

# International Court of Justice

## **Special Agreement**

Between Laurentia and Caledon for submission to the International Court of Justice of the Differences between them Concerning the Children of the Mount Zolo Disaster

Jointly Notified to the Court on 1 December 1996

# Cour Internationale de Justice

## **Compromis**

Entre Laurentia et Caledon Visant à Soumettre à la Cour Internationale de Justice les Contestations qui les Opposent Concernant Les Enfants du Désastre du Mont Zolo

Notifié conjointement à la Cour le 1 Décembre 1996

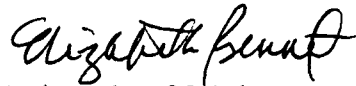
JOINT NOTIFICATION, DATED 1 DECEMBER 1996, ADDRESSED TO THE  
REGISTRAR OF THE COURT

The Hague, 1 December 1996

On behalf of Laurentia and Caledon, and in accordance with Article 40, paragraph 1, of the Statute of the International Court of Justice, we have the honour to transmit to you an original copy of the Special Agreement for Submission to the International Court of Justice of the Differences between Laurentia and Caledon concerning the Children of the Mount Zolo Disaster, signed at Washington, D.C. on 10 November 1996.



Ambassador of Laurentia  
to the Kingdom of the Netherlands.



Ambassador of Caledon  
to the Kingdom of the Netherlands.

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SPECIAL AGREEMENT  
FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE  
OF THE DIFFERENCES BETWEEN LAURENTIA AND CALEDON  
CONCERNING THE CHILDREN OF THE MOUNT ZOLO DISASTER

*Laurentia and Caledon,*

*Considering* that differences have arisen between Laurentia and Caledon regarding certain children removed from Caledon following the catastrophic eruption of Mount Zolo, and other matters;

*Recognizing* that the Parties concerned have been unable to settle these differences by negotiations;

*Desiring* that these differences should be settled by the International Court of Justice;

*Desiring* further to define issues to be submitted to the International Court of Justice,

*Have agreed as follows:*

*Article 1*

The Parties submit the questions contained in the Statement of Facts to the International Court of Justice pursuant to Article 40, paragraph 1, of the Statute of the Court.

*Article 2*

(1) The Court is requested to decide on the basis of the rules and principles of general international law, as well as any applicable treaties.

(2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions presented in the Case.

*Article 3*

(1) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 1997 Philip C. Jessup International Law Moot Court Competition.

(2) However, the Parties request the Court to order that the written proceedings should consist of memorials presented by each of the parties not later than 13 January 1997.

*Article 4*

(1) The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

(2) Immediately after the transmission of the Judgment the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof the undersigned, being duly authorized thereto, have signed the present Special Agreement and have affixed thereto their seals.

Done in Washington, D.C., this 10th day of November 1996, in triplicate in the English language.

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## The Case Concerning the Children of the Mount Zolo Disaster

### *Republic of Laurentia v. Federal Republic of Caledon*

The Republic of Laurentia is a developing country. Its largest trading partner has been the Federal Republic of Caledon, a more developed nation that is its geographic neighbor to the east. The two nations have had friendly diplomatic relations and extensive trade relations since the early 1920s, when Laurentia was created by the terms of the treaties ending World War I. There have, however, been occasional "misunderstandings," deriving from the differences in cultural, religious, and linguistic heritage between them.

Mount Zolo is an active volcano located in the southwestern part of Laurentia. Over the centuries, there have been periodic eruptions of the volcano, but before 1994, the most recent eruption causing serious damage was in the 1600s.

In February 1994, there was a devastating eruption of Mount Zolo, destroying virtually all man-made structures within a 100-kilometer radius, and killing well over 150,000 persons. The precise dimensions of the tragedy will probably never be known in economic or in human terms. The damage to Laurentia was enormous: the International Committee of the Red Cross rated the disaster one of the most significant of the century.

A world-wide effort was mobilized immediately to assist in disaster relief, and to help to rebuild the economy and the infrastructure of Laurentia. Almost every member of the United Nations responded in some measure: by donating funds or making available needed supplies, services, or personnel. As part of this effort, but not under any organized international command structure, the Caledon Medical Corps (CMC), a disaster relief agency which was part of Caledon's Ministry of Defense, established a network of field hospitals near a severely affected area, to perform triage on patients, prior to evacuating the most seriously injured by air to Caledon for full medical attention.

Of approximately 122,000 patients who passed through CMC field facilities in March, 1994, some 15,000 were taken to Caledon. About 3,000 of these were children under the age of 16. Many had become separated from their parents during the eruption or in its chaotic aftermath.

Because of the medical condition of the children who were evacuated, the lack of communications infrastructure on the ground, and its presumption that most if not all of the parents were dead, the CMC made no effort to obtain consent of the children's parents before ordering their transportation to Caledon. Nor did the CMC or the Government of Caledon seek or obtain authorization from the Government of Laurentia prior to undertaking the airlift.

Patients evacuated to Caledon were provided medical treatment. The vast majority of the adults who were treated successfully were given transportation back to Laurentia. Over the next year, all of the able-bodied children over the age of 14 were given airfare to return to Laurentia, and about 600 others were released into the care of parents or relatives who presented themselves to the authorities. The remaining children, however -- about 400 -- were placed with foster families in Oriente, the easternmost province of Caledon, the majority of whose population observed a stricter and more literal interpretation of the religious and cultural heritage that it held in common with the dominant ethnic group in the rest of the country. These children were provided not only medical care, but psychological assistance in dealing with the effects of the trauma they had experienced.

A list of their names and particulars, to the extent that they could be ascertained in the circumstances, was maintained in public records in the capital of Caledon, and the Government of Laurentia was duly informed of it through diplomatic channels. The list contained only the vaguest information about the infants and very small children, and those so badly injured and/or traumatized that they were unable to provide helpful data. It was impossible to maintain accurate records of such matters as where any individual child may have lived before evacuation.

In May 1995, Caledon's Minister of the Interior issued a decree announcing that, with the authority of the Federal Government, his Ministry would reimburse the foster parents in full for all of their expenses, and that the remaining Laurentian children would be kept in Caledon -- "out of harm's way," in the words of the decree -- until there was persuasive evidence that "safe conditions" had been restored in Laurentia, or natural parents came forward to claim them. The decree proposed no definition of "safe conditions," nor did it specify how the Government would determine when or whether they existed.

Elections in all 16 of Caledon's provinces were scheduled for June 1995. The campaigns were characterized by a heightened level of appeal for ethnic solidarity in voting: something not seen before so openly in political discourse in Caledon. In Oriente, there was an especially vigorous campaign fought between the Solidarity Party, which claimed to represent the interests of national unity, and the Way of Righteousness Party, which said that it stood for "traditional Oriente values." These included mandatory religious instruction and observance in schools and other public places; restrictions on the rights of women to higher education, to enter such professions as law and medicine, and to own property in their own names; legal prohibition of all abortions and homosexual activity; and a very strong attack on federal judicial decisions which were claimed to have interfered with religious freedom.

The people of Oriente Province, on June 28, 1995, overwhelmingly gave their mandate to the Way of Righteousness Party, and elected retired General Theophilus Jones as Provincial Governor. Within days, Governor Jones announced the agenda for his four-year term. High on his list was the objective of preserving the unity of families in Oriente -- whether established by birth, adoption, or foster care -- and the importance of preventing, as he put it, "the loss of the children who are growing up with our values to pagan cultures that cannot appreciate them."

Knowing of these developments, and concerned about the approximately 400 Laurentian children remaining in foster homes in Oriente, the Minister of State of Laurentia on July 1, delivered a diplomatic note to Caledon's Embassy asking for the immediate return to Laurentia of all children evacuated after the eruption of Mount Zolo. No answer was returned.

The Government of Caledon asserts that it promptly demanded of the Provincial Administration an assurance that no unilateral action be taken with respect to the children, although it declines to make the communication public. On July 9, 1995, Governor Jones of Oriente issued the following decree:

Pursuant to § 3.052(c) of the Family Law Title, Code of Oriente Province, and, most importantly, pursuant to the higher laws to which all of us owe fealty, I hereby declare that all of those children of Laurentian parentage who came to these shores after the wrath of the Lord was felt by their country last year are wards of the Province, to be governed by the laws of our people and of our God as if they had been born amongst us. I further instruct the courts of the Province that I consent to their adoption by our fellow Pilgrims who seek to become their parents. May we be grateful for their presence here, and may they thank us in years to come for opening to them the Way of Righteousness and Enlightenment.

Under Oriente Provincial Law, the relevant portions of which are set out in Appendix I, the effect of this Decree was to permit the courts to accept petitions to adopt the Laurentian children without the consent of their parents, which would otherwise have been required. Petitions for the adoption of virtually all of the 400 Laurentian children in foster care were recorded in the courts of Oriente Province. Within nine months, the courts received reports in approximately 320 such cases, attesting to the adequacy of the proposed adoptive home. Those petitions were granted in individual proceedings. In the remaining cases, the courts required that the petitions be modified before they could be granted. In some, the order of adoption was made contingent on such factors as the demonstrated good behavior of either or both of the adoptive parents. In no case was there evidence of physical or other abuse of a child in foster care. Nor did anyone claiming to be the natural parent of any prospective adoptee come forward to oppose an adoption petition.

The Government of Laurentia strongly condemned the Governor's statement, through diplomatic channels. On July 15, 1995, the Laurentian Foreign Minister called into her office the Ambassador from Caledon, and delivered to her a note, of which the following were the essential portions:

The Republic of Laurentia gratefully acknowledges the assistance provided to us by the world community after our recent catastrophe, and in particular expresses its appreciation for the tireless efforts of the Federal Republic of Caledon. My Government notes, however, that what began as a humanitarian mission to save our country's children has now become tantamount to organized kidnapping.

The wholesale "adoption" of Laurentian children in the Province of Oriente, characterized by cultural chauvinism and imperialism of certain local elected officials, and by the lack of regard for the views of the prospective adoptees themselves, is utterly inconsistent with international law, as well as with the rights of these children and their families in Laurentia.

The Republic calls upon the Federal Republic of Caledon to take all necessary measures forthwith to vacate any illegal adoption decrees, and to deliver all of the Laurentian children in Oriente Province to the custody of the Ambassador of Laurentia in Caledon. We must insist upon a prompt answer to our demand for the repatriation of our citizens, or we shall be forced to consider other measures to protect our rights.

A week later, Caledon's Minister of Foreign Affairs responded:

My Government expresses its satisfaction with the kind words of the Government of Laurentia regarding our attempts to abate suffering and misery after the eruption of Mount Zolo. We do not share, however, and are dismayed to observe, the cavalier dismissal of Caledon's efforts, entailing great sacrifices on the part of our citizens, which have served the best interests of the foreign children evacuated to our shores. In particular, we protest most strongly the injudicious use of such terms as "organized kidnapping" to describe our ongoing humanitarian effort that has saved the lives of thousands of innocent people.

In addition, as Your Excellency is aware, Caledon is a Federal Republic, with all legal and constitutional responsibility for such domestic matters as the care, rearing, and adoption of children left to the exclusive jurisdiction of the Provinces. The adoptions that Your Excellency has questioned are formal, final, and legally binding acts of the Provincial courts of Oriente. My Government is therefore powerless to comply with the terms of the note received on July 15, and could not do so even if it were otherwise so disposed.

In further exchanges of notes, the two sides reiterated their positions, and approaches to potential third-party mediators, such as a Nobel Peace Laureate proposed by the Secretary General of the United Nations, were rejected by Caledon on the grounds that it could not be compelled by international law to act inconsistently with its own Constitution.

On October 29, 1995, Laurentia announced that it was immediately suspending all imports of cigarettes from Caledon. Until that time, sales of cigarettes had been a significant element of the bilateral trading relationship, with sales reaching U.S. \$800 million in 1991. Many of the enterprises producing cigarettes in Caledon are at least partially owned by Laurentian investors.

Both countries are members of the World Trade Organization. Immediately upon receipt of official notice that the import ban had been imposed, Caledon requested consultations under Article XXIII of the General Agreement on Tariffs and Trade, as amended, a preliminary measure to an application for a formal dispute-resolution panel. Consultations were duly convened in Geneva on April 25, 1996. Caledon tabled a brief memorandum, which was released to the news media, contending that the Laurentian action violated Article XI of the GATT, and was unjustified under any of the provisions permitting derogation from that Article.

At the completion of the WTO consultations, the Laurentian Trade Minister held a news conference, and made a statement of which the following summary was reported by the International Post Dispatch:

The Government of Laurentia has for some time been seeking an effective means of achieving the return of its sons and daughters held against their will in Caledon. We have attempted a rational and peaceful dialogue with our neighbor, to no avail. We were therefore driven to impose import restrictions, in the hope not that they would cause hardship, but that they would bring the Government of Caledon to its senses.

Our hopes have once again been dashed by the inexplicable attitude of chauvinism and inhumanity on the part of certain leaders of Caledon who seek nothing more than short-term political gain.

My Government will not attempt to defend the embargo imposed on cigarettes from Caledon before the World Trade Organization, because of the expense and effort that will be required to vindicate what we believe to be our thoroughly legal and compellingly moral decision to sanction such trade. Accordingly, we are today abrogating the import ban.

We appeal once again to the Government of Caledon to return our beloved children, and to the world community not to permit this act of flagrant illegality to go undeterred.

Caledon's response was a press release issued by its own Trade Representative in Geneva, expressing "relief that Laurentia's misguided effort to tug at the heartstrings of the world has not led the international community to lose sight of the need to establish and to enforce consistent trading rules." No organized effort on the part of any member of the United Nations led to the imposition of multilateral sanctions against Caledon.

On June 9, 1996, the Laurentian Parliament enacted, and executive assent was extended to, the "Save the Children Act of 1996." The statute provided at § 301, among other things, that

(a) any social worker, psychologist, physician, nurse, or other professional (not including attorneys, judges, and court personnel), who might be served with process in Laurentia, and whose substantial participation in any proceeding before a court of any foreign nation, or any political subdivision thereof, materially contributed to the purported adoption of a child of Laurentian citizenship without the written, voluntary, and informed consent of his or her natural parent(s) or next of kin, shall be liable to the parent(s) or next of kin of such child, in a civil action for actual and punitive damages, including damages for loss of society, companionship, and support;

(b) any organization sponsoring, encouraging, or supporting the purported adoptions referenced in paragraph (a), and which is amenable to service of process in Laurentia, shall be liable in the same manner to each and every natural parent or next of kin of any child who was the subject of such proceedings; and

(c) the property located in Laurentia of any defendant adjudicated as liable to a Laurentian citizen under either paragraph (a) or paragraph (b) hereof may be attached and sold in order to execute a judgment entered pursuant to this Act, without prejudice to the rights of the successful plaintiff(s) to pursue any resulting deficiency according to the law.

The Children's Foundation is a private not-for-profit international organization, incorporated under the laws of Caledon. Ms. Yolanda Montaigne, the Chief Administrative Officer of the Foundation, spent the month of August, 1996, visiting the Foundation's rural rehabilitation facility in Laurentia. As she prepared to return home, she was served with process in a civil action styled *Doe v. Children's Foundation*, filed in the court of general jurisdiction for Anderson City, the capital of Laurentia. The complaint recited the text of the Save the Children Act, and alleged that the Foundation had provided social workers and/or expert witnesses who supported the petitions in approximately 50 "adoptions" of children evacuated to Caledon in the aftermath of the volcano, and that its workers consistently represented that adoption would be in the children's best interests, while deliberately failing to search out the natural parents or to notify them of what was about to happen. It asserted that, among the children "adopted" in those cases, was Moses Doe, seven years old at the time the suit was filed, the nephew of Mr. and Mrs. Aaron Doe of Anderson City. When Moses's parents were killed by the volcano, Mr. and Mrs. Doe were his next of kin as defined by applicable law. They claimed 50 million Laurentian pesos, equivalent to U.S. \$10 million, in damages.

Neither the Foundation nor Ms. Montaigne did anything to appear in the action, or to oppose the claims asserted by the Does. In fact, Ms. Montaigne left the country as planned. On October 19, 1996, the court entered a default judgment against the Foundation, awarding the Does actual damages equivalent to U.S. \$100,000 and exemplary damages of U.S. \$5 million. A writ of execution was promptly issued, and the Rehabilitation Center visited by Ms. Montaigne was seized and sold for \$500,000, which was paid over to Mr. and Mrs. Doe.

The parties to the Compromis stipulate that, in fact, Children's Foundation social workers did testify in favor of a large number of adoptions of Laurentian children in Caledon, and specifically provided evidence in the case of the adoption of Moses Doe. They further stipulate that all of the social workers whose activities were challenged were properly licensed, and that the participation of social work professionals in adoption proceedings is required by the laws of all Provinces of Caledon. In no case did the affidavit provided by the Children's Foundation under § 3.053(b)(ii) of the Code of Oriente disclose that the Foundation did any more than consult the list of names maintained in the capital of Caledon, and, where an address was provided, send a letter by certified mail containing information regarding the adoption hearing.

Having obtained their judgment in Laurentia, Mr. and Mrs. Doe brought an action against Ms. Montaigne in Caledon to enforce it. Although the filing of the enforcement action was entirely regular, the Oriente Provincial court of first instance rejected the Does' claim, on the grounds that the individual civil liability of officials for acts undertaken in order to effect implementation of a gubernatorial decree would violate public policy. The court of appeals and Federal Supreme Court upheld this decision. It was the first time in the country's history that the Supreme Court refused to enforce a judicial order of a country with whom Caledon maintained diplomatic relations.

After inconclusive exchanges of diplomatic notes over this incident as well, and responding to pressures from numerous members of the United Nations that maintain friendly and close relations with both countries, Laurentia and Caledon agreed to submit their disputes to the International Court of Justice, pursuant to Article 36(1) of the Court's Statute. To that end, they have agreed to the terms and language of the present Compromis.

As Applicant, the Republic of Laurentia requests that the Court:

- (a) DECLARE that the continued detention in Caledon of Laurentian children who were evacuated after the volcano, irrespective of whether they have been "adopted" according to the laws of Caledon or any political subdivision thereof, is illegal in international law; and ORDER the immediate return of those children;
- (b) AWARD damages to Laurentia, in an amount calculated to compensate each Laurentian child who was unlawfully and involuntarily detained in Caledon, as well as to the family of each such child; and
- (c) ORDER Caledon to enforce the judgment of the Laurentian court in *Doe v. Children's Foundation*, or, in the alternative, AWARD to Laurentia, on behalf of Mr. and Mrs. Doe, an amount equivalent to the uncollected portion of the judgment in that case.

The Federal Republic of Caledon, Respondent, asks the Court to reject these demands, and in particular, to:

- (a) DECLARE that the adoptions of the children evacuated to Caledon were not inconsistent with international law, or, in the alternative, that Caledon as a Federal Republic is not bound by international law to undo the adoptions;
- (b) DECLINE, if return of the children were to be compelled (which it believes would be in excess of the Court's authority), to award damages in any amount whatsoever;
- (c) AWARD to Caledon compensation for lost profits from sales of cigarettes in Laurentia during the period when the import ban was in place (*i.e.*, October 29, 1995 through April 25, 1996); and
- (d) DECLARE generally that the retaliatory provisions of the Laurentian Save the Children Act are impermissibly extraterritorial and therefore illegal, and, in particular, that the decision of the courts of

Caledon, declining to enforce *Doe v. Children's Foundation*, is consistent with international law; and ORDER that Laurentia return to Caledon on behalf of the Foundation the property seized and sold, or its value.

Applicant and Respondent both became parties to the following treaties before any of the facts discussed herein occurred: the United Nations Charter, the Statute of the International Court of Justice, the General Agreement on Tariffs and Trade, the constitutive documents of the World Trade Organization, the Vienna Convention on the Law of Treaties, and the Convention on the Civil Aspects of International Child Abduction. Caledon has been a party to the Convention on the Rights of the Child since shortly after it was opened for signature; Laurentia was an original signatory to the Convention, but deposited its instrument of ratification only as of July 1, 1996. Neither country has signed the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption. Nor is either country a signatory to any other treaty relevant to this case.

**Appendix:****FEDERAL REPUBLIC OF CALEDON  
THE CODE OF ORIENTE PROVINCE****Family Law Title****Excerpts from Chapter 3: Adoption**

§ 3.050. (a) Subject to the provisions of this Chapter, the District Courts of the Province shall have exclusive jurisdiction to hear and to determine petitions for the adoption of any child resident within the Province.

(b) For purposes of this Chapter, the term "child" shall refer to a person who has not yet attained the age of 16 years.

§ 3.052. A petition for the adoption of a child may not be granted unless there is filed with the court:

(a) a consent to the adoption signed by both natural parents of the proposed adoptee if both are alive, from the living parent if one natural parent is dead, or from any guardian of the child duly appointed by the court;

(b) in the event that the parental rights of the natural parent(s) have previously been terminated by order of the court, the consent of a duly-licensed child placement agency; or

(c) in the event that the child has been declared a ward of the Province,  
the consent of the Governor of Oriente Province.

§ 3.053. (a) In addition to the provisions of § 3.052(a) - (c) of this Title, a petition for the adoption of a child may not be granted unless there is filed with the court a statement attesting that the natural parent(s) of the proposed adoptee have been informed of the filing of the petition, and of their right to be present in person or through counsel to contest the adoption if they so wish.

(b) In the event that a petition for the adoption of a child does not contain the statement referenced in paragraph (a) hereof, then the court shall direct a duly-licensed child placement agency :

(i) to take all necessary measures to obtain such a statement; or

(ii) to file with the court an affidavit attesting to its unsuccessful efforts to contact the natural parent(s).

§ 3.058. (a) In consideration of any petition for the adoption of a child, the court shall be guided first and foremost by its reasoned determination of the child's best interests.

(b) As elements of, or in addition to, the best interests of the proposed adoptee, the court may consider the following factors:

(i) the suitability of the petitioner(s) as parent(s) of the proposed adoptee;

(ii) the desirability of maintaining family unity;

(iii) the conditions in which the proposed adoptee would live were the adoption petition to be granted or were it not to be granted;

(iv) the material and spiritual well-being of the prospective adoptee; and

(v) the public interest.

§ 3.064. (a) Before deciding any petition for the adoption of a child, the court of competent jurisdiction shall first convene a hearing under the Oriente Rules of Civil Procedure, to receive evidence and to hear argument. Any person entitled to notice under this Chapter may appear at such hearing in person or through counsel.

(b) The court may make a decree of adoption conditional on the petitioner's acceptance of such limitations or modifications of the petition as may be consistent with this Chapter.

§ 3.071. Any child adopted pursuant to this Chapter who is not a citizen at the time of his or her adoption shall immediately upon entry of the adoption decree become a citizen of the Province of Oriente.<sup>1</sup>

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<sup>1</sup> Under the Constitution of Caledon, Article II, § 6(b), every citizen of a Province of Caledon is automatically a citizen of the Federal Republic.