Team No – 122 A

IN THE INTERNATIONAL COURT OF JUSTICE

LA COUR INTERNATIONALE DE JUSTICE

PEACE PALACE, THE HAGUE

NETHERLANDS

2012 GENERAL LIST NO. …….

THE REPUBLIC OF ARPENIA

APPLICANT

v.

THE STATE OF BELLOMACH

RESPONDENT

ENTRE LA REPUBLIQUE D' ARPENIA

DEMANDERESSE

v.

ET LA ÉTAT D' BELLOMACH

DÉFENDEUR

The Case Concerning the Differences Between Arpenia and Bellomach Regarding the Interpretation of Ruritania Free Trade Agreement.

MEMORIAL FOR THE APPLICANT // MÉMOIRE DE LA DEMANDERESSE

FOURTH GNLU INTERNATIONAL MOOT COURT COMPETITION, 2012

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

1. ¶ - Paragraph
2. AB/R – Appellate Body Report
3. AJSS – African Journal of Social Sciences
4. Art. – Article
5. Arts. – Articles
6. ASBL – *Association Sans But Lucratif* (French: Non-Profit Organisation)
7. CDPA – Copyright
8. Ch. – Chancery
9. Doc. – Document
10. DSR – Dispute Settlement Resolution
11. DSU – Understanding on Rules and Procedure Governing the Settlement of Disputes
12. EC – European Community
13. ECJ – European Court of Justice
14. Ed. – Edition
15. EEC – European Economic Union
16. EILR – Emory International Law Review
17. Eng. – England
18. EU – European Union
19. EWHC – High Court of England and Wales
20. FFB – Federal Football Board
21. FIFA – *Fédération Internationale de Football Association*
22. FRBSB – *Fédération Royale Belge des Sociétés de Basket-ball*
23. FTA – Free Trade Agreement
24. GATS – General Agreement on Trade in Services
25. GPA – Government Procurement Agreement
26. HL – Helping Limbs
27. ICCPR – International Convention on Civil and Political Rights
28. ICESCR – International Convention on Economic, Social and Cultural Rights
29. ICJ – International Court of Justice
30. ILM – International Legal Materials
31. Inc. – Incorporated

32. IPR – Intellectual Property Rights
33. Ltd. - Limited
34. MFN – Most-Favoured Nations
35. MTN – Multilateral Trade Negotiations
36. No. – Number
37. OECD – Organisation for Economic Co-operation and Development
38. OJ – Official Journal of the European Union
39. Ors. – Others
40. OUP – Oxford University Press
41. Pg. – Page
42. Pvt. – Private
43. R&D – Research and Development
44. r/w – read with
45. Regd. – Registered
46. RFTA – Ruritania Free Trade Agreement
47. S&S – Sight and Sound
48. SCC – Supreme Court Cases
49. TS – Treaty Source
50. TEU – Treaty on European Union.
51. TFEU – Treaty on the Functioning of the European Union.
52. TRIPS – Trade Related Aspects of Intellectual Property Rights.
53. UEFA – Union of European Football Association
54. UK – United Kingdom
55. UN – United Nations
56. UNCRPD – United Nations Convention on Rights of Person with Disabilities
57. UNTS – United Nations Treaty Source
58. UOI – Union of India
59. US – United States
60. USA – United States of America
61. VCLT – Vienna Convention on Law of Treaties
62. WT/DS – World Trade/Dispute Settlement
63. WTO – World Trade Organisation
64. YEA Initiative – Youth Employment of Arpenia Initiative

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STATEMENT OF JURISDICTION

The Republic of Arpenia and the State of Bellomach have submitted this dispute to the International Court of Justice pursuant to a Special Agreement (Compromis), dated July 15, 2011. This Court's jurisdiction is invoked under Art. 36(1) r/w Art. 40(1) of the Statute of the International Court of Justice, 1950.

STATEMENT OF FACTS

BACKGROUND OF FACTS

- The Republic of Arpenia ('Arpenia'), which was formerly a colony of the State of Bellomach ('Bellomach'), is a middle income country in the continent of Ruritania. It's economy was predominantly based on manufacture of primary goods and Bellomach was one of its main markets. Of late, Arpenia has also started promoting R&D in various fields. (¶ 1)

- Bellomach, which was once a colonial power, is a parliamentary monarchy and is also situated in Ruritania. It is now a middle income country and is proud of its combination of economic liberalism and socially progressive programming. (¶¶ 5-6)

- To promote trade between the two countries, Arpenia and Bellomach have concluded the Ruritania Free Trade Agreement ('RFTA') which has a broad scope covering trade in goods, trade in services, intellectual property rights, market access rights for investors in agriculture, and also allows for automatic approval of tourist visas for upto two months. The RFTA adopts all WTO rules and commitments as FTA rules and commitments, and provides that in case of dispute, the parties are to approach the ICJ for a resolution of their differences. (¶ 11)

THE YOUTH EMPLOYMENT OF ARPENIA INITIATIVE ('YEA INITIATIVE') AND ITS EFFECTS

- Due to a slow-down in the economy, the government of Arpenia embarked on a program to foster the disadvantaged youth of the country, called YEA Initiative. The program had three main components. Firstly, to increase employment opportunities for young people, the mandatory retirement age of all workers was reduced to 60 years with no exceptions including the public and private sectors. (¶ 3)

- Secondly, to encourage national loyalties, the Federal Football Board ('FFB') has passed a rule that in national league competitions, at least six of the players on the field at any point in the game must be either citizens or have resided in Arpenia for at least ten of the past fifteen years to qualify as "Arpenian" for national league games. However, Bellomach's National Football Commission has called the rule "worth considering" if Arpenia is going to persist in enforcing it. (¶¶ 3, 13)

- Thirdly, in an attempt to eliminate the disadvantage of languages faced by tribal youth, the High Court of Larront, the largest state in Arpenia, passed a binding rule that all documents and pleadings, done and submitted to the court, must be made in either the state language or one of the federal languages (Arpenian and Bellomachese), and one of the two main tribal languages. However, vigorously protesting the changed rules on court language, the National Attorneys Association of Bellomach has called it "unwarranted nationalism", and has demanded it be pursued legally. (¶¶ 4, 14)

BELLOMACH'S REFITTING CONTRACT, AND BRAILLE AND AUDIO CONTRACT

- Sight and Sound ('S&S'), a big company in Arpenia, manufactures a device named as "Virtual Eye". The device helps blind people to read non Braille books. The company was granted many patents in this area and is considered a world leader in this field. These devices are exported all over the world including Bellomach, and is one of the biggest markets for S&S. (¶ 2)

- Although Bellomach has just signed and is yet to ratify the UNCRPD, its parliament passed legislation to make all public buildings wheelchair accessible and sight- and hearing-impaired friendly. To do so, they made two contracts. The first was granted by means of a public offer for bids to re-fit the public buildings with ramps and elevators to permit access to persons with physical handicaps (Refitting Contract) and tender was valued to be B$ 2million.The "Virtual Eye" devices were to be installed in all the public libraries to help blind people read non-Braille books. (¶ 6)

- The second contract was for making improvements in the information available on public property to persons with sight and hearing impairments (Braille and Audio Contract). This contract was not subject to an open tender and was given to Helping Limbs (HL), a local non-governmental, non-profit organization that helps train workers with disabilities. It provided for a payment of 15% over the costs of labour and material, and the estimated total to be paid was B$32,000. (¶¶ 6-7)

- Furthermore, the government of Bellomach issued a mandatory waiver of copyright for any of the information provided in the buildings in Braille and on audio, although not for the information in regular text form. The prominent poet Ra Ephrama, who was a Bellomachian, but now a permanent resident of Arpenia, was hired by the Bellomach government to write seven out of ten of the introductory descriptions of the landmarks and HL were to transpose such descriptions (as well as others) into Braille and audio forms as part of the contract. However, Arpenia accused Bellomach of unfair procurement behavior and of illegally denying intellectual property protection. (¶¶ 9, 15)

- Both the countries exchanged formal diplomatic protests to no avail and after six months of subsequent consultations, the negotiators of Arpenia and Bellomach could not come to an agreement. Therefore, they decided to invoke the provisions of their RFTA and proceed to the ICJ. (¶ 9)

RELEVANT INTERNATIONAL AGREEMENTS

- Arpenia and Bellomach are parties to the WTO as well as United Nations. Arpenia has ratified the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR'). Bellomach has ratified the ICCPR, and has signed but not ratified the ICESCR and the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD'). (¶ 12)

STATEMENT OF ISSUES

I. ARPENIA IS JUSTIFIED IN PASSING THE BINDING RULE REGARDING THE COURT LANGUAGES.

A. THE BINDING RULE PASSED BY THE HIGH COURT DOES NOT AMOUNT TO UNWARRANTED NATIONALISM.

B. BURDEN OF PROOF IS ON BELLOMACH TO PROVE THAT ARPENIA HAS VIOLATED GATS PROVISIONS AND NOT ABIDED BY ITS SPECIFIC COMMITMENTS.

C. ARPENIA HAS THE RIGHT OF SELF DETERMINATION IN ORDER TO FOSTER THE DISADVANTAGED YOUTH OF THE COUNTRY.

1. ***Art. 31(1) of the VCLT will apply to Bellomach.***
2. ***Art. 1 of the ICCPR states that all peoples have the Right of Self-Determination.***
3. ***Common language helps to facilitate freedom of expression.***

D. ARPENIA HAS NOT VIOLATED THE GATS SPECIFIC COMMITMENTS.

II. BELLOMACH'S NATIONAL FOOTBALL COMMISSION IS UNJUSTIFIED IN PROTESTING THE 'SIX NATIONALS' RULE MADE BY THE ARPENIA'S FEDERAL FOOTBALL BOARD.

A. ARPENIA IS JUSTIFIED IN PASSING THE SAID RULE.

B. THE SAID RULE IS AN INTERNATIONAL CUSTOMARY NORM.

C. THE SAID RULE IS NOT IN VIOLATION OF GATS.

III. BELLOMACH BY ISSUING THE REFITTING AND BRAILLE AND AUDIO CONTRACT HAS DENIED ARPENIA INTELLECTUAL PROPERTY PROTECTION AND VIOLATED THE TRIPS AGREEMENT.

A. TRIPS AGREEMENT IS BINDING ON BELLOMACH AND ARPENIA AS MEMBERS TO WTO.

B. BRAILLE AND AUDIO CONTRACT HAS VIOLATED THE BERNE CONVENTION.

C. INSTALLATION OF THE VIRTUAL EYE AS PER REFITTING CONTRACT OF BELLOMACH HAS RESULTED IN DENYING INTELLECTUAL PROPERTY PROTECTION TO ARPENIA.

1.*Violation of the Government Procurement Agreement.*

2.*Violation of the TRIPS agreement by issuing Refitting Contract.*

SUMMARY OF ARGUMENTS

I. HIGH COURT OF LARRONT IS JUSTIFIED IN PASSING THE BINDING RULE REGARDING THE COURT LANGUAGES.

It is humbly submitted that the High Court of Larront, has passed the binding rule regarding court languages in order to eliminate the disadvantages the tribal youth faces rising out of their traditional low-paying jobs. The High Court is merely furthering the cause of the Government in order to eliminate the disadvantages the tribal youth face in their traditional low paying jobs, in the legal sector. Thus, this rule is an example of judicial activism by the Court, in order to foster the disadvantaged youth of the country.

The mere assertion of a claim does not amount to proof. The burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence. Thus, since it is Bellomach which is protesting against the Court language rule imposed by High Court of Larront, the onus is, therefore, on Bellomach to *affirmatively* prove that there is a *prima facie* violation of the GATS.

II. BELLOMACH'S NATIONAL FOOTBALL COMMISSION IS UNJUSTIFIED IN PROTESTING THE 'SIX NATIONALS' RULE MADE BY THE ARPENIA'S FEDERAL FOOTBALL BOARD.

The youth of Arpenia have invested great sums of money in training to acquire an opportunity to play in one of the three major football leagues in Arpenia. Thus, it is submitted that the rule was passed as part of the YEA Initiative to help the disadvantaged youth of the country. It was passed to further employment opportunities to the local youths, to encourage national loyalties in the game and also to reap the manifest of the investments made by the youth for the training.

Furthermore, Arpenia is not completely ousting the scope of Bellomachese football players from joining the National League teams. It has still kept an opening of 5 out of 11 players, and these 5 players can be foreigners.

III. BELLOMACH BY ISSUING THE REFITTING AND BRAILLE AND AUDIO CONTRACT HAS DENIED ARPENIA INTELLECTUAL PROPERTY PROTECTION AND VIOLATED THE TRIPS AGREEMENT.

It is submitted that both Arpenia and Bellomach are bound by the Berne Convention, 1971. Sight and Sound is the manufacturer of "Virtual Eye" and is considered the world leader in the products and services for the sight and hearing impaired. As per the refitting contract issued by Bellomach government, the Virtual Eye is to be installed in the public libraries, which implies the use of the product, without the consent of the patentee- Sight and Sound.

In the circumstances, wherein Bellomach government required the installation of Virtual Eye device in the public libraries, should have contracted with Sight and Sound exclusively. Hence there is a clear violation of the GPA by Bellomach. As per the refitting contract issued by Bellomach government, the Virtual Eye is to be installed in the public libraries, which implies the use of the product, without the consent of the patentee- Sight and Sound. There has been no transfer of the rights or limitations incorporated. Hence, it is submitted that the use of the product Virtual Eye, without the authorization of patentee is violation of the TRIPS agreement.

ARGUMENTS ADVANCED

I. ARPENIA IS JUSTIFIED IN PASSING THE BINDING RULE THAT ALL DOCUMENTS SUBMITTED TO THE COURT AND ALL PLEADINGS BEFORE THE COURT MUST BE MADE IN EITHER THE STATE LANGUAGE OR ONE OF THE FEDERAL LANGUAGES (ARPENIAN AND BELLOMACHESE) AND ONE OF THE TWO MAIN TRIBAL LANGUAGES.

A. THE BINDING RULE PASSED BY THE HIGH COURT DOES NOT AMOUNT TO UNWARRANTED NATIONALISM.

It is submitted that High Court of Larront is justified in imposing the court language rule. Further, it is submitted that this rule is an example of judicial activism by the Court, in order to foster the disadvantaged youth of the country.[1] Regarding this aspect, the federal judiciary has undertaken a study on the role of language disadvantages in the court system and passed it on to the state courts with a recommendation that measures be taken to ensure access to courts. In response, the High Court of Larront, the largest state in Arpenia, in an attempt to eliminate the disadvantages the tribal youth face in rising out of their traditional low-paying jobs, passes a binding rule that all documents submitted to the court and all pleadings before the court must be made in either the state language or one of the federal languages (Arpenian and Bellomachese) and one of the two main tribal languages. Thus, the High Court of Larront has passed this binding rule as a measure to safeguard the interest of the public, particularly, the youth of Arpenia and also help the Government of Arpenia in furthering the cause of YEA Initiative.[2]

Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions."[3] Thus, one basic and fundamental question that

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[1] *As per* ¶ 4, *Compromis.*
[2] *Id.*
[3] BLACK'S LAW DICTIONARY (8TH ED. 2004).

confronts every democracy is what is the role or function of a judge. Is it the function of a judge merely to declare law as it exists-or to make law? The scope of judicial activism depends on the implications of this aspect.[4]

However, several impositions have been laid down on the Courts regarding judicial activism; one of them being that with a view to see that judicial activism does not become "judicial restraint", the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile. Failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties".[5] Also, an example of a country practicing judicial activism and helping to foster the public is India. In the last few years the Supreme Court has, through intense judicial activism, become a symbol of hope for the people of India.[6]

Justice Harland in the case of *Poe v. Ullman* wrote a dissenting judgment in favour of judicial activism which later became the foundation for the majority of opinions in various cases involving privacy rights.[7] In the case of *Brown v. Board of Education*[8], proponents of judicial activism believed the Supreme Court of USA had appropriately used its position to adapt the basis of the Constitution to address new problems in new times.

Thus, it is submitted that the rule passed by High Court of Larront does not amount to judicial restraint because the High Court is merely furthering the cause of the

[4] P. N. Bhagwati, *Judicial Activism in India, available at* http://www.law.wisc.edu/alumni/gargoyle/archive/17_1/gargoyle_17_1_3.pdf (last visited Dec. 3, 2011).
[5] Common Cause (A Regd. Society) v. UOI & Ors., (1996) 6 SCC 530 (India).
[6] Bhagwati, *supra* note 4.
[7] Harlan, J. (Dissenting Opinion), Poe v. Ullman, 367 US 497 (1961), pp. 541-542.
[8] Brown v. Board of Education, 347 US 483 (1954).

Government in order to eliminate the disadvantages the tribal youth face in their traditional low paying jobs, in the legal sector. [9]

B. BURDEN OF PROOF IS ON BELLOMACH TO PROVE THAT ARPENIA HAS VIOLATED GATS PROVISIONS AND NOT ABIDED BY ITS SPECIFIC COMMITMENTS.

It is submitted that the burden of proof is on Bellomach to prove that the court language rule in not in consonance with Arpenia's GATS Schedule.

The Appellate Body in *US – Wool Shirts and Blouses* has recognized that the concept of a burden of proof is implicit in the WTO dispute settlement system.[10] The concept of the burden of proof generally has two important aspects in any judicial or quasi-judicial system: (i) who should "lose" the dispute if the facts remain unclear? In whose favour should a panel decide if, based on the available evidence, it cannot establish the facts necessary to determine whether or not the respondent has violated a certain provision of the covered agreements?

For example, Art. 11.3 of the Agreement on Safeguards[11] prohibits [WTO] Members from encouraging or supporting non-governmental measures equivalent to a voluntary import or export restraint. How should the panel rule, if the available evidence leaves open whether an alleged act of governmental support has taken place or not? (ii) What level of proof suffices for a panel to establish a fact? Above this level, the panel would consider the fact at issue as established and would base its decision, among other things, upon this fact. In turn, below this level, the panel cannot consider the fact as established; if it is a fact that is necessary to satisfy the legal provision, the panel would rule against the party bearing the burden of proof.

[9] *As per* ¶¶ 3-4, *Compromis*.
[10] Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, ¶ 6.7 (Apr. 25, 1996).
[11] Agreement on Safeguards , *available at* http://www.wto.org/english/tratop_e/safeg_e/safeint.htm. (last visited Dec. 2, 2011).

The mere assertion of a claim does not amount to proof. In line with the practice of various international tribunals, the Appellate Body has endorsed the rule that the party who asserts a fact, whether the complainant or the respondent, is responsible for providing proof thereof. The burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence.[12]

This means that the party claiming a violation of a provision of the WTO Agreement[13] (i.e. the complainant) must assert and prove its claim. In turn, the party invoking in defence a provision that is an exception to the allegedly violated obligation (i.e. the respondent) bears the burden of proof that the conditions set out in the exception are met.[14]

It is further submitted that it is a requirement on part of the complainant to present a *prima facie* case which is a threshold question. In other words, the panel must first determine whether the complainant has presented a *prima facie* case; if the panel finds that it is the case, it can then proceed to determine on the basis of all evidence before it whether the challenged measure is inconsistent with the WTO agreements.[15]

Since it is Bellomach which is protesting against the Court language rule imposed by High Court of Larront, the onus is, therefore, on Bellomach to *affirmatively* prove that there is a *prima facie* violation of the GATS.

C. ARPENIA HAS THE RIGHT OF SELF DETERMINATION IN ORDER TO FOSTER THE DISADVANTAGE YOUTH OF THE COUNTRY.

1. *Art. 31(1) of the VCLT will apply to Bellomach.*

It is submitted that although Bellomach is not a party to VCLT, the treaty however binds both the countries. The Appellate Body Report on *US — Gasoline*[16] stated that the

[12] Appellate Body Report, US — Wool Shirts and Blouses, *supra* note, ¶ 7.9.
[13] Marrakesh Agreement establishing the World Trade Organization, 1879 UNTS 3.
[14] Appellate Body Report, US — Wool Shirts and Blouses, *supra* note , ¶ 7.12.
[15] Panel Report, *United States – Section 211 Omnibus Appropriations Act of 1988,* ¶ 7.14, WT/DS176/R (Aug.6, 2001).
[16] Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R (Apr. 29, 1996).

"general rule of interpretation", contained in Art. 31[17] of the VCLT had attained the status of customary or general international law. The Appellate Body added that WTO law was not to be "read in clinical isolation from public international law". As such, it forms part of the 'customary rules of interpretation of public international law' which the Appellate Body has been directed, by Art. 3(2) of the *DSU*[18], to apply in seeking to clarify the provisions of the *General Agreement* and the other 'covered agreements' of the *Marrakesh Agreement Establishing the World Trade Organization*[19] . That direction reflects a measure of recognition that the *General Agreement* is not to be read in clinical isolation from public international law."[20]

Further, in connection with applying the "customary rules of interpretation of public international law", the Appellate Body in *Japan — Alcoholic Beverages II*[21] stated that Art. 31 of the *Vienna Convention* provides that the words of the treaty form the foundation for the interpretative process: 'interpretation must be based above all upon the text of the treaty'."[22] In *EC — Hormones*[23], the Appellate Body paraphrased its statement from *India — Patents (US)*[24], by noting that the fundamental rule of treaty interpretation requires a treaty interpreter to read and interpret the words actually used by the agreement under examination, not words the interpreter may feel should have been used.[25]

2. *Art. 1 of the ICCPR states that all peoples have the Right of Self-Determination.*

[17] VCLT, Art. 31(1), May 23, 1969, 1155 U.N.T.S. 33.
[18] DSU, Art. 3.2, Apr. 15, 1994, 33 I.L.M. 112(1994).
[19] WTO, *supra* note 13.
[20] Appellate Body Report on *US — Gasoline*, *supra* note 16, ¶ 17. See also Appellate Body Report on *India —Patents (US)*, ¶ 46, WT/DS50/AB/R (Dec. 19, 1997).; Appellate Body Report on *Japan — Alcoholic Beverages II*, ¶¶ 10-12, *WT/DS8/R, WT/DS10/R, WT/DS11/R* (Jul. 11, 1996); and Panel Report on *US — DRAMS*, ¶ 6.13, WT/DS99/R (Jan. 29, 1999).
[21] Appellate Body Report on *Japan — Alcoholic Beverages II*, ¶¶ 10-12, *WT/DS8/R, WT/DS10/R, WT/DS11/R* (Jul. 11, 1996).
[22] *Id*, ¶ 11.
[23] Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998).
[24] Appellate Body Report on *India — Patents (US)*, ¶ 46, WT/DS50/AB/R (Dec. 19, 1997).
[25] Appellate Body Report on *Japan — Alcoholic Beverages I, supra* note , ¶ 181.

Art. 1[26] of the ICCPR states that all peoples have the right of self determination. Both Arpenia and Bellomach are parties to this Covenant.[27]

Self - determination is defined by the Oxford Dictionary as 'the right of a country or a region and its people to be independent and choose their own government and political system'[28] and 'self government' is defined as 'the government or control of a country or an organisation by its own people or members [and] not by others.'[29]

It is submitted that since Arpenia was a colony of Bellomach and has now gained independence, thus, it is a self governing country.[30]

The idea of self determination is perhaps defined most by two political doctrines. The first is nationalism and the second is liberalism. Liberalism and nationalism are not unrelated, and the two may, in fact, cover considerable common ground.[31] The language of the two is also close.[32] Both these ideas use the rhetoric of the people. Thus, both these ideas can be wrapped in the language of self-determination, and these two aspects are perhaps most significantly expressed in the notion that the principle has 'internal' and 'external' aspects.[33]

A liberal state is characterised by constitutionalism and the rule of law, as the best means of guaranteeing individual freedoms, as well as its representative and democratic character. The authority of the government is seen to derive from 'the people', in a generic rather than national sense, as the group of individuals composing the population of a

[26] ICCPR, Art. 1, Dec. 16, 1966, 999 U.N.T.S. 171.
[27] *As per* ¶10, *Compromis.*
[28] OXFORD ADVANCED LEARNER'S DICTIONARY (8TH ED. 2011).
[29] *Id.*
[30] *As per* ¶ 1, *Compromis.*
[31] JAMES SUMMERS, PEOPLES AND INTERNATIONAL LAW HOW NATIONALISM AND SELF- DETERMINATION SHAPE A CONTEMORARY LAW OF NATIONS 30-31 (2007).
[32] *Id.*
[33] D. RAIC, STATEHOOD AND THE LAW OF SELF-DETERMINATION 226-307 (2002).

state.[34] 'The people' is defined by the Oxford Dictionary as 'ordinary men and women of a country, rather than those who govern or have a special position in society'.[35]

However, the concept of people is famously undefined in international law. However, it is well established that people are the basic unit that exercise the legal right of self determination. It can also be noted that people exercise this right collectively as a single group. More broadly people tend to be seen as national groups, possessing certain national characteristics. This is both in the colloquial use of the term and in international law. What those national characteristics are is left open.[36]

3. *Common language helps to facilitate freedom of expression.*

Similarly, if people have a common language that might help to facilitate freedom of expression and the exchange of ideas necessary to hold governments to account.[37] Self determination can perhaps be best seen as legitimising process which can be used to justify various political and legal activities.[38]

Language is considered to be one of the most important national ties and is probably the most important in ethnic interpretations of nationality. However, it related rather less well to legal principles than political ties. Linguistic ties can connect to the principle of self-determination and can perform two roles in relation to that right. First, they have been used to identify peoples who have the right of self-determination. Second, they have been used to draw political boundaries on the basis of nationality.[39]

Language can also be associated with territorial integrity if it is connected to a 'country', as outlined in principle 6 of the Colonial Independence Declaration, GA Res. 1514 (XV)

[34] J. RAWLS, THE LAW OF THE PEOPLES 14 (1999).
[35] OXFORD ADVANCED LEARNER'S DICTIONARY 1124 (8TH ED. 2011).
[36] SUMMERS, *supra* note 31, pp. 1-2.
[37] J.S. MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT IN UTILITARIANISM, LIBERTY, REPRESENTATIVE GOVERNMENT 360-361 (1954).
[38] SUMMERS, *supra* note 31, pg 33.
[39] SUMMERS, *supra* note 31, pp. 61-62.

of 1960.[40] Language was used to identify a country on this basis, for example, by Mauritania in its claims over Western Sahara in the *Western Sahara Opinion*.[41]

Therefore, the rationale behind passing the binding rule that all documents submitted to the court and all pleadings before the court […] should be in one of the two main tribal languages[42] is in consonance with the above analysis.

Further, t he right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law. Art. 1 enshrines an inalienable right of all peoples as described in its ¶¶1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.[43]

Therefore, the Government of Arpenia, in order to pursue the social welfare of its citizens, particularly, that of the youth has embarked on the YEA initiative in order to foster the disadvantaged youth of the country. One of the main components is the passing of the court language rule by the High Court. Further, it is humbly submitted that Bellomach being a party to the ICCPR has an obligation towards Arpenia to not impede upon it's right of self determination.

[40] *As per* GA Res. 1514 (XV), 15 GAOR (1960) Supplement No. 16 (A/4684) at pp. 66-67.
[41] Western Sahara, Advisory Opinion, ¶ 132, 1975 ICJ 58 (Oct. 16).
[42] *As per* ¶ 4, Facts on Record.
[43] General Comment No. 12: The right to self-determination of peoples (Art. 1): 03/13/1984. CCPR General Comment No. 12, ICCPR, 21st Session at ¶¶ 1-2.

D. ARPENIA HAS NOT VIOLATED THE GATS SPECIFIC COMMITMENTS.

It is submitted that Arpenia has not violated its GATS Schedule of Specific Commitments[44] and consequently the GATS.

The Preamble to the GATS states that it is the right of the Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives.[45] Further, ¶5 of the preamble of GATS and Art. IV recognise that developing country Members need to strengthen their domestic services capacity, efficiency and competitiveness. Arpenia being a developing nation[46] needs to eliminate the disadvantages that the tribal youth face with respect with languages. Therefore, the High Court of Larront has taken a positive step to ensure the success of YEA Initiative.[47] However, it is humbly submitted that Arpenia has not violated its GATS commitments by including the mandatory rule regarding court language.

It is submitted that all commitments in a schedule are bound unless otherwise specified. In such a case, where a Member wishes to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment, the Member has entered in the appropriate space the term unbound.[48] Thus, Arpenia has kept Mode 4/Presence of natural persons in the sector of legal services unbound (in Limitations on National Treatment).[49]

Further, the Specific Schedules contain two kinds of promises. First, the *Schedules* include promises that apply "horizontally," that is, to all sectors. In addition, each country identifies those specific service sectors for which the country is willing to assume additional obligations. These additional obligations are assumed by listing a particular

[44] *Hereinafter* referred as GATS Schedule.
[45] General Agreement on Trade in Services, Preamble, Apr. 15, 1994, 1869 U.N.T.S. 183.
[46] *As per* ¶ 1, *Compromis.*
[47] *As per* ¶ 4, *Compromis.*
[48] J. H. Weiler, et al., *International and Regional Trade Law: The Law of the World Trade Organization*, pg. 12, available athttp://centers.law.nyu.edu/jeanmonnet/wto/units/ (last visited Dec. 2, 2011).
[49] *As per* Annexure II, *Compromis.*

service sector – such as legal services – on a country's *Schedule of Specific Commitments.*[50] Thus, "horizontal" commitments which stipulate limitations that apply to all of the sectors included in the schedule. Any evaluation of sector-specific commitments must therefore take the horizontal entries into account.[51]

In Arpenia's GATS Schedule, the Horizontal Sector lists the limitation on market access and national treatment to be 'unbound' and refer to commercial presence and the presence of natural persons.

Mode 3, or Commercial Presence, involves foreign lawyers who establish a permanent presence in a country, such as a branch office. This Mode is the one which is most frequently thought about when the GATS is discussed among lawyers. It will usually involve the establishment of an office in a foreign country by one of the large commercial firms. [52] GATS define commercial presence as any type of business or professional establishment, including through:

i. the constitution, acquisition or maintenance of a juridical person, or
ii. the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service. [53]

Further, 'supply of service' is defined under the GATS as one which includes the production, distribution, marketing, sale and delivery of a service.[54]

With respect to market access through the modes of supply identified in Art. I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[55]

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[50] International Bar Association, *GATS – A Handbook for International Bar Association,* 4, *availableat* http://www.personal.psu.edu/faculty/l/s/lst3/IBA%20GATS%20Handbook%20final.pdf.
[51] *Id.* Pg. 26.
[52] *WTO Background Note by the Secretariat on Legal Services,* pg. 7, *available at* www.wto.org/english/tratop_e/serv_e/w43.doc *(*last visited on Nov. 30, 2011*).*
[53] GATS, Art. XXVIII, Apr. 15, 1994, 1869 U.N.T.S. 183.
[54] *Id.*
[55] GATS, *supra* note 53, Art. XVI.

It further states that countries may meet the national treatment requirement either by according formally identical treatment or formally different treatment.[56]. The Agreement also provides that 'formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.[57]

Thus, Arpenia can modify its GATS Schedule regarding Mode 3 and 4 and since the limitations are unbound in the market access and the national treatment category, hence, Arpenia has the right to incorporate any limitations to the legal service sector.

[56] *Id.*, ¶ 2 of Art. XVII.
[57] *Id.,* ¶ 3 of Art. XVII.

II. BELLOMACH'S NATIONAL FOOTBALL COMMISSION IS UNJUSTIFIED IN PROTESTING THE 'SIX NATIONALS' RULE MADE BY THE ARPENIA'S FEDERAL FOOTBALL BOARD.

A. ARPENIA IS JUSTIFIED IN PASSING THE SAID RULE.

According to the facts, the youth of Arpenia have invested great sums of money in training to acquire an opportunity to play in one of the three major football leagues in Arpenia. The investment is fruitful for those who are good and major league players are paid exceptionally well – up to one hundred times the salary of the average Arpenian citizen – and are tax-free. However, over the past five years, the competition has become more fierce as foreign players have started approaching Arpenia, hoping for a spot on the teams as well.

It is submitted that to promote the disadvantaged youth of the country, Arpenia's Federal Football Board[58] had passed a rule that to play in national league competitions, at least six of the players on the field at any point in the game must be players that fulfill the qualifications for the national team. So, under the FFB's Rule 48*bis*, the six players must either be citizens or have resided in Arpenia for at least ten of the past fifteen years to qualify as "Arpenian" for national league games.

It is submitted that the rule was passed as part of the Youth Employment of Arpenia Initiative (YEA Initiative), to help the disadvantaged youth of the country. It was passed to further employment opportunities to the local youths, to encourage national loyalties in the game and also to reap the manifest of the investments made by the youth for the training.

The main aim behind the formation of rule is to help the home-grown talent to be able to join the teams without extreme fierce competition from international players and benefit from high salaries paid to the football players.

Furthermore, Arpenia is not completely ousting the scope of Bellomachian football players from joining the National League teams. It has still kept an opening of 5 out of 11

[58] *Hereinafter* referred to as the FFB.

players, and these 5 players can be foreigners. Hence, the rule is not unreasonably restricting the influx of foreign football players.

Thus, Arpenia has a reasonable justification to pass the said rule as it wanted to further the youth of its country and let them gain the high salaries paid to the football payers by the FFB.

B. THE SAID RULE IS AN INTERNATIONAL CUSTOMARY NORM.

The said Arpenian 'six nationals' rule is an international customary law. Art. 38(1)(b) of the Statute of the International Court of Justice[59] defines 'international custom' as "evidence of a general practice accepted by law."

Starke's International Law[60] states that customary rules crystallise from usages and practices which have evolved from mostly three sets of circumstances:

i. Diplomatic Relations between States.
ii. Practice of International Organs.
iii. State Laws, Decisions of State Courts, and State Military or Administrative Practices.

In the present case, it is submitted that most of premiere football federations have rules to restrict the number of foreign players in a team. Furthermore, FIFA and UEFA have made it clear that they would like football clubs to retain their national identity by promoting their domestic talent and some steps have already been taken towards that goal by certain national leagues.[61] For example, the Union of European Football Association[62], which is governing body[63] for football in Europe, has also implemented that out of the 25 players in a team, 8 have to be 'home grown players'.[64]

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[59] Statute of the International Court of Justice, Art. 38 (1945).
[60] I. A. SHEARER, STARKE'S INTERNATIONAL LAW 31-37(11TH ED. 1994).
[61] The "6 + 5" Rule Will not be Adopted, Says FIFA, available at http://www.harbottle.com/hnl/pages/article_view_hnl/7227.php (last visited on Dec. 24, 2011).
[62] *Hereinafter* referred to as UEFA.
[63] Statute of UEFA, Art. 2 (1954)
[64] R. 1808 – UEFA Regulations, 2010-11.

Hence, as such foreign players' quota systems are practiced in international organs like UEFA, it is an internationally recognised custom. Thus, Arpenia is in conformity with the prevailing customary norms in the field of football.

C. THE SAID RULE IS NOT IN VIOLATION OF GATS.

The said rule is not in violation of GATS as Arpenia and Bellomach have both ratified the International Convention on Civil and Political Rights[65]. Art. 1(2)[66] of the ICCPR provides as follows:

> "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

Hence, Art. 1(2) of the ICCPR provides that for the reason of obligations arising out of international economic co-operation, based on principle of mutual benefit and international law, a person should not be deprived of its own means of subsistence. The said sub-clause of the article provides an exception to the obligations arising out of the GATS Schedule, as it provides for a proviso for a means of subsistence and releases them restrictively from their obligations under GATS.

Thus, it is submitted that the rule made by the FFB made the said rule to help the youth to achieve their own means of subsistence by attaining a place on the National League Teams and earn high salaries provided to the football players. The FFB wanted to benefit the youth by the YEA Initiative, and not to deprive them of an opportunity for their own means of subsistence by controlling the influx for foreign players trying to acquire a place on the National League Teams.

[65] *Hereinafter* referred to as ICCPR.
[66] ICCPR, Art.2 (1), Dec. 16, 1966, 999 U.N.T.S. 171.

III. BELLOMACH BY ISSUING THE REFITTING AND BRAILLE AND AUDIO CONTRACT HAS DENIED ARPENIA INTELLECTUAL PROPERTY PROTECTION AND VIOLATED THE TRIPS AGREEMENT.

A. TRIPS AGREEMENT IS BINDING ON BELLOMACH AND ARPENIA AS MEMBERS TO WTO.

Bellomach and Arpenia are both members to the World Trade Organisation. Thereby they are obliged to abide by all the agreements of WTO, including TRIPS (Trade Related Intellectual Property Rights).

When the WTO agreements took effect on 1 January 1995, Developing countries were given five years until 2000 to ensure that their laws and practices conform to the TRIPS agreement.[67] Hence, the government of Bellomach and Arpenia are required as per the WTO policy to incorporate the changes in their domestic intellectual property laws to provide protection as per the standard of TRIPS.

The members each accept all the agreements as a single package with a single signature — making it, a "single undertaking". The TRIPS Agreement is part of that package. Therefore it applies to all WTO members.[68]

1. *TRIPS confers obligation of Berne Convention on the member- states.*

As per the facts Bellomach and Arpenia are not members to the Berne Convention.
But according to Art. 9(1) of TRIPS, "Members shall comply with Arts. 1 through 21 of the Berne Convention (1971) and the Appendix thereto."

Hence, Arpenia and Bellomach are bound by the Berne Convention, 1971.

[67] WTO, *Understanding the WTO – Intellectual Property: Practice and Protection, available at* http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (last visited on Dec. 7, 2011).
[68] WTO, *Frequently Asked Questions about TRIPS in the WTO, available at* http://www.wto.org/english/tratop _e/trips_e/tripfq_e.htm#Who'sSigned (last visited on Dec. 10, 2011).

Bellomach government has issued the Braille and Audio contract for improving the information on public property and making it accessible to sight and hearing impaired persons.

Ra Epharama is in contract of service with the Bellomachian Government for the purpose of writing 7 out of 10 introductory descriptions for public buildings and landmarks.[69] Bellomach government has required a mandatory waiver on the transposed texts in the Braille and Audio contract.
Ra Ephrama's work refers to literary work. As per Black's Law[70] literary works is defined as:

> "A non-audiovisual work is that expressed in verbal, numerical or other symbols, such as words or musical notion and embodied in some type of physical object."

Literary works are one of the eight general categories that are eligible for copyright protection.

Further, Black's Law[71] defines Copyright as follows:

> "The right to copy: specific, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adopt, distribute, perform, and display the work."

Copyright does not need any registration. Copyright and trade secrets are protected automatically according to specified conditions. They do not have to be registered, and

[69] *As per* ¶ 10, Clarification of GIMC, 2012.
[70] BLACK'S LAW DICTIONARY (8TH ED. 2004).
[71] *Id.,* Pg. 425.

therefore there is no need to disclose, for example, how copyrighted computer software is constructed.[72]

Copyright is not a territorial right and TRIPS agreement requires its members to ensure minimum standard of protection to foreign works in case of violation. In the case of Miles, a Bangladeshi rock band, the copyright of their music was infringed by Anu Malik, Mahesh Bhatt and Saregama Pvt. Ltd. The music band's song "*Phiriye Dao Amar Prem*" was copied for their movie Murder.

The verdict of the Calcutta High Court in the Miles case was a triumph of the rule-based international trade regime. Previously, IPR laws were applicable mainly within national boundaries, and only the nationals of a country could benefit from such laws. However, Bangladesh and India became members of the WTO on its formation in 1995, and the Indian Copyright Act was amended accordingly to make it compatible with the TRIPS Agreement.[73]

B. <u>BRAILLE AND AUDIO CONTRACT HAS VIOLATED THE BERNE CONVENTION.</u>

The field of copyright is governed by the Berne Convention. The Berne Convention contains detailed provisions for the protection of copyrights with respect to literary and artistic work.

It provides for extensive rights to the owner of the copyright.

> "Art. 2(3) contains the provision that "Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work."

[72] WTO, *supra* note, 68.
[73] Abul Kalam Azad, Rock *'n Roll in Bangladesh: Protecting Intellectual Property Rights in Music, available at* http://www.wto.org/english/res_e/booksp_e/case studies_e /case3_e.htm#outcome (last visited Jan. 1, 2012).

The Braille and Audio contract requires a mandatory waiver on the braille and audio forms of the information text. This requirement of the contract is in violation of Art.2 (3) of the Berne Convention, requiring the adaptations or translations to be protected as original works.

Art. 8 of the Berne Convention provides that Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term[74] of protection of their rights in the original works.

In addition to the above provision, Art. 12[75] incorporates the exclusive right of the author for authorizing adaptations, arrangements and other alterations of their works.

The organisation Helping Limbs have been given the contract by the Bellomach Government to transpose the descriptions of the public buildings and landmarks, including those produced by the poet, Ra Ephrama into braille and audio form. The permission of the author, Ra Ephrama has not been taken and neither has he been informed that his work of description about the landmarks is being utilised and being translated and adapted into braille and audio form.

Thereby, Bellomach has denied Arpenia the minimum standards of protection of their intellectual property in terms of copyright. For the adaptation of the introductory descriptions by Ra Ephrama, Bellomach government and Helping Limbs require the prior permission of Ra Ephrama as he has the exclusive rights to grant permission for such adaptations and translations under the Berne Convention.

[74] Berne Convention for the Protection of Literary and Artistic Works, Art. 7(1), Sep. 9, 1886, S. Treaty Doc. No. 99-27 (1986) – The term of protection granted by this Convention shall be the life of the author and fifty years after his death.
[75] *Id.,* Art.12 – Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

They have not secured the basic standards of intellectual property protection as required by the TRIPS as well as Berne Convention, thus violating the principles and norms of both the agreements.

The Poet Ra Ephrama is born to Bellomachian parents but has his permanent residence in Arpenia. As per Art. 3(1) (a)[76] Ra Ephrama will be extended copyright protection for the works he has produced for Bellomach.

Further, Art. 5(1) of the Berne Convention provides that:

> "Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention."

Art. 2(6) of the Berne Convention protects the copyright work in all the countries of the Union[77] for the benefit of the author. This implies an obligation on Bellomach to provide copyright protection to Arpenian works in Bellomach.

The contract regulation has resulted in primary infringement of the copyrights of Arpenia, i.e. with respect to the exclusive rights of allowing adaptation, translation of the original works. Not acting in coherence of the braille and audio contract, Bellomach has violated Art.9 of the TRIPS.

[76] *Id.,* Art. 3(1) The protection of this Convention shall apply to: Authors who are nationals of one of the countries of the Union, for their works, whether published or not;
[77] *Id.*, Art. 1 - The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

C. INSTALLATION OF THE VIRTUAL EYE AS PER REFITTING CONTRACT OF BELLOMACH HAS RESULTED IN DENYING INTELLECTUAL PROPERTY PROTECTION TO ARPENIA.

1. ***Violation of the Government Procurement Agreement.***

S&S is an Arpenian Company, which manufactures Virtual Eye, a device which enables blind people read non-braille books.[78] Sight and Sound has been granted a patent on Jan 1, 2001 for "Virtual Eye".[79]

Black's Law dictionary[80] defines Patents as:

> "A statutorily created license that allows certain people to pay a royalty and use an invention without the patentee's permission."

Art. XV of Government Procurement Agreement provides for limited tendering. Clause (b) [81]of the Article provides that limited tendering may be done in case when there is an exclusive provider of the product or service and no reasonable alternative is available.
Sight and Sound is the manufacturer of Virtual Eye and is considered the world leader in the products and services for the sight and hearing impaired.

Virtual Eye has been patented product manufactured by Sight and Sound..In the circumstances, wherein Bellomach government required the installation of Virtual Eye device in the public libraries, they should have contracted with Sight and Sound exclusively for the procurement of Virtual Eye.

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[78] *As per* ¶ 2, *Compromis*
[79] *As per* ¶ 2, Clarification GIMC 2012.
[80] BLACK'S LAW DICTIONARY (8TH ED. 2004).
[81] GPA, Art. XV(1)(b) Apr. 12, 1979, 1869 U.N.T.S. 508 –when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copy rights, or in the absence of competition for technical reasons, the products or serv ices Can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

Moreover, Art. XXIII(2)[82] of the GPA provides that nothing in the agreement shall restrict the enforcement of intellectual property rights.

Hence there is a clear violation of the GPA by Bellomach.

2. *Violation of the TRIPS agreement by issuing Refitting Contract.*

Though patent is a territorial right, Art. 27[83] of TRIPS provides for the protection of intellectual property with respect to local as well as imported products.
Virtual Eye, manufactured by Sight and Sound, is an Arpenia based company. Bellomach is one of the major importers of the product. Hence, the patent rights over Virtual Eye, imported product need to be recognised and are enforceable in Bellomach by Arpenia.

Art. 28 of the TRIPS refers to the rights of the patentee with respect to the patented product or service. Clause (1) (a) states that:

> "where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[84]for these purposes that product;"

As per the refitting contract issued by Bellomach government, the Virtual Eye is to be installed in the public libraries, which implies the use of the product. This would require a prior permission of Arpenia, as their patent rights over the product are in question for the purpose of installation.

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[82] GPA. *supra* note 81, Art. XXIII(2) - Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimina -tion between countries … nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

[83] TRIPS, Art. 27, Apr. 15, 1994, 1869 U.N.T.S. 299 – Subject to ¶ 4 of Art. 65, ¶ 8 of Art. 70 and ¶ 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

[84] *Id.,* Art. 28 – This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Art. 6.

Bellomach government has not made any efforts with the view to seek permission for the utilization of virtual eye in their public buildings. There is no national emergency or urgency which would fall within the exception Art. 31[85] of the TRIPS agreement. There is no time limitation fixed on the incorporation of the UN CRPD based legislation into effect.

Sight and Sound has not entered into any agreement for the transfer or limitations on the patent rights. Hence, there has been no transfer of the rights [86]or limitations incorporated[87] in accordance with the TRIPS agreement between Arpenia and Bellomach. As aforementioned, the patentee has exclusive rights to the use of the patented product.

Without taking permission of Sight and Sound, the utilisation of virtual eye for the installation by the Bellomach government has resulted in the breach of TRIPS as well as GPA, infringing primary intellectual property rights of Sight and Sound and thereby denying Arpenia its intellectual property protection.

[85] *Id.*, Art. 31 - In the case of public non- commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

[86] TRIPS, *supra* note 83, Art. 28(2) – Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

[87] *Id.,* Art. 30 – Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

PRAYER/ CONCLUSION

Wherefore, may it please the Court in the light of the questions presented, arguments advanced, and authorities cited, to adjudge and declare that: The Republic of Arpenia respectfully requests this Honourable Court to:

- **Declare** that the binding rule passed by High Court of Larront is justified and not unwarranted nationalism;
- **Declare** that the "six national rule" is justified and is not in violation of Arpenia's GATS commitments;
- **Declare** that Bellomach has illegally denied them IP protection;
- **Declare** that Bellomach has unfairly procured the IP rights from Arpenia.

All of which is respectfully affirmed and submitted

AGENTS FOR THE APPLICANT,
REPUBLIC OF ARPENIA.