

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE REPUBLIC OF ASPATRIA (APPLICANT)
AND THE KINGDOM OF RYDAL (RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE STATES
CONCERNING THE WINDSCALE ISLANDS**

jointly notified to the Court on 16 September 2009

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE LA RÉPUBLIQUE D'ASPATRIA (DEMANDERESSE)
ET LE ROYAUME DE RYDAL (DÉFENDEUR)
VISANT À SOUMETTRE À
LA COUR INTERNATIONALE DE JUSTICE
LES DIFFÉRENDS QUI OPPOSENT LES DEUX ÉTATS
EN CE QUI CONCERNE LES ÎLES WINDSCALE**

notifié conjointement à la Cour le 16 septembre 2009

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

The Hague, 16 September 2009

On behalf of the Republic of Aspatria ("the Applicant") and the Kingdom of Rydal ("the 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 for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the Windscale Islands, signed in Chicago, Illinois, United States of America, on the tenth day of September in the year two thousand and nine.

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

Ambassador of the Kingdom of Rydal
to the Kingdom of The Netherlands

SPECIAL AGREEMENT

SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE REPUBLIC OF ASPATRIA AND THE KINGDOM OF RYDAL ON THE DIFFERENCES BETWEEN THEM CONCERNING THE WINDSCALE ISLANDS

The Republic of Aspatria and the Kingdom of Rydal (hereinafter referred to as "the Parties"),

Considering that differences have arisen between them concerning the sovereignty and status of the Windscale Islands and other matters;

Recognising 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 referred to as "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 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 Aspatria shall act as Applicant and the Kingdom of Rydal 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 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 4

- (a) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 2010 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 2010 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 authorised, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in Chicago, Illinois, United States of America, this tenth day of September in the year two thousand and nine, in triplicate in the English language.

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

Ambassador of the Kingdom of Rydal
to the Kingdom of the Netherlands

THE 2010 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

****COMPROMIS****

THE CASE CONCERNING THE WINDSCALE ISLANDS

(ASPATRIA/RYDAL)

1. The Windscale Islands ("the Islands") are an archipelago in the Southern Hemisphere lying in the Eden Ocean, approximately 500 miles due west of the Republic of Aspatria.
2. Aspatria is a developed country with a coastline along the Eden Ocean. It is the closest country to the Islands by some distance.
3. The Kingdom of Plumbland is a developed country located in the Northern Hemisphere, approximately 6,000 miles from Aspatria. Aspatria was a colony of Plumbland from 1610 until its independence.
4. The Kingdom of Rydal is a developed country located in the Northern Hemisphere, approximately 7,500 miles from the Islands. Rydal has a long maritime history and during the seventeenth and eighteenth centuries established a number of colonies throughout the world. Rydal was originally ruled by an absolute monarch, but is currently governed by a constitutional monarchy, with the King serving as head of state and a Prime Minister serving as head of government.
5. The Islands were first discovered in the late eighteenth century by Captain Geoffrey Parrish, the commander of *The Wansfell*, which was on a voyage of naturalist discovery under a Commission from the King of Rydal. Captain Parrish recorded in his ship's log:

On 6 December 1777, we discovered a group of remote and windswept islands not appearing on our charts. There were no signs of human habitation. Before our ship departed, we took short leave on one of the larger islands and left behind the flag of Rydal and a stone carved with a declaration asserting the sovereignty of King Andrew of Rydal and his successors over the Islands.

6. In early 1778, a naval ship from Plumbland, *The Salkeld*, came across the Islands. Shortly afterwards, the Viceroy of Aspatria sent Lieutenant Manuel Ricoy to settle and claim the Islands on behalf of the King of Plumbland. Lieutenant Ricoy established a fort and settlement named Salkeld on one of the islands.

7. Internal disturbances in the Viceroyalty of Aspatria caused Lieutenant Ricoy and his men to be ordered back to Langdale, the capital city of Aspatria. Before they left Salkeld on 20 December 1799, Lieutenant Ricoy left the flag of Plumbland flying over the fort at Salkeld together with a notice which read:

These Islands were first settled on behalf of His Excellent Majesty King Piero of Plumbland some twenty years ago by His Excellent Majesty's most loyal servant, Lieutenant Manuel Ricoy. These Islands will forever remain the territory and property of His Excellent Majesty. Dated this twentieth day of December in the Year of Our Lord seventeen hundred and ninety-nine. Manuel Ricoy.

8. It is not known to what extent Lieutenant Ricoy explored the archipelago beyond the island on which Salkeld was located or to what extent he exercised control over them. Historians say that the Islands were used by pirates, slave-ships, and other seafarers during the period Ricoy and his men were in Salkeld.

9. The disturbances in Aspatria were quelled by forces from Plumbland. However, there was no return to the Islands by Plumbland or its Viceroyalty of Aspatria. Nautical charts produced in Plumbland and Aspatria from that period showed the Islands as belonging to Plumbland. The charts ascribed to them the name "Windscale Islands," the name by which they subsequently became known.

10. On the night of 6 September 1813, a naval ship of Rydal, *HMS Applethwaite*, under the command of Admiral George Aikton, was wrecked on one of the smaller islands in the archipelago. Admiral Aikton's nautical charts indicated the Islands belonged to Rydal. He and the other survivors of the wreck set about building what they initially intended to be a temporary settlement named St. Bees. In Rydal, it was assumed that *HMS Applethwaite* and its crew had been lost at sea.

11. In January 1814, war broke out between Rydal and Plumbland over matters unrelated to the Islands.

12. In May 1815, *The Unthank*, a slave ship from the State of Sodor, drifted into the harbour at St. Bees with her mast broken by a strong storm. *The Unthank* had been drifting for many months and all on board were starving. The Rydalian assisted the 26 crew members and 150 slaves—men, women, and children—to shore. Admiral Aikton informed the crew of *The Unthank* that they had landed on Rydalian territory. He declared the slaves free, since slavery had been abolished in Rydal, and offered refuge to the crew and former slaves. The weakened and hungry captain and crew of *The Unthank* did not resist; they, together with the former slaves, swore loyalty to Queen Constance, the new Queen of Rydal.

13. By 1816, Admiral Aikton and his men had explored most of the other islands in the archipelago. The men began to cultivate the land and to domesticate a wild equine species native to the Islands. They discovered the abandoned settlement of Salkeld, including the fort with the flag of Plumbland, although there is no indication that anyone found the notice left by Lieutenant Ricoy.

14. Apart from *The Unthank*, historians have found no record of any ship discovering Admiral Aikton and the other inhabitants of the Islands until *The Grizedale* landed in June 1817. *The Grizedale* had been sent by the Viceroy of Aspatria to the Islands under Commander Javier Crook to establish a penal colony. Settlers living in the fort at Salkeld noticed the approaching vessel and immediately sent for Admiral Aikton. At his order, a small detachment of armed sailors met the landing party of *The Grizedale*, including Commander Crook, when it reached the shore. Admiral Aikton informed Commander Crook that he and his men must leave at once or be subject to arrest. Outnumbered and out-armed, Commander Crook chose to depart, protesting as he left at "the unfounded claims of a foreign monarch" over the Islands.

15. In the middle of 1818, King Piero learned of Rydal's presence on the Islands from his Viceroy in Aspatria. He immediately sent a letter to Queen Constance, protesting at Rydal's occupation of the Islands, which he termed "the territory and property of Plumbland by right of first occupation." Rydal replied in a diplomatic note dated 15 September 1818:

Her Majesty Queen Constance and Her government were unaware of the survival of Admiral Aikton and the crew of *HMS Applethwaite*. Her Majesty gives thanks to God for their preservation. The Islands are within the dominion of Her Majesty and have been since they were discovered by Captain Parrish, a subject of Rydal. Plumbland's settlement at Salkeld was an illegal occupation of Her Majesty's territory, and was furthermore subsequently abandoned. Her Majesty embraces and adopts all of the actions of her loyal and noble subject, Admiral Aikton.

16. In March 1819, *HMS Braithwaite* set sail from Rydal for the Islands under the command of Vice-Admiral Arthur Wilkinson, who had been appointed by Queen Constance as Governor of the Islands. *HMS Braithwaite* subsequently returned to Rydal along with some members of its crew and those members of the crew of *HMS Applethwaite* who wished to leave the Islands; most chose to remain because they had been promised land on the Islands. Vice-Admiral Wilkinson remained on the Islands as Governor.

17. In 1819, with war between Rydal and Plumbland intensifying, Plumbland's garrison in Langdale was reduced to a single battalion of soldiers. By then, an independence movement had emerged in the Viceroyalty of Aspatria, led by a group of former soldiers from Plumbland who had settled in Langdale. Assisted by conspirators within the regular army, on 31 October 1819, the self-proclaimed commander of the movement, Colonel Alejandro Diaz, took advantage of the reduction in Plumbland's armed presence and led a night-time raid against the garrison at Langdale. The attack succeeded, and the few surviving officers and soldiers loyal to King Piero were brutally slaughtered.

18. Colonel Diaz and his supporters drafted and signed a Declaration of Independence on 2 November 1819, a copy of which he sent to King Piero. The King, unable to spare forces to retake Aspatria, sent a short reply on 20 March 1820 declaring Diaz and anyone supporting him to be traitors who would receive the "harshest of penalties befitting their treasonous crime."

19. A Constitutional Convention was held in Langdale in January 1820. The resulting Aspatrian Constitution established a federal system of government and provided that the Islands were included in the new Republic of Aspatria and that all laws applied to the whole of Aspatria's territory. On 1 July 1820, Colonel Diaz was elected the first President of Aspatria.

20. Plumbland was losing the war with Rydal and in mid-1821 sued for peace. The terms of the Treaty of Great Corby, signed on 22 September 1821 and shortly thereafter ratified, included an article that read:

His Majesty King Piero acknowledges the sovereignty of Her Excellent Majesty Queen Constance over the islands lying to the West of Aspatria, known as the Windscale Islands. His Majesty hereby irrevocably transfers any sovereignty that His Majesty possesses in the aforesaid Islands to Her Excellent Majesty.

21. By 1823, there had been attempts at revolution in Plumbland; the people were starving and disease was rampant. As part of the Treaty of Great Corby, Plumbland had been required to give up the majority of its army and navy. The retaking of Aspatria was impossible. At the time, however, King Piero refused to acknowledge the independence of Aspatria.

22. In 1826, President Diaz sent a force to the Islands in an attempt to seize them. The force landed on one of the smaller islands unopposed, but after several unsuccessful attempts to take Salkeld, the force withdrew from the Islands.

23. The next year, President Diaz sent an ambassador, Miguel Trinidad, to Rydal. Queen Constance received the Ambassador in a formal ceremony at Court, recognised the independence of Aspatria and the government of President Diaz, and instructed her Foreign Minister, William Smith, to take up with the Ambassador any diplomatic matters between the two States.

24. During subsequent meetings with Foreign Minister Smith, Ambassador Trinidad noted that Plumbland had been the first to occupy the Islands. He argued that the Islands belonged to Plumbland, administered by the Viceroyalty of Aspatria, until 1819. Upon the independence of Aspatria, all territory of the Viceroyalty, including the Islands, devolved to the new State under the principle of *uti possidetis juris*. He regarded the Treaty of Great Corby, to the extent that it purported to affect the Islands, as a nullity, observing that "it was signed by the King of Plumbland after Aspatria had ceased to be subject to His rule."

25. Foreign Minister Smith rejected all of Aspatria's assertions, replying that Rydal would never relinquish its claim to the Islands. He recalled that Rydal had discovered the Islands and that, in any event, Plumbland had abandoned its settlement there. He concluded, "I understand

your contention that all of Plumbland's rights in the Islands have descended to Aspatria. But I regret to inform you that Aspatria has inherited nothing." The negotiations produced no resolution.

26. In 1839, King Piero finally prevailed in his sixteen-year conflict against revolutionaries within Plumbland. Weary of conflict and ill-equipped to re-conquer his remaining colonies in the Southern Hemisphere, he recognised the independence of Aspatria. In the subsequent Treaty of Woodside, Plumbland recognised Aspatria's sovereignty over the former territory of the Viceroyalty of Aspatria, excluding the Islands. At Aspatria's insistence, a clause was included within the Treaty acknowledging Aspatria's continued claim to the Islands.

27. In 1845, Aspatria established a permanent diplomatic mission in Rydal. Between 1845 and 1880, in addition to conducting unrelated diplomatic business, the Ambassador routinely reiterated Aspatria's claim to the Islands, complaining particularly of any specific acts that Aspatria considered inconsistent with its sovereignty over the Islands. The Rydalian Foreign Ministry categorically dismissed these complaints.

28. Meanwhile, a succession of Rydalian governors of the Islands exercised control over the whole archipelago. The early inhabitants brought by *HMS Applethwaite*, *HMS Braithwaite* and *The Unthank* inter-married and produced offspring. The population was further supplemented by other immigrants to the Islands, mainly from Rydal. Farming and fishing were developed and whilst there was no great wealth on the Islands, they provided a useful strategic harbour for Rydal's navy. By 1899, the population was 4,420, and by 1999, it was 7,054.

29. In 1903, the King of Rydal issued an order to the Governor of the Islands to establish a consultative Assembly to allow the Islanders to express their views to the Governor on matters of day-to-day administration of the Islands. However, the Governor retained sole authority to act.

30. Between 1880 and 1910, Aspatria experienced a serious political and economic crisis which led to a series of coups d'état and counter-coups. During this period, Aspatria recalled all of its ambassadors, lodged no complaints concerning the Islands, and made no attempts to assert control over them. In 1910, civilian government was restored in Aspatria, and, in 1911, the new

President, Porfirio Sebastiani, appointed a new Ambassador to Rydal, who resumed the assertion of Aspatria's claim to the Islands.

31. By the late 1930s, a small but regular trading link had been established between the Islands and Aspatria. Aspatria did not impose import duties on goods from the Islands, although Rydal levied duties on all goods imported to the Islands from outside Rydal, including those from Aspatria.

32. Until World War II, foreign commercial activity on the Islands, especially by Aspatrian companies, was limited because of restrictions imposed by Rydal. The Islands depended upon Rydal for substantial investment in local business or infrastructure. Rydal paid for the introduction of telephones and radio transmissions, and for the building of an airport. The Islands did not have a self-sustainable economy and remained poor by international standards.

33. Since independence, Aspatrian law has treated persons born on the Islands as citizens of Aspatria. They are free to enter Aspatria as citizens and some do so for educational or business purposes. Rydal allows Aspatrians to visit the Islands only on presentation of a passport, a requirement that Aspatria has consistently protested.

34. In 1945, Rydal joined the United Nations as an original member. It designated the Islands a non-self-governing territory and has fulfilled its obligations under article 73 of the Charter by regularly transmitting reports on the Islands to the Secretary-General.

35. In 1947, Rydal gave the Islands a constitution, in line with Rydal's treatment of its other colonies. It guaranteed universal suffrage to all adult residents of the Islands in elections to choose the members of the Assembly of the Islands. The Constitution confirmed Rydalian sovereignty over the Islands, but gave control over day-to-day governance, including the exploitation of natural resources, to the Assembly, subject to the approval of the Governor appointed by Rydal as the King's representative. Rydal maintained exclusive authority over the defence and foreign relations of the Islands.

36. When Aspatria joined the United Nations in 1949, its Ambassador, Francisco Hotton, sent a diplomatic note to the Secretary-General, asserting:

Aspatria has indisputable sovereignty over the Windscale Islands, deriving from Plumbland's first settlement and Aspatria's subsequent independence, notwithstanding any provision of the Treaty of Great Corby. We trust that the member states and organs of the United Nations will recognise Aspatria's rights and call for Rydal to cede administration of the Islands peacefully to Aspatria.

37. Since its formation in 1962, the U.N. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ("Special Committee") has regularly taken up the matter of the competing claims to the Islands. In such proceedings, the Special Committee has always expressed concern for the interests of the population on the Islands. When the Special Committee first discussed the question of the Islands, the Prime Minister of Rydal appeared before the Committee and stated:

Rydal has committed itself to respecting the will of the peoples of its various territories. If they want self-government or independence, we will facilitate their desire and respect their right to determine their own futures. However, if any of these territories wish to remain within the Rydalian family, the rest of the world must respect their decision.

38. In the 1980s, the Special Committee began allowing a delegation from the Islands to make presentations at the Committee's meetings, despite Aspatria's protests. The delegation routinely expressed its desire that the Islands remain a part of Rydal. Before the Special Committee and the General Assembly, a number of states regularly supported Aspatria's claim to the Islands. Among these were ten states located near Aspatria.

39. In the 1970s and 1980s, trade steadily increased between Rydal and Aspatria. Although the two States continued to disagree over the status of the Islands, one Prime Minister of Rydal noted, "This issue may in some future time be resolved, but for now, it is more productive for these two great nations to focus upon matters of more significant mutual benefit." In 1985, Aspatria and Rydal negotiated and signed a Treaty Concerning the Encouragement and Reciprocal Protection of Investment ("the Aspatria-Rydal BIT"), which entered into force in the same year. The relevant provisions of the Aspatria-Rydal BIT are set out in Annex I.

40. The Rydalian Oil Company ("ROCO"), incorporated in Rydal in 1972, is a multi-national energy corporation with worldwide gross revenue of more than US\$150 billion in 2007. ROCO's

corporate structure includes dozens of subsidiaries and related corporations around the world, including the A & L Exploration Corporation ("ALEC"), incorporated in Aspatria. ROCO owns 80% of the shares in ALEC, and the remaining 20% are owned by more than 5,000 shareholders of various nationalities.

41. In 1991, the Natural Resources Act ("NRA") was passed in Aspatria, *inter alia* making it a criminal offence, punishable by a fine of up to 5% of its worldwide revenues, for an Aspatrian company to "take any action inconsistent with an exclusive government license or patent concerning natural resources." The NRA also restricts licenses for the exploitation of energy resources in Aspatria to locally incorporated companies. Following the enactment of the NRA, ROCO has channelled its Aspatrian business through ALEC, over the years providing machinery and capital for ALEC's operations in Aspatria. In 1993, Aspatria granted ALEC a license to exploit oil deposits in the northeast province of Aspatria, which has resulted in a consistent stream of revenue to ALEC's shareholders.

42. In 1997, oil was discovered in the basin around the Islands. Rydal contracted with ROCO to explore and map the oil reserves. In 2001, ROCO submitted its findings, indicating significant reserves located within 200 nautical miles of the Islands' baselines. The report stated that the Islands had the potential to become "one of the most important producers of oil outside the Middle East."

43. The discovery of oil energised an already growing independence movement on the Islands, led by a group calling itself Islanders Longing for Sovereignty and Autonomy ("ILSA"). ILSA's statement of principles declared, "The Islands are entitled to independence, which ILSA seeks as an ultimate goal. In the interim, continued administration by Rydal is preferable to subjugation by Aspatria, which ILSA will never accept." ILSA cited the potential oil wealth as a basis for the Islands' viability as an independent state. In the 2002 and 2006 elections, members of ILSA were elected to the Assembly of the Islands in growing numbers.

44. News of oil in the Islands also reinvigorated calls in the Aspatrian media and Aspatrian Parliament for a more aggressive assertion of Aspatrian sovereignty over the Islands. Numerous bills were proposed in Parliament, variously declaring Aspatria's legal right to the Islands.

45. Felix Monte de Rosa is the richest man in Aspatria and, according to *Forbes* magazine, one of the 25 wealthiest individuals in the world. His company, MDR Limited, is an Aspatrian corporation engaged in the business of extracting and processing oil, coal, and other fuel sources throughout the Southern Hemisphere. The weekly newspaper *The Times of Rydal* has estimated that Monte de Rosa is the fifth-largest landowner in Rydal. MDR Limited also owns a diverse portfolio of securities and other investment assets in Rydalian companies.

46. In 2003, MDR Limited petitioned the Aspatrian government for an exclusive license to extract oil from the basin around the Islands. The Justice Minister of Rydal, a university classmate of Monte de Rosa, addressed remarks directly to him in a press conference, commenting, "Aspatria doesn't actually control the Islands, so any rights you might be granted would be worthless." Nonetheless, at a press conference of his own promoting the petition, Monte de Rosa declared, "The Islands belong to Aspatria, and the oil belongs to Aspatria. I am a son of Aspatria. So it is my patriotic responsibility to make sure that Aspatrian oil is extracted by the Aspatrian people for the Aspatrian people."

47. The President of Aspatria, Cecilia Lavin, approved the petition, and the Parliament duly endorsed it in legislation which explicitly referred to the NRA. In a subsequent press conference, President Lavin stated, "By this decision, the government has granted Monte de Rosa an exclusive license to extract the oil in the Windscale Islands."

48. The Prime Minister of Rydal, Agnes Abbott, protested at the decision by diplomatic note to President Lavin, commenting that "the nonsensical grant of authority by Aspatria to exploit the natural resources of the Windscale Islands, over which it has no sovereignty, needlessly complicates the fragile relations between our two States." Meanwhile, in a letter published in *The Times of Rydal*, Monte de Rosa wrote, "Let Aspatria worry about Aspatria; let Rydal worry about Rydal. Monte de Rosa will take care of Monte de Rosa." Nevertheless, Monte de Rosa and MDR Limited took no steps to extract oil from the Islands' basin over the next several years.

49. In December 2006, the leader of the Assembly of Islands, First Minister Nigel Craven, announced that the Rydalian government had approved an Assembly plan to invite and evaluate bids for the rights to exploit the oil reserves within the exclusive economic zone of the Islands. First Minister Craven issued a public call for bids, which announced that the bidding process

would be "open, transparent and competitive." To qualify, bidding companies had to be incorporated or have a registered office in Rydal. First Minister Craven instructed companies wishing to bid to set forth a strategic plan, a profit sharing proposal, and a list of existing corporate resources to be committed to the project. A committee of the Assembly would evaluate all bids and make recommendations to the full Assembly. A final decision would be made by a majority vote of the Assembly, subject to the assent of the Governor of the Islands, Lucy Black. President Lavin and the Aspatrian Ambassador to Rydal publicly protested the bidding process.

50. Although several companies expressed interest in the project, the Assembly received only two bids: one from ROCO and one from MDR Limited. ROCO's bid promised 45% of the net proceeds to the Islands and listed the existing equipment, personnel, and assets of ALEC located in Aspatria as resources that would be used to extract and process the oil.

51. MDR's bid, which was submitted by its local registered office in Rydal, included an up-front payment of US\$500 million upon the signing of a final license agreement and a promise to pay 50% of the net proceeds to the Islands. MDR's strategic plan included a customer list, projected sales, and proposed transportation routes. MDR also planned to build a facility in the Islands and to employ Islanders as part of the enterprise. MDR's bid noted that it already had the approval of the Aspatrian government, and would be able to utilise ports and infrastructure in Aspatria. In his cover letter accompanying the bid, Monte de Rosa stated:

I am not an international lawyer. All I know is oil. I do not know the outcome of the negotiations that Aspatria and Rydal plan to conduct concerning the long-term future of the Windscale Islands. Nor is this of any significance to me. As a practical matter, it is clear that I will need the acquiescence of both governments if I am to get oil from the Islands, and if I am to be able, in turn, to provide them with infrastructure, employment, and prosperity.

52. In October 2007, the committee of the Assembly recommended that MDR's bid be approved. The Assembly rapidly endorsed the committee's recommendation by a vote of 20 in favour and 15 against, and forwarded it to Governor Black for her signature. First Minister Craven explained, "The MDR bid was without question the more economically attractive to the people of the Islands." An ILSA spokesman explained his group's dissenting votes, saying, "The

offer is attractive, but as the classic story of Troy tells us, we must be wary of Aspatrians bearing gifts."

53. After a week of consultation with Prime Minister Abbott, on 1 November 2007, Governor Black called a press conference to announce that she was withholding her signature. She invited the Assembly to reconsider its recommendation:

The future of the Windscale Islands lies with that community of States, led by Rydal, which shares a common history, culture, and values. Whilst Mr Monte de Rosa's proposal may be appealing in the short term, it is my responsibility as the King's representative in the Islands to safeguard the long-term viability of the territory and its people.

54. On 14 November 2007, the Assembly approved the ROCO bid, by a vote of 22 to 13. First Minister Craven explained his vote in favour on the floor of the Assembly, remarking, "Whilst not as generous as the MDR bid, the ROCO bid is still quite lucrative for the Islands." The ILSA members issued a joint press release, announcing that they "vote in favour of this bid on its merits, but have grave concerns about the high-handed manner in which this matter has been treated by the Governor. This is a defeat for the cause of self-determination, and underscores the need for independence for the people of the Windscale Islands." Governor Black promptly signed the recommendation and announced that First Minister Craven would immediately initiate negotiations with ROCO towards a final contract.

55. The next day, Monte de Rosa held a press conference, denouncing the decision as "discrimination, pure and simple." He concluded, "Aspatria and Rydal have open economic relations, secured by a bilateral investment treaty. Yesterday, the old world of imperialism struck a jarring blow against the new world of free trade. The colonial arrogance shown by Rydal must not stand."

56. On 16 November 2007, the Public Prosecutor of Aspatria filed criminal charges against ALEC under the NRA. In the official announcement, the Prosecutor said:

It is illegal for any Aspatrian company to interfere with an exclusive license over energy resources. In materially participating in the ROCO bid, ALEC violated the NRA by circumventing the Aspatrian license and claiming access to the same oil reserves that

are the subject of that license under a purported grant from the government of Rydal.

57. In connection with the criminal case, the Prosecutor contemporaneously filed an administrative petition, asking the court to seize all assets of ALEC within Aspatria. The Aspatrian criminal code authorises the seizure of assets within the jurisdiction of the court if they "might be used to further, to promote, or to conceal criminal conduct." The Prosecutor requested that the court order the sequestration of all ALEC vessels, drilling equipment, and cash within the territory of Aspatria. The court granted the application, and Aspatrian federal police immediately seized all assets of ALEC that could be found within Aspatrian territory, including bank accounts and an oil tanker valued at approximately US\$80 million.

58. Counsel for ALEC promptly filed a petition with the Supreme Administrative Court of Aspatria, consistent with Aspatrian law, asking that the order be cancelled. On 3 March 2008, the Supreme Administrative Court denied ALEC's petition in *ALEC v. Langdale Administrative Court*. No further direct or indirect appeal from the order is possible under Aspatrian law.

59. The underlying criminal case, *Prosecutor v. ALEC*, has not yet reached final decision. According to reports from several independent international NGOs, most criminal cases in Aspatrian courts take between four and six years to conclude, with another two to three years for appeals. Counsel for ALEC, in a press conference on 4 March 2008, complained about this process, saying, "The slow pace of justice in Aspatria means that this so-called 'temporary' seizure is for all practical purposes permanent. By the time this case wends its way through the Aspatrian courts, ALEC will have lost millions of dollars in revenue."

60. Prime Minister Abbott sent a protest to President Lavin on 1 April 2008, asserting that the seizure was unlawful under international law and violated the Aspatria-Rydal BIT. President Lavin responded:

The assets of ALEC are not protected by the Aspatria-Rydal BIT. Furthermore, the administrative court's order was necessary to preserve the *status quo* until the criminal court is able to deliver its final judgment. I reiterate that Rydal's claim of authority to extract Aspatria's natural resources without permission is a violation of our sovereignty, and adds insult to the great injury already inflicted

upon Aspatria by Rydal's long illegal occupation of the Windscale Islands.

61. On 3 December 2007, Monte de Rosa filed a judicial challenge in the courts of Rydal against the results of the Rydalian bidding process, but the case was dismissed for lack of standing to sue. His expedited appeals from that dismissal failed to overturn it, and the Supreme Court denied discretionary review on 22 August 2008. After the Supreme Court decision was announced, in an interview with the Tokyo newspaper *Asahi Shimbun*, Monte de Rosa called upon the Aspatrian government to assert its rights under the Aspatria-Rydal BIT.

62. Meanwhile, the controversy surrounding Governor Black's rejection of the Assembly's acceptance of MDR's bid sparked non-violent protests across the Islands. ILSA organised a number of public rallies and called for a referendum on independence. First Minister Craven called a meeting of the Assembly on 6 September 2008. It passed a resolution declaring that the Islanders had the right to determine their own future and that a plebiscite should be held. In the event the vote favoured independence, the resolution called upon Rydal to provide all necessary assistance in the progression to independence, in accordance with a further resolution of the Assembly which would be required to give effect to the results of the plebiscite.

63. A plebiscite was held on 6 December 2008, offering three options: (1) "full independence," (2) "entering into negotiations over unification with Aspatria," or (3) "remaining a part of Rydal." On 8 December, the Assembly concluded its tally, and announced that 76% of the Islanders had voted for independence, 18% for remaining with Rydal, and 6% in favour of prospective unification with Aspatria. The voter turnout was 93%.

64. Following the plebiscite, First Minister Craven scheduled a session of the Assembly to consider the necessary steps to give effect to the desire of the Islanders for independence. Prime Minister Abbott issued a statement indicating that the King of Rydal and His government endorse the outcome of the plebiscite and pledge the full support of Rydal in assisting the Islanders' transition to independence.

65. President Lavin condemned the plebiscite as illegal and stated that she would do all in her power to ensure that the Islands were "returned to Aspatria's rightful control." The President said, "Rydal cannot grant what it does not possess: it cannot grant independence where it does not

itself have lawful sovereignty. The Rydalian endorsement of the plebiscite exacerbates the illegal occupation of the Islands in violation of Aspatria's historic title."

66. On 1 February 2009, Prime Minister Abbott sent a diplomatic note to President Lavin.

The note read, in relevant part:

Aspatria's unlawful prosecution and seizure of ALEC's assets has made it impossible for ROCO to exploit this resource, and Rydal has no intention of respecting an Aspatrian license to exploit assets which Aspatria does not have. What is at stake goes beyond commercial interests. Issues of territorial sovereignty and self-determination for the Islanders are also in play. We therefore propose that our two governments begin negotiations immediately towards a Special Agreement for submission to the International Court of Justice.

67. When the media reported the diplomatic note, Monte de Rosa immediately called a press conference. He stated:

I support the peaceful resolution of this dispute. However, I remind the Government of Aspatria that Rydal rejected MDR's bid on the basis of blatant discrimination as to nationality. The economic interests of an Aspatrian national – namely, MDR Limited – have been irreparably harmed by this violation of the bilateral investment treaty. Regardless of how the other issues are resolved, MDR's extraction of these resources has already been delayed for nearly two years by Rydal's unjustifiable rejection of MDR's bid.

68. President Lavin accepted the offer to negotiate, and the two States concluded the present Special Agreement.

69. Aspatria and Rydal have ratified the United Nations Charter, the Statute of the International Court of Justice, the Vienna Convention on the Law of Treaties, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the United Nations Convention on the Law of the Sea. Neither Aspatria nor Rydal are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States. Rydal is a member of the World Trade Organization ("WTO"); Aspatria has applied for WTO membership, but it has not been admitted.

70. Aspatria asks the Court to adjudge and declare that:

(1) Rydal may not lawfully take steps giving effect to the independence of the Windscale Islands and must cede administration over the Islands to Aspatria because:

(a) sovereignty over the Islands belongs to Aspatria; and

(b) the Islanders are not entitled to independence based on the principle of self-determination.

(2) Rydal's rejection of MDR's bid constituted a violation of the Aspatria-Rydal BIT.

(3) Rydal does not have standing to invoke the Aspatria-Rydal BIT to protect the assets of ALEC, an Aspatrian company, and in any event, Aspatria did not violate the Aspatria-Rydal BIT.

71. Rydal asks the Court to adjudge and declare that:

(1) Rydal is permitted under international law to take steps giving effect to independence for the Windscale Islands because:

(a) sovereignty over the Islands belongs to Rydal; and/or

(b) the Islanders are entitled to independence as an exercise of their right to self-determination.

(2) Rydal's rejection of the MDR bid did not violate the Aspatria-Rydal BIT.

(3) Rydal has standing to invoke the Aspatria-Rydal BIT to protect the assets of a Rydalian enterprise in Aspatria and the seizure of such assets was a violation of the Aspatria-Rydal BIT.

ANNEX I

Treaty Concerning the Encouragement and Reciprocal Protection of Investment 7 November 1985

The Republic of Aspatria and the Kingdom of Rydal (hereinafter referred to as "the Parties"),

Desiring to create favourable conditions for greater economic cooperation between the Parties, in particular, for investments by investors of one Party in the territory of the other Party based on the principles of equality and mutual benefit,

Recognising that the promotion and reciprocal protection of investments on the basis of this Agreement will be conducive to stimulating entrepreneurship and will increase prosperity in both States,

Hereby agree as follows:

* * *

"Investment" means every asset of an investor that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include: (a) an enterprise; (b) shares, stock, and other forms of equity participation in an enterprise; (c) licenses, authorisations, permits, and similar rights conferred pursuant to applicable domestic law.

"Investor of a Party" means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.

* * *

Article IV

Each Party shall accord investments and investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors and to investors of any non-Party.

Article V

Each Party shall accord to investments treatment in accordance with customary international law, including fair and equitable treatment, full protection and security, and non-discrimination.

Article VI

(a) Neither Party may expropriate or nationalise an investment either directly or indirectly through measures equivalent to expropriation or nationalisation ("expropriation"), except for a public purpose; in accordance with due process of law; in a non-discriminatory manner; and on prompt, adequate, and effective compensation.

(b) With the exception of measures so severe in light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriation.

* * *

Article XIII

In the event of a dispute arising with respect to the rights conferred by this Treaty, in addition to any arbitration proceeding to which an Investor of a Party may be entitled under this Treaty or by contract, the Party of said Investor's nationality may bring the claim before the International Court of Justice, and the other Party shall accept the personal and subject matter jurisdiction of that Court.

ANNEX II

THE WINDSCALE ISLANDS

