

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN REMORRA AND ARDEN FOR SUBMISSION
TO THE INTERNATIONAL COURT OF JUSTICE
OF THE DIFFERENCES BETWEEN THEM CONCERNING
THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER INTEGRA**

jointly notified to the Court on 1 December 1997

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE REMORRA ET ARDEN VISANT A SOUMETTRE
A LA COUR INTERNATIONALE DE JUSTICE
LES CONTESTATIONS QUI LES OPPOSENT
CONCERNANT LE TRIBUNAL PÉNAL INTERNATIONAL
POUR L'ANCIEN INTEGRA**

notifié conjointement à la Cour le 1 decembre 1997

**JOINT NOTIFICATION, DATED 1 DECEMBER 1997,
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 1 December 1997

On behalf of Remorra and Arden, and in accordance with Article 40(1), of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Special Agreement for Submission to the International Court of Justice of the Differences between Remorra and Arden concerning the Jurisdiction of the International Criminal Tribunal for the Former Integra, signed at Washington, D.C., on 10 November 1997.

Ambassador of Remorra
to the Kingdom of
the Netherlands.

Ambassador of Arden
to the Kingdom of
the Netherlands.

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Remorra and Arden,

Considering that differences have arisen between Remorra and Arden concerning the jurisdiction of the International Criminal Tribunal for the Former Integra, 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 the 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(1) of the Statute of the Court.

Article 2

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

(b) 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

(a) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 1998 Philip C. Jessup International Law Moot Court Competition.

(b) 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 12 January 1998.

Article 4

(a) 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.

(b) 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 1997, in triplicate in the English language.

**1998 Philip C. Jessup International Law
Moot Court Competition**

**** *Compromis* ****

The State of Remorra v. The Irenic Republic of Arden

**THE CASE CONCERNING THE INTERNATIONAL CRIMINAL
TRIBUNAL**

1 The State of Remorra is a small developing country that, until 1995, was part of the Federal Republic of Integra. The Irenic Republic of Arden is a developed island nation, constitutionally non-aligned and geographically far removed from Remorra, that conducts extensive trade with Remorra and other nations in its region. This case concerns an individual wanted for crimes allegedly committed prior to the division of the Former Integra, who has fled to Arden, and Remorra's petition for his surrender by Arden into Remorran custody.

2 As far back as the early sixth century A.D., the previously uninhabited region of the former Integra was settled by the Nylesians, an agricultural people. Bordered to the west by the ocean and the east by the Pristine Mountains, Nylesians farmed the river deltas of the southern part of the region, and fished the rich coastal waters. Over the course of the ensuing centuries, the northern areas were gradually populated by an ocean trading people, the Remorrans, who resided almost exclusively along the coast, and subsequently developed the seaport of Harbaar, their economic and cultural center.

3 The Remorrans and the Nylesians lived as peaceful neighbors in close symbiosis for many generations. Although there has always been some intermarriage between the two groups, they have generally maintained their distinct linguistic, ethnic, and cultural identities to this day.

4 In 1854, the various principalities of the region were peacefully united under a charismatic Remorran merchant, the threat of colonial domination was finally repelled, a republican government was created, and Integra was established as a sovereign nation. The capital of the new nation was established at the inland city of Nylar. Although the populations of the major cities of Harbaar and Nylar included both Remorrans and Nylesians, the majority of the people continued to live in the areas traditionally associated with their ethnic heritage.

5 At the time of its establishment, Integra's population was predominantly Nylesian, and Nylesians managed virtually all agricultural and aquatic production in the country. Nylesians were the predominant economic and political power in the country. Until 1875, every minister of every Government was Nylesian.

6 Over the course of the next decades, however, the balance of power shifted as various domestic and international economic factors induced a move away from reliance on agriculture and rewarded those with the ability to move goods quickly by sea. As the balance of wealth and influence shifted from traditionally Nylesian areas to those traditionally Remorran, an economic rift began to crystallize along ancient ethnic lines.

7 By the middle of the 20th century, economic power in Integra was almost exclusively in the hands of Remorrans, who dominated the political arena, owned most of the major businesses, controlled the ocean trading routes, and established a substantial middle class of merchants, traders, bankers, and professionals. Between 1950 and 1993, while the population of Integra remained as it had been for 100 years (approximately 75% Nylesian and 25% Remorran), economic and political power in Integra became consolidated in the hands of Remorrans.

8 In the late 1980s, as a result of a series of political and other decisions the proper characterization of which is still hotly debated, increasing sporadic violence between Remorrans and Nylesians in Integra accelerated into a series of large-scale military actions. The conflict rapidly became a bitter ethnic one, as people of Integra began to define themselves primarily as Remorran or Nylesian, attributing malice to members of the other group. In 1995, the conflict crystallized into a full-blown revolution of Nylesians against the sitting (almost entirely Remorran) Government.

9 By all accounts, the spark that ignited the revolt came from an underground revolutionary movement, the Nylesian People's Army (NPA), which had since 1990 been preparing a plan to overthrow the Government of Integra through force of arms. The NPA's objective, according to its own platform, was not the establishment of an autonomous Nylesian nation: it was the transformation of the Integran state itself into one dominated by persons of Nylesian heritage. Malu Terraq, a native Harbaar innkeeper and leading member of the NPA Liberation Planning Committee, claimed to be the principal architect of the NPA strategy.

10 On the night of 15-16 March 1995, armed members of the NPA seized public buildings (including police stations and military installations) in both Remorran and Nylesian parts of Integra by force, killing some 5,000 Remorrans. At the same time, the NPA circulated leaflets blaming alleged difficulties of Integran workers on "the Remorran elite," and encouraging those of Nylesian ancestry to wage battle by whatever means deemed necessary against the Remorrans "plundering our Nylesian homeland."

11 Terraq concurrently orchestrated a media campaign in which false reports were sent out across the airwaves of television and radio stations captured by NPA forces, announcing that, since the early hours of the morning, innocent Nylesian men, women and children were being dragged from their homes by Remorrans and murdered in the streets. Each broadcast segment ended with a call to all "true Nylesians" to overthrow the Remorran government and take up arms in defense of the Nylesian homeland, closing with the slogan, "Integra must be Nylesian, from the mountains to the sea!"

12 Nylesians around the country mobilized against their Remorran neighbors, storming houses and killing entire families. The exact extent of the carnage of the following days is not now known, and may never be known. The nation of Integra descended into anarchy as former friends took up arms against those of the other ethnic group. It is estimated that well over 15,000 people were killed in the ten days following the NPA mobilization.

13 Over the course of the next three weeks, a majority of the territory of Integra, including the city of Nylyar, fell to the NPA forces. The province of Telfin, whose population was roughly 60% ethnic Remorrans and 40% ethnic

Nylesians, was the site of particularly bitter fighting, as Remorrans fought against Nylesians in retaliation" for reported NPA outrages.

14 Many surviving top officials of the Integran government were able to escape to Harbaar, and, on 26 March 1995, declared the city to be the new capital. On 15 April 1995, the Harbaar government issued warrants for the arrest of members of the NPA, and, in particular, the members of the Revolt Planning Committee, for the crimes of treason, sedition, and murder.

15 Over the course of the next six months, the conflict waged between the forces led by the NPA and Integran government forces -- by now almost entirely Remorran -- commanded from Harbaar. Upwards of 120,000 people are reliably reported to have lost their lives. Among reports issued from the conflict areas were accounts by human rights organizations of torture of prisoners taken in the region of Telfin, at two transport stations overseen by Malu Terraq, and the seizing of weapons and food from Remorran houses in the Telfin area by paramilitary forces under Terraq's control.

16 On 10 October 1995, a multilateral force entered the conflict zone and effectively disarmed most of the combatants. The force was comprised of troops representing Integra's fellow members of the Regional Association of Treaty States, an organization of which Integra had been a charter member. The warring factions signed a treaty which divided the old nation of Integra into two new countries: the Republic of Remorra, occupying approximately one-fourth of the original territory of Integra, including the area around Harbaar and the region of Telfin, and a larger Nylesian Republic, which occupies approximately three-fourths of the old territory.

17 The Peace Treaty provided that each citizen of Integra would acquire automatically the citizenship of the country in which his or her birthplace was now located. Nylesians born in -- and now citizens of -- Remorra would be free to apply for naturalization in their country of ethnic heritage if they so wished, and the same was true for Remorrans born outside the new borders of independent Remorra. Both states duly implemented this agreement in their domestic laws. Naturalization in both countries required waiting periods of five years.

18 The Treaty also set forth an agreement between the two states that Nylesia, as the larger in both population and area, would be considered the "successor state" to Integra for the purposes of membership in international organizations and that other matters would be resolved in accordance with the Vienna Convention on Succession of States in Respect to Treaties of 1978. Thus it was agreed, *inter alia*, that Nylesia would occupy the United Nations General Assembly seat of Integra, and that Remorra would apply for membership, with Nylesia's full support and encouragement. Remorra's application was quickly approved, and it also acceded to the ICJ Statute.

19 On 4 January 1996, the United Nations Security Council voted unanimously to establish an impartial Panel of Experts to investigate accusations of grave violations of humanitarian law made by both sides in the conflict. The panel was charged with gathering relevant information and preparing a report "in order to provide the Secretary General with its conclusions on the evidence of crimes in breach of international law committed in the territory of the former Integra, and to recommend whether the creation of an international tribunal to indict and try the perpetrators of such acts is warranted."

20 The Panel of Experts submitted its report in April 1996. The Panel's report laid out substantial evidence of torture, systematic rape, summary executions, and "ethnic cleansing" carried out by Nylesian separatists associated with the NPA. Specifically, the Panel catalogued several instances of forces under Malu Terraq's command seizing weapons and food from Remorran houses in the Telfin area. It concluded that these acts were crimes against peace and crimes against humanity. The panel recommended to the Secretary General that an International Criminal Tribunal for the Former Integra (ICTFI) be commissioned to issue indictments and to conduct trials of the perpetrators of these crimes, and other violations of law occurring in the territory of the former Integra since the outbreak of hostilities in 1994.

21 The panel reported that Malu Terraq had committed a number of acts in violation of international humanitarian law, notably in the mistreatment of persons detained in and expelled from Telfin. It found that Terraq had issued a standing order that ethnic Remorrans owning houses and other property requisitioned by his forces be transported to the beaches and set afloat in boats to drift at sea without food, water, or fuel. He was accused personally of having killed the mayor of Telfin, who protested the creation of the detention camp. Terraq was also alleged to have personally ordered the torture of two ethnic Remorran prisoners at the Telfin transfer station in the spring of 1995, which resulted in their

deaths. For these reasons, the Panel branded Malu Terraq "*hostis humani generis*" -- an enemy of all mankind. Moreover, the report disclosed substantial reason to believe that Terraq had systematically diverted to his own use approximately US\$20 million in cash and other liquid assets that had passed through his hands in connection with the procurement of munitions and supplies to support the Nylesian separatists. By this time, Terraq had settled into a new home in Nylar and applied for Nylesian citizenship.

22 The Secretary General transmitted the Panel's Report and Recommendations to the Security Council immediately. The report was adopted by the Council with no negative votes. The Council voted to establish an International Tribunal pursuant to its Chapter VII powers, providing in Resolution 1024 that "the jurisdiction of this Tribunal shall be complementary to that of national criminal courts, and shall be interpreted in a manner not inconsistent with pre-existing obligations under treaties and customary international law." According to the charter of the Tribunal, a variety of penalties would be available in the case of convictions, the most extreme of which being life imprisonment.

23 On 1 July 1996, in a predawn raid, a band of commandos burst into Terraq's home in Nylar and attempted to capture him. Terraq was able to escape, and it was the commandos themselves who were eventually taken prisoner by the local police. They confessed to attempted kidnapping, and while in custody admitted that this effort had been planned and funded by the Remorran Intelligence Service. A diplomatic protest was immediately delivered to the Remorran Ambassador in Nylesia. The reply, delivered the following day, apologized for "the technical interference with the sovereignty of Nylesia," but insisted that "our national independence can never be complete until we have put on trial those of our nationals who subjected their fellow citizens to untold indignities."

24 The matter was resolved peacefully, with Nylesia accepting the apology, and the President of Remorra announcing at her weekly press conference that "we will await the moment to bring Terraq and his accomplices to justice by other means." She refused to answer questions seeking an explanation of her remarks, except to say that Remorra, and not any foreign or international body, would "deal appropriately" with the former NPA leader.

25 Meanwhile, three other members of the Revolt Planning Committee were arrested in the suburbs of Harbaar. After a brief and highly publicized trial before the Harbaar Criminal Court, the three Committee members were found

guilty of sedition, treason, and complicity to murder. They were sentenced to death by lethal injection, and executed immediately after the court handed down its verdict.

26 On 22 September 1996, elections in Nylesia brought to power the Peace and Justice Party (PJP), which had campaigned on a platform of improving relations with Remorra through acceptance of responsibility for wrongdoing during the Integran Civil War by persons allied with the fight for Nylesian dominance. Among other measures, the PJP legislature immediately enacted a bill requiring all those who had borne arms during the Civil War, and who wished to become naturalized citizens of Nylesia, to demonstrate that they had not committed any acts illegal under the Geneva Conventions or attendant Protocols. Terraq was identified by the bill's proponents as one of its principal intended targets.

27 The Nylesian Government also revoked the alien work authorizations of Terraq and several dozen others accused or suspected of offenses during the recent conflict, and invoked provisions of the existing immigration statutes (which, while on the books for decades, have almost never been enforced) requiring them to report their whereabouts weekly to the authorities. The statutes provide that violators of these requirements may be summarily deported to the state of their citizenship.

28 The first indictment by the ICTFI, that of Malu Terraq, was handed down on 20 November 1996. Terraq was charged with crimes against humanity, crimes against peace, inciting acts of violence, and murder. The charging document characterized his involvement with the NPA Revolt Planning Committee as "planning of genocide." The Tribunal requested Nylesia's assistance in arresting Terraq and presenting him for trial. Nylesia promptly replied that it condemned the actions of which Terraq stood accused, stating that it would assist in his apprehension to the fullest extent possible. The next day a force was dispatched to Terraq's house to take him into custody, only to discover that he had already fled. His whereabouts were unknown.

29 Ten days later, on 1 December 1996, Terraq was arrested in Arden. According to Immigration Service officials, Terraq had arrived at New Arden International Airport on 21 November 1996, entering the country in disguise and using a forged Remorran passport. One week after his arrival, he was recognized by a woman who had stayed at his inn in Harbaar years earlier. Arden authorities took him into custody for suspected illegal entry into the country.

30 The next day, a Remorran government spokesman issued the following statement:

31 Yesterday, Malu Terraq, the mastermind of the March Massacre and the Terror of
Telfin, was arrested and imprisoned by the Immigration Authority of Arden. Your
government promises that Terraq will be tried and punished for his crimes. The blood
of our martyrs will be dishonored unless such criminals receive the justice they deserve!

32 Citing the 1965 Extradition Treaty between Arden and the former Integra (which contains a provision for the
political offense doctrine and a dual criminality requirement), the Remorran government formally requested extradition
of Terraq so that he could be tried in Remorra for acts of treason, sedition, and murder committed during the revolt,
including his management of the Telfin transfer stations. At the same time, the ICTFI formally requested that Arden
surrender Terraq to its control, in order to stand trial pursuant to its indictment.

33 After receiving both requests, the Foreign Minister of Arden issued the following statement:

34 Arden's commitment to the international rule of law requires the condemnation of acts
of atrocity committed in times of peace and in times of conflict. By the same token, a
fundamental provision of the rule of law calls for all persons charged with crimes to be
given a fair trial. Balancing our valued friendship with the members of the Regional
Association of Treaty States, including the new Republic of Remorra, and our belief in
the importance of regional organizations in maintaining international peace and
harmony, Arden concludes that the preservation of the rule of law requires that Malu
Terraq stand trial before the International Criminal Tribunal for the Former Integra. We
therefore will surrender Terraq to the Tribunal subsequent to the completion of
investigations concerning his activities in Arden.

35 Remorra immediately delivered a diplomatic reply to this announcement protesting Arden's failure to extradite Terraq to Remorra.

36 During a search of Terraq's hotel room, conducted without any kind of legal formalities immediately following his arrest, the Arden authorities discovered financial documents that were shown by further investigation to be evidence of his control over certain accounts in the First Arden National Bank. The total balance in the accounts exceeded the equivalent of US\$18 million. It was determined that deposits in four increments of approximately US\$4.5 million each had been made in the accounts during a time frame corresponding to the most intense periods of the conflict in the former Integra. Uncontradicted press reports indicate that, prior to the break up of Integra, Terraq never reported to the Integran Revenue Service a gross income from operation of his hotel, or from any other legal source, of over US\$130,000 in any given year: a total of US\$1.1 million over the last ten years.

37 One week after Terraq's arrest, the Remorran Minister of Home Affairs brought a civil action against Terraq in the Remorran courts, demanding US\$20 million in damages "on behalf of the class of all of those Remorran citizens and nationals injured through conduct illegal in international law during the war of liberation." On 28 December 1996, a default judgment was entered in favor of the plaintiff, and the court issued a writ of attachment entitling the Minister as judgment creditor "to seize and to appropriate assets belonging to the defendant up to the amount awarded in the judgment."

38 Meanwhile, the Arden authorities had impounded the accounts as soon as they were discovered, announcing that it considered them "suspicious," and sought the public's help in determining who might have claims against them. Despite extensive publicity in the Arden media, no one came forward to claim the funds. Terraq himself was quoted in the newspapers as claiming that the money was an inheritance, although reporters quickly were able to determine that no deceased member of his family had owned wealth of anything like the amount in the accounts.

39 On 31 January 1997, officials of the First Arden National Bank filed lawsuits to lift the freeze on the accounts, and obtained restraining orders from the local court ending any form of Government restriction on their use. All requests

for additional information about the accounts would be refused, according to the order of the court, on the grounds of Arden's bank secrecy laws.

40 Remorra's Ambassador delivered another diplomatic note on 4 February 1997, which read in relevant part as follows:

41 The Government of Remorra regrets, and considers to be in flagrant violation of international law principles, the decision of Arden to deliver Malu Terraq -- a fugitive from Remorra's justice and an enemy of Remorra's people -- into the custody of a so-called international tribunal rather than into the hands of those he has so grievously wronged. Now, however, that it has been determined that at least some of the material wealth he has plundered from us lies in bank vaults in Arden, Remorra demands that the relevant authorities seize ownership of these accounts, that they be liquidated, and that the proceeds be delivered to this Embassy as soon as possible. Failure to take such measures will constitute a significant gesture of hostility to the Government and people I have the honour to represent.

42 The Foreign Minister of Arden responded:

43 While my Government understands the concerns that certain liquid assets found in our capital may represent funds unlawfully diverted from Remorra, Arden law does not permit the banks to deprive the record owners of those assets of their property rights, or to share with anyone, including our own authorities, information concerning their disposition. We regret the inconvenience that might result from the application of Arden laws in this instance, but we firmly believe that, in the long run, the consistent and uniform conformity to the law is in the interest of everyone, including those who might seek exceptions in certain cases. We inform the State of

Remorra that no further communication on this subject will be issued by my Government.

44 In order to prevent further escalation of this conflict, and after the personal appeal of twelve Nobel laureates, Remorra and Arden have agreed to submit the dispute to the International Court of Justice, waiving all objections to the Courts' jurisdiction. Terraq remains in detention in Arden, pending the outcome of this case.

ISSUES/CLAIMS

Remorra requests that the International Court of Justice:

- 1) **declare that the Extradition Treaty between the Former Integra and Arden requires that Malu Terraq be extradited to Remorra forthwith;**

- 2) **order that under binding provisions of international law, Arden has no right to deliver a Remorran national to the custody of an international tribunal with no basis in the law, when he is accused of crimes in Remorra;**

- 3) **in the alternative, award compensatory damages equivalent to US\$100 million to Remorra, to be used for the establishment of a Truth and Reconciliation Commission, charged with investigating charges of violations of human rights during the Integran Conflict; and**

- 4) **order that an accounting be provided of the funds in the First Arden National Bank to which Malu Terraq is record owner, and that such funds, with interest, be paid over to Remorra as its own property.**

Arden asks that the Court:

- 1) **declare that the Extradition Treaty between Arden and the former Integra is no longer in effect;**

2) **reject the prayer for relief of Remorra, and declare that the proposed surrender of Terraq by Arden to the ICTFI and the ICTFI's jurisdiction to try this case is consistent with international law;**

3) **reject any claim of Remorra for monetary damages; and**

4) **determine that international law does not require the abrogation of Arden's bank secrecy laws in the case of the accounts allegedly held in the name of Malu Terraq.**

Remorra's status under various international instruments is discussed in the Compromis. Arden is a party to the following treaties: the U.N. Charter; the Statute of the ICJ; the Vienna Convention on the Law of Treaties; the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; and the 1949 Geneva Conventions. The Former Integra was also a party to all of these instruments, as well as to the 1978 Vienna Convention on Succession of States in Respect to Treaties. Arden is a signatory to the 1978 Convention on Succession to Treaties, but never filed its ratification. Neither Remorra nor Arden is a party to any international agreement regarding the recognition of foreign judgments or legal instruments. No other treaties are relevant.