

THE NETWORK FOR INTERNATIONAL LAW STUDENTS

NILS
BUSINESS AND
HUMAN RIGHTS
MOOT COURT
COMPETITION

CASE STUDY

2017 – 18

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THE NETWORK FOR INTERNATIONAL LAW STUDENTS

WITH THE SUPPORT OF



LEAD DRAFTING COMMITTEE

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Anthony S. Winer is a Professor at Mitchell Hamline School of Law. He has a teaching and publishing interest in topics dealing with international law. As an academic writer and educator, he has also been active in the fields of constitutional law and administrative law. Many of his teaching and academic projects have placed special emphasis on the relationships between law and sexuality.

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We are also thankful to Adam Smith-Anthony, Angela Evans, Sarah Macrory and Barnali Choudhury for their inputs.

IN THE INTERNATIONAL ARBITRATION COURT OF GREAT BRITAIN

PROCEEDINGS TO DATE

1. This arbitration was commenced on November 1, 2017, when Human Rights International, a charitable company incorporated in the UK (HRI), counsel for a number of minors and their parents, delivered an application for arbitration under Chapter 1 of the Arbitration Rules of this Court, naming as respondent Mawnsune Company, a corporation organized in Chindia (Mawnsune). Copies of such application were delivered to the respondent on November 2, 2017.
2. HRI accompanied its application with a notarized statement signed by the parents of 15 children. The parents authorized HRI to act as counsel for the children (Named Children) and their parents in connection with this matter. The application claimed that the Named Children were employed either by Mawnsune or by one of Mawnsune's suppliers, HurraCaine Products, a company incorporated in Chindia (HurraCaine), in the production of raw silk in a manner that constituted a violation of Mawnsune's contractual commitments regarding the Named Children. HRI requested that, for the sake of protection of the privacy of the minors and their parents, the names of the parents and children be redacted from any copies of such documents to be delivered to others than the proposed arbitration tribunal.
3. The application requested that Tournedo, S.A., a company organized in France (Tournedo), be joined in the arbitration pursuant to Chapter 17 of the Rules. The application stated that Tournedo is a party to the arbitration agreement. A copy of such application was delivered to Tournedo on November 3, 2017.
4. The application requested that the arbitration take place in London.

5. The application proposed the appointment of three arbitrators and the appointment of Ms. One to act as one of the arbitrators.
6. The application contained a brief statement of the claims involved: Mawnsune is claimed to be in breach of a contract dated July 1, 2015 between it and Tournedo (Tournedo-Mawnsune Contract). The application stated that the Named Children are parties to such Contract. A copy of such Contract accompanied the application. Such Contract requires Mawnsune to engage in a program of action designed to end, in several stages, the employment of children below the age of 18 years in the production of raw silk fabric.
7. The application stated that the Named Children are members of a group consisting of all children below the age of 18 who had been employed by Mawnsune or HurraCaine at various dates between July 1, 2015 and November 1, 2017. The application stated that the Tournedo-Mawnsune Contract provides that, should Mawnsune fail to honor its commitments under the Tournedo-Mawnsune Contract, then any person harmed by such breach would have the right to deliver a notice of dispute to Mawnsune, thereby becoming a party to such Contract and entitled to enforce its terms, including the right to instigate arbitration to be administered by this Court, and that the Named Children have exercised those rights in bringing this application.
8. The application demanded that Mawnsune immediately cease the employment of children below the age of 18, and also cease doing business with HurraCaine, unless Mawnsune immediately implements the terms of the Tournedo-Mawnsune Contract and causes HurraCaine to do the same, and that, for every hour that Mawnsune or HurraCaine employed such a child in excess of the daily or weekly number stated in the Tournedo-Mawnsune Contract, Mawnsune should pay damages sufficient to be used to allow such child to attend school for one hour, as determined by this Tribunal.
9. On December 1, Mawnsune responded. It admitted that children below the age of 18 were employed by it and HurraCaine under conditions that did not conform to the Tournedo-Mawnsune Contract. It claimed that the Named Children are not entitled to enforce the terms of such Contract because the provision in such Contract

providing for such entitlement is void under UK law. In its defense, it claimed that Tournedo was responsible for the claimed breach because Tournedo had increased its order for raw silk by 40% during the period in question, making it impossible for Mawnsune to restructure its work force so as to comply with such Contract. Mawnsune also cross-claimed against Tournedo for any damages that Mawnsune should be required to pay as a result of the arbitration, claiming that Tournedo was at fault. It proposed that a panel of three arbitrators be appointed and proposed the appointment of Mr. Two as an arbitrator.

10. On December 2, Tournedo responded. It claimed that children had been employed by Mawnsune and HurraCaine in violation of the Tournedo-Mawnsune Contract. It claimed that such Contract was only one of dozens of such contracts that it had entered into and that Mawnsune was the only one of the very few suppliers that had not complied. It claimed that it had been consistently misled by representations from Mawnsune as to the conditions of employment of such children. It also stated that it had been forced to increase the demand for raw silk fabric from Mawnsune because one of its primary customers, MacroSilk, Ltd., a company incorporated in the UK (MacroSilk), had increased its order for finished garments by 40% during the time in question. It proposed that a panel of three arbitrators be appointed and proposed the appointment of Ms. One as an arbitrator.
11. This Tribunal takes note that the three parties to this arbitration have informed this Tribunal that they have engaged in direct settlement negotiations as provided in the Tournedo-Mawnsune Contract, without success. The Tribunal also takes note that the parties have informed this Tribunal that, pursuant to the terms of such Contract, they have discussed the use of mediation to resolve their dispute and that they have mutually agreed not to engage in mediation.
12. This Court appointed the two arbitrators proposed by the parties. The two arbitrators were unable to agree on a third arbitrator. Consequently, on January 1, 2018, the Secretary-General of this Court, acting as appointing authority pursuant to Rule 10.3 of the Rules, appointed Ms. Three to act as the third arbitrator and the President of this Tribunal, whereupon this Tribunal was formed. In doing so, the Secretary-General observed that, in view of the various claims and the cross-claim, the appointment of such a panel would establish a reasonable balance among the parties.

13. The parties submitted various requests for documents to this Tribunal. On February 15, this Tribunal ordered the production of the same by March 1. Among those documents were employment rosters for all children employed by Mawnsune during the period in question. No party has claimed non-receipt of the requested documents.
14. This Tribunal conducted a hearing on this matter held from March 12 through March 16, 2018, for the purpose of gathering factual information. Its resulting Findings of Fact appear below.

FINDINGS OF FACT

The Tribunal hereby makes the following findings of fact:

1. MacroSilk is a large retailer of fashion silk garments, having an approximately 35% share of the world market. Its headquarters are in London. It has branches throughout Europe, the Americas, Africa, Australia and Asia. MacroSilk produces designs that are protected under intellectual property laws worldwide. It has a stable of designers, including the renowned Gianni Schicchi. It has also registered and protected its company name, the brand name “MacroSilk” and the stylized logo “M/S” on a worldwide basis. It advertises its products and its brand names extensively on television, in print and on the Internet.
2. Tournedo is a leading manufacturer of custom silk garments. It has its world headquarters in Paris, and its sewing factories are located in various countries in the world, including Bangladesh, Vietnam, France and Italy. It purchases raw silk from various producers, including Mawnsune, and dyes the cloth, prints fabric designs supplied by customers, and cuts and sews the final garments according to designs supplied by its customers. Approximately 30% of its revenues in the calendar year 2016 were from MacroSilk.
3. Mawnsune’s principal business is the production of raw silk fabric, starting with the cultivation of silkworms and ending with the weaving of raw silk fabric. It has extensive mulberry plantations and spinning and weaving facilities located throughout Chindia. Mawnsune also buys silken thread from numerous other producers, including HurraCaine. Approximately 15% of its revenues in the year 2016 were from Tournedo.
4. HurraCaine is a midsized producer of silk thread with all of its operations conducted in Chindia. Prior to July 1, 2016, it had not done business with Mawnsune.
5. HRI has approximately 400,000 members located in chapters in many countries throughout the world. It receives its operating funds from members’ dues and from grants from philanthropic foundations. It has a paid professional staff, the bulk of whom work in London, although one or two paid staff members work in each of its country chapters. It has a staff of attorneys who attend to its legal functions and the

representation of various victims of claimed human rights breaches. Its stated purposes are: “To investigate and report on violations of internationally recognized human rights and to seek legal and other means to end such violations and to access justice for the victims.”

6. This Tribunal’s comparison of the Mawnsune employment rosters with the list of the 15 Named Children represented by HRI found that 10 of those children were so employed. HRI represents to this Tribunal that the remaining five children were employed by HurraCaine. There being no objection to such representation, this Tribunal has accepted that representation as true for the purposes of this proceeding.
7. Raw silk fabric is derived from cocoons woven by silkworms. Adult moths lay eggs that turn into silkworms that are fed on mulberry leaves. At some point, the silkworm weaves a cocoon by exuding a tiny strand of silk from its head and moving its head so as to wrap its entire body with a layer made from a single silken strand. The cocoons are gathered (leaving a certain number to become adult moths for breeding purposes) and boiled in water long enough to kill the pupae. The single strand from the cocoon is unwound into a spool in a process known as “reeling.” Two or three strands are then twisted into a larger, stronger thread that is used to weave the raw silk fabric on a loom¹. Handling and boiling the delicate cocoons, finding and unwinding the single strands and feeding them into a spooling apparatus is work that is ideally suited for the small hands of children and, historically for centuries, children have performed almost all of this work. The work is hazardous, owing to boiling water and active machinery, such as spinning machines and looms. The injury rate among such children is substantial, particularly on account of scalding. Additionally, children below the age of 18 years are employed at looms and perform other chores in the fabric-making process. Hence, much of the world’s silk production is dependent on child labor. Children often work from ten to twelve hours a day, six to seven days a week. Children are able to perform work in the thread-making process from the age of 6 up to around the age of 13. Those who have worked full time up to that age generally receive little or no formal education².

¹ See https://texeresilk.com/article/silk_making_how_to_make_silk

² See <https://www.hrw.org/report/2003/01/22/small-change/bonded-child-labor-indias-silk-industry>

8. MacroSilk, having been called by HRI as a witness, testified extensively through its Vice President. She stated that it is common knowledge in the silk industry that children are extensively employed in the production of silk products. She also stated that prior to 2015 Macrosilk, along with many other participants in the silk business, accepted this condition in the belief that the poverty of the children's families both necessitated and excused the practice. Up to that time, it did not devote any considerable management attention to the working conditions, including human rights risks, in its supply chain.
9. On January 15, 2015, HRI produced a report that exposed the use of child labor in the silk industry, with a specific focus on suppliers to MacroSilk. The report was widely distributed on the Internet. The report claimed that MacroSilk was acting in violation of international law, namely the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Minimum Age Convention and the UN Convention on the Rights of the Child. The report stated that many of the countries producing silk products, including Chindia, are members of the UN and the ILO and that Chindia is a member of the OECD. The report has been entered into the evidence of this proceeding. HRI started a movement, in which many other NGOs joined, to persuade consumers, mainly women, to avoid buying garments bearing MacroSilk's label. Although not specifically targeted, other retailers of silk garments were adversely affected.
10. MacroSilk initially responded to the report and the boycott by a public relations campaign that attempted to discredit the HRI's findings. It posted videos of happy children working in idyllic surroundings, accompanied by claims that their work was critical to their welfare and the survival of their families.
11. HRI and the other NGOs enlisted the help of numerous popular movie stars and singers who appeared in television talk shows and at large public rallies that received widespread coverage. The boycott started to gain momentum throughout the world.
12. MacroSilk's worldwide sales started to drop off significantly. It realized that its defensive campaign was not effective. Its lenders began to make inquiries, as did its

major stockholders. It received warnings from its underwriters that its stock price was in danger of falling. There were even calls from government procurement agencies that hinted that MacroSilk could be placed on a list of banned companies. Senior officials at MacroSilk reported that they and their spouses and children were experiencing social difficulties as the campaign continued. The clergy leader of the religious institution attended by the family of MacroSilk's CEO gave a sermon that strongly condemned child labor.

13. MacroSilk called in outside experts to consult with its senior managers and its board of directors. The outside experts advised that the boycott was likely to take a significant toll on its business. They predicted a major drop in earnings and a downward slide in the price of MacroSilk stock.
14. MacroSilk asked the consultants how it could end the campaign and ensure that it did not recur. The consultants pointed out that the charge against MacroSilk was that its silk was being made by "children." This was illegal under Chindian law, although the laws were generally ignored and seldom enforced. There were also various international treaties that called for the ending of employment of children below the age of 18, particularly when they were being exposed to unsafe or hazardous conditions. The consultants were of the opinion that MacroSilk would be vulnerable to the boycott as long as any of its silk was made by children below the age of 18.
15. The consultants also pointed out that the economics of the highly competitive silk industry have historically favored the use of children over adults. They work for lower wages and perform certain tasks, such as unwinding the cocoons, more quickly. However, the marginal cost saving of the use of children amounts to only 2% to 5% of the overall cost of producing silk fabric. (This would convert to less than 1% of the selling price of a finished garment.) Additionally, advanced machines have been developed that can perform certain tasks, and these can be operated by adults. The machines have also been shown to actually reduce operating costs. Conversion to machine work would likely require a number of years, owing to the lead time for obtaining the machinery, the costs involved and the need to hire and train adult workers. Additionally, it would be best not to make a conversion so

quickly that the families would not have time to adjust to the loss of income from the employment of their children.

16. MacroSilk's senior management met to discuss the situation. The outcome was a consensus that the time had come for MacroSilk to entirely eliminate child labor from its supply chain as fast as possible, but in a way that made both practical and humanitarian sense. The board authorized the president to develop a program.
17. MacroSilk's President invited HRI in for a discussion. The parties met in May, 2015. The President explained MacroSilk's new policy. She pointed out that MacroSilk and HRI had a common goal and invited HRI to participate in developing a program to eliminate child labor entirely.
18. HRI convened a conference of interested NGOs that listened to MacroSilk's spokespeople as they described the proposal. The result was an initial feeling of skepticism among the NGOs: Could MacroSilk be trusted? Would the suppliers actually comply with any new program? How could one check on compliance with the program? Weren't many suppliers located in remote areas where surveillance would be nearly impossible? Would suppliers actually set up the program for allowing children to attend school part-time?
19. MacroSilk responded by openly acknowledging that it, too, had its concerns on many of these fronts. It invited representatives of HRI to sit in on MacroSilk's internal meetings to participate in the development and implementation of the program. HRI accepted the offer and a course of cooperation began. The boycott continued in effect, pending the outcome of the program's development.
20. MacroSilk and HRI then engaged in extensive discussions with Tournedo, MacroSilk's other major suppliers, and Mawnsune and other significant producers of raw silk fabric. The picture that emerged from these discussions was that child labor was commonly accepted in all of the various industries in the countries that produced silk. Domestic laws in most countries that have attempted to limit child labor were generally ignored and seldom enforced. Families in many cases were dependent for their survival on what little their children could bring in. However, the silk industry was becoming increasingly concerned about the boycott and was seeing a drop in demand for silk products. At the same time, it became apparent that

converting to child-labor-free production would be a considerable undertaking for silk producers and that it would entail substantial capital investment, particularly in connection with any mechanization of the process.

21. The producers also pointed out that a program to end child labor would be highly disruptive unless they were given adequate time. They needed to convert their production methods to adult labor or machines. In either case, there would be long lead times as they acquired the machinery and trained new workers.
22. The producers suggested that, if they were given four or five years and a modest rise in the prices they were given for raw silk, they could eliminate child labor by 2020. In the interim, they could limit the hours that children were required to work and soon thereafter institute a system of part-time work for children that enabled them to attend school for at least a few hours per day. To do this, they would have to hire and train nearly the same number of additional children as were now working. There were many children available whose parents would like their children to work, so finding the children would not be difficult. During this interim period, the families of children who were converted to part-time work would have to sacrifice part of the children's income.
23. The producers pointed out that many of the children could be retained as workers when they reached adulthood. They could operate the new spooling and spinning machines, the looms and other parts of the production process. Training them for these types of work would be eased because the children would already be generally familiar with the various workings of the factories.
24. MacroSilk decided that it would be willing to increase the amount that it paid for silk garments by up to 3%, provided that its garment suppliers agreed to pass this on to their own suppliers of raw silk fabric.
25. The final result was an informal agreement by Tournedo and other major suppliers that the program was capable of being implemented and that they would agree in writing to carry it out, provided they were to receive the additional funds. HRI agreed that it would suspend, but not terminate, the boycott, pending the launch of the new program.

26. MacroSilk's board of directors adopted a company policy statement calling for a complete ban on any child labor risks in its entire supply chain to be effective on January 1, 2020, with interim steps to be achieved. The statement called for the program to be effectuated as expeditiously as practicable.
27. MacroSilk persuaded the Silk Garment Industry Association (whose members were also feeling the effects of the boycott) to adopt a policy of encouraging all of its members, constituting nearly three-fourths of the silk garment industry, to ban the use of child labor and to take other steps along the lines of MacroSilk's program.
28. MacroSilk's lawyers, with the help of HRI and in consultation with Tournedo's legal department, developed a new model contract (Model Contract) to be signed by MacroSilk and all participants in MacroSilk's supply chain. The Model Contract appears as Attachment A, below. All suppliers of silk products that went into MacroSilk garments at all levels of production were to sign the contract. It called for the complete elimination of the use of children below the age of 18 years by January 1, 2020. The contractual program was designed to ease the impacts on both the silk producers and the families of the children. Prior to 2020, certain milestones were to be reached. The first was to immediately limit working hours of children to eight hours per day, with one day off per week. The next milestone, to be reached by January 1, 2017, was to allow no child to work more than four hours per day or more than 24 hours per week (with one day off per week), and all children were to be required to attend school in order to be employed. The Model Contract required each supplier of raw silk or silk garments to make a written representation, along with each shipment, that the silk had been produced in accordance with the requirements of the Model Contract.
29. MacroSilk worked with the suppliers to get the Model Contracts signed. By January 1, 2016, it had signed Model Contracts with Tournedo and all of MacroSilk's garment suppliers and it was satisfied that all of the major suppliers to MacroSilk's suppliers (including Mawnsune) had also signed Model Contracts.
30. The first ladies of France and the United States appeared at a White House celebration in July 2016. They both wore full-length pink silk dresses designed by Gianni Schicchi and bearing the MacroSilk label. The event received worldwide

press and TV and Internet coverage, with the names of the designer and MacroSilk prominently featured. The demand for Gianni Schicchi dresses and other MacroSilk garments soared. MacroSilk increased its orders for silk garments by 40%. MacroSilk did not offer to raise the price it was willing to pay, or to extend its product due dates, in connection with this increase.

31. Tournedo responded to the increased orders from MacroSilk and other garment retailers by increasing its orders for raw silk by 40%. Tournedo did not offer to raise the price it was willing to pay, or to extend its product due dates, in connection with this increase. Nor did it request assurances from its raw silk fabric suppliers, including Mawnsune, that the increased orders would not interfere with the implementation of the child labor elimination program.
32. HRI conducted a field investigation in Chindia in mid-2017. It learned that that Mawnsune had not even started to implement the first step of the program.
33. HRI learned also that Mawnsune had been buying silk thread from HurraCaine without first requiring HurraCaine to execute the Model Contract.
34. HRI informed MacroSilk of this development.
35. MacroSilk then discussed the matter with Tournedo, reminding Tournedo that Tournedo had represented in writing, with each shipment, that all silk garments had been produced in compliance with the Model Contract. Tournedo said that, in making those representations, it had been relying on written representations from Mawnsune. It showed MacroSilk copies of Mawnsune's representations.
36. MacroSilk sent strongly-worded letters to Tournedo and Mawnsune demanding that they immediately come into compliance with their commitments and reminding them that it had increased the payment for silk so as to help them finance the new program. MacroSilk stated that its aim is to ensure that the children working for Mawnsune are "made whole" by allowing them to receive the educational opportunities that they had lost as a result of Mawnsune's breach. MacroSilk also stated that it is important to it, as a retailer of silk garments, to be confident that none of its suppliers of silk products is tempted to disregard the terms of its contractual program for the elimination of child labor. It believed that strict enforcement of the

Model Contract is critical. Thus, Mawnsune should be obligated to pay the funds into an educational trust fund, as HRI has requested. It stated that its interests and those of HRI were fully aligned.

37. Tournedo then confronted Mawnsune. Mawnsune admitted that it had neither limited the hours of work of children as per the first stage of the program nor complied with the second stage. It stated that it had not yet been able to implement even the first stage because Tournedo had upped its order for silk fabric in the third quarter of 2016 by 40%. That amounted to a substantially greater percentage of Mawnsune's business than a corresponding increase for other raw silk suppliers would be, because none of the other suppliers provided more than 15% of their raw silk fabric to Tournedo. Mawnsune had hoped to hire and train a new cadre of children to take up the work of children who would be spending less time in its factories while going to school. But these new children had to be pressed into service in order to meet the new orders for fabric that Tournedo had insisted on.
38. Mawnsune also admitted that it had purchased silk thread from HurraCaine in order to meet the increased demand for silk fabric. Mawnsune had thought of asking HurraCaine to sign the Model Contract, but decided that it would take too much time to negotiate. Mawnsune stated that, due to its urgent need to fulfill the increased Tournedo order, it did not feel that it had sufficient leverage with HurraCaine, in other words, it was "over a barrel."
39. Mawnsune admitted that it had falsified the representations to Tournedo as to compliance, but claimed that it "had no choice, if it wanted to keep Tournedo's account."
40. Mawnsune promised to continue hiring new children and to let the children attend school "as soon as practicable" and thereafter to implement the contractual program to meet the required 2020 cutoff date.
41. On July 1, 2017, HRI sent a notice of dispute to Mawnsune and invoked the rights of the various children whom it represents to enter into settlement discussions with Mawnsune. It demanded that Mawnsune set up a trust fund that would enable all children who had been employed in excess of the prescribed hours be given extra time off, with pay, to attend school. A copy of such notice was sent to Tournedo.

42. On July 15, 2017, Tournedo sent a notice of dispute to Mawnsune. Tournedo took the position that HRI and Mawnsune should resolve the dispute between themselves. A copy of such notice was sent to HRI.
43. Between August 1, 2017 and September 1, 2017, Tournedo, HRI and Mawnsune conferred among themselves, by various conference telephone calls, in an effort to reach a settlement of their various disputes.
44. HRI and Tournedo took identical positions during the negotiations, as follows: They insisted that Mawnsune immediately come into compliance with the Tournedo-Mawnsune Contract. They insisted also that Mawnsune make a payment into a trust fund in an amount that would provide every child who had been employed in a manner not in compliance with the Contract one hour of time off (i.e., from the four hours per day allowed under the Contract) to attend school, with pay, for every hour that such child had worked in excess of the time limits specified in the Contract. This would apply not just to the Named Children, but to all children employed by Mawnsune or HurraCaine.
45. Mawnsune's position during the negotiations was as follows: It pointed out that, at the time it signed the Tournedo-Mawnsune Contract, it fully intended to curtail working hours of children by hiring more children part-time to take up the slack, but that the huge increase in silk orders from Tournedo had made it necessary for it to keep working hours at the pre-Contract level and also to put even the new hires to work full-time. Its failure to observe the Contract was due entirely to the actions of Tournedo and thus beyond its control. It rejected the notion that the children who had been kept out of school should be given a chance to go to school full-time, asserting that this would be impracticable. It would disrupt the production lines and furthermore, the children who left their employment to go to school the extra time would lose their places at the factory to those who had to replace them. It stated that it could not have pressured HurraCaine to sign the Model Contract and that it had no responsibility for HurraCaine's employment of children. At most, Mawnsune would give an hour of time off, with pay, to every Named Child that worked for it, for every hour that such Child had worked in excess of the limits stated in the Tournedo-Mawnsune Contract.

46. MacroSilk did not participate in the negotiations. It testified to this Tribunal that it had not done so because it believed that its suppliers were responsible under the Model Contract for the conduct of their own suppliers and should accordingly bring the appropriate enforcement proceedings without MacroSilk's formal involvement.
47. No settlement was reached.
48. At the final conference call on September 1, 2017, the parties discussed the possibility of referring the dispute to mediation. There was a mutual agreement that they would not do so.
49. Mawnsune stated to this Tribunal in a recent filing that as of April 30, 2018, it had completely converted its workforce of 1500 children to the part-time work/school schedule called for by the Model Contract.

ATTACHMENT A

AGREEMENT

THIS AGREEMENT, entered into as of the _____ day of _____, 2016 by and between [insert name of Purchaser], a [describe nature of business entity and home state of organization] (Purchaser) and [insert name of Supplier and home state of organization] (Supplier).

PREAMBLE

WHEREAS, Purchaser buys products containing silk (Silk Products) from Supplier;

WHEREAS, The parties are aware that numerous children below the age of 18 years (Children, or, in the singular Child) are currently employed in the production of Silk Products and that Children may be working such hours per day and per week that they are being harmed because they are unable to obtain appropriate schooling, contrary to the provisions of applicable international covenants, and that Children are being exposed to unsafe or hazardous conditions;

WHEREAS, Employment of Children is contrary to international law, namely the UN Convention on the Rights of the Child and the ILO Convention concerning Minimum Age for Admission to Employment;

WHEREAS, The parties are responsible to remedy the human rights violations taking place under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises;

WHEREAS, There has been a public campaign against various sellers of silk garments aimed at causing the buying public to refrain from buying garments made from Silk Products that are produced with child labor, thereby harming the market for silk garments that all parties hereto depend on; that the parties hereto wish to cause such campaign to end and not be resumed, which can be accomplished only if it can be established on an ongoing basis that producers of Silk Products are making good-faith efforts to end the use of child labor;

WHEREAS, The parties hereto desire to provide by this Agreement and by such other contracts that are to be entered into hereafter pursuant to this Agreement, that all such persons are engaged in a practicable program to eliminate the use of Children in the production of Silk Products; that Supplier shall, on and after a date certain, refrain from doing so; and that Supplier shall take certain prescribed steps towards such goal; and

WHEREAS, In order to ensure that this Agreement and all other contracts entered into pursuant to this Agreement are complied with, the parties hereto desire to ensure that any other person who is harmed as a result of a breach of this Agreement may have recourse under this Agreement;

NOW, THEREFORE, the parties to this Agreement hereby covenant and agree as follows:

SECTION 1: COMMITMENT CLAUSE

- A. After June 30, 2020, Supplier shall employ no Child in any facility that produces Silk Products (Silk Factory).
- B. After July 1, 2016 and until June 30, 2010, Supplier shall employ no Child in any Silk Factory for more than eight hours per day or for more than six days per week.
- C. After January 1, 2017 and until June 30, 2020, Supplier shall employ no Child in any Silk Factory, unless: (1) such Child is employed by Supplier no more than four hours in any given day and no more than 24 hours in any given week; and (2) such Child is also enrolled in a regular school program where he or she receives instruction at a level appropriate for his or her age and level of education during at least 20 hours per week.
- D. After July 1, 2016, Supplier shall not purchase or otherwise obtain any Silk Products from any person that employs any Child at a Silk Factory unless such Child is employed under conditions that conform to the requirements set forth in this Section 1.
- E. Supplier shall accompany each shipment to Purchaser of Silk Products with a written representation, signed by the chief executive officer of Supplier, that Child has been employed in the production of any component of such Silk Products except in compliance with this Section 1.

- F. Supplier shall otherwise comply with the requirements set forth in the UN Convention on the Rights of the Child, the ILO Convention Concerning Minimum Age for Admission to Employment, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

SECTION 2: DISPUTES RIGHTS TO BECOME A PARTY TO THIS AGREEMENT

- A. Purchaser and Supplier hereby jointly make an outstanding and irrevocable offer to any person who is harmed as a result of a breach of this Agreement to allow such person to become a party to this Agreement. At any time, such person may accept such offer by the act of delivering a notice in writing to Supplier that it has a dispute with Supplier regarding Supplier's compliance with this Agreement.
- B. Parties to this Agreement who have a dispute shall, for a period of 60 days following delivery to Seller of written notice of such dispute, engage in discussions of such dispute with the object of reaching a settlement of the same. If such dispute is not resolved within such 60-day period, the parties to such dispute shall have an additional period of 30 days to discuss whether to engage in mediation of such dispute. Should the parties agree to mediate, the parties may, in writing, agree to extend such 30-day period for an additional period of time that the parties deem necessary to conduct such mediation. If the parties have not reached agreement as to the resolution of such dispute prior to the expiration of the time periods referenced herein, then any party may submit a notice of arbitration pursuant to the Rules referenced in Subsection C, below.
- C. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, provided that, for the purposes of any proceedings arising out of this Agreement:
- i. Article 28.3 of said Rules shall not apply and shall be superseded by the following:
[Article 28.3]: Hearings shall *not* be held in camera unless the parties agree otherwise. The arbitral tribunal, *if the parties so agree* may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert

witness, who is a party to the arbitration shall not, in principle, be asked to retire.

- ii. Article 34.5 of said Rules shall not apply and shall be superseded by the following:
[Article 34.5]: An award shall be made public *unless all parties agree that it shall not be made public.*
- iii. The appointing authority shall be the International Arbitration Court of Great Britain.
- iv. Such arbitration shall take place in London, the United Kingdom or such other location as all parties to the arbitration shall agree upon.

SECTION 3: COMMITMENT TO REQUIRE OTHER SUPPLIERS TO OBSERVE UNDERTAKINGS

Supplier shall require each of its suppliers of Silk Products to enter into a written contractual agreement with Supplier that is identical to this Agreement, with only the names and dates of execution revised, as appropriate.

SECTION 4: NOTIFICATION OF PROTECTED PERSONS

If Supplier employs any Child, it shall immediately post a copy of this Agreement, translated, if necessary, into the language most commonly used by its workforce, on a bulletin board to which all of its employees have unrestricted access. Supplier shall also post a copy of this Agreement, translated as stated above, if necessary, on its main website, if it maintains such a website. The purpose of this Section 4 is to ensure that all employees are aware of their rights under this Agreement.

SECTION 5: GOVERNING LAW

The substantive laws (as distinguished from the choice of law rules) of England and Wales applicable to contracts made and performed entirely in such jurisdiction(s) shall govern: (A) the validity and interpretation of this Agreement; (B) the performance by the parties of their respective obligations hereunder, and (C) all other causes of action (whether sounding in

contract or in tort) arising out of or relating to this Agreement or the termination of this Agreement.

[THE REMAINING PARTS OF THE AGREEMENT, SUCH AS THE REQUIREMENTS FOR THE DELIVERY OF NOTICES AND OTHER DOCUMENTS, SAVINGS CLAUSE, ETC. ARE NOT PERTINENT TO THE ARBITRATION.]

SKELETAL ARGUMENTS FOR THE CASE STUDY

ARGUMENTS FOR HRI AND TOURNEDO:

ISSUE ONE: Mawnsune is in breach of the Tournedo-Mawnsune Contract for failing to curtail the hours of the Children employed by it and for failure to require HurraCaine to do the same, and for not enabling the Children to attend school from July 1 to the date of full compliance.

ISSUE TWO: Mawnsune is in violation of the Tournedo-Mawnsune Contract for its failure to observe the requirements of four international documents relating to human rights and/or child labor.

ISSUE THREE: Tournedo bears no obligation to reimburse Mawnsune for any funds it must expend in damages for its breach.

ISSUE FOUR: The Children are proper parties to this arbitration because the Tournedo-Mawnsune Contract's provisions that allow them to join as parties are fully enforceable under UK law.

ISSUE FIVE: To remedy the harm caused to the adversely affected population, Mawnsune is required to pay into a trust account to be administered by a person appointed by this Tribunal, an amount sufficient to allow each Child to make up for the schooling hours lost on account of Mawnsune's breach of the Tournedo-Mawnsune Contract, including its failure to require HurraCaine to sign the Model Contract.

ISSUE SIX: Mawnsune is required to provide the remedies for which it is responsible to every member of the adversely affected population that was harmed, not just to the Children represented by HRI. This includes all Children employed by HurraCaine.

ARGUMENTS FOR MAWNSUNE

ISSUE ONE: There has been no breach of the Tournedo-Mawnsune Contract, or, if a breach has occurred, it is excusable because, in either case, MacroSilk and Tournedo significantly increased the quantity of the Silk Products they ordered. In any event, the Children have no grounds for recovery.

ISSUE TWO: There has been no breach of any of the four international documents cited in the Tournedo-Mawnsune Contract because none of such documents places binding substantive obligations on private persons.

ISSUE THREE: Because Tournedo “caused” Mawnsune to continue full-time work for the Children, it must reimburse Mawnsune for any funds it has to pay in damages.

ISSUE FOUR: The Children are not proper parties to this arbitration because the Model Contract’s provisions that allow them to join as parties are contrary to UK law.

ISSUE FIVE: Even if Mawnsune is in breach of the Tournedo-Mawnsune Contract, it is not legally required to give the Children time off, with pay, to attend school.

ISSUE SIX: Even if Mawnsune is required to pay damages, it can, at most, be required to pay damages only as to the Children represented by HRI.