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BEFORE THE INTER STATE WATER DISPUTE TRIBUNAL

APPLICATION NO. 2023

DEMOCRATIC REPUBLIC OF DHALLAPPLICANT

VERSUS

REPUBLIC OF KARTINARESPONDENT

Date: 27th August, 2023

MEMORIAL ON BEHALF OF RESPONDENT

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TABLE OF ABBREVIATION

Sr. No.	Abbreviations	Full Forms
1.	AIR	All India Reporter
2.	Art.	Article
3.	Ed.	Edition
4.	GATT	General Agreement on Trade and Tariff
5.	GERD	Grand Ethiopian Renaissance Dam
6.	GWh	Gigawatt Hour
7.	HC	High Court
8.	Hon'ble	Honorable
9.	ICJ	International Court of Justice
10.	Id.	Ibidem
11.	J.	Justice
12.	KHEP	Kishanganga Hydro Electric Power Project
13.	LJ	Law Journal
14.	No.	Number
15.	Ors.	Others
16.	P.	Paragraph
17.	pp.	Pages
18.	SCC	Supreme Court Cases
19.	SCR	Supreme Court Record
20.	Sec.	Section
21.	UOI	Union of India
22.	U.S.A	United States of America
23.	USD	United States Dollar
24.	Vol.	Volume
25.	w.r.t	With respect to

INDEX OF AUTHORITIES

[A] BOOKS

INTERNATIONAL LAW

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2. Blanco & Razzaque, Globalisation and Natural Resources Law: Challenges, Key Issues And Perspectives (2012).
3. Brownlie, Principles of Public International Law (2008).
4. Cassesse, International Law (2001).
5. Hanqin, Transboundary Damage in International Law (2003).
6. Lin, The Unifying Role of Harm in Environmental Law (2006).
7. McNair, The Law of Treaties (1961). 1 Nordquist, UNCLOS, 1982: A Commentary (1975).
8. Paradell-Trius, Principles of International Environmental Law: An Overview. Reziel 9(2) (2000).

CONSTITUTIONAL LAW

1. Dr. Durga Das Basu, Shorter Constitution of India, (Justice A.R. Lakshmanan, V.R. Manohar, 14th Ed., 2013)
2. Dr. Subhash C. Kashyap, Constituional Law of India, Vol. 1, (2nd Ed., 2015)
3. H.M. Seervai, Constitutional Law of India, Vol. 1, (4th Ed., 2015)
4. M.P. Jain, Indian Constitutional Law, (7th Ed., 2016)
5. Sanjay S. Jain and Sathya Narayan, Basic Structure Constitutionalism, (1st Ed., 2011)

[B] LEGAL DATABASE

1. www.sconline.com
2. www.manupatra.com
3. www.livelaw.com
4. www.heinonline.com

[C] LEGISLATIONS

1. Interstate Water Disputes Act, 1956.
2. Helsinki Rules, 1956.
3. Convention on Law of Non-Navigational Uses of International Watercourses 1997.
4. Vienna Convention.

[D] LEXICONS

1. Black Law Dictionary
2. Lexico
3. Concise Law Dictionary
4. Oxford Dictionary of Law
5. Brooms Legal Maxims
6. Ganguly Law Lexicons

[E] TABLE OF CASES

Sr. No.	Cases
1.	Islamic Republic of Iran v. United States of America
2.	Johnny Paul Pierce v. The Union of India
3.	Kansas v. Colorado
4.	Lake Lanoux Arbitration (France v. Spain)
5.	Nuclear Tests Case: Australia v. France; New Zealand v. France
6.	Pulp Mills on the River Uruguay (Argentina v. Uruguay)
7.	SK. MD. Soleman v. State of West Bengal
8.	State Of Andhra Pradesh v. the State of Karnataka & Ors and the
9.	State Of Haryana v. the State of Punjab And Anr
10.	The Indus Waters Kishenganga Arbitration, Pakistan v India
11.	The State of Karnataka by its Chief Secretary v. the State of Tamil Nadu by its Chief Secretary & Ors.
12.	United Kingdom v. Norway

STATEMENT OF JURISDICTION

The applicant in the present case approached the Hon'ble Domestic Court of the Republic of Kartina under Article VII of the River Biffin Water Treaty.

Article VII of the River Biffin Water Treaty reads as:

(1) Any question which arises between the Parties concerning the interpretation or application of this Treaty or the existence of any fact which, if established, might constitute a breach of this Treaty can be brought to the domestic courts of the two Parties to this Treaty.

(2) As soon as a dispute to be settled in accordance with the paragraphs of this Article has arisen, the Parties are free to approach either the Kartinian or Dhallian domestic courts for the adjudication of the matter. The respective Constitution will apply.

(3) When referred to the courts of Kartina, the relevant act to be applied will be the Interstate River Water Disputes Act, 1956.

Further, the Central Government of Kartina appointed an ad-hoc Tribunal under Section 4 of the Interstate River Water Disputes Act, 1956 to resolve the dispute. The present River Water Dispute Tribunal has the power to hear the instant matter w.r.t Section. 5 of the Interstate River Water Disputes Act, 1956.

Article 5 (2) of the Interstate River Water Disputes Act, 1956 reads as:

The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years:

Provided that if the decision cannot be given for unavoidable reasons, within a period of three years, the Central Government may extend the period for a further period not exceeding two years.

This River Water Dispute Tribunal has the jurisdiction to hear current dispute and the jurisdiction of the Tribunal is not in dispute.

STATEMENT OF FACTS

KARTINA

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 Acton Ranges, lying in the northernmost part of the Kartinian landmass.

DHALL

The Democratic Republic of Dhall shares a portion of its eastern border with the western border of Kartina. A fairly big portion of the population is also engaged in farming.

TREATY

According to the treaty entered by Kartina and Dhall, none of the governments of any of the countries or any private parties are permitted to take any action that could change the flow rate or the course of River Biffin. This Treaty was to be in force for 50 years, post which the delegates would have to renew.

DISPUTE

On 22nd June, 2022, Mr. Angelo Mubble, the President of Kartina, announced the construction of The Great Kartina Dam a Run-of-River Plant, on the river Biffin. Ms. Nancy Lu, the Prime Minister of Dhall expressed her displeasure with the Dam though she conceded that the subsidized electricity would be beneficial. Mr. Mubble said that although the construction will start shortly, it will not affect the flow of the river until 2030, by which time the Treaty would have lapsed. He has urged the people of Dhall to look at the bigger picture, not take this issue further, and accept the hydroelectricity at subsidized rates and promote technology development. However, Ms. Lu is not willing to back down. The Democratic Republic of Dhall approaches the domestic courts at the Republic of Kartina, to resolve the dispute.

STATEMENT OF ISSUES

ISSUE I

**WHETHER OR NOT KARTINA SHOULD BE GIVEN THE POWER TO DICTATE
HOW NATURAL RESOURCES ARE DISTRIBUTED?**

ISSUE II

**WHETHER OR NOT KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF
INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL TREATY LAW?**

ISSUE III

**WHETHER OR NOT FUNDAMENTAL RIGHTS ENSHRINED IN THE CONSTITUTION
OF KARTINA WILL APPLY TO THE PEOPLE OF DHALL?**

SUMMARY OF ARGUMENTS

[1] WHETHER OR NOT KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

The counsel for the respondent humbly submits before the hon'ble tribunal that Kartina should be given the power to dictate how to distribute natural resources (water of River Biffin in this case) because not only it has longer length of flow of the river but also a bigger population as compared to that of Dhall. Provisions of the Helsinki Rules 1966, Convention on the Law of the Non-navigational Uses of International Watercourses 1997 and Berlin Rules 2004, state that for equitable utilization of water one of the factors to be considered is the population dependent on the water or watercourse. Since Kartina has more population than Dhall and because a vast amount of the population of Kartina is dependent on the River Biffin for the purpose of the agriculture, Kartina should thus be given the authority to dictate the distribution of the river water. In addition to this, Coase theorem suggests that if the benefits outweigh the costs, then the dam should be constructed. In the present case the construction of the dam has more advantages as it will not only solve the living crisis in Kartina but is also beneficial to the citizens of Dhall because Kartina is willing to offer hydroelectricity generated by the Dam to Dhall at an immensely subsidized rate. Furthermore, it is a benefit sharing situation because both the parties will be benefitted with the construction of the dam as the standard of living will be improved in Kartina and Dhall can access hydroelectricity at a subsidized rate. It is thus a win-win situation. The counsel therefore, submits that considering these points of contention, Kartina should be given the power to dictate how to distribute the river water.

[2] WHETHER OR NOT KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL TREATY LAW?

The counsel of the respondent humbly submits that Kartina is not in contravention of the principles of International Environmental Law and International Treaty Law because as per Article 2 of the Treaty, inference in the flow of the river biffin allowed for the hydroelectric projects and also new runoff could be constructed until it causes any material change in the flow of the river. According to Article 7 of the Treaty, any sort of

engineering work over the river is permitted but the only prerequisite condition is to notify the other party. In the present case, the public announcement was made by the President of Kartina, and as per the ruling of the International Court of Justice in the Case of Australia and New Zealand vs. France, the president's public announcement can be associated with the country's decision and will have a binding nature over the communication under any treaty. The flow of the river is not going to change till 2030 when the treaty will get expire. As per the treaty itself, the Kartina offered Dhall electricity at subsidized rates. The International Court of Justice in numerous cases held that the treaty must be read in harmonious construction and good faith. The action of Kartina is in good faith.

[3] WHETHER OR NOT FUNDAMNETAL RIGHTS ENSHRINED IN THE CONSTITUTION OF KARTINA WILL APPLY TO THE PEOPLE OF DHALL?

The counsel for the respondents would like to humbly submit to this hon'ble tribunal that the fundamental rights enshrined in the Kartinian Constitution would not apply to the people of Dhall as the fundamental rights can be enforced and will be applicable only to the foreigners residing within the territory of Kartina. There are few fundamental rights applicable only to the citizens of the Kartina (Article 15,16,19,29,30), these would only be applicable to the citizens of Kartina and under no circumstances these fundamental rights would be applicable to the non-citizens. Rest of the fundamental are applicable to foreigners as well given that they are living with the territory of Kartina. In the present scenario, the people of Dhall are living in their country and not within the premises of Kartina, thus are not eligible to access the fundamental rights of the Constitution of Kartina. Hence, the fundamental rights of Kartinian Constitution will not apply to the people of Dhall.

ARGUMENTS ADVANCED

ISSUE I: WHETHER OR NOT KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

RULE:

1. Helsinki Rules, 1966¹

Article IV - Each 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.

Article V – 1. What is a reasonable and equitable share within the meaning of Article IV is to be determined in the light of all the relevant factors in each particular case.

2. Relevant factors which are to be considered include, but are not limited to:

(f) the population dependent on the waters of the basin in each basin State;

2. Convention on the Law of the Non-navigational Uses of International Watercourses, 1997²

Article 5 - Equitable and reasonable utilization and participation

Article 6 - Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(c) The population dependent on the watercourse in each watercourse State;

3. Berlin Rules, 2004³

Article 12 - Equitable Utilization

¹ ILA, REPORT OF THE FIFTY-SECOND CONFERENCE, Helsinki, 1966, p. 477. The Helsinki Rules and the commentaries are given here as they have been published in the ILA publication HELSINKI RULES ON THE USES OF THE WATERS OF INTERNATIONAL RIVERS, London, 1967, at 7-55

² Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997, UN Doc. A/51/869,

³ Berlin Rules, 2004, Berlin Rules on Watercourses: Principles and Commentaries. Berlin, Springer Science & Business [accessed 27th August, 2023] Available at: https://link.springer.com/chapter/10.1007/978-1-4020-9867-3_1

Basin States shall in their respective territories manage the waters of an international drainage basin in an equitable and reasonable manner having due regard for the obligation not to cause significant harm to other basin States.

Article 13 - Determining an Equitable and Reasonable Use –

1. Equitable and reasonable use within the meaning of Article 12 is to be determined through consideration of all relevant factors in each particular case.

2. Relevant factors to be considered include, but are not limited to:

c. The population dependent on the waters of the international drainage basin in each basin State;

ARGUMENT:

The respondent would like to humbly submit before the Hon'ble tribunal that the Republic of Kartina should be given the power to dictate how natural resources are distributed based on the claim that it has a bigger population and longer length of flow of River Biffin as compared to Democratic Republic of Dhall because they conform with the generally accepted and established environment law principles.

1. International Environment Law Principles.

The counsel for the respondent would like to humbly submit that with reference to provisions of the Helsinki Rules 1966, Convention on the Law of the Non-navigational Uses of International Watercourses 1997 and Berlin Rules 2004, (as mentioned under RULE), the population dependent on the water or watercourse is an important factor in determining the equitable and reasonable use of the water. In the present case, Kartina has a bigger population as compared to Dhall and the people of Kartina are primarily engaged in the agricultural sector where to a large extent, the water that is used to irrigate the crops in the land is taken by the locals from River Biffin. This clearly implies that since the primary occupation of the people of Kartina is in the agriculture sector, a large amount of population is highly dependent on the River Biffin. Applying the above discussed population factor in the current scenario, it can thus be said that since Kartina has more population than Dhall and since a vast amount of the population of Kartina is dependent on the River Biffin, Kartina should thus be given the authority to dictate the distribution of the river water.

2. Coase Theorem

The Coase Theorem is a legal and economic theory developed by economist Ronald Coase.⁴ The Coase theorem provides to avoid the greater harm and is a form of a harm balancing approach. It focuses on the objectively assessable balance of harms to the exclusion of other, more subjective considerations that are difficult to define.⁵ An example for the same is depicted in the U.S.A Supreme Court judgement of *Kansas v. Colorado*.⁶ In this case, Kansas challenged Colorado's diversion of water from the Arkansas River. Despite Kansas being a riparian state and Colorado a prior appropriation state, the Supreme Court declined to adopt either regime in resolving the dispute. Rather, it held that "the diminution of the flow of water in the river by the irrigation of Colorado has worked some detriment to the southwestern part of Kansas." Nonetheless, "the amount of this detriment," when compared "with the great benefit . . . to the counties in Colorado," weighed against "any interference with the present withdrawal of water in Colorado for purposes of irrigation."⁷ The rule of "equitable apportionment" has been developed by the Supreme Court of U.S.A., starting with this case.⁸

2.1 Coase Theorem and Grand Ethiopian Renaissance Dam ("GERD") dispute

Since 2011, the two countries, Ethiopia and Egypt have been engulfed in an intractable conflict surrounding Ethiopia's construction of the Grand Ethiopian Renaissance Dam ("GERD") on the Blue Nile River. While Ethiopia claims a right to build the GERD in order to harness the Nile waters, Egypt maintains that the dam will reduce the flow and quantity of water that it receives. Because the Nile River is Egypt's only source of water, it considers the GERD to be an "existential threat." Following the principle of greater harm being avoided, the authors of the article "International Water Law and Fresh Water Dispute Resolution: A Cosean Perspective" suggest to evaluate the overall harm that would result from allowing Ethiopia to proceed with the GERD, and the overall harm that would result from prohibiting it and at the end avoid the greater harm. So,

⁴ The Nobel Prize. "Ronald H. Coase Biographica, Ronald H. Coase – Biographical - NobelPrize.org

⁵ International Water Law and Fresh Water Dispute Resolution: A Cosean Perspective, Volume 92, Issue 2, by Tamar Meshel and Moin A. Yahya, University of Colorado Law Review [accessed 27th Aug, 2023] Available at: <https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1063&context=lawreview>

⁶ *Kansas v. Colorado*, 206 U.S. 46 (1907)

⁷ *Supra* Note 3

⁸ *Supra* Note 2

according to the principle the authors state that if Ethiopia can show that the GERD's overall benefits outweigh its costs, it should be allowed.⁹

The facts of the GERD dispute are quite in line with the current case. So, applying the same concept in the present case, the counsel for the respondent would like to humbly submit that the benefits of constructing the Great Katrina Dam, definitely outweigh its costs. This is because, the primary reason for the construction of the dam is the living crisis faced by Katrina since its independence. The citizens of the country till today are suffering due to lack of basic resources like nutritious food, clean drinking water, and consistent electricity. Apart from this poverty remains widespread due to huge increase in population. Despite having a fast-developing economy, Kartina is one of the poorest in the world. Thus, the President, Mr. Angelo Mubble announced the construction of the dam. The Dam was predicted to generate over 4,500 megawatts of electricity, thereby doubling the output of electricity in the country. This would significantly improve the lives of the people of the Republic of Kartina. This step has been taken with the vision to solve the issues faced by the citizens. Thus, the construction of the dam has more advantages as it will not only solve the living crisis in Kartina but is also beneficial to the citizens of Dhall because Katina is willing to offer hydroelectricity generated by the Dam to Dhall at an immensely subsidized rate. Hence, it is submitted before the hon'ble tribunal that Kartina should be given the power to dictate in how the river water is distributed.

3. Benefit-Sharing

Benefit-sharing is a diplomatic term, but its use in transboundary water management has become increasingly popular. It means that co-riparian basin states share not only water but also various other forms of benefits from the river.¹⁰ It is a win-win solution—everyone is better off, no one is worse off. Benefit-sharing typically involves sharing water but also involves countries offering one another various forms of social, political, or environmental benefits or various combinations of these.¹¹ Sadoff and Grey referred to sharing four types of

⁹ Id

¹⁰ Sadoff, C.W.; Grey, D. Beyond the river: The benefits of cooperation on international rivers. *Water Policy* **2002**, *4*, 389–403.

¹¹ Jalilov, S.-M.; Varis, O.; Keskinen, M. Sharing Benefits in Transboundary Rivers: An Experimental Case Study of Central Asian Water-Energy-Agriculture Nexus. *Water* **2015**, *7*, 4778–4805. Available at: <https://www.mdpi.com/2073-4441/7/9/4778>

benefits: benefits to the river, benefits from the river, benefits due to the river, and benefits beyond the river.¹²

Benefits from the River refer to the direct benefits from extracting and consuming water, for example, for agricultural production or urban/industrial water supply. This concept also refers to changes in flow management, with a primary emphasis on direct benefits often in ways that involve trade-offs with benefits to the river. A prime example would be managing water for hydropower. For instance, in 1960, the USA constructed four dams in Canada upstream of the Columbia River to produce hydro-power and reduce floods in the USA. As compensation, Canada was provided USD 64.4 million for flood reduction in the USA and received half of the electricity produced for 60 years.¹³ Another successful example of managing rivers for benefits from the river across borders is the Senegal basin where there are common hydraulic structures operating under cooperative agreements across national borders. The Manantali Dam, whose capacity is 740 GWh per year, is situated 300 kilometres inside Mali. However, approximately 55% of the electricity is used in Mali, 30% in Senegal, and 15% in Mauritania.¹⁴

Likewise, in the present case as well, the outcome of the construction of the dam will benefit Katrina as it will help solve the problems faced by the citizens and improve their living standards and on the other hand the country of Dhall also can be benefitted from the construction of the dam through the hydroelectricity at subsidized rates. Hence, it is submitted before the hon'ble tribunal that Kartina should be given the power to dictate in how the river water is distributed.

CONCLUSION:

Thus, the counsel for the respondent would humbly submit that taking into consideration the above generally accepted principles of international law, Kartina should be allowed to construct the dam and be given the power to dictate how natural resources, (water of river Biffin in this case) are to be distributed.

¹² Sadoff, C.W.; Grey, D. Beyond the river: The benefits of cooperation on international rivers. *Water Policy* **2002**, *4*, 389–403. Available at: [https://www.scirp.org/\(S\(351jmbntvnsjt1aadkposzje\)\)/reference/ReferencesPapers.aspx?ReferenceID=1540757](https://www.scirp.org/(S(351jmbntvnsjt1aadkposzje))/reference/ReferencesPapers.aspx?ReferenceID=1540757)

¹³ Winston, Y. Benefit Sharing in International Rivers: Findings from the Senegal River Basin, the Columbia River Basin, and the Lesotho Highlands Water Project; World Bank Group: Washington, DC, USA, 2008. Available at: https://www.academia.edu/63011814/Benefit_sharing_in_international_rivers_findings_from_the_Senegal_River_Basin_the_Columbia_River_Basin_and_the_Lesotho_highlands_water_project

¹⁴ Id

ISSUE II: WHETHER OR NOT KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL TREATY LAW?

RULE:

Article II: Provisions Regarding the Obligations of Kartina

- i) Dhall shall receive for unrestricted use all those waters which Kartina is under obligation to let flow under the provisions of Paragraph (2).
- ii) 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 the following uses given hereunder: (a) Domestic Use; (b) Non-Consumptive Use; (c) Agricultural Use; (d) Generation of hydro-electric power
- iii) A new Run-of-River Plant can be constructed by Kartina provided that it conforms to the condition that it does not cause a material change to the natural channel, flow rate, and water quality of the river Biffin.

Article V: Future Co-operation

- 1) The two Parties recognize that they have a common interest in the optimum development of the river, and, to that end, they declare their intention to cooperate, by mutual agreement, to the fullest possible extent.
- 3) If either Party plans to construct any engineering work which would cause interference with the water of the river and which, in its opinion, would affect the other Party materially, it shall notify the other Party of its plans and shall supply such data relating to the work as may be available and as would enable the other Party to inform itself of the nature, magnitude and effect of the work.
- 4) If a work would cause interference with the waters of any of the rivers but would not, in the opinion of the Party planning it, affect the other Party materially, nevertheless the Party planning the work shall, on request, supply the other Party with such data regarding the nature, magnitude and effect, if any, of the work as may be available.

Article 6 of the Convention on the Law of the Non-navigational Uses of International Watercourses 1997¹⁵

Under **Article 14** of the **Berlin Rules**, while determining an equitable and reasonable use, the States shall first allocate water to satisfy vital human needs.¹⁶

The Helsinki Rules on the Uses of the Waters of International Rivers¹⁷: The watercourse states shall utilize the water fairly and reasonably, taking into consideration all relevant variables, according to the concept of equitable and reasonable use.

According to **Article 33 of the Vienna Convention**¹⁸, if there is a disagreement between treaty parties over how the treaty should be interpreted or applied, the parties must attempt to reach a compromise via dialogue first.

ARGUMENT:

In the case of *The State of Karnataka by its Chief Secretary Versus the State of Tamil Nadu by its Chief Secretary & Ors*¹⁹, “In totality, we (the bench) deem it appropriate to award to the State of Karnataka an additional 14.75 thousand million cubic of water, that is, 10 thousand million cubic (on account of the availability of groundwater in Tamil Nadu) + 4.75 thousand million cubic (for drinking and domestic purposes, including such need for the whole city of Bengaluru).”

In the case of the *State Of Andhra Pradesh vs. the State Of Karnataka & Ors*²⁰ and the *State Of Haryana vs. the State Of Punjab And Anr*²¹, The needs of the riparian states should be taken into account.

¹⁵ Convention on the Law of the Non-navigational Uses of International Watercourses 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)

¹⁶ International Law Association, Berlin Conference 2004, Water Resources Law. (Accessed on: 20-8-2023) Available at: http://www.cawaterinfo.net/library/eng/l/berlin_rules.pdf

¹⁷ Supra Note 1

¹⁸ United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html> [accessed 26 August 2023]

¹⁹ The State Of Karnataka By Its Chief ... vs State Of Tamil Nadu By Its Chief CIVIL APPEAL NO. 2453 OF 2007

²⁰ State Of Andhra Pradesh vs State Of Karnataka & Ors Original Suite 2 of 1997

²¹ State Of Haryana vs State Of Punjab And Anr Original Suite 6 of 1996

Kartina is also a riparian state. As per National and International Standards and principles, it ought to get extra privileged, owing there is no breach of the treaty. In the case of *Lake Lanoux Arbitration (France v. Spain)*²², The Tribunal decided that in carrying out, without prior agreement between the two Governments, works for the utilization of the waters of Lake Lanoux in the conditions mentioned in the Scheme for the Utilization of the Waters of Lake Lanoux, the French Government was not committing a breach of the provisions of the Treaty of Bayonne of May 26, 1866, and the Additional Act of the same date."

In the case of *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*²³, "no conclusive evidence in the record to show that Uruguay has not acted with the requisite degree of due diligence or that the discharges of effluent from the Orion (Botnia) mill have had deleterious effects or caused harm to living resources or the quality of the water or the ecological balance of the river since it started its operations in November 2007". Consequently, the Court concluded that Uruguay had not breached substantive obligations under the Statute.

In the case of *The Indus Waters Kishenganga Arbitration*²⁴, In February 2013, the Court issued a Partial Award, finding that India was permitted under the Treaty to divert water for power generation by the KHEP. If it can demonstrate that the dam won't hurt the neighboring nation and that it would utilize the water fairly and sensibly, it is justified in constructing one on the river.

The construction of the Dam is not in contravention of the treaty as the river flow will not change till the existence of the treaty by 2030. Moreover, the power generated through the Great Kartina Dam will be shared with the Dhall at Subsidized Rates under Art. 5 of the treaty.

When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.²⁵ The dual aspect of the principle of effectiveness can be seen in the Court's judgment on

²² Lake Lanoux Arbitration (France V. Spain) (1957) 12 R.I.A.A. 281; 24 I.L.R. 101 Arbitral Tribunal.

²³ Pulp Mills on the River Uruguay, Argentina v Uruguay, Order, Provisional Measures, ICJ GL No 135, [2006] ICJ Rep 113, (2006) 45 ILM 1025, ICGJ 2 (ICJ 2006)

²⁴ Indus Waters Kishenganga Arbitration, Pakistan v India, Final Award, ICGJ 478 (PCA 2013), 20th December 2013, Permanent Court of Arbitration [PCA]

²⁵ Commentary on draft articles, [1966] Yearbook of the ILC, vol II, p 219, para 6

Territorial Dispute (**Libyan Arab Jamahiriya/Chad**).²⁶, The ICJ applied the principle of effectiveness to confirm that the reference in article 3 of the treaty to ‘the frontiers’ meant all the frontiers resulting from those instruments to which reference was made in the legal instruments: ‘Any other construction would be contrary to the actual terms of Article 3 and would render completely ineffective the reference to one or other of those instruments in Annex I.’^{27 28} In light of the interpretive principle of effectiveness, any treaty interpreter must ‘read all applicable provisions of a treaty in a way that gives meaning to all of them, harmoniously.’ An important corollary of this principle is that a treaty should be interpreted as a whole, and, in particular, its sections and parts should be read as a whole. In a separate opinion²⁹ Judge Ajibola reviewed the role of good faith in treaty interpretation. He referred to the situation where a treaty affects the exercise of a power by a state. The Appellate Body held in the issue of GATT 1994: ... a treaty interpreter must read all applicable provisions of a treaty in a way that gives meaning to all of them, harmoniously.³⁰ As per the generally accepted rule and principle of the International Treaty Law, Good Faith can outweigh the objects of the treaty and In such situations, such provisions should be given harmonious construction. Kartina has the good faith to bring out its large population from poverty and crisis and also to help dhall with electricity and irrigation purposes.

Oil Platforms (*Islamic Republic of Iran v. United States of America*)³¹, The Court thus found that the United States had not breached its obligations to Iran under Article X, paragraph 1, of the 1955 Treaty as all trade was suspended due to attacks and rejected Iran’s claim for reparation.

²⁶ Territorial Dispute (Libyan Arab Jamahiriya/Chad) (Merits) [1994] ICJ Reports 6.

²⁷ [1994] ICJ Reports 6, at 23, para 47, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation), (Preliminary Objections), [2011] ICJ Reports, at paras 133–34

²⁸ Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v Greece) [2011] ICJ Reports 644, at 673

²⁹ Territorial Dispute, Libya v Chad, Judgment, merits, [1994] ICJ Rep 6, ICGJ 88 (ICJ 1994), 3rd February 1994, United Nations [UN]; International Court of Justice [ICJ]

³⁰ Argentina—Safeguard Measures on Imports of Footwear, AB-1999–7, WT/DS121/AB/R, p 27, para 81 (1999)

³¹ Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America, International Court of Justice (ICJ), 6 November 2003, available at: https://www.refworld.org/cases_ICJ_414b00604.html [accessed 26 August 2023]

*United Kingdom v Norway*³², On 18 December 1951, the ICJ decided that Norway's claims to the waters were consistent with international laws concerning the ownership of local sea space. The Court found that neither the method employed for the delimitation by the Decree nor the lines themselves fixed by the said Decree, are contrary to international law.

*Nuclear Tests Case: Australia v. France; New Zealand v. France*³³, the unilateral statements made by French authorities were first relayed to the government of Australia. There was no need for the statements to be directed to any particular state for it to have legal effect.

As the treaty is silent on at what stage and manner the Kartina have to notify to Dhall in case of any interference, Hence the official announcement of Kartina for the construction of the dam can be treated as proper notification to Dhall. Hence, there is no breach of treaty by Kartina.

CONCLUSION:

Hence, the counsel for the respondent would humbly submit before of the hon'ble tribunal that taking into consideration the above contentions, Kartina is not in contravention of the principles of international environmental law and international treaty law.

³² United Kingdom v Norway [1951] ICJ 3

³³ Nuclear Tests Case (Australia v. France), International Court of Justice (ICJ), 20 December 1974, available at: <https://www.refworld.org/cases/ICJ.4023a57c7.html> [accessed 26 August 2023]

ISSUE III: WHETHER OR NOT FUNDAMENTAL RIGHTS ENSHRINED IN THE CONSTITUTION OF KARTINA WILL APPLY TO THE DISPUTE?

RULE:

Right to Equality (Articles 14 – 18)

Article 14 in The Constitution of Kartina³⁴: Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Kartina.

Article 15 in The Constitution of Kartina³⁵: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16 in The Constitution of Kartina³⁶: Equality of opportunity in matters of public employment.

Article 17 in The Constitution of Kartina³⁷: Abolition of Untouchability Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

Article 18 in The Constitution of Kartina³⁸ : Abolition of titles No title, not being a military or academic distinction, shall be conferred by the State No citizen of India shall accept any title from any foreign State No person who is not a citizen of Kartina shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State Right to Freedom

Right to Freedom (Articles 19 – 22)³⁹

³⁴ Constitution of Kartina, 1950, Art. 14

³⁵ Constitution of Kartina, 1950, Art. 15

³⁶ Constitution of Kartina, 1950, Art. 14

³⁷ Constitution of Kartina, 1950, Art. 14

³⁸ Constitution of Kartina, 1950, Art. 18

³⁹ Constitution of Kartina, 1950, Art. 19, 20,21,22, 23

Article 19 in The Constitution of Kartina: Protection of certain rights regarding freedom of speech etc

Article 20 in The Constitution of Kartina: Protection in respect of conviction for offences

Article 21 in The Constitution Kartina: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

Article 22 in The Constitution of Kartina: Protection against arrest and detention in certain case

Article 23 in The Constitution of Kartina: Prohibition of traffic in human beings and forced labour

Right to Freedom of Religion (Articles 25 – 28)⁴⁰

Article 24 in The Constitution of Kartina⁴¹: Prohibition of employment of children in factories, etc No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

Article 25 in The Constitution of Kartina: Freedom of conscience and free profession, practice and propagation of religion

Article 26 in The Constitution of Kartina: Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

Article 27 in The Constitution of Kartina: Freedom as to payment of taxes for promotion of any particular religion No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination

Article 28 in The Constitution of Kartina: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Cultural and Educational Rights (Articles 29 – 30)⁴²

⁴⁰ Constitution of Kartina, Art. 25,26,27,28

⁴¹ Constitution of Kartina, 1950, Art. 24

⁴² Constitution of Kartina, 1950, Art. 29,30

Article 29 in The Constitution of Kartina: Protection of interests of minorities

Article 30 in The Constitution of Kartina: Right of minorities to establish and administer educational institutions

Right to Constitutional Remedies

Article 32 in The Constitution of Kartina⁴³: Remedies for enforcement of rights conferred

ARGUMENT:

The counsel for the respondents would like to humbly submit to this hon'ble tribunal that the fundamental rights enshrined in the Kartinian Constitution will not apply to the people of Dhall. This is because for fundamental rights to be applicable, the foreigner must reside within the territory of Kartina.

Part III of the Constitution of Kartina provides for the following two types of fundamental rights: (a) There are few fundamental rights which are applicable only to the citizens of Kartina, these include Articles 15,16,19,29,30 of the Kartinian Constitution. (b) And there are few fundamental rights which foreigners can also access under the Constitution of Kartina, these comprise of Articles 14,20,21,21A,22,23,24,25,26,27,28 of the Kartinian Constitution. But foreigners can enjoy the fundamental rights granted to them under Kartinian Constitution only if they are within the territory of India.

1. Fundamental rights available to citizens

Article 15,16,19,29,30 of the Kartina constitution would apply only to the citizens of Kartina thus there is no chance of these fundamental rights being applicable to the dispute. As held in the case of ***SK. MD. Soleman v. State of West Bengal***⁴⁴ the court stated that fundamental rights applicable to citizens, is only for the citizens of the country, which confers certain fundamental rights of freedom on the citizens. No such corresponding rights are given to foreigners who are not within the territory of India.

⁴³ Constitution of Kartina, 1950, Art. 32

⁴⁴ Sk. Md. Soleman vs State Of West Bengal And Anr. AIR 1965 Cal 312, 1965 CriLJ 679 [Calcutta High Court]

In the case of *Johnny Paul Pierce v. The Union of India*⁴⁵, the petitioners approached the hon'ble High Court of Kerala under Art. 226(writ petition) of the Constitution. **Justice C S Dias** considered the writ petition and said that of the constitution of the country doesn't give fundamental rights to the foreigner right to reside and settle within the country.

Thus, the counsel submits that in light of these cases, the fundamental rights applicable to citizens of Kartina would only be applicable to the citizens of Kartina and under no circumstances these fundamental rights can be granted to a non-citizen.

2. Fundamental rights available to non-citizens

These are the fundamental rights which are available even to non-citizens i.e fundamental rights which foreigners can also access include Articles 14,20,21,21A,22,23,24,25,26,27,28 of the Constitution of Kartina.

These are fundamental rights which are even applicable to non-citizens but there are applicable only with in the territory of India. Thus, a foreigner not staying in Kartina but residing in his country, cannot claim the fundamental rights of Kartina.

For example, looking at Article 14 which is applicable to the foreigners reads as – “Equality before law – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Kartina.” The provisions clearly says that the state shall not deny any person equality before law or equal protection of law within the territory of the Kartina. But in the present the people of Dhall are completely residing in in their country and not within the premises of Kartina. If the people of Dhall want to claim the fundamental rights available to foreigners under the Constitution of Kartina, then they should be living with in the territory of Kartina, which they are not and thus not eligible for the same. Thus, the counsel for the respondent humbly submits that the claim of Kartina that the Fundamental Rights of the Constitution of Kartina will not apply to the people of Dhall is therefore a valid claim.

⁴⁵ Johnny Paul Pierce vs The Union Of India WP(C).No.13263 OF 2020(G) [Kerala High Court]

CONCLUSION:

Hence, the counsel for the respondent would humbly submit before of the hon'ble tribunal that taking into consideration the above contentions, Fundamental Rights enshrined in the Constitution of Kartina will not apply to the people of Dhall.

PRAYER

Wherefore, in light of the facts stated, issues raised, arguments advanced and authorities cited, may this Hon'ble Interstate River Water Dispute Tribunal that it may be graciously pleased to adjudge and declare that:

1. The Republic of Kartina should be given the power to dictate how natural resources are distributed.
2. The Republic of Kartina is not in contravention of the principles of international environmental law and international treaty law.
3. Fundamental Rights enshrined in the Constitution of Kartina will not apply to the people of Dhall.

Also, pass any other order it may deem fit, in the favour of the RESPONDENT in the interest of Justice,
Equity and Good Conscience.

All of which is most humbly and respectfully submitted

Place: The Republic of Kartina

S/d _____

Date: 27 August 2023

Counsel for the Respondent