

TABLE OF CONTENTS

INDEX OF AUTHORITIES -----iv

STATEMENT OF JURISDICTION-----xii

QUESTIONS PRESENTED-----xiii

STATEMENT OF FACTS-----xiv

SUMMARY OF PLEADINGS-----xviii

PLEADINGS-----1

I. MERAPI WAS JUSTIFIED IN ITS SEIZURE AND DETENTION OF EREBIAN VESSELS BECAUSE IT HAS EXCLUSIVE TERRITORIAL RIGHTS OVER THE ALMA SHOALS AREA. -----1

A. The Boundary Between Merapi and Erebus Remains at the Original Riverbed of the Krakatoa River, Keeping the Alma Shoals Within Merapin Territorial Waters. -----1

1. The boundary remains at the original riverbed because an avulsion caused the shift of the Krakatoa River. -----1

2. The Treaty of Amity and Peace reflects the intent of the parties to draw the boundary at the original riverbed. -----2

3. Special historical factors warrant retention of the original boundary. -----4

B. Even If This Court Modifies the Land Boundary, Special Circumstances Dictate that the Delimitation of the Maritime Boundary Ensures that the Alma Shoals Remain in Merapin Territorial Waters. -----5

C. Merapi May Properly Seize and Detain Erebian Vessels Illegally Exploiting Resources in the Alma Shoals Because the Area is Within Merapi’s Exclusive Economic Zone. -----6

1. The Alma Shoals lie within the Merapin Exclusive Economic Zone. -----6

2. Under the 1982 United Nations Law of the Sea convention, Merapi has the right to manage the Exclusive Economic Zone and the duty to prevent over-exploitation of the living resources therein. -----7

3.	Merapi’s seizure and detention of trespassing Erebian vessels is justified under international law. -----	8
II.	THE EREBIAN DEEP SEABED MINING OPERATION VIOLATES INTERNATIONAL LAW. -----	10
A.	<u>The Erebian Mining Operation Does Not Comport with Customary International Law Governing Mineral Resources of the Deep Seabed.</u> -----	10
B.	<u>The Erebian Mining Operation Violates International Environmental Custom and Disregards the Concerns of the International Community.</u> -----	12
1.	The Erebian mining operation does not comply with customary international environmental law. -----	12
2.	The Erebian mining operation disregards international concerns about the risk of environmental danger. -----	14
III.	MERAPI IS NOT LIABLE UNDER INTERNATIONAL LAW FOR THE DISABLING OF THE EREBIAN SEABED MINING FACILITY BY THE AQUA PROTECTORS. -----	14
A.	<u>The Provision of Financial Support to The Aqua Protectors is Insufficient to Impute Their Acts to Merapi.</u> -----	15
B.	<u>Even if the Disabling of the Mining Facility is Attributed to Merapi, This Act was Justified Pursuant to Merapi’s Inherent Right to Self-Defense.</u> -----	16
1.	The threat of starvation to the Merapin people caused by Erebus is an act of aggression equivalent to an armed attack. -----	16
2.	Disabling the mining facility was necessary to prevent the imminent threat to the Merapin people. -----	18
3.	Disabling the mining facility was proportionate to the threat to the Merapin people. -----	19
IV.	MERAPI HAS NO OBLIGATION UNDER INTERNATIONAL LAW TO EXTRADITE THE AQUA PROTECTORS. -----	20
A.	<u>Previous Extradition on the Basis of Comity Does Not Obligate Merapi to Extradite The Aqua Protectors.</u> -----	21
B.	<u>Merapi is Not Obligated to Extradite its Nationals or Persons Accused of Political Offenses.</u> -----	21

V. MERAPI IS ENTITLED TO REPARATIONS FOR EREBUS' BREACH OF ITS INTERNATIONAL OBLIGATIONS. -----	24
A. <u>Erebus Should Compensate Merapi for the Loss of Revenue From the Alma Shoals.</u> -----	24
B. <u>Erebus Should be Enjoined From Operating its Mining Facility Until it is Environmentally Safe or Moved to Another Location.</u> -----	24
CONCLUSION AND PRAYER FOR RELIEF-----	25

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<i>Fisheries Jurisdictions Case (Spain v. Can.)</i> , 1996 I.C.J. 58 (8 May) (Counter-Memorial of Canada) (Jurisdiction).....	6
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STATEMENT OF JURISDICTION

The sovereign states of Merapi and Erebus have agreed to submit the present dispute to the International Court of Justice (“I.C.J.”) by *compromis* pursuant to Article 40(1) of the I.C.J. Statute. According to Article 36(1) of the I.C.J. Statute, this Court’s jurisdiction “comprises all cases which the parties refer to it.” This Court, therefore, has jurisdiction to resolve all disputes presented by the parties in this dispute.

QUESTIONS PRESENTED

- I. WHETHER THE BOUNDARY BETWEEN MERAPI AND EREBUS SHOULD REMAIN AT THE ORIGINAL RIVERBED OF THE KRAKATOA RIVER AS INTENDED BY THE PARTIES.
- II. WHETHER EREBUS' OPERATION OF THE SEABED MINING FACILITY IN DISREGARD OF ITS INTERNATIONAL OBLIGATION TO PROTECT THE ENVIRONMENT VIOLATES INTERNATIONAL LAW.
- III. WHETHER, WITHOUT EVIDENCE OF CONTROL, THE DISABLING OF THE EREBIAN SEABED MINING FACILITY BY THE AQUA PROTECTORS IS ATTRIBUTABLE TO MERAPI.
- IV. WHETHER MERAPI IS REQUIRED TO EXTRADITE THE AQUA PROTECTORS IN THE ABSENCE OF AN EXTRADITION TREATY.
- V. WHETHER MERAPI IS REQUIRED TO RELEASE THE SIX EREBIAN FISHING VESSELS ILLEGALLY EXPLOITING RESOURCES IN THE ALMA SHOALS.
- VI. WHETHER EREBUS SHOULD COMPENSATE MERAPI FOR CAUSING THE LOSS OF REVENUE FROM THE ALMA SHOALS AND BE ENJOINED FROM COMMENCING AN OPERATION THAT WOULD SEVERELY ENDANGER MARINE LIFE IN THE GRAND BASIN.

STATEMENT OF FACTS

The Kingdom of Merapi is a small, developing country that regained its independence after WWII from the Republic of Erebus. (Compromis ¶¶ 2,3). In 1947, Merapi entered into “The Treaty of Amity and Peace” (“Treaty”) with Erebus, a large, technologically advanced state to the north. (Compromis ¶¶ 1,3). The Treaty determined the respective boundaries of these two coastal states. (Compromis ¶ 3). After extensive negotiation, the treaty specified that the maritime boundary between the two countries would “follow the mouth of the Krakatoa River, taking as the mouth of the river, its principal arm.” (Compromis ¶ 4). Merapi and Erebus share the Krakatoa River and the delta it forms out to the Etna Ocean as a common border. (Compromis ¶ 2). The drafters of the Treaty selected the principal arm of the River, merely to establish an objectively identifiable boundary. (Compromis ¶ 4) Significantly the boundary delimitation kept the ancient burial sites and part of the fertile delta area of the river within Merapi’s territory. (Compromis ¶ 4).

Only in the last four years has the principal arm of the Krakatoa River shifted southward. (Compromis ¶ 5) The shift followed three major hurricanes and places the River south of Pigeon Rock. (Compromis ¶ 5). As a result, tension has arisen between Merapin and Erebian fishing vessels over the location of the Alma Shoals. (Compromis ¶ 5). Until now, the Alma Shoals rested in Merapin waters. (Compromis ¶ 5).

In response to Erebus’ claims to the Alma Shoals, the Prime Minister of Merapi issued a communiqué stating that the clear purpose of the treaty was to have the line of delimitation extend directly outwards halfway between Pigeon Rock and the Cape of Realto. (Compromis ¶ 6). It further stated that any Erebian claims to the Alma Shoals would be considered as hostile acts. (Compromis ¶ 5). Merapi offered advance warnings of its intention to seize Erebian ships

found fishing in those waters. (Compromis ¶¶ 5, 6). Accordingly, in March 2000, the Merapin navy seized six Erebian-flagged vessels found fishing in the Shoals. (Compromis ¶ 7). Although the crew was allowed to return to Erebus, the vessels remain in Merapi. (Compromis ¶ 7). In response, Erebus sent a fleet of military patrol boats to accompany other Erebian fishing vessels to the Shoals, thereby overpowering the Merapin navy and preventing Merapin ships from fishing in the area. (Compromis ¶ 7).

In April 2000, in the midst of the escalating fishing dispute, Erebus publicly announced that it would begin seabed mining at an underwater mining facility by the end of September 2000. (Compromis ¶ 9). The construction would take place 500 nautical miles directly off the coast of the southernmost portion of Merapi. (Compromis ¶ 9). It is believed that the supply of minerals in this area will greatly increase in price on the world market over the next few months. (Compromis ¶ 9)

The proposed seabed mining operations were harshly denounced by several prominent scientists around the world. (Compromis ¶ 10). Particularly, the President of the International Seabed Authority stated that the proposed operations do not conform to the standards set by the Authority. (Compromis ¶ 10). The underwater pollution from the proposed extraction process would severely endanger the marine life in a 300 nautical-mile radius of the mining site. (Compromis ¶ 10).

As a result, an environmental organization called “The Aqua Protectors” immediately campaigned world-wide, denouncing the seabed operation as a violation of international law. (Compromis ¶ 11). The media attention and public pressure caused other states to bring the matter to the attention of the UN Security Council. (Compromis ¶ 11). The Security Council issued a statement on 15 August, 2000, declaring that the boundary dispute and the potential

environmental catastrophe constitute a threat to the peace under Chapter VII of the United Nations Charter. (Compromis ¶ 12). Furthermore, the Security Council demanded that Erebus provide the Council with evidence that the mining facility would not endanger marine life in the Grand Basin before it continued its operation. (Compromis ¶ 12).

In a note issued on 20 August, 2000, the Erebus Foreign Ministry replied that it would not comply with the Council's demands to delay commencement of its mining facility. (Compromis ¶ 13). Merapi responded by reiterating to the Security Council the catastrophic effect the pollution from the seabed mining facility would have on the waters of the Grand Basin. (Compromis ¶ 14). Merapi has fished in the resource-rich Grand Basin for hundreds of years and the resources of the Grand Basin account for over 40% of Merapi's gross domestic product. (Compromis ¶ 14). The Merapin communiqué to the Security Council stated that the severe environmental damage would lead to the destruction of Grand Basin marine life and thereby lead to massive starvation and death of the Merapin people. (Compromis ¶ 14). The communiqué further stated that the operation of the seabed mining facility would thus be an act of aggression equivalent to an armed attack. (Compromis ¶ 14).

On 1 September, 2000, members of The Aqua Protectors disabled the Erebian underwater mining facility using explosives. (Compromis ¶ 16). Six Erebian nationals were killed in the explosion. (Compromis ¶ 16). Merapi informed the Security Council of the act, expressing that it was a private action in which Merapi did not plan or participate. (Compromis ¶ 17) However, Merapi believed the action to be justified and consistent with Article 51 of the United Nations Charter and its 15 August statement. (Compromis ¶ 17).

It was later determined that the Merapin government provided monies to the Aqua Protectors to help finance the operation. (Compromis ¶ 18). Erebus immediately demanded

compensation for the damage and loss of life, as well as the extradition of the members responsible for the attack. (Compromis ¶ 19). It is not Merapi's policy to extradite in the absence of an extradition treaty, or extradite Merapi nationals or persons accused of political offenses. (Compromis ¶ 19) Therefore, Merapi and Erebus have agreed to bring their dispute before the International Court of Justice. (Compromis ¶ 20)

SUMMARY OF PLEADINGS

Merapi was justified in its seizure and detention of Erebian vessels because it has exclusive territorial rights over the waters surrounding the Alma Shoals. The shift of the Krakatoa River was caused by avulsion. Therefore, the boundary between Merapi and Erebus should remain at the original riverbed of the Krakatoa River, keeping the Alma Shoals within Merapin territorial waters. The Treaty of Amity and Peace signed by Merapi and Erebus in 1947 reflects the intent of the parties to draw the boundary at the original riverbed. Furthermore, special historical factors warrant retention of this original boundary. Even if this Court modifies the land boundary, special circumstances dictate that the delimitation of the maritime boundary ensures that the Alma Shoals remain within Merapin territorial waters.

Merapi may properly seize and detain Erebian vessels illegally exploiting resources in the Alma Shoals because the area is within Merapi's Exclusive Economic Zone ("EEZ"). Under the 1982 United Nations Convention on the Law of the Sea, Merapi has the right to manage the EEZ as well as the duty to prevent over-exploitation of the living resources therein. Merapi's seizure and detention of trespassing Erebian vessels is justified under international law because it is a legitimate reprisal for the Erebian aggression and violation of Merapin sovereign rights within the EEZ. In addition, Erebus has not followed the procedure set forth in the 1982 United Nations Convention on the Law of the Sea for the release of detained vessels.

The Erebian deep seabed mining operation violates international environmental custom and disregards the concerns of the international community. Under customary international law every state is required to ensure that all activities within their jurisdiction do not damage the environment of other states. Furthermore, the precautionary principle heightens each nation's duty to prevent environmental damage. In this case, there is more than a mere scientific

uncertainty that the mining facility will cause environmental damage. Thus, Erebus violates its international obligation to respect the environment.

Merapi is not liable under international law for disabling the Erebian seabed mining facility by the Aqua Protectors. Without evidence of effective control over the acts of the Aqua Protectors, the provision of financial support to their organization is insufficient to impute their acts to Merapi. Even if the disabling of the mining facility is attributed to Merapi, it is justified pursuant to Merapi's inherent right to self-defense. There was significant evidence that the mining facility would lead to environmental catastrophe, severely endangering the Grand Basin marine life. This would in turn cause the ultimate starvation of the Merapin people and death on a massive scale. Thus, Erebus was preparing an act of aggression equivalent to an armed attack against Merapi. Disabling the mining facility was necessary to prevent the imminent threat to the Merapin people and was a proportionate response to this threat.

Merapi has no obligation under international law to extradite the Aqua Protectors in the absence of an extradition treaty, and previous extradition on the basis of comity does not obligate Merapi to extradite in this case. Furthermore, Merapi has a policy of not extraditing its nationals or persons accused of political offenses and is not obligated to do so under international law.

Merapi is entitled to reparations for Erebus' wrongful acts. Thus, Erebus should compensate Merapi for the loss of revenue from the Alma Shoals, and they should be enjoined from operating its mining facility until it is environmentally safe or moved to another location that no longer threatens Merapi.

I. MERAPI WAS JUSTIFIED IN ITS SEIZURE AND DETENTION OF EREBIAN VESSELS BECAUSE IT HAS EXCLUSIVE TERRITORIAL RIGHTS OVER THE ALMA SHOALS AREA.

An avulsion caused the Krakatoa River to shift its position. Under customary international law, the boundary between Erebus and Merapi should remain at the original position of the riverbed. The maritime boundary extends outward from the land boundary, placing the Shoals in Merapi territorial waters. Alternatively, if this Court decides to alter the land boundary, special circumstances dictate that this Court draw the maritime boundary such that the Shoals remain in Merapi territorial waters. Merapi therefore has the right to exclude other nations from fishing in the area and a duty to protect the area. This Court should find that Merapi is justified in seizing and detaining Erebus vessels illegally exploiting the Alma Shoals resources.

A. The Boundary Between Merapi and Erebus Remains at the Original Riverbed of the Krakatoa River, Keeping the Alma Shoals Within Merapi Territorial Waters.

The Treaty of Amity and Peace set the international boundary between the two countries at the principal arm of the Krakatoa River. The Krakatoa River shifted due to an avulsion and, in accordance with customary international law, this Court should not alter this boundary position. This Court should also respect both parties' intent in signing the Treaty of Amity and Peace for the boundary to lie at the original position of the riverbed. Finally, this Court should consider special historical factors dictating that this Court not alter the boundary position.

1. The boundary remains at the original riverbed because an avulsion caused the shift of the Krakatoa River.

The Krakatoa River experienced an avulsion, a sudden shift in the flow of the river from its original riverbed.¹ An accretion, in contrast, occurs when the river experiences a slow,

¹ See *Land, Island and Maritime Frontier Dispute* (El Sal. v. Hond.), 1992 I.C.J. 351, 546-47 (11 Sept.); *The Anna*, 5 C. Rob. 373 (U.K. 1805); *Nebraska v. Iowa*, 143 U.S. 359, 361 (1892);

gradual, imperceptible and slight change in the location of the riverbed.² The change in the position of the Krakatoa River was not an imperceptible, gradual movement. The change occurred during relatively sudden shifts as a direct result of three distinct weather disasters.³ When a river that serves as an international boundary shifts as a result of an avulsion, the boundary remains at the original position of the riverbed,⁴ and the boundary location should therefore remain at the original Krakatoan riverbed.

2. The Treaty of Amity and Peace reflects the intent of the parties to draw the boundary at the original riverbed.

The Vienna Convention on the Law of Treaties (“Vienna Convention”) codified pre-existing international custom on treaty interpretation,⁵ and was ratified by both Merapi and Erebus in 1969.⁶ According to the Vienna Convention, a tribunal considering a treaty dispute should interpret the treaty “in good faith in accordance with the ordinary meaning to be given to

Louisiana v. Mississippi, 282 U.S. 458, 460 (1940); *Pereyra Iraolo v. Provincia De Buenos Aires of April 11, 1982* (Arg.), Ann. Dig. (1919-22), Case No. 62; *Chamizal Arbitration* (U.S. v. Mex.), 11 R.I.A.A. 309 (Int’l Boundary Comm. 1911); 1 Lassa Oppenheim, *International Law* (Robert Jennings & Arthur Watts eds., 9th ed. 1955), § 229.

² See *The Anna*, 5 C.Rob. at 373; *Louisiana v. Mississippi*, 282 U.S. at 458; *Chamizal*, 11 R.I.A.A. at 309; Oppenheim, *supra* note 1, § 229.

³ Compromis ¶ 5.

⁴ *Nebraska v. Iowa*, 143 U.S. at 361; Oppenheim, *supra* note 1, § 229; Georges Kaeckenbeeck, *International Rivers* 176 (1962).

⁵ See *Gabcikovo-Nagymaros Project* (Hung. v. Slov.), 1997 I.C.J. 3 (5 Feb.); *Territorial Dispute* (Libya v. Chad), 1994 I.C.J. 6 (3 Feb.) (Judgment); *Oil Platforms* (Iran v. U.S.), 1996 I.C.J. 803 (12 Dec.); *Kasikili/Sedudu Island* (Bots. v. Nam.), 1999 I.C.J. 1 (13 Dec.); *Land, Island and Maritime Frontier Dispute*, 1992 I.C.J. at 351.

⁶ Compromis, ¶ 8.

the terms of the treaty in its context and *in the light of its object and purpose.*⁷ Further, when the terms of a treaty are ambiguous, a court should use supplementary means of interpretation to determine the intent of the parties in creating the treaty.⁸ The resolution of this dispute revolves around the ambiguity of the phrase “at the midpoint of the Krakatoa River.”⁹ Specifically, this Court must determine whether the Treaty set the boundary at the position of the river at the time the Treaty was signed, or at an unpredictable location shifting with every change in the position of the Krakatoa River. Since the dispute revolves around this ambiguity, this Court should look to appropriate supplementary means of interpretation as provided in the Vienna Convention, including the preparatory works of the Treaty and the circumstances of its conclusion.¹⁰

For several months, both parties carefully negotiated the terminology of this phrase.¹¹ Erebus wanted the boundary to lie at Pigeon Rock, and Merapi wished the boundary to lie at the Cape of Realto.¹² Both parties were concerned about losing fertile delta area of the river if the

⁷ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969), art. 31(1) (hereinafter “Vienna Convention”); *Competence of the General Assembly for the Admission of a State to the U.N.*, 1950 I.C.J. 4 (3 March) (emphasis added).

⁸ Vienna Convention, *supra* note 7, ¶ 32; *Elettronica Sicula S.p.A. (ELST)* (U.S. v. Italy) 1989 I.C.J. 15 (20 July); *Young Loan Arbitration* (Arb. Trib. for the Agmt. on Germ. External Debts), 59 I.L.R. 495, 529-30 (1980); *Fothergill v. Monarch Airlines Ltd.*, A.C. 251 (U.K. 1981); *Commonwealth of Australia v. State of Tasmania*, 68 I.L.R. 266, 303 (1983); II Y. B. Int'l L. Comm'n 247-49, 261, 266 (1966); Sir Gerald Fitzmaurice, 33 *British Year Book of International Law* 204-7 (1957).

⁹ Compromis, ¶ 4.

¹⁰ II Y.B. Int'l L. Comm'n at 223; *Young Loan Arbitration*, 59 I.L.R. at 544-45; Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties* 141-7 (2nd ed. 1984).

¹¹ Compromis, ¶ 4.

¹² *Id.*

Treaty set the boundary too far north or south.¹³ As a negotiated compromise, both parties agreed to a point in between the Cape of Realto and Pigeon Rock.¹⁴ Accordingly, it is evident that the parties intended the boundary to lie between the Cape of Realto and Pigeon Rock.

Erebus may argue that the parties chose the principal arm of the Krakatoa River as an “objectively identifiable boundary.”¹⁵ The selection of this location was intended to stabilize the relationship between the two countries by establishing an easily identifiable boundary in an unsettled period of peace following Erebus’ occupation of Merapi.¹⁶ After many years of political stability and a constant, secure border, this objective is no longer necessary. The boundary location is now well known and identifiable.¹⁷

3. Special historical factors warrant retention of the original boundary.

In hearing a dispute on territorial boundaries, this Court should consider historical factors.¹⁸ When resolving a disputed boundary, historical or other special circumstances can override generally applicable rules.¹⁹ In this case, Merapins have fished the Alma Shoals area

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Compromis, ¶ 4.

¹⁶ Compromis, ¶ 3.

¹⁷ See Compromis, Annex A (map of the area).

¹⁸ *North Sea Continental Shelf Case* (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 3, 68 (20 Feb.); *Continental Shelf* (Tunis. v. Libya) 1982 I.C.J. 18 (24 Feb.); *The Minquiers and Ecrehos Case* (Fr. v. U.K.), 1953 I.C.J. 47 (17 Nov.); *Rann of Kutch Arbitration* (India v. Pak.), 50 I.L.R. 2 (1968); *Western Sahara Advisory Opinion*, 1975 I.C.J. 12 (16 Oct.); *Land, Island and Maritime Frontier Dispute*, 1992 I.C.J. at 351.

¹⁹ Convention on the Territorial Sea and Contiguous Zone, 516 U.N.T.S. 205 (1958), art. 12 (hereinafter “1958 Geneva Convention”); United Nations Convention on the Law of the Sea, 1833 U.N.T.S. 3 (1982), art. 15 (hereinafter “1982 Convention”); Convention for the Solution of

for hundreds of years, and have other important traditional and customary ties to the area.²⁰

Additionally, many Merapin historical burial sites lie in the delta area of the Krakatoa area.²¹

Setting the boundary to the south of Pigeon Rock would place these ancient burial sites outside of Merapin territory. This Court should accordingly consider these historical factors and affirm the existing boundary location at the original Krakatoan riverbed.

B. Even If This Court Modifies the Land Boundary, Special Circumstances Dictate that the Delimitation of the Maritime Boundary Ensures that the Alma Shoals Remain within Merapin Territorial Waters.

In drawing maritime boundaries, this Court may take into account special historical or traditional factors.²² A court may consider a nation's economic dependence on the resources of a certain area as evidence of a historical claim to the area.²³ In this case, over 50% of Merapi's U.S. \$10 billion GDP comes from fishing and related industries.²⁴ A significant percentage, over 10%, of the GDP comes solely from the Alma Shoals area.²⁵ Of Erebus' large, diversified economy, fishing is of relatively minor importance.²⁶ Because Merapi is economically

the Chamizal Problem 505 U.N.T.S. 185 (1963); *Jan Mayen Continental Shelf Decision* (Ice. v. Nor.), 20 I.L.M. 797 (Concil. Comm. 1981).

²⁰ Compromis, ¶ 2.

²¹ Compromis, ¶ 4.

²² 1958 Geneva Convention, *supra* note 19, art. 12; 1982 Convention, *supra* note 19, art. 15; *Continental Shelf*, 1982 I.C.J. at 18.

²³ *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Can. v. U.S.), 1984 I.C.J. 246, 272-73 (12 Oct.).

²⁴ Compromis, ¶ 2.

²⁵ Compromis, ¶ 2.

²⁶ Compromis, ¶ 2.

dependent on the area, this Court should draw the maritime international border such that the Alma Shoals area remains in Merapin territory.

C. Merapi May Properly Seize and Detain Erebian Vessels Illegally Exploiting Resources in the Alma Shoals Because the Area is Within Merapi's Exclusive Economic Zone.

Since the Alma Shoals lie in the Merapin Exclusive Economic Zone (EEZ), Merapi has a duty under international law to protect the area and a right to use force to do so. Accordingly, this Court should determine that Merapi may properly exclude other countries from the area, and that the seizure and detention of the Erebian fishing vessels was therefore proper.

1. The Alma Shoals lie within the Merapin Exclusive Economic Zone.

Exclusive Economic Zones are a culmination of an increasing trend in international law to grant nations rights and responsibilities over certain waters outside the nation's territorial sea.²⁷ Recognition of EEZs was customary even before it was codified in the 1982 Convention.²⁸ EEZ status grants a nation certain preferential rights to exploit natural resources within the area.²⁹ A nation may claim an EEZ in areas within 200 miles of a nation's coastline.³⁰

²⁷ *Fisheries Jurisdictions Case* (F.R.G. v. Ice.), 1974 I.C.J. 175 (25 July); *Fisheries Jurisdictions Case* (U.K. v. Ice.), 1974 I.C.J. 3 (25 July); Oppenheim, *supra* note 1, § 327.

²⁸ *Continental Shelf Case* (Libya v. Malta), 1985 I.C.J. 13 (3 June); *Continental Shelf*, 1982 I.C.J. at 18; *Fisheries Jurisdictions Case* (U.K. v. Ice.), 1974 I.C.J. at 3; *Gulf of Maine Area*, 1984 I.C.J. at 246; *Delimitation of the Maritime Boundary* (Guinea v. Guinea-Bissau), 25 I.L.M. 251 (I.C.J. 1986); Oppenheim, *supra* note 1, § 329.

²⁹ 1982 Convention, *supra* note 19, art. 56.

³⁰ 1982 Convention, *supra* note 19, arts. 21, 57; *Continental Shelf*, 1982 I.C.J. at 18; *Arbitral Award* (Guinea-Bissau v. Sen.), 1989 I.C.J. 126 (31 July); *Land, Island and Maritime Frontier Dispute*, 1990 I.C.J. at 92; *Gulf of Maine*, 1984 I.C.J. at 246; *Continental Shelf Case*, 1985 I.C.J. at 13; *Delimitation of Maritime Areas* (St. Pierre and Miquelon), 31 I.L.M. 1145 (1992); Federal Law of the Sea, 25 I.L.M. 889 (Mex. 1986), art. 50; *Delimitation of the Maritime Boundary* (Guinea v. Guinea-Bissau), 25 I.L.M. at 251; Ian Brownlie, *Principles of Public International Law* 206 (5th ed. 1998).

The Alma Shoals area meets all the requirements of being an EEZ, and Merapi has enjoyed these benefits for years.³¹

2. Under the 1982 United Nations Law of the Sea Convention, Merapi has the right to manage the Exclusive Economic Zone and the duty to prevent over-exploitation of the living resources therein.

The 1982 Convention grants Merapi certain rights over its EEZ areas.³² Merapi has the exclusive right to explore, exploit, conserve, and manage all living and nonliving resources within the zone.³³ Not only does Merapi enjoy the right to exclude other nations from exploiting its natural resources, but Merapi also has an obligation under the 1982 Convention to prevent over-exploitation of the natural resources by other nations.³⁴ Merapi must determine the maximum amount of fish that can be harvested without depleting the stock.³⁵ Merapi is obligated to regulate the fishing activity in the area to ensure that this maximum sustainable yield is not exceeded.³⁶ In this case, if Merapi determines that its fishing requirements will exceed the capacity of the EEZ, Merapi has a duty under international law to prevent nations such as Erebus from trespassing in the EEZ and exploiting the natural resources.

Under certain narrow circumstances, a foreign nation may lay claim to a share in the resources of the EEZ. The 1982 Convention grants a landlocked nation the right to share in the

³¹ Clarification, ¶ 3.

³² 1982 Convention, *supra* note 19, art. 56.

³³ *Id.*

³⁴ 1982 Convention, *supra* note 19, art. 61.

³⁵ *Id.*

³⁶ 1982 Convention, *supra* note 19, art. 61; “*Camouco*” Case (Pan. v. Fr.), 39 I.L.M. 666 (I.T.L.O.S. 2000); *M/V “Saiga” (No. 2) Case* (St. Vincent v. Guinea), 38 I.L.M. 1323 (I.T.L.O.S. 1999).

resources of a neighboring country's EEZ.³⁷ A coastal nation may also lay claim to a share in the resources of an EEZ if the nation is "geographically disadvantaged" and dependent upon the resources of another nation's EEZ.³⁸ Erebus meets neither of these narrow exceptions. It is not a landlocked nation, and provides no facts demonstrating its dependency on the resources of any Merapi EEZ. Additionally, the 1982 Convention expressly precludes these exceptions when the economy of a nation possessing an EEZ is "overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone."³⁹ As a developing nation, Merapi is overwhelmingly dependent on the resources of its EEZs. Over 50% of Merapi's U.S. \$10 billion GDP comes from fishing and related industries.⁴⁰ A significant percentage, over 10%, of the GDP comes solely from the Alma Shoals area.⁴¹

3. Merapi's seizure and detention of trespassing Erebian vessels is justified under international law.

International law allows a nation to use force to ensure the exclusivity and maintenance of its EEZ. Under the 1982 Convention, a nation has a right and duty to enforce all laws enacted in its jurisdiction to conserve and manage the EEZ's living resources.⁴² A nation may board and inspect a ship, impound the ship and arrest its crew, and institute judicial action against them.⁴³

³⁷ 1982 Convention, *supra* note 19, art. 69; *M/V "Saiga" (No. 2) Case*, 38 I.L.M. at 1323.

³⁸ 1982 Convention, *supra* note 19, art. 70; *M/V "Saiga" (No. 2) Case*, 38 I.L.M. at 1323.

³⁹ 1982 Convention, *supra* note 19, art. 71; *M/V "Saiga" (No. 2) Case*, 38 I.L.M. at 1323.

⁴⁰ *Compromis*, ¶ 2.

⁴¹ *Compromis*, ¶ 2.

⁴² 1982 Convention, *supra* note 19, art. 73.

⁴³ 1982 Convention, *supra* note 19, art. 73(1); *"Camouco" Case*, 39 I.L.M. at 666; *M/V "Saiga" (No. 2) Case*, 38 I.L.M. at 1323.

In this case, Merapi did not exceed its rights or duties accorded by international law when it boarded, seized, and detained six Erebian vessels illegally exploiting the resources of the Alma Shoals. It promptly allowed the crews to return to Erebus and detained the vessels in accordance with Merapin law, pending forfeiture for trespass.⁴⁴ These actions are within the rights and duties that accompany an EEZ.

Merapi's seizure and detention of the Erebian vessels represented a reprisal against Erebus for that country's aggression and violation of Merapin sovereign right of exclusive exploitation of the EEZ resources.⁴⁵ Merapi properly warned Erebus against further violations, and of its intent to seize any Erebian fishing vessels engaged in such illegal activity.⁴⁶ Merapi also took proportionate, measured action in releasing the crews of the vessels and detaining only the vessels involved in the illegal transgression.⁴⁷ This reprisal against Erebian aggression is justified until the violating nation makes necessary reparations.⁴⁸ Since Erebus has not made such reparations, Merapi's continued detention of the Erebian vessels is justified.

The 1982 Convention also sets forth a procedure for a nation to request the return of a seized vessel.⁴⁹ The Convention provides for release on bond when a nation has arrested a

⁴⁴ Compromis, ¶ 7.

⁴⁵ 1 Lassa Oppenheim, *International Law*, Vol. 2 (Disputes, War and Neutrality) §§ 33-34 (H. Lauterpacht ed., 7th ed. 1952).

⁴⁶ Compromis, ¶ 6; Oppenheim, *supra* note 45, § 34.

⁴⁷ Compromis, ¶ 6; Oppenheim, *supra* note 45, § 39.

⁴⁸ Oppenheim, *supra* at note 45, § 41.

⁴⁹ 1982 Convention, *supra* note 19, arts. 73, 292; "*Camouco*" Case, 39 I.L.M. at 666; *M/V "Saiga" (No. 2) Case*, 38 I.L.M. at 1323.

trespassing foreign ship illegally harvesting resources within its EEZ.⁵⁰ A nation may apply to the International Tribunal for the Law of the Sea for the release of a detained vessel ten days after the seizure.⁵¹ In this case, Erebus has made no such application for release of the impounded vessels and Merapi is under no unilateral duty to release the vessels.

II. THE EREBIAN DEEP SEABED MINING OPERATION VIOLATES INTERNATIONAL LAW.

The Erebian mining operation does not adhere to current customary international law, the 1982 United Nations Convention on the Law of the Sea. The operation also violates all other customary international environmental law. Erebus' refusal to discontinue use of the risky mining operation completely disregards all concerns of the international community.

A. The Erebian Mining Operation Does Not Comport With Customary International Law Governing Mineral Resources of the Deep Seabed.

The 1982 Convention serves as the current international custom on the mining of natural resources on the deep seabed.⁵² Part XI of the Convention sets forth the regulations governing

⁵⁰ 1982 Convention, *supra* note 19, art. 73.

⁵¹ *M/V "Saiga" (No. 2) Case*, 38 I.L.M. at 1323.

⁵² United Nations General Assembly Economic and Social Council: Report of the Economic and Social Council: Economic and Environmental Questions, 49th Sess., U.N. Doc. A/49/50 (1994); United Nations Secretary-General: Report of the Secretary-General: Oceans and the Law of the Sea, U.N. GAOR, 55th Sess., U.N. Doc. A/55/61 (2000); United Nations Secretary-General: Report of the Secretary-General: Oceans and the Law of the Sea, U.N. GAOR, 54th Sess., U.N. Doc. A/52/429 (1999); Impact of the Entry Into Force of the 1982 Convention on the Law of the Sea on Related Existing and Proposed Instruments and Programmes, U.N. Doc. A/52/491 (1997); United Nations Decade of International Law (Report of the Secretary-General), 39 I.L.M. 966 (2000); Jeffrey T. Scrimo, *A Review of Developments in Ocean and Coastal Law 1998-1999*, 5 *Ocean & Coastal L.J.* 147 (2000); David A. Colson, *United States Accession to the United Nations Convention on the Law of the Sea*, 7 *Geo. Int'l Envtl. L. Rev.* 651 (1995); Gerhard Von Lahn, *Law Among Nations: An Introduction to Public International Law* 399-403 (7th ed. 1996); Oppenheim, *supra* at note 1, § 350.

the seabed and subsoil beyond the limits of national jurisdiction (the “Area”).⁵³ Erebus’ mining operation lies in international waters, 500 nautical miles directly off the coast of Merapi,⁵⁴ and is therefore subject to the international regime.

International custom defines the mineral deposits of the deep seabed as belonging to the “common heritage of mankind.”⁵⁵ The international community is directed to establish an international regime (“the Authority”) to manage all activities in the Area for the benefit of mankind as a whole.⁵⁶ Accordingly, the 1982 Convention expressly excludes any renegade nation from exploiting such resources for the sole benefit of that country.⁵⁷

If a nation wishes to engage in mining of the natural resources of the deep seabed, it must follow the directive of Article 153 of the agreement.⁵⁸ The nation must first submit a formal written plan to the international governing regime (the “Enterprise”) established by the Authority.⁵⁹ The Enterprise submits the plan to the Legal and Technical Commission for review on environmental, financial, and other grounds,⁶⁰ and is ultimately either approved or denied by the Authority. Erebus has sent no such written plan to the Authority, and this Court should therefore hold that the mining operation is in violation of international law.

⁵³ 1982 Convention, *supra* note 19, art. 1(1).

⁵⁴ 1982 Convention, *supra* note 19, arts. 137, 153, 156-57.

⁵⁵ 1982 Convention, *supra* note 19, art. 136.

⁵⁶ Compromis, ¶ 10.

⁵⁷ 1982 Convention, *supra* note 19, art. 137.

⁵⁸ 1982 Convention, *supra* note 19, art. 153.

⁵⁹ *Id.*

⁶⁰ *Id.*

B. The Erebian Mining Operation Violates International Environmental Custom and Disregards the Concerns of the International Community.

Erebus' mining operation is in violation of customary international law preventing nations from engaging in activity that would expose other nations to a potential environmental risk. The precautionary principle requires nations to refrain from activities when there is virtually any uncertainty regarding the risk for environmental damage. Erebus' continued deep sea mining completely disregards scientific evidence of an environmental risk, and all international concern about the operation.

1. The Erebian mining operation does not comply with customary international environmental law.

The 1982 Convention notwithstanding, international law has long held that a country is barred from engaging in activity that will negatively impact the international environment.⁶¹ All states have the responsibility to ensure that all activities within their jurisdiction or control do not damage the environment of other states or areas beyond the limits of national jurisdiction.⁶² States are required to adopt all laws and regulations necessary to prevent pollution of the marine environment arising from or in connection with their exploration and exploitation of the seabed.⁶³ States must not only make reparation for environmental damage caused by that nation,

⁶¹ Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf. 48/14 (1972), principle 21 (hereinafter "1972 Stockholm Declaration"); Declaration on Environment and Development, U.N. Doc. A/Conf. 151/5/Rev. 1 (1992), principle 2 (hereinafter "Rio Declaration"); *Trail Smelter Case* (U.S. v. Can.), 3 R.I.A.A. 1905 (1941); *Corfu Channel Case* (U.K. v. Alb.), 1949 I.C.J. 4 (9 April); *Lac Lanoux Arbitration* (Spain v. Fr.), 12 R.I.A.A. 285 (1957).

⁶² 1972 Stockholm Declaration, *supra* note 61, principle 21; Rio Declaration, *supra* note 61, principle 15; *Trail Smelter Case*, 3 R.I.A.A. at 1905; *Institut De Droit International: Responsibility and Liability Under International Law for Environmental Damage*, 37 I.L.M. 1473 (1998).

⁶³ 1982 Convention, *supra* note 19, arts. 194(3)(c), (d), 208.

but must also exercise due diligence in preventing future environmental harm.⁶⁴ A nation has a duty to cooperate in good faith with the nations that might suffer the environmental risks if its proposed activities create a potential for environmental risk outside its boundaries.⁶⁵

The “precautionary principle” heightens each nation’s duty to prevent environmental damage. Under this international custom, nations have a duty to undertake an assessment of the environmental consequences of planned activities and to take preventative measures where appropriate.⁶⁶ The principle provides that a nation must refrain from conducting activities not only when there is concrete evidence of danger, but also when there is merely a concern, risk potential, or a scientific uncertainty.⁶⁷ In this case, there is more than a mere scientific uncertainty about the environmental danger of the Erebian deep seabed mining operation. All independent studies demonstrate great concern in the international community for potential

⁶⁴ 1972 Stockholm Declaration, *supra* note 61, principle 21; Rio Declaration, *supra* note 61, principle 19; *Trail Smelter Case*, 3 R.I.A.A. at 1905; *Responsibility and Liability Under International Law for Environmental Damage*, 37 I.L.M. at 1473.

⁶⁵ 1972 Stockholm Declaration, *supra* note 61, principle 24; Rio Declaration, *supra* note 61, principle 19; *Lac Lanoux Arbitration*, 12 R.I.A.A. at 285.

⁶⁶ Rio Declaration, *supra* note 61, principle 15; United Nations Framework Convention on Climate Change, 31 I.L.M. 849 (1992); Convention on Biological Diversity, 31 I.L.M. 818 (1992); Bergen ECE Ministerial Declaration on Sustainable Development of 15 May 1990, Agenda 21, Chapter 17, para. 17.21, reprinted in 20 *Envtl. Pol’y & Law* 100, 100 (1990); Convention for the Protection of the Marine Environment of the North East Atlantic (“OSPAR Convention”), 32 I.L.M. 1069 (1993); Treaty on European Union (“Maastricht Treaty”), 31 I.L.M. 247 (1992), art. 130R(2); Convention on International Trade in Endangered Species of Wild Fauna and Flora, 12 I.L.M. 1085 (1973); *Leatch v. National Parks and Wildlife Service*, 81 L.G.E.R.A. 270 (Austl. 1993).

⁶⁷ Rio Declaration, *supra* note 61, principle 15; Convention on Biological Diversity, *supra* note 66, 31 I.L.M. at 818; Bergen ECE Ministerial Declaration on Sustainable Development, *supra* note 66, Agenda 21; OSPAR Convention, *supra* note 66; Maastricht Treaty, *supra* note 66 art. 130R(2); Convention on International Trade in Endangered Species of Wild Fauna and Flora, *supra* note 66.

environmental disaster.⁶⁸ Accordingly, Erebus should be barred by international law from continuing operation of its unlawful and dangerous deep seabed mining operation.

2. The Erebian Mining Operation Disregards International Concerns About the Risk of Environmental Danger.

International customary law requires each state to take all measures necessary to prevent pollution of the environment.⁶⁹ There is overwhelming international concern about the environmental effect of the mining operation.⁷⁰ A number of prominent scientists from the international community have expressed concern about the environmental risk, and the President of the Authority stated that the operation does not conform to the standards set by the international community.⁷¹ Erebus has produced no independent evidence that the mining operation is safe. The potential environmental damage would occur in an area extending 300 nautical miles from the mining operation,⁷² and would certainly devastate Merapi's environment.

III. MERAPI IS NOT LIABLE UNDER INTERNATIONAL LAW FOR THE DISABLING OF THE EREBIAN SEABED MINING FACILITY BY THE AQUA PROTECTORS.

Merapi cannot be held responsible for the independent acts of The Aqua Protectors, a non-governmental organization, because it did not have the requisite control needed for attribution. Even if these acts were attributable to it, Merapi is not in violation of international

⁶⁸ Compromis, ¶ 10.

⁶⁹ 1982 Convention, *supra* note 19, art. 194(1); Rio Declaration, *supra* note 61, principle 2; 1972 Stockholm Declaration, *supra* note 61, principle 21; *Legality of Threat or Use of Nuclear Weapons*, 1996 I.C.J. 226 (8 July).

⁷⁰ Compromis, ¶ 10.

⁷¹ *Id.*

⁷² *Id.*

law because it was acting pursuant to its inherent right to self-defense, satisfying both the proportionality and necessity requirements of this right.

A. The Provision of Financial Support to The Aqua Protectors is Insufficient to Impute Their Acts to Merapi.

In order for Merapi to be held legally responsible for the disabling of the seabed mining facility, Erebus would have to show that the Merapin government had “effective control” of the operations during the time the act was committed.⁷³ Merapi provided funds to the organization.⁷⁴ However, the provision of funds is in and of itself, without other evidence of control, insufficient to impute the acts of The Aqua Protectors to Merapi.⁷⁵

In *Military and Paramilitary Activities in and Against Nicaragua*, the United States was not held responsible for the acts of the contras even though they had provided funding as well as training and logistical support.⁷⁶ Here, there is only evidence that Merapi provided funding but none to suggest that Merapi controlled or directed the members of The Aqua Protectors. Because Merapi did not have effective control of The Aqua Protectors, it cannot be held responsible for the independent acts of its members.

⁷³ *Military and Paramilitary Activities In and Against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J 14, 65 (27 June) (Merits); *Differences Between New Zealand and France Arising From the Rainbow Warrior Affair*, 19 R.I.I.A. 199 (1986); Draft Articles on State Responsibility: Report of the International Law Commission on the Work of its Fifty-Second Session, U.N. Doc. A/CN.4/L.600 (2000), art. 8; Draft Convention on the International Responsibility of States for Injuries to Aliens, (Draft No. 12, 1961), reprinted in F.V. Garcia-Amador, Louis B. Sohn & Richard R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens* (1974), art. 15.

⁷⁴ *Compromis* ¶ 18

⁷⁵ *Nicaragua*, 1986 I.C.J. at 64.

⁷⁶ *Id.*

B. Even if the Disabling of the Mining Facility is Attributed to Merapi, This Act was Justified, Pursuant to Merapi's Inherent Right to Self-Defense.

The catastrophic environmental effects of Erebus' seabed mining facility's extracting process would result in the equivalent of an armed attack on Merapi. The operation of the seabed mining facility violates customary international law emphasizing every state's obligation to respect and protect the environment. Operation of the facility would constitute an act of ecological aggression that would lead to death on a massive scale in Merapi.⁷⁷ This ecological aggression violates Article 2(4) of the UN Charter. Merapi legitimately responded pursuant to its Article 51 right to self-defense with the requisite necessity and proportionality.

1. The threat of starvation to the Merapin people caused by Erebus is an act of aggression equivalent to an armed attack.

As this Court recognized in its advisory opinion on *The Legality of the Threat or Use of Nuclear Weapons*, states have a general obligation to ensure that activities within their control "respect the environment of other States or of areas beyond national control."⁷⁸ The destruction of the Grand Basin's marine life would result in the loss of nearly half of Merapi's gross domestic product that could lead to the ultimate starvation of the Merapi people.⁷⁹ In

⁷⁷ Compromis ¶ 14.

⁷⁸ *Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J. at para. 29; *Nuclear Test Cases* (N.Z. v. Fr.), 1974 I.C.J. 456 (20 Dec.); Stockholm Declaration, *supra* note 61, principle 7; Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX) (1974), art. 30; World Charter for Nature, G.A. Res. 37/7 (1982); UNEP Governing Council Draft Principles of Conduct in the Field of the Environment for the Guidance in the Conservation and Harmonious Utilization of Natural Resources Shared By Two or More States, 17 I.L.M. 1091 (1978); Jan Schneider, "State Responsibility for Environmental Protection and Preservation," *International Law: A Contemporary Perspective* 602 (Falk, R., Kratochwil, F., and Mendlovitz, S., eds. 1985).

⁷⁹ Compromis ¶ 14.

conducting a mining operation that threatened severe damage to the marine life of the Grand Basin, Erebus was threatening an act of aggression equivalent to an armed attack against Merapi.

The UN General Assembly defined acts of aggression in its Definition of Aggression Resolution as the use of armed force.⁸⁰ While the environmental damage threatened by the operation of the mining facility was not an act of aggression falling under the current U.N. definition,⁸¹ it is nevertheless an imminent form of aggression that creates the same probable results as a threat of nuclear attack. A nuclear attack would produce catastrophic effects on the environment,⁸² just as the certain pollution of the Grand Basin will produce catastrophic effects on the marine life of the Grand Basin.⁸³ As fishing in the Grand Basin accounts for over 40% of Merapi's gross domestic product,⁸⁴ the destruction of these resources would leave Merapi facing starvation and death on a massive scale. Thus, the imminent threat of starvation as a result of the environmental damage that would be caused by the mining facility is a form of nonmilitary ecological aggression. The principle of ecological aggression is derived in part from the Convention on the Prohibition of Military or Other Hostile Use of Environmental Modification Techniques which declares that military activities that are harmful to the environment are illegal.⁸⁵ This principle should be extended to nonmilitary acts of ecological aggression as well,

⁸⁰ Definition of Aggression Resolution, G.A. Res. 3314 (XXIX) (1974).

⁸¹ *Id.*; *Nicaragua*, 1986 I.C.J. at 14; Ian Brownlie, *International Law and the Use of Force by States* 361 (1991).

⁸² *Nuclear Weapons*, 1996 I.C.J. at 226.

⁸³ Compromis ¶ 10.

⁸⁴ Compromis ¶ 14.

⁸⁵ Convention on the Prohibition of Military or Other Hostile Use of Environmental Modification Techniques, 16 I.L.M. 88 (1977); Declaration On the Historic Responsibility of States for the

consistent with the customary international law obligation to protect the environment, since the ultimate catastrophic results are the same.⁸⁶ Whether the threat to Merapi was a traditional armed attack or an attack through the abuse of the surrounding environment should make no difference since the result would be the same for the population of Merapi.

Although the UN General Assembly did not include environmental threats in its definition of aggression, the list is not exhaustive and leaves room for the Security Council to determine that other acts constitute aggression.⁸⁷ The Security Council recognized that the effect of the mining operation on Merapi would be potentially catastrophic.⁸⁸ With Erebus clearly determined to ignore the Security Council demand to delay operation of the mining facility,⁸⁹ Merapi faced an imminent threat and was left with no choice but self-defense.

2. Disabling the mining facility was necessary to prevent the imminent threat to the Merapi people.

A state is not required to remain passive when another state acts against its protected interests and, if an attack is believed to be imminent, anticipatory self-defense is lawful.⁹⁰

Protection of Nature or the Earth for the Benefit of Present and Future Generations, G.A. Res. 35/8, 35 U.N. GAOR Supp. (No. 48) at 120, U.N. Doc. A/35/48 (1980).

⁸⁶ Alexandre S. Timoshenko, *Ecological Security: Global Change Paradigm*, 1 Colo. J. Int'l. Env'tl. L. & Pol'y. 127, 137-38 (1989).

⁸⁷ Definition of Aggression, *supra* note 81.

⁸⁸ Compromis ¶ 12.

⁸⁹ Compromis ¶ 13.

⁹⁰ Malcolm M. Shaw, *International Law*, 693-694 (1991); 1963 Proceedings, American Society of International Law, 164; Humphrey Waldock, Hag. R., 81 (1952) 496-8; Sir Gerald Fitzmaurice, Hag. R., 92 (1957), ii, 171; D.W. Bowett, *Self Defence in International Law* 187-92 (1958); Tom Farer in *The Future of the International Legal Order*, v. 3, p. 36-42 (Black, C. and Falk, R., eds.) (1971); Stephen Schwebel, Hag. R., 136 (1972) ii, 413, 478-83; Antonio Cassese, *International Law in a Divided World*, 230-33 (1986); Thomas Franck, *Who Killed Article 2(4)?*

However, an act of self-defense requires necessity.⁹¹ The disabling of the mining facility occurred only after Erebus was put on notice of the worldwide opposition to the mining facility by Merapin citizens, renowned scientists, the President of the International Seabed Authority and other nations.⁹² Furthermore, the Security Council specifically demanded that Erebus delay the operation of the facility because it considered the potential environmental catastrophe a threat to the peace.⁹³ However, Erebus flatly refused to comply with the Security Council's mandate, in violation of Article 25 of the U.N. Charter,⁹⁴ and affirmed its intention to proceed in spite of this demand. Erebus' rejection of the Security Council demand made it clear that to attempt peaceful settlement would be futile.⁹⁵ Merapi was left with no other choice, thereby establishing necessity.

3. Disabling the mining facility was proportionate to the threat to the Merapin people.

The underwater pollution that would be caused by the mining facility would severely damage the marine resources Merapi so greatly depends on.⁹⁶ This would result in death on a

Or: Changing Norms Governing the Use of Force By States in International Law: A Contemporary Perspective 376 (1985); Oppenheim, *supra* note 1, §127

⁹¹ *The Caroline Incident*, 2 John Basset Moore, *Digest of International Law* 412 (1906); *Nuclear Weapons*, 1996 I.C.J. at para. 41; Yoram Dinstein, *War, Aggression and Self-Defence* 202, 231 (2nd ed. 1994); Louis Henkin, "Use of Force: Law and U.S. Policy," *Right v. Might: International Law and the Use of Force* 62 (1989).

⁹² Compromis ¶¶ 10, 11.

⁹³ Compromis ¶ 12.

⁹⁴ Charter of the United Nations, GAOR, XX, Supp. 14 (A/6014) (1945), art. 25.

⁹⁵ Dinstein, *supra* note 91 at 202.

⁹⁶ Compromis ¶ 10.

massive scale through the starvation of the people of Merapi.⁹⁷ Disabling the mining facility eliminated this threat.⁹⁸ While there was an unfortunate loss of life in this process,⁹⁹ it is far less than the loss of life that would be suffered by the citizens of Merapi if the operation had been allowed to continue. Thus, the proportionality requirement of the right of self-defense is met.¹⁰⁰

IV. MERAPI HAS NO OBLIGATION UNDER INTERNATIONAL LAW TO EXTRADITE THE AQUA PROTECTORS.

Regardless of whether the operation against the mining facility can be attributed to it, Merapi can refuse to extradite the responsible individuals.¹⁰¹ There is no extradition treaty between Merapi and Erebus. Merapi's previous compliance with Erebus' requests for extradition was done on the basis of comity and does not obligate Merapi to extradite either its nationals or persons accused of political offenses. Furthermore, Erebus has not specified the crimes for which it seeks to prosecute the members of The Aqua Protectors. Without such, Merapi cannot ensure that the crimes that Erebus seeks to prosecute The Aqua Protectors for are

⁹⁷ Compromis ¶ 14.

⁹⁸ Compromis ¶ 16.

⁹⁹ *Id.*

¹⁰⁰ *Nuclear Weapons*, 1996 I.C.J. at para. 41; *Nicaragua*, 1986 I.C.J. at 94; Dinstein, *supra* note 91 at 231; Henkin, *supra* note 92 at 62; 7 John Bassett Moore, *A Digest of International Law* 919 (1906); Ian Brownlie, "Non-Use of Force in Contemporary International Law" in *Non-Use of Force in International Law* 17, 25 (William E. Butler ed., 1989); Oscar Schachter, *International Law in Theory and Practice* 153 (1991).

¹⁰¹ *Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie* (Lib. v. U.S.), 1992 I.C.J. 114, 136 (Joint Declaration of Evensen, J., Tarassov, J., Guillaume, J., Aguilar Mawdsley, J.) (Provisional Measures); Oppenheim, *supra* note 1, § 415.

crimes under Merapi law, in accordance with the doctrine of double criminality.¹⁰² Thus, Merapi is under no obligation to extradite.

A. Previous Extradition on the Basis of Comity Does Not Obligate Merapi to Extradite The Aqua Protectors.

In the absence of an extradition treaty, a state is under no obligation to extradite the requested individual.¹⁰³ Although Merapi had previously extradited individuals to Erebus, it was done on the basis comity.¹⁰⁴ Comity is merely a practice of convenience, not a rule of law that creates an absolute obligation to extradite in every instance.¹⁰⁵ Thus, Merapi can refuse to extradite the members of The Aqua Protectors.

B. Merapi is Not Obligated to Extradite its Nationals or Persons Accused of Political Offenses.

Under customary international law, Merapi is under no obligation to extradite its nationals.¹⁰⁶ As Judge Oda emphasized in his concurring opinion in the *Lockerbie* case: “. . .it is

¹⁰² *M. v. Federal Dept. of Justice & Police* (Switz. Fed. Trib. 1979), 75 I.L.R. 107, 113 (1987); Geoff Gilbert, *Aspects of Extradition Law* 47, 106 (1991); Oppenheim, *supra* note 1, § 415.

¹⁰³ *Lockerbie*, 1992 I.C.J at 130; Gilbert, *supra*, note 102 at 26; M. Cherif Bassiouni, *International Extradition: United States Law and Practice*, 10-12, 25-33 (2d Rev. ed. 1987); Ian Brownlie, *supra* note 30 at 315.

¹⁰⁴ Clarifications ¶ 6.

¹⁰⁵ *Barton v. Commonwealth of Australia* (Austl. High Ct. 1974), 55 I.L.R. 11, 23-24 (1979); *Trial of Steiner*, 74 I.L.R. 478 (Sudan 1971); Oppenheim, *supra* note 1, § 17.

¹⁰⁶ *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie* (Libya v. U.K.), 1992 I.C.J. 60, 71 (27 Mar.) (Oral Hearings); German (Weimer) Constitution, art. 112; Basic Law of the Federal Republic of Germany (1949) (155 B.F.S.P. 503), art. 16(11); Encyclopedie Dalloz: Penal III (DR-INST), para. 151 (1968); *Service of Summons in Criminal Proceedings*, 38 I.L.R. 133, 134 (Austria 1961); Karle, *Some Problems Concerning the Application of the European Convention on Extradition*, at p. 49 et seq., *Legal Aspects of Extradition* (Council of Europe 1970); Oppenheim, *supra* note 1, § 418.

a matter of general international law that...no State (unless by virtue of any convention) is obliged to extradite its own nationals....”¹⁰⁷

In addition, Merapi is under no obligation to extradite the members of The Aqua Protectors because they are protected by the political offense exception. In disabling the mining facility, The Aqua Protectors were advancing a political objective. While the attack may not be considered a pure political offense because it is not an act of treason, espionage or sedition,¹⁰⁸ it is a relative political offense nonetheless. A relative political offense contains elements of both a political and a common crime, which are balanced by the political motivation test.¹⁰⁹ An extradition request can be refused if the political element dominates: “the political character of an offence is predominant only if the offense is in direct relation to the end sought...this offense must be a really efficacious method of achieving the end.”¹¹⁰ Disabling the mining facility was a relative political offense because it was the most efficient and proportionate method of eliminating the threat of the environmental catastrophe and the resultant starvation of the people of Merapi.¹¹¹ Erebus made it clear that it would not cease its operations of the facility.¹¹² In disabling the mining facility, the threat was eliminated and the political objective of The Aqua Protectors met, thereby meeting the political offense exception.

¹⁰⁷ *Lockerbie* (Oral Hearings), 1992 I.C.J. at 71; Gilbert, *supra* note 102 at 95.

¹⁰⁸ *In Re Gatti*, 14 Ann. Dig. 145 (Fr. 1947); M. Cherif Bassiouni, *International Extradition and World Public Order* 371 (1974); Gilbert, *supra* note 102 at 118.

¹⁰⁹ Swiss Law on International Judicial Assistance in Criminal Matters, 20 I.L.M. 1339 (1981), art. 3.

¹¹⁰ *In Re Nappi*, 19 I.L.R. 375, 376 (Switz. 1952).

¹¹¹ *In Re Nappi* 19 I.L.R. at 376; *Folkerts v. Public Prosecutor*, 74 I.L.R. 498, 501 (Neth. 1978); *Prevato v. Governor Metropolitan Remand Centre*, 64 I.L.R. 37 (Austl. 1986).

¹¹² Compromis ¶ 13.

Erebus will likely claim that disabling the facility was an act of terrorism. There is no concise definition of what truly encompasses an international terrorist act.¹¹³ Thus, there is presently no customary international law on terrorism.¹¹⁴ Nor are Erebus or Merapi parties to a treaty on terrorism requiring the use of that treaty's definition.¹¹⁵ Even if a generic definition of terrorism is utilized, such as "a form of violence directed primarily against civilians, rather than the uniformed military, police forces or economic assets,"¹¹⁶ it would be inapplicable. The operation was aimed solely at the mining facility, an economic asset, in an attempt to relieve Merapi of the imminent threat of the equivalent of an armed attack. The operation was not aimed at a civilian target or done with a desire to cause public fear. Rather, it was a political act with the sole purpose of eliminating the grave Erebian threat on Merapi's population.

¹¹³ Report of the Ad Hoc Committee on International Terrorism, U.N. Docs. A/34/31 (1979), para. 88; OAS General Assembly Resolution on Acts of Terrorism, OAS Doc. AG/Res. 4(I-E 170) (1970); M. Cherif Bassiouni, "A Policy-Oriented Inquiry into the Different Forms and Manifestations of 'International Terrorism,'" *Legal Responses to International Terrorism: U.S. Procedural Aspects* xvi (1988); Antonio Cassese, *Terrorism, Politics & Law: The Achille Lauro Affair* 1 (1989); Johan D. Van Der Vyver, *State Sponsored Terror Violence*, 4 S. Afr. J. Hum. Rts. 55, 58-59 (1988); Paul Johnson, "The Seven Deadly Sins of Terrorism," *Terrorism & Political Violence: Limits & Possibilities of Legal Control* 191 (Han, H., ed. 1993); Alfred Rubin, "Current Legal Approaches to International Terrorism: Difficulties of Legal Control," *Terrorism & Political Violence: Limits & Possibilities of Legal Control* at 213.

¹¹⁴ Omer Y. Elagab, *International Law Documents Relating to Terrorism*, xix-xx (1997); Edward Marks, "Diplomacy and Terrorism: Conflicting Systems," *Terrorism & Political Violence: Limits & Possibilities of Legal Control*, *supra* note 113 at 41; Oppenheim, *supra* note 1, § 122.

¹¹⁵ Compromis ¶ 8.

¹¹⁶ Bard E. O'Neill, "The Strategic Context of Insurgent Terrorism," *Terrorism & Political Violence: Limits & Possibilities of Legal Control*, *supra* note 113 at 77.

V. MERAPI IS ENTITLED TO REPARATIONS FOR EREBUS' BREACH OF ITS INTERNATIONAL OBLIGATIONS

A. Erebus Should Compensate Merapi For the Loss of Revenue From the Alma Shoals.

By laying claim to the waters surrounding the Alma Shoals and preventing Merapin fishing vessels from accessing the resources of the Alma Shoals by threatening military action,¹¹⁷ Erebus breached its obligation not to intrude upon Merapi's sovereign rights.¹¹⁸ As the injured state, Merapi is entitled, under customary international law, to obtain compensation for the wrongful acts committed against it by Erebus.¹¹⁹ Reparations are meant to "wipe out all the consequences of the illegal act."¹²⁰ Therefore, Merapi is entitled to U.S. \$1 billion as compensation for the loss in fishing revenue "which would have been possible in the ordinary course of events."¹²¹

B. Erebus Should Be Enjoined From Operating its Mining Facility Until it is Environmentally Safe or Moved to Another Location.

Erebus attempted to operate a seabed mining facility that would have catastrophic environmental effects on the marine life of the Grand Basin.¹²² This would ultimately lead to death on a massive scale of the Merapin people.¹²³ Thus, Erebus was preparing the equivalent of

¹¹⁷ Compromis ¶ 7.

¹¹⁸ 1982 Convention, *supra* note 19, art. 56.

¹¹⁹ *Gabcikovo-Nagymaros Project*, 1997 I.C.J. at 3; *Chorzów Factory Case* (F.R.G. v. Pol.), 1927 P.C.I.J. (ser. A) No. 8 (July 26) (Jurisdiction); *Spanish Zones of Morocco* (U.K. v. Spain), 2 R.I.I.A. 29, 47 (1923).

¹²⁰ *Gabcikovo-Nagymaros Project*, 37 I.L.M. at 202.

¹²¹ Eduardo Jiménez de Aréchaga, *International Law in the Past Third of a Century*, 159 Rec. des Cours 285-287 (1978).

¹²² Compromis ¶¶ 10, 12.

¹²³ Compromis ¶ 14.

an armed attack. Merapi was exposed to the continual threat of this act of aggression in violation of the UN Charter. Thus, Merapi is entitled to injunctive relief, an appropriate remedy under international law,¹²⁴ to prevent Erebus from renewing its threat to the Merapin population by reconstructing its seabed mining facility until it has been either upgraded or moved to another location that no longer threatens Merapi.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Merapi respectfully requests that this Court:

- (1) **DECLARE** that the Alma Shoals area lies within a Merapin Exclusive Economic Zone, such that Merapi may properly exclude vessels and persons from the area;
- (2) **DECLARE** that the Erebian seabed mining operation is in violation of international law;
- (3) **DECLARE** that Merapi is not liable for the disabling of the Erebian seabed mining facility by The Aqua Protectors;
- (4) **DECLARE** that Merapi has no obligation under international law to extradite The Aqua Protectors responsible for the attack, in the absence of an extradition treaty;
- (5) **DECLARE** that Merapi is not required to release the six Erebian fishing vessels;
- (6) **ORDER** that 1) Merapi is entitled to compensation for the loss of revenue from the Alma Shoals, and 2) Erebus is enjoined from commencing its seabed mining operation.

Respectfully Submitted,

Agents for Merapi
317 R

¹²⁴ *Nicaragua*, 1986 I.C.J. at 149; cp. *Lockerbie*, 1992 I.C.J. at 117; *Fisheries Jurisdiction Case* (Spain v. Can.) 1996 I.C.J. para 223 (1996) (Counter-memorial of Canada) (Jurisdiction); *Vienna Convention on Consular Relations* (Para. v. U.S.), 1998 I.C.J. 99 (Provisional Measures) (9 Apr.); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia & Herz. v. Yugo. (Serb. & Mont.)), 1993 I.C.J. 325 (13 Sept.) (Provisional Measures).

