

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE STATE OF KOSOVINA (APPLICANT)
AND THE REPUBLIC OF SAYOMA (RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE PARTIES
CONCERNING THE PAMALI REFUGEES OF BORODINA**

jointly notified to the Court on 16 March 2019

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

The Hague, 16 March 2019

On behalf of the State of Kosovina and the Republic of Sayoma, and in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honor to transmit to you an original of the Special Agreement for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the Pamali refugees of Borodina, signed in The Hague, The Netherlands, on the sixteenth day of March in the year two thousand nineteen.

His Excellency Nayam Niya
Ambassador of the State of Kosovina
to the Kingdom of The Netherlands

His Excellency Homori Mono
Ambassador of the Republic of Sayoma
to the Kingdom of The Netherlands

**SPECIAL AGREEMENT
SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE
BY THE STATE OF KOSOVINA
AND THE REPUBLIC OF SAYOMA
ON THE DIFFERENCES BETWEEN THEM
CONCERNING THE PAMALI REFUGEES OF BORODINA**

*The State of Kosovina (“the Applicant”) and the Republic of Sayoma (“the Respondent”)
(hereinafter “the Parties”);*

Considering that differences have arisen between them concerning the protection of Pamali refugees of Borodina and other related matters;

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

Desiring further to define the issues to be submitted to the International Court of Justice (“the Court”) for resolution;

In furtherance thereof the Parties have agreed as follows::

Article 1

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

Article 2

It is agreed by the Parties that the State of Kosovina shall appear as Applicant and the Republic of Sayoma 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 S. K. Puri Memorial International Moot Court Competition JUSTIFIED 2019.

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

(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 S. K. Puri Memorial International Moot Court Competition JUSTIFIED 2019.

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 Special Agreement and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this sixteenth day of March in the year two thousand nineteen, in triplicate in the English language.

His Excellency Nayam Niya
Ambassador of the State of Kosovina
to the Kingdom of Netherlands

His Excellency Homori Mono
Ambassador of the Republic of Sayoma
to the Kingdom of The Netherlands

SPECIAL AGREEMENT

THE CASE CONCERNING THE PAMALI REFUGEES OF BORODINA

STATE OF KOSOVINA V. REPUBLIC OF SAYOMA

1. The state of Borodina is on the continent of Manobi. It borders with the state of Kosovina on its north and with the State of Jakosli on its south. These States are on the west of the Pleasant Sea. On the east of the Pleasant Sea is the continent of Maropia. Most of Manobi continent was under the colonial rule of Maropian States till the 1950s. The process of decolonization led to the liberation of the Manobi continent from colonialism, and by 1980s all States became independent. Because of the long colonial rule and because of other historical reasons, all the States of Manobi lag in the economic development and are broadly referred to as developing economies. Historically, people belonging to different ethnicities lived in the territories which now constitute the States of Borodina, Kosovina, and Jakosli.

2. The postcolonial state creation in Manobi did not take place in accordance with the administrative units of the pre-colonial era. It primarily followed colonial administrative units. This was the course through which Borodina came into existence. As a result, the ethnic composition of the population and governance of the pre-colonial time was not followed. In all of Manobi, pre-colonial administration was predominantly based on ethnic, linguistic and socially cohesive units. Colonial administration did not strictly follow this system and adopted their own scheme of geographical units, which was more in tune with their economic exploitation and political subjugation of the colonies. The post-colonial state formation mostly followed the colonial geographical units. Consequently, Borodina’s population consists of multiple ethnic identities. While multiple ethnic identities themselves symbolize social diversity of society, representation in the political sphere always remains a challenge in general in such societies, and Borodina is not an exception. People belonging to Tomu ethnicity constitute 60 percent of the Borodina population. Pamali ethnic people constitute 25 percent, Kohila ethnic people constitute another 10 percent, and other ethnic groups constitute remaining five

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

percent. For administrative purposes, Borodina is divided into three provinces. These are Eastern Province, Western Province, and Northern Province.

3. After attaining independence from colonialism in 1968, Borodina adopted representative constitutional democracy as the form of governance. Despite criticism on the fairness and transparency in the electoral system, elections are held periodically to elect successive governments. However, Pamalis and Kohilas feel that they are not adequately represented in the political processes at every Level. They observe that during the first few decades after the independence, successive governments attempted to bring policies with a view to including the minority ethnic groups into all walks of life. They claim that this changed significantly from 2000, the year in which Tomu Nationalist Party (TNP) won the elections and took over the power. Since then TNP has been winning the elections consecutively. Pamali and Kohila ethnic leaders argue that TNP led governments have been consistently resorting to anti-minority policies in Borodina.

4. In May 2016, TNP led government brought the legislation to do away with the preferential treatment provided to ethnic minorities in educational institutions. The preferential treatment involved earmarking of 10 percent seats in government-run higher educational institutions. This added to the already existing resentment among the minority groups. Particularly, Pamalis felt that this action by the government would affect them adversely and would have long term implications to all the minority communities in Borodina. However, the government of Borodina clarified that the legislation incorporating preferential treatment to minorities was made in 1973 to provide adequate representation to them in the field of education as it was found that they were underrepresented then. Nevertheless, the government informed, a recent government survey shows that all the minority groups were adequately represented in education and employment at every level. However, the government has not revealed any data to substantiate its assertion.

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

5. On 1 June 2016, Pamali community leaders gave a call for a nationwide protest to be observed on 10 June 2016. Borodina witnessed nationwide protests on 10 June 2016. Protests were overwhelmingly successful in the Eastern Province where the majority of the Pamalis live. Media reported that there was a large scale mobilization of people of all ethnic minorities. Following months have witnessed active mobilization of the ethnic minorities by the respective community leaders. Borodina Minority Front (BMF) was formed in October 2016. All the ethnic minorities are represented in it. BMF declared that they would democratically fight for the equal treatment of all people in Borodina. They demanded the government that it should do away with all discriminatory policies and prevent all forms of discrimination. However, the media reported that there were differences of opinion in the BMF on the modes of struggle to be adopted.

6. Violent protests erupted in November 2016. On the night of 30 November 2016, government offices and property were attacked at several places. The transport system was specifically targeted. On 2 December 2016, a press note was released to the media with the name Pamali Liberation Front (PLF). PLF claimed responsibility for the attacks of 30 November 2016. The press note stated that the PLF would fight for equality of Pamalis and other ethnic minorities with Tomus. If that is not facilitated by the government, they will fight for the ultimate goal of forming a State of Pamali Land. The press note asserted that all the Pamali people were supporting the PLF agenda. It also sought solidarity from all the minority ethnic groups in Borodina. The press release also underlined that they resort to all means to achieve their objective. It emphasized that they had the support of the neighboring States.

7. The interior minister of Borodina responded to this in a media meet on 15 December 2016. He stated that the government would take all necessary measures to maintain law and order in Borodina. They would deal sternly with all those who disrupt the peace and tranquility. He said the PLF is formed to disrupt the peace and to create hatred among different ethnic groups. He appealed to people not to allow any divisive forces to disturb the cordial relations among the people in Borodina. Soon after that, police forces started arresting supporters of the PLF. It was

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

reported by the media that by the end of January 2017 more than 3000 Pamali people were arrested. Many were booked under the Anti-Terrorism Law of 2015. The interior minister explained that all the arrests were being made in accordance with the law and all those arrested would be dealt with in compliance with all the procedural guarantees.

8. This created a sense of insecurity among ordinary Pamalis. While the police continued to arrest those suspected of supporting the PLF, those who claimed to belong to the PLF continued targeting government offices and property. Meanwhile, several cultural and social organizations of Tomu ethnicity started organizing gatherings with a view to supporting the government. This added to the already existing sense of insecurity among Pamalis. The media reported that the PLF is trying to gather support from outside Borodina. PLF started targeting police and paramilitary forces of Borodina. In March 2017, it was reported in the media that 33 police and paramilitary forces lost lives. The government also claimed that 54 PLF cadres were killed in the anti-PLF operations. This aggravated the sense of fear among the Pamalis.

9. Pamalis are mainly concentrated in the Eastern Province which is on the coast of the Pleasant Sea. Pamalis constitute 42 percent population of the Eastern Province. PLF claimed that 25 percent of the Eastern Province came under their control. The area that is claimed to be under the control of the PLF is mainly covered with forest. Media reported in April 2017 that a large number of people was moving in different directions from the conflict areas, particularly from the Eastern Province of Borodina. Some moved to safer places in other provinces of Borodina. As the conflict between the government forces and the PLF intensified in the Eastern Province and adjoining areas, normal life of the people got affected. Security forces increased their activities, and a large number of people were arrested and sent to prisons located in other parts of Borodina. Media reported that people were experiencing a sense of fear and were concerned about their safety.

10. In the first week of May 2017, thousands of Pamalis cross into Jakosli. Jakosli also has a mixed ethnic composition, and Pamalis constitute 35 percent of its population.

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

Jakosli government reacted quickly to the inflow of Pamalis from Borodina by creating temporary camps with necessary food supplies. United Nations High Commissioner for Refugees (UNHCR) started its operations with humanitarian relief. By the end of May 2017, it was estimated that more than 200000 Pamalis of Borodina were residing in the camps in Jakosli. All the camps in Jakosli were established just next to the border with Borodina. Despite Jakosli government's positive response to the inflow of Borodina people and the work of the humanitarian organizations, the condition of camps was reported to be deplorable. Media reported the paucity of food supply and sanitary amenities. These conditions discouraged the fleeing Pamalis of Borodina from entering into Jakosli. Thus, the fleeing Pamali people, instead of approaching the Jakosli border, started moving towards the Pleasant Sea coast and from there to Kosovina through the sea route. Though a few thousand people could reach Kosovina, they soon avoided that route to escape from the coast guard personnel of Borodina. It was reported that several boats carrying Pamali people were sent back to Borodina coast by the Borodina coast guard.

11. This situation forced the people to move towards Maropian continent. Reaching Maropian continent would require them to cross the Pleasant Sea. The manageable destination in Maropia continent is the Republic of Sayoma. It was reported that the people of Pamali ethnicity from Borodina were reaching the coast at night to take boats and cross the sea to reach Sayoma. Sayoma government stated that it had received more than 5000 people of Borodina in the month of June 2017. Borodina said it would comply with its obligations under international law and would take every measure to prevent illegal migration. Sayoma's other neighbouring states Vania, Jowami, and Saro also received people from Borodina. It is estimated that the other three States together received around 4000 Borodina people. On 5 July 2017, these four States enter into a written Understanding on maritime security. The understanding clearly states that there would be coordinated activities involving security measures in the Pleasant Sea, mainly targeting illegal migration. Understanding further states that, being parties to the 1951 Refugee Convention and its Protocol, they would comply with all the obligations under international law. However, they would take every measure to prevent

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

illegal entry into their territories. Understanding further states that the four States would coordinate their activities over the sea in preventing illegal entry of people.

12. Conflict in Borodina intensifies during the month of August 2017. Security forces of Borodina further step up their military activities in the territory which was being controlled by the PLF in the Eastern Province. This led many civilians to move from their locations for safer places. Jakosli, though did not stop people from entering into its territory, however, expressed its inability to bear the burden and requested the international community to extend the humanitarian help to the fleeing people of Borodina. Estimates show that more than 400000 Borodina people are hosted by Jakosli. As the possibility of getting safe havens in Jakosli was becoming difficult, movement of the Pamali people of Borodina increased in large numbers across the Pleasant Sea to reach Sayoma.

13. Sayoma, in coordination with other three coastal States, increased its coast guard surveillance as they concluded in their Understanding. It is reported that more than 20000 Borodina people were interdicted in a period of four months from September to December 2017. It is suspected that many people approached the smugglers to facilitate their movement towards safety. On 5 January 2018, the foreign minister of Sayoma, along with the foreign ministers of Vania, Jowami, and Saro issued a press statement in Molua, capital of Sayoma. The press statement stated that all the measures undertaken by Sayoma in cooperation with other coastal States were in accordance with their international legal obligations. Their security measures in the high seas of the Pleasant Sea were very much within the applicable legal framework.

14. As a result of the security measures by Sayoma and its neighboring States, the movement of fleeing people on the Pleasant Sea took a different turn. Most of the people who were interdicted on the high seas started moving towards northwest on the Pleasant Sea and reached Kosovina. The inflow of Borodina people increased into Kosovina. By the end of February 2018, Kosovina announced that 90000 Boridiina people entered Kosovina. Similar to

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

Jakosli, Kosovina established makeshift arrangements to accommodate all the refugees. Kosovina sought the intervention of the international community. The prime minister of Kosovina addressed the media on 1 March 2018. While appealing for the humanitarian relief, he alleged that Sayoma was violating its obligations under international law by preventing the asylum seekers from entering into its territory by resorting to interdiction in the high seas. He appealed to the international community to use their good offices to convince Sayoma to respect its obligations in accordance with international law.

15. As the intensity of the conflict increased in Borodina, more and more Pamali people started moving for safer places. With the increased movement of people, security surveillance over the sea also increased mainly by the Maropian States. While Pamali people of Borodina continue to move towards the shores of Maropia, their movement towards Maropian continent has been drastically restricted. On 25 March 2018, media prominently reported in Borodina, Sayona, and other neighboring countries that more than 200 people drowned in the Pleasant Sea on the night of 23 March 2018. It was reported that all of them were Pamalis from the Eastern Province of Borodina. It was also reported that they were proceeding to reach Sayona. As they found that the movement of people was being restricted, they approached the smugglers and were promised to be taken to the shores of Maropia safely. The boat they were traveling was filled beyond its capacity. It was suspected that there were no survivors of the tragedy. This incident drew the attention of the international community. World leaders appealed to the concerned States to address the situation and prevent further loss of lives. A strong opinion emerged that there was a need for humanitarian approach to prevent future such incidents.

16. Kosovina and Jakosli ministers of foreign affairs blamed the Maropian States for their security-centric approach to what is essentially a humanitarian crisis. They demanded that Maropian States should change their policy towards refugees and stop their border control measures. Despite safety issues involved in crossing the sea over unsafe boats, Pamali people continued to venture to reach the Maropian coast. Sayona and other Maropian coastal States insisted that their security measures were very much in accordance with international law and

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

they were taking these measures to prevent the acts of terrorism and illegal economic migration.

17. Meanwhile, Maropian Human Rights Alert (MHRA), a non-profit human rights organization released a report blaming the Maropian coastal States, particularly Sayoma, for resorting to stringent security measures over the sea, which is resulting in the prevention of refugees from reaching their territory. The MHRA stated that their measures were in clear violation of the principle of *non-refoulement*. The MHRA report also said that Borodina security forces were indiscriminately targeting Pamalis in their actions to curb the activities of the PLF. As a result, many innocent Pamalis are either being arbitrarily arrested or losing their lives. The report said that these actions by the Borodina security forces are in clear violation of international humanitarian law and human rights law obligations of Borodina.

18. On 15 May 2018, at the initiative of the Manobi Cooperation Union (MCU) and the Maropian Economic Union (MEU), a meeting was convened in Molua to discuss the issue. The meeting was attended by the foreign ministers of Borodina, Jakosli, Jowami, Kosovina, Saro, Sayoma, Vania, and the Secretaries-General of the MCU and MEU. The Maropian States felt that Borodina has to take measures to end the conflict on its territory as soon as possible which is the root cause for the movement of refugees. The Maropian States defended the security measures they were undertaking in their territorial waters as well as on the high sea as in accordance with international law.

19. Kosovina stated that the security measures that were being implemented by the Maropain States on the high sea of the Pleasant Sea are contrary to international law and clearly violate the principle of *non-refoulement*. Kosovina minister was of the view that though they were willing to receive refugees, they see that the refugees were reaching their territory because of the actions of Sayoma and the other Maropian States which were contrary to their international law obligations. The opinion of the participating States at the meeting was clearly divided. They could not agree on the measures to be taken by each participating State. At the

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

end of the ministerial level meeting, with the intervention of the Secretaries-General of the MCU and MEU, it was decided that the dispute over the nature of legal obligations should be referred to the International Court of Justice (ICJ). Accordingly, an agreement would be reached between Kosovina and Sayoma referring the matter to the ICJ.

20. Accordingly, Kosovina and Sayoma enter into this special agreement on 16 March 2019 and submit the same to the International Court of Justice in accordance with Article 40(1) of the Statute of the Court. It is agreed in the special agreement that Kosovina would act as the Applicant and Sayoma as the Respondent.

Accordingly,

21. Kosovina requests the Court to adjudge and declare that:

a) Sayoma has an obligation under international law to provide protection to all those Pamali refugees from Borodina, who seek its protection;

b) Sayoma’s measures interdicting the Pamali refugees from Borodina on the Pleasant Sea are in violation of its obligations under international law, specifically Convention Relating to the Status of Refugees of 1951 and its Protocol Relating to the Status of Refugees of 1967, the International Covenant on Civil and Political Rights of 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, United Nations Convention on the Law of the Sea of 1982 and under other relevant international laws.

22. Sayoma requests the Court to adjudge and declare that:

a) Sayoma has an obligation under international law to provide protection to all those Pamali refugees from Borodina, who fall under its jurisdiction;

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED’19

b) Sayoma’s measures interdicting the Pamali refugees from Borodina on the Pleasant Sea are not in violation of its obligations under international law, and are very much in accordance with the Convention Relating to the Status of Refugees of 1951 and its Protocol Relating to the Status of Refugees of 1967, the International Covenant on Civil and Political Rights of 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, United Nations Convention on the Law of the Sea of 1982 and under other relevant international laws.

23. Some of the relevant treaties to which Kosovina and Sayoma are parties are: Convention Relating to the Status of Refugees of 1951 and the Protocol Relating to the Status of Refugees of 1967, International Covenant on Civil Political Rights of 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, United Nations Convention on the Law of the Sea of 1982, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) of 1988, and the Vienna Convention on the Law of Treaties of 1969.

S. K. PURI MEMORIAL INTERNATIONAL MOOT COURT – JUSTIFIED'19

