INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN THE FEDERAL REPUBLIC OF ENDURAS
(APPLICANT)
AND
THE CHRISTLAND KINGDOM
(RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE STATES
REGARDING CERTAIN EXPLORATION ACTIVITIES IN THE ANTARCTICA

Jointly notified to the Court on 15 SEPTEMBER 2017
JOINT NOTIFICATION
ADDRESS TO THE REGISTRAR OF THE COURT

The Hague, 15 September 2017

On behalf of the Federal Republic of Enduras and the Christland Kingdom, 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 between Enduras and Christland concerning the environmental damage in the Antarctica due to some exploration activities and refusal to compensate and other issues, signed in The Hague on the tenth day of November in the year two thousand fourteen.

Pete Legrand
Ambassador of the Federal Republic of the Endruas to the Kingdom of The Netherlands

Michael Warwick
Ambassador of the Christland Kingdom to the Kingdom of the Netherlands
SPECIAL AGREEMENT FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF THE DIFFERENCES BETWEEN THE FEDERAL REPUBLIC OF THE ENDURAS AND THE CHRISTLAND KINGDOM REGARDING CERTAIN EXPLORATION ACTIVITIES IN THE ANTARCTICA

The Federal Republic of Enduras and the Christland Kingdom,

Considering that differences have arisen between them regarding certain exploration activities in the Antarctica and the ensuing State Responsibility for the environmental pollution of Antarctica and the refusal to pay compensation thereof and other issues;

Bearing in mind that the Republic of Enduras and the Christland Kingdom have agreed mutually that they would not bring up issues of Claims of Sovereignty before the International Court of Justice;

Recognising that the Parties concerned have been unable to settle these differences by negotiations and other alternative methods of dispute settlement; and

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

Recalling their commitment to continue, pending the Judgment of the International Court of Justice, the Antarctic Revival Programme as has been agreed between the Parties;

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 Special Agreement (together with Corrections and/or Clarifications to follow) ("the Case") to the Court pursuant to Article 40(1) of the Statute of the Court.

**Article 2**

It is agreed by the Parties that the Federal Republic of Enduras shall act as the Applicant and the Christland Kingdom as the Respondent, but such agreement is without prejudice to any question as to the burden of proof.

**Article 3**

(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 4

(a) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the ILNU International Moot Court Competition 2016.

(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 the date set forth in the Official Schedule of the ILNU International Moot Court Competition 2016.

Article 5

(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 authorised, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this fifteenth day of September in the year two thousand seventeen, in triplicate in the English language.

Pete Legrand
Ambassador of the Federal Republic of the Endruas to the Kingdom of The Netherlands

Michael Warwick
Ambassador of the Christland Kingdom to the Kingdom of the Netherlands
ILNU INTERNATIONAL MOOT COURT COMPETITION 2016

**SPECIAL AGREEMENT**

Republic of Enduras Vs. The Christland Kingdom

THE CASE CONCERNING THE CAUSING OF IRREVERSIBLE DAMAGE TO THE ANTARCTIC ENVIRONMENT AS A RESULT OF CERTAIN EXPLORATION ACTIVITIES

1. The Antarctic Continent lying in the southern hemisphere, has a continental land mass underlying thick layers of ice sheets which are a few kilometres deep. This continental land mass measures approximately 14.2 million square kilometres, and is slightly bigger than Australia or the Europe itself. It is also said that the ice in the Antarctica stores almost 70% of the total fresh water on the Earth. The Antarctic continent is surrounded by a dynamic belt of sea ice, which ranges from 2.5 million square kilometers in the austral summer to 21.0 million square kilometers in the winter. Antarctica did not have indigenous population, no sovereign nations (considered as *terra nullius*) and the explorers from the Christland Kingdom, were the first people who have explored Antarctica, which was until then unexplored. The Antarctic continent is considered to contain large deposits of unexplored minerals which has for long attracted the commercial interests of the powerful States of the world. It was speculated that since the land masses adjacent to the Antarctic (all of which was once part of the Gondwana supercontinent) are similar, there was a high probability that huge reservoirs of oil may be present below the continent. In 2000, the US Energy Information Administration (EIA), estimated that the Wendell and the Ross Seas of the Antarctica alone could contain 45 billion barrels of oil—the total amount of oil that might be found in the northern part of the U.S mainland. The presence of such huge quantities of oil reserves coupled with the non-availability of offshore oil reserves has resulted in States starting their oil race in the Antarctica.

2. Many States have claimed sovereign rights over regions of the Antarctica. However the Enduras and the Christland Kingdom has had the oldest sovereign claims in the continent. The Republic of Enduras has a claim over a part of the Antarctic territory called the Enduran Antarctica (EA), whereas, the Christland Kingdom claims sovereignty over an overlapping territory called the Christland Antarctic Territory (CAT). There has always been political tension between Enduras and Christland
regarding the sovereignty over Antarctica and the islands proximate to Antarctica like the Penguinis Islands. For e.g., the diplomatic relationship got entangled, when in 2012, Christland named the Southern part of the Christland Antarctic Territory as the Lady Taylor Land in the honour of the Monarch of Christland.

3. The **Enduran Antarctica** is a section of Antarctica claimed by Endruas as a part of its national territory consisting of a wedge-shaped section of the Antarctic Peninsula which extends until the South Pole. The Endurans started exploring the continent since the 20th century. Charlet Anne was the first Enduran to set foot in Antarctica in 1902. Shortly afterwards, in 1904, a permanent base called the “Pioneer” was established and it became operative in the same year. Since then several permanent and temporary bases have been set up by the Enduras under the auspices of the Instituto Antártico Enduras (IAE) constituted by the Ministry of Antarctic Affairs, of the Enduran Government. **Arkadus** was the first permanent station ever to be established. The same is located in the Ross Islands, East Antarctica. The general mission of the Arkadus base was to conduct scientific research, survey and exploration, and also provide possible support for foreign missions. Apart from this the Arkadus base also gives technical support like weather forecast support to expeditions, bases, vessels and air carriers.

4. Apart from this Enduras has six permanent stations and 7 winter stations altogether making the number of stations to be 13. These 13 stations are inhabited by at least 250 Endurans who live in families along with their children. All these stations always hold the Enduran Flag.

5. The **Christland Antarctic Territory (CAT)** is a huge triangle-shaped section of Antarctica claimed by the Christland Kingdom. This is the largest claim made by any State and amounts to 40% of the total of Antarctica’s landmass. This claim is disputed because Enduras also claims 23% of the landmass claimed by Christland. Since the making of the Antarctic Treaty, 1959, which came into force in 1961, all States which made claims over the Antarctic Territory had agreed not to make any new claims while the Treaty is in force. Christland’s permanent base in the Antarctica is called as the **Polaris** which also performs functions similar to that of Arkadus. Additionally, Polaris has basic laboratory facilities for conducting scientific experiments on Antarctic wildlife and a sophisticated laboratory for conducting advanced experiments on mineral explorations in Antarctica. Christland has also allocated certain area in the Ross islands (falling within the CAT) to the Penguinis Island (As to Penguinis Island see
for the purposes of carrying out research activities in the Antarctica. The Penguinis Islands have established the Salmon Station. The functioning of the Salmon Station was supported by the Penguinis Petroleum University (PPU). The focus area of the Salmon Station was to research upon the mineral resources of Antarctica and also study upon the possibility of Development Activities and also its impact in the Antarctica. For the above purposes, researchers at the Salmon Station would rely upon the data provided by the Polaris station.

6. The Penguinis Islands are a group of islands lying on the southern hemisphere, proximity to the Antarctic continent. The sovereign rights over the islands were first claimed by the Christland Kingdom in the early 1740’s. In the year, 1802, the island was first occupied by few military men from Christland who were permitted under a “decree of consent” issued by the Monarch of the Christland Kingdom. The island did not have any indigenous population prior to the settlement by the Christlanders. 90% of the present population of Penguinis consists of Christlanders and a very minimal population of the native Endurans.

7. The Republic of Enduras had also claimed sovereign rights over the Penguinis since the early 1800’s. On October 29, 1832, an Enduras military battalion landed in the Penguinis attempting to establish its sovereignty over the Penguinis Islands, thereby disregarding the Christland Kingdom’s claim made almost 77 years ago. Within 3 months since the Enduran occupation, on 2nd January 1833, the Royal Navy of the Christland Kingdom evicted the Enduras military battalion. The islanders, who had sought permission from Christland Kingdom were again invited to stay in the islands. A year later, a small, but permanent local administration of the Christland was established. With an increasing population, in 1845 St. Lois was formed as a capital of Penguinis. The islanders had a peaceful existence enjoying rights under the Christland Kingdom until 1st April, 1982, when Enduras military force had again briefly invaded Penguinis. For 74 days, the islanders lived under Enduran occupation, until they were liberated by the Christland Kingdom military forces on 14th June 1982. Nearly 1000 Penguinis Islanders, Christlanders and Enduran lives were lost as a result of this act of the unlawful Enduran aggression.

8. Since then, Penguinis came to be treated as Christland's Overseas Territory (COT). The Christland Kingdom, respecting the Right to Self-determination of the people of Penguinis facilitated the framing of the Penguinis Constitution, 2007 which came into effect on 1st January, 2007. Under the 2007 Constitution, the island administration was
given full powers of internal self-governmenance and the islanders were enshrined with the rights of self-determination and other fundamental rights whereas Christland assumed responsibility for the maintaining the external affairs of the Penguinis including the island’s defence. This Constitutional arrangement facilitated in Christland retaining power over the Penguinis thereby protecting Christland Kingdom’s vested interests in the islands and also base this position to make substantially huge claims in Antarctica.

9. The Republic of Enduras had always refuted the very idea of the existence of the right of self-determination of the islanders and its recognition by Christland. Enduras has always maintained that the islanders did not have any right of self-determination and the entire control of Christland over Penguinis is nothing but an illegal occupation in violation of International Law.

10. To put the issue of the Right to Self-determination to rest, the Christland Kingdom decided to hold a referendum letting the people to decide their association and their future. The said referendum was held in October, 2010. At the referendum, the Islanders voted to determine their future, and accordingly 98.8% of the electorate voted “YES” thereby expressing their willingness to be associated with the Christland Kingdom as its Overseas Territory.

11. Internationally, the Penguinis is treated, received and recognized as a part of Christland’s Overseas Territory and is also represented at the European Union. The islands' judicial system is supervised by the Christland Kingdom’s Ministry of Overseas Territory’s Office and is analogous to the English Legal System and the Penguinis Constitution incorporates almost all the principles of the European Convention on Human Rights. Residents can resort to the individual complaint mechanism or prefer an appeal to the European Court of Human Rights. Law enforcement is the responsibility of the Royal Penguin Islands Police (RPIP), and military defence of the islands is provided by the Christland Kingdom. A Christland’s military battalion is stationed on the islands, along with aircraft carrying fleet of Navy Ships.

12. Since the new Constitution, the lives of the islanders have undergone rapid transformation. The island and its administration started focussing on the economic growth of the island and boasted its core portfolios: fisheries, tourism and oil exploration as the backbone of the island’s economy. Penguinis became financially self-reliant and established their own governance. The Christland Kingdom was the
major importer of oil from the Penguinis Islands. For this Christland would pay the Penguinis $80 per barrel (while the international market price would be $100 per barrel). Accordingly, 80% of the oil drilled in the Penguinis Islands would be consumed by the Christland Kingdom. A minimal 10% would be exported to Enduras. (The Enduras was in itself a major oil producer but due to frequent regime changes, and the State suffering from insurgencies, over population, unemployment, poverty, the Enduras has lost track in the development pathway. Moreover, in and around the mid-2000’s many of the potential oil wells in the Enduran Territory have become unfit for commercial exploitation).

13. The Penguinis liberalised its economy in 2011, giving scope for many private investments in the Island. The Penguinis government has adopted a series of measures aimed at bringing more and more foreign investments particularly in the Oil & Natural Gas sector. By the early 2013, huge companies more particularly from Christland and a very few from the Enduras started queuing to invest in the Penguinis Islands. By the beginning of 2014, the Penguinis’ economy started growing at the rate of 200%-300% (Approx.). Post-liberalisation, Penguinis has also witnessed a sprout in the inward flow of migrants to the island.

14. Tourism is yet another sector of economic boon in the island. The Tourism Department of the Penguinis Island used to organize sea expeditions for foreign tourists which would cover a trip from the Penguinis Islands, to Antarctica and back to the Penguinis. The islanders also used to carry out expeditions to the Antarctica. The islanders basically enjoyed a full autonomy and were very prosperous. In due course of time “Economic Development” had been the motto of the Penguinis Government. The various departments of the Penguinis were directed to initiate steps that would contribute towards the overall development of the Penguinis economy.

15. The Syndicate Inc., one of the principal investors in the Penguinis was founded in 1919 as a Christland-Gulf Oil Company, by William George who found oil in the Saudi Arabia after a tiresome search over the period of eighteen years. When they actually found oil, they were not able to commercially exploit it because they did not have the necessary resources and the company had by then almost gone bankrupt. However, Hillary Bond, the then Christland Navy chief persuaded the Christland government, to buy a 51% stake in the company looking at the future prospects of the company in commercial oil exploration and exploitation. The Christland Government was successful in taking a stake in the Syndicate Inc., The Syndicate Inc., has since then,
undergone several mergers and acquisitions but, the Christland government’s control over the Syndicate Inc., still remained. Since its incorporation, Syndicate Inc., has achieved a steady and rapid growth. Syndicate Inc., became the third largest State owned oil companies in the world, and, in the month before the Great Opportunity Disaster (THE GOD) (See below), it was the largest company listed on the Morrisland (Christland’s Capital) Stock Exchange (MSE).

16. The Genesis Oil & Natural Gas Ltd. (GONG), is an AIM (Alternative Investment Market-Created by the MSE for small investors) quoted oil and gas exploration company based in the Penguinis Islands. Since the early 1980’s Genesis was very instrumental in the overall development of the Penguinis economy which was also into oil drilling. During the early 1980’s when the Penguinis government was looking for avenues to develop its economy, oil exploration was looked upon as a boon and the scientific research data suggested that the territorial waters of the Penguinis islands have robust deposits of minerals which was capable of commercial exploitation. The government of Penguinis, at that time did not have the necessary technology to carry out prospecting, exploring or exploitation activities of these natural resources. The GONG, which was initially a very small company conducting exploration activities made a proposal to the Penguinis government expressing its interest to expand its portfolio to prospecting, oil exploration and subsequent exploitation in the Penguinis. The Genesis was given the rights of commercial exploitation vide PL001/1987. This licence covered approximately 1,126 square kilometres in the Northern Penguinis Basin. By virtue of this licence, Genesis was entitled to a whopping 7.5% Royalty Interest in the said licence. Within years since Genesis started the commercial exploitation of oil, the enterprise developed into a multi-million dollar enterprise always eager to expand. Looking at the potentials of the Genesis, the Penguinis government in 2010 also decided to license out yet another region in the Northern Basin called Sea Leo oil field, the commercial exploitation of which Genesis could start by the end of 2017. Genesis has made substantially huge investments for the Sea Leo project considering the huge prospects underlying it. By 2011, GONG has become the pioneer in oil drilling in the island and was drilling in almost 30 wells in the Penguinis. In 2012, Genesis faced severe impediments in exploring oil as it lost out a fair share of its fortune in exploring wells that were not suitable for commercial exploitation. When the economy of GONG was in a really bad shape, the Syndicate Inc., which originally
had a 25% in the Genesis, acquired some 28.5% shares in the GONG. The total holding of Syndicate Inc., in Genesis became 53.5% and eventually Syndicate Inc., took over its management. The Penguinis government taking note of the change in the management of Genesis, issued new licences to the Syndicate Inc., to carry out the activities licenced to the Genesis. The Government *vide The Penguin*, a State run newspaper publication dated 11-11-2012, communicated the change in the management of the Genesis to the islanders.

17. Since the year 2013, Penguinis started witnessing low-magnitude earthquakes happening with increasing frequency in and around the Penguinis, and this was something that the Penguinis and the Islanders have never experienced. The Islanders suffered damages when their homes used to develop cracks, electric poles used to fall down on the streets and seismic cracks used to develop in the streets of the island.

18. According to the Penguinis Gelogical Survey (PGS), the reason behind the growth in the number of earthquakes can be attributed to a **Waste Water Disposal System** (WWDS) used in the oil wells, according to which during the offshore drilling, all the waste water that is collected from drilling would be again injected into to earth’s crust with the help of special disposal wells. This was the very same system that was practiced by Genesis then and also by the Syndicate Inc., now.

19. Scientists from the Penguinis Institute of Seismologic Research (PISR), who were researching upon the recent seismic disturbances published a study called “*Effects of Oil Drilling in the Penguinis Islands*”, where they have provided ample research that data which suggested that ‘oil and gas drilling’ is causing these earthquakes in the islands and since their magnitude is often very less, they even go unnoticed. Until recently, the quakes were mostly small and had done little damage, but the study warned that the shaking can dramatically increase the chances of bigger, more dangerous quakes which could cause irreparable damage to the Penguinis. The study also suggested that earthquake activity in the Penguinis in 2013 was 70 times greater than it was before the 1990’s. Penguinis historically recorded an average of 1.5 quakes of magnitude 3 or greater each year. It is now seeing an average of 2.5 such quakes each day, according to geologists.

20. This caused huge unrest amongst the islanders who landed on the streets demanding the government to halt all the drilling activities happening in the Penguinis Islands as the same has caused environmental mayhem to the island and its territorial waters. The earthquakes were something that the First Generation or Second Generation of islanders have never experienced. As the agitations grew stronger and stronger, the
Penguinis government decided to ban all the oil drilling with immediate effect. This ban on the oil drilling in the Penguinis, however, had an adverse impact on the economic growth of the island as by 2013, the country was majorly relying on oil exploration. Considering the size of the population and expenditure of the Government, the Ministry of Finance Stated that with the revenue reserves of the island, the affairs of the government could easily be carried on for the next 30 years but it will be extremely difficult for the island to survive only on fisheries and tourism as all the cash reserves of the Penguinis Islands would be exhausted beyond this 30 years period. The leading economists of both Penguinis and Christland said that the government had to venture out into other avenues of revenue generation for the future sustenance of the populace. They also opined that the government sooner or later has to resort to oil exploration but with technologies that could cause less harm to the island’s environment.

21. The sudden halt in the oil drilling in the Penguinis island was a blow to Christland and its economy because, Christland was largely reliant upon the Penguinis Island’s oil. At the Conference on the Future of the Oil Drilling in the Penguinis, 2014 conducted for all the departments of both Christland and the island’s government, attention regarding the prospects of oil exploration in the Antarctica was drawn by the Christland Mineral Department (CMD). The CMD relied upon the research data published jointly by the Penguinis Petroleum University and the researchers of the Salmon research station. The prospects of oil drilling in Antarctica was extensively discussed. The CMD also intimated the Conference that the PMD vide a letter dated 01.03. 2014, has invited Expression of Interest from private companies for availing flexible licences to explore the Fairaway Enclave of the Ross Islands; the scientific study of which suggested the presence of huge deposits of hydrocarbons considered very lucrative for oil drilling. Post the Conference on 30.09.2014, the Syndicate Inc., being the only technology-capable entity in Christland as well as the Penguinis, which could set up research stations and could conduct prospecting and exploration activities, expressed its willingness to start exploration activities in Antarctica. Accordingly, a flexible licence for carrying out oil drilling with minimal conditions on safety and insurance was given to the Syndicate Inc.,

22. This plan was severely criticized by the world community, and the international non-governmental organizations declared that Christland had actually opened up the door for mining activities in Antarctica and claimed that the Syndicate Inc. would run
haywire in Antarctica. Several powerful States also claimed that what Christland had done is actually violative of International Law. The Centre of Antarctic Studies of the Enduras University proclaimed “that the Antarctic ecological system was sensitive to disturbance, that parts of it would be unlikely to recover from gross disturbances of oil drilling for hundreds of years.”

23. The Prime Minister of the Christland Kingdom, Honourable Mr. Tony Mathews, responded to the criticism against his government for the authorization given to Syndicate Inc. On 28.12.2014, he made an appearance in the Morrisland Televison (MTv) on the State’s favourite 9:00 PM show “Speak Up”, whereby he declared that the activities of the Syndicate Inc., in the Fairaway Enclave would be under the strict supervision, regulation and control of the Christland Kingdom and that his government shall ensure that there shall not be any adverse impact to the Antarctic environment as the Syndicate Inc., is only carrying out an exploratory activity and the same is not to be construed as commercial exploitation. He also emphasized that “...Today finding an offshore facility for oil exploration in any other part of the world is almost impossible and that States should change their attitude towards Antarctica because Antarctica’s oil could hold the key to our future sustenance and economic progression...” and also reiterated his government’s commitment to ensure that the resources of Antarctica shall be available for the use by humanity as a whole. He also recalled that the Christland Kingdom was the pioneer in advocating the “Convention on the Regulation of Antarctic Mineral Resource Activity (CRAMRA), 1988” within the Antarctic Treaty System (ATS), but States like Australia and New Zealand thwarted the conclusion of the Convention. He said that time has changed now and Christland shall not wait and watch any other power race over Christland in Antarctic oil exploration.

24. The Prime Minister of the Enduras, Mr. Gilanio Robert, got agitated by this unilateral activity of Christland in Antarctica. Since, then, the Enduran Government had carried out a series of measures to stop Christland going ahead with Antarctic oil exploration. Enduras even sought international help by the way of making motions and declarations

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1 The Convention was signed in 1988 but never came into force. Article 1 (9) of the Convention defined the term ‘exploration’ as the activities, including logistic support, aimed at identifying and evaluating specific mineral resource occurrences or deposits, including exploratory drilling, dredging and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development, but excluding pilot projects or commercial production. For the definition of ‘prospecting’ and ‘development’ refer to the CRAMRA.
in the United Nations but all of them were thwarted by the mighty Christland. Mr. Gilanio Robert once publicly stated that Christland is “hell-bent on mining Antarctica”.

25. Apart from the above said measures, the Republic of Enduras was not able to do anything and seemed helpless before Christland’s alleged uncontrollable thirst for oil as even the Republic of Enduras was facing a severe economic crisis and hence it was unable to prevent Christland’s exploration neither through economic pressure nor was unable to resort to use of force. The Government of the Enduras, finally, decided to settle the issues amicably. With this objective, Mr. Steward John, the Minister of External Affairs of Enduras, sent a communique to his counterpart, stating the Government’s willingness to work alongside the Christland government in carrying out the exploration activities in the Antarctica as it thought that since Enduras also has sovereign claim in the Antarctica, remaining silent in the oil race might result in Enduras losing ground in the Antarctica. Apart from this the Christland Government had earlier also offered to invest the much needed $600,000 as FDI in the infrastructure of the Enduras so as to conciliate the Enduran Government.

26. Accordingly the two Heads of Government, Honourable Tony Mathews and Honourable Giliano Robert so as to initiate a co-operative attempt towards a joint exploration of Antarctica’s natural resources, concluded the Joint Declaration for Co-Operation over Offshore Activities in the Antarctica, February 2015 (The Annexure-I herein). The main objective for concluding the declaration was to neutralise the hostile relationship between the two States and carry out peaceful exploration of Antarctica. This declaration was seen as the foundational stone for a co-operative relationship in the access to the oil within the Special Exploration Zone (SEZ) identified by the Declaration. Moreover, this Declaration was also seen as an attempt to separate the issues of sovereignty over Antarctica and the exploration of the mineral resources found in the Antarctica, thereby creating a cooperative regime.

27. On the Joint Declaration, Honourble Tony Mathews commented that: “The Republic of Enduras shall benefit, without prejudice to its rights, of the activities to be carried out in the SEZ subject to the dispute of sovereignty, through a provisional modus vivendi until both parties resolve that dispute by peaceful means established by international law. The benefits to be perceived shall be related to the exploration areas or the volumes of hydrocarbons produced.
28. In accordance with the Declaration, both the States published in their respective States an invitation for Expression of Interest to carry out prospecting and exploration activities in the Antarctica. Pursuant to this, two companies viz., the Syndicate Inc., (as licenced earlier) as representing the Christland and the PanOcean Oil and Gas Limited, as representing the Enduras were authorized by their respective States as these two companies have shown their ability and willingness and also the companies' successful offshore activities till date.

29. The Syndicate Inc. and the PanOcean vide their respective States' newspapers published their course of action towards starting their 'prospecting and exploration' activities in the Fairway Enclave.

30. “The Fairway Enclave Project” -THE WELL, THE RIG & THE CREW: Syndicate Inc., got authorization from both the Penginis Government and also the Christland’s government for operation in the Fairway Enclave Project. Syndicate Inc., was the principal developer and operator of the Fairway Enclave Project and held a 63% financial share in the project. The Syndicate Inc.’s other investors for the project, included a Netherlands based-Akun Petroleum Corpn., which owned a 25% share, and MARX Offshore, a unit of Japan-based Mitsai, which owned 10% share.

31. For the purposes of prospecting and exploration in the Antarctica, Syndicate Inc., leased out PanOcean’s rig called the “Atlantis”. The Atlantis Rig was registered in the Enduras and had the flag of the Enduras on it. The Atlantis started drilling at the Fairway Enclave in the austral summer of 2016 (April). While Syndicate Inc., maintained operational decision-making authority, PanOcean employees, who performed the majority of the work on the rig, had some decision-making authority over operations and maintenance. For the leased out rig, PanOcean would charge approximately $450,00 per day towards the lease charges of the Atlantis and an equal amount as contractor fees. The Great Opportunity well was installed at about 6,550 feet below the sea level, alongside the coast of the northern tip of the Fairway Enclave, Ross Islands. The Great Opportunity well had the greatest potential for oil exploration but nevertheless had its own perils.

32. The Antarctic’s complex environment included extreme weather conditions and freezing temperatures. Further, the presence of extremely thick layers of ice deposited over millions of years increased the risks of oil drilling, and would always complicate logistics and in the eventuality of an oil-spill, cleaning up would be near impossible and also would cause an irreversible and profound effect on the Antarctic environment.
According to Ignitio Energy Ltd., mining in the Antarctic presents, “significant challenges” and an oil exploration cannot be completed without huge investments.

33. The Atlantis rig had its own defects. In May 2016, when a team from the Syndicate Inc., conducted a safety audit on the rig, it was found that the Atlantis was earlier installed and used at an onshore drilling site in the Enduras and had its normal wear and tear. The audit identified as many as 390 repairs which needed immediate attention without the repairing of which oil drilling would be disastrous. The audit mandated immediate attention and calculated that it would require more than 3,500 hours of labour to fix.

34. One of the most important defect the Atlantis had was with its “Drilling Chairs.” Panocean’s Chief Electronics Technician Myr Jason, was responsible for maintaining the Drilling Chairs. The Drilling Charis had three malfunctioning computers, operating on a mid-1990’s era Windows NT Operating System, which would frequently freeze. If Chair-A went down, the driller would have to go to Chair-B and if this also doesn’t function properly, then in order to maintain control of the driller had to go to Chair-C and this process used to continue. There were times when all the three chairs would go defunct. According to Myr Johnson, “one needs to be extraordinarily skilled to handle these notorious systems”. Apart from the usual configuration, these computers had also installed the “EquiCem Software” (Similar to the OptiCem Software used in the Deepwater Horizon Well in the Gulf of Mexico). Yet another important function of Myr Jason, was to run model simulations on the “EquiCem” Software. This extremely advanced software is used for controlling the cementing process involved in oil drilling and was designed by Panocean itself. In the process of oil drilling, steel pipes are inserted with the help of centralizers (special brackets that are used to keep the pipe centred) under the surface until the oil reservoir. A uniform layer of cementing around the pipe is done so that there is no gap between the pipe and the rocks under the surface and also ensures that the pipe is insulated. The results in the software are used to check the accuracy of the cementing done. In case, there was improper cementing which could lead to gas flow through the well, the software would automatically issue warnings and if the gas leak is severe, would automatically turn on the rig’s Alarm System. For running the “EquiCem”, Panocean had to collect data from the Syndicate Inc. Even the “EquiCem” was not free from errors. It used to misinterpret fed information, auto-stimulate hoax alarms, ignore potential gas leaks. Whenever, an issue regarding the gas leak would be brought
to Transocean by Syndicate Inc., Transocean would respond saying that information provided by Syndicate Inc. was inaccurate and would never accept responsibility.

35. These shortcomings, however, were not taken seriously by the Syndicate Inc., as it was only focussing on oil exploration. The Chief Operating Officers of Syndicate Inc., Jeff Hawkings, opined that since the Atlantis was only an exploratory vessel, they could go ahead with the current exploration and a new rig could be leased out in future if at all Syndicate Inc., gets to extract oil.

36. After six weeks of drilling in the month of July, Syndicate Inc.’s Chief Operating Officer, Michael Geraldo, made a public statement that his company has explored the first oil. Two weeks after the discovery, when the company had collected all the oil that was required for scientific testing, Syndicate Inc. decided to seal the well so that exploration could be carried on in the future.

37. The Great Opportunity Disaster (GOD): On 23.09.2016, when the cementing job was going on to seal the well, there was a problem in the use of the EquiCem software because of which the cementing was not done properly. The improper cementing resulted in gas piercing through the pipe and at 12:30 PM, when the engineers were working on board the Atlantis, there was a huge bang and heckling followed by the crushing of one of the rig’s engines. Within minutes, two explosions in the Atlantis followed and the magnitude of the explosion was so high that the crew members had to abandon the rig and jump into the coldest ocean which was partially on fire. Out of the 105 workers on board the Atlantis, 17 were injured, including Myr Jason, and 11 others were killed. The rig burned for 36 hours, combusting 700,000 gallons of oil, leaving a trail of smoke over 30 miles long. The Atlantis sank on September 26, taking with it the top pipe of the Great Opportunity Well and parts of the system that were supposed to prevent blowouts from occurring.

38. Within few days preceding the accident, a 30-mile long slick of oil covered an area of about 10 square miles which also included huge glaciers of ice and had reached the beaches. The research stations viz., Arkadus, Polaris and Salmon located a few hundred kilometres away from the Fairway Enclave in the Ross Islands, were also severely affected all the inhabitants had to abandon these stations, and soon after the GOD, these stations were covered by thick layers of oil rendering the laboratory facilities of all the research stations obsolete. The route to these stations was also hindered by the oil spill. The oil spill had also killed the entire krill species found in the sea around the Ross islands (the lone habitat of krill in the entire Antarctica), oiled the seals and
penguins (at the time of GOD, it was breeding season for the penguins). The entire brood of *skua* chicks in Ross Island were also lost.

39. The government of Enduras owing to its proximity to Antarctica, responded within 24 hours of the disaster by sending 63 tons of equipment along with oil spill experts. These experts had also helped the US government during the *Deepwater Horizon Disaster* that occurred in the Gulf of Mexico in 2010. The CMD, under whose authority the entire Response Team acted, had actually spent about $12.5 million to date on its response efforts. The Enduras government further estimated that closing the valve of the Great Opportunity Well would cost about $4 to $5 million, and another $10.5 million might be required to remove the rig and bring it back.

40. The entire blame game for the Great Opportunity Disaster started where the States started blaming each other and holding the other responsible for the disaster. The Minister of Antarctic Affairs of the Christland Government, Mr. Christen Hutchison, sent a communique to his counterpart asking him to accept the responsibility for the disaster. Negotiations were carried out over a period of 8 months as a result of which both parties have agreed upon the *Antarctic Revival Programme* as an interim measure pending negotiations on the disputes regarding the liability for disaster and ensuing reparations.

41. On the above stated negotiations, the Parties failed to reach a conclusion and it was evident that the parties had reached an *impasse* and were unable to settle their disputes. Accordingly on 15.09.2017, Pete Legrand and Michael Warwick, Ministers the Ministers of Enduras and Christland respectively, met in New York and expressed their willingness to submit the dispute regarding the causing of irreversible damages to the Antarctic environment including the research stations as a result of the Great Opportunity Disaster and ensuing State Responsibility to the International Court of Justice. The parties accordingly negotiated and concluded this Special Agreement on the same day.

42. The Christland Kingdom and the Republic of Enduras have been members of the United Nations since 1945. The Republic of Enduras is a founding signatory to the Antarctic Treaty and also a permanent consulting member. The Republic of Enduras has also signed the Protocol on Environmental Protection (including other Agreements) to the Antarctic Treaty. The Christland Kingdom is also a founding signatory to the Antarctic Treaty and also a permanent consulting member. However,
the Christland Kingdom has not signed any other agreements of the ATS including the Protocol on Environmental Protection to the Antarctic Treaty.

43. **The Republic of Enduras respectfully requests the Court to adjudge and declare that:**

   a. The Christland Kingdom has as a result of the **Great Opportunity Disaster** had violated the rights of the Republic of Enduras guaranteed both under Customary International Law and also Treaty Law;

   b. The damage caused by the **Great Opportunity Disaster** to the Antarctic Environment is attributable to the Christland Kingdom and, therefore, the Christland Kingdom has committed an ‘internationally wrongful act’ and hence entailed to ‘international responsibility’.

   c. The Christland Kingdom is accordingly under an obligation to provide compensation to the Republic of Enduras for the damage caused by the Great Opportunity Disaster.

44. **The Christland Kingdom respectfully requests the Court to adjudge and declare that:**

   a. The Christland Kingdom has neither violated the rights of the Republic of Enduras under Customary International Law or under any Treaty Law;

   b. The Great Opportunity Disaster and the subsequent environmental damage cannot be attributed to the Christland Kingdom and, therefore, the Christland Kingdom has not committed any ‘internationally wrongful act’. On the contrary, the Great Opportunity Disaster is to be attributed to the Republic of Antarctica for Transocean’s misdeeds;

   c. The Christland Kingdom is under no obligation to compensate the Republic of Enduras for the Great Opportunity Disaster on the contrary it is the Republic of Enduras that has to compensate the Christland Kingdom
Annexure-I

JOINT DECLARATION OF 14 FEBRUARY 2015

CO-OPERATION OVER OFFSHORE ACTIVITIES IN ANTARCTICA

1. The Government of the Christlanad Kingdom and the Government of the Enduras Republic agreed that the following formula on sovereignty, applies to this Joint Declaration and to its results:

(1) Nothing in the content of the present Joint Declaration or of any similar subsequent Joint Statements and meetings shall be interpreted as:

(a) a change in the position of Christlanad Kingdom with regard to sovereignty or territorial and maritime jurisdiction over Antarctica and the surrounding maritime areas.

(b) a change in the position of the Enduran Republic with regard to sovereignty or territorial and maritime jurisdiction over the Antarctica and the surrounding maritime areas.

(c) recognition of or support for the position of the Christlanad Kingdom or the Enduran Republic with regard to sovereignty or territorial and maritime jurisdiction over the Antarctica and the surrounding maritime areas.

(2) No act or activity carried out by the Christlanad Kingdom, the Enduran Republic or third parties as a consequence and in implementation of anything agreed to in the present Joint Declaration or in any similar subsequent Joint Statements and meetings shall constitute a basis for affirming, supporting, or denying the position of the Christlanad Kingdom or the Enduran Republic regarding the sovereignty or territorial and maritime jurisdiction over the Antarctica. The areas subject to the controversy on sovereignty and jurisdiction will not be extended in any way as a consequence of this Joint Declaration or its implementation.

2. The two Governments agreed to co-operate in order to encourage offshore prospecting activities in the Antarctica in accordance with the provisions contained herein. Exploration for and future exploitation of hydrocarbons by the offshore oil and gas industry will be carried out in accordance with sound commercial principles and good oil field practice, drawing on the Governments’.

Co-operation will be furthered:

(a) by means of the establishment of a Joint Commission, composed of delegations from both sides;

(b) by means of coordinated activities in the areas identified in the Annex.

3. The Commission will be composed of a delegation from each of the two States, and will meet at least twice a year. Recommendations shall be reached by mutual agreement.
4. The Commission will have the following functions:

(a) to submit to both Governments recommendations and proposed standards for the protection of the Antarctic environment, taking into account relevant international conventions and recommendations of competent international organisations.

(b) to co-ordinate activities in the areas referred to in paragraph 2(b) above, as “Special Exploration Zone (SEZ)”. For the purposes of this Joint Declaration, the Special Exploration Zone (SEZ) refers to the 1,332 sq. kilometres with the Coast of the Ross Islands as the baseline. Other areas prospective for oil drilling shall be identified by the Commission in due course of time. The Commission shall also take steps:

(i) encouraging commercial activities in the SEZ by means such as joint ventures and consortia from the two sides;

(ii) seeking nominations from companies for drilling in the SEZ, to be offered upon terms appropriate for a challenging environment;

(iii) making recommendations on proposals made to the two Governments by companies for development projects in the SEZ.

(iv) seeking close coordination in regard to all aspects of future operations, including the overall level of fees, royalties, charges and taxes, the harmonisation of timing, commercial terms and conditions, and compliance with the recommended standards;

(v) recommending on the basis of geological data known to both sides, additional Zones further to be agreed by the Governments on the recommendation of the Commission;

(c) to promote the exploration for and exploitation of hydrocarbons in maritime areas of SEZ subject to a controversy on sovereignty and jurisdiction, and to this end:

(i) to promote cooperation between industry on both sides, including the formation of joint ventures and the elaboration of joint projects for exploration, production and use of infrastructure;

(ii) to receive from both sides and from operating companies the available information on scientific research, development of activities and commercial operations relating to the seabed, whilst respecting commercial confidentiality;

(iii) to propose to both Governments coordinated research work by commercial undertakings;

(iv) to submit to both Governments recommendations for standards for offshore activities in safety, health and monitoring;

(d) on the basis of geological data known to both sides, to propose to the two Governments at the appropriate time further areas of special cooperation, on terms similar to those contained in paragraph 4(b) above;

(e) to consider and submit recommendations to the two Governments on any related matter which may arise in the future, including the possible need to agree on the unitisation
of any discoveries in accordance with good oil field practice, on pipeline operations and on the
efficient use of infrastructure

5. Each Government will take the appropriately related administrative measures in
accordance with this Joint Declaration for the exploration for and exploitation of
hydrocarbons in the SEZ. They agreed that such measures regulating the activities of the
companies would be subject to the formula on sovereignty in paragraph 1 above. The Parties
will create the conditions for substantial participation in the activities by companies from the
two sides. The Parties will communicate to each other relevant information relating to the
conduct of exploration and exploitation activities in the areas. Both Parties agreed to abstain
from taking action or imposing conditions designed or tending to inhibit or frustrate the
possibility of carrying out hydrocarbons development in the areas.

6. Any instrument/machine/vehicle/vessel used by a Corporation/Company/Entity for
carrying out functions in accordance with this Joint Declaration, shall bear the ‘flag’ of the
State where such Corporation/Company/Entity is based and its functions shall be dealt with
in accordance with International Law.

7. A Corporation/Company/Entity starting operations in the SEZ pursuant to this Joint
Declaration shall be for the purposes of this Joint Declaration only be treated as the
‘instrumentality’ of that State where such Corporation/Company/Entity is incorporated and
shall be dealt with in accordance with Customary International Law and any other applicable
Treaty Law.

8. In order to implement the different arrangements in this Joint Declaration, which form
an interdependent whole, the two Governments agreed to cooperate throughout the different
stages of offshore activities undertaken by commercial operators, including the regime for the
eventual abandonment of installations.

Honourable Tony Mathews,  
Honourable Prime Minister,
Of the Christland Kingdom

Honourable Gilliano Robert,  
Prime Minister
of the Republic of Enduras

Signed at St.Peter’s Avenue, Morrisland on 14 February 2015

Note: This is a hypothetical problem drafted by Mr. U. VARADHARAJAN, Assistant
Professor, Institute of Law, Nirma University exclusively for use in the ILNU International
Moot Court Competition 2016. The problem is not intended to depict any actual situation.