

FIFTY-FOURTH ANNUAL PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

THE CASE CONCERNING THE ALFURNAN MIGRANTS

The 2013 compromis raised four primary issues: (1) state extinction and the elements of statehood; (2) the status and treatment of persons displaced across international borders because of environmental disasters; (3) the treatment of detainees; and (4) the enforcement of sovereign to sovereign loans.

Alfurna is a developing nation made up of two islands, Batri and Engili, located in the Bay of Singri. Alfurna was first settled by Finutafu, a developed state approximately 800 miles west. As of 2011, Alfurna's population was approximately 53,000. Among its population is a group of about 1,500 residents of Nullatree Cove, a small coastal village in Engili, who have lived apart from other citizens for many years because they reject urbanization and technological development.

Rutasia is a large developed state on the eastern side of the Bay of Singri, about 350 miles east of Alfurna. Rutasia is heavily reliant on the burning of fossil fuels and has been slow to reform its carbon emission behavior, having committed to a massive public works program in the mid-1990s. It is also a frequent lender to impoverished nations and a member of the Paris Club, an informal group of official creditor nations.

The climate of the Bay of Singri includes rain-bearing monsoons in summer, with strong cyclones and torrential rains in spring and fall. The Bay also experiences undersea earthquakes, generating tsunamis, which have devastated the coastal regions of the nations surrounding the Bay. Within the first decade of Alfurna's settlement, it was clear that the islands were in frequent danger of being swamped. Seawalls were erected around the islands, which were maintained by Finutafu before Alfurna became an independent nation. However, Alfurna's post-independence monitoring and maintenance of the seawalls was hampered by financial difficulties.

By 1990, the rate at which sea levels were rising had increased to such an extent that many parts of the islands were underwater even at low tide. Because of its financial difficulties, Alfurna sought grants and loans from various foreign governments to finance repairs. In 1992, Rutasia agreed to a "climate change loan" of USD 125 million, tied to the use of Rutasia's expertise and resources for a long-term climate change remediation project, the Alfurna Climate Change Remediation Project (ACCR Project). Disbursement of the funds was conditioned on their use to repair the seawalls and related damage, and to implement other remedies and preventative measures, and the funds were deposited into Alfurna's account at Rutasia's provincial bank. The loan required Alfurna to contract a Rutasian company to perform the construction and maintenance work on the seawalls, and Mainline Constructions Limited (MCL) was the only such Rutasian private-sector construction company capable of performing the work. The loan agreement also required that funds be deposited into an account at Alfurna's central bank, the Alfurna Reserve Bank (ARB), maintained in the Provincial Bank of Lando, one of Rutasia's provincial reserve banks.

In January 1999, the International Monetary Fund reported that Alfurna's debt had reached 120% of GDP. In late 1999, Alfurna failed to pay any interest or principal under the climate change loan, and negotiated for debt relief. Rutasia agreed to cancel 25% of the loan, among other things. In 2001, Hurricane Caryl caused major damage throughout the Bay, and Alfurna again anticipated it would be unable to meet its payment obligations. As the work in connection with the ACCR Project continued, Alfurna complained that a significant amount of MCL's

repairs to portions of the seawalls were substandard. MCL rejected Alfurna's claims. In November 2001, Alfurna and MCL submitted their contractual dispute involving the repair work to arbitration, in accordance with the loan agreement. Alfurna withheld USD 20 million that MCL claimed pursuant to their contract, which it agreed to preserve in the ARB account at the Provincial Reserve Bank of Lando until the arbitral panel issued its final award.

In July 2002, Alfurna's Treasury reported to Prime Minister Fatu that based on a "best case" analysis, Alfurna would encounter severe debt servicing problems within three years, and had a high risk of missing principal payments again within the next five years. In September 2002, Rutasia agreed to cancel a further 25% of the loan and restructure payment obligations. In November 2002, the arbitrators in the case against MCL issued their final award in favor of Alfurna, authorized the release of the USD 20 million held pending the award, and ordered an additional USD 35 million be paid in damages. MCL paid USD 35 million in damages to the ARB account in the Lando Bank.

Prime Minister Fatu established a Climate Emergency Committee (CEC) comprising his most senior government ministers in early 2003, to examine the future prospects of Alfurna. By 2004, the CEC concluded that Alfurna would be habitable for only a few more years before earthquakes and extreme weather events destroyed the seawalls. Alfurna began strategizing to relocate its people. The government also declared a moratorium on servicing debt to foreign lenders. By 2005, Alfurna stopped repaying any of its loans.

In mid-2006, a major earthquake destroyed much of Batri Island and also caused significant damage to Rutasia. Alfurna's government relocated to Finutafu, occupying temporary premises until Alfurna could find a new homeland. The remainder of Batri residents fled to Engili. Shortly thereafter, Batri was submerged permanently. Alfurna pleaded for assistance in negotiations with various neighboring states, asking for migration arrangements and a new homeland, and succeeded in securing a range of emergency migration arrangements. By 2007, after another series of severe storms caused damage to the Bay, Finutafu finally agreed to negotiate with Alfurna for the cessation of an offshore island.

In mid to late 2008, as world credit markets tightened, Rutasia experienced severe financial pressures, and its own loan repayment obligations and costs of dealing with the 2007 storms caused it to look at improving its collection of repayments on its official development assistance loans. Alfurna did not respond to the notice from Rutasia to remedy its breach of its payment obligations.

By early 2009, most of Engili was almost uninhabitable. Most of the remaining citizens were those in the Nullatree Cove area who had refused to take part in the migration program because they did not wish to leave, though some could not take part because they had criminal records, which meant they did not meet the good moral character requirements of receiving states. During 2009 and 2010, Rutasia's navy encountered a large number of overcrowded boats in Rutasia's territorial waters, drifting towards Rutasia. They were intercepted and the people onboard brought to the Woeroma Immigration Processing and Detention Center.

Of the roughly 3,000 people brought to the Woeroma Center, about 1,500 were from Nullatree Cove and requested to be housed together, which they were, in a separate Block A. Conditions at the Woeroma Center came under criticism. After a small earthquake in 2011 caused cracks in Block A, asbestos was discovered, and Rutasia's immigration department declared it could no longer provide separate facilities for the Nullatree Cove people. Rutasia reached an agreement with the Republic of Saydee, a developing country that has a poor human rights record, to transfer those people to Saydee's existing facilities. The International Legal Support Association (ILSA) filed suit in Rutasia's highest court to stay

the proposed transfer, and sought damages for the alleged mistreatment of the detainees. The court denied the motion and dismissed the case.

By the end of 2011, an earthquake destroyed the remaining sections of Alfurna's seawall, and Engili became permanently submerged. Negotiations with Finutafu collapsed because Alfurna was unable to assure Finutafu that it had access to sufficient funds to pay for the cession of the land. However, Finutafu agreed to lease the land to Alfurna, at an initial rental of USD 1 million per year, for a period of 99 years.

In February 2012, Rutasia directed its provincial bank to close Alfurna's account and transfer the balance to Rutasia's government. Rutasia claimed that the funds no longer belonged to any state, and that they should be applied to the debt the former state would have been obliged to pay had it continued to exist. Debates in the UN led to the parties negotiating this special agreement to the ICJ. On the news of the prospective special agreement, ILSA filed for a stay of transfer of the migrants, and a temporary stay was granted pending the ICJ decision in this case.

Issues to be resolved by the Court:

- I. Whether Alfurna is still a state and the Court's jurisdiction;
- II. Whether Alfurna may make claims for the detainees in Rutasia and whether Rutasia properly processed those detainees and accorded them status consistent with international law;
- III. Whether Rutasia's treatment of the detained Alfurnan migrants held in the Woeroma Center, and the proposed transfer to Saydee, violate international law; and
- IV. Whether Rutasia's conduct in respect of Alfurna's assets is also consistent with international law.

SUMMARY OF PARTICIPATION IN JESSUP 2013

The 2013 White & Case International Rounds began on Sunday, March 31, and culminated with the World Championship Round on April 6. With 114 participating teams from 83 jurisdictions, 2013 was the most diverse International Round ever. The International Law Students Association would like to thank White & Case LLP, the American Society of International Law, the International Bar Association, @WashULaw, and the countless volunteers who contributed their time and energy to the competition.

WHITE & CASE JESSUP CUP WORLD CHAMPIONSHIP ROUND

Final Round Judges

Ronny Abraham

Judge, International Court of Justice

Xue Hanqin

Judge, International Court of Justice

Julia Sebutinde

Judge, International Court of Justice

White & Case Jessup Cup World Champion

National Law School of India University

Raag Yadava

Geetha Hariaran

Shreya Jain

Akshaya Ramadurai

Jessup Cup Runner-Up Team

Singapore Management University School of Law

Hui Ying Chong

Kenneth Tan

Shaun Pereira

Aleksandar Georgiev

Zhao Xiang Liu

Stephen M. Schwebel Best Oralist Award (Championship Round)

Raag Yadava, National Law School of India University

OTHER WHITE & CASE INTERNATIONAL ROUNDS AWARDS

Best Oralist (Preliminary Rounds): Emily Burke, University of New South Wales (Australia)

Best New Team: University of Macau (Macau)

Best Overall Applicant: University of New South Wales (Australia)

Best Overall Respondent: Columbia Law School (United States)

Best Applicant Memorial

1. University of Bucharest (Romania)
2. New York University School of Law (United States)
3. Friedrich-Schiller-Universität Jena (Germany)

Best Respondent Memorial

1. Russian Academy of Justice (Russia)
2. City University of Hong Kong (Hong Kong)
3. Columbia Law School (United States)

Semifinalists

University of Buenos Aires (Argentina)

Columbia Law School (United States)

Quarterfinalists

Hebrew University (Israel)

Murdoch University (Australia)

University of New South Wales (Australia)

University of California–Hastings (United States)

Octofinalists

Norman Manley Law School (Jamaica)

Centro de Investigación y Docencia Económicas, A.C. (Mexico)

European Humanities University (Baltic Region)

Leiden University (The Netherlands)
Universitas Indonesia (Indonesia)
Washington University, St. Louis (United States)
Urals State Law Academy (Russia)
Royal University of Law and Economics (Cambodia)

Run-Off Teams

Università di Roma Tre (Italy) American University (United States)
University of Sydney (Australia) Oxford University (United Kingdom)
Moscow State University of International Relations (Russia)
University of Western Ontario (Canada)
University of Helsinki (Finland)
Victoria University of Wellington (New Zealand)
Russian Academy of Justice (Russia)
University of the Philippines (Philippines) Universiteit Gent (Belgium)
National Law University, Delhi (India)
Moscow State University named after M.V. Lomonosov (Russia)
Universidade Federal Minas Gerais (Brazil)
Wayne State University (United States)
Cambridge University (United Kingdom)

Alona Evans Award for Best Memorials Submitted in the White & Case International Rounds

First Place: University of Bucharest (Romania)
Second Place: Royal University of Law and Economics (Cambodia)
Third Place: National Law University, Delhi (India)

Hardy C. Dillard Award for Best Memorials Submitted in the Regional and National Rounds

First Place (tie): Humboldt-Universität Berlin (Germany)
First Place (tie): Université de Luxembourg (Luxembourg)
Third Place: St. Augustine University of Tanzania (Tanzania)
Fourth Place (tie): Russian Academy of Justice (Russia)
Fourth Place (tie): Université Pantheon-Assas Paris 2 (France)

Richard R. Baxter Award for Top Overall Applicant and Respondent Memorials

Best Applicant Memorial: Université de Luxembourg (Luxembourg)
Best Respondent Memorial: National Law University, Delhi (India)