

Convention on the Suppression of Urtica

The *Convention on the Suppression of Urtica* (the Convention or Treaty) forms a binding treaty between the three parties as evidenced by their belief that Urtica has caused an increase in violence and other health effects to the population. The three countries (Arum, Bellis and Cardamine) are parties to Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on the Law of Treaties 1969. They are also bound to the UN Charter since they are members of the United Nations and bound by customary international law, of which the VCLT is partly representative (Shaw, 8th ed, p 685). As evidenced (see *Fisheries Jurisdiction*, para 36; *Namibia*, para 94; *Legal Consequences*, para 31) International Court of Justice (ICJ) has recognised that articles of the VCLT represent CIL on a number of occasions.

Is Arum violating the terms of the Convention?

Terms of the Treaty

Under article 14 of the VCLT, the consent of a state to be bound by a treaty is expressed by ratification when (a) the treaty provides for such consent to be expressed by means of ratification. In this case, the three countries stated the terms of the Convention such that it contains no provisions on reservations or withdrawal. An example of a Convention that provides no provision for reservation is the International Criminal Court Article 120. Under section 2 (Reservations), Article 19 (formulation of reservations) of the VCLT, a state may formulate a reservation when signing, ratifying, accepting, or approving or acceding to a treaty unless as specified under subparagraph (a). In the Convention for Suppression of Urtica, the treaty contains no provision for reservation. Article 19 sub-paragraph (c) states “In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.” This implies that the reservations made by Arum were incompatible with the object

and purpose of the Convention which was “make the manufacture, possession or sale of Urtica a criminal offence in their territories.”

Reservation by Arum

In ratifying the Convention, Arum made preservation stating that it reserved the right to apply the Convention in a manner that would permit the manufacture, possession or sale of Urtica for medicinal purposes. The reservation was incompatible with the Treaty as indicated under Article 19 sub-paragraph (c) of the VCLT. The Treaty that came into force on ratification by the three states contained no provisions on reservation or withdrawal.

Article 2(1)(d) of the Vienna Convention 1969) describes a reservation as a Unilateral statement made upon signature, ratification, acceptance, approval of or accession to a treaty. While states make a formal statement at the time of signature, ratification, or accession of a treaty, these statements are clear and do not pose any problem in relation to the object and purpose of the treaty. However, when there is a lack of clarity, problems are bound to arise. Reservations are important as they enable a state to participate in a treaty in which it would not be able to participate due to an unacceptable provision or provisions. Nonetheless, reservation might be perceived as a reflection of a lack of good faith or a clever way of refusing to accept the terms of a treaty if the state perceives it to compromise its activities.

Territorial Exclusion

Under article 29 of the VCLT, “Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.” The Convention does not allow any state which is a party in the treaty to exclude any territory since it has no provision for reservation or withdrawal. However, Arum has implemented territorial

exclusion by using Vica, a remote uninhabited Arum island, for the production, manufacture, and sale of Urtica.

Objection of the Reservation

Under Article 20 paragraph 5 of the VCLT, a state will have accepted a reservation if it does not make a formal objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later. In the Convention on the Suppression of Urtica, Both Bellis and Cardamine objected to the reservation but did not say whether they regarded the Convention as applying between each of them and Arum. Although the reservation by Arum is inconsistent with the object and purpose of the Convention, Bellis and Cardamine failed to effect the objection before the entry into force of the treaty. Article 21 paragraph 3 says, “When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.” Although Billis and Cardamine did not withdraw the objection as required under Article 22 paragraph 3, sub-paragraph B, the provision on Article 21 paragraph 3 allowed Arum to effect its reservations. As outlined under Article 23 paragraph 1, Billis and Cardamine did not formulate an objection to Arum’s reservation in writing and communicate it to each party entitled to become parties to the treaty. This is evident in the statement “Bellis and Cardamine objected to the reservation but did not say whether they regarded the Convention as applying between each of them and Arum.”

Interpretation of “Medical Purposes”

Article 31 paragraph 1 of the VCLT advocates the interpretation of a treaty in good faith according to the ordinary meaning given to terms of the treaty. In making its reservation, Arum

did not provide a clear interpretation or definition of the phrase “medicinal purposes”. As indicated in Article 32 of the VCLT, interpretation is critical for phrases that (a) Leaves the meaning ambiguous or obscure; or (b) Leads to a result which is manifestly absurd or unreasonable. The failure to have a clear definition of the phrase “medical purpose” in the treaty was a significant error that affects the manufacture, use, and sale of Urtica by Arum. The interpretation error or lack of interpretation, thereof, resulted in the illegal use and smuggling of Urtica into Bellis and Cardamine. The activities of Arum in smuggling Urtica into other states despite the treaty that prohibits the manufacture, production, use, and sale of the drug is a *pacta sunt servanda* as indicated in Article 26.

The use of Urtica for medical purpose requires clarity to ensure its use does not constitute a crime. For example, some states in the United States of America such as California allow the use of Medical Marijuana. However, this is done under a clear definition of medical marijuana in accordance with the Compassionate Use Act of 1996. The Act ensures that the drug is used under a physician's recommendation and regulates the possession and cultivation of the drug. The parties to the Convention should have required Arum to provide the definition and regulation of the Medical purpose of Urtica by including a statute in the treaty such as the Cal Health & Saf Code § 11362.5 to facilitate proper monitoring and control of the drug use, distribution, and manufacturing.

Article 32 of the VCLT allows supplementary means of interpretation in the case of ambiguous or obscure meaning. To have a clear understanding of the phrase “Medical Purposes” we may consider the circumstances following the interrogation of six Arum smugglers arrested in Bellis. Bellis police found that there was a thriving black market for Urtica in Arum, to which the government of Arum was “turning a blind eye”. Rumours associated the Arum government

for supporting the trade. Relating the illegal trade and drug trafficking in Arum with the increased cases of Urtica addiction in Cardamine show Arum was not using Urtica for medical purposes but also engaged in dubious activities for economic reason.

Apparently, The ICJ has reaffirmed on a number of occasions that Articles 31, 32 and 32 of the VCLT reflect customary law (Shaw, 8th ed, p 707). In this case, the Treaty should be interpreted in good faith and in accordance with the ordinary meaning of the terms in light of the purpose and context (art 31). The purpose of the Convention is to make the manufacture, possession or sale of Urtica a criminal offence. The Digitalis states acknowledge that leaving one country out of the treaty will have a significant impact since the excluded country will benefit from the illegal trafficking of the drug. Arum used reservation as a tool to exclude itself from the treaty by including an undefined and non-conceptualised phrase to create ambiguity that will allow it to engage in the production and distribution of Urtica.

Arum capitalised on the ambiguity created in the reservation to establish an exclusive territory for the manufacturing and sale of Urtica under the “medical purpose” category. The reservation gives Arum the right to establish an exclusive territory for producing and selling the Urtica since the treaty gives it the permit to enact the treaty in its entire territory (Article 29). Therefore, the decision to set Vica Island as the destined area for the production of Urtica is a domestic issue that does not fall under international law.

Errors in the Objection Procedure

Bellis and Cardamine made an error in failing to follow up on their objection of Arum’s reservation. Under Article 22 Paragraph 2, Arum made the reservation on the day of confirmation but the other parties did not follow the provided procedure to object it. Under Art.20-23 of Vienna Convention on the Law of Treaties 1969, any signatory or contracting state

has the option of objecting to a reservation, inter alia, if, in its opinion, the reservation is incompatible with the object and purpose of the treaty. The objecting state may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving states. In this case, Bellis and Cardamine did not declare that their objection precludes the entry into force of the treaty. The Convention on the Suppression of Urtica entered into force in accordance with Article 24 paragraph 2 following the consent of all the parties. Bellis and Cardamine would have followed Article 25 paragraph 1 subparagraph (b) to allow time to negotiate and understand Arum's meaning of the phrase "Medical Purpose" to avoid situations that would arise in future due to ambiguity and lack of clarity in interpretation of the reservations.

State Responsibility

Under international law, state responsibility results as a breach of a primary obligation as stated in Article 1 of the Responsibility of States for Internationally Wrongful Acts (ASR). Article 2 of ASR state that there is an internationally wrongful act of a state when conduct consisting of an action or omission (a) is attributed to the state under international law; and (b) constitutes a breach of an international obligation of the State.

In the Convention, it is recognised that the three states which are a party to the Treaty have a general obligation to ensure activities within their jurisdiction prohibits the manufacture, possession or sale of Urtica. In accordance with Article 12 of the ASR, Arum's manufacture, possession and sale of Urtica breaches the existence of an international obligation requiring it to obligate to the treaty. However, Article 13 of the ASR, considering the reservation and incomplete objection by the other parties, ensures that Arum activities in regard to Urtica do not constitute a breach of an international obligation.

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