

**2<sup>ND</sup> INTERNATIONAL MOOT COURT COMPETITION, 2018**

**SCHOOL OF LAW, ANSAL UNIVERSITY**

**MOOT PROPOSITION**

**INTERNATIONAL COURT OF JUSTICE**

**SPECIAL AGREEMENT**

**BETWEEN THE REPUBLIC OF BLUE WATER (APPLICANT)**

**AND THE REPUBLIC OF GREEN DESERT (RESPONDENT)**

**TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE DIFFERENCES  
BETWEEN THE STATES CONCERNING THE UNILATERAL DECLARATION OF  
INDEPENDENCE OF PURPLE VALLEY, INTERPRETATION OF THE  
CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF  
GENOCIDE, 1948 AND DOCTRINES OF SOVEREIGN IMMUNITY AND UNIVERSAL  
JURISDICTION FOR INTERNATIONAL CRIMES INVOLVING INDIVIDUAL  
CRIMINAL RESPONSIBILITY.**

**Jointly notified to the Court on 5<sup>th</sup> October 2017**

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

**THE HAGUE, 5 OCTOBER 2017**

**On behalf of the Republic of Blue Water ( Applicant) and the Republic of Green Desert ( Respondent), 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 Blue Water and Green Desert concerning the Unilateral Declaration of Independence of Purple Valley, Interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 and the Doctrines of Sovereign Immunity and Universal Jurisdiction for crimes involving individual criminal responsibility.**



**Markosa Aurovilla**

**(Ambassador of Blue Water)**

**Rivera Wilbur**

**(Ambassador of Green Desert)**

## SPECIAL AGREEMENT

The Republic of Blue Water and the Republic of Green Desert (hereinafter, after referred to as “the Parties”)

*Considering* the differences that have arisen over the Unilateral Declaration of Independence by Purple Valley in the wake of the Plutonia Massacre launched at the behest of Blue Water and other issues that follow thereafter.

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

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

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



### *Article 1*

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

### *Article 2*

It is agreed by the Parties that the Republic of Blue Water shall act as the Applicant and the Republic of Green Desert 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 based on the rules and principles of general international law and 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.

- c. The parties retain the right to argue on issues of Jurisdiction.

*Article 4*

- a. All questions of procedure and rules shall be regulated in accordance with provisions of the Official Rules of the 2018 Ansal University International Moot Court Competition.
- b. The Parties shall submit their written submissions (memorials) on or before the last due date set forth in the Official Brochure of the 2018 Ansal University International Moot Court Competition.

*Article 5*

- a. The Parties shall accept any judgment of the Court as final and binding upon them and shall execute the same *in toto* and in good faith.

**Markosa Aurovilla**

**(Ambassador of Blue Water)**

**Rivera Wilbur**

**(Ambassador of Green Desert)**

**2<sup>nd</sup> ANSAL UNIVERSITY INTERNATIONAL MOOT COURT  
COMPETITION, 2018**

*The Moot Proposition has been drafted by Prof. Abraham Joseph, Assistant Professor, School of  
Law, Ansal University, Gurgaon.*

**Republic of Blue Water v. Republic of Green Desert**

1. The Republic of Blue Water is a European Nation located in the Eastern part of the Continent. Possessing a land area of 1, 78,629 square kilometers, it has a population of 12 million citizens. It is a coastal country with the Western frontier of the country bordering the famed Black Sea. The country has an old civilization that runs back to 1500 B.C. Various ethnic, cultural and religious groups inhabit the country, with the Dolos and the Simbas being the dominant ethnic groups in the country. The Dolos inhabit the southern part of the country (the semi- autonomous territory of ‘Purple Valley’) and constitute 80% of the population of Purple Valley.
2. Blue Water is a Federal Republic. It is divided into 6 federal units of which Purple Valley is the largest, in terms of both area and population. Historically, Purple Valley has remained semi-autonomous with its own Constitution, Judiciary and political apparatus, with ultimate sovereignty lying with Blue Water. Blue Water’s Constitution prohibits the secession of its federal territories under all circumstances. The country proclaims itself a Multi-Ethnic and Secular Nation that respects the interests of all groups. Despite these assertions, there have existed social tensions between various groups.
3. Purple Valley has an area of 46,374 sq.kms. has a population of 5 million inhabitants. As stated above, majority of the inhabitants, belong to the Dolo ethnicity. The Dolos have historically been regarded as a unique people with different ethnic features and animistic religious beliefs, which mark them as distinct from the rest of the country who do not share these traits. They are regarded as an Indigenous Community. The region is rich in natural

resources and contributes close to 30% of the GDP of the country. Leading mining companies of the world have their business interests in Purple Valley. While the Dolo are peaceful, they strongly resist any interference in their internal affairs and way of life. Mining activities over the last few decades has depleted their natural habitat and has threatened their peaceful, serene and non-confrontational approach to existence. Despite their indigenous status, the Dolo were not afforded any protective discrimination status within Blue Water.

4. In December 2014, a movement known as the 'Free Dolo Movement' (FDM) led by a group of radical Dolo youth for the liberation of the country from Blue Water's control was initiated. The movement gained steam with more than 4 lakh individuals joining it in the first month of its inception. The rampant exploitation of the county by foreign mining interests with the tacit support of Blue Water was the rationale behind the movement. In addition, fighting for the right of self-determination among the indigenous Dolo people was also a valued objective. Over the next 6 months, an estimated 2 million people in Purple Valley were believed to be associated with the movement directly or indirectly. The movement is indigenous and homegrown and does not have overt or covert external support.
5. The movement, though started on a peaceful note, eventually took on a violent turn with symbols and institutions representing Blue Water being attacked. Central Blue Water forces were also targeted attacked and killed. In May 2016, a referendum was held in Purple Valley on the question of independence. The question for the voters was: *Would you like Purple Valley to secede from Blue Water and become an independent nation, which promises the legitimate self-determination aspirations of the Dolo People?* An overwhelming 60% people voted 'Yes' to indicate the desire for self-determination whereas, 40% voted 'No'. The voting percentage was 42% chiefly because of fear of reprisal from the Central Blue Water government.
6. Blue Water responded by declaring an emergency in Purple Valley, abrogating the Purple Valley Constitution and suspending the application of all fundamental rights in Purple

Valley. It refused to accept the results of the referendum terming it as 'illegal'. Central armed forces, vested with extraordinary powers were deployed across Purple valley. These forces crushed dissent with an iron hand, amidst numerous allegations of human rights violations. Dolo scattered across the country were subject to humiliation, discrimination and violent physical attacks. No further progress happened on the referendum.

7. On 10 August 2016, the armed forces were informed about a mass meeting of Dolo boys and men to discuss the future strategy of the FDM. The meeting was scheduled to take place on 17 August. Blue Water desperate to prevent the meeting and display the might of 'Simba Power' decided to sabotage the meeting. On 17 August, a state sponsored militia entity, 'Simba Warriors' opened fire on the innocent Dolo volunteers who had assembled for the meeting killing an estimated 25,000 people in a single day. The massacre evoked an international outcry and came to known as the 'Plutonia Massacre' (after Plutonia, the place where the massacre happened). Almost all the dead were Dolo's, who the international community believed were targeted because of their ethnic origin and ancestry. Owing to an international outcry, Blue Water was compelled to pull back its forces from Purple Valley, restore Constitutionalism and democratic normalcy in the region. Blue Water acknowledged the massacre and accepted the supervisory control it had over the Simba Warriors. The massacre intensified the pro-independence movement in Purple Valley.
8. The International Commission of Concerned Jurists (ICCJ), The Genocide Research Network (GRN) and the International Association of Genocide Watchers (IAGN) did factual and empirical analysis on the massacre and came to the conclusion that the Plutonia Massacre constituted a 'Genocide' within the meaning of the Convention for the Prevention and Punishment of the Crime of Genocide, 1948 (Genocide Convention). On 22 August 2016, the United Nations Security Council passed Resolution 5221 referring the matter to the ICC for investigation and prosecution. This step according to the UNSC was essential as Blue Water was not a member of the ICC and individual criminal responsibility for the Plutonia Genocide was the need of the hour. Blue Water staunchly objected to the referral terming it as a 'gross abuse of international law'. Kyna one of the Permanent

Members of the UN Security council also objected to Blue Water's forceful referral to the ICC on the ground that it was not fair and proper to refer a non-party to the jurisdiction of the ICC. However, this country did not block the resolution using its Veto power but merely abstained from voting. The prosecutor of the ICC, pursuant to Resolution 5221 launched a preliminary investigation into the Plutonia massacre and concluded the need for a full-fledged investigation. The Prosecutor's investigation, which concluded on 9 January 2017, made out a sufficient case for the trial of 'General Jack Jupiter', a self-styled state sponsored militia officer who commanded the Plutonia massacre. In addition, the Prosecutor concluded that the Plutonia massacre constituted 'Genocide' with the meaning of the Rome Statute. The Prosecutors report affirmed the need to hold General Jack Jupiter individually responsible for the crime of genocide under the Rome Statute and requested Blue Water to hand over General Jupiter to the ICC for trial. A formal Arrest Warrant issued under Article 58 of the Rome Statute by Pre-Trial Chamber I (PTC-1) was turned down and General Atlanta, the President of the Country appointed General Jupiter as the Home Minister of the country. The President turned down subsequent requests for extradition on the ground of 'Sovereign immunity' and refusal to accept the jurisdiction of the ICC. The Prosecutor realizing that the ICC warrant would not be honored requested the UNSC to secure the arrest of General Jupiter using its powers.

9. To tackle the situation, Resolution 5222 proposed by Green Desert was passed on 10<sup>th</sup> January, 2017 which required Blue Water to hand over General Jupiter either to the ICC or to Green Desert for the purpose of a criminal trial based on the principle of individual criminal responsibility. Blue Water objected to the Resolution terming the same as a gross violation of International Law.
  
10. Following the Plutonia massacre and the refusal by Blue Water to hand over General Jupiter to the ICC, the semi-autonomous administration of Purple Valley held a referendum on 6 March 2017 for full and final independence from Blue Water. The question for the voters was: *In the wake of the Plutonia massacre, which is the most recent illustration of genocide and violence against the Dolo people, should the Dolo People sever all ties with Blue*



*Water and Unilaterally Declare its independence from the country?* A resounding 85% of the voters of Purple Valley voted 'Yes' as opposed to 15% who voted no. The voter turnout for the referendum was 94%. On 10 March, the administration of Purple Valley unilaterally declared independence from Blue Water. Within 48 hours, 105 countries recognized Blue Water as an independent nation and initiated plans to start diplomatic relations with the new nation. These countries made public statements justifying the Unilateral Declaration of Independence (UDI) by Purple Valley.

11. Pursuant to the UDI by Purple Valley, the United Nations Security Council acting under Chapter VII of the Charter passed Resolution 5223 on 9 March 2017 recognizing Purple Valley as a State and making it mandatory for Blue Water to free the nation and grant it full independence. The Successful Resolution was introduced by Green Desert, a P5 member of the United Nations. Blue Water rejected the Resolution as being illegal and having no binding effect. It claimed the UDI and the Resolution to be violative of its territorial integrity.
12. With Blue Water refusing to comply with Resolutions 5221 and 5222, Green Desert acting through its foreign office issued an international arrest warrant for General Jupiter, requesting members of the international community to arrest the latter if he happens to visit their territory. In addition, the foreign office of Green Desert called an international press conference wherein they promised to use all measures possible to secure the arrest and trial of General Jupiter.
13. Owing to international pressure, Blue Water agrees to form a domestic tribunal to try General Jupiter. However, the country asserted that the trial would be an in-camera trial, which would not be accessible to members of the international community except 5 journalists to be nominated by the United Nations with the approval of Blue Water. In addition, Blue Water stated that General Jupiter could be tried only in 2022 after the end of a constitutionally mandated 6-year term. This condition was not acceptable to the ICC or Green Desert who pressed ahead with the enforcement of the UNSC resolutions.

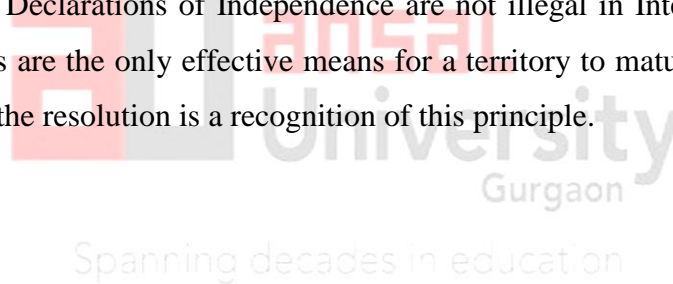
14. Unable to solve the stalemate and failing to arrive at a negotiated settlement, the Republics of Blue Water and Green Desert agree to submit the dispute to the International Court of Justice. Both countries agree (subject to jurisdictional reservations) that the case involves interpretation of complex questions of international law.
15. The applicant Blue Water submits that :
- a. UN Security Council Resolution 5221 passed at the behest of Green Desert that forcefully referred Blue Water to the International Criminal Court despite its staunch reservations and objections in the absence of its membership of the Rome Statute and the ICC is a violation of International Law. A state cannot be subject to treaty obligations it does not voluntarily assume.
  - b. UN Security Council Resolution 5222 passed at the behest of Green Desert that requires Blue Water to forcefully hand over General Jupiter to the ICC or Green Desert is a violation of International Law. Since Blue Water is ready to domestically try General Jupiter, albeit conditionally, its stand is consistent with the principle of complementarity. In addition, UNSC Resolution 5223 is violative of the Genocide Convention, 1948 that mandates that States assume Jurisdiction for the offence committed in their territories. By compelling Blue Water to hand over General Jupiter either to the ICC or Green Desert, the Resolution violates *jus cogens* and treaty prohibitions which impose obligations on States to directly assume jurisdiction and create strong domestic frameworks for prosecuting genocide. The manner and method of domestic trials is a concern of municipal law and not international law. International Criminal Law should subordinate itself to domestic criminal prosecutions irrespective of how imperfect the domestic mechanisms may be.
  - c. UN Security Council Resolution 5223 passed at the behest of Green Desert, which ratifies the UDI of Purple Valley and compels Blue Water to grant unconditional independence to Purple Valley is a violation of International Law.

d. The issue of an international arrest warrant by Green Desert against General Jupiter is illegal and violative of international law. General Jupiter enjoys 'Sovereign Immunity' as long as he serves as the Home Minister of the country.

16. The Respondent Green Desert submits that :

- a. The referral of Blue Water to the ICC by the UNSC by way of Resolution 5221 is consistent with International law since the Rome Statute permits the referral of a non-state party to the jurisdiction of the ICC. The ICJ cannot adjudicate on the *vires* of a globally ratified treaty instrument. This measure is genuine and lawful exercise of global power under Chapter VII of the UN Charter, essential to maintain international peace and security and is not subject to review, judicial or otherwise by any authority.
- b. UNSC Resolution 5222 is legal as it gives effect to the mandate of the ICC. The ICJ cannot give a verdict that renders the ICC and its powers nugatory. Furthermore, Complementarity has to be unconditional and not a potential abuse of the process. An in-camera trial for an alleged *Genocidaire* violates the principles of open justice and fair trial for the victims and the international community, which has an interest in protecting the rights of Purple Valley and the Dolo people. In addition, postponing the trial until 2022 was unacceptable as it is a direct contravention of international obligations. ICC, its mechanisms and jurisprudence is today part of Customary International Law.
- c. The issue of an international arrest warrant by Green Desert against General Jupiter is legal as any immunity pertains to actions taken during the office and not prior. Since the General committed the acts in question prior to his assuming office, he enjoys no immunity. In addition, since General Jupiter was referred to the ICC by the UNSC, the latter is under an obligation to aid the ICC in the arrest and prosecution of the General. This assumes added significance in light of the fact that the ICC and the international community has no global police force that can take enforcement actions.

- d. The Principle of Universal Jurisdiction has today evolved since the days of the prior judgments of the Court and the creation of the International Criminal Court and the rise of individual criminal responsibility jurisprudence.
- e. The ICJ cannot sit in judgment over Resolution 5223 as it an Independent Organ of the United Nations over which the ICJ enjoys no jurisdictional power. Even if the ICJ assumes jurisdiction, the ratification of the Universal Declaration of Independence of Purple Valley by the UNSC was essential to give effect to provisions of the Montevideo Convention, protect the human rights of the Dolo People and essentially a justifiable measure to ‘maintain peace and security’ within the mandate of Chapter VII of the UN Charter. Non-intervention by the UNSC would have been an abdication of its Chapter VII obligations.
- f. Unilateral Declarations of Independence are not illegal in International Law. UNSC resolutions are the only effective means for a territory to mature into an independent state, and the resolution is a recognition of this principle.



## **Appendix 1 (Relevant Provisions)**

### **1. UN Security Council Resolution 5221 (Relevant aspects):**

“Recognizing the gravity and seriousness of the Plutonia Massacre and taking cognizance of the International Community’s call for urgent action on the Purple Valley situation, the UN Security Council refers the investigation and inquiry of the massacre to the office of the Prosecutor of the International Criminal Court. All member states of the United Nations, especially those who are members of the Rome State should endeavor to fully cooperate with the Prosecutor of the International Criminal Court. This Resolution requires Blue Water to fully cooperate with the ICC Prosecutor”. This Resolution is passed under Chapter VII of the UN Charter”.

### **2. UN Security Council Resolution 5222 (Relevant aspects):**

“In the wake of the Prosecutors final report unearthing sufficient evidence against General Jack Jupiter for the crime of Genocide and the issue of an Arrest Warrant by PTC-I necessitating a trial, Blue Water is required to take all steps to hand over General Jupiter to ICC authorities at Hague. This entails his immediate removal from his high executive office and end of any immunities he may have enjoyed by virtue of his office. Any denial/refusal of this mandate would entail action from the UNSC acting under Charter VII for the maintenance of international peace and security”. This Resolution is passed under Chapter VII of the UN Charter”.

### **3. UN Security Council Resolution 5223 (Relevant aspects):**

“Recognizing that it is impossible for the indigenous Dolo people of Purple Valley province of Blue Water to exist under the Federal framework of the country, save, with grave dangers to their life and property, the UNSC ratifies the UDI passed by the appropriate authorities of Purple Valley and accepts the same to have legal effects of a formal and legitimate secession of a peaceful people exercising a legitimate claim of self-determination as victims of a Genocidal attack”. This Resolution is passed under Chapter VII of the UN Charter”.

**4. International Arrest Warrant issued by the Republic of Green Desert:**

“Green Desert is fully authorized to secure the arrest of General Jack Jupiter, Home Minister of Blue Water, wanted by the ICC for the offence of Genocide. The international community is requested to exercise the warrant by arresting General Jack Jupiter if he happens to come to their respective territories, notwithstanding claims of immunity which may be made, as such claims do not exist for individuals wanted for mass crimes demanding individual criminal responsibility”



## Appendix 2

1. Both the Republic of Blue Water and Green Desert are members of the United Nations. Blue Water is not a member of the ICC whereas Green Desert is. Both the nations are members of all other relevant international treaties including the Genocide Convention, 1948.
2. All the Resolutions against Blue Water have been proposed and initiated by the Republic of Green Desert.
3. Participants are free to incorporate additional issues, which may be relevant to the problem.

