



**PHILIP C JESSUP INTERNATIONAL LAW MOOT 2016  
SURANA & SURANA INDIA NATIONAL ROUNDS  
29 - 31 January 2016**

**INTERNATIONAL COURT OF JUSTICE**

**SPECIAL AGREEMENT**

**BETWEEN THE STATE OF AMESTONIA (APPLICANT)  
AND THE FEDERAL REPUBLIC OF RIESLAND (RESPONDENT)  
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE  
THE DIFFERENCES BETWEEN THE TWO STATES  
CONCERNING THE FROST FILES**

**jointly notified to the Court on 1 September 2015**

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

The Hague, 1 September 2015

On behalf of the State of Amestonia and the Federal Republic of Riesland, 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 Frost files, signed in The Hague, The Netherlands, on the first day of September in the year two thousand fifteen.

Mata Rosenberg,  
Ambassador of the State of Amestonia  
to the Kingdom of The Netherlands

Klaus Hall,  
Ambassador of the Federal Republic of Riesland  
to the Kingdom of The Netherlands

## SPECIAL AGREEMENT

### SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE STATE OF AMESTONIA AND THE FEDERAL REPUBLIC OF RIESLAND ON THE DIFFERENCES BETWEEN THEM CONCERNING THE FROST FILES

*The State of Amestonia and the Federal Republic of Riesland (hereinafter referred to as “Amestonia” and “Riesland” respectively and “the Parties” collectively),*

*Considering* that differences have arisen between them concerning the legality of certain alleged acts of espionage, and other matters;

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

*Desiring* further to define the issues to be submitted to the International Court of Justice (hereinafter referred to as “the Court”) to resolve this dispute;

*In furtherance thereof* the Parties have concluded this Special Agreement:

#### *Article 1*

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

#### *Article 2*

- (a) It is agreed by the Parties that Amestonia shall act as Applicant and Riesland as Respondent, but such agreement is without prejudice to any question of the burden of proof.
- (b) The Parties agree that any reference in this Special Agreement to documents obtained and disclosed without the consent of Respondent is without prejudice to Respondent’s objection to the admissibility of these documents as evidence before the Court.

#### *Article 3*

- (a) The rules and principles of international law applicable to the dispute, on the basis of which the Court is requested to decide the Case, are those referred to in Article 38, paragraph 1 of the Statute of the Court.
- (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 rules and procedure shall be regulated in accordance with the provisions of the Official Rules of the 2016 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 2016 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 Special Agreement and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this first day of September in the year two thousand fifteen, in triplicate in the English language.

Mata Rosenberg,  
Ambassador of the State of Amestonia  
to the Kingdom of The Netherlands

Klaus Hall,  
Ambassador of the Federal Republic of Riesland  
to the Kingdom of The Netherlands

**\*\*SPECIAL AGREEMENT\*\***

**THE CASE CONCERNING THE FROST FILES**

**AMESTONIA / RIESLAND**

1. Riesland is a developed democratic state with a population of approximately 100 million, which boasts one of the fastest growing free-market economies in the world. Many of Riesland's top corporations are listed on the New York, London, and Shanghai stock exchanges. Its rapidly-expanding information technology and communications sector is world-renowned.
2. Amestonia is a developing country bordering Riesland to the south, with a population of approximately 20 million. Amestonia is a predominantly agrarian export economy. Agriculture employs 55% of Amestonia's workforce.
3. The Rieslandic Secret Surveillance Bureau ("the Bureau") engages, *inter alia*, in covert operations and collects intelligence outside of Riesland pursuant to the provisions of the Secret Surveillance Bureau Act 1967 ("SSBA"), as amended.
4. Section 21 of the SSBA, entitled "Electronic Surveillance," grants the Director of the Bureau ("the Director") the power to authorize "electronic surveillance," without a court order, to

acquire “foreign intelligence.” The SSBA defines “electronic surveillance” as “the installation of an electronic, mechanical, or other surveillance device outside Riesland’s territory, and/or the acquisition by such a device of the content of or other technical information concerning a wire or radio communication.” The statute defines “foreign intelligence” as “any information located or emanating from outside Riesland’s territory, which is relevant to the ability of Riesland to protect itself against any actual or potential threat to its national security or the ability of Riesland to conduct its foreign affairs.”

5. Section 32 of the SSBA, “Minimization Procedures and Structural Safeguards,” sets forth five limitations on the Bureau’s surveillance activity. *First*, electronic surveillance may not be authorized by the Director whenever there is a “substantial likelihood” that information acquired thereby will include “any communication to which a national of Riesland is a party.” *Second*, it establishes a five-judge National Security Tribunal (“the Tribunal”), which must review all electronic surveillance conducted under the SSBA every six months. Proceedings before the Tribunal are closed to the public, but the Tribunal is authorized to call on technical experts, academics, and NGOs to participate as *amici curiae*. *Third*, a Parliamentary Committee for Surveillance Oversight is created, with access to all information relating to the Bureau’s operations, and the capacity to launch independent investigations and to summon the Bureau’s Director and other personnel to appear before it. *Fourth*, the statute provides that surveillance of “foreign public officials” may be authorized only when the Director, with the concurrence of the Minister of Foreign Affairs, considers it “necessary.” *Fifth*, the Bureau must comply with any regulations issued by the Attorney General concerning legal aspects of any surveillance program.
6. Relations between Riesland and Amestonia, which share a common language and have similar ethnic composition, have been largely positive. On 11 December 1970, Riesland’s Prime Minister visited Amestonia to mark the centenary of the completion of the first railway line between the two countries. During that visit, the Prime Minister and his Amestonian counterpart signed a number of bilateral agreements, concerning tourism, trade, extradition, intelligence-sharing, and other fields of cooperation. Since then, the two nations have enjoyed healthy cross-border economic, cultural and security ties, including the establishment of a free-trade area in agricultural and agricultural-related goods in 1992. By 1998, Riesland had become the top importer of Amestonian agricultural produce, totaling approximately €1.5 million per day. Between 2003 and 2013, Amestonia saw an annual GDP growth rate of between 6.8% and 7.4%, the highest in the region.
7. On 4 March 1992, Riesland and Amestonia signed the “Treaty on The Establishment of Broadcasting Facilities” (“the Broadcasting Treaty,” Annex I), pursuant to which each state was permitted to build, staff, and operate a television station in the other’s territory. In a joint press release, ministers from both states expressed their hopes that the treaty “will become yet another milestone in what is already the warmest of friendships between our two societies.” Both Parties ratified the Broadcasting Treaty shortly thereafter.

8. Riesland National Television is a state-owned and operated corporation, which provides public broadcasting services across Riesland. In accordance with the Broadcasting Treaty, Riesland established a new division of the corporation, The Voice of Riesland (“VoR”), to operate in Amestonia. The inaugural program of the new station and its Amestonian counterpart, a combined performance by the two countries’ national orchestras of Vivaldi’s “The Four Seasons,” aired on 22 December 1992. VoR broadcast a variety of award-winning documentaries and highly-acclaimed programs for the next 22 years.
9. One of VoR’s most popular shows was “Tea Time with Margaret,” a weekly one-hour news program featuring interviews with leading Amestonian political and business figures. Margaret Mayer, the show’s host, is a television icon from Riesland, appointed by the Ministry of Telecommunications to serve as Head of VoR. Among those appearing on her show were former and incumbent Amestonian presidents, cabinet ministers, parliamentary party leaders, business executives, and diplomats.
10. The Institute for Land and Sustainable Agriculture (“ILSA”), a Dutch NGO established for the purpose of monitoring global soil structure, composition, and biodiversity, began to express concerns in the early 1990s about the long-term sustainability of Amestonia’s agricultural production and trade. In particular, ILSA’s reports addressed Amestonian farmers’ reliance on a class of neuro-active insecticides known as neonicotinoids, or “neonics,” produced solely by Rieslandic companies, to boost yields. From time to time ILSA called on the governments of both countries to study and review the environmental and ecological impacts of these insecticides on the regional biosphere.
11. On 2 October 2012, ILSA published a report entitled “The Plight of the Bumblebee.” The report summarized a 20-year peer-reviewed scientific study examining the negative effects of the increased use of neonics by Amestonian farmers on populations of bees and other pollinators. ILSA experts found that the region’s honeybee population had decreased by some 25% over the previous 20 years, due in part to the well-documented phenomenon of Colony Collapse Disorder (“CCD”). The report also found a statistically significant correlation – but not definitive evidence of causation – between the gradual increase in CCD and the rise in the use of neonics across the region. ILSA urged Riesland to reevaluate its production of this type of insecticide, and Amestonia to reevaluate its extensive use, suggesting that the only long-term solution would be a complete phase-out of neonicotinoids. It concluded, “the current rate of decrease in bee populations will, if it continues unchecked, result in catastrophic consequences for the environment, for food production, for sustainable farming, and ultimately for the economies of both states.”
12. The European Commission adopted a Regulation on 24 May 2013, restricting for a period of two years the use of a number of neonics for seed treatment, soil application, and foliar treatment in crops attractive to bees. The ILSA report and the European Commission’s action sparked academic and parliamentary debates in both Riesland and Amestonia, but no policy changes were undertaken in either country.

13. On 2 July 2013, a new website, [www.longlivethehive.com](http://www.longlivethehive.com), was launched. The website invited environmental activists to register online and to utilize its chat rooms to discuss ways to stop the continued production and use of neonicotinoids. The website quickly gained attention in Amestonia and Riesland, and at its peak was visited by approximately 200,000 users a day. Conversations on its online forums, which protected users' anonymity, often focused on lobbying activities in support of draft legislation. However some members also promoted violent actions, including sabotage and arson. One anonymous post, which was later reposted onto social media and received widespread attention in Amestonia, read: "Our politicians have failed to respond to peaceful initiatives. We must take charge and command attention. The despoliation of the Earth, and of its living creatures, is an act of violence, and unless it is stopped, it must be responded to effectively and in kind."
14. On the night of 2 February 2014, seven Amestonian warehouses were simultaneously set on fire. The warehouses stored a significant number of barrels of neonicotinoids. In total, five people died from smoke inhalation, and many others were injured. Two of the dead were Rieslandic nationals. Police found spray-painted images of a bee on the asphalt outside the sites. Initial government reports estimated the damage from the attacks, including long-term adverse health consequences for the local population, at €75 million.
15. The President of Amestonia, Jonathan Hale, was interviewed by Margaret Mayer on the day following the arson attacks. When asked about the alleged involvement of environmental activists in the attacks, President Hale responded: "We do not yet have all of the facts concerning these terrible, orchestrated crimes. The police are investigating and will bring the perpetrators to justice. Given the critical importance of agriculture to our national economy, acts of sabotage like these should be seen as attacks on us all. My administration will not tolerate such provocations."
16. On 7 March 2014, 263 envelopes containing white powder were sent to the Ministries of Trade and Agriculture in both Riesland and Amestonia, to prominent Amestonian farmers, and to board members of three neonic-producing Rieslandic corporations. The image of a bee was stamped on the back of all of the envelopes. Examinations determined that the powder was a non-toxic variant of a neonicotinoid. An anonymous tweet by user @buzzkiller24601 posted that evening, which quickly went viral, read: "You've been warned. The threat is real. It must be addressed. Next time you'll taste your own poison. #banneonics #savethebees."
17. President Hale and the Prime Minister of Riesland, Alice Silk, discussed the arson and the white powder incident in a telephone conversation the following day. Prime Minister Silk offered Riesland's continued cooperation in combatting what she called "acts of eco-terrorism," including coordination and sharing of intelligence information, and stressed the importance of continued agricultural trade between the two countries. Following the call, the Prime Minister announced that she had ordered Riesland's security and intelligence services to direct their operations against "what appears to be a new, growing, and dangerous threat to the well-being of both of our countries."

18. On 16 October 2014, Tom Sivaneta, the Bureau's Director, met with the Amestonian Minister of Internal Affairs. He informed the Minister that the Bureau had succeeded in identifying a ring of Amestonian environmental activists who had been plotting to contaminate a large shipment of honey, intended for consumption in Riesland, with a chemically-altered and toxic neonicotinoid. He provided the Minister with the names and locations of the ring members. The following day, Riesland declared a Terrorism Alert pursuant to the Terrorism Act 2003 (Annex II). The Terrorism Alert was reissued in April 2015.
19. On 21 October 2014, the police broke into a garage located in Amestonia's capital and apprehended three Amestonian college students. The students had in their possession significant quantities of chemically-altered neonicotinoids and detailed maps of a number of honey extraction facilities in Amestonia. They admitted to planning an attack (which they insisted would not cause injuries or deaths), and to being part of a group of environmentalists, which they called "The Hive." The students refused to provide the authorities with the names, locations, or future plans of other members of the group.
20. Frederico Frost, a national of Riesland, is a former Bureau intelligence analyst who had been part of the Bureau's eco-terrorism working group, established in early 2014. Frost had full access to sensitive information relating to Riesland's intelligence operations in Amestonia. On the morning of 16 December 2014, Frost drove from the Bureau's facilities to Amestonia, where he contacted Chester & Walsingham, a law firm that had previously represented defendants in a number of high-profile whistle-blower and national security cases. Frost handed lawyers from the firm a USB drive containing nearly 100,000 documents labeled top secret that he said he had directly downloaded from Bureau computers. The firm agreed to represent Frost in relation to any disclosure or dissemination of the materials.
21. On 18 December 2014, accompanied by his lawyers, Frost met with two reporters from *The Ames Post*, Amestonia's most widely-circulated newspaper. He gave the reporters a copy of the USB drive, requesting that the newspaper publish the contents on its website. In a written statement, Frost explained that "I have come to realize how surveillance programs, like the ones I was engaged in, threaten individual liberties and sovereign equality. I am compelled to talk about this! If we are going to trade liberty for security, we have to do it with our eyes open. These decisions should be made by the public, not by politicians."
22. In January and February 2015, thousands of documents marked "top secret" were gradually published, unedited and unredacted, on the website of *The Ames Post*, following what the newspaper termed "a process of authentication and review performed by our reporters and lawyers." One of the documents, published on 23 January and headed "The Verismo Program," bore a signature of Tom Sivaneta. It detailed a May 2013 operation he had authorized, in which a waterproof recording pod was installed on the undersea fiber optic cable that was the primary backbone for Amestonia's international internet and telephone communications traffic. The device was placed on a section of the cable located in Riesland's exclusive economic zone. The pod copied all information that went through the cable and

transferred it to the Bureau's servers. According to the document, 1.2 million gigabytes of data were collected and stored daily pursuant to Verismo. The document also noted that, following the white powder incident on 7 March, Bureau employees had been instructed to use all of the Bureau's resources "to track environmental activists in Amestonia," relying on specifically tailored search terms, or "selectors."

23. On 29 January 2015, *The Ames Post* published on its website a document on the letterhead of the Office of the Attorney General of Riesland, James Deloponte. Dated 2 July 2014, it detailed regulations issued by the Attorney General regarding the Bureau's surveillance. The document provided that all data collected by the Bureau through Verismo or related programs, other than as the result of investigation of a specific individual, could be stored for a maximum of two years. It also noted that the Tribunal, in accordance with the SSBA, had reviewed the Verismo Program every six months since its inception with no participation from outside experts. The Parliamentary Committee for Surveillance Oversight had also reviewed Verismo twice in closed-door hearings, but neither the Tribunal nor the Committee had ever challenged its legality. According to the document, Amestonian security authorities had knowingly accepted, on at least 50 occasions, redacted information relating to terrorist activity derived from Verismo.
24. On 2 February 2015, Riesland's Minister of Foreign Affairs sent a diplomatic note to his counterpart in Amestonia requesting the immediate extradition of Frost, in accordance with the 1970 Extradition Treaty, to stand trial for theft and a number of data security offenses. The diplomatic note also requested that Amestonia recover the information Frost had downloaded, believed to be held by either Chester & Walsingham or *The Ames Post*, and return it to Riesland for use in the ongoing criminal investigation against Frost. It emphasized that "any further publication of these materials will have a long-term, damaging impact on cooperation between our two nations in our joint campaign against terrorism." The Amestonian Minister indicated that the extradition request would be considered in accordance with the Treaty, but noted the Amestonian Government's "surprise at the reported scope and reach of Riesland's surveillance programs." He called upon the Minister to provide more information on the extent of these activities and their impact on Amestonian nationals' private lives.
25. On 16 February 2015, the banner headline of *The Ames Post* website read: "Margaret the Spy!" Another document leaked by Frost stated that since its inception in 1992, the premises of the VoR station had been used by the Bureau to promote its surveillance activities on Amestonian soil. The document was printed on the letterhead of the Office of the Bureau's Director. According to the document, Margaret Mayer was part of an operation called "the Carmen Program," intended to collect intelligence on high-ranking Amestonian public figures and private sector leaders. Whenever such individuals came to be interviewed for Mayer's show, they were told that their electronic devices could interfere with the sensitive wireless microphones used during broadcasts. They were offered the opportunity to place their devices in a locker within their line of sight from the studio. Electronics placed in the locker were removed during the interviews by means of a concealed backdoor. This provided Bureau

engineers, who doubled as VoR employees, sufficient opportunity to hack into the guests' phones and portable computers and install a rootkit malware referred to in Frost's documents as "Blaster," which then provided the Bureau full remote privileged access to these devices. The information collected from "Carmen" was stored and later analyzed in an underground floor within the VoR building, code-named "The Opera House."

26. A number of memoranda mentioning "Carmen" were also published in raw form on *The Ames Post's* site. They revealed that over 100 Amestonian public figures, businessmen, officials, and diplomats were surveilled under this program, whose primary objective was "to collect information concerning Amestonia's domestic and foreign policy, in order to advance Riesland's political and economic interests in the region." One memorandum contained an image of David Cornwell, Amestonia's Ambassador to the United Nations, and detailed how Carmen operatives had been able to hack his phone and access emails regarding Amestonia's positions on upcoming votes in the General Assembly and specialized agencies.
27. That evening, Amestonian police applied to a judge for an emergency warrant to seize all assets and property of VoR pending an investigation into whether criminal offenses had been committed, citing as probable cause the Carmen Program documents published by *The Ames Post*. While the police were in chambers with the judge applying for the warrant, VoR's television broadcasting was interrupted and replaced with old reruns of "Tea Time with Margaret." The judge immediately granted the warrant. Upon execution of the warrant that night, the Amestonian police found the station unattended, although the TV broadcasting equipment and various other devices and documents had been left untouched. These articles were all catalogued and removed by the police.
28. At 3:15 A.M. the following morning, Amestonia's Border Patrol, conducting routine operations, encountered Margaret Mayer and two other Rieslandic VoR employees on a train crossing into Riesland. The Border Patrol requested that they present their travel documents for inspection. They refused, and were promptly detained. When the commander of the police unit conducting the investigation into VoR learned of this development, she sought and was granted a warrant for the arrest of the three on suspicion of espionage. They were subsequently charged with that offense, and were denied bail on the basis that they were a flight risk.
29. President Hale held a press conference on the morning of 17 February 2015. Before taking questions, he read a prepared statement:

I am deeply troubled by reports that Riesland has, for decades, engaged in a concerted surveillance campaign targeting our citizens and violating our territorial integrity and political independence. Riesland's own documents show that these offenses against our sovereignty were purely politically motivated and had no public order implications. We are entitled to an explanation. Any claims that such programs are necessary to combat terrorism simply ring hollow. No matter how severe any perceived threat to Riesland's national security, there is absolutely no justification for the systematic infringement of our citizens'

privacy. Mass electronic surveillance of our people and institutions violates Riesland's obligations under the U.N. Charter, the Vienna Conventions on Diplomatic and Consular Relations, the Broadcasting Treaty, and principles of comity between nations. Simply put, gentlemen do not read each other's mail, and friends do not spy on friends.

30. In response to a reporter's question, President Hale went on to say, "Our police authorities are treating the VoR facilities and its equipment as a crime scene. Margaret Mayer and the other VoR employees are suspected of having committed the very serious crime of espionage, charges which will be handled according to our laws." He denied that the search of the premises and the detention of the three individuals violated Amestonia's obligations under the Broadcasting Treaty, saying: "the VoR facilities and employees lost their immunities and privileges once the station ceased acting as a broadcaster and became a nest of spies." Amestonia then recalled its ambassador to Riesland for consultations, and officially closed its TV station in Riesland.
31. On 19 February 2015, Prime Minister Silk rejected President Hale's characterization of Riesland's and VoR's activities in a televised interview. She explained that Riesland's surveillance programs complied with both domestic and international law because they "were prescribed by statutes, structured around minimization procedures, and routinely reviewed by competent authorities with oversight power." She asserted that the methods employed were "both necessary and proportionate," observing that the results of the surveillance "had benefited the national security and interests of Amestonia just as much as those of Riesland." She ended her statement by saying:

Our two nations have enjoyed decades of fruitful bilateral cooperation, which is now being severely compromised. We make no apology for our efforts to keep ourselves and our friends safe from acts of terrorism. Meanwhile, the Amestonian administration is hardly reciprocating our acts of friendship. It is providing sanctuary to Frederico Frost, who is accused of very serious crimes in Riesland, and has expropriated our property and arrested our nationals in blatant disregard of the treaty between us.

32. Joseph Kafker is a 70-year-old retired Amestonian politician who founded the Green Party, now the third largest in the Amestonian Parliament. For years, Kafker has been a vocal opponent of the use of neonics in agricultural production. During his years as a Member of Parliament he attempted, on a number of occasions, to promote legislation banning them. None of these efforts was successful, a fact he lamented on his retirement in 2012. On 7 March 2015, Kafker was invited to give the keynote address at an international environmental law conference at Riesland's largest law school. After he completed his speech, he was detained by the police, allegedly in accordance with the Terrorism Act. The story broke in the international media the following day. In a special session, the Amestonian Parliament adopted a resolution denouncing Kafker's detention and demanding his release. The Government of Riesland did not respond.

33. On 10 March 2015, Kafker's case was brought before the National Security Tribunal. Following a request from the Attorney General's Office, the Tribunal ruled that all evidence pertaining to Kafker's activities and leading to his apprehension was "closed material," as the term is defined in the Terrorism Act. The Tribunal further allowed Bureau officers to testify via video conferencing, with their faces and voices obscured, regarding the need to detain Kafker. Following their testimony, the Tribunal granted the petition to extend Kafker's detention for reasons of national security. Kafker's lawyer, who had been selected from a list of approved "special advocates," was present during the proceedings, but was not permitted either to consult with his client or to share with him any of the secret information said to substantiate the allegations against him. Kafker remains detained without charge in a maximum-security facility in Riesland and his detention has been extended by the Tribunal every 21 days. A motion challenging the constitutionality of the proceedings was filed before the Supreme Court of Riesland but was denied.
34. On 12 March 2015, Amestonia's Foreign Minister contacted his counterpart in Riesland and demanded access to the secret evidence that constituted the basis for Kafker's detention. He also stated that, in Amestonia's view, the Terrorism Act did not comply with international human rights standards. The Rieslandic Minister rejected the request, responding that disclosure of the information concerning Kafker's apprehension would endanger the integrity of particular intelligence sources and therefore the national security of Riesland. The Minister further stressed that the National Security Tribunal had already determined that the information could not be disclosed in accordance with the Terrorism Act.
35. On 14 March 2015, President Hale instructed his Minister of Justice to refuse the extradition request for Frederico Frost, citing the "political offense" exception in the Extradition Treaty. He also ordered that Riesland's request for the documents held by *The Ames Post* be denied. Attorney General Deloponte responded to these developments in a statement:

The Government of Riesland has repeatedly made clear that it will not tolerate the publication of leaked confidential information, and that it will do whatever is in its power to disrupt any further threats to our national security. With or without foreign government support, we will continue our efforts to bring the fugitive Frost to justice, and to stop the damage that will result from any dissemination of Riesland's top secret documents.

36. On 17 March 2015, *The Ames Post* website's banner read "A Kafker-esque Affair." A memorandum, sourced from Frost's USB stick, revealed that a May 2014 interview with Kafker on "Tea Time with Margaret" had allowed the Bureau to hack into his electronic devices. According to the memorandum, Kafker was considered a "high-level suspect with ties to The Hive, including the planned contamination of a large shipment of honey with a toxic variant of neonicotinoids in 2014." The continuous surveillance of Kafker, following the bugging of his devices, was considered a "top priority." From intercepted communications, Bureau analysts were able to establish that Kafker was a frequent visitor to the longlivethehive

website, had participated in online chats, and had used the forum's "like" function to endorse conversations including calls for violent disruptions to raise public awareness of the neonics controversy. Attorney General Deloponte refused to comment on questions raised by the media following *The Ames Post's* publication. He stated only that Riesland was in possession of "closed materials" that "directly link Kafker to The Hive's senior echelons."

37. On 22 March 2015, the computer networks and communication switches at both *The Ames Post* and Chester & Walsingham were hacked and disabled. Investigators found that the hackers had used a malicious program to disrupt the operation of the computer systems and to corrupt master boot records, to the extent that nearly 90% of the information was "non-recoverable."
38. Based on traffic analysis, cyber security experts from the Amestonian Institute of Technology concluded: "The malware used in the hacking of the computers has been traced to IP addresses within Riesland's territory that are associated with Riesland's computer infrastructures. Significant segments of code in the malware are exact replicas of those used in the Bureau's 'Blaster' program. These code segments are not otherwise known to be in use or available to the general public." Both Chester & Walsingham and *The Ames Post* contracted external appraisers, who have estimated the combined damages related to infrastructure and to unrecoverable data at €45-50 million. A significant number of proceedings before Amestonian courts were delayed for months as a result of Chester & Walsingham's inability to access its files. *The Ames Post* had to shut down its operations entirely; it resumed publication only in June 2015.
39. On 1 April 2015, President Hale issued a statement denouncing the cyberattacks, stating that "all of the evidence points back to the Bureau and to Riesland." He described them as "not only undermining freedom of expression and attorney-client privilege – essential values in and of themselves," but as an "assault upon the very principles that stand at the core of our society." In an interview with local news held on 5 April 2015, Attorney General Deloponte refused to respond to allegations that Riesland was involved in the attacks.
40. On 22 April 2015, the Amestonian Ministry of Justice announced that the police investigation into the items found at the VoR station premises had determined that a number of them had been used for surveillance. The Ministry reported that it had obtained a forfeiture order against the premises and all property found there on the basis that it was employed in criminal activity. Finally, the Ministry stated its intention to sell the station's real estate and property, estimated to be worth €20 million, by public auction. Challenges to the original warrant dated 16 February 2015 and to the forfeiture order, presented to Amestonia's High Court by attorneys from Riesland National Television Corporation, were rejected. All subsequent appeals were summarily dismissed. The auction has been stayed until the conclusion of all outstanding legal proceedings before the International Court of Justice.

41. In mid-2015, diplomats from Riesland and Amestonia began meeting in an attempt to settle their differences. After several months of negotiations, the parties were unable to reach an agreement. In July 2015, Amestonia circulated among the members of the United Nations Human Rights Council the text of a proposed resolution calling on the recently-appointed Special Rapporteur on the Right to Privacy to investigate whether Riesland's cyber and surveillance programs were in compliance with international law. An article published in *The Sydney Morning Herald* on 9 July 2015 reported that Riesland's supporters on the Council had urged it to resolve its disputes with Amestonia. A source within the Council told the newspaper: "A number of countries voiced their concern that the continued uncertainty as to the legality of the challenged surveillance programs would hinder their ability to continue to engage and share intelligence with Riesland without fear of being complicit in human rights abuses."
42. In light of growing international pressure, Riesland and Amestonia agreed to refer all matters in dispute to the International Court of Justice, and for this purpose have drafted and signed this Special Agreement. Riesland, however, has reserved its objections to the admissibility of information derived from any confidential documents that may have been provided to *The Ames Post* by Frost. The parties agreed that the issue of the admissibility of the documents would be left for the Court to resolve, as reflected in Article 2(b) of this Special Agreement.
43. Amestonia and Riesland are both members of the United Nations, and are parties to 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; the Vienna Convention on Diplomatic Relations; the Vienna Convention on Consular Relations; the International Convention for the Suppression of Terrorist Bombings; and the International Convention for the Suppression of the Financing of Terrorism. Neither state has made any reservations, declarations or understandings with regard to any of these treaties.
44. Applicant asks the Court to adjudge and declare that:
  - (1) The documents published on the website of *The Ames Post* are admissible as evidence before the Court; Riesland's mass electronic surveillance programs against Amestonian public figures and nationals revealed in those documents violates international law; and Amestonia is therefore entitled to an order directing the immediate cessation of those programs with assurances of non-repetition;
  - (2) The seizure and forfeiture of the VoR station and its equipment, and the arrest of Margaret Mayer and the other two VoR employees, did not violate the Broadcasting Treaty, and were in accordance with Amestonia's other international law obligations;

- (3) The detention of Joseph Kafker under the Terrorism Act violated international law, and Amestonia is therefore entitled to his immediate release, the disclosure of all information which formed the basis of his apprehension, and the payment of compensation for his detention; and
- (4) The cyber attacks against the computer systems of *The Ames Post* and Chester & Walsingham are attributable to Riesland, and constitute an internationally wrongful act for which Amestonia is entitled to compensation.

45. Respondent asks the Court to adjudge and declare that:

- (1) The illicitly-obtained documents published on the website of *The Ames Post* are inadmissible before the Court, but in the event that the Court does find them to be admissible, they do not evidence any breach by Riesland of an international obligation owed to Amestonia;
- (2) The arrest of Margaret Mayer and the other VoR employees, and the expropriation of the VoR facility and its equipment, violated the Broadcasting Treaty and international law generally, and Riesland is therefore entitled to the immediate release of its nationals and compensation for the value of the confiscated property;
- (3) Riesland's detention of Joseph Kafker under the Terrorism Act is consistent with its obligations under international law, and the Court has no authority to order either Kafker's release or the disclosure of the information relating to his apprehension; and
- (4) The cyber attacks against the computer systems of *The Ames Post* and Chester & Walsingham cannot be attributed to Riesland, and in any event did not constitute an internationally wrongful act.

## ANNEX I

**TREATY ON THE ESTABLISHMENT  
OF BROADCASTING FACILITIES  
BETWEEN THE STATE OF AMESTONIA  
AND THE FEDERAL REPUBLIC OF RIESLAND  
4 MARCH 1992**

*[excerpts]*

The State of Amestonia and the Federal Republic of Riesland (“the Contracting Parties”), (a) *desiring* to fortify the friendship between the two countries; (b) *recognizing* the importance of strengthening understanding and cooperation between their peoples; (c) *seeking* to offer their citizens radio and television channels that will reflect the two nations’ dynamic political, cultural, and artistic activity; have agreed upon the following articles:

### ARTICLE 1

1. Each Contracting Party may establish and operate in the territory of the other a radio and television broadcasting station.
2. The land on which each station will be constructed will be procured by the operating-state and held in its name. The operating state will be responsible for staffing, running, and funding the station, and shall procure at its own expense and in its own name the materials and other equipment required for its operation.

[...]

### ARTICLE 2

Each station shall produce and air programs and content including news stories, interviews, documentaries, and movies produced either in or by the operating country, with local viewers and listeners in the host country as the target audiences.

[...]

### ARTICLE 14

1. The premises referenced in article 1(2) of the present Treaty shall be inviolable, and agents of the host state may not enter those premises without the consent of the head of the station. Such consent may be assumed only in cases of fire or other similar disaster posing or threatening serious immediate danger to public safety or order.
2. In addition to the premises of the station, its furnishings, equipment, and other property used in its operation, as well as its means of transport, shall be immune from search, requisition, attachment, expropriation, or execution.
3. The receiving state is under a special duty to take all appropriate steps to protect the premises of the station against any intrusion or damage, and to prevent any disturbance of the peace of the premises or impairment of its dignity.
4. The archives and documents of the station shall bear visible external marks of identification, and shall be inviolable at all times and wherever they may be.

[...]

### **ARTICLE 15**

1. Each station's employees, who are also nationals of the operating state, shall be entitled to the following immunities and privileges:
  - a) The persons of each station's employees shall be inviolable, and they shall not be liable to any form of arrest or detention. The host state shall treat them with due respect and shall take all appropriate steps to prevent any attack on their freedom or dignity.
  - b) Each station's personnel shall enjoy immunity from the criminal jurisdiction of the receiving state, and shall not be obliged to give evidence as witnesses.
  - c) In respect of acts performed by an employee of the station in the exercise of its functions, the immunities and privileges shall continue to subsist after the employee's functions at the station have come to an end.

[...]

### **ARTICLE 23**

1. Without prejudice to their privileges and immunities, it is the duty of all persons employed by each station to respect the laws and regulations of the host state. Those who are nationals of the operating state have an additional duty not to interfere in the internal affairs of the host state.
2. The premises of the station must not be used in any manner incompatible with the station's functions as envisaged in the present Treaty, in other rules of general international law, or in any other agreements in force between the Parties hereto.

[...]

### **ARTICLE 36**

All privileges and immunities provided for in this Treaty, save for those in Article 15(1)(c) above, shall cease to have effect upon the cessation of the station's functions as envisaged in the present Treaty.

[...]

### **ARTICLE 40**

The term of this agreement shall be 30 years.

(Signed)  
Shannon Belle Cambridge  
Minister of Telecommunications  
State of Amestonia

(Signed)  
John Andre Sorge  
Minister of Telecommunications  
Federal Republic of Riesland

## ANNEX II

### ***TERRORISM ACT 2003***

*[excerpts]*

#### **1. Definitions**

[...]

“*National Security Tribunal*” (“the Tribunal”) shall have the meaning given that term under the Secret Surveillance Bureau Act 1967;

[...]

“*Terrorist Act*” shall mean an act as defined in Article 2.1(b) of the International Convention for the Suppression of the Financing of Terrorism (9 December 1999);

[...]

#### **2. Terrorism Alert**

If the Government receives information that there is a credible danger of an imminent terrorist act being committed in Riesland, it may issue a Terrorism Alert. Such an Alert shall be valid for six months, unless it is revoked earlier. Upon its expiration or revocation, the Government may issue a new Terrorism Alert if it considers that the credible danger of terrorist acts still persists or has been revived.

#### **3. Detention Powers**

- a. When a Terrorism Alert is in force, the Government may detain any foreign national suspected of being involved in instigating, authorizing, planning, financing, carrying out, or aiding a Terrorist Act, as defined herein, for a period not exceeding 180 days.
- b. Except as provided herein, no court shall review the detention of any person hereunder, but every detainee shall be brought before the Tribunal within three days of his or her detention.
- c. Proceedings before the Tribunal will be held in secret, and its proceedings will not be disclosed to the public or the media. Records of the Tribunal’s proceedings shall be entitled to the highest protection provided by law.
- d. The Tribunal may decide whether continued detention of an individual is required for reasons of national security or public safety. The Tribunal shall give appropriate consideration to factors including, but not limited to:
  - i. the likelihood that the detainee has in fact committed, instigated, authorized, planned, financed, or aided a Terrorist Act;

- ii. the likelihood that the detainee will commit a Terrorist Act or will incite others to do so if he or she is released;
  - iii. the likelihood of family or government rehabilitation or support for the detainee if he or she is released;
  - iv. the likelihood that the detainee may be subject to criminal trial, whether under this Act or some other statute;
  - v. the likelihood that, following release, the detainee's country of nationality will request extradition from Riesland; and
  - vi. any substantial interest in the detainee expressly stated by national law enforcement or intelligence authorities.
- e. In making its decision under subsection (d), the Tribunal may receive and accept any documentary or testimonial evidence from any source. It shall determine whether or not particular evidence is to be treated as "closed material." Closed material shall not be made available to the detainee, his or her counsel, or third parties, without the Tribunal's authorization.
- f. In proceedings before the Tribunal, officials from the security and intelligence authorities may be allowed to testify anonymously via video conferencing with their faces and voices obscured.
- g. After the initial review provided in subsection (b), each detainee will be brought before the Tribunal no less often than every 21 days for a periodic review. The Tribunal will consider whether conditions such as those listed under subsection (d) have changed, allowing for the detainee's criminal prosecution or release.
- h. The Tribunal may extend the detention of any detainee in appropriate circumstances, but no detainee shall remain in custody under this Act for a period of more than 540 days in total.
- i. Persons detained under this Act may be represented by legal counsel to be selected by them from a list of "Special Advocates," who possess appropriate security clearance. This list shall be compiled by the Attorney General. Only Special Advocates will be entitled to participate in proceedings where closed material is presented. A Special Advocate may not disclose closed materials to or discuss them with the detainee or any third party, or obtain the detainee's instructions pertaining to such materials.

[...]

**2016 PHILIP C. JESSUP**  
**INTERNATIONAL LAW MOOT COURT COMPETITION**  
**CORRECTIONS AND CLARIFICATIONS TO THE SPECIAL AGREEMENT**

The following corrections and clarifications to the Special Agreement have been agreed to by the parties, and the text jointly notified to the Court on 1 September 2015 should be considered amended accordingly. The Registrar of the Court reminds all parties and participants of the following:

- a. The Special Agreement is, in essence, a negotiated stipulation of facts. Its words have been carefully chosen, and are the result of extensive negotiation. The parties decline to “clarify” matters about which they are unlikely to agree.
- b. Any request for clarification not addressed in the following paragraphs has been considered by the parties to be redundant, inappropriate, or immaterial, or the parties were unable to reach agreement on a mutually acceptable answer.
- c. Except to the extent that corrections and clarifications are set out below, participants are to assume that the Special Agreement is accurate in all respects.
- d. With respect to pronunciations of the various proper names used in the Special Agreement, all parties and the Court have agreed that they will not take formal or informal offense at any reasonable effort to pronounce proper names correctly.

**CORRECTIONS**

1. The words “radio and” should be deleted from both subparagraph (c) to the preamble and Article 1(1) of the 4 March 1992 Broadcasting Treaty, excerpted in Annex I.
2. At the end of section 3(a) of the Terrorism Act, excerpted in Annex II, the following sentence should be added: “No detention shall be undertaken under this Act except pursuant to a warrant issued by the National Security Tribunal.”
3. At the end of Paragraph 43 the following sentence should be inserted: “Amestonia and Riesland are not parties to any other bilateral or multilateral treaty of potential relevance.”

**CLARIFICATIONS**

1. Amestonian police investigators found that the chemically altered neonicotinoids in the possession of the three Amestonian college students, referenced in Paragraph 19, could potentially cause serious bodily injury to anyone handling or inhaling them.
2. The undersea fiber optic cable, referenced in Paragraph 22, is owned by a multinational telecommunications company registered in Germany, and is roughly 2000 km in length. At the request of the Amestonian government, divers from the telecommunications company

were sent to the coordinates cited in the “Verismo Program” published on the *Ames Post* website. They identified the pod and dismantled it by 6 April 2015. Company investigators were able to determine that the pod did not cause any breaking or injury to the cable, nor did it interrupt or in any other manner obstruct communications.

3. When, as referenced in Paragraph 23, the intelligence obtained under what the Frost Files called “the Verismo Program” was provided to Amestonian security authorities, its source was never disclosed. Amestonian officials always accepted the intelligence, and never challenged or otherwise demanded additional information as to the nature, scope, and reach of the Verismo Program, until 2 February 2015.
4. In accordance with the provisions of the Broadcasting Treaty, Amestonia approved the appointment of each Rieslandic national working at VoR. Thereafter, these employees received documentation detailing their privileges and immunities under the Treaty.
5. The memoranda detailed in Paragraph 26 additionally revealed that the Rieslandic Minister of Foreign Affairs was consulted on the authorization of the Carmen Program and was routinely briefed on the program’s activities.
6. Amestonia was immediately informed of Kafker’s detention when he was apprehended, and he was afforded consular assistance. Kafker has access to medical care and the ability to communicate with, and accept visits from, his immediate family.
7. Riesland reissued a Terrorism Alert in October 2015. It has notified the Secretary General of the United Nations of each of the issued Alerts without providing any additional information.
8. The Amestonian Institute of Technology (AIT) referenced in Paragraph 38 is a world-renowned research-intensive academic institution with a focus on engineering and computer science. The Amestonian Government turned to security experts from AIT following the 22 March 2015 cyberattack, and asked for their assistance in determining the identity of the perpetrators. The experts were also provided unfettered access to the devices seized from the VoR station.
9. AIT’s subsequent investigation determined that the computer infrastructures referenced in Paragraph 38 were Rieslandic governmental computer infrastructures.
10. Amestonia and Riesland became parties to the Vienna Convention on the Law of Treaties in 1982 and 1976 respectively.