2000, available at, <http://www.un.org/geninfo/faq/factsheets/FS6>.

MEMORIAL FOR THE APPLICANT

The Universal Declaration of Human Rights,¹²⁰ following the United Nations Charter,¹²¹ which binds both parties by virtue of their membership,¹²² similarly states that “[e]veryone has the right to life” without defining ‘everyone’ nor ‘life’.

However, States are under an affirmative duty to protect the life of a pregnant woman.¹²³ It is an uncontroverted fact that maternal mortality is an unfortunate corollary of anti-abortion policies due to unsafe abortion practices and the medical complications that are ordinarily associated with pregnancy.¹²⁴ Thus, a denial of abortion rights to pregnant women can put them in life-threatening danger constitutive of a deprivation of their right to life enshrined in Article 6(1).

Furthermore, forced continuation of an unwanted pregnancy may also contravene, *inter alia*, Article 7 of the Covenant which prohibits the subjection to torture or to cruel, inhuman or degrading treatment. In the case of *Karen Noelia Llantoy Huamán v. Peru*¹²⁵ concerning the refusal to abort an anencephalic fetus, the Human Rights Committee (HRC) found Peru in breach of the ICCPR for its failure to recognise the psychological effects of forcing a pregnancy to term,¹²⁶ together with the failure to recognise privacy rights¹²⁷ and special protections that the aggrieved individual should have been granted as a minor.¹²⁸ Indeed the HRC, in an attempt to induce a liberalisation, has condemned various States with regard to their anti-abortion laws.¹²⁹

Regional organisations, similar to those of the T.U., have consistently reiterated that there is no right to life for the unborn. This is particularly noticeable from judicial decisions emanating

¹²⁰ Universal Declaration of Human Rights, Art 3, G.A. Res. No 217A (III), UN Doc A/810 (1948), [hereinafter UDHR].

¹²¹ Charter of the United Nations, Art. 55(c) states that the United Nations shall promote “*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*”

¹²² Supra n. 115.

¹²³ Art. 6(1) supra n. 116.

¹²⁴ See: Siegrid Tautz, “Unsafe Abortion, Review Paper, GTZ, Sector Project Reproductive Health”, 2004, available at, [http://www.gtz.de/de/dokumente/de-disk-ssa4\(1\).pdf](http://www.gtz.de/de/dokumente/de-disk-ssa4(1).pdf).

¹²⁵ Human Rights Committee [hereinafter HRC] CCPR/C/85/D/1153/2003, 17 Nov. 2005, VIEWS, Comm. No. 1153/2003.

¹²⁶ Article 7 of ICCPR.

¹²⁷ Article 17 states: ‘(1) *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.* (2) *Everyone has the right to the protection of the law against such interference or attacks.*’

¹²⁸ Article 24 of ICCPR.

¹²⁹ HRC, 82nd Session, Nov. 2004, Geneva, available at <http://www2.unog.ch/news2/documents/newsen/ct04020e.htm>.

from Article 2 of the European Convention on Human Rights (ECHR)¹³⁰ and Article 4 of the Inter-American Convention on Human Rights, even though the latter stipulates the right to life is “[p]rotected by law, and, in general, from the moment of conception”.¹³¹ Correspondingly, the European Court of Human Rights (ECtHR)¹³² has affirmed that the decision whether or not to abort involves the private life of the pregnant women which member States must respect under the ECHR.¹³³ Indeed, the utilitarian prioritization of individual autonomy over the uncertain value of unborn human life has been embraced in the Supreme Court of the United States.¹³⁴ The Applicant State has a duty to protect the right of self-determination of its people,¹³⁵ a right pertaining to the reproductive autonomy of pregnant women, as supported by the obligation to provide “[a]ppropriate services in connection with pregnancy”¹³⁶ under international law.

It is a submission of the Republic of Anghore that there can be no right to life owed to the unborn since this would divest a pregnant woman of her own rights. Thus, recognition of abortion rights is in alignment with Applicants international obligations.

2. Applicant has not violated the International Covenant on Civil and Political Rights by articulating the right to die as a natural corollary to the right to life.

No discernible prohibitions on voluntary euthanasia exist at international law. That States enjoy a wide margin of appreciation over voluntary euthanasia is beyond contestation,¹³⁷ given the endorsement of euthanasia or physician assisted suicide in many civilized jurisdictions.¹³⁸

¹³⁰ *Paton v. UK*, App. No. 8416/79, 1980, 19D and R 244; See also, *Vo v. France*, App. No. 53924/00 ECHR, 2004; *Evans v United Kingdom*, App. No. 6339/05, 2006 ECHR 200.

¹³¹ *Babyboy case*, No. 2141 U.S. 1981; 2 Human Rights Law Journal 110.

¹³² *Bruggemann and Scheuten v. Federal Republic of Germany*, App. No. 6959/75, 3 EHRR, 1977, 244 325 at p. 120: ‘*I am unable to attribute rights and freedoms under the Convention to an unborn child not yet capable of independent life.*’

¹³³ Article 8 ECHR; compare, Art 17 ICCPR, supra n. 127.

¹³⁴ *Roe v. Wade*, 410 U.S. 113, 1973.

¹³⁵ International Covenant on Economic, Social and Cultural Rights, [hereinafter ICESCR], Article 1(1), G.A. Res. 2200A (XXI), U.N. Doc. A/6361 (1966).

¹³⁶ Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Art. 12(2), G.A. Res. 2263(XXII), U.N. Doc. A/34/46 (1979).

¹³⁷ *Pretty v. United Kingdom*, 35 EHRR, 2002, 1, 46 ¶ 12; *Rees .v United Kingdom*, 9 EHRR 56, 1986, ¶ 49-50.

¹³⁸ Such as Netherlands, various States of the U.S., Belgium, Switzerland, Columbia, Japan, Austria- among others; See also, Article 38(1)(c) of the Statute of the International Court of Justice which states, ‘*The Court (...) shall apply: (...) c. The general principles of law recognised by civilized nations.*’

Article 6(1) of the ICCPR only prohibits *arbitrary* deprivation of life, as opposed to consensual termination of unbearable suffering upon request. There is no international immorality in implementing the wishes of individuals to forestall the protraction of their suffering, as contended by Respondents.¹³⁹ Accordingly, Applicants respectfully submit that an individual's protected right to self-determination¹⁴⁰ encompasses the issues of life and death.

Furthermore, the forced continuation of suffering amounts to the subjection of individuals to proscribed treatment under Article 7 of the same. In the regional sphere, this non-derogable¹⁴¹ right imposes positive obligations upon member States to prevent such treatment¹⁴² including treatment attributable to the progression of a disease where the State can ameliorate the suffering but does not do so.¹⁴³ Similarly, the duty of States to legally protect an individual's right to privacy against interference¹⁴⁴ lends credence to the permissibility of voluntary euthanasia.

3. Applicant has not violated provisions of the International Covenant on Economic, Social and Cultural Rights.

Article 2(1) of the Covenant in question encapsulates the principle of *progressive* realization in acknowledgment of constraints due to limited availability of resources.¹⁴⁵ In discharging this obligation, Anghore undertook to "take steps",¹⁴⁶ which it has duly done so through the adoption of legislative measures¹⁴⁷ and by securing international assistance under the

¹³⁹ *Compromis*, ¶ 11.

¹⁴⁰ Article 1(1) of ICCPR; reaffirmed in Article 1(1) in the context of ICESCR.

¹⁴¹ See Article 4(1) ICCPR.

¹⁴² *A v. United Kingdom*, 27 EHRR 611, 1998; *Z v. United Kingdom*, 2 FLR 612 at 631, ¶ 73, 2001.

¹⁴³ *D v. United Kingdom*, 24 EHRR 423, 1997, pp. 446-449, ¶ 46-54.

¹⁴⁴ Article 17, supra n. 127.

¹⁴⁵ Committee on ESCR, General Comment No.3, *The Nature of States Parties Obligations*, 5th Sess., U.N. Doc. HRI/GEN/1/Rev.1 at 45.

¹⁴⁶ Article 2(1) of the ICESCR reads: 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

¹⁴⁷ *Compromis*, ¶ 9, subpara. (d).

TATT treaty.¹⁴⁸ Thus, by taking “measurable progress to the full realization” of the said rights,¹⁴⁹ Applicants have discharged their obligations.

Respondents’ suspension of “[i]nternational assistance and co-operation”¹⁵⁰ to Anghore, a developing nation,¹⁵¹ has admittedly¹⁵² compromised its efforts to achieve these objectives. In this regard, it has been emphasized by resolutions adopted at the General Assembly¹⁵³ that in accordance with Articles 55 and 56 of the UN Charter, international cooperation for development is an obligation for all States, especially incumbent upon those in a position to assist, to enable developing countries to fulfill their core obligations.¹⁵⁴ In this vein, Respondents would be acting contrary to elemental principles of international law, namely, those of ‘good faith’ and ‘clean hands’, by instigating a claim for an alleged violation which it has contributorily accentuated.

VII. ARGUENDO, THE REPUBLIC OF RATANKA HAS VIOLATED CUSTOMARY INTERNATIONAL LAW BY VIRTUE OF ITS UNFOUNDED UNILATERAL IMPOSITION OF DISPROPORTIONATE COUNTERMEASURES.

The actions of the Republic of Ratanka, by virtue of their incompatibility with its international obligations,¹⁵⁵ can not amount to a lawful retorsion. Rather, Respondents have resorted to countermeasures based on its unilateral assessment of Anghore’s laws, and thus, has acted to its own peril if Anghore’s laws are objectively defensible,¹⁵⁶ as submitted *supra*.

In any event, the Ratankan countermeasures are disproportionate. A copious corpus of international jurisprudence has approved the requisite of proportionality in the application of countermeasures.¹⁵⁷ Whether countermeasures are “[c]ommensurate with the injury suffered”¹⁵⁸ as

¹⁴⁸ *Compromis*, ¶ 5, subpara. (d).

¹⁴⁹ *Maastricht Guidelines*, Part II, ¶ 8.

¹⁵⁰ *Supra* n. 146.

¹⁵¹ *Compromis*, ¶ 4.

¹⁵² *Compromis*, ¶ 11.

¹⁵³ Declaration on the Right to Development, G.A. res. 41/128, annex, 41 U.N. Doc. A/41/53, 1986.

¹⁵⁴ General Comment, *No. 14*, ¶ 45, U.N. G.A. A/CONF.191/BP/7, 13 May 2001.

¹⁵⁵ See, *YB of the I.L.C.*, Vol. 2, 2001, *supra* n. 5; M. Evans, *supra* n. 103.

¹⁵⁶ *Air Services Agreement*, *supra* n. 12 at 443, ¶ 81.

¹⁵⁷ *Draft Articles on State Responsibility, Part Two*, I.L.C. Rep., 1996, U.N. Doc. A/CN.4/L.528/Add.2 at 22; I.L.C. YB II-2, 1979, 118 at 595; *Sixth Report on State Responsibility*, U.N. Doc., 1985, A/CN.4/389, 18.

established in the *Air Services Case*, “[c]an at best be accomplished by approximation”.¹⁵⁹ Thus, according to the proportionality calculus, Applicants’ contention suffices if this Court is satisfied that the said measures bear no reciprocity to the gravity of the Applicants alleged internationally wrongful act.¹⁶⁰ To this end, it was agreed in the discussion of the Committee on Economic, Social and Cultural Rights on the effect of economic sanctions on civilian populations, that “it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of a country (...) and the collateral infliction of suffering upon the most vulnerable groups within the target country.”¹⁶¹ Moreover, Respondents are precluded from taking reprisals against persons protected by treaties of a humanitarian character.¹⁶² Accordingly, Ratanka’s imposition of draconian measures on Anghorians, the beneficiaries of the TATT Treaty, flagrantly violates its customary law obligations.

¹⁵⁸ Art. 51 I.L.C. Articles; *See also, Gabcivoko-Nagymaros Case*, supra n. 70 at ¶ 85.

¹⁵⁹ *Air Services Agreement of 27 March*, supra n. 12 at ¶ 443.

¹⁶⁰ Art. 50 I.L.C. Articles, p. 341 commentary.

¹⁶¹ General Comment 8 (1997) E/C.12/1997/8, 5 Dec. 1997, ¶ 4.

¹⁶² Article 60 (5) of V.C.L.T.

CONCLUSION/ PRAYER

Therefore in light of the questions presented, arguments advanced and authorities cited, this Hon'ble Court may be pleased to adjudge and declare that-

- I. The Republic of Anghore has the *jus standi* to present the claim.
- II. The Republic of Ratanka is bound by the TATT Treaty.
- III. The Republic of Ratanka has violated international treaty law by suspending its obligations under the TATT Treaty.
- IV. The Republic of Ratanka has violated its international customary law obligations.
- V. The claims presented by the Republic of Ratanka are inadmissible.
- VI. *Arguendo*, the Republic of Anghore has acted in consonance with its international human rights law obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- VII. *Arguendo*, the Republic of Ratanka has violated its customary law obligations by the imposing a disproportionate countermeasure.

All of which is respectfully submitted

Agents for the Applicant.