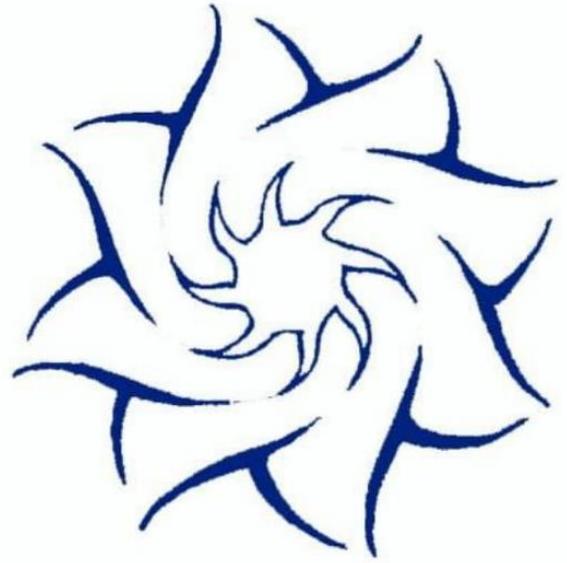


**20th D.M. HARISH MEMORIAL GOVERNMENT LAW COLLEGE
INTERNATIONAL MOOT COURT COMPETITION, 2019**

8th – 10th FEBRUARY 2019



HOSTED BY
Government Law College

IN ASSOCIATION WITH
D.M HARISH FOUNDATION

INTERNATIONAL COURT OF JUSTICE
CASE ARISING OUT OF INCIDENTS IN THE ANDURION SEA
THE UNITED STATES OF ENDARABOO (APPLICANT)
v. THE REPUBLIC OF GONDON (RESPONDENT)
ORDER OF 1ST JULY 2018

2018

COUR INTERNATIONALE DE JUSTICE
CAS RÉSULTANT D'INCIDENTS SUR LA MER D'ANDURION
LES ÉTATS-UNIS D'ENDARABOO (DEMANDEUR)
v. LA RÉPUBLIQUE DU GONDON (DÉFENDEUR)
ORDONNANCE DU 1^{ER} JUILLET 2018

2018

1st July

General List No. 69

INTERNATIONAL COURT OF JUSTICE

CASE ARISING OUT OF INCIDENTS IN THE ANDURION SEA

THE UNITED STATES OF ENDARABOO

v.

THE REPUBLIC OF GONDON

ORDER

The International Court of Justice, having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45(1), 48, 49, 79, and 80 of the Rules of Court;

Having regard to the Application filed in the Registry of the Court on 15th June 2018, whereby The United States of Endaraboo (hereinafter ‘Endaraboo’), instituted proceedings against The Republic of Gondon (hereinafter ‘Gondon’) with regard to a dispute concerning alleged violations by Gondon of the Beself Accords signed on 19th December 2015;

Whereas, the Application was communicated to Gondon on the day it was filed;

Whereas, Endaraboo and Gondon have appointed their respective Agents;

Whereas, on 10th June 2018, Gondon informed the Registrar and the Agent of Endaraboo of its intention to file counter-claims under Article 80 of the Rules of Court;

Whereas, at a meeting with the President of the Court on 25th June 2018, the Agents of the Parties agreed to have all the preliminary objections, claims and counter-claims be heard together in a single set of proceedings;

Whereas, at the same meeting, the Agents agreed to prepare jointly a Statement of Agreed Facts, including a formulation of the claims and counter-claims to be adjudicated by the Court;

Whereas, after negotiations, the Agents of the Parties jointly communicated the attached Statement of Agreed Facts to the Court on 1st July 2018;

Whereas, the Agents have agreed that they shall each submit one written Memorial and make oral pleadings solely on the claims and counter-claims presented in the Statement of Agreed Facts;

Taking into account the agreement of the Parties, fixes the dates for the filing of the written Memorials and for the oral pleadings as the dates set forth in the Official Schedule of the 20th D.M. Harish Memorial Government Law College International Moot Court Competition, 2019 and adopts the Official Rules of the 20th D.M. Harish Memorial Government Law College International Moot Court Competition, 2019.

Done in English at the Peace Palace, The Hague, this first day of July two thousand and eighteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Governments of Enderaboo and Gondon.

(Signed) President

(Signed) Registrar

CASE ARISING OUT OF INCIDENTS IN THE ANDURION SEA

The United States of Endaraboo v. The Republic of Gondon

1. The United States of Endaraboo (hereinafter 'Endaraboo'), The Republic of Gondon (hereinafter 'Gondon'), The Kingdom of Rohor (hereinafter 'Rohor'), The Corsellia Republic (hereinafter 'Corsellia'), The State of Vulcoria, (hereinafter 'Vulcoria'), and The Democratic Nation of Rallzoth (hereinafter 'Rallzoth') collectively comprise a region known as Tatoogard. While Endaraboo and Gondon are countries in the economically prosperous Scarifharrow Continent, Rohor, Corsellia, Vulcoria, and Rallzoth are countries of the ethnically diverse Narsillobah Continent.
2. Several countries in Scarifharrow are also parties to the Scarifharrow Convention of Human Rights. This convention creates a Human Rights regime congruent to the European Model including constituting the Scarifharrow Court of Human Rights.
3. The northern part of the Scarifharrow Continent encompasses the polar ice caps and is bounded by the Boromir Ocean. To the south of the Scarifharrow land mass is the Andurion Sea which separates Scarifharrow from Narsillobah. The maritime boundaries of the various countries in the Tatoogard region substantially overlap and have been a source of disagreement since the late 19th century.
4. Vulcoria and Endaraboo are part of an informal coalition of countries known as the Alliance. Gondon, Rohor, Corsellia, Rallzoth, along with a few smaller countries of Narsillobah, form another informal coalition called the Glan Bloc. Most of the Glan Bloc countries have socially conservative societies which are characterized by *inter alia* rampantly prevalent homophobia, xenophobia, anti-immigration, and pro-life movements.
5. The Alliance and Glan Bloc countries have been embroiled in a multi-decade cold war known as the Silent War. While there have been accusations of state-sponsored terrorism by both coalitions, the Silent War has not seen active hostilities between any of the countries of the two coalitions. Though, for years, countries of both the coalitions have engaged in disruptive trade wars. The Silent War has also witnessed various countries

withdrawing from important multinational Trade and Human Rights instruments. In fact, the Silent War has resulted in the gradual erosion of the Scarifharrow Human Rights System. The System has become so dysfunctional, that in present times, hardly any decisions of the Scarifharrow Court of Human Rights are adhered to by Scarifharrow states. An indirect consequence of the Silent War is that Gondon and several other Glan Bloc countries have submitted declarations accepting the compulsory jurisdiction of the International Court of Justice (hereinafter 'ICJ') "*excluding disputes with members of the Alliance*".

6. Vulcoria is a mid-size country with a rapidly expanding economy. Vulcoria is the only country in the Tatoogard region where a majority of the population follows a sole religion – Karsmuil. Karsmuil is a faith grounded on the principles of several other religions including Christianity, Islam, Buddhism, Hinduism, Judaism, Taoism etc., as well as teachings of Greek Philosophers such as Plato, Aristotle, Socrates, and Plotinus. The vague tenets of Karsmuil have given rise to several schools, including extremist ones like Neo Karsmuil. Neo Karsmuil's use force and intimidation to spread and propagate their faith. Vulcoria has, in recent years, had rough relations with its neighbor Corsellia over issues ranging from border (both land and maritime) and fresh water disputes to state-sponsored terrorism.
7. Endaraboo is the third largest country by land mass in the world but has one of the lowest population densities due to its extremely cold climate. With hardly any immigration, Endaraboo is predominantly inhabited by its native population. The majority of Endaraboo's population is involved in traditional industries like lumbering, farming, fishing, hunting, etc. The prohibitive tariffs placed on Endaraboo products by Glan countries makes Endaraboo entirely dependent on Vulcoria for all exports. A small but rapidly growing contribution to Endaraboo's economy comes from tourists visiting the country to explore the expansive and scenic wilderness of Endaraboo. Fermented whale meat a unique local delicacy is a big draw for the tourists.
8. Endaraboo's population has engaged in the hunting of different species of whales like Narwhals, Belugas, Minke for its meat, oil, and blubber since the 17th century in parts of the Boromir Ocean and the Andurion Sea. Currently, about 65 percent of Endaraboo's population makes use of whale meat, oil, and fat on a regular basis which they purchase

easily from local markets. However due to Endaraboo's sparse population, the whaling stock in the region has been within sustainable limits. In recent years, the whale game has significantly increased with the growing popularity of whale meat among tourists. Whale hunters have also begun using sophisticated whale catchers with automated machinery which has substantially increased the amount of game caught by over 300 percent in comparison to hunting using harpoons. Endaraboo's whaling program has been immensely controversial with several countries voicing their reservations over its legality and long-term sustainability. Endaraboo has constantly refused to take part in any whale conservation discussions at the international level.

9. Gondon which shares a border with Endaraboo, is one of the wealthiest countries of the world, owing to its extensive oil and natural gas reserves. While Gondon has one of the highest per capita incomes and the lowest poverty rates in the world, Gondon has been ruled by members of the authoritarian Anuron family since the Gondonian Revolution of 1922. Mr. Saakin Anuron, the current President of Gondon, has won the last six presidential elections with overwhelming majority. The Anuron government has been extremely intolerant of any dissent in the society and severely punished anyone opposed to its ways of functioning.
10. Corsellia, Rohor, and Rallzoth (hereinafter the 'CRR region') are adjacent countries. All these three countries have been witnessing years of political instability and conflict spreading over the entire land masses of these countries. This conflict has arisen primarily as a result of the growth of the Karsmuil País, which is founded by a Neo Karsmuil group insistent on abolishing democracy and creating a society grounded on a fundamentalist vision of the Karsmuil religion. It has been speculated by multiple media sources that Vulcoria clandestinely funds the Karsmuil País to ensure the spread of Karsmuil. By 1st January 2015, the Karsmuil País controlled 50 percent of the CRR region. The combined forces of Corsellia, Rohor, and Rallzoth, aided by the armed forces of Gondon, have been engaged in military operations over both land and sea in trying to prevent the spread of the Karsmuil País in the CRR region.
11. In the last decade itself, the Corsellia, Rohor, and Rallzoth Conflict (hereinafter the 'CRR Conflict') has seen the displacement of over five million individuals. The CRR Conflict, the various land and maritime boundary disputes in the Tatoogard region, the trade wars,

and the internal political conflicts have resulted in the Tatoogard region being regarded as one of the most tumultuous parts of the world. Recognizing that long-term peace in the region is in the greatest interests of all, the leaders from all the countries of the Tatoogard region met on 15th December 2015, in Beself, the capital of Vulcoria, to negotiate possible long-term solutions to peace in the region.

12. While the Beself Negotiations were not able to resolve the maritime or land boundary issues in the region, the results of the negotiations were nonetheless considered successful. The Beself Negotiations resulted in all the countries of the Tatoogard region jointly entering into the Beself Accord. The Beself Accord, which contained more than 40 provisions, mapped a road towards peace in the Tatoogard region.

13. The important provisions of the Beself Accords were:

- Article 2 – All contracting parties shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any of the contracting parties.
- Article 3 – All contracting parties shall abide by the rules of international law governing conduct in seas except in so far as they relate to the delimitation of maritime boundaries.
- Article 5 – All contracting parties shall secure to everyone within their jurisdiction core civil and political rights.
- Article 8 – All contracting parties shall abstain from imposing any form of economic sanctions against any contracting party.
- Article 13 – All contracting parties shall strive to uphold mechanisms to ensure free and fair regional trade and to implement human rights.
- Article 21 – Any dispute between the contracting parties concerning any provision of the Beself Accords shall be submitted to the International Court of Justice for resolution.

14. Wary of the possibility of numerous frivolous claims to the ICJ, the contracting parties explicitly omitted a ‘Sovereignty’ Clause from the Beself Accord. By 15th January 2016, All the countries of the Tatoogard region had both signed and ratified the the Beself Accord in its entirety. Soon after entering into the Beself Accord, the Tatoogard countries had removed all the prohibitive trade tariffs that were in force.

15. The CRR Conflict had over the years forced numerous individuals to flee from the CRR region. Some of these individuals called the ‘boat people’ tried to cross the Andurion Sea in overcrowded, unsafe rubber boats and make it to Endaraboo. Considering Endaraboo’s low population and lack of skilled workers, Endaraboo welcomed the boat people and did not place any significant restrictions on their entry other than standard background checks. In fact, in early 2014, Endaraboo’s Senate passed a law called Immigrant Employment Guarantee Act 2014 (hereinafter ‘IEGA’), according to which, Endaraboo guaranteed employment to the boat people for at least 180 days in a year.
16. Once, in Endaraboo, some of the boat people tried to cross over to the developed Gondon in search of better opportunities, since employment provided under the IEGA were mostly low-wage manual jobs. Unable to stop this cross-border influx over the hilly terrain along the border, Gondon’s navy controversially deployed high-power military vessels called Seafleet Explorers in the entire Andurion Sea to intercept the rubber boats before they reach Scarifharrow and send the boat people to Corsellia. In Corsellia, a larger proportion of these returned boat people were subjected to harsh persecution by both, governmental and non-governmental groups.
17. On 10th February 2016, the Scarifharrow Court of Human Rights in the case of *Aragorn Skysleeper v. Republic of Gondon*, held that “*Gondon’s practice of intercepting the boat people and sending them to Corsellia without examining their cases exposed them to a risk of ill-treatment, and amounted to collective expulsion and a violation of the principle of non-refoulement*”. In a first in several years, the President of Gondon, Mr. Saakin Anuron, announced on 12th February 2016, “*In light of the Beself Accord, the Republic of Gondon will abide by the ruling of the Scarifharrow Court of Human Rights in the case of Aragorn Skysleeper v. Republic of Gondon. The Republic of Gondon will immediately cease the return of boat people to Corsellia and will instead take them to Gondon where all eligible boat people will be granted refugee status. All individuals rescued at sea will have their cases assessed on an individual basis and would be provided the opportunity to challenge any decision to return them to their country of departure or nationality.*”
18. Post the statement of President Anuron, the intercepted boat people were taken to Gondon where their travel documents and passports were seized. While the individual claim assessments and background checks were in progress and even for long periods thereafter,

the boat people were housed in makeshift camps outside major cities where they were provided with extremely basic food and clothing. Living conditions in these accommodations were nonetheless rather abysmal, with constant and lengthy power outages and a perennial inadequacy of water. In these camps, the frequent outbreak of diseases like cholera, jaundice and gastritis was not uncommon. There was no policy to create or regulate employment for the boat people in the camps. It was not uncommon for the people in the camps to take employment in Gondon's Oil and Gas factories. Since they did not have work permits they often worked at below minimum wage. This move of taking the rescued boat people to Gondon was severely criticized by various Alliance countries and particularly Enderaboo whose economy significantly benefited from these boat people.

19. On 25th January 2017, the President of the Scarifharrow Court of Human Rights, Ms. Bilbo Organa, while delivering the keynote address at the Vulcoria Society of International Law Annual Conference, stated *"Gondon cannot be considered a place of safety for the boat people. Gondon is obligated to send the boat People to a more welcoming country where they face lesser discrimination and are provided with better facilities."* Responding to Organa's comment, Ms. Yobacca Chewda, the minister responsible for the settlement of the boat people stated, *"Liberals would have us make the boat people stay in The Château de la Messardière in St Tropez. At the end of the day, the boat people are provided with a life far better than the ones that they have left behind. Additionally, Gondon is constantly working on solving the numerous problems that the boat people face in their new home."* On 28th January 2017, Mr. Ganollun Golldalf, one of the most prominent foreign policy commentators, in an op-ed in the Enderaboo Post wrote *"Gondon's move of taking the boat people to Gondon is a masterstroke. They now need not worry about illegal entry of the boat people from Enderaboo, they have a detailed account of everyone in their country and their Oil and Gas companies get cheap labor"*

20. On 5th February 2017, in a rather controversial move, Gondon issued a declaration which stated that, *"The Republic of Gondon will henceforth accept the jurisdiction of the Scarifharrow Court of Human Rights over claims arising out of the Scarifharrow Convention of Human Rights only as far as they do not concern the boat people."* In a press conference the next day, the Foreign Minister of Gondon, Mr. Snoke Boromir, stated, *"Being taken to the Scarifharrow Court of Human Rights by every disgruntled person*

significantly threatens Gondon's good faith attempts to uphold the Beself Accord and help provide a new life to the boat people."

21. It was observed that a sizeable number of boat people had their asylum claims rejected on grounds that they *"do not face any persecution in the country of their origin."* These rejected applicants were consequently deported back to their country of origin. A number of the rejected asylum claims were those of individuals who alleged persecution by both, their governments and the Karsmuil País, owing to their sexual preferences. While different evidences of these boat people's claim to homosexuality was looked into, they had their claims denied predominantly due to reports of psychologists who conducted mandatory investigative examinations on them. These investigative examinations involved the use of personality tests like Draw-A-Person-In-The-Rain Test, Rorschach Ink Blot Test, and Szondi Nonverbal Projective Personality Test, etc. to determine the sexual orientation of the asylum seekers. In a detailed report published on 1st January 2018 by the LGBTQ rights organization, Pride International, it was estimated that between 1st March 2016 and 15th December 2017, 80 percent of homosexuality-based asylum claims were rejected by Gondon authorities.
22. Between 1st January 2016 and 1st July 2018, Gondon's Supreme Court dismissed numerous petitions concerning the boat people and their treatment by Gondon authorities on grounds that *"any decision rendered would violate 'separation of powers' and the 'political question doctrine'"*.
23. Beginning August 2017, the joint forces of Gondon, Corsellia, Rohor, and Rallzoth were able to significantly push back against the Karsmuil País. By 28th February 2018, the Karsmuil País had lost control of a sizeable portion of its territory in the CRR region. On 3rd March 2018, a Seafleet Explorer intercepted an overcrowded boat on its way to Endaraboo and transported all rescued individuals to Gondon. Among the intercepted individuals was one Mr. Han Kirk, a founder leader of the Karsmuil País. Mr. Han Kirk sought asylum on the basis of falsified identity documents in his possession. The immigration authorities at Gondon spotted his fake documents and foiled his attempt. He was arrested and sent to the Khitgom Central Prison in Khitgom, the capital of Gondon, while he awaited trial for 'Acts of Terrorism'.

24. On 1st April 2018, Han Kirk, with the aid of some fellow Karsmuil País prisoners housed in the same jail ward, was able to escape the Khitgom Central Prison. After spending about a week in hiding, Kirk managed to reach the Endaraboo Embassy in Khitgom, where he claimed asylum. Finding his case extremely complicated, coupled with the mounting pressure from Gondon to hand him over, Endaraboo decided to come to an arrangement with Kirk and temporarily hire Kirk as a consultant. Endaraboo claimed that his employment was in furtherance of the IEGA, which guaranteed employment to the boat people. Endaraboo stated that in the role of a consultant, Kirk would help provide Endaraboo with essential information which would aid Endaraboo's national security. Enterprise, a popular newspaper in Gondon, had reported an unnamed Endaraboo governmental official stating that the *"hiring of Kirk as a consultant was actually a sham arrangement Endaraboo had conjured on Vulcoria's insistence to provide protection to Han Kirk"*.
25. On 28th April 2018, Kirk complained of symptoms of flu. He was visited by doctors from a nearby government hospital on the 29th and the 30th of April. He said he was feeling better, but a few hours post the last visit from the doctors, Kirk was seen to be slipping in and out of consciousness. Before the Embassy authorities could fathom what was going on, Kirk started getting seizures and died. The post mortem results of Kirk showed that he had suffered a fatal cardiac arrest due to poisoning by nerve agents. While there were suspicions that Gondon had a hand in the sudden death of Kirk, these suspicions were confirmed the next day when the Defense Minister of Gondon, Mr. Palpatine Frodo, openly proclaimed on national television that *"the assassination of Kirk was part of a covert operation in Gondon's war against the Karsmuil País"*. Endaraboo's Prime Minister, Mrs. Padme Picard, reacted strongly and stated that, *"Gondon's actions represent an unlawful use of force against Endaraboo."*
26. Utterly shocked at the recent conduct of Gondon, on 15th June 2018, Endaraboo filed an application in the Registry of the ICJ instituting proceedings against Gondon concerning (1) The taking of the intercepted boat people to Gondon; (2) The adjudication of homosexual individuals asylum claims based predominantly on psychological tests; (3) The carrying out of the covert operation to assassinate Han Kirk. Endaraboo invoked Article 21 of the Beself Accord as the basis of jurisdiction over Gondon. Gondon reserved its right to preliminary objections with respect to the above claims and on 21st June 2018, indicated its intention to file counter-claims concerning the whaling program of Endaraboo. Gondon

alleged a violation of Article 3 of the Beself Accord and relied on Article 21 of the Beself Accord to establish the Court's jurisdiction over its counter-claims.

27. Without prejudice to any questions of jurisdiction, standing or admissibility of claims, the ICJ is confronted with the following issues:
- a. Is Gondon violating the Beself Accord in taking the intercepted boat people to Gondon?
 - b. Does the Beself Accord prohibit Gondon's use of investigative examinations in assessing the homosexual asylum claims?
 - c. Has Gondon violated the Beself Accord by carrying out the assassination of Han Kirk?
 - d. Does Endaraboo's whaling program violate the Beself Accord?
28. On 22nd June 2018, in another op-ed written in the Endaraboo Post, Mr. Ganollun Golldalf praised Endaraboo's formulation of claims at the ICJ and remarked "*By targeting the act of bringing the boat people to Gondon and the methods of evaluation of the homosexual asylum claims rather than an ancillary issue concerning the boat people's treatment in Gondon, Endaraboo has significantly improved its chances of winning at the World Court*"
29. Both Gondon and Endaraboo are members of the United Nations. They are not parties to any instrument of relevance to the case at hand.