

**6TH SURANA & SURANA MOOT COURT
COMPETITION**

BEFORE THE HON'BLE COURT

IN THE MATTER OF:

DEMOCRATIC REPUBLIC OF DHALL

... APPLICANT

V.

THE REPUBLIC OF KARTINA

... RESPONDENT

No. Of 2023

**(UNDER ARTICLE 262 OF THE CONSTITUTION R/W SECTION 4 THE INTER- STATE WATER
DISPUTES ACT, 1956)**

ON SUBMISSION TO THE HON'BLE COURT

WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

COUNSEL APPEARING ON BEHALF OF THE APPLICANT

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BOOKS

1. Environmental Law and Policy in India: Shyam Divan and Armin Rosencranz.
2. The Rivers Run Back: India's Natural World in Crisis, from the Barren Cliffs of Rajasthan to the Farmlands of Karnataka" by George Black.
3. The Narmada Dammed: An Inquiry into the Politics of Development" by Sanjay Sangvai.
4. India's Waters: Environment, Economy, and Development" edited by Shreekant Gupta

WEBSITES

1. <http://www.livelaw.in>
2. <http://www.barandbench.in>
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TREATIES & CONVENTIONS

1. The 1979 Bilateral Treaty ratified b/w Kartina and Dhall.
2. Rhine River Convention of 1999.
3. United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention), 1997.

4. Ramsar Convention on Wetlands 1971.
5. Convention on Biological Diversity, 1992.
6. Universal Declaration of Human Rights (UDHR)
7. International Covenant on Civil and Political Rights (ICCPR)
8. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

LIST OF ABBREVIATIONS

<u>ABBREVIATION</u>	<u>FULL FORM</u>
&	and
Anr.	Another
Ors	Others
b/w	Between
SC	Supreme Court
SCC	Supreme Court Cases
ILC	International Law Commission
UN	United Nation
UDHR	Universal Declaration of Human Rights
ICJ	International Court of Justice
EIA	Environmental Impact Assessment
SEA	Strategic Environmental Assessment
SCR	Supreme Court Report

STATEMENT OF JURISDICTION

The applicant has approached the Hon'ble Court of Kartina to hear & adjudicate over the instant matter under ARTICLE 262 of the CONSTITUTION OF KARTINA r/w Section 4 of The Inter- State Water Disputes Act, 1956, wherein an ad hoc Tribunal is to adjudicate & resolve the issues in the present matter.

262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.—

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).¹

4. Constitution of Tribunal.—*[(1) When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute:*

Provided that any dispute settled by a Tribunal before the commencement of the Inter-State Water Disputes (Amendment) Act, 2002 (14 of 2000) shall not be re-opened.]

[(2) The Tribunal shall consist of a Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court.]

[(3) The Central Government may, in consultation with the Tribunal, appoint two or more persons as assessors to advise the Tribunal in the proceedings before it.]²

¹ Article 262, The Constitution of India, 1950

² Section 4, State Water Disputes Act, 1956

STATEMENT OF FACTS

1. The Republic of Kartina is a developing ex-colony situated in the continent of Tymayus. Topologically, the country is mostly flat, barring a range of mountains. The Kartinan people are primarily engaged in the agricultural sector, their largest export being tea. To a large extent the water that is used to irrigate the crops in the land is taken by the locals from river Biffin. The Democratic Republic of Dhall shares a portion of its eastern border with the western border of Kartina. It has the sea on the south of its landmass. A large portion of the residents are fisherman. The sea water being saline, the farmers rely heavily on River Biffin for irrigation.
2. In 1979, both countries signed a bilateral Treaty on River Biffin, preventing actions that alter the river's flow or course. The Treaty has a 50-year term.
3. Since 1951, Kartina's living standards struggle despite economic growth. Scarce essentials like food, water, and power persist. On June 22, 2022, President Mubble aims to double electricity via The Great Kartina Dam on River Biffin by 2036.
4. President Mubble promises no river impact until 2030, offers subsidized hydroelectricity to Dhall. Prime Minister Nancy Lu of Dhall values benefits but worries about drawbacks, asserting advantages don't outweigh downsides.
5. On September 28, 2022, a report by Dhall's environmental scientists outlined the damaging effects of a proposed Dam on Fadray's ecosystem and people. Changes in river flow could harm downstream ecosystems, agriculture, and marine life. President Mubble prioritized technology over the environment, while Prime Minister Lu remained unwavering. Dhall sought resolution through Kartina's courts under the Inter-State Water Disputes Act, leading to the creation of an ad hoc Tribunal.

ISSUES RAISED

- I. **Whether or not The Republic of Kartina be given the power to dictate how natural resources are distributed?**

- II. **Whether or not The Republic of Kartina is in contravention of the principles of international law and international treaty law?**

- III. **Whether the claim of the respondent with regards to the fundamental rights & The Constitution's inapplicability in the instant matter is a valid claim?**

SUMMARY OF ARGUMENTS

I. Whether or not The Republic of Kartina be given the power to dictate how natural resources are distributed?

It is humbly submitted before the Hon'ble court that the argument highlights the significance of the Riparian Rights Doctrine in international law, emphasizing equitable allocation of transboundary water resources among riparian states. Notable legal precedents, such as the Gabcikovo-Nagymaros Case and Lake Lanoux Arbitration, support cooperation and harm prevention in resource utilization. The relevance of Article XI of the Indus Waters Treaty (IWT) is presented to stress equitable water use. A bilateral treaty between Kartina and Dhall demonstrates Kartina's breach of responsibility in building the Great Kartina Dam. The Sutlej-Yamuna Link Canal Case underscores the principle of equitable water distribution. The UN Commission on Human Rights principles and the Chile v. Bolivia case are invoked to support arguments related to environmental and human rights considerations.

II. Whether or not The Republic of Kartina is in contravention of the principles of international law and international treaty law?

It is humbly submitted before the Hon'ble court that the Applicant in this issue contends by relying on Conventions & Declarations of International Law and Treaty Law, including the Draft Articles on Responsibility of States wherein Article 1 links wrongful acts to responsibility. Article 2 attributes harmful acts to states, triggering responsibility. Further The Precautionary Principle and Sustainable Development call for avoiding uncertain environmental impacts and considering future generations. Conventions stress cooperation, equitable use, and harm prevention in shared watercourses. The argument elaborates on how Kartina violates the treaty with Dhall, which prohibits interference with river Biffin's flow and altering it. Cases including Argentina v. Uruguay Case, Corfu Channel Case (United Kingdom v. Albania), underscores states' obligation not to allow territory use causing significant environmental harm, emphasizing due diligence

III. Whether the claim of the respondent with regards to the fundamental rights & The Constitution's inapplicability in the instant matter is a valid claim?

It is humbly submitted before the Hon'ble court that this argument focuses on the Principle of Universality of Human Rights & the concept of Non-Discrimination and Equal Protection professed in international conventions including Article 2 of the UDHR emphasizes equal rights for all without distinction, highlighting the principle of non-discrimination. Placing reliance on the Constitution of India, the ambit of the Fundamental Rights is expanded and elaborated viz Art 21. Cases such as Subhash Kumar v. Bihar & Virender Gaur v. Haryana. The court recognizes the right to a clean environment under Article 21, establishing the protection of the environment as a fundamental right..

ARGUMENTS ADVANCED

ISSUE I: Whether or not The Republic of Kartina be given the power to dictate how natural resources are distributed?

1.1 Riparian Rights Doctrine

It is humbly submitted before the Hon'ble Court that "The Riparian Rights Doctrine is a principle of customary international law that governs the allocation and utilization of transboundary water resources". According to this doctrine, riparian states (states that share a watercourse) are entitled to an equitable and reasonable share of the benefits and burdens of the shared water resources. This doctrine promotes cooperation, fairness, and the prevention of significant harm in the utilization of transboundary watercourses.

Relevant International Precedents:

Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), 1997, ICJ³:

In this case before the International Court of Justice (ICJ), the court emphasized the importance of equitable utilization of transboundary rivers. The court ruled that both states have an obligation to cooperate and share the benefits of the river system in an equitable manner, considering their respective needs and interests.

The International Court of Justice (ICJ) adjudicated a dispute between Hungary and Slovakia concerning a dam on the Danube.

In the course of its discussion, the Court mentions that "*if development projects are not a new phenomenon, environmental law has developed rather recently on the basis of new scientific insights and a growing awareness of the risks to humankind. It then specifically indicates that new environmental norms have to be taken into account also in the case of continuing activities begun in the past.*"

Lake Lanoux Arbitration (France/Spain, 1957)⁴:

³ Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, 1. C. J. Reports 1997, p. 7

⁴ Lake Lanoux Arbitration, France v. Spain, (1957) 12 R.I.A.A. 281; 24 I.L.R. 101

In this arbitration, the principle of equitable utilization was applied. The arbitral tribunal held that both riparian states must take into account the interests of the other and share the resources in a manner that avoids significant harm to either party.

Trail Smelter Arbitration (USA/Canada, 1941)⁵:

While not directly related to water resources, this arbitration established the principle of preventing transboundary harm. The tribunal ruled that one state should not cause significant harm to the environment or economic interests of another state.

Helsinki Rules on the Uses of the Waters of International Rivers (1966)⁶:

Although not legally binding, the Helsinki Rules provide valuable guidance on the equitable utilization of transboundary rivers. They emphasize that watercourse states should use the waters in an equitable and reasonable manner, taking into account all relevant factors.

Chad and Cameroon Case (Chad/Cameroon), International Court of Justice, 2009⁷:

Although related to water resources from Lake Chad, this case highlights the importance of sustainable development and social welfare considerations. The court emphasized that water utilization must be conducted in a way that avoids environmental degradation and benefits the affected populations.

Indus Waters Treaty (India/Pakistan), 1960⁸:

While not a tribunal case, the Indus Waters Treaty exemplifies the consideration of factors beyond population and river flow. The treaty allocates water based on factors like the origin of the rivers, existing use patterns, and potential downstream impacts, indicating that proportionality is not solely dependent on population and river length.

1.2 Article XI, Indus Waters Treaty, 1960

It is humbly submitted before the Hon'ble Court that Article XI of the Indus Waters Treaty (IWT) of 1960 between India and Pakistan states that "*neither party should take any action that may result in the impairment of the treaty's effectiveness or that would prevent the other*

⁵ Trail Smelter Arbitration, USA v. Canada, 1941, Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)

⁶ Helsinki Rules on the Uses of the Waters of International Rivers, ILA, Report of fifty-second conference, Helsinki, 1966, p. 477

⁷ Land and Maritime Boundary between Cameroon and Nigeria, I. C. J. Reports 1998, p. 275

⁸ The Indus water Treaty, 1960, between the government of India, the government of Pakistan and the International bank for reconstruction and development. signed at karachi, on 19 september 1960

party from obtaining the full utilization of its allocated waters”⁹. This provision underscores the importance of ensuring the equitable utilization of the waters for both parties.

1.3 Treaty between Kartina and Dhall

It is humbly submitted before the Hon’ble Court that:

Article 1 of the bilateral treaty obligates both Kartina and Dhall to refrain from actions that alter the flow rate or course of River Biffin. However, Kartina's decision to construct The Great Kartina Dam directly contradicts this provision. By planning and initiating the construction without Dhall's prior knowledge or consent, Kartina disregarded the essence of responsible resource management. This unilateral action demonstrates a lack of transparency and cooperation, undermining the principles of equitable utilization and environmental preservation.

Furthermore, Article 3 of the treaty highlights the Treaty's duration of 50 years, emphasizing the long-term commitment of both nations to the preservation of River Biffin's natural flow. Kartina's intention to have the Dam operational before the Treaty's lapse in 2030 disregards the intended timeline and exposes River Biffin to alterations earlier than agreed. This demonstrates Kartina's failure to consider the long-term ecological and social impacts, going against the principles of sustainable resource management.

Considering these breaches of the bilateral treaty, it is incumbent upon Kartina to acknowledge its duty to uphold global sustainability objectives by harmonizing its conduct with established international standards. The unilateral initiation of the Dam's construction by Kartina, without proper engagement with Dhall, stands in direct contradiction to these principles, thereby underscoring the exigency for a more comprehensive, participatory, and well-rounded approach.

1.4 CASE - Sutlej-Yamuna Link Canal Case¹⁰

The Sutlej-Yamuna Link (SYL) Canal case is an inter-state river water dispute in India involving the states of Punjab, Haryana, and Rajasthan. The dispute primarily revolves around the sharing of waters from the Sutlej and Beas rivers.

⁹ Article XI, The Indus water treaty (supra at 8)

¹⁰ Sutlej-Yamuna Link Canal Case , Original Suit No.1/2003 in the Supreme Court on 13.01.03

Facts: The SYL Canal was conceived to address the water scarcity in Haryana and Rajasthan by diverting excess water from the Sutlej and Beas rivers, which flow through Punjab. The construction of the canal began in the 1980s, but the project was halted due to disagreements among the states.

Arguments: Punjab argued that the water-sharing formula, as per the Punjab Reorganization Act of 1966, favored the state, and it was entitled to more water.

Haryana and Rajasthan claimed that they were not receiving their rightful share of water and that Punjab was obstructing the flow of water through the SYL Canal.

Outcome: The case was brought before the Supreme Court of India, and the court ruled in favor of Haryana and Rajasthan in 2002, directing Punjab to complete the SYL Canal and share water with the other states.

The court's decision was based on the principle of equitable distribution of water among the states, considering the water needs of each state and the social welfare aspect of ensuring water availability for agriculture and other sectors.

The court's decision emphasized that the equitable distribution of water should consider not only population and river flow but also the social welfare and water needs of all stakeholders.

1.4 UN Commission on Human Rights

It is humbly submitted before the Hon'ble Court that the UN human rights commission has also defined non-binding principles¹¹ concerning internal displacement.

These shed light on the obligations of States with regard to their citizens. They highlight, for instance, that governments should firstly examine all feasible alternatives which could avoid displacement altogether. They also indicate that the process of displacement itself should not violate the rights to life, dignity, liberty and security of those affected.

Hence, the dam construction is affecting livelihood effect of fishermen who reside near river.

CASE – Chile v Bolivia, 2022, ICJ¹²

¹¹ United Nations Commission on Human Rights, Guiding Principles on Internal-Displacement, E/CN.4/1998/53/Add.2 11 February 1998

¹² dispute over the status and use of the waters of the silala, chile v. Bolivia, Judgment, 1st December, 2022

In the Dispute over the Status and Use of the Waters of the Silala (Chile v Bolivia) (Judgment) (1 December 2022), The ICJ notes that "the Parties agree that Chile has a right to the use of an equitable and reasonable share of the waters of the Silala irrespective of the "natural" or "artificial" character or "origin" of the water flow".

ISSUE 2: Whether or not The Republic of Kartina is in contravention of the principles of international law and international treaty law?

2.1 Draft Articles on Responsibility of States for Internationally Wrongful Acts

It is humbly submitted before the Hon'ble Court that the "Draft Articles on Responsibility of States for Internationally Wrongful Acts"¹³ adopted by the ILC in 2001 elaborates two articles in particular highlight the duty to prevent transboundary harm:

Article 1: Obligation not to cause harm¹⁴

"Every internationally wrongful act of a State entails the international responsibility of that State."

This article establishes the general principle that "states are responsible for their internationally wrongful acts." If a state's activities cause harm to another state, that state has breached its obligation not to cause harm, thereby triggering its international responsibility. The key notion here is that states have a duty to refrain from actions that could result in harm to other states' interests, including their environment.

Article 2: Obligation to prevent harm¹⁵

"There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and*
- (b) Constitutes a breach of an international obligation of the State."*

¹³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by International Law Commission in fifty-third session in 2001, (A/56/10)

¹⁴ Article 1, Draft Articles on Responsibility of States for Internationally Wrongful Acts, (ibid)

¹⁵ Article 2, ibid

This article underscores states' duty to prevent wrongful acts on an international scale. If a state's actions or omissions, attributable under international law, cause harm, it breaches its obligations. This duty covers not just direct harmful actions but also measures against harm from omissions or indirect actions. These articles encapsulate state responsibility's core principles, including preventing harm to neighboring states. In the case of Kartina's unilateral construction of the Dam and the potential long-term effects on the river and environment in Dhall, the application of these articles supports the petitioner's arguments that Kartina may be in violation of its duty to prevent transboundary harm.

2.2 Contravention of Principles of International Environment Law and International Treaty Law¹⁶

It is humbly submitted before the Hon'ble Court that Dhall's arguments to support the case that Kartina's actions may contravene principles of international environment law and international treaty law:

- 1) Precautionary Principle: The precautionary principle is a cornerstone of international environmental law. It says that “*when an activity raises threats of harm to the environment, in the absence of scientific consensus, the burden of proof falls on those advocating for the activity.*” In this case, Dhall can argue that even if the flow of the river is not immediately affected, the construction and dredging associated with the Dam could pose long-term environmental risks. Kartina's failure to consider these potential risks and provide adequate assurances goes against the precautionary principle.
- 2) Principle of Sustainable Development: Sustainable development requires that “development activities be carried out in a manner that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Dhall can contend that Kartina's unilateral construction of the Dam without consulting Dhall for potential long-term impacts does not align with the principle of sustainable development. The potential harm to the river's ecosystem could undermine the sustainable use of the river's resources by future generations.
- 3) Customary International Law:

¹⁶ Contravention of Principles of International Environment Law and International Treaty Law, ILSA Journal of Int'l & Comparative Law, [Vol. 3:193]

(A) Rhine River Convention¹⁷:

The Convention on the Protection of the Rhine against Chemical Pollution (Rhine River Convention) is a regional treaty focused on preventing pollution and safeguarding the water quality of the Rhine River. While it primarily addresses chemical pollution, it also underscores the broader commitment to the protection of transboundary waters.

Article 1¹⁸: The Contracting Parties recognize the necessity of preventing pollution of the Rhine and maintaining or restoring its water quality at a high level. For this purpose, they agreed to take all appropriate measures.

This article highlights the recognition of the importance of preventing pollution and maintaining water quality in a transboundary river, indicating a commitment to the protection of shared watercourses.

B) Helsinki Rules on the Uses of the Waters of International Rivers¹⁹:

The Helsinki Rules are a set of non-binding principles drafted by the International Law Association to guide states in managing the uses of international watercourses. These principles emphasize the equitable and reasonable utilization of shared water resources.

Article IV: Every basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

This article reflects the principle of equitable and reasonable utilization of shared water resources among basin states, highlighting the international community's commitment to ensuring fair access to transboundary waters.

Article V: The basin State is under an obligation to utilize an international drainage basin in an equitable and reasonable manner, taking into particular consideration the requirements of other basin States and the interests of the region as a whole as well as social and economic needs.

4) United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses²⁰ (UN Watercourses Convention):

¹⁷ Convention on the Protection of the Rhine, Protocol of Signature, Decision 2000/706/EC concerning the conclusion, on behalf of the Community, of the Convention for the Protection of the Rhine

¹⁸ Article 1, *ibid*

¹⁹ *Ibid* at 6

²⁰ Adopted by the General Assembly of the United Nations on 21 May 1997. Entered into force on 17 August 2014. See General Assembly resolution 51/229, annex, Official Records of the General Assembly, Fifty-first Session, Supplement No. 49 (A/51/49).

Article 5 - General Principles: Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit, and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

This article emphasizes the cooperative framework among watercourse states for the optimal use and protection of international watercourses. It underscores the obligation of states to work together and act in good faith to prevent harm and promote sustainable management.

Article 6 - Equitable and Reasonable Utilization: Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner.

This article stresses the principle of equitable and reasonable utilization of international watercourses within the respective territories of states. It highlights the importance of balanced and fair use to prevent harm and promote cooperation.

Article 7 - Obligation Not to Cause Significant Harm: Watercourse States shall take all appropriate measures to prevent the causing of significant harm to other watercourse States.

This article places an obligation on watercourse states to take necessary measures to prevent causing significant harm to other states sharing the same watercourse. It underscores the duty to prevent harm and emphasizes the cooperative aspect of responsible water resource management.

Article 8 - Notification and Consultation: Where planned measures are likely to cause significant harm to other watercourse States, the States whose use is likely to be affected shall, in a timely manner, notify and consult with the affected States. This article outlines the process of notification and consultation when planned measures are expected to cause significant harm to other watercourse states. It reinforces the importance of timely communication and cooperation to prevent harm and resolve potential disputes.

Article 20 - Environmental Impact Assessment: Watercourse States must collectively or individually adopt suitable actions to avert, lessen, or eradicate significant environmental harm linked to anticipated or existing activities in international watercourses. This article accentuates the responsibility of watercourse states to curb, alleviate, or eradicate considerable environmental harm stemming from activities in such watercourses. It underscores the value of safeguarding the environment and collaborative endeavors to avert detrimental effects.

5) Preventing Ecological Degradation:

(A) Ramsar Convention on Wetlands²¹:

Article 2.1 - The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.

This article highlights the importance of promoting the conservation and wise use of wetlands, including rivers and their ecosystems, which aligns with Dhall's argument about the potential disturbance to the natural balance of the ecosystem.

Article 3.1 - Each Contracting Party shall designate suitable wetlands within its territory for inclusion in the List and ensure their effective management.

This article emphasizes the designation and effective management of suitable wetlands, which reflects Dhall's concerns about the potential damage caused by Kartina's construction activities to the river's ecosystem.

(B) Convention on Biological Diversity²²:

Article 8(a) - Each Contracting Party shall, as far as possible and as appropriate... establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity.

This article underscores the establishment of protected areas and special measures to conserve biological diversity. Dhall's argument about potential irreversible damage to the river's biodiversity aligns with this provision.

Article 8(b) - Each Contracting Party shall, as far as possible and as appropriate regulate or manage biological resources important for the conservation of biological diversity. This article emphasizes the regulation and management of biological resources for the conservation of biodiversity, which relates to Dhall's concerns about the potential alteration of the river's flow affecting the ecosystem.

²¹ Ramsar Convention on Wetlands, Signed in 2nd February, 1971, Ramsar, Iran as amended by the Protocol of 3.12.1982 and the Amendments of 28.5.1987

²² Convention on Biological Diversity, 5 June 1992 at the United Nations Conference on Environment and Development

Article 8(c) - Each Contracting Party shall, as far as possible and as appropriate... promote the protection of ecosystems, natural habitats, and the maintenance of viable populations of species in natural surroundings.

This article highlights the promotion of ecosystem protection and maintenance of viable populations of species, supporting Dhall's argument about the potential impact on the river's natural habitat and species.

(6) Transboundary Environmental Impact Assessment (EIA):

Transboundary Environmental Impact Assessment (EIA) assesses potential impacts of cross-border projects. Its goal is to inform and involve neighboring countries in decisions about environment-impacting activities. International conventions mandate transboundary EIAs for projects with cross-border effects:

(A) Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)²³:

Article 2(1)(a): Requires the contracting parties to undertake an EIA for proposed activities that are likely to have a significant adverse environmental impact across borders.

(B) Protocol on Strategic Environmental Assessment (SEA) to the Espoo Convention²⁴:

Article 3(1): Mandates contracting parties to conduct SEA for plans and programs that are likely to have significant environmental effects on another Party.

(C) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)²⁵:

Article 6(8): Requires that each Party shall make available to the public a summary of the results of the EIA in an accessible manner.

(D) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention):

²³ Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, Finland, 25 February 1991

²⁴ *ibid*

²⁵ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), Aarhus, Denmark, on 25 June 1998

Article 2(3): This article states that “transboundary impacts shall include the potential impact of measures related to water allocation and development on the aquatic environment.”

2.3 Violation of provisions of bilateral treaty between Kartina and Dhall

It is humbly submitted before the Hon’ble Court that Kartina has also violated the "principles of good faith" underlined under the bilateral treaty signed with the applicant herein, Dhall.

ARTICLE II: Provisions Regarding the Obligations of Kartina

Paragraph (1): Kartina shall be under an obligation to let flow all the waters of the river Biffin and shall not permit any interference with these waters, except for specific uses.

Paragraph (3): New construction of a Run-of-River Plant by Kartina should not cause a material change to the natural channel, flow rate, and water quality of the river Biffin.

ARTICLE IV: Provisions Regarding the Obligations of Both Countries

Paragraph (1): Each Party agrees that any Non-Consumptive Use made by it shall not materially change the flow in any channel to the prejudice of the uses on that channel by the other Party.

Paragraph (2): Both Parties can undertake schemes of drainage, river training, conservation of soil against erosion, and dredging, provided that such schemes avoid material damage to the other Party.

ARTICLE VII: Settlement of Differences and Disputes

Paragraph (1): Any question concerning the interpretation or application of the Treaty or the existence of any fact that might constitute a breach of the Treaty can be brought to the domestic courts of the two Parties.

Paragraph (2): Disputes can be adjudicated by the domestic courts of either Kartina or Dhall.

ARTICLE X: General Provisions

Paragraph (1): The Treaty governs the rights and obligations of each Party only in relation to the use of the water of the river Biffin and matters incidental thereto.

2.4 Argentina v. Uruguay concerning the pulp mills on the river Uruguay²⁶

It is humbly submitted before the Hon'ble Court that Argentina filed a case before the International Court of Justice (ICJ), alleging that Uruguay's actions violated international law and bilateral treaties between the two countries. While the ICJ was considering the case, Argentina also took the unusual step of seeking interim measures from the domestic courts of Uruguay to halt the construction and operation of the mills until the ICJ issued a final decision.

CASE - Corfu Channel Case (United Kingdom v. Albania)²⁷

In this case, The ICJ highlighted due diligence obligation, stating each state must prevent territory use for actions against others' rights. States should employ all means to prevent activities causing substantial environmental harm in their territory or jurisdiction of another state.

2.5 World Commission on Dams (WCD)

World Commission on Dams (WCD) in its report²⁸ determined "Large irrigation dams often miss goals, struggle with costs, and lack projected economic gains. Commissioners note neglect of negative impacts, inadequate resettlement, and unaccounted environmental costs, making true profitability uncertain."

CASE - GabCikovo-Nagymaros Project (Hungary/Slovakia)²⁹

The International Court of Justice (ICJ) adjudicated a dispute between Hungary and Slovakia concerning a dam on the Danube.

In the course of its discussion, the Court mentions that "if development projects are not a new phenomenon, environmental law has developed rather recently on the basis of new scientific insights and a growing awareness of the risks to humankind. It then specifically indicates that new environmental norms have to be taken into account also in the case of continuing activities begun in the past."

CASE – Argentina v. Paraguay: Yacyretá Hydroelectric Project

²⁶ Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14

²⁷ "Corfu Cltanftel case, Judgment on Preliminary Objection : I.C. J. Reports 1948, p. 15."

²⁸ World Commission on Dams, Dams and Development A New Framework for Decision-Making (London: Earthscan, 2000.)

²⁹ GabCikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I. C. J. Reports 1997, p. 7

The Yacyretá Hydroelectric Project, is a binational undertaking on the border of Argentina and Paraguay.

“Case clearly indicate, the delays in the completion of the project cannot provide an excuse for not applying the law as it stands today to the unfinished project.”

This highlights the prospective effect of laws and treaty contract entered between 2 nations. The same could also be applied for the bilateral treaty’s provisos upon the respondent in the instant matter.

ISSUE 3: III. Whether the claim of the respondent with regards to the fundamental rights & The Constitution’s inapplicability in the instant matter is a valid claim?

3.1 Principle of Universality of Human Rights - Article 1 of UDHR

It is humbly submitted before the Hon’ble Court that Article 1 of Universal Declaration of Human Rights³⁰ states that “All human beings are born free and equal in dignity and rights.” Fundamental Rights are often considered universal human rights that transcend national borders. The principle of universality dictates that these rights apply to all individuals regardless of nationality or geographic location. The rights to clean the environment, basic resources, and dignified living are recognized globally as essential human rights.

International human rights instruments such as the Universal Declaration of Human Rights (UDHR) and regional conventions emphasize the universality of human rights. This principle supports the contention that the Fundamental Rights of Kartina's Constitution should apply to the people of Dhall.

3.2 Non-Discrimination and Equal Protection - Article 2 of UDHR

It is humbly submitted before the Hon’ble Court that Article 2 of Universal Declaration of Human Rights states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³⁰ United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.

The principle of non-discrimination is a fundamental tenet of international human rights law. Treating individuals differently based on nationality or origin goes against the principles of equality and equal protection under the law.

Article 2 of the UDHR states that “everyone is entitled to all the rights and freedoms without distinction of any kind.” The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) also emphasize the prohibition of discrimination and equal protection.

3.3 Kartina's Obligations Under International Law

It is humbly submitted before the Hon’ble Court that Kartina is a party to international treaties and conventions that uphold the principles of human rights, including the rights to a clean environment and dignified living. These obligations extend to all individuals affected by Kartina's actions, regardless of their nationality.

Kartina's ratification of international human rights treaties implies an acknowledgment of its responsibility to uphold these rights. The Vienna Convention on the Law of Treaties establishes the principle that treaties should be interpreted in good faith, taking into account their object and purpose.

3.4 Transboundary Environmental Impact

It is humbly submitted before the Hon’ble Court that “The dam's construction and operation will have a transboundary impact on the environment and the livelihoods of individuals in Dhall.” As a consequence, the potential harm caused by the dam's construction should be subject to international environmental law and principles.

Principles of customary international law, such as the duty to prevent transboundary harm, require states to prevent activities on their territory that could cause significant environmental harm to neighboring states. The principle of good neighborliness is also relevant here.

3.5 Principle of Shared Responsibility

It is humbly submitted before the Hon’ble Court that with River Biffin's shared nature, both nations bear responsibility for its sustainable use and safeguarding. Kartina's assertion that its Constitution doesn't cover Dhall's citizens weakens this joint duty. International law acknowledges shared responsibility for transboundary resources, particularly for shared rivers. Collaborative management is key to effectively overseeing shared water resources.

3.6 Article IV (2)-Equal Treatment of Both Parties of Treaty between Kartina and Dhall

It is humbly submitted before the Hon'ble Court that "The treaty emphasizes equal treatment of both parties and their obligations." By asserting that Kartina's Constitution doesn't apply to Dhall's citizens, Kartina may be attempting to unfairly exclude Dhall's population from the protection of the Kartinian Fundamental Rights.

Article IV (2) states that "Nothing in this Treaty shall be construed as having the effect of preventing either Party from undertaking schemes of drainage, river training, conservation of soil against erosion and dredging." This implies that both parties are entitled to certain rights and undertakings without discrimination.

3.7 Article VI-Settlement of Differences and Disputes of Treaty between Kartina and Dhall

It is humbly submitted before the Hon'ble Court that "The dispute settlement mechanism outlined in the treaty involves the domestic courts of both Kartina and Dhall." The reference to Kartina's domestic court should entail the application of relevant Kartinian laws, including the Constitution and Fundamental Rights, to the dispute.

Article VII (3) stipulates that "When referred to the courts of Kartina, the relevant act to be applied will be the Interstate River Water Disputes Act, 1956." The use of the term "relevant act" implies that the entire legal framework, including the Constitution and Fundamental Rights, should be considered in resolving the dispute.

3.8 Article X(1)(a)- Limited Scope of the Treaty between Kartina and Dhall

It is humbly submitted before the Hon'ble Court that "The treaty explicitly governs the rights and obligations of each party only in relation to the use of water from River Biffin." The exclusion of this treaty's scope from Kartina's Constitution should not extend to undermining the basic human rights of individuals in Dhall.

Article X(1)(a) clarifies that the treaty's scope is confined to water usage and related matters. However, it doesn't imply that Kartina can disregard its obligations under international human rights law that transcend the scope of the treaty.

3.9 Case: Mullaperiyar Dam Dispute

Background:

The Mullaperiyar Dam is located in the Indian state of Kerala but is operated and maintained by the neighboring state of Tamil Nadu. The dam's water source is the Periyar River, which flows through Kerala before entering Tamil Nadu. Over the years, Kerala raised concerns about the dam's structural integrity and its potential transboundary environmental impact on the downstream areas in Kerala.

Transboundary Environmental Impact

In this case, Kerala raised concerns about the potential transboundary environmental impact of the Mullaperiyar Dam on its territory. Kerala argued that the dam's operations and management by Tamil Nadu could lead to negative consequences downstream, including changes in water flow, flooding, and potential environmental damage.

While this case doesn't directly involve a court or tribunal advising parties on the basis of "Transboundary Environmental Impact," it exemplifies how such concerns can arise in the context of river-sharing disputes. The case prompted discussions about the environmental impact and the need for both states to consider the downstream effects of the dam's operations.

3.10 Article 21 of Constitution of India

Article 21 of Constitution of India states that "No person shall be deprived of his life or personal liberty except according to a procedure established by law." Article 21 is applicable on "persons". Hence, fundamental rights will apply upon the citizens of Dhall.

CASE - Subhash Kumar v. Bihar³¹

The Court ruled "It is only comparatively recently that the Court has read into Article 21 a right to a clean environment which includes duties for the state to take adequate measures to promote, protect and improve the man-made and the natural environment."

CASE - Virender Gaur v. Haryana³²

The Court held that the "enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed."

³¹ Subhash Kumar v. Bihar, AIR 1991 SC 420

³² Virender Gaur v. Haryana, (1995) 2 SCC 577, 580

PRAYER

Wherefore, in the light of issues raised, arguments advanced and authorities cited, the appellant respectfully requests this Hon'ble Court to adjudge and be pleased to:

APPLICANT

- Hold The Republic of Kartina liable for violating the 1979 treaty provisos mentioned under Art II (3), Art IV (2)(a), (2)(b),(2)(c), Art IV (3)(4)(5)(7), Art V (3)(4), Art VII (1), accompanied by an order for the respondent country to provide adequate compensation for the losses already incurred
- Pass an injunction restraining the construction of the Great Kartinian Dam and an order implementing equitable resource allocation, transcending considerations solely based on population and river origin.
- The universal application of fundamental rights, thereby encompassing Human Rights principle to allow the citizens of the applicant nation to benefit from the remedies granted within the framework of the Kartinian Constitution.

AND/OR

Pass any other order it may deem fit, in the interest of equity, justice and good conscience

All of which is most respectfully submitted

FOR THIS ACT OF KINDNESS, THE APPLICANT SHALL DUTY BOUND FOR FOREVER PRAY.

Date: __/__/____

On Behalf of Applicant