

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE KINGDOM OF ARKAM (APPLICANT)
AND THE STATE OF RANDOLFIA (RESPONDENT)
ON THE DIFFERENCES BETWEEN THEM
CONCERNING THE INTERNATIONAL CRIMINAL COURT**

jointly notified to the Court on 1 November 2003

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE LE ROYAUME D'ARKAM (REQUÉRANT) ET
L'ÉTAT DE RANDOLFIE (RÉPONDANT)
VISANT À SOUMETTRE À LA COUR INTERNATIONALE DE JUSTICE
LES CONTESTATIONS QUI LES OPPOSES
CONCERNANT LA COUR PÉNALE INTERNATIONALE**

notifié conjointement à la Cour le 1 novembre 2003

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

The Hague, 1 November 2003

On behalf of the Kingdom of Arkam and the State of Randolfia, in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Special Agreement for Submission to the International Court of Justice of the Differences between the Kingdom of Arkam and the State of Randolfia Concerning the International Criminal Court, signed in Washington, D.C., on 15 October 2003.

Ambassador of the Kingdom of Arkam
to the Kingdom of The Netherlands

Ambassador of the State of Randolfia
to the Kingdom of The Netherlands

**SPECIAL AGREEMENT
BETWEEN THE KINGDOM OF ARKAM AND THE STATE OF RANDOLFIA
FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE
OF THE DIFFERENCES BETWEEN THEM CONCERNING
THE INTERNATIONAL CRIMINAL COURT**

Arkam and Randolfia,

Considering that differences have arisen between them concerning the International Criminal Court and other matters;

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

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

Therefore, Arkam and Randolfia have concluded the following Special Agreement:

Article 1

The Parties submit the questions contained in the Compromis (together with Clarifications to follow) to the International Court of Justice pursuant to Article 40(1) of the Statute of the Court.

Article 2

(a) The Court is requested to decide the Case on the basis of the rules and principles of general international law, as well as any applicable treaties.

(b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its judgment on the questions presented in the Case.

Article 3

(a) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 2004 Philip C. Jessup International Law Moot Court Competition.

(b) The Parties request the Court to order that the written proceedings should consist

of Memorials presented by each of the parties not later than 16 January 2004.

Article 4

(a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

(b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

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

Done in Washington, D.C., this 15th day of October 2003, in triplicate in the English language.

Ambassador of the Kingdom of Arkam
to the Kingdom of The Netherlands

Ambassador of the State of Randolfia
to the Kingdom of The Netherlands

THE 2004 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

****COMPROMIS****

THE KINGDOM OF ARKAM V. THE STATE OF RANDOLFIA

THE CASE CONCERNING THE INTERNATIONAL CRIMINAL COURT

1. In 1918, following World War I, the monarch of the centuries-old “Duchy of Lengians and Arkamians” abdicated. Three new independent states were established in the former territory of the Duchy: in the western half was created the State of Randolfia (“Respondent” in this Case); the northeastern quarter became the Kingdom of Arkam (“Applicant” in this case); and in the southeastern quarter the Kingdom of Leng was formed. Today, Randolfia, Arkam, and Leng are all developing States, each with a population of about one million. Each of the three States shares a border with the other two.
2. The populations of Arkam and Leng are composed almost entirely of two ethnic groups, Arkamians and Lengians, who differ markedly in appearance. The Arkamians, who migrated to the area from the north in the fifth century AD, generally have red hair and green eyes, while the Lengians, who arrived from the south several centuries later, tend to have brown hair and brown eyes. In Arkam, Arkamians constitute nearly 90 percent of the population, while in Leng, Lengians make up slightly more than 90 percent. In neither country has there ever been a significant number of intermarriages between the two ethnic groups, and relations between them have been tense for centuries, highlighted by periodic episodes of armed conflict. Randolfia is home to a highly multi-ethnic population, with large and roughly equal numbers of Lengians and Arkamians.
3. Arkam and Leng are both constitutional monarchies, with the throne and legislative control in each country held since independence by the ethnic majority. Relations between Arkam and Leng have always been quite cold, and there is little trade or official cultural exchange between the two States, despite their common border.
4. Randolfia is a democracy, with a largely ceremonial Presidency and a government selected by parliament and headed by a Prime Minister. The Randolfian parliament has since independence been closely (but largely peacefully) contested by several ethnically-based political parties. Currently, the Lengian-dominated party is in power. Randolfia is a major trading partner of both Arkam and Leng, with annual trade with Arkam alone constituting approximately 40 percent of Randolfia’s worldwide commerce.
5. In January 2003, a trans-border armed conflict erupted between ethnic Lengians and ethnic Arkamians in Leng and Arkam. The United Nations moved quickly to attempt to quell the fighting in both countries by convening an international peace conference in Cimmeria, the capital of Randolfia, to which the governments of both Arkam and Leng sent high-level delegations.

6. The conflict in Arkam was ended on February 14, 2003, when the leaders of the two ethnic groups in that country agreed to a peace agreement brokered at Cimmeria by the United Nations Secretary-General. The delegates to the Cimmeria peace conference were unable, however, to reach an accord to end the conflict in Leng. Ethnic Arkamians in Arkam continued to provide material and financial support to Arkamians in Leng, who continued to fight against ethnic Lengians in that country.

7. Under the terms of the Cimmeria Peace Agreement, the government of Arkam established a "Truth and Reconciliation Commission" ("the TRC"), modeled after that of South Africa, except that the mandate of the Arkamian TRC was not limited to acts associated with a political objective. In part, its Statute empowered the TRC to "grant a full amnesty for all criminal charges that have been or might be brought based upon any acts, including acts of violence, committed during and in furtherance of the armed conflict between the ethnic Arkamians and Lengians, to any person who makes a full disclosure of all the relevant facts relating to such acts." The TRC was formally created by a valid Act of the Arkamian Parliament on March 1, 2003, and began its operations on April 15, 2003. In its first four months, the TRC granted immunity to 11 individuals, and has been cited by numerous international human-rights organizations as (in a frequently-used phrase) "a shining example of how truth and reconciliation can bring peace to a troubled region."

8. Meanwhile, in Leng, sporadic small-scale fighting continued in the primarily Arkamian northern province of Yuggott. The fighting was spurred by the Greater Arkamian Liberation Army (GALA), a militia with members in both Leng and Arkam dedicated to the secession of the Yuggott province from Leng and its unification with Arkam.

9. On May 1, 2003, the Rome Statute establishing the International Criminal Court entered into force for Leng and Randolfia. Arkam is not a party to the Rome Statute, which its government has repeatedly called "an illegal and dangerous incursion into the concept of State sovereignty." Though Randolfia has enacted domestic legislation implementing the Rome Statute, it does not have any domestic legislation criminalizing acts of genocide, crimes against humanity, or war crimes committed by non-Randolfian nationals outside of its borders.

10. Dr. Herbert West, a citizen of Arkam, is a professor of Arkamian history at Miskatonic University in Arkam, and his scholarship is recognized and respected around the world. He is also one of the leaders of the GALA. In April of 2003, Mr. West made a two-minute audiotape recording at his home in Arkam, in which he urged "my Arkamian brothers and sisters to rid Yuggott – an integral part of our greater Arkamian homeland – of its Lengian occupiers. Eliminate them all: men, women, and children. Eliminate them all! It is the only way to achieve the unity of our land of which our people has dreamed forever. Eliminate them all!" West gave the only copy of the recording to his neighbor, who was also a member of the GALA, but there is no evidence that he issued specific instructions as to what use, if any, should be made of the tape.

11. Members of GALA duplicated the recording, which was then widely circulated to GALA members in both Arkam and Leng. Between May 15 and May 25, 2003, it was repeatedly played on Radio Yuggott, a private radio station controlled by members of the GALA which has supported the GALA's goals in its broadcasts.

12. Beginning on May 16, bands of ethnic Arkamians began to conduct a series of nighttime raids, massacring ethnic Lengians in several towns in Yuggott. Local newspapers surmised that the raids were inspired by West, noting in particular that many of the Arkamians were chanting "Eliminate them all," an apparent reference to his recording. By the end of May, the dead constituted nearly 10 percent of the Lengian population of the province, and the number of Lengian casualties continued to rise in the days that followed.

13. On June 17, 2003, the Lengian ambassador to the United Nations formally requested that the United Nations Security Council authorize the deployment of troops to Yuggott, in order to quell the raids against ethnic Lengians there. Three days later, in response to the Lengian request, the Security Council, explicitly acting under Chapter VII of the U.N. Charter, adopted Resolution 2241, which authorized a multilateral force, designated "IFLEN." In the preamble to the Resolution, the Security Council noted Randolfia's offer to take the lead in organizing and commanding IFLEN, and designated Randolfian Lieutenant General John Legrasse as the commanding officer of the multilateral force. According to the Resolution, IFLEN's mandate was threefold: to enter Yuggott province, to shut down Radio Yuggott, and to put a stop to the bloodshed. IFLEN included troops from thirteen countries in the region, including a small contingent from Arkam.

14. At the insistence of one Permanent Member of the Security Council, Operative Paragraph 7 of the Resolution creating IFLEN included provisions concerning the jurisdiction of the International Criminal Court. The paragraph read, in relevant part:

"that current or former officials or personnel from a contributing State, which is not a party to the Rome Statute of the International Criminal Court, shall be subject to the exclusive jurisdiction of that contributing State for all alleged acts or omissions arising out of or related to . . . IFLEN, unless such exclusive jurisdiction has been expressly waived by that contributing State."

15. During debate on Resolution 2241, all Security Council representatives expressed strong support for the deployment of troops to Yuggott. However, several delegates expressed deep concern about the provisions limiting the jurisdiction of the ICC. The representative of one Permanent Member stated, "We do not believe that Operative Paragraph 7 of the proposed Resolution 2241 is consistent with the Rome Statute or with international law, but the situation in Yuggott compels us to refrain from voting against this Resolution." In the end, ten Members of the Security Council voted in favor of Resolution 2241, with five states abstaining.

16. Lieutenant Joseph Curwen is a citizen and resident of Arkam, and a veteran of several United Nations and multinational peacekeeping missions. On June 28, 2003, the day after the arrival of the first IFLEN troops in Yuggott, GALA snipers attacked an IFLEN platoon under the command of Curwen stationed outside the provincial capital. The platoon consisted of military personnel from several states, including Arkam. Twelve soldiers in the platoon were killed and four others were injured. None of the casualties was of Arkamian nationality.

17. Lieutenant Curwen immediately ordered the remaining members of his platoon to attack and destroy Exhamtown, a nearby village which, according to IFLEN intelligence reports, was a GALA stronghold. The town was undefended by GALA troops, and on June 29, 2003,

Lieutenant Curwen's platoon killed 200 unarmed ethnic Lengian and ethnic Arkamian men, women, and children in Exhamtown.

18. The so-called "Massacre at Exhamtown" was heavily publicized in the print and electronic media in all three countries in the region and throughout the world. On June 30, GALA and the Lengian government jointly announced that they were "horrified" by this event and agreed to a U.N.-monitored cease-fire, which continues to this day.

19. IFLEN commander Gen. Legrasse immediately dismissed Lieutenant Curwen, and the government of Arkam promptly ordered him to return home. Upon Lieutenant Curwen's arrival in Arkam on July 3, the commander-in-chief of the Royal Arkamian Army ordered him to resign his commission without benefits, and served upon him a duly-issued subpoena from the Arkam TRC, requiring him to appear before the Commission within thirty days. Curwen, then a private citizen, promptly left Arkam to visit family members in Randolfia. This trip was not forbidden by the terms of the subpoena or by Arkamian law.

20. On July 20, 2003, Randolfian civilian police in Cimmeria arrested Curwen, after the car he was driving struck and injured a pedestrian. Tests administered at the scene suggested that Curwen was inebriated.

21. Coincidentally, Dr. Herbert West had also traveled to Randolfia in July 2003, as part of a GALA fundraising effort. On July 22, 2003, West was arrested for possession of illegal drugs. The arrest record states that when West arrived at his hotel in Cimmeria, he reached into his pocket to present identification to the hotel's security guard, and he accidentally spilled a small amount of marijuana from his pocket to the floor. The guard immediately reported this to a civilian police officer, who placed West under arrest and took him into custody.

22. Both West and Curwen were charged with minor offenses in Randolfia, indicted, and jailed, all consistent with Randolfian domestic law and with applicable international norms. Nonetheless, the arrests of the two men attracted intense international press attention. On July 23, *The Randolfia Post-Intelligencer*, a highly-respected daily newspaper published in Cimmeria, ran an editorial urging the government of Randolfia to send these two "war criminals" to the newly established International Criminal Court in The Hague. Eliza Tillinghast, the Randolfian Minister of Justice, dispatched a communiqué, dated July 25, 2003, to the Registrar of the International Criminal Court, proposing to extradite both individuals to the custody of the Court, and requesting that the Registrar indicate "the Court's willingness to exercise its jurisdiction under Article 13(a) of its Statute" to try them. The communiqué stated in relevant part:

It has come to my government's attention that our civilian police hold in custody two citizens of Arkam, each of whom may conceivably be guilty of international crimes committed in Leng. Mr. Joseph Curwen may be culpable for war crimes he committed while serving in IFLEN, while Mr. Herbert West may be guilty of incitement of genocide. However, under the substantive and procedural criminal laws of Randolfia, my Ministry lacks jurisdiction to prosecute either of these individuals for these crimes.

My government believes that it would be inappropriate to repatriate Messrs. West and Curwen to Arkam, since that country's adoption of the TRC amnesty process makes a genuine prosecution of either of them for these crimes unlikely. Nor will my government

surrender either prisoner to Leng, since we do not have an extradition treaty with that country, and in any event we do not believe that they would receive a fair trial there.

Therefore, we request that the Court take jurisdiction over and try these two men.

23. Upon learning of the Minister's communiqué, on July 26, 2003, the King of Arkam sent a diplomatic note to the President of Randolfia, protesting Ms. Tillinghast's request for the ICC to exercise jurisdiction over West and Curwen. The note indicated that Arkam would not appear before the ICC Chamber to challenge admissibility, in light of Arkam's well-publicized characterization of the ICC as an illegal court. The note concluded, "The supranational International Criminal Court improperly invades the sovereign prerogative of States and, as such, transgresses both the inherent safeguards of all civilized systems of criminal law and the international human rights of those unfortunate prisoners of whatever nationality who might be brought before it."

24. On July 29, the Prosecutor of the ICC sent written notification to Arkam and to all States Parties to the Rome Statute, concluding that "there is a reasonable basis to commence an investigation pursuant to Articles 13(c) and 15 of the Statute into the allegations contained in the communiqué sent by Minister Tillinghast, and any other allegations regarding the conflict in Leng." In the notification, the Prosecutor expressly identified Arkam, Leng, and Randolfia as "States which would normally exercise jurisdiction over the crimes concerned." None of the three States has replied to the notification as of the date of this Compromis.

25. During the month of August 2003, the Prosecutor of the ICC carried out two separate investigations based upon the Randolfian Justice Minister's requests, and the President of the ICC subsequently constituted two Pre-Trial Chambers to conduct proceedings. The investigations and pre-trial proceedings were carried out in conformity with Parts 2 and 5 of the Rome Statute.

26. On September 1, 2003, the ICC Prosecutor announced that Joseph Curwen was charged with the commission of a serious war crime in Leng under Article 8(2)(a) and/or Article 8(2)(e), and with acts of violence against life and person under Article 8(2)(c), of the Rome Statute. Herbert West was charged with incitement to genocide and attempted genocide in Leng under Rome Statute Articles 6(a) and 25(e).

27. Following confirmations of admissibility, on September 9, 2003, the Pre-Trial Chambers issued arrest warrants for Messrs. West and Curwen in conformity with the requirements of Article 58 of the Rome Statute. Since both men remained in the custody of the Randolfian Ministry of Justice, a copy of each warrant was hand-delivered to Ms. Tillinghast.

28. On the same day that the Pre-Trial Chambers issued these arrest warrants, the King of Arkam sent a diplomatic note to the President of Randolfia. Its full text was as follows: "If your Government delivers either of the two Arkamian citizens currently in the custody of your Justice Ministry to the so-called International Criminal Court, Arkam shall immediately and without further discussion recall its Ambassador, close our common border, and impose a complete embargo on all exports to or imports from Randolfia."

29. Faced with potentially crippling economic consequences if his government executed the ICC's arrest warrants, the Prime Minister of Randolfia ordered that the two prisoners continue to be detained in Randolfia, while the foreign ministers of the two countries entered into diplomatic negotiations to resolve the crisis. In light of Arkam's hostility to the ICC, Arkam and Randolfia agreed to submit their dispute to the International Court of Justice and to act consistently with the Court's legal conclusions regarding the disposition of Messrs. Curwen and West. Pending resolution of the case by this Court, Arkam has agreed not to take measures to surrender either prisoner to the ICC. Leng has declined to intervene in this case.

30. Randolfia, Arkam, and Leng are all original members of the United Nations. All are parties to the Vienna Convention on the Law of Treaties, the International Covenant on Civil and Political Rights, the Genocide Convention, the 1949 Geneva Conventions, and the two Additional Protocols of 1977. Randolfia and Arkam have a bilateral extradition treaty. Leng and Randolfia are States Parties to the Rome Statute establishing the ICC. Arkam has neither signed nor ratified the Rome Statute. The three countries are neither signatories nor parties to any other treaties relevant to this case.

31. Applicant, the Kingdom of Arkam, requests that the International Court of Justice adjudge and declare:

- (a) that it would be illegal under international law for Randolfia to surrender Joseph Curwen to the ICC pursuant to the warrant for his arrest because:
 - (1) Arkam has not waived its exclusive jurisdiction to try him, pursuant to Security Council Resolution 2241, and therefore the ICC is without jurisdiction to try him; or, in the alternative,
 - (2) the exercise of jurisdiction by the ICC over a national of a State not a party to the Rome Statute violates the Vienna Convention on the Law of Treaties and customary international law; or, in the further alternative,
 - (3) given the ongoing investigation by the Arkamian TRC into the acts of Mr. Curwen described in the indictment, the exercise of jurisdiction over him by the ICC would violate the principle of complementarity.
- (b) that it would be illegal under international law for Randolfia to surrender Herbert West to the ICC pursuant to the warrant for his arrest because:
 - (1) neither Mr. West nor his allegedly criminal conduct demonstrates the necessary nexus with a State Party to the Rome Statute, or, in the alternative,
 - (2) Mr. West's actions preceded the date upon which the Rome Statute entered into force with respect to Leng and Randolfia, and are thus barred from the ICC's consideration, or, in the further alternative,
 - (3) Mr. West's alleged conduct does not constitute a crime within the competence of the ICC.

32. Respondent, the State of Randolfia, requests that the International Court of Justice:

- (a) determine that Randolfia's decision to surrender Mr. Joseph Curwen to the custody of the International Criminal Court would be consistent with international law, and on that basis reject Applicant's request for relief concerning Mr. Curwen; and
- (b) determine that Randolfia's decision to surrender Mr. Herbert West to the custody of the International Criminal Court would be consistent with international law, and on that basis reject Applicant's request for relief concerning Mr. West.