

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN THE REPUBLIC OF ARRUDO (APPLICANT)
AND THE FEDERAL STATES OF RESPINOS (RESPONDENT)
STATEMENT OF AGREED FACTS**

jointly notified to the Court on 1 September 2016

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE RÉPUBLIQUE D'ARRUDO (DEMANDERESSE)
ET LA RÉPUBLIQUE FÉDÉRALE DE LES ÉTATS-RESPINOS (DÉFENDEUR)
SOUMIS À
À LA COUR INTERNATIONALE DE JUSTICE
EXPOSÉ CONJOINT DES FAITS**

notifié conjointement à la Cour le 1 septembre 2016

1. The Republic of Arrudo is a developing country situated in the middle of the Zurc Sea Region. It consists of 14 small islands and 2 major islands named Chelgo and Ralyu. It has a population of approximately 8 million people and its economy is primarily dependent on agriculture and fishing. Arrudo's per capita GDP is \$10,000.
2. Also located in the Zurc Sea Region is the Federal States of Respinos, a developed nation with a population of approximately 150 million people. It has a highly industrialized economy with a per capita GDP of \$45,000. Respinos is heavily reliant on mineral exploitation and coal-fired power.
3. Since time immemorial, Arrudo regularly experiences typhoons. On average, around 10-15 typhoons hit the territory of Arrudo every year. This is mainly attributed to the location of Arrudo being at the center of the vast waters of the Zurc Sea.
4. In 1992, both Respinos and Arrudo became parties to the United Nations Framework Convention on Climate Change (UNFCCC) and subsequently, to the 1997 Kyoto Protocol. Both countries also signed and ratified the Paris Agreement on 22 April 2016.
5. In 1994, Respinos authorities enacted the Environmental Impact Law, which required any power plant to obtain environmental permits before commencing operation within Respinos. This was part of its efforts to comply with its international obligations under the UNFCCC and Kyoto Protocol.
6. In 1995, Arrudan Parliament enacted the Greenhouse Gas Emissions Reduction Act, otherwise known as the GHG Law. The central policy behind the law was to curtail the greenhouse gas emissions discharged by large industrialized companies in Arrudo. The GHG Law was widely considered to be a model law. The law and its implementing regulations (a) penalized non-compliant power plants in the form of fines and revocation of license, and (b) set carbon emission reduction targets of 20% below Arrudan's 1990 levels.
7. Alba Zel Corporation is a corporation duly organized under the laws of Arrudo. Since the 1980s, it has been engaged in the production of energy through its coal-fired plants and distributes the energy to the national grids of Arrudo. It is now a major player in the small but growing energy sector of Arrudo.
8. In June 2006, an environmental organization in Arrudo published a scientific study demonstrating the trend in the typhoons entering Arrudo's territory. According to the study, the typhoons were observed to have intensified in the last decade with the strongest wind recorded at 185kph compared to 140kph in the 1970s. The report concluded that stronger typhoons are expected in view of global warming. Prevalent greenhouse gas emissions are the suspected cause of this phenomenon.

9. In January 2007, alarmed by the scientific study and the developments in the energy sector, an environmental group in Arrudo called the Society for Environment Appreciation by Netizens (SEAN) petitioned the Arrudan government to penalize Alba Zel Corporation due to reports of excessive emissions of carbon dioxide, sulphur dioxide, and nitrogen dioxide from its power plants.
10. In an interview in March 2007, the Prime Minister of Arrudo, Eian Delario, assured the public that the government would undertake all efforts to penalize corporations that do not comply with the carbon emissions restrictions under the GHG Law. However, despite this assurance, the government has never penalized Alba Zel Corporation for repeated excessive emissions.
11. In November 2013, a deadly typhoon named Cramedo struck the islands of Arrudo, leaving almost 1,000 people dead and 4,000 people homeless. Typhoon Cramedo was identified to be the most powerful tropical cyclone reported in the last 50 years with winds averaging at 220kph. A storm surge also ravaged the island of Tiega, nearly wiping out a coastal town. Lifeless bodies, toppled trees, and debris from wrecked houses were scattered all over the affected towns and provinces of Ralyu. The farm lands and plantations of Chelgo were likewise ruined by the typhoon.
12. Following Typhoon Cramedo, Prime Minister Delario sought relief assistance from the international community to aid the communities affected by the typhoon. He also called on developed nations to halt excessive GHG emissions contributing to the rise in global temperature but deeply affecting small island-States like Arrudo. He added that Arrudan Government would initiate coordination efforts with neighboring countries to constrain the phenomenon of global warming.
13. Arrudo and Respinos have a long standing history of cooperation and trade. Respinos' former President was a proponent of reducing the country's carbon emissions. In 2006, he introduced carbon taxation schemes in order to reduce the Respinos' reliance on fossil fuel as well as a carbon emissions reduction target of 15% below 1990 levels by 2026. The carbon reduction targets were scaled in order to take into account the economy's heavy reliance on carbon emissions.
14. In February 2014, Arrudo and Respinos concluded a free trade agreement, which included a carbon trading scheme under which the countries traded carbon credits. Respinos was aware that it would be difficult to meet its carbon emission targets in the short term, so requested a trading scheme in the interim, enabling it to meet its new targets while it continued to transition its energy sector to a green energy sector. Given the significant value of the carbon trading scheme to Respinos, it also committed to the following terms, contained in Annex B of the free trade agreement. Respinos committed to:

- a. Provide \$200 million dollars of funding to Arrudo to to support it with climate change mitigation and adaptation technologies.
 - b. Accept 100,000 migrants from Arrudo over 10 years given its vulnerability to climate warming impacts such as sea-level rise, increasing water salinity, and extreme weather events.
15. The additional commitments contained in Annex B were controversial. Therefore, Respinos and Arrudo agreed that Annex B would not commence until 30 July 2016.
16. On 1 June 2016, Respinos had a general election and the country elected a new President. The result was a landslide victory for the new President, who was elected due to her opposition to the new carbon taxes in Respinos and her opposition to the free trade agreement between Respinos and Arrudo. For a number of years, Respinos had suffered high debts, limited GDP growth, high unemployment, and power shortages, which had occurred due to restrictions on the country' power plants.
17. On 15 June 2016, the new President announced that her government would immediately:
 - a. repeal the carbon tax schemes,
 - b. issue new carbon emission targets,
 - c. infuse more money into domestic power plants, and
 - d. withdraw from its commitments under Annex B of the free trade agreement. The President stated that Annex B had not yet commenced and that the Annex B commitments were not in Respinos' national interest, especially given that the former government did not give due consideration to how Respinos would absorb 100,000 migrants given growing unemployment rates in Respinos.
18. On 30 June, Respinos' parliament passed new carbon emission targets, which are 15% above its 1990 levels by 2025.
19. On 7 July 2016, Arrudan Minister of Foreign Affairs, Alan Nozavill, sent a diplomatic note to Respinos. In the diplomatic note, the Government of Arrudo:
 - a. demanded that Respinos commit to Annex B of the free trade agreement;
 - b. expressed alarm over Respinos' new carbon emission targets and its plans to approve a further 20 coal-fired power plants; and
 - c. requested that Respinos discontinue issuing permits to these industries which have largely contributed to the concentration of GHGs in the atmosphere.
20. On 21 July 2016, Respinos' Secretary of Foreign Relations, Flavia Kentwell, sent a diplomatic note to Arrudo extending warm greetings. Ms. Kentwell stated that Respinos' Government is one with the international community in the battle against global warming. Ms. Kentwell noted that the requirement under the Enviornmental Impact Law

for power plant operators to secure environmental permits is consistent with ensuring that domestic power plants' emissions are not left unchecked. The note added that Respinos' new carbon emission targets are more realistic and that it is fully committed to meeting those targets, which it believes are appropriate in view of its financial economic woes. Ms. Kentwell concluded that Arrudo should also draw its attention to its own power plants whose discharges are over and beyond the standards set under international law.

21. On 1 August 2016, the Arrudan Government sent a further diplomatic note to Respinos. Arrudo noted that while a number of its local corporations may have exceeded their limits in GHG emissions, particularly Alba Zel Corporation, the Arrudan Government does not have adequate resources to rigorously enforce its laws. These lack of resources are the reasons why it agreed to carbon trading and sought assistance as outlined under Annex B of the free trade agreement. The Arrudan Government stated that due to its growing population and recent economic growth, boosted by the influx of foreign investment, Arrudo needs a larger supply of energy. The Arrudan Government further outlined its vulnerability to climate change effects and stated that Respinos must:
 - a. Financially assist Arrudo consistent with its obligations under the free trade agreement and the Paris Agreement, more specifically under Article 9 of the Paris Agreement.
 - b. Curb its carbon emissions to ensure compliance with the Paris Agreement and UNFCCC framework. Arrudo stated that by entering into the UNFCCC and Paris Agreement, Respinos had accepted a national responsibility for the joint volume of national greenhouse gases. Arrudo further contended that it is the highly industrialized countries such as Respinos which should be held responsible for global warming and the adversities that fall upon developing nations like Arrudo. The long history of incessant carbon emission in Respinos that continues until today is in stark violation of its environmental obligations under international law.
22. On 8 August 2016, the Respinosi Government replied in a diplomatic note sent to Arrudo. According to Respinos, it has not violated any of its international environmental obligations. It has a regulatory mechanism in place in compliance with its international legal commitments. Additionally, it has donated \$400 million to the Global Climate Change Fund. Respinos alleged that it is Arrudo which has violated its obligations in light of its failure to enforce its own domestic law to control local GHG emissions.
23. Consultations and negotiations failed to resolve the matter between Arrudo and Respinos. In late August 2016, both States agreed to submit the matter to the International Court of Justice.
24. Both Arrudo and Respinos are Members of the United Nations and are Parties to the Statute of the International Court of Justice. They are also signatories to the Rio

Declaration, the Stockholm Declaration, and the Montreal Convention on Ozone Depleting Substances.

25. Arrudo prays that this Court adjudge and declare as follows:

- a. Respinos is obliged to implement Annex B of the trade agreement and provide funding to Arrudo and outline it plans to assist with resettlement of Arrudan climate change refugees.
- b. Respinos has violated its international environmental obligation with respect to its new carbon emissions targets. In particular, Respinos:
 - i. Is aware that all countries have an obligation to curb carbon emissions to ensure that global warming does not exceed 2°C, which is danger line to humanity and to Arrudo' continued existence.
 - ii. Is far exceeding reasonable allowances for a carbon budget.
- c. Arrudans have a right to a clean, healthy, and functional environment, which is integral to their human rights, including their rights to life, health, food, and an adequate standard of living. By setting reckless carbon emissions targets, Respinos is violating the Arrudans' human rights and contributing to dangerous levels of carbon emissions, which is endangering the continued health and safety of Arrudans.
- d. Arrudo has not violated international law for its failure to rigorously enforce its laws on greenhouse gas emissions.

26. Respinos prays that this Court adjudge and declare as follows:

- a. Respinos has not violated the terms of its free trade agreement with Arrudo on the grounds that Annex B had not yet commenced and the commitments within Annex B required congressional ratification under its constitution, which was not granted. In the absence of a binding agreement, Respinos cannot be forced to provide funding to Arrudo, particularly in light of its economic restrictions.
- b. Respinos has not violated its international environmental obligation with respect to its revised carbon emissions. The UNFCCC and Paris Agreement do not set carbon budgets. Instead, these treaties ask parties to make efforts to reduce carbon emissions. Respinos believes its current targets are appropriate given its current economic issues and that it can revise those targets in the next 10 years subject to economic growth and receiving more evidence on appropriate carbon budgets.
- c. Arrudo has violated international law for its failure to rigorously enforce its laws on greenhouse gas emissions.

CLARIFICATION ONE

1. Annex B of the Free Trade Agreement (FTA) has not commenced and Respinos has argued that Annex B has not been ratified. The parties should consider the implications of article 14 of the Vienna Convention on the Law of Treaties.
2. The Paris Agreement refers to the Paris Agreement under the United Nations Framework Convention on Climate Change, which is not yet in effect. Parties should consider art. 18 of the Vienna Convention on the Law of Treaties, which is to "refrain from acts that would defeat the object and purpose of the treaty."
3. The current status of the law on "climate refugees."
4. Arrudo has identified as being a small-island developing state: see paragraph 12 of the Compromis.
5. The parties have an obligation to come to court with clean hands.

CLARIFICATION TWO

1. The parties may assume that Appendix B of the free trade agreement was to be ratified and that Respinos had not deposited its instrument of ratification for Annex B of the free trade agreement.
2. Arrudo is a small island developing state. Based on the current models prepared by the Intergovernmental Panel on Climate Change (IPCC), there is a high confidence that 50% of Arrudo will be submerged by 2066 unless global emissions peak by 2020 and global warming is kept to 2 degrees Celsius. We do not require the parties to present technical arguments on the IPCC's representative concentration pathways (RCPs), which are used in IPCC's modelling. However, please further assume that Respinos' new carbon emission targets of 15% above its 1990 levels by 2025 are inconsistent with a global emissions peak by 2020 and limiting global warming to 2 degrees Celsius.

CLARIFICATION THREE

1. Both Arrudo and Respinos are parties to the UN Refugee Convention and the Vienna Convention on the Law of Treaties.