

4th VIPS INTERNATIONAL LAW MOOT COURT COMPETITION, 2017



MOOT PROBLEM

**INTERNATIONAL COURT OF JUSTICE
SPECIAL AGREEMENT**

BETWEEN

THE REPUBLIC OF MEROVIDEA (APPLICANT)

AND

THE FEDERATION OF BREZANIA (RESPONDENT)

**TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE
DIFFERENCES BETWEEN THE PARTIES CONCERNING THE LEGALITY
OF DEFENCE OF NECESSITY IN INTERLINKING OF RIVERS AND OTHER
ISSUES**

Jointly notified to the Court on 12th September 2017

JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:

The Hague, 12th September 2017

On behalf of the Republic of Merovidea and the Federation of Brezania, and in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honor to transmit to you an original of the Special Agreement for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the legality of defence of necessity in interlinking of rivers and other issues, signed in The Hague, The Netherlands, on the twelfth day of September in the year two thousand seventeen.

Her Excellency Romez Dinea
Ambassador of the Republic of
Merovidea to the Republic of The
Netherlands

His Excellency Jessop Kirol
Ambassador of the Federation
of Brezania to the Republic of
The Netherlands

— ADVOCATES LEGION —

SPECIAL AGREEMENT

SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE
REPUBLIC OF MEROVIDEA AND THE FEDERATION OF BREZANIA ON THE
LEGALITY OF DEFENCE OF NECESSITY IN INTERLINKING OF RIVERS AND
OTHER ISSUES.

Republic of Merovidea and the Federation of Brezania,

Considering that differences have arisen between them, the legality of defence of necessity in environmental damage and other issues;

Recognizing that the Parties concerned have been unable to settle the dispute by negotiation;

Desiring further to define the issues to be submitted to the International Court of Justice (hereinafter “the Court”) for settling this dispute;

In furtherance thereof the Parties have concluded the following Special Agreement:

Article 1

The Parties submit the questions contained in the Special Agreement (together with Corrections and Clarifications to follow) to the Court pursuant to Article 40(1) of the Court’s Statute.

Article 2

It is agreed by the Parties that Republic of Merovidea shall act as Applicant and the Federation of Brezania as Respondent, but such agreement is without prejudice to any question of the burden of proof.

Article 3

(a) The Court is requested to decide the Case on the basis of the rules and principles of international law, including 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) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the Fourth VIPS 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 the date set forth in the Official Schedule of the Fourth VIPS International Law Moot Court Competition.

Article 5

(a) The Parties shall accept the Judgment of the Court as final and binding 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, have signed the present Compromis and have affixed thereto their respective seals of office.

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

Her Excellency Romez Dinea
Ambassador of the Republic of
Merovidea to the Republic of The
Netherlands

His Excellency Jessop Kirol
Ambassador of the Federation
of Brezania to the Republic of
The Netherlands

— ADVOCATES LEGION —

**THE CASE CONCERNING THE LEGALITY OF DEFENCE OF NECESSITY
IN CAUSING ENVIRONMENTAL DAMAGE AND OTHER ISSUES
MEROVIDEA / BREZANIA**

1. Applicant, the Republic of Merovidea (“Merovidea”), and Respondent, the Federation of Brezania (“Brezania”) are neighbouring states that occupy the North Amber Sub-Continent. The North Amber Sub-Continent, characterized by rich natural resources and diverse topographical features is bounded to the south by the South Amber Sub-Continent and is surrounded by the Amberosia Ocean. The North Amber Sub-Continent is primarily drained by the Great River, which originates in Fountain Mountain range located in Brezania. The Great River along with many small rivers including Zastu, Ayastu and Niramastu form the Fountain river system of North Amber Subcontinent. Of these Zastu & Niramastu are most important sources of fresh water for Merovidea. Apart from these rivers, the countries also share the Yak Wetlands which was recognised as a Ramsar site in the year 2014.
2. The Creek of Tenling (“The creek”), one of the largest fishing grounds in North Amber Sub-Continent, is yet another geographical feature of importance in this region. The 80km long creek is more of a tidal estuary, though it is navigable throughout the year. Fishermen from both the nations have been amicably fishing in the creek since ages. The Creek separates Merovidea from Brezania at the latter’s southern border and opens up into the Amberosia Ocean.
3. The Republic of Merovidea, a democracy and a developed nation saw a peaceful civil movement to install a pro-environment political outfit ‘Guardians of the Green’ in the year 1991. Through this transition, Merovidea became the first developed nation in the world to adopt an environment based economy. Major sources of GDP for Merovidea are renewable energy exports, agriculture and allied industries and tourism. All vocations which are considered to be even slightly harmful to environment are banned in Merovidea (with defence sector being the sole exception) and the public is enjoined to adopt robust

sustainable living measures in their way of life. These economic measures have seen significant drop in Merovidean GDP over the years with the GDP growing at -0.2% but the approval ratings of the new political dispensation have remained high at least until 2010 and Merovidea topped in Human Development Index consecutively for 9 years from 2000-2009. Merovidea's GDP in January 2015 was estimated at US \$1 trillion. According to the March 2016 census, its population was 20.5 million. The current Prime Minister, Ms. Marcelou Seno, has been ruling since past 15 years.

4. Following a long period of economic stagnation and depression, five sovereign states of North Amber Sub-Continent united into the Federation of Brezania in the year 1990. Thereafter Brezania followed a policy of absolute economic liberalisation where the federal government was responsible only for international relations and defence. The five federal states of Brezania are essentially run by five giant corporations. The major businesses of these corporations are oil & mineral explorations, metallurgy, cements, fertilizers and defence exports. In fact oil & mineral explorations accounted for more than 50% of Brezania's GDP in the year 2014. As of 1 January 2015, Brezania had a population of just over 30 million. Ever since then, Brezania has adopted this new economic policy their GDP growth rate has been over 15% and is significantly increasing year on year. In January 2015, Brezania's GDP was estimated at US \$ 900 billion. The current President of Brezania, Mr. Marshall Orlando has been newly elected in 2013.
5. On 5th June 1991 both the nations entered into a treaty "Treaty of Equity" and agreed to share water of the rivers of the Fountain river system in an equitable manner. At the time of signing of the treaty Brezanian President and the Prime Minister of Merovidea had issued a joint statement "This treaty is an expression of solidarity between the two nations and their commitment to co-exist in a peaceful and mutually beneficial manner". Subsequently, in August 1991 this treaty was formally registered with the United Nations.
6. During the years 1996-1999 Brezania witnessed frequent devastating floods. More than three thousand lives were lost as a direct cause of floods and more than ten thousand people were displaced. Economic loss was also significant and was pegged

conservatively at \$100 billion. Merovidea was prompt in extending humanitarian aid to Brezania during these floods and its gestures were appreciated by Brezania.

7. Until the present dispute arose, the countries had utmost cordial and warm relations with each other with thriving trade, diplomatic and cultural relations. Since many essential industries were banned in Merovidea, its people largely depended on Brezanian imports for the same. Brezania was granted MFN status by Merovidea in the year 1999.
8. On 5th July 2000, Brezanian minister for rivers and water bodies announced his country's ambitious plan to interlink the various rivers flowing through Brezania. This was portrayed as a necessary step to mitigate the loss of life and property due to floods. This announcement was received with scepticism by Merovidea and the issue was raised bilaterally at many occasions. On all these occasions, Brezania's stated position was that interlinking the rivers is a necessity. It cited example of how several nations have interlinked their major rivers in recent years to mitigate and prevent droughts and floods.
9. At a bilateral summit held at City of Uba, Brezania on 7th August 2002, both nations arrived at an understanding according to which Brezania agreed to carry out an Environmental Impact Assesment of the entire project and share its report with Merovidea. Brezania also agreed to provide information to Merovidea regarding the interlinking of rivers, details about dams being built and quality of water being released into Merovidea on a monthly basis. Both nations agreed to constitute a joint commission for this purpose. This understanding came to be known as the Uba Agreement.
10. In August 2003, BrezOil, a Brezanian Oil Corporation claimed to have discovered large deposits of Shale gas and Hydrocarbons in the Creek of Tenling. Brezania at once permitted the exploration and exploitation of these reserves. This move was vehemently opposed by Merovidea, which claimed that the entire Creek belonged to Merovidea.

11. A joint commission of the two nations was convened to decide the issue bilaterally in April 2004. Brezania offered to divide the creek mid-channel. This offer was rejected by Merovidea which relied on certain historical documents and maps from 13th century. According to Merovidea, in the 13th century, entire creek belonged to the ruling clan of Merovidea and only fishing rights were shared as a gesture of magnanimity with the tribes on the other side of the creek which forms part of the present-day Brezania. Merovidea took the position that it has no objection in carrying of joint fishing activities in the Creek of Tenling and would honour the customary international law in that regard. Since then, there has been little progress on the issue and the vast reserves of shale gas and hydrocarbons have been left unexploited and the machinery employed by BrezOil has been lying idle.
12. In the year 2008 a series of events triggered the current dispute. A BBC report of Merovidea highlighted that how north-western province of Merovidea was water deprived for many years and how the administration lacked empathy. Every summer the Zastu River would dry up on the Merovidean side because of dams built by Brezania. Also in the North-eastern province a first instance of mercury poisoning of Niramastu was witnessed. Researchers discovered elevated levels of mercury, fluorine and selenium in the waters of Niramastu. It was not difficult to ascertain the source of this pollution. The report concluded that Brezanian metallurgical industry, now the largest in the world, were contributing to mercury poisoning of the Niramastu. Brezanian research agencies, however, could not independently verify the link between mercury poisoning and their industries.
13. In October 2008, Merovidean Foreign Minister took this matter at once with her Brezanian counterpart and requested that these mines and exploration works shall be stalled immediately. According to Brezania's municipal law, all new industries were given immunity from all environment protection and labour laws for first ten years, hence Brezanian state could not take any action against the corporations. However, on 31st December 2008 on the sidelines of NAARC summit, Mr Jacob Lawns, President of Brezania promised Ms Marcelou Seno, Prime Minister of Merovidea that their country

will quickly introduce more stringent municipal laws to tackle instances of environmental pollution by Brezanian corporations. After the NAARC summit, levels of Mercury dropped but they still remained at threshold levels.

14. In September 2009, Brezania achieved partial success in diverting the course of the Zastu tributary, even though bilateral talks related to this issue were underway albeit at a slow pace and the joint commission constituted under the Uba Agreement had met only thrice. This unilateral act by Brezania received harsh criticism from Merovidea. The Prime Minister of Merovidea Ms Marcelou Seno reminded her Brezanian counterpart "... By going against the agreed terms of the Treaty of Equity and the Uba Agreement, the Federation of Brezania has started treading a very dangerous path. I appeal to the world community to take note of this action, for if, all treaties could so brazenly be violated, the sacred thread that binds the world will break in a whiff (sic)"

15. To this the Brezanian President responded, "We uphold and venerate the treaty of equity. But lest not Merovidea be misinformed. A treaty to share water equitably does not mean a treaty to share water equally. The seven tributaries are still flowing in Merovidea. Ours is a developing nation, you are a developed nation. Our needs are different..."

16. The task of interlinking three of the seven major rivers was achieved by 2011. On 30th May 2011 Zastu-Ayastu-Niramastu link was opened amid much fanfare. On the same day, Brezanian state agency released its first Environment Impact Assessment Report of the project. This report was criticised by the Home Minister of Merovidea as "Dubious, delayed and lacking measurement of important parameters"

17. By May 2012, adverse effects of this project were evident. The Zastu-Ayastu-Niramastu link decreased water supply to Merovidea. As volume of water in Niramastu flowing in Merovidea decreased, the concentration of mercury gradually started increasing in Merovidean waters. The number of people diagnosed with Minamata disease rose from

300 in 2010 to 7000 in 2013 and 25000 in 2015. Independent research groups assessed that at least 10,000 lives were annually lost due to direct or indirect environmental impact in Merovidea. Economic impact was computed to be in excess of \$170 bn annually. Merovidea accused Brezania of waging environmental terrorism on its soil and inflicting a covert biological and chemical warfare on its subjects.

18. In August 2013, Merovedian Superior Court while acting on a writ petition filed by a citizen's group "Minamata Sufferers" attached the assets of Central Bank of Brezania located in Merovidea as a security against economic reparations. Brezanian Foreign ministry urged that these proceedings shall at once be annulled since the Central Bank of Brezania is a separate juridical entity that is not party to the judgment on liability in respect of which enforcement is sought and even otherwise, it benefits from immunities from enforcement proceedings as a matter of international law.

19. Meanwhile, the condition in the Merovidean hinterland continued to deteriorate. North-Eastern province, which had been worst hit due to rise in mercury levels in water received no assistance from the Merovidean administration. In September 2013, the Provincial minister had requested the Prime Minister to provide funds for mass scale relief and rehabilitation and also to shift the citizens to other parts of the country but no such aid was given. Discontentment amid the public was growing and there were rumours that a civil war may any day break out. On 28th March 2014, a domestic pacifist group, led by a Father Dibru took out a candle light march and observed non-violent protests at the border of Brezania and pleaded to the world community and Brezania to stop this onslaught on their water and life. This event was covered by international media and almost all major publications of the world carried the stories of plight of Merovidean people, apathy of their government and the alleged disregard of environmental concerns by Brezania.

20. The condition in the north-western province was equally grim. Zastu, the only source of fresh water in north-western province of Merovidea became an almost non navigable

river tributary for about six months a year. Many villages turned dry. In December 2015 a report was published by an international research group that desertification of North-Western province of Merovidea has begun and if it continues unabated the effects will become irreversible within a decade.

21. Following these developments, in January 2016, Merovidea revoked MFN status given to Brezania and put strict import controls over all imports coming from Brezania and introduced a green cess @12% above all other taxes and duties on account of environmental damage being sustained by Merovidea from action of industries located in Brezania. Brezania has termed this action contrary to the spirit of various commitments made under WTO.
22. On 26th January 2017 a rebel youth faction 'Merovidea Youth Army' of North-Eastern province crossed over the border and attacked a mineral exploration plant using petrol bombs. They were neutralized within a few hours by the Brezanian guards but this became a watershed moment in the history of the two nations. The youth were hailed as Water Warriors by Father Dibru and many Merovidean state publications. Mr Renner, the Merovidean Provincial Minister though expressed regrets at the use of violence but was quick to add that "Desperate people will seek desperate measures". The Foreign Minister of Merovidea Mr J Jin expressed regret over the incidence and said that border security has been beefed up and an internal committee will be set up to get all the evidence related to the matter.
23. Brezanian Home Minister at once condemned Merovidea for this act of "cowardice" and went on to say that these terrorists were backed by the Merovidean state. In order to remind Brezania of its military might Merovidea conducted a series of contrived nuclear tests in April 2017. These tests were conducted within 20km of its border with Brezania. Brezania accused Merovidea for demonstrating double standards in its concern for environment and also for conducting nuclear tests so close to the border area.

24. On 1st May 2017, IAEA conducted a research on the after-effects of these nuclear tests and concluded that the tests have caused certain irreversible damage to the ecology of the area and presence of low-grade radiation was also found in the adjoining areas of Brezania including the Yak wetlands.
25. Following this report, Brezanian President convened an emergency meeting with its Army Chief and gave this statement. “The actions carried out by Merovidea close to our border on the intervening night of 6th and 7th April 2017 was not a nuclear test or a threat to use nuclear force... but it was an actual nuclear attack carried out on our soil. Our army is fully prepared to neutralise any threat to our sovereignty.” Thereafter, Merovidea’s ambassador was summoned by Brezania’s foreign minister and was asked to leave the country within 24 hours. As diplomatic efforts failed, relations between the countries nosedived and both the countries mobilised their troops at the border.
26. Realizing that the world was at the brink of a “NUCLEAR WAR OVER WATER”, major powers of the world intervened and mediated between Brezania and Merovidea and were successful in encouraging them to refer their dispute to ICJ.
27. Both Merovidea and Brezania are members of United Nations and WTO and have ratified all four Geneva Convention 12 August 1949, Vienna Convention on Diplomatic Relations (1961), Convention on the Protection and Use of Trans-boundary watercourses and International Lakes (1992), The Convention on the Law of Non- Navigational Uses of International Watercourses, (1997), The Convention on Nuclear Safety (1994), Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention, 1988, Convention on Supplementary Compensation for Nuclear Damage (CSC), 1997, United Nations Convention to Combat Desertification (1994), Convention on the Prevention of Marine Pollution by the dumping of wastes and Other Matter (1972), UN Convention on the Law of the Sea, International Covenant on Civil and Political Rights (1966) & Ramsar Convention. They are also members of NAARC (North Ambrosia Association of Regional Cooperation).

28. Applicant, the Republic of Merovidea, respectfully requests that this Court adjudge and declare that:

- i. Brezania has violated the “Treaty of Equity” and “Uba Agreement” governing the equitable sharing of water and by doing this Brezania has violated the right to water of Merovidean people
- ii. Brezania has caused irreversible environmental damage to Merovidea and must make reparations to Merovidea for all direct and indirect expenses incurred and accruing as a result of its actions (and inactions) regarding environmental and economic damage and the liability of Brezania in respect to environmental damage is co-extensive with the corporations directly causing this damage.
- iii. Merovidea has a right to subject assets of Central Bank of Brezania to enforcement proceedings.
- iv. Merovidea has a right to put strict import controls on Brezanian imports until its industries continue to cause environmental damage to Merovidea and the same is within its rights being a member of WTO.
- v. Merovidea has a right to conduct nuclear tests on its soil and has not violated any principle of international law.
- vi. Merovidea has sole right over the creek of Tenling as per historical evidence.

29. Respondent, the Federation of Brezania, respectfully requests that this Court adjudge and declare that:

- i. Brezania has not violated the “Treaty of Equity” and the “Uba Agreement” and is entitled to the defence of necessity for interlinking the rivers and constructing dams for mitigating floods.
- ii. Brezania is not responsible for any environmental damage sustained by Merovidea. In any case, Brezania cannot be held liable for the actions of its corporations.
- iii. Merovidea has breached international law obligations by expropriating the assets of Central Bank of Brezania in Merovidea.
- iv. Merovidea has violated international law obligations being a member of WTO by putting undue trade restrictions on Brezania.

- v. Merovidea has violated principles of international law by conducting nuclear tests close to its border with Brezania and must make reparations to Brezania for conducting these tests and incidental environmental damage sustained by Brezania especially to the Yak wetlands.
- vi. The Creek of Tenling shall be divided mid-channel as per International Law.

TREATY OF EQUITY

June 5, 1991

TREATY BETWEEN THE REPUBLIC OF MEROVIDEA AND THE FEDERATION OF BREZANIA CONCERNING THE EQUITABLE SHARING OF WATERS OF THE GREAT RIVER AND ITS PRESERVATION

Preamble

The Republic of Merovidea and the Federation of Brezania, being conscious of the fact that the Fountain river system is the lifeline of the North-Amber Sub Continent and acknowledging their long history of sharing its waters for centuries without any dispute are now desirous of formalising their mutual rights and duties towards this shared heritage and natural resource on the principles of equity, have resolved to conclude a Treaty in furtherance of these objectives, and for this purpose have named as their plenipotentiaries :

THE GOVERNMENT OF Merovidea:

Mr. Delphi Wig, Prime Minister of Merovidea;

THE GOVERNMENT OF BREZANIA:

Mr. Antrix Dupont, President of Brezania, and

Who, having communicated to each other their respective full powers and having found them in good and due form, have agreed upon the following Articles:

Article 1

Definitions as used in this Treaty:

1. The terms "Article" means an Article of, this Treaty.
2. The term "Party" means the Party to the Treaty that is Federation of Brezania and Republic of Merovidea
3. The term "River System" or "Rivers" refers to the "Fountain River System"
4. The term "Fountain River System" means the rivers originating in the fountain mountain ranges namely, the Great River, Zastu, Ayastu, Niaramstu, Valyur, Kotur and Phynn and including all their tributaries, distributaries and connecting Lakes, if any.
5. The term "Connecting Lake" means any lake which receives water from, or yields water to the Great River or any of its tributaries

Article 2

Both parties will share waters of the river system for agricultural, domestic, household and municipal use, industrial use, power generation use as also transportation without polluting its waters.

Article 3

The parties undertake that it shall be their primary responsibility under this treaty to take all necessary steps to preserve the rich ecosystem associated throughout the course of the rivers.

Article 4

The parties will preserve the status of water sharing as existing at the time of entering the treaty subject to Article 5.

Article 5

Any change in present status of water sharing shall be based on equitable principles and must be done by obtaining prior consent or taking the other party into confidence.

Article 6

Notwithstanding anything contained in Article 4 & Article 5 the parties can take all measures related to rivers required to meet the basic necessities of their growing population.

Article 7

The treaty was to be valid for a period of 30 years upon expiry of which it can be further extended by a joint review of both the parties.

Article 8

- i. This Treaty consists of the Preamble, the Articles hereof, and may be cited as "Treaty of Equity"
- ii. This Treaty shall be ratified and the ratifications thereof shall be exchanged in Bamascus. It shall enter into force upon the exchange, of ratifications, and will then take effect from the fifth day of July 1991.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

DONE in triplicate in English at Bamascus, on this Fifth day of June, 1991

For the Republic of Merovidea
Mr. Delphi Wig
Prime Minister of Merovidea

For the Federation of Brezania:
Mr. Antrix Dupont,
President of Brezania

5th June, 1991

ADVOCATES LEGION

Moot preposition authored by: - **Mr. Apoorv Bhardwaj**, Advocate, Delhi High Court, Alumni (VIPS) with special thanks to our knowledge partner **The Indian Society of International Law (ISIL)**, New Delhi, specially **Prof. S.K. Verma**, Secretary General, ISIL and **Dr. Vinai Kumar Singh**, Deputy Director, ISIL for giving their valuable opinion on moot problem.

Note: Any attempt to contact the author of moot preposition or the knowledge partner shall directly lead to disqualification and the organizers shall forfeit any amount submitted by the participants.