

**INTERNATIONAL COURT OF JUSTICE**

# **SPECIAL AGREEMENT**

**BETWEEN THE REPUBLIC OF EREBUS (APPLICANT)  
AND THE KINGDOM OF MERAPI (RESPONDENT)  
ON THE DIFFERENCES BETWEEN THEM  
CONCERNING THE SEABED MINING FACILITY**

*jointly notified to the Court on 1 November 2000*

**COUR INTERNATIONALE DE JUSTICE**

# **COMPROMIS**

**ENTRE LA RÉPUBLIQUE D' EREBUS (REQUÉRANT) ET  
LE ROYAUME DE MERAPI (RÉPONDANT) VISANT À SOUMETTRE  
À LA COUR INTERNATIONALE DE JUSTICE  
LES CONTESTATIONS QUI LES OPPOSENT  
CONCERNANT L'INSTALLATION D'EXPLOITATION MINIÈRE  
AUX FONDS SOUS-MARINS**

*notifié conjointement à la Cour le 1 novembre 2000*

**JOINT NOTIFICATION  
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 1 November 2000

On behalf of the Republic of Erebus and the Kingdom of Merapi, 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 the Republic of Erebus and the Kingdom of Merapi Concerning the Seabed Mining Facility, signed in Washington, D.C., on 15 October 2000.

Ambassador of the Republic of Erebus  
to the Kingdom of The Netherlands

Ambassador of the Kingdom of Merapi  
to the Kingdom of The Netherlands

**SPECIAL AGREEMENT  
BETWEEN THE REPUBLIC OF EREBUS AND THE KINGDOM OF MERAPI  
FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE  
OF THE DIFFERENCES BETWEEN THEM CONCERNING  
THE SEABED MINING FACILITY**

*Erebus and Merapi,*

*Considering* that differences have arisen between them concerning the seabed mining facility and other matters;

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

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

*Therefore,* Erebus and Merapi have concluded the following Special Agreement:

*Article 1*

The Parties submit the questions contained in the Compromis (together with Annex A, the attached map, and Clarifications to follow) 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 of 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 2001 Philip C. Jessup International Law Moot Court

Competition.

(b) The Parties request the Court to order that the written proceedings should consist of memorials presented by each of the parties not later than 8 January 2001.

*Article 4*

(a) The Parties shall accept any 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 any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorized to do so, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in Washington, D.C., this 15th day of October 2000, in triplicate in the English language.

Ambassador of the Republic of Erebus  
to the Kingdom of The Netherlands

Ambassador of the Kingdom of Merapi  
to the Kingdom of The Netherlands

# **THE 2001 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION**

## **\*\*COMPROMIS\*\***

### **THE REPUBLIC OF EREBUS V. THE KINGDOM OF MERAPI**

#### **THE CASE CONCERNING THE SEABED MINING FACILITY**

1. The Republic of Erebus is a large, technologically advanced, coastal state with a population of 75 million people. Although it has a developed economy and a gross domestic product of U.S. \$300 billion, Erebus is not mineral-rich and must therefore rely on imports for most of its raw materials. Erebus has a minor fishing industry, and some small vessels fish in the waters off the Erebian coast. Due to increasing political tensions and several recent military skirmishes with its powerful northern neighbor, the State of Fogo (which has unresolved territorial claims with respect to Northern Erebus), the proportion of Erebus's GDP dedicated to military expenditures is among the highest in the world.

2. The Kingdom of Merapi is a small, developing, coastal state with a population of 15 million people. Merapi is located just to the south of Erebus. They share a common border, the Krakatoa River, which forms a large delta as it flows eastward out to the Etna Ocean, which both countries also border. Over fifty percent of Merapi's U.S. \$10 billion gross domestic product comes from fishing and related industries. For hundreds of years, the people of Merapi have fished the plentiful cod, haddock, and halibut in the resource-rich "Grand Basin," a 300 nautical mile wide band of relatively shallow water (less than 2,000 meters deep) beginning 220 nautical miles off the coast of the southernmost portion of Merapi and extending outward for 150 nautical miles. Between Merapi's Continental Shelf and the Grand Basin lies a 20 nautical mile wide, 10,000 meter deep, ravine called the St. Helena's Trench. In 1999, fishing in the Grand Basin contributed U.S. \$ 4 billion to Merapi's economy. The citizens of Merapi also fish the waters immediately off the coast of the northernmost portion of Merapi, known as the Alma Shoals. In 1999, fishing in the Alma Shoals contributed U.S. \$1 billion to Merapi's economy.

3. Merapi had been an independent state when it was conquered by Erebus in 1865; it regained its independence shortly after WWII. Erebus and Merapi entered into a Treaty, "The Treaty of Amity and Peace," establishing their respective boundaries, in 1947. The Merapi Constitution of 1948 states in article II, clause 2 that "the Merapi National Territory includes the continental platform beneath the Etna Ocean, adjacent to Merapi's coast."

4. The Treaty of Amity and Peace established the Southern land border of Erebus and the Northern land border of Merapi "at the midpoint of the Krakatoa River." The Treaty further specified that the maritime boundary between the two nations would "follow the mouth of the Krakatoa River, taking as the mouth of the river its principal arm, said arm lying between Pigeon

Rock to the South, and the Cape of Realto to the North.” This clause was agreed to after several months of difficult negotiations, during which Erebus argued that the maritime boundary should extend straight outward from Pigeon Rock, which had always been Erebian territory, and Merapi contended that because there were ancient burial sites of the Merapin people scattered between Pigeon Rock and the Cape of Realto, the maritime boundary should extend outward from the Cape. Both countries were also concerned about losing the fertile delta area of the River if the boundary was drawn either too far north or south. According to the *travaux préparatoires* of the Treaty of Amity and Peace, the drafters came upon the solution of choosing the principal arm of the river as a means to find an objectively identifiable boundary that would satisfy both parties.

5. During the last four years, due to erosion of the wetland delta area following major hurricanes in 1996, 1998, and 1999, the principal arm of the Krakatoa River has shifted southward, so that Pigeon Rock now lies to the north of the River. This shift has caused a great deal of friction between Merapin and Erebian fishing vessels, because Erebus takes the position that the shift has placed the rich waters of the Alma Shoals, which used to lie in Merapin waters, in Erebian waters; Merapi has regularly rejected these claims. In addition, petroleum reserves were discovered early in 1999 in an area bordering the Alma Shoals, lying approximately 50 nautical miles off the coast in the disputed waters.

6. In August of 1999, the Erebian Ministry of Foreign Affairs announced that the Alma Shoals and the oil-rich adjacent waters were “the territory of Erebus, pursuant to the Treaty of Amity and Peace.” The Prime Minister of Merapi promptly issued a communiqué in response, stating that “the clear purpose of the Treaty was to have the line of delimitation extend directly outwards half-way between Pigeon Rock and the Cape of Realto, and any attempts by Erebus to claim otherwise will be viewed by the government of Merapi as hostile acts.” In addition, the Merapin Prime Minister stated that any Erebian fishing vessel found fishing in the Alma Shoals would be seized, and that any petroleum exploration in the vicinity of the Shoals would first have to be licensed by the Merapin Ministry of the Interior, and also receive environmental approval from the Merapin Ministry of the Environment.

7. Erebus made no response to the Merapin Prime Minister’s communiqué, but Erebian vessels continued to fish in the Alma Shoals. In March 2000, the Merapin navy seized six Erebian-flagged vessels found fishing in the Shoals. The crews of the vessels were permitted to return to Erebus, but the vessels were detained pending forfeiture proceedings for trespass. Erebus, in response, has sent a fleet of military patrol boats to accompany other Erebian fishing vessels wishing to fish the Alma Shoals, and the outgunned Merapin naval force and Merapin fishing vessels have retreated from the area.

8. Prior to this dispute, Merapi and Erebus had maintained normal diplomatic and trading relations. Both are parties to the U.N. Charter, the Statute of the International Court of Justice, and the Vienna Convention on the Law of Treaties. In addition, Merapi is a party to the 1982 Law of the Sea Convention, as well as the Agreement in Implementation of Part XI of the Law of the Sea Convention. Erebus, on the other hand, has neither signed nor ratified the 1982 Law of the Sea Convention, although it is a party to the four 1958 Geneva Conventions on the Law of

the Sea. Merapi and Erebus do not have a bilateral extradition treaty. Neither State is party to any other treaty relevant to this case.

9. In the midst of the escalating fishing dispute, in April 2000, Erebus publicly announced that by the end of September 2000 it would start seabed mining at an underwater mining facility under construction on the floor of the ocean at a depth of 5,000 meters, 500 nautical miles directly off the coast of the southernmost portion of Merapi. According to the announcement, after years of study, this location was selected because it is especially rich in seabed nodules containing vast amounts of manganese, cobalt, nickel, and copper. A new supply of these minerals, which are expected to increase greatly in price on the world market over the next few months, is especially important to Erebus's efforts to build fighter aircraft and short-range missiles as part of its overall military strategy to respond to what it terms Fogo aggression.

10. Erebus's announcement, although accompanied by a lengthy report by the Chair of the Department of Environmental Science of the University of Erebus contending that the proposed operations are entirely safe, has been met with harsh criticism by a number of prominent scientists around the world, whose studies indicated that the underwater pollution caused by Erebus's proposed extraction process would severely endanger the marine life in a 300 nautical-mile radius of the mining site. Likewise, the President of the International Seabed Authority, established by the 1982 Law of the Sea Convention, has publicly opposed the Erebus operation, which she contends does not conform to the standards set by the Authority.

11. An environmental organization headquartered in Merapi, known as "The Aqua Protectors," immediately launched a world-wide media campaign to condemn the proposed seabed mining operation as a violation of international law. The resulting media attention and public pressure caused several States to bring the dispute to the attention of the U.N. Security Council.

12. On August 15, 2000, the President of the Security Council issued the following official statement on behalf of the Council:

The Security Council is gravely concerned about the possible effects of the planned Erebian seabed mining facility on the marine life in the area of its operation. In addition, the Council views with alarm the deterioration in relations between Erebus and Merapi. The Council determines that the boundary dispute and potential environmental catastrophe constitute a threat to international peace and security in the region within the meaning of Article VII of the Charter and emphasizes the need to prevent further deterioration of this situation. The Council therefore demands that Erebus delay the commencement of its proposed seabed mining operation, until it has proven to the Council's satisfaction that the process will not threaten the marine life of the Grand Basin. The Council also calls upon the two countries to settle the issue of their respective maritime boundaries by peaceful means.

13. In a diplomatic note to the President of the Security Council dated August 20, 2000, the Erebus Foreign Ministry responded, in pertinent part:

Erebus appreciates the Security Council's position on this matter, but regrets that it must decline to follow the Council's recommendation. Our seabed mining process has been thoroughly tested and is perfectly safe. Indeed, the Kingdom of Merapi has known about our plans for many months and has made no protest. Any delay in commencing the operation is unacceptable because of our pressing need for the manganese, cobalt, nickel, and copper for the defense of our country. We will begin seabed mining on September 15. The Security Council has no authority to order us to determine our maritime boundary with Merapi, which, in any event, was settled by the Treaty of Amity and Peace between our two countries.

14. On August 25, Merapi sent a diplomatic note to the Security Council, which read in relevant part:

The Kingdom of Merapi would bring to the attention of the Security Council the fact that the Republic of Erebus has wrongfully claimed the Alma Shoals as its territory and has sent armed vessels into Merapin Territorial waters to enforce its illegal claims. These measures constitute an immediate threat to the peace and security of the entire region, which should be addressed and condemned by the Council. In addition, the Kingdom of Merapi requests the Security Council to take immediate and forceful action to prevent Erebus from commencing its seabed mining operation. Since the fish stocks within the Grand Basin account for over 40 percent of Merapi's gross domestic product, the effect of the pollution from the Erebus seabed mining operation would be equivalent to an armed attack on Merapi itself. The consequences to the population of Merapi would be starvation and death on a massive scale. Obviously, neither we nor any government can be expected to stand by and allow this to happen.

15. The members of the Security Council have been unable to agree on the text of any further Presidential Statement or Resolution. The Council has, however, decided "to remain seized of the matter."

16. In the morning of September 1, 2000, a spokesman for The Aqua Protectors announced at a news conference in Merapi that, in the early morning hours of that day, a team of divers affiliated with the organization had launched "Operation Sea Storm," the objective of which was to disable the Erebian underwater mining facility using explosive charges. A few hours later, the press spokesman for the Erebian Energy Minister acknowledged that the facility had been badly damaged by saboteurs. According to the spokesman, the damage will take over a year to repair, at an estimated cost of U.S.\$1 billion. In addition, six Erebian scientists and engineers who were working on board a temporary platform at the facility were killed as a result of the explosion.

17. Later that day, Merapi delivered a diplomatic note to the Security Council, which stated:

The Kingdom of Merapi wishes to apprise the Security Council that a non-governmental organization headquartered in Merapi has disabled the Erebian underwater mining facility. The Kingdom of Merapi sincerely regrets the loss of life that appears to have occurred at the mining platform. Merapi did not plan or participate in this private action, although it believes the action to have been justified by and consistent with Article 51 of the United Nations Charter and the Security Council's August 15 Presidential Statement. It will have the beneficial effect of delaying the commencement of mining operations, until Merapi and the United Nations can pursue diplomatic efforts to persuade Erebus to upgrade or relocate its proposed seabed mining facility.

18. A report appearing in the *Merapi Times* September 1, 2000 late edition quoted an unnamed Merapi high-level official as acknowledging that the Merapi government had received advance warning of the attack on the Erebian mining facility from The Aqua Protectors, and that the Merapi government provided U.S. \$100,000 to The Aqua Protectors to help finance the operation. During routine oversight hearings by the Merapi legislative body, this report was confirmed.

19. Erebus immediately demanded that Merapi compensate it for the damage and loss of life, and turn over to Erebus the responsible members of The Aqua Protectors for criminal prosecution for what it called "their terrorist act." Merapi refused to comply, saying (1) that Merapi does not extradite in the absence of an extradition treaty; and (2) it is the policy of Merapi not to extradite Merapi nationals or persons accused of political offenses.

20. Following a series of diplomatic talks mediated by the Secretary General of the United Nations, on October 1, 2000, Erebus and Merapi agreed to bring their dispute before the International Court of Justice. The parties have stipulated to the facts as contained in this Compromis and to the map attached hereto as Annex A. They have also agreed to accept any judgment of the Court as final and binding upon them, and to execute it in its entirety and in good faith. The International Seabed Authority has determined that the ICJ is the appropriate forum to consider this matter, and the Security Council has decided to refrain from taking any action pending the outcome of the case.

21. (a) Erebus requests that the Court declare:

(1) that, by virtue of the change in course of the principal arm of the Krakatoa River, the Alma Shoals lie in waters belonging to Erebus, and its citizens and vessels therefore have a right to fish there;

(2) that its proposed deep seabed mining operations in the Grand Basin are consistent with international law; and

(3) that Merapi violated international law through its involvement in the terrorist attack against the Erebus seabed mining facility, and by its seizure and detention of the six Erebian vessels.

(b) Erebus further requests that the Court order Merapi to pay U.S. \$1.2 billion in compensation for the damage to the facility, the loss of human life, and the loss of future seabed mining revenue.

(c) Finally, Erebus requests that the Court order Merapi to surrender those members of The Aqua Protectors responsible for the attack on the mining facility to Erebus for prosecution, and release the six Erebian fishing vessels.

22. (a) Merapi, in turn, requests that the Court declare:

(1) that, notwithstanding the change in course of the principal arm of the Krakatoa River, it has the right under international law to exclude vessels and persons of Erebian nationality from fishing the Alma Shoals;

(2) that the proposed Erebian seabed mining operation is in violation of international law; and

(3) that it is not required by international law either to surrender the members of The Aqua Protectors to Erebus for prosecution, or to release the six fishing vessels.

(b) Further, Merapi requests that the Court enjoin Erebus from starting up its seabed mining operation until it is either upgraded or relocated to ensure the safety of the marine life off the coast of Merapi.

(c) Finally, Merapi requests U.S. \$1 billion in damages to compensate it for the losses it has sustained as a result of Erebus' occupation of the waters surrounding the Alma Shoals.