

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE STATE OF AMALEA (APPLICANT)
AND THE REPUBLIC OF RITANIA (RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE PARTIES
CONCERNING CERTAIN ACTIVITIES WITHIN THE MALACHI GAP**

jointly notified to the Court on 17 September 2013

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE L'ÉTAT D'AMALÉA (DEMANDERESSE)
ET LA RÉPUBLIQUE DE RITANIE (DÉFENDERESSE)
VISANT À SOUMETTRE À LA COUR INTERNATIONALE DE JUSTICE
LES DIFFÉRENDS QUI OPPOSENT LES DEUX PARTIES CONCERNANT
CERTAINES ACTIVITÉS DANS LE MALACHI GAP**

notifié conjointement à la Cour le 17 septembre 2013

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

The Hague, 17 September 2013

On behalf of the State of Amalea (“the Applicant”) and the Republic of Ritania (“the Respondent”), 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 Certain Activities within the Malachi Gap, signed in The Hague, The Netherlands, on the 17th day of September in the year two thousand thirteen.

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

Ambassador of the Republic of Ritania
to the Kingdom of The Netherlands

SPECIAL AGREEMENT

SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE STATE OF AMALEA AND THE REPUBLIC OF RITANIA ON THE DIFFERENCES BETWEEN THEM CONCERNING CERTAIN ACTIVITIES WITHIN THE MALACHI GAP

The State of Amalea and the Republic of Ritania,

Considering that differences have arisen between them concerning the certain activities within the Malachi Gap;

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 (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 Amalea shall act as Applicant and the Republic of Ritania 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 2014 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 the date set forth in the Official Schedule of the 2014 Philip C. Jessup International Law Moot Court Competition.

Article 5

- (a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorized, have signed the present Compromis and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this 17th day of September in the year two thousand thirteen, in triplicate in the English language.

Ambassador of the State of
Amalea to the Kingdom of the
Netherlands

Ambassador of the Republic of Ritania
to the Kingdom of The Netherlands

The 2014 Philip C. Jessup International Law Moot Court Competition

****Special Agreement****

The State of Amalea v. the Republic of Ritania

The Case Concerning Certain Activities within the Malachi Gap

1. Amalea, a developing, newly industrialized island state, and the Republic of Ritania, a developed, industrialized peninsular state, are separated by the Strait of Malachi, a channel connecting the Dorian Sea (to the North) and the Occitan Ocean (to the South).
2. The Strait of Malachi ranges from 217 nautical miles (at its narrowest) to 386 nautical miles (at its widest). At its deepest point, in an area known as the Amalean Trench, the Strait reaches a depth of over 5,000 meters. Within approximately 100 nautical miles of the coast of Ritania, the Strait also contains several oceanic ridges and plateaus, where the water depth is at places as little as 20 meters. A major international sea lane traverses some of the deeper areas of the Strait of Malachi. A map of the Malachi Gap and its neighboring land masses is attached as Appendix A hereto.
3. The Strait of Malachi itself contains abundant fish and shellfish stocks, and Amalean fishing vessels have historically plied almost every part of the Strait, regularly coming within less than 40 nautical miles of the Ritanian coast. Fish accounts for roughly 40% of the protein content of the Amalean diet. Amalea's fishing industry supplies the domestic market and is also responsible for exports generating more than 5% of the country's USD 45 billion GDP. The industry directly employs over 250,000 people.
4. Ritania, by contrast, has never developed a commercially significant fishing industry and its people do not consume significant quantities of seafood. Ritanian fishing in the Strait of Malachi is limited to sedentary fish species found within five nautical miles of the coastline.
5. In the 1940s, Ritanian geologists discovered significant reserves of petroleum and natural gas beneath the seabed in the Strait of Malachi, though at the time it was not technologically feasible to exploit these deposits.

6. In early 1946, Amalea and Ritania began discussions regarding appropriate control and regulation by each of them of the resources within and beneath the high seas beyond their respective territorial waters. These discussions continued for over a decade, but negotiations stalled over the Strait of Malachi. On 19 September 1956, the President of Ritania issued a proclamation claiming all rights to the natural resources of the subsoil and sea bed of the continental shelf contiguous to the coasts of Ritania. The proclamation also stated that where the continental shelf extends to the shores of another State, the boundary of the shelf is to be determined in accordance with equitable principles.

7. On 29 October 1957, Amalea established bounded conservation zones in those areas of the seas contiguous to its coasts (including large portions of the Strait of Malachi) where fishing activities had been developed and maintained solely by Amalea, and declared that fishing activities in those areas were subject to the regulation and control of Amalea.

8. In the United Nations General Assembly, both Amalea and Ritania voted in favor of UNGA Resolution No. 1105 (XI) convening the First United Nations Conference on the Law of the Sea. In 1958, both countries signed the four Geneva Conventions on the Law of the Sea, but not the Optional Protocol on the Compulsory Settlement of Disputes. Ritania ratified all four Conventions in February 1961, while Amalea ratified them in September 1962.

9. For the next 11 years, Amalea and Ritania managed their respective interests in the resources within and beneath the Strait of Malachi without further attempts at negotiating bilateral arrangements. Both participated in the Third United Nations Conference on the Law of the Sea from 1973 to 1982.

10. In April 1983, Ritania signed and ratified the 1982 Convention on the Law of the Sea (UNCLOS), and claimed a 200 nautical mile exclusive economic zone (EEZ) the same year. In relevant part, Ritania's declaration stated: "in cases where the maritime boundary with a neighboring state has not been definitively fixed, or where Ritania and another state have asserted potentially conflicting or overlapping claims to EEZs, these matters shall be determined by Ritania and the other state in accordance with international law."

11. Amalea signed UNCLOS in June 1983, but has never ratified it. However, on 13 June 1984, the President of Amalea, by proclamation, asserted his country's claim to a 200 nautical mile EEZ. Among other things, the Proclamation also claimed the right to control energy production, as well as the establishment and use of artificial islands, installations, and structures having economic purposes, within the EEZ. With respect to the Strait of Malachi, the proclamation declared that the boundary between Amalea's and Ritania's exclusive economic zones was to be determined by the two countries in accordance with equitable principles, giving due consideration to Amalea's historical dependence on fishing resources.

12. Amalea was among the first nations in the world to develop and implement sustainable fishing practices. In 1986, its legislature enacted the Coastal Fisheries Protection Act, which stated that it applied, *inter alia*, to the EEZ. The Act established a licensing scheme for all fishing activities, granting authority to the Amalean Environmental Protection Agency to regulate any activities that posed risks to fish stocks.

13. Through a Note Verbale issued four days after the promulgation of the Coastal Fisheries Protection Act, Ritania objected to any potential interpretation of the Act as applying to any part of the Strait of Malachi, on the grounds that the potentially conflicting EEZ claims of the two states had never been resolved.

14. In 1988, a Ritanian exploration vessel discovered the Erebus gas field, a massive natural gas deposit located in deep waters within the Strait of Malachi, approximately 150 nautical miles from the coast of Ritania. By then, advances in oil and gas extraction technology were such that Ritania believed the exploitation of the Erebus field could become commercially feasible within the next decade.

15. Between 1988 and 1992, Amalea and Ritania engaged in extensive negotiations about the demarcation of their EEZ claims in the Strait of Malachi, resulting in a treaty dated 30 March 1992. With respect to an area of approximately 1,200 square nautical miles, known as the Malachi Gap, the parties agreed to apportion their respective rights as set out in the extracts of the Malachi Gap Treaty at Appendix B hereto. The areas previously claimed by

each state as its Exclusive Economic Zone outside of the Malachi Gap were stipulated to constitute that state's "uncontested EEZ."

16. The Malachi Gap Treaty was hailed by both sides as an historic achievement, which allowed Amalea to protect vital fisheries resources within the Strait of Malachi while allowing Ritania to develop subsea resources such as the Erebus gas field. Neither the Treaty nor any of its *travaux préparatoires* makes any specific reference to military activity in the area or prescribes or proscribes any specific commercial or environmental activities. The "whereas" clauses of the Treaty do provide, however, that "a key shared objective" of the parties to the Treaty was "to balance, and insofar as possible to promote, the interests of the States Parties in respect of exploration, exploitation, and protection of this maritime area of great importance to them both." Both parties ratified the Malachi Gap Treaty in January 1993.

17. Later in 1993, Amalea amended its Coastal Fisheries Protection Act in two relevant respects: (a) clarifying that, within the Strait of Malachi, the law applied to "waters within Amalea's uncontested exclusive economic zone and waters within the Malachi Gap area over which Amalea has jurisdiction, as set out in the Malachi Gap Treaty of 1992," and (b) requiring environmental impact assessments "for all activities undertaken within the Strait of Malachi which could adversely affect Amalea's sovereign rights under international law."

18. For most of recorded history, the people of Amalea have prized the flesh of the Dorian wrasse (*Labridae doriensis*), a brightly colored marine fish known to breed only in a small area of the Strait of Malachi. The Dorian wrasse is typically consumed on important holidays or feast days, and tradition requires that it be eaten at such major events as coming-of-age ceremonies, weddings, and funerals. While other species of the wrasse family are regularly claimed by experts to be interchangeable with the Dorian wrasse in terms of nutritional and cooking characteristics, many Amaleans insist that the tastes are different. Because of these strong traditions, numerous efforts to import and market substitutes have been unsuccessful. Over the last several decades, the Amalean fishing industry has developed an export market for the fish as well, initially aimed at Amalean expatriates. More recently, preparations of the Dorian wrasse have been featured to great acclaim in Michelin-starred restaurants in Paris, New York, Tokyo, Milan, and Doha. The Amalean Ministry of Trade has

reported that domestic and foreign sales of the fish generated some USD 160 million annually by the year 2000. Exporters have regularly projected higher returns over the next decades.

19. The breeding ground of the Dorian wrasse occupies less than 50 square kilometers within the shallow waters of the Sirius Plateau, an area of the continental crust in the Malachi Gap approximately 40 nautical miles from the Ritanian coast and approximately 180 nautical miles from the coast of Amalea (*see* Appendix A). The Sirius Plateau is geomorphologically and geologically related to the Ritanian landmass, where the waters are on average less than 20 meters deep.

20. In late 2006, at the annual shareholders' meeting of one of her companies, Ritanian billionaire Esmeralda Kali announced her intention to finance the construction of Excelsior Island on the Sirius Plateau. The plans contemplated the creation of a large, donut-shaped artificial island made of oceanic sand and rock dredged from the Malachi Gap area. According to the detailed engineering plans for Excelsior Island, the reclaimed land area itself would be located just outside the Malachi Gap, entirely within Ritanian's uncontested EEZ. Kali, through her wholly-owned project company, Excelsior Island Gas & Power Limited (EIGP), planned to use Excelsior Island as a facility for the production of seven million metric tons per annum of liquefied natural gas (LNG) from the Erebus field. The LNG facility would be powered by an 800-megawatt combined wind farm and hydroelectric plant, to be built just off the coast of Excelsior Island, wholly within Ritanian's uncontested EEZ. Kali's engineers had concluded that when the wind is strong, excess energy from the wind turbines could be used to pump water from the hollowed center of the island. At times of low wind, the stored water could be released, powering the hydroelectric turbines and ensuring a constant supply of power to the LNG facility. The two billion cubic meters of sand and rock needed for the construction of the island would be dredged entirely from areas located within the Malachi Gap.

21. Upon learning of the proposal to build Excelsior Island, Amalea's Foreign Minister summoned the Ritanian Ambassador, who confirmed that the feasibility of EIGP's plan was currently "under review" by the Ritanian government. During the meeting, the Amalean Foreign Minister made clear that "such a large-scale project cannot be undertaken except

with the consent of both Amalea and Ritania, in accordance with the letter and spirit of the Malachi Gap Treaty.”

22. The following day, the Ritanian Ambassador responded with a note stating, in relevant part, as follows:

If it is approved by the appropriate Ritanian authorities, Excelsior Island itself (consisting of the reclaimed land, all associated structures, and the offshore wind farm) will be built entirely outside of the Malachi Gap and within Ritania’s uncontested exclusive economic zone. Therefore, Amalea’s consent for the project is not required. To the extent that any activities relating to the construction of Excelsior Island will take place within the Malachi Gap, Ritania will take appropriate measures to ensure that such activities are carried out in full compliance with Ritanian law, as well as with Ritania’s obligations under the Malachi Gap Treaty and any applicable norms of international law.

23. As part of the Ritanian licensing process, EIGP was required to conduct an environmental impact assessment (EIA) for the Excelsior Island project. Under Ritanian law, an EIA for a proposed marine development project is reviewed by Ritania’s Department of Resource Management and any other government agency claiming a specific interest. If all reviewing agencies are satisfied with the EIA and other information relating to the project, the Department of Resource Management issues a license authorizing the developer to proceed. Under these laws, EIA requirements apply to activities “on or in Ritanian territory and any other areas over which Ritania may exercise sovereign rights in accordance with international law.” In early 2008, EIGP submitted an EIA for the Excelsior Island project. The EIA did not address the potential impacts of the dredging program on the waters of the Malachi Gap, or on fish species living there.

24. Amalea consistently maintained that Ritania had no right to engage in or to allow dredging within the Malachi Gap, and that even if it did have such a right, Ritania could not permit such dredging to proceed without at least a full EIA specifically covering all of its potential impacts. Amalea expressed particular concern regarding the fate of the Dorian wrasse, given the proximity of its only known breeding ground to the proposed dredging in the Sirius Plateau. Ritania maintained that its regulatory processes complied with international law.

25. Shortly after EIGP filed its EIA, the Amalean Environmental Protection Agency published a report prepared by the International League for Sustainable Aquaculture (ILSA), an international non-governmental organization whose members include prominent marine scientists from around the world. The report concluded that any major dredging activity in the Malachi Gap would likely interfere with ongoing research and conservation efforts, and could potentially prove catastrophic for native species and ecosystems. It also suggested that because of the presence of gas hydrates at the foot of the Sirius Plateau, an underwater landslide could threaten particularly grave damage. Amalea's Foreign Minister forwarded the report to the Ritanian Ambassador and urged her to submit it to the appropriate authorities for consideration in the assessment of the project. The Ambassador responded that neither she nor her superiors were authorized to interfere with the independent regulatory role of the Ritanian Department of Resource Management.

26. Amalea's Foreign Minister notified Ritania of Amalea's intent to seek provisional measures from the International Court of Justice if it could not be resolved through negotiations. Ritania responded by proposing bilateral negotiations, which began in mid-2008, continued for a year, but reached a stalemate in late July 2009.

27. Having received Ritanian government approval of its EIA and its other project information, and having put in place all of the other logistical pieces needed to commence the project, EIGP was granted a permit to construct Excelsior Island on 1 August 2009. Ms. Kali announced to the international media at a press conference that dredging would begin as soon as the required equipment could be installed at the site. Upon hearing that the project was to go forward despite Amalea's objections, Amalea sought an order from the International Court of Justice, requiring Ritania to halt the project. The Court concluded by eight votes to seven that "the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures. The rejection of this request shall not prevent Applicant from making a fresh request based on new facts at a later date."

28. On 10 December 2009, after three months of dredging without incident, sonar buoys detected a significant underwater landslide. By all accounts, the landslide was the direct result of the dredging, which had caused an over-steepening of the slope in a geologically weak part of the Sirius Plateau. While the landslide did not generate a tsunami, extremely

high water turbidity levels persisted for several weeks. It also caused a dissociation of gas hydrates at the foot of the Sirius Plateau, resulting in a higher concentration of several dissolved gases, including carbon dioxide and methane, in shallow waters throughout the Sirius Plateau.

29. Following the landslide, Amalean authorities instituted an emergency monitoring program developed and implemented by ILSA for several species living on the Sirius Plateau within the Malachi Gap, including the Dorian wrasse. Early results of the program, released in February 2010 revealed that the landslide had an immediate and significant negative impact on the known Dorian wrasse population. Amalea's Foreign Minister contacted her counterpart in Ritania to advise him of this development, stating that Amalea would hold Ritania responsible for economic losses caused by harm to the fishing stocks once its precise impact had been determined.

30. The total catch of Dorian wrasse reported by Amalean fishing companies to the Ministry of Fisheries by the end of 2010 and 2011 had fallen to 25% and 15%, respectively, of the levels reported in 2000. By February 2012, ILSA declared the Dorian wrasse to be an endangered species, and recommended that commercial fishing be suspended indefinitely until its population was regenerated. At the same time, ILSA noted that there was doubt among experts in the field whether the number of Dorian wrasse in the Sirius Plateau would return to pre-landslide levels before the end of the century.

31. In January 2010, a Ritanian oil and gas exploration vessel conducting sonar mapping operations in the Malachi Gap to the west of the Amalean Trench, discovered the wreck of the schooner *Cargast*, whose captain was Baldric Verdigris, an Amalean explorer and cartographer. The wreck was approximately 80 nautical miles from the nearest point on the Amalean coast.

32. Historians have long agreed that Verdigris died at sea on 10 March 1510, when the *Cargast* – the first of what would become a standard model of Amalean schooners – disappeared in the Strait of Malachi during a storm. At the time the *Cargast* went down, Verdigris held a letter of marque from the King of Amalea, who granted the ship to him for use “to bring glory to the Kingdom of Amalea.” Contemporaneous records indicate that the King provided and the Royal Treasury paid for a battery of 20 24-pounder cannons as well as

a complement of lighter weapons, causing one commentator to observe upon the ship's maiden voyage that "she is the most formidable vessel bearing His Majesty's escutcheon yet to ply our seas. Long may she sail in His service!" The crew of the vessel appears to have been recruited, employed, and provisioned by Verdigris using funds provided by private financial backers, who hoped to recover their investment through shares of the foreign treasure they hoped he would bring back to Amalea.

33. Ritanian history books describe Baldric Verdigris as a ruthless Amalean pirate, responsible for the plunder and destruction of the Ritanian capital of Helios during the week of 4 March 1510. On their return to Amalea from what contemporary records said was a very successful trading mission to recently discovered overseas territories, Verdigris and his crew laid siege to Helios, setting fire to the town, killing hundreds of people, and stealing most of the town's prized religious and cultural icons as well as all of the precious objects that they could carry. Among the objects stolen was the Sacred Helian Coronet, which was placed on the heads of Ritanian monarchs during their coronation ceremonies. It had been kept in the Chapel of Saint Nicolas in Helios. According to legend, the Coronet – reportedly made of gold and precious stones – was a gift from the gods to the first king of Ritania in the fourth century A.D. Over the centuries it has acquired mythical importance in Ritanian iconography, and a stylized image of the Coronet occupies the center of the flag of Ritania to the present day. Historians are unanimous in their assumption that the cargo that went down with the *Cargast*, and that lay somewhere in the depths of the Strait of Malachi, contained not only the Coronet, but a vast array of precious stones, gold and other coinage, and bejeweled artifacts obtained not only during the Sack of Helios but during the trading mission that preceded it.

34. Amalean Prime Minister Beesley responded to the discovery, claiming the *Cargast* and all of the cargo that might be on board as "the property of Amalea, to be held in trust for all humankind." He noted that the wreck "should be protected from those who have no right to it." The President of Ritania immediately responded with "gratitude for our shared understanding that the unique property on board the *Cargast*, sacred to the people of Ritania, must be treated with dignity and respect," but also noting "our feeling of deep offense that Amalea, or any other country, would claim ownership or control of our nation's birthright. As and when appropriate, the contents of the ship should be brought to the surface for careful

restoration and preservation, and thereafter treated in a manner consistent with international law.”

35. In an interview with Svenska Dagbladet timed to commemorate the 500th anniversary of what has become known as “the Sack of Helios” on 4 March 2010, Ritanian Minister of Cultural Affairs Gloria de Sousa declared that if later investigations revealed the presence of the Sacred Helian Coronet on board the ship, “this would be the realization of a dream of generations of our ancestors, in whose honor the entire population of Ritanian will, as one, welcome home this revered symbol of our nation.” She noted that the media had in recent days reported the arrival at Amalea’s main airport of a number of internationally known divers experienced in recovering treasure lost at sea, and stated that “Ritanian will not tolerate the presence of looters – of any nationality – anywhere near the *Cargast*, and we reserve the right to send naval patrol vessels to the area to prevent the desecration of our national heritage.” However, no Ritanian ships were sent to the wreck site after that statement was published.

36. In January 2011, the Amalean Cultural Affairs Ministry announced that it had acquired five objects recovered in an exploratory dive to the wreck by Milo Bellezza, a well-known deep sea treasure hunter of Swiss nationality. These included an item that appeared to be the Sacred Helian Coronet. Detailed information provided by Bellezza following his exploratory dive had persuaded Amalea that the hull structure of the *Cargast* was at risk of catastrophic collapse. Amalea, therefore, contracted with Bellezza to explore the wreck and recover items therefrom.

37. The Ritanian government, through its embassy in Amalea, strongly objected to what it called “the systematic looting of the wreck of the *Cargast*,” and announced that it was again considering the deployment of naval vessels to patrol the area. No such ships were in fact observed in the vicinity of the wreck during 2011. Ritanian also demanded that Amalea immediately hand over the items “plundered by the modern-day pirate Milo Bellezza, who proposes to consummate the theft of our national identity begun by his comrade and role-model Baldric Verdegris half a millennium ago.”

38. Amalea's Cultural Affairs Ministry responded that the wreck and all other items, including the Coronet, were recovered in good faith, and in any event Amalea remains in fact and at law the owner of the wreck of the *Cargast* and its cargo. In June 2011, the Ministry granted Milo Bellezza, "acting as agent for and on behalf of the Republic of Amalea," the status of "salvor of the wreck of the *Cargast*."

39. Ritanian President Lipman immediately issued a public statement, denouncing Amalea's granting of a license to Bellezza as "a violation of the letter and spirit of the Malachi Gap Treaty as well as customary international law." The license, the President stated, "should be declared null and void, and of no legal effect. On behalf of all Ritanians, we intend to seek the return of the items already in Amalea's possession, including the Coronet, which are the sacred property of our people."

40. Shortly after the Ritanian President's public statement, Ritania's Navy began to patrol the area of the wreck (which patrols continue to the date of this Special Agreement). Although there have been no reports of violent confrontations, Amalea has vehemently objected through diplomatic channels to what its Prime Minister called "this unlawful incursion Ritania has gone beyond the lamentable creeping jurisdiction exercised by some states under the guise of protecting underwater cultural heritage, to full blown unlawful assertion of power beyond its own territory."

41. On 13 February 2011, at approximately 1500 hours local time, the *Rosehill*, an Amalean-registered cruise ship carrying 556 passengers, 70% of whom were Amaleans, and 215 crew members of various nationalities, departed from Amalea and headed towards Ritania. Helios was to be the *Rosehill*'s first port of call on its regular 20-day voyage around the region. Because construction of Excelsior Island's hydroelectric plant was complete and final steps were being taken to develop the wind farm, in response to customers' requests the *Rosehill*'s owners had obtained permission for the vessel to navigate close to the Island.

42. As the *Rosehill* approached Excelsior Island, the *Daedalus*, a stolen Ritanian-flagged yacht under the control of Oscar de Luz, a Ritanian citizen, carrying a crew of 10 and with an undetermined number of others on board, was speeding towards the Island. The captain of the *Rosehill*, saw that his ship was on a collision course with the fast-approaching *Daedalus*, and

tried to maneuver the *Rosehill* away. He was forced to veer toward the Island and to accelerate in order to avoid what seemed an imminent collision. Despite what later investigations described as the heroic efforts of the captain and crew of the *Rosehill*, the ship struck the Island with significant force. The *Rosehill's* captain immediately radioed the Amalean authorities about the incident.

43. The impact caused ruptures to three oxy-fuel storage tanks on the island, in turn leading to a series of explosions that killed five of the Ritanian nationals working on Excelsior Island. The explosions also tore large holes in the hull of the *Rosehill* and caused fires that spread through parts of the ship, which began to sink. Before nightfall, 127 passengers and crew of the *Rosehill* had died from the explosions, burns, smoke inhalation, or drowning, and 150 others were injured. 89 of the dead were Amalean nationals.

44. Luz steered the *Daedalus* away from the Island to the northwest. Within minutes of the *Rosehill's* distress call, the Amalean Coastal Protection Service (ACPS) issued an alert describing the *Rosehill* collision as apparently caused by a yacht that had hurriedly left the scene. The alert noted that the yacht had been seen speeding away bearing west northwest, creating a danger for other vessels.

45. As the *Daedalus* drew within about 23 nautical miles of Amalea's coastline, it was picked up on radar by the *Icarus*, an Amalean Navy Fast Response Cutter, under the command of Captain Walter Haddock. Captain Haddock, who had followed the ACPS alerts, set out at full speed to intercept the *Daedalus*. When the *Icarus* was within visual range, Captain Haddock issued an order over several different radio frequencies commonly used by vessels in the Strait of Malachi, ordering the *Daedalus* to stop.

46. Instead, Luz turned the *Daedalus* and sped due east, towards Ritania. Haddock pursued the *Daedalus*, crossing into Ritania's uncontested EEZ north of the Erebus Gas Field. In an attempt to get the *Icarus* to veer away, Luz suddenly steered the *Daedalus* straight towards the *Icarus*. Captain Haddock kept his vessel on course, expecting that the *Daedalus* would turn at the last moment, but it did not. The ships collided at high speed. The *Icarus* suffered some minor damage, but the *Daedalus* began to sink rapidly. Luz leapt overboard into a dinghy. Captain Haddock's crew captured Luz in the dinghy, where they

declared him under arrest, then brought him on board the *Icarus*. The crew and passengers of the *Daedalus* were also taken on board, but it was quickly determined that they had committed no criminal acts, and they were released when the *Icarus* reached port.

47. Since 1995, Amalea's Penal Code has specifically included offenses committed in Amalea's uncontested EEZ and the Malachi Gap. Amalea's Attorney General concluded that under that Code her country's courts had jurisdiction to try Luz for violations of Amalean criminal laws, and he was charged with 127 counts of murder, as well as reckless endangerment, negligent operation of a seagoing vessel, and various property crimes.

48. Ritania immediately filed a formal protest with the Amalean Embassy, claiming that the arrest and prosecution of Luz, a Ritanian citizen, were illegal under international law. Ritania argued that it had exclusive jurisdiction over the alleged offenses, and demanded that Luz immediately be returned to Ritania for investigation into whether there was a basis to prosecute him for the *Rosehill* accident. Ritania also noted that it expected the full cooperation of Amalea, as a signatory to UNCLOS, in resolving the situation regarding Oscar de Luz.

49. Amalea declined to repatriate Luz, noting that Ritanian criminal law did not expressly provide for prosecution of offenses committed outside the country's territorial waters, and therefore Luz might never be required to answer for his crimes. Instead, Amalea put him on trial. Luz was ultimately convicted of nearly all of the charges against him, and his convictions were affirmed by the Court of Criminal Appeals in June 2012, and by Amalea's Supreme Court in January 2013. Luz is currently serving a life sentence in a medium-security prison in Amalea, and will not be eligible for parole until 2032.

50. In February 2013, Amalea's Ministry of Fisheries published a report concluding that projected commercial exploitation of the Dorian wrasse would have amounted to no less than USD 250 million annually over the next five years. Being unable to fish the Dorian wrasse for the foreseeable future, Amalea demanded reparations from Ritania for the loss of this revenue.

51. After several months of unsuccessful negotiations, the parties decided to refer the matter involving the loss of the Dorian wrasse, along with the unresolved disputes involving the *Cargast* and the *Rosehill*, to the International Court of Justice, and for this purpose have agreed to the terms of this Special Agreement. In addition, Amalea has agreed to place all objects removed from the *Cargast*, and any others that might be brought to the surface during the pendency of this case by Milo Bellezza, in escrow held by the Ministry of Culture of the Government of Canada, which takes no position on any of the issues in dispute.

52. Amalea and Ritania are both members of the United Nations since 1945, and each has signed and ratified the Vienna Convention on the Law of Treaties. Both have been members of the International Maritime Organization since 1968, and have ratified the 1989 International Convention on Salvage. Amalea is a party to the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage, which Ritania has signed but not ratified. Ritania is also a party to the 1910 Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea; Amalea is not a party to that Convention. There is no extradition or mutual legal assistance treaty between the two states.

53. Amalea requests the Court to adjudge and declare that:

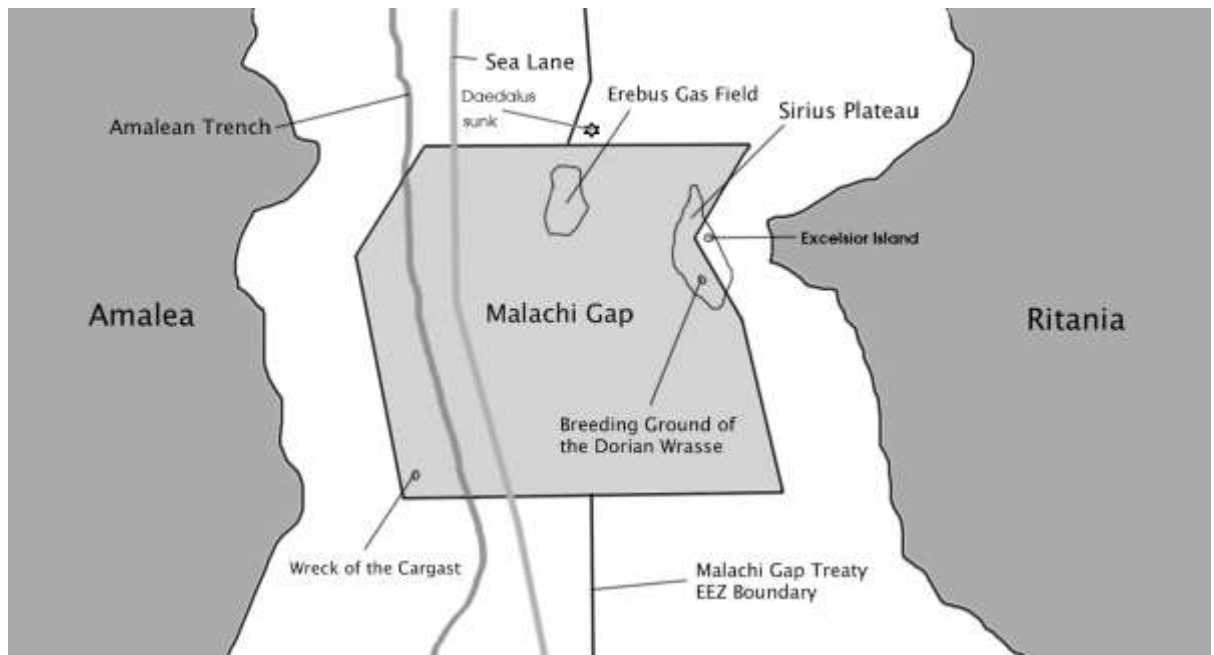
- (a) Ritania's acts and omissions with respect to the development of Excelsior Island violated international law, and Amalea is therefore entitled to seek compensation from Ritania for economic losses caused by the landslide.
- (b) Amalea has exclusive ownership of the wreck of the *Cargast* and all artifacts recovered from it, and Ritania's deployment of patrol vessels to the site of the *Cargast* violated international law.
- (c) The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were in compliance with international law.
- (d) Amalea had jurisdiction to try and convict Luz for criminal actions related to the *Rosehill* incident, and has no obligation to return him to Ritania.

54. Ritania requests the Court to adjudge and declare that:
- (a) Ritania's conduct with respect to the Excelsior Island project complied in all respects with its obligations under international law and the terms of the Malachi Gap Treaty, and Ritania has no obligation to compensate Amalea for any loss or damage allegedly caused by the 2009 landslide.
 - (b) Milo Bellezza's salvage of the *Cargast* is unlawful, and the cargo and artifacts recovered from the wreck properly belong to Ritania, which has the right to protect them.
 - (c) The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were illegal.
 - (d) Amalea was without jurisdiction to try Luz in connection with the *Rosehill* collision, and must return him to Ritania immediately.

Appendix A

Map

(not to scale)



Appendix B

Excerpts from the 30 March 1992 Malachi Gap Treaty between Amalea and Ritania

Article 12

Delineation of jurisdiction. In the area defined by the list of geographic coordinate points set out in the Exhibit to this Treaty (hereafter referred to as “the Malachi Gap”):

- (a) the First Party [Amalea] may explore, exploit, and protect the natural resources of the waters superjacent to the seabed;
- (b) the Second Party [Ritania] may explore, exploit, and protect the natural resources of the seabed and subsoil;
- (c) neither Party shall exercise its rights hereunder in a manner which unduly inhibits the exercise of the rights of the other Party and nothing in this Treaty shall be interpreted to render the Malachi Gap or any portion thereof the sovereign territory of either Party; and
- (d) the Parties shall cooperate with each other in relation to the exercise of their respective rights giving due regard to each Party’s unique interests in the Malachi Gap, including, but not limited to, in the case of Amalea the protection of fisheries, and in the case of Ritania its desire to develop resources lying beneath the water.