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
Respondent

MEMORIAL FOR THE RESPONDENT

REPUBLIC OF RATANKA

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

INDEX

CONTENTS	PAGE
INDEX OF AUTHORITIES	3.
STATEMENT OF JURISDICTION	13.
SYNOPSIS OF FACTS	14.
SUMMARY OF ARGUMENTS	16.
BODY OF ARGUMENTS:	18.
I. THE REPUBLIC OF RATANKA IS NOT RESPONSIBLE FOR THE PERFORMANCE OF OBLIGATIONS PRESCRIBED BY THE TATT TREATY……………………………………….………………**18.**	
II. REPUBLIC OF ANGHORE DOES NOT HAVE THE *JUS STANDI* TO PRESENT THE CLAIM………………………………………..**23.**	
III. THE CLAIMS PRESENTED BY THE REPUBLIC OF RATANKA ARE ADMISSIBLE………………………………………………..**25.**	
IV. THE REPUBLIC OF ANGHORE HAS CLEARLY DEPARTED FROM ACCEPTED NORMS OF INTERNATIONAL HUMAN RIGHTS LAW WITHIN THE MEANING OF THE TATT TREATY WITH REGARD TO ITS CONSTITUTIONAL AMENDMENTS…………….……………**27.**	
V. ARGUENDO, THE REPUBLIC OF RATANKA HAS NOT VIOLATED INTERNATIONAL TREATY LAW BY THE ENACTMENT OF DOMESTIC LEGISLATION INCONSISTENT WITH THE TATT TREATY…………………………………………………….………**35.**	
VI. THE REPUBLIC OF RATANKA HAS NOT BREACHED INTERNATIONAL CUSTOMARY LAW BY SUSPENDING INTERNATIONAL AID TO THE REPUBLIC OF ANGHORE…..…**36.**	
CONCLUSION/ PRAYER	38.

INDEX OF AUTHORITIES

ARTICLES	REFERENCE (In the body of argument)
A. Sereni, "Agency in International Law", Am. J. Int'l. L., 34, 1940.	3
Amerasinghe, "Liability to Third Parties of Member States of International Organisations: Practice, Principle and Judicial Precedent", 85 Am. J. Int'l. L. 259, 260, 1991.	4
B. Robertson, "Exhaustion of Local Remedies In International Human Rights Litigation: The Burden of Proof Reconsidered", Int'l. & Comp. L.Q. Vol. 39, No. 1, 1990.	8
Barry, Robert L, "Death Induction, Active Euthanasia by Omission and Protecting the Vulnerable", Int. Rev. of Natural Family Planning.	16
C. Eagleton, "International Organization and the Law of Responsibility", 76 RCADI, 319, 351, 1950	7
D. Sarooshi, "Some Preliminary Remarks on the Conferral by States of Powers on International Organisations", 2003, J.M.W.P. 4.	4
Gerard Conway, "Breaches of EC Law and the International Responsibility of Member States", EJIL 13, 2002.	6
H. Kuhse, P. Singer, "Active Voluntary Euthanasia, Morality and the Law" (1995) 3(2) J.M.L. 129.	16
H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", 26 Brit. Y.B. Int'l. L. 48 (1949).	18

M. Hardy, "Claims by International Organisations in respect of Injuries to their Agents", 37 Brit. Y.B. Int'l. L. 516, 1961.	6
P. P. Schoutheete, S. Andoura, Working Paper for European Affairs: The Royal Institute for International Relations, "The Legal Personality of the European Union", The Royal Institute for International Relations, Vol. LX, No. 1, 2007.	1
R.Y. Jennings, "Recent Developments in the International Law Commission: Its relation to the Sources of International Law", 13 Int'l. & Comp. L.Q. 385, 386, 1964.	5
Rosalyn Higgins, "Report on the Legal Consequences for Member States of the Non-fulfillment by International Organisations of their Obligations toward Third Parties", 1 Y.B. Inst. Int'l. L. 252, 1995.	2
T. Meron, "The Incidence of the Rule of Exhaustion of Local Remedies" (1959), 35 B.Y.I.L. 85.	10

BOOKS	REFERENCE
B. Cheng, *General Principles of Law as applied by International Courts and Tribunals,* 1987.	3
B.G. Ramcharan, "The Concept and Dimensions of the Right to Life" in, *The Right to Life in International Law* (Ramcharan Edn., MNP, Dordrecht, 1985).	12
Bradley M. Patten, *Human Embryology*, (3rd Edn., New York: McGraw Hill, 1968).	13
D Verwey, *The European Community, The European Union and the International Law of Treaties,* (T.M.C. Asser Press, 2004).	6
D.J. Harris, *Cases and Materials on International Law,* (5th Edn., London: Sweet & Maxwell, 1998).	9
E.L. Potter and J.M. Craig, *Pathology of the Fetus and the Infant*, (3rd Edn., Chicago: Year Book Medical Publishers, 1975).	13
F. G. Amador, *The Changing Law of International Claims* (1984).	10
Fenigsen, Richard, *A Case Against Dutch Euthanasia*.	16
H. G. Schermers & N. M. Blokker, *International Institutional Law* at 99, (4th Edn., 2003).	4
I. Brownlie, *Principles of Public International Law,* (6th Edn., Oxford University Press, 2003).	3
J Crawford, *The International Law Commissions Articles on State Responsibility: Introduction, Text and Commentaries,* (2002).	9
J.P. Greenhill and E.A. Friedman, *Biological Principles and Modern Practice of Obstetrics*, (Philadelphia: W.B. Sanders, 1974).	13

John F, *Lies and Lamentation—A Solid No to Euthanasia*.	16
Keith L. Moore*, The Developing Human: Clinically Oriented Embryology*, (6th Edn., Philadelphia: W.B. Saunders Company, 1998).	13
Oppenheim's International Law-Vol. I (Sir R. Jennings and Sir A. Watts, 9th Edn., New York: Longman, 1996).	9
Ronan R. O'Rahilly, Fabiola Muller, *Human Embryology & Teratology*, (New York: Wiley-Liss, 1996).	13
Scharf, *The Law of International Organisations,* 2001.	2
Segers, J. H. *Elderly Persons on the Subject of Euthanasia*.	16
Shaw, *International Law,* (5th Edn., Cambridge University Press, 2003).	4
Trindale, *The Rule of Exhaustion of Local Remedies,* (Cambridge University Press, 1983).	9
Van Der Sluis, Isaac, *How Voluntary Is Voluntary Euthanasia*?.	16
William J. Larsen, *Essentials of Human Embryology*, (New York: Churchill Livingstone, 1998).	13
Y Dinstein, "The Right To Life, Physical Integrity, and Liberty" in, *The International Bill of Rights,* (L. Henkin Edn., Columbia University Press, New York, 1981).	16

CASES	REFERENCE
Aerial Incident of July 27, 1955 (*Israel* v. *Bulgaria*) *I.C.J Pleadings*, 1955, 530.	9
Air Services Agreement of 27 March 1946 Case (United States v. France), I.L.R., 54 306.	20
Airedale NHS Trust v Bland [1993] 1 All ER 821.	16
Albert and Le Compte v. Belgium, [1983] ECHR 1.	15
Ambatielos Arbitration, 23 I.L.R. 306.	9
Arrest Warrant of 11 April 2000 (D.R.C. v. Belg.), I.C.J. Rep. 2002, 3, 32.	10
Australia & New Zealand Banking Group v. Australia, 29 I.L.M. 670, 674, 1989.	5
Borchgrave (Belg. v. Sp.), P.C.I.J. (ser. C), No. 85, 1937.	10
Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), I.C.J. Rep., 1986, 14.	4
Corfu Channel Case , I.C.J. Reports, 1949.	17
Costa/ENEL, Case 6/64, 1964 E.C.R. 585.	2
Dianne Pretty v. United Kingdom, App. No. 2346/02 ECHR.	15
Electronica Sicula S.P.A.(United States v. Italy), I.C.J. Rep., 1989.	8
Gabčíkovo-Nagymaros-Project (Hung. v. Slovk.), I.C.J. Rep., 1997.	19
Grootboom v. Republic of South Africa, [2001] 1 SA 46 (CC).	11
Hussain v. Union of India, O.P. 2741/1988.	12
Interhandel Case, (Switzerland v. United States), I.C.J. Rep., 1959.	8
Interpretation of the Agreement of 25 March 1951 between the WHO and	

Egypt Case, I.C.J. Reports 1980.	
J.H. Rayner (Mincing Lane) Ltd v Department of Trade and Industry [1990] 2 A.C. 418.	4
Kupferberg Case, 194/81 [1982] ECR 3641.	6
Laskey, Jaggard and Brown v. United Kingdom [1997] 24 EHRR 39.	15
MacLaine Watson & Co. Ltd. v. International Tin Council [1989] 1 Ch. 72, 253.	4
Olga Tellis v. Bombay Municipal Corporation, AIR 1986 Supreme Court 18.	12
Phosphates in Morocco, PCIJ Ser.A./B., No. 74, 1938.	9
Prosecutor v. Tadic, ICTY, Case IT-94-1, I.L.M., 1999, Vol. 38.	12
R v. Brown [1993] 2 All E.R. 75 (HL).	15
Rainbow Warrior (New Zealand v. France), 20 UNRIAA 217, 1990.	9
Re Quinlan N.J. 10, 355 A.2d 647 (1976).	16
Reparations for Injuries Suffered in the Service of the United Nations, (Advisory Opinion), I.C.J. Reports 1949.	1
Rodriguez v. British Columbia A-G, [1993] 3 S.C.R. 519.	15
South West Africa (Ethiopia v. South Africa, Liberia v. South Africa), (Preliminary Objections), I.C.J. Reports, 1962.	7
The Mexican Eagle Oil Company Dispute, Grotius Socy, 1957.	9
The Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania), P.C.I.J. Series A/B No. 76.	8.
The Queen v Secretary of State for Transport, ex parte Factortame Ltd and	2

Others, Cases 221 and 213/89 E.C.R.	
The Spanish Zone of Morocco Claim, Rapport III (1924) 2 UNRIAA.	17
UNESCO-France Arbitration Award, 2003, 107, R.G.D.I.P. 221.	6
United States Diplomatic and Consular Staff in Tehran Case (United States v. Iran), I.C.J. Rep., 1980, 3.	3
Van Gend en Loos, Case 26/62, 1963 E.C.R. 105, 129.	2
X v Germany [1984] 7 EHRR 152.	15

MISCELLANEOUS (TREATIES/ REPORTS ETC).	REFERENCE
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.	9
Agreement between the EU and the Federal Republic of Yugoslavia (FRY) on the activities of the EU Monitoring Mission (EUMM) in FRY, OJ, 2001, L 125/2	1
Agreement between the EU and the Republic of Macedonia on the activities of the EUMM, OJ, 2001, L 241/2; Agreement between the EU and the North Atlantic Treaty Organisation on the security of information, OJ, 2003, L 80/36	1
Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, 13 February 1946, Section 1.	7
Convention on the Rights of the Child.	13
Council of Europe Parliamentary Assembly, Recommendation 1418 (1999) 779.	16
Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 8, G.A. Res. 55/152, 2001	3
Draft Articles on State Responsibility, U.N. Doc. A/CN.4/L.501.	8
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.	5
Draft Convention on the Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners, Harvard Law School, 1929.	10

Fourth Report on Relations Between States and International Organizations, Y.B. Int'l. Comm'n., Vol.II, 153, A/CN.4/424.	7
Human Rights Quarterly, Vol. 9 (1987), pp. 122–135.	11
International Commission of Jurists, The Justiciability of Economic, Social and Cultural Rights: National, Regional and International Experiences.	11
International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966).	11
International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6361 (1966).	11.
International Military Tribunal, Nuremburg, 1st Oct. 1946.	16
Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI).	11
Report of International Law Commission on the Work of its Forty-Second Session, U.N. Doc. A/45/10, pp. 84-89, 1990	2
Report of the I.L.C. on the Work of its 53rd Sess., Draft Articles on Responsibility of States, U.N. GAOR 56th Sess., Supp. No. 10, U.N. Doc. A/56/10.	6
Report of the ILC on the Work of its 53rd Sess., Draft Articles on State Responsibility.	8
Statute of the International Court of Justice.	12
Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002.	14
The Limburg Principles on the Implementation of the International Covenant	11, 12, 17

on Economic, Social and Cultural Rights.	
The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.	11
Treaty Establishing the European Economic Community, 298, U.N.T.S. 11.	7
Treaty Establishing the European Union	1
U.N. Human Rights Committee.	14
UN Declaration of the Rights of the Child.	13
Universal Declaration of Human Rights, G.A. res. 217A (III).	12
Vienna Convention on the Law of Treaties, May 1969, 1155 U.N.T.S. 331	2

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:

Ratanka is a developed country that gained its 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. Anghore, by comparison, is a smaller, developing nation. 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 withdrawal from the TATT Treaty:

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.

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. Based on Anghorian international human rights breaches, the Ratankan Parliament passed the Suspension of Obligations under the "TATT Treaty" Act under clause (e) of the TATT Treaty. All of Ratanka's responsibilities under the TATT Treaty were legally withdrawn and the Act imposed obligations on Anghore to change 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. This led the Ratankan Government to consider prosecuting women who had flown into 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 prosecuted upon their return to Ratanka. Ratanka strongly protested this move and demanded the immediate return of the women.

SUMMARY OF ARGUMENTS

I. THE REPUBLIC OF RATANKA IS NOT RESPONSIBLE FOR THE PERFORMANCE OF OBLIGATIONS PRESCRIBED BY THE TATT TREATY.

A. **T**he Republic of Ratanka is Not Responsible for International Obligations Accepted by the TORMAY Union.

1. **T**he TATT Treaty does not engage the Respondents' direct responsibility because the TORMAY Union assumes obligations independently from Respondents by virtue of its separate international legal personality.

2. **T**he TORMAY Union is not an empowered agent of Respondents as they have not consented to an agency relationship and neither have effective control over the organisation.

3. **R**espondents are not concurrently responsible for breaches of the TATT Treaty under international law as they have not agreed to be subsidiarily liable or led Anghore to rely on their responsibility.

II. THE REPUBLIC OF ANGHORE DOES NOT HAVE THE JUS STANDI TO PRESENT THE CLAIM.

A. **A**pplicants Do Not Have Standing because Obligations Concerning the TATT Treaty was owed to the TORMAY Union, Not to the Applicants.

1. **O**nly the TORMAY Union is entitled to invoke Ratankan responsibility since the alleged obligations would have been owed solely to them.

2. **A**pplicants cannot espouse a claim on behalf of the TORMAY Union because the TATT Treaty confers no such right.

B. **A**lternatively, Applicants Claim is Inadmissible since Local Remedies Have Not Been Exhausted.

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

A. **T**he Republic of Ratanka is an Injured State because they are Specially Affected by the Breach of an Obligation owed to Member Nations of the TORMAY Union, and the International Community.

B. **T**he Republic of Ratanka has Exhausted all Available Local Remedies.

C. **T**he Exhaustion of Local Remedies Rule is Inapplicable.

1. The Preponderance test has been satisfied.

2. The *Sine Qua Non* test has been satisfied.

IV. **THE REPUBLIC OF ANGHORE HAS CLEARLY DEPARTED FROM ACCEPTED NORMS OF INTERNATIONAL HUMAN RIGHTS LAW WITHIN THE MEANING OF THE TATT TREATY WITH REGARD TO ITS CONSTITUTIONAL AMENDMENTS.**

A. **T**he Court is Competent to Entertain Respondents' Claims since Fundamental Human Rights are Justiciable.

B. **A**pplicant has Departed from Accepted Norms of International Human Rights Law

1. **A**pplicant has violated Article 6 of the International Covenant on Civil and Political Rights by incorporating abortion rights into its constitution.

2. **A**pplicant has violated Article 6 of the International Covenant on Civil and Political Rights by articulating the right to die as a natural corollary to the right to life.

3. **A**pplicant has violated provisions of the International Covenant on Economic, Social and Cultural Rights.

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

A. **R**espondents Have Acted in Conformity with International Law by Invoking the 'Suspension of Obligations under the "TATT Treaty" Act'.

1. **R**espondents have repudiated any obligations due under the TATT Treaty in accordance with the terms therein established.

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

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

BODY OF ARGUMENTS

I. THE REPUBLIC OF RATANKA IS NOT RESPONSIBLE FOR THE PERFORMANCE OF OBLIGATIONS PRESCRIBED BY THE TATT TREATY.

A. The Republic of Ratanka is Not Responsible for International Obligations Accepted by the TORMAY Union.

1. The TATT Treaty does not engage the Respondents' direct responsibility because the TORMAY Union assumes obligations independently from Respondents by virtue of its separate international legal personality.

It is inessential that the acquisition of international legal personality derives from an explicit stipulation to that effect in the constitutional charter.[1] The status of an international entity depends on its "[p]urposes and functions as specified or implied in its constituent documents *and* developed in practice".[2] Thus, the European Union (EU) is widely acclaimed to possess objective international legal personality[3] due to its generous invocation of Articles 24 and 38 of the Treaty of European Union (TEU), as its purported authority[4] and its capacity to entertain bilateral diplomatic relations with international actors under a right of legation.[5]

In the *Reparations* case, this Court found that international organizations "exercis[e] and enjo[y] functions and rights which can only be explained on the basis of the possession of a large measure of international legal personality and the capacity to operate on the international plane."[6] The TORMAY Union (T.U.) fulfils the prerequisites for the conferral of objective international standing through recourse to the doctrine of implied personality. The

[1] *Reparations for Injuries Suffered in the Service of the United Nations*, (Advisory Opinion), I.C.J. Reports 1949, at 174, 179; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt Case,* I.C.J. Reports 1980, at 73.
[22] *Ibid., Reparations for Injuries Suffered in the Service of the United Nations*, [emphasis added].
[3] On the basis of Article 2, ¶ 2, subpara. 2 of the Treaty Establishing the European Union.
[4] Agreement between the EU and the Federal Republic of Yugoslavia (FRY) on the activities of the EU Monitoring Mission (EUMM) in FRY, OJ, 2001, L 125/2; Agreement between the EU and the Republic of Macedonia on the activities of the EUMM, OJ, 2001, L 241/2; Agreement between the EU and the North Atlantic Treaty Organisation on the security of information, OJ, 2003, L 80/36.
[5] P. Schoutheete, S. Andoura, Working Paper for European Affairs: The Royal Institute for International Relations, "The Legal Personality of the European Union"*,* The Royal Institute for International Relations, Vol. LX, No. 1, 2007.
[6] *Reparations for Injuries Suffered in the Service of the United Nations*, supra n. 1.

member States, "[b]y entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged".[7] Considering whether non-Member States must recognise this personality, the Court held that the member Nations of the U.N., "had the power in conformity with international law, to bring into being an entity possessing *objective* international personality, and not merely personality recognised by them alone."[8] Like the UN, EC[9] and the EU, the T.U. possesses objective international legal personality.

The ability of an organisation to assume international obligations by entering into treaties resolves uncertainties surrounding its personality.[10] When an international organisation accedes to a treaty, the organisation itself, not its member States, assumes the treaty obligations.[11] The Vienna Convention on the Law of Treaties,[12] to which both parties to this dispute are bound,[13] provides that such a treaty "[d]oes not create either obligations or rights for a third State without its consent."[14] Obligations vis-à-vis Respondents could only arise "if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State *expressly* accepts that obligation in writing."[15] The same is in consonance with the refusal to include an Article 36*bis* into the V.C.L.T.S.I.O. for the purpose of rendering all

[7] *Ibid*. at 179.
[8] *Ibid*. at 185.
[9] Art. 281 EC Treaty reads: *'The Community shall have legal personality'*; See also, Art. 6 ECSC Treaty; Art. 184 Euratom Treaty. See also, *Costa/ENEL,* Case 6/64, 1964 E.C.R. 585; *Van Gend en Loos,* Case 26/62, 1963 E.C.R. 105, 129; *The Queen v Secretary of State for Transport, ex parte Factortame Ltd and Others,* Cases 221 and 213/89 E.C.R.
[10] See, *Report of International Law Commission on the Work of its Forty-Second Session,* U.N. Doc. A/45/10, pp. 84-89, 1990; Rosalyn Higgins, *Report on the Legal Consequences for Member States of the Non-fulfillment by International Organisations of their Obligations toward Third Parties,* 1 Y.B. Inst. Int'l. L. 252, 1995.
[11] See, Scharf, *The Law of International Organisations,* 2001 at p. 44.
[12] *Vienna Convention on the Law of Treaties*, May 1969, 1155 U.N.T.S. 331, [hereinafter] V.C.L.T.
[13] *Compromis,* ¶ 13.
[14] V.C.L.T., Art. 34; See also, *Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations*, Art. 34, March 21, 1986, U.N. Doc. A/CONF. 129/15 (1986) [hereinafter V.C.L.T.S.I.O.].
[15] V.C.L.T. Art. 35.

treaty commitments of international organisations automatically binding upon member States, since this contravened elemental principles, including, *pacta tertiis nec nocent nec prosunt.*

As Respondents have not *expressly* consented to be bound by the terms of the TATT Treaty, they cannot be held internationally responsible for acting inconsistently with them.

2. The TORMAY Union is not an empowered agent of Respondents as they have not consented to an agency relationship and neither have effective control over the organisation.

In substantiating an agency relationship, the consent of both parties is indispensable: "[w]ithout the principal's consent the agent has no authority, without the agent's consent the principal is unrepresented".[16] Indeed it has been acknowledged that, "the principle of individual responsibility- in international law is fully demonstrated by the fact that States are only responsible for those acts which are, according to international law, imputable to them. *Any exception to this principle (...) cannot be presumed but must result from an express and unequivocal treaty stipulation or a clear legal provision*."[17] In the *United States v. Iran* case[18] this Court posited that the necessary consent of the Iranian State for the establishment of an agency relationship with the militants was provided by the "[a]pproval given to these facts (…) and the decision to perpetuate them".[19] It is respectfully submitted that there has been no such approval of the TATT Treaty by Respondents, neither impliedly nor expressly.

The Draft Articles on State Responsibility[20] determines that *de facto* control is a determinant of attribution of international responsibility to States. This Court in the *Nicaragua*

[16] A. Sereni, "Agency in International Law", AJIL, 34, 1940, p.638.
[17] B. Cheng, *General Principles of Law as applied by International Courts and Tribunals,* 1987, pp. 213-214, [emphasis added].
[18] *United States Diplomatic and Consular Staff in Tehran Case (United States v. Iran),* I.C.J. Rep., 1980, 3 at 29.
[19] *Ibid*. at 35.
[20] *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 8, G.A. Res. 55/152, 2001 [hereinafter 2001 Draft Articles]; J Crawford, *The International Law Commissions Articles on State Responsibility: Introduction, Text and Commentaries,* (2002), pp. 110-113.

Case[21] developed the test of 'effective control' as the degree of control required to prove an agency relationship. The rigorous threshold therein established means, for the purposes of imputability, that Anghore must prove that the Respondent directed the T.U. to commit an act not envisaged by the constituent treaty, namely, to specifically conclude the TATT Treaty. Thus, Respondents humbly submit that a rebuttal of the presumption against an agency relationship cannot be achieved in the present dispute.[22]

3. Respondents are not concurrently responsible for breaches of the TATT Treaty under international law as they have not agreed to be subsidiarily liable or led Anghore to rely on their responsibility.

This Court's President, Rosalyn Higgins, has observed "there is no general rule of international law whereby States members are, due solely to their membership, liable concurrently or subsidiarily, for the obligations of an international organisation of which they are members".[23] The same is in consonance with the frequent practice of States to explicitly disclaim legal liabilities in the constituent instruments establishing the international organisation which they subscribe to.[24] Furthermore, this rule received judicial affirmation in the *International Tin Council* (ITC) case where it was held that the member States of the ITC were not concurrently responsible under international law for its financial liabilities to creditors in respect of an unsatisfied arbitration award.[25] The ITC was an international corporate entity designed to regulate the world tin market through the establishment of buffer stocks and export controls.[26] Lord Templeman, delivering the majority judgment in the British House of Lords

[21] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States),* I.C.J. Rep., 1986, 14 at pp. 62, 64, 65.
[22] D. Sarooshi, "Some Preliminary Remarks on the Conferral by States of Powers on International Organisations", 2003, J.M.W.P. 4.
[23] H. G. Schermers & N. M. Blokker, *International Institutional Law* at 99, (4th Edn., 2003).
[24] See *MacLaine Watson & Co. Ltd. v. International Tin Council* [1989] 1 Ch. 72, 253; Amerasinghe, "Liability to Third Parties of Member States of International Organisations: Practice, Principle and Judicial Precedent", 85 Am. J. Int'l. L. 259, 260, 1991.
[25] *J.H. Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 A.C. 418.
[26] *Ibid*. at 419; Shaw, *International Law,* (5th Edn., Cambridge University Press, 2003) at 1202.

held that there was "no support" for the submission that "a contract by the ITC involves a concurrent, direct, or guarantee liability on the members joint and severally."[27] This has been internationally endorsed as the correct encapsulation of the current state of international law.[28]

The International Law Commission (ILC), a selection of distinguished publicists tasked with the codification of customary international law,[29] has likewise concluded that member States of international organisations are not directly responsible for the obligations of the organisation merely because of their membership.[30] The circumstances envisaged where responsibility is directly attributable to the member State are not engaged in this case. State responsibility will be invoked only where the member State; (i) "aids or assists", "directs or controls", "an international organisation in the commission of an internationally wrongful act", (ii) "coerces an international organisation", or (iii) "accept[s] responsibility for that act or has led the injured party to rely on its responsibility".[31] Mere "[p]articipation by a Member State in the decision-making process of the organisation according to its pertinent rules" does not amount to aid or assistance.[32] While Respondents, as member States of the T.U., will be represented in Council, these representatives are acting solely under the capacity of the T.U. and not as instruments of the Respondent State. Furthermore, Respondents have not exerted coercion over any organs of the T.U., and have not directed nor assisted in its negotiation or conclusion of the TATT Treaty. Moreover, Respondents have not led Anghore to rely on their responsibility since it has not expressed consent to be responsible in the constituent treaty nor

[27] *Australia & New Zealand Banking Group v. Australia,* 29 I.L.M. 670, 674, 1989.
[28] Shaw, supra n. 26 at 1204; Higgins, *Legal Consequences,* p. 393; Schermers and Blokker, supra n. 23 at 992.
[29] R.Y. Jennings, "Recent Developments in the International Law Commission: Its relation to the Sources of International Law"*,* 13 Int'l. & Comp. L.Q. 385, 386, 1964.
[30] *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.
[31] *Ibid*. at 261-262.
[32] *Ibid*. at 279-281.

the ad-hoc transfer of powers, and, had no pre-existing trade and tax treaty relations with the Applicants before consolidation under the multilateral TATT Treaty.[33]

II. THE REPUBLIC OF ANGHORE DOES NOT HAVE THE *JUS STANDI* TO PRESENT THE CLAIM.

A. Applicants Do Not Have Standing because Obligations Concerning the TATT Treaty were owed to the TORMAY Union, Not to the Applicants.

1. Only the TORMAY Union is entitled to invoke Ratankan responsibility since the alleged obligations would have been owed solely to them.

As a corollary of the acquisition of international legal personality an international organisation is capable of possessing rights and obligations independently,[34] including the capacity to invoke the responsibility of States for internationally wrongful acts.[35] Therefore, this is a power *exclusive* to the T.U., as all obligations were owed to the same.[36]

The aforementioned proposition is in consonance with the practice of international organisations presenting claims themselves for breaches of obligations suffered by its agents.[37] In this regard, member States of the EC are prevented from consenting to the jurisdiction of international tribunals concerning disputes of general EC law.[38] Whilst the failure of member States to assist the Community can result in the institution of internal infringement procedures,[39] they cannot be called before the international legal order for failing to assist in the performance of internal obligations.[40] Therefore, only the T.U. is capable of invoking the international responsibility of Respondents and the Applicant lacks standing in this regard.

---

[33] *Compromis,*¶ 2 and 3.
[34] *Reparations for Injuries Suffered in the Service of the United Nations,* supra n. 1.
[35] *Ibid*.; M. Hardy, "Claims by International Organisations in respect of Injuries to their Agents", 37 Brit. Y.B. Int'l. L. 516, 1961.
[36] *Report of the I.L.C. on the Work of its 53rd Sess., Draft Articles on Responsibility of States,* U.N. GAOR 56th Sess., Supp. No. 10, U.N. Doc. A/56/10, Art. 42,¶ 1-3.
[37] *UNESCO-France Arbitration Award*, 2003, 107 R.G.D.I.P. 221.
[38] Article 292 EC Treaty; Gerard Conway, "Breaches of EC Law and the International Responsibility of Member States", EJIL 13, 2002 at 679-695.
[39] Articles, 226-227 EC; D Verwey, *The European Community, The European Union and the International Law of Treaties,* (T.M.C. Asser Press, 2004) at 150.
[40] Verwey, *Ibid*.; *Kupferberg Case,* 194/81 [1982] ECR 3641.

2. Applicants cannot espouse a claim on behalf of the TORMAY Union because the TATT Treaty confers no such right.

Since "[e]very international subject has the capacity to enter directly into international intercourse",[41] the Applicant is unable to espouse the T.U's claim. Indeed, Applicants are precluded from presenting the claim as no such right has been conferred. Equally, no provision enabling a State to espouse a claim in place of an international organisation has been included in the codification of international responsibility of international organisations.[42]

The fact that the Statute of this Court[43] precludes international organisations from becoming parties to contentious proceedings, as opposed to its advisory jurisdiction, does not grant Anghore with a cause of action on their behalf. This Court has previously stated that "in the international field, the existence of obligations that cannot in the last resort be enforced by any legal process, has always been the rule rather than the exception."[44] Any other situation would disregard the international personality of the organisation, contrary to the legitimate interests of Respondents.[45]

B. <u>**A**lternatively, Applicants Claim is Inadmissible Since Local Remedies Have Not Been Exhausted.</u>

Since international organisations possessing legal personality are able to instigate legal proceedings in municipal courts,[46] the T.U. is obliged, as are the Applicants, to exhaust local remedies before a claim is presented on the international plane.[47]

---

[41] A. Sereni, supra n. 16.
[42] Report of the ILC, 55th Sess., A/CN.4/532; Report of the ILC, 55th Sess., A/CN.4/541; Report of the ILC, 57th Sess., A/CN.4/553; Report of the ILC, 58th Sess., A/CN.4/564; Report of the ILC, 58th Sess., A/CN.4/564/Add.1.
[43] IC.J. Statute, June 26, 1945, 1060 U.S.T.S. 993, Article 34.
[44] *South West Africa (Ethiopia v. South Africa, Liberia v. South Africa),* Preliminary Objections, I.C.J. Reports, 1962 at 319, ¶ 86.
[45] Shaw, supra n. 26 at 243.
[46] *Convention on the Privileges and Immunities of the United Nations*, 1 U.N.T.S. 15, 13 February 1946, Section 1; *ILO Constitution*, Article 39, 15 U.N.T.S. 35; *Treaty Establishing the European Economic Community*, 298 U.N.T.S. 11 Article 211; *Fourth Report on Relations Between States and International Organizations*, Y.B. Int'l. Comm'n.., Vol.II, 153, Article 5, A/CN.4/424.
[47] C.Eagleton, "International Organization and the Law of Responsibility*",* 76 RCADI, 319, 351, 1950.

A claim is rendered inadmissible if “the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.”[48] Thus, the claim must be bought before “[t]he competent tribunals and pursued as far as permitted by local law and procedures, and without success.”[49] Redress is clearly available in the domestic Courts of the Republic of Ratanka, but neither the T.U., nor the Applicants have exhausted local remedies.

Indeed, where States intend waiver of the rule, practice dictates the inclusion of an express treaty stipulation to this effect, to rebut the presumption towards its observance.[50]

Furthermore, the mere involvement of the Respondent State is not sufficient to render the rule futile according to the *dictum* of the *Interhandel Case*.[51] Judicial independence militates against the inference of executive interference or judicial subservience or impartiality.

A fortiori, this Court cannot confer jurisdiction upon a dispute until and unless the municipal courts have conclusively denied jurisdiction,[52] thus, Applicants are precluded from resorting to the jurisdiction of the Hon’ble International Court of Justice.

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

A. The Republic of Ratanka is an Injured State because they are Specially Affected by the Breach of an Obligation owed to Member Nations of the TORMAY Union, and the International Community.

International responsibility may be invoked by a State *specially* affected by the breach of obligations owed to a group of States under a multilateral treaty.[53] Respondents submit that Ratanka has been “affected by the breach in a way which distinguishes it from the generality of

---

[48] Article 44(b), Draft Articles on State Responsibility, U.N. Doc. A/CN.4/L.501.
[49] *Electronica Sicula S.P.A.(United States v. Italy),* I.C.J. Rep., 1989, p. 42 at ¶ 50.
[50] *Ibid.* at ¶ 51.
[51] *Interhandel Case, (Switzerland v. United States),* I.C.J. Rep., 1959 at p. 6.
[52] *The Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania),* P.C.I.J. Series A/B No. 76; B. Robertson, “Exhaustion of Local Remedies In International Human Rights Litigation: The Burden of Proof Reconsidered”*,* Int’l. & Comp. L.Q. Vol. 39, No. 1, 1990.
[53] Report of the ILC on the Work of its 53rd Sess., Draft Articles on State Responsibility, Article 42, ¶ 1, 2 & 3, supra n. 48.

other States to which the obligation is owed"[54] because of the masses of aborted fetuses and euthanized Ratankan's at the hands of the Anghorian regime.

B. The Republic of Ratanka has Exhausted all Available Local Remedies.

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.[55] The TORMAY International Court (T.I.C.) has already decided the dispute in question.[56] The T.I.C. is an organ "placed at the disposal of"[57] Anghore and is acting "with the consent, under the authority of and for the purposes of"[58] 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.[59] The PC role is paralleled by the secondment of judges to foreign jurisdictions and certain appellate courts, analogous to the T.U., acting pursuant to treaty arrangements.[60]

C. The Exhaustion of Local Remedies Rule is Inapplicable.

When an aggrieved State is injured by a direct breach committed against it,[61] it is entitled to seek declaratory relief as well as reparation.[62] Respondents humbly submit that the

[54] Article 42, ¶ 13, *Ibid.*
[55] *ELSI case,* supra n. 49; *Ambatielos Arbitration,* 23 I.L.R. 306; Trindale, *The Rule of Exhaustion of Local Remedies,* (Cambridge University Press, 1983) at p. 58.
[56] *Compromis,* ¶ 12 and 13.
[57] See, Article 6 of 2001 Draft Articles, supra n. 20.
[58] *Ibid.*
[59] *Ibid.*
[60] 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.
[61] *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 ed., 9th Edn., New York: Longman, 1996) at 512; I. Brownlie, *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.
[62] 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.

present dispute pertains to a direct injury sustained by the Republic of Ratanka due to flagrant treaty violations committed by the Republic of Anghore.

1. The Preponderance test has been satisfied.

When a claim is based preponderantly on direct injury, the exhaustion of local remedies is unnecessary.[63] In this case, the claim raised by Respondents concerns the infliction of direct moral injury. As observed by Judge Jessup in the *South West Africa* case, "[i]international law has long recognised that States may have legal interests in matters which do not affect their financial, economic, or other 'material', or, say 'physical' or 'tangible' interests".[64] Thus, the moral injury[65] suffered by Ratanka,[66] aggregated with the violation of the TATT Treaty, confutes any assertions that Respondents' claims are preponderantly indirect.

2. The *Sine Qua Non* test has been satisfied.

A claim comprising elements of direct and indirect injury would need to be exhausted on the domestic plane if it would not have been instituted internationally but for the indirect injury sustained by its nationals.[67] It is clearly discernable that Respondents' concerns are centralized around Anghore's failure to guarantee the rights of its own nationals, not those of Respondents; therefore, the claim is characterized as pertaining to a direct injury.

IV. APPLICANTS HAVE CLEARLY DEPARTED FROM ACCEPTED NORMS OF INTERNATIONAL HUMAN RIGHTS LAW WITH REGARD TO ITS CONSTITUTIONAL AMENDMENTS

A. The Court is Competent to Entertain Respondents' Claims since Fundamental Human Rights are Justiciable.

[63] F. G. Amador, *The Changing Law of International Claims* (1984), pp. 467-468; *Draft Convention on the Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners*, Harvard Law School, 1929, and Commentary, reproduced in (1929) 23 A.J.I.L., Special Suppl., pp.156-157; 2006 ILC Draft Articles on Diplomatic Protection; T. Meron, "The Incidence of the Rule of Exhaustion of Local Remedies" (1959), 35 B.Y.I.L. 85.

[64] *South West Africa (Eth. v. S. Afr., Liber. v. S. Afr.),* Jurisdiction Phase, I.C.J. Rep., 1969, 319, 425 (separate opinion of Judge Jessup).

[65] See, *Arrest Warrant of 11 April 2000 (D.R.C. v. Belg.),* I.C.J. Rep. 2002, 3, 32; *Borchgrave (Belg. v. Sp.),* P.C.I.J. (ser. C), No. 85, 1937 at 37; *Rainbow Warrior (Fr. v. N.Z.)* I.L.R. 1990, 82, 500.

[66] *Compromis,* ¶ 11.

[67] Supra n. 63.

The justiciability of the rights embodied in the International Covenant on Civil and Political Rights[68] is uncontroverted, as clarified by the international adjudicative mechanism existing under the United Nations to monitor violations of the same.[69] Respondents submit, in line with international jurisprudence,[70] that the indivisibility and interdependence of human rights countenances any objections as to the justiciability of immediate rights guaranteed under the International Covenant on Economic, Social and Cultural Rights.[71]

The Constitutional Court of South Africa has observed with regard to certain qualified economic, social and cultural constitutional rights that, "[t]hese are rights and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce".[72] Furthermore, the British House of Lords in the case of *Limbuela v. Secretary of State for the Home Department*[73] held that a refusal to support destitute asylum seekers and a statutory prohibition preventing them from seeking employment violated Article 3 of the European Convention on Human Rights.[74] Thus, the Court engaged the rights to social security, adequate standard of living and the right to physical and mental health as paralleled under Articles 9, 11 and 12 of the ICESCR respectively. Similarly, the

[68] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966) [hereinafter ICCPR].
[69] International Commission of Jurists, *The Justiciability of Economic, Social and Cultural Rights: National, Regional and International Experiences;* See also, Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI).
[70] *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, [hereinafter *Limburg Principles*] ¶ 3, Part 1 A, UN doc. E/CN.4/1987/17; *Human Rights Quarterly*, Vol. 9 (1987), pp. 122–135; *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,* [hereinafter *Maastricht Guidelines*] ¶ 4, *Human Rights Quarterly,* Vol. 20, 1998, at 691-705; Foreign Commonwealth Office, *Human Rights Annual Report*, 2006 at 233.
[71] International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 [hereinafter ICESCR].
[72] *Grootboom v. Republic of South Africa*, [2001] 1 SA 46 (CC) at ¶ 45, Yacoob J. refers to the ICESCR, and employs a test of reasonableness, concluding that the eviction of illegal squatters was unreasonable.
[73] [2006] 1 A.C. 396.
[74] Concerning freedom from subjection to inhuman or degrading treatment; *comparable to,* Article 7 of ICCPR.

Supreme Court of India[75] has interpreted the right to life to give rise to socio-economic rights, since paucity of the former prevents full enjoyment of the latter. Thus, the Hon'ble Court is competent to adjudicate whether Applicants have respectively departed from accepted norms of international human rights law, otherwise these rights would be merely symbolic.

The ICESCR should therefore, "in accordance with the Vienna Convention on the Law of Treaties be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and *the relevant practice*".[76] Indeed, the [s]tate-sovereignty-orientated approach has been gradually supplanted by a human-being-orientated approach."[77]

B. Applicant has Departed from Accepted Norms of International Human Rights Law.

1. Applicant has violated the International Covenant on Civil and Political Rights by incorporating abortion rights into its constitution.

The ICCPR, which has been ratified by both parties to this dispute,[78] guarantees the "[r]ight to life" of "[e]very human being".[79] This provision, of deceptive simplicity, "leaves the meaning ambiguous and obscure"[80] and therefore permits recourse to supplementary means of interpretation, including instruments ratified by the United Nations, as both parties are signatories of the same.[81] In this regard, Article 3 of the Universal Declaration of Human Rights[82] articulates the "[r]ight to life"; a right regarded as "[e]qual and inalienable of all members of the human family".[83] Consensus among distinguished embryologists verifies that

[75] *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 Supreme Court 18; *Hussain v. Union of India*, O.P. 2741/1988, concerning the right to potable water being encompassed within the right to life enshrined in Article 21, Part IV, Directive Principles of State Policy.
[76] *Limburg Principles,* Part 1, ¶ 4; See also, Art. 31of V.C.L.T.
[77] *Prosecutor v. Tadic,* ICTY, Case IT-94-1, I.L.M., 1999, Vol. 38.
[78] *Compromis,* ¶ 13.
[79] Art. 6 (1) of ICCPR.
[80] See, Article 32(a) of V.C.L.T.
[81] *Compromis,* ¶ 13.
[82] Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) [hereinafter UDHR].
[83] First preambular paragraph of UDHR.

human life begins at fertilization[84] and from that moment we all share a common humanity; that we are all members of the "human family". Accordingly, the Applicant is required under international human rights law[85] to protect the unborn insofar as the fetus comprises a member of the human family.

The envisagement of protection for the unborn is compounded by the prohibition on capital punishment of pregnant women.[86] Respondents submit that this protection can only be rationalized by attributing rights to life to an innocent unborn child.

Furthermore, Article 24 of the ICCPR regarding the rights of the child is to be interpreted consistently with the relevant provisions of the Convention on the Rights of the Child[87] following the UN Declaration on the Rights of the Child.[88] Thus, "[t]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before* as well as after birth".[89] Since a child is defined as a human being,[90] it follows that Article 6(1) of the ICCPR encompasses protection for the unborn child.

Fetal "right to life" must take precedence over a woman's autonomic human right of privacy promulgated in Article 17 of the ICCPR. Any other situation would perpetuate the blanket authorization of abortions and disproportionately grant the counter-rights of the mother priority over the sole subsisting right of the fetus, that of life.

---

[84] Keith L. Moore, *The Developing Human: Clinically Oriented Embryology*,(6th Edn., Philadelphia: W.B. Saunders Company, 1998), 2-18; William J. Larsen, *Essentials of Human Embryology*, (New York: Churchill Livingstone, 1998), 1-17; Ronan R. O'Rahilly, Fabiola Muller, *Human Embryology & Teratology*, (New York: Wiley-Liss, 1996), 5-55; Bradley M. Patten, *Human Embryology*, (3rd Edn., New York: McGraw Hill, 1968), 43; J.P. Greenhill and E.A. Friedman, *Biological Principles and Modern Practice of Obstetrics*, (Philadelphia: W.B. Sanders, 1974), 17; E.L. Potter and J.M. Craig, *Pathology of the Fetus and the Infant*, 3rd Edn., Chicago: Year Book Medical Publishers, 1975).

[85] Art. 38(1) of the Statute of the International Court of Justice states: *'The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply (...) the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law'.*

[86] Article 6(5) of the ICCPR.

[87] Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/44/49 (1989), Ninth Preambular paragraph.

[88] UN Declaration of the Rights of the Child, G.A. res. 1386 (XIV), U.N. Doc. A/4354 (1959), Third Preambular paragraph.

[89] *Ibid.*

[90] Article 1, Convention on the Rights of the Child, supra n. 87.

2. **A**pplicant has violated the International Covenant on Civil and Political Rights by articulating the right to die as a natural corollary to the right to life.

Article 6(1) of the ICCPR forbids the *arbitrary* deprivation of life.[91] The non-derogability[92] of the same, even in situations of life-threatening national emergency, emphasizes the sanctity accorded to human life. The inclusion of the word "arbitrary" is widely regarded as having "[t]he intention of providing the highest possible level of protection of the right to life and to confine permissible deprivations therefrom to the narrowest of limits".[93]

The promulgation of a positive right to die, equivalent to the unfettered authorization of euthanasia, is unprecedented and therefore defies *norms* of international human rights law. For example, the legalization of voluntary euthanasia in the Netherlands is circumscribed to patients facing a future of unbearable, interminable suffering where a voluntary and well-considered request to die is made and a doctor and second medical opinion is convinced that there is no other solution to ameliorate suffering.[94] Notwithstanding this circumspect regulation, the regime has attracted international castigation; "the main worry [being] not only the actual practice, but also the fact that this new law could create precedents that dilute the importance and trivialize this act".[95] Since there are no identifiable prerequisites under the Applicants constitutionalised regime, these concerns are accentuated. It is humbly submitted on behalf of Respondents that the promulgated right thus falls under the "arbitrary" meaning.

Furthermore, the consent of a person cannot render nugatory a *prima facie* infringement of Article 6(1) for two reasons. Firstly, the right to life is inalienable[96] and transcends the

[91] Article 6(1) of the ICCPR states: *'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'.*
[92] Article 4(2) of the ICCPR.
[93] B.G. Ramcharan, "The Concept and Dimensions of the Right to Life" in, *The Right to Life in International Law,* (Ramcharan Edn., MNP, Dordrecht, 1985) at p. 19.
[94] *Termination of Life on Request and Assisted Suicide (Review Procedures) Act,* 2002.
[95] U.N. Human Rights Committee, 72nd Sess., Committee Rapporteur Eckart Klein.
[96] First Preambular paragraph of UDHR.

individual; thus cannot be waived in subordination to ones right of self-determination. Secondly, consent ceases to be legally effective when consensual infliction of serious harm is involved.[97] To this end, the European Court of Human Rights (ECtHR) has stated that "[t]he nature of some of the rights safeguarded by the Convention is such as to exclude a waiver of the entitlement to exercise them."[98] The mandatory right of bodily integrity thus bars consent from being invoked to excuse euthanasia as non-arbitrary.

Moreover, it has been judicially confirmed that infliction of inhumane or degrading treatment will be justified in order to serve the ends of protecting ones right to life.[99] In the analogous case of *Pretty v United Kingdom* the Applicant contended that the right to die is the corollary of the right to life which the State had an affirmative duty to protect.[100] In the negative, the ECtHR unanimously stated that "[N]o right to die, whether at the hands of a third person or with the assistance of a public authority could be derived".[101] In reliance of the erudite decision of the Supreme Court of Canada in the case of *Rodriguez v Canada,* the Court quoted "[I] find more merit in the argument that security of the person, by its nature, cannot encompass a right to take action that will end ones life as security of the person is intrinsically concerned with the well-being of the living person".[102] Thus, the right to die is not the corollary of the right to life, but the antithesis to it, and thus prohibited under international law.

The institutionalization of voluntary euthanasia has also been censured because practice confirms that vulnerable individuals submissively consent, rather than ardently acquiesce, to the

[97] *Laskey, Jaggard and Brown v. United Kingdom* [1997] 24 EHRR 39, *R v. Brown* [1993] 2 All E.R. 75 (HL).
[98] *Albert and Le Compte v. Belgium,* [1983] ECHR 1, ¶ 35.
[99] *X v Germany* [1984] 7 EHRR 152; See, *Dianne Pretty v. United Kingdom*, App. No. 2346/02 ECHR, ¶ 13.
[100] *Pretty v. UK, Ibid.*
[101] *Ibid.*¶ 40.
[102] *Rodriguez v. British Columbia A-G*, [1993] 3 S.C.R. 519.

termination of life in order to alleviate the socio-economic burden they cause.[103] The same is comparable to the condemnation of Nazi Germany's annihilation of 'useless eaters'.[104]

The Applicants cannot equate a "right to die" with passive euthanasia. The latter involves the discontinuation of nourishment where there is no reasonable possibility of a person ever emerging from a comatose condition to a cognitive state.[105] This is distinguishable from the forbidden hastening of death and prevention of the same from pursuing its natural course.[106]

Similarly, the Human Rights Committee has condemned one State for passing legislation regarding penalty mitigation when the motive involved was mercy.[107] Considering the current climate of international human rights discourse, irrespective of any contention of being duty-bound to abstain from forcing the protraction of suffering, it is incontrovertible that Applicants' unconditional recognition of a right to die flagrantly violates Article 6(1) of the ICCPR.

3. **A**pplicant has violated provisions of the International Covenant on Economic, Social and Cultural Rights.

The Republic of Anghore has persistently violated its minimum core obligations under the ICESCR. Its failure to provide a social welfare net for its citizens violates obligations concerning the protection of certain socio-economic rights of its people, such as the right to social security,[108] an adequate standard of living,[109] the enjoyment of the highest attainable standard of physical and mental health,[110] and education.[111]

[103] H. Kuhse, P. Singer, "Active Voluntary Euthanasia, Morality and the Law" (1995) 3(2) J.M.L. 129; Segers, J. H. *Elderly Persons on the Subject of Euthanasia*, pp. 407-424; Fenigsen, Richard, *A Case Against Dutch Euthanasia*, pp. S22-S30; John F, *Lies and Lamentation—A Solid No to Euthanasia*, pp. 119-121; Van Der Sluis, Isaac, *How Voluntary Is Voluntary Euthanasia*?, pp. 107-109; Barry, Robert L, *Death Induction, Active Euthanasia by Omission and Protecting the Vulnerable*, Int. Rev. of Natural Family Planning.
[104] *International Military Tribunal,* Nuremburg, 1st Oct. 1946.
[105] *Airedale NHS Trust v Bland* [1993] 1 All ER 821; *Re Quinlan* N.J. 10, 355 A.2d 647 (1976).
[106] Council of Europe Parliamentary Assembly, Recommendation 1418 (1999) 779; Y Dinstein, "The Right To Life, Physical Integrity, and Liberty" in, *The International Bill of Rights,* (L. Henkin Edn., Columbia University Press, New York, 1981) at p. 121.
[107] U.N. Doc CCPR/C/SR 222 ¶ 6 (1980).
[108] Article 9 of ICESCR.
[109] Article 11 of ICESCR.
[110] Article 12 of ICESCR.

A fortiori, the prevalence of forced labour and sexual crimes perpetrated against children[112] constitutes a flagrant violation of Article 10(3), a non-derogable provision,[113] which provides that, "[c]hildren and young persons should be protected from economic and social exploitation". Such transgression, including continual crimes against women,[114] is incontestably violative of Article 7 of the ICCPR. As a result thereof, Applicants have failed to fulfill their Article 3 obligations under the ICESCR pertaining to protection from discrimination, since gender inequality is evidenced by the ineffectiveness of police response to such crimes.[115]

Failure to comply with these obligations constitutes a violation of the Covenant engaging the responsibility of the delinquent State.[116] Moreover, by disregarding the welfare of its citizenry, Applicants have not acted in good faith to fulfill its obligations under the Covenant.[117] Indeed, responsibility can be engaged for an internationally wrongful omission,[118] since the 'intended inaction'[119] of a State attracts the same degree of wrongfulness as a positive act.

Anghore's constitutional articulation of the said rights, only enforceable following individual notification by the Government,[120] renders such protection inadequate. Indeed, international jurisprudence has accepted that, "a State party will be in violation of the Covenant, *inter alia,* if (…) it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet; [or] it *applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant*".[121] Respondents respectfully submit that Article 4 of the Covenant, pertaining to the imposition of permissible limitations, is

---

[111] Article 13 of ICESCR.
[112] *Compromis,*¶ 9.
[113] See, Article 5 of ICESCR.
[114] *Compromis,*¶ 9.
[115] *Ibid.*
[116] *Maastricht Guidelines*, Part III ¶ 6; *Limburg Principles*, ¶ 70.
[117] *Limburg Principles,* ¶ 7.
[118] *Corfu Channel Case* , I.C.J. Reports, 1949, pp. 22-23.
[119] *The Spanish Zone of Morocco Claim*, Rapport III (1924) 2 UNRIAA p. 615 at p. 643.
[120] *Compromis,* ¶ 9 subpara. (d).
[121] *Limburg Principles,* Part 1 D, ¶ 72, (emphasis added).

not engaged since the requirement of individual notification is not "[f]or the purposes of promoting the general welfare in a democratic society".[122] Moreover, "the State cannot use the "progressive realization" provision in Article 2 of the Covenant as a pretext for non-compliance"[123] with such obligations of immediacy.

V. ARGUENDO, RESPONDENTS HAVE NOT VIOLATED INTERNATIONAL TREATY LAW BY THE ENACTMENT OF DOMESTIC LEGISLATION INCONSISTENT WITH THE TATT TREATY.

A. Respondents Have Acted in Conformity with International Law by Invoking the 'Suspension of Obligations under the "TATT Treaty" Act'.

Respondents have not perpetuated "a repudiation of the treaty not sanctioned by the [V.C.L.T.]",[124] but rather have suspended its obligations in accordance with treaty law.

1. Respondents have repudiated any obligations due under the TATT Treaty in accordance with the terms therein established.

Respondents may rely on the TATT Treaty itself as justification for denunciation.[125] Pursuant to the foregoing submissions, Respondents are authorized by the terms therein stated to suspend its international obligations with Anghore by the advent of the latter's departure from *accepted norms* of international human rights law. Any interpretative margin of appreciation enjoyed by Applicants must be interpreted in good faith, in context, and in accordance with the common intention of the treaty as a whole, its object and spirit.[126] Even if the ordinary meaning of "accepted norms" is wider than the context herein advocated, according to the principle of *lex specialis derogate lex generalis,* the latter should prevail.[127] As the purpose of Ratanka's provision of economic aid to Anghore was to *"help [them]*

---

[122] Article 4 of the ICESCR.
[123] *Maastricht Guidelines,* Part 1 ¶ 8.
[124] Article 60(3)(a) V.C.L.T.
[125] 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 (...)'.*
[126] Article 31 V.C.L.T.; H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", 26 Brit. Y.B. Int'l. L. 48 (1949), 80.
[127] *Gabčíkovo-Nagymaros-Project (Hung. v. Slovk.),* I.C.J. Rep., 1997, p. 7 at ¶ 142; See also, Article 31(4) V.C.L.T.

overcome key education and health constraints for its people",[128] thus clearly associated with human rights, any deviation therefrom must be rigorously construed. Thus, through recourse to Article 57 of the V.C.L.T., Respondents have suspended the operation of the TATT Treaty "in conformity with the provisions of the treaty", [129] and consequently have discharged their obligations in good faith, in consonance with the principle of *pacta sunt servanda.*[130]

VI. RESPONDENTS HAVE NOT BREACHED INTERNATIONAL CUSTOMARY LAW BY SUSPENDING INTERNATIONAL AID TO THE REPUBLIC OF ANGHORE.

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

The Draft Articles on State Responsibility declares that, "The wrongfulness of an act of a State not in conformity with an obligation of that State towards another State is precluded if the act constitutes a measure legitimate under international law against that other State, in consequences of an internationally wrongful act of that other State".[131]

Countermeasures involve conduct taken in derogation from a subsisting treaty obligation to procure the cessation of an internationally wrongful act and induce compliance.[132] Respondents' measures are clearly intended to induce Applicants' compliance with international human rights law.[133] Moreover, Respondents have not transgressed any rules concerning the legality of countermeasures, such as impairment to diplomatic or consular inviolability,[134] or prevention of resumption of performance of obligations,[135] in the adoption of their legislation.

---

[128] *Compromis,* ¶ 5 subpara. (d).
[129] See, Article 57 of V.C.L.T.
[130] 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'.*
[131] Draft Articles on State Responsibility, 1979, U.N. Doc. A/CN.4/.L.289; See also, 2001 Draft Articles, Article 22, supra n. 20.
[132] 2001 Draft Articles, Article 49(1), supra n. 20.
[133] *Compromis,* ¶ 11.
[134] 2001 Draft Articles, Art. 50(2)(b), supra n. 20.
[135] 2001 Draft Articles, Art. 49(3), supra n. 20.

Furthermore, effective inducement measures should be distinguished from measures which are purely punitive and disproportionate. *A fortiori,* the reciprocity of countermeasures concerning the protection of human rights is inconceivable. Thus, the Court should "be satisfied with a very approximative appreciation"[136] made by Ratanka. In the *Air Services* arbitration, the Tribunal held the United States measures to be in conformity with the principle of proportionality because they did "not appear to be *clearly* disproportionate".[137]

Furthermore, Respondents are justified in applying countermeasures notwithstanding that the complained laws concerned individual rights. In the *dictum* of the *Barcelona Traction* case, it was observed that *erga omnes* obligations, "[d]erive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person".[138] In consonance therewith, State practice confirms that States often react to the wrongdoing of other States which they are individually unaffected by. For example, in 1978, the United States Congress adopted legislation prohibiting the trading of goods to and from Uganda to dissociate itself from the crime of genocide. Again, they suspended treaties following the imposition of martial law and subsequent suppression of demonstrations and the intern of dissidents in Poland and Soviet Union in 1981. Similarly, EC member States; by freezing Iraqi assets and adopting trade embargoes following Iraq's invasion and occupation of Kuwait, together with the freezing of Yugoslav funds in response to the humanitarian crisis in Kosovo, demonstrates that countermeasures may be applied to international human rights violations.

[136] *Air Services Agreement of 27 March 1946 Case (United States v. France),* I.L.R., 54 306.
[137] *Ibid.* at p. 444, ¶ 83.
[138] (Second Phase), I.C.J. Rep., 1970, 3 at 32.

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 Ratanka is not bound by the TATT Treaty or obligations arising thereunder.

II. The Republic of Anghore lacks the *jus standi* to present the claim.

III. The claims presented by the Republic of Ratanka are admissible.

IV. The Republic of Anghore has violated accepted norms of international human rights law as codified under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

V. *Arguendo,* the suspension of obligations by the Republic of Ratanka is in consonance with any international obligations incumbent upon the same arising under the TATT Treaty.

VI. The Republic of Ratanka has not violated its customary law obligations.

All of which is respectfully submitted

Agents for the Respondent.