6th Dr. PARAS DIWAN MEMORIAL INTERNATIONAL 'ENERGY LAW' MOOT COURT COMPETITION COMPROMIS, 7th – 10th APRIL, 2016

INTERNATIONAL COURT OF JUSTICE

IN THE PROCEEDINGS BETWEEN

THE REPUBLIC OF ALBROSA, ISLAND STATES OF BONG-BONG AND KOLRA AND THE PEOPLE'S DEMOCRACY OF BRISSELANTA TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE DIFFERENCES ARISING BETWEEN THE STATES CONCERNING THE INTERPRETATION OF THE COOPERATION AGREEMENT ON THE DEVELOPMENT OF THE PEACEFUL USES OF NUCLEAR ENERGY

Jointly notified to the Court on January 15, 2015

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

Ont conjointement notifié à la Cour le 15 Janiver, 2015

JOINT NOTIFICATION

ADDRESSED TO THE REGISTRAR OF THE COURT:

The Hague, January 15, 2015

On behalf of the Republic of Albrosa, the Island States of Bong-Bong and Kolra ("the Applicants") and the People's Democracy of Brisselanta ("the Respondent"), in compliance with Article 40(1) of the Statute of the International Court of Justice, it is our privilege to present to you an original of the Compromis for Submission to the International Court of Justice of the Differences between the Applicants and the Respondent arising out of the Cooperation Agreement on the Development of the Peaceful Uses of Nuclear Energy.

Highest consideration,

Ambassadors of the Republic of Albrosa and the People's Democracy of Brisselanta

THE REPUBLIC OF ALBROSA & OTHERS

V.

THE PEOPLE'S DEMOCRACY OF BRISSELANTA

The Case Concerning the Cooperation Agreement on the Development of the Peaceful Uses of Nuclear Energy

1. The Republic of Albrosa ("Albrosa") is a developing archipelagic island nation, located in a high-risk seismic zone. In 2001, the country witnessed a catastrophic earthquake that lead to the Frugal Valley gas leak that exposed over 500,000 people to toxic chemicals and is considered the world's worst industrial disaster. But the reformist Albrosan Democratic Government has arduously put the country back on the path to a socio-economic recovery. In fact, the IMF has lauded the Albrosan growth story hitherto, and has forecasted further growth from 5% in 2015 to 6.5% in 2016.

2. The energy situation in Albrosa, particularly the electricity sector, is rather dismal and fares poorly in comparison to the growth exhibited by the other sectors. The unstable electricity supply from conventional energy sources and a high rate of energy importation has significantly stunted Albrosa's industrial growth. This has prompted the Albrosan Government to endorse a switch to nuclear energy. The Albrosan Ministry of Energy and Natural Resources intends that by 2023, 4% of Albrosa's primary energy production should comprise of nuclear energy. In fact, this isn't Albrosa's maiden tryst with nuclear energy. Albrosa's nuclear history

which dates back to the 1950s, had shot to prominence under the CIRUS Research Reactor (1962-1977), and was succeeded by an additional reactor in 1984.

3. The People's Democracy of Brisselanta ("Brisselanta") is a developed and technologically advanced nation. In 2004, Brisselanta announced plans to build Floating Nuclear Power Plants (FNPP), comprising small nuclear reactors which are mounted on barges and are floated in the territorial waters of the installing State. Brisselanta contended that the older, land-based, stationary nuclear reactors, which typically generate thousands of megawatts of electricity, are specifically designed to meet the power requirements of large cities. But the water-based FNPPs, which can generate up to sixty megawatts of electricity are better suited to meet the energy requirements of coastal towns comprising of approximately fifty thousand people. Other cutting edge advantages of FNPPs include *inter alia* the desalination of water and easy transferability to new areas as demand patterns shift. Moreover, at the end of its service life, the FNPP station could be towed to a specially equipped yard where it could be easily dismantled and decommissioned. Brisselanta aspires to install FNPPs in multiple countries across the Pacific Rim, with the intention to provide power to coastal areas.

4. On 21st March, 2004, Brisselanta also expressed interest in cooperating with Albrosa to place an FNPP off the Albrosan coast. Soon, the Brisselantan media was rife with reports about the new business development between the two countries. But Prof. Vasiuki from the Brisselantan University of Technology cautioned that as much as the FNPP initiative will be a boon to the power-deficient coastal nations, they are not without substantial environmental risk. This risk is exacerbated by the fact that Albrosa is located in a high-risk seismic zone and has had a

history of cataclysmic natural disasters. It was best advised by the prominently renowned "Clean & Alive" research foundation that public and expert opinion be taken into consideration, key risks be notified to all the neighbouring States/stakeholders. A public disclosure of the EIA and SIA reports was considered to be an imperative prior to the commencement of the FNPP Project in Albrosa. Further, since both Brisselanta and Albrosa were members of the International Atomic Energy Agency, the FNPP was to be subject to stringent monitoring and supervision of the IAEA.

5. The collaboration with Albrosa for the FNPP was likely to make Brisselanta the most sort-after country for such projects in the Pacific Rim. Considering the huge financial gains that the success of FNPP projects could bring to Brisselanta (estimated to reduce inflation by 4 percent and trigger growth by 6 percent), the Brissilantan government left no stone unturned in making the project a success. Hence, in early May 2008, Brisselanta appointed an independent expert consultant agencies for studying the geographical disposition of the coastal belt of Albrosa. The Albrosan Atomic Energy Authority also sought to minimize the risks associated with these reactors by engaging the best techno-legal experts to determine the license regime and operator/supplier compliance regime. Having selected a viable site for establishing the FNPPs, the two states subsequently invited experts from the IAEA to assess the feasibility of installing the FNPPs at the desired sites. In effect, the two States carried out all the requisite compliances to remain adherent of the IAEA nuclear safeguards.

6. On 1st February, 2010, the two states entered into the COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ALBROSA AND THE GOVERNMENT OF PEOPLE'S DEMOCRACY OF BRISSELANTA ON THE DEVELOPMENT OF THE PEACEFUL USES OF NUCLEAR ENERGY, 2010 ("123 Agreement"). As per the terms of the 123 Agreement, Brisselanta was to be the *supplier* of nuclear equipment and material while Albrosa was to be the *operator* of the FNPP. The Brisselantan flagship government company – *Brisselanta Power for Power Electrical Company (BPPEC*) was to supply the equipment for establishing 12 FNPPs in Albrosa in phases, completing the installation by 2020. BPPEC was also to provide 8,000 tons of uranium to Albrosa over the 10 year period. BPPEC released an official notification (FNP/NP/C-R141, 2010) confirming the safety of the FNPP structures from the expanse of the ocean and seismic waves in the seabed, as well as from earthquakes and tsunamis.

7. In the contingency of a nuclear disaster, the 123 Agreement provided that,

"*Art. V: APPORTIONMENT OF LIABILITY IN THE EVENT OF A NUCLEAR DISASTER (LIABILITY CLAUSE)*

1) *In the event of a nuclear disaster, there shall be a no-fault liability regime channeling exclusive liability on the operator.*

Provided the maximum amount of liability of the operator in respect of each nuclear incident shall be 300 million SDRs or such higher amount as the Central Government may specify by notification.

2) *The Parties agree that a substantial portion of the operator's liability is to be covered by a nuclear insurance pool.*

3) *The Parties agree that for the purpose of compensating for damage caused by a nuclear incident, each Contracting Party shall create a civil nuclear liability regime based upon established international principles"*

8) The Parliament of the Republic of Albrosa took strong objection to the Liability Clause of the 123 Agreement. They contended that the 123 Agreement was silent on supplier liability and impliedly channeled exclusive liability on the operator. Thus, even in cases where the nuclear disaster might be the result of the supplier's negligence, the operator had no right of recourse against the supplier. The Parliament of Albrosa feared that allowing the supplier to go scot-free may result in another Frugal Valley like industrial disaster, where the victims could not be adequately compensated. The Parliament of Albrosa enacted a new domestic legislation on civil nuclear liability under Article V (3) of the 123 Agreement. This Act was called the Civil Liability for Nuclear Disaster Act, 2010 ("CLNDA, 2010"). Section 23 of the CLNDA pertains to the operator's right of recourse against the supplier.

"Section 23: OPERATOR'S LIABILITY AND RIGHT OF RECOURSE

a) *In the event of a nuclear disaster, there shall be a no-fault liability regime channeling exclusive liability on the operator.*

Provided the maximum amount of liability of the operator in respect of each nuclear incident shall be 300 million SDRs or such higher amount as the Central Government may specify by notification.

b) *The operator shall, before he begins operation of his nuclear installation, take out an insurance policy or such other financial security, covering his liability to a minimum value of 150 million SDRs.*

c) *After compensation has been paid by the operator (or its insurers), the operator shall have legal recourse against the supplier, if in the opinion of the Supreme Court of Albrosa the nuclear incident has resulted as a consequence of an act of the supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services.*

The operator's right of recourse against the supplier shall cover:

i. *The compensation paid by the operator under S.23(a); and*

ii. *Any outstanding compensation claims - over and above the compensation paid by the operator under S.23 (a).*

Provided the outstanding compensation claims against the supplier under S.23 (c) (ii) shall not exceed beyond 250 million SDRs."

9) The BPPEC was baffled by the turn of events and refused to supply any nuclear material or equipment to Albrosa in case their investment was to be governed by the draconian CLNDA. They contended that Albrosa had only signed but not ratified the Convention for Supplementary Compensation for Nuclear Damage, 1997; the Vienna Convention on Civil Liability for Nuclear Damage, 1963 or the Paris Convention on Third Party Liability in the field of Nuclear Energy, 1960. Thus, in the event of a nuclear disaster, Albrosa was likely to misuse the open-ended tenor of Art. V (3) of the 123 Agreement read in conjunction with Section 23(c) of the CLNDA, and thereby render BPPEC vulnerable to inflated liability claims.

10) Albeit, the Democratic Government of Albrosa realized the importance of the FNPP for fueling their energy requirements, the Albrosan Parliament was hard-bent on not diluting the

CLNDA. In order to overcome the impasse and to make the 123 Agreement operational, the governments of Brisselanta and Albrosa had no option but to amend the 123 Agreement. The amended Art. V of the 123 Agreement (vide official notification dated 22nd July, 2010) is reproduced hereunder:

"*Art. V: APPORTIONMENT OF LIABILITY IN THE EVENT OF A NUCLEAR DISASTER (LIABILITY CLAUSE)*

1) *In the event of a nuclear disaster, there shall be a no-fault liability regime channeling exclusive liability on the operator.*

   Provided the maximum amount of liability of the operator in respect of each nuclear incident shall be 300 million SDRs or such higher amount as the Central Government may specify by notification.

2) *The Parties agree that a substantial portion of the operator's liability is to be covered by a nuclear insurance pool.*

3) *The Parties agree that the operator shall have no right of recourse against the supplier in the event of a nuclear disaster.*

4) *Each Contracting Party shall ratify the Supplementary Compensation for Nuclear Damage, 1997; the Vienna Convention on Civil Liability for Nuclear Damage, 1963 and the Paris Convention on Third Party Liability in the field of Nuclear Energy, 1960.*

11) The amendment to the 123 Agreement by the Albrosan Democratic Government once again rendered the operator exclusively liable in case of a nuclear disaster, without a right of recourse against the supplier and was inconsistent with the legislative intent of the CLNDA. This lead to a major uproar from the civil society and leftist factions of Albrosa; so much so, that the

government found itself sidelined by its own allies. On 25th December, 2010 the Parliament of Albrosa passed a no confidence motion against the Democratic Government of Albrosa, and the ruling party was forced to resign.

12) The Socialist Government of Albrosa was sworn in as the new government of Albrosa. By an official notification dated 2nd February, 2011, the Socialist Government of Albrosa denied the validity of the amendment to the 123 Agreement on the ground that it was in disregard of the Civil Liability for Nuclear Disaster Act, 2010 and that the Democratic Government of Albrosa did not have authority of law to deal with the 123 Agreement after the enactment of the above said law. Thus, the amendment to the 123 Agreement was entered into by the preceding government in bad faith, which ultimately lead to the ouster of the Democratic Government of Albrosa. Regardless of the official notification dated 2nd Feb., 2011, both the Republic of Albrosa and the Government of Brisselanta, evinced their continued interest in operating under the 123 agreement.

13) The first FNPP was planned for the Morsin-kkkuyu site, where four reactors with a total capacity of about 4800 MW were to be constructed. When the construction of the Morsin-kkkuyu FNPP reached its penultimate stage, an inspection was carried out by the IAEA. The report prepared by the IAEA inspectors pointed out that one of the ten turbines supplied by BPPEC was not fully compliant with the IAEA standards and needed to be replaced. BPPEC acknowledged the patent defect in the said turbine and immediately replaced the same. The IAEA also cautioned the State of Albrosa to employ more skilled technicians and increase its manpower for operating the Morsin-kkkuyu FNPP, within 6 months from the said order. In

lieu of the fulfillment of the aforesaid conditions, the IAEA provisionally approved the Morsin-kkkuyu FNPP. After conducting the EIA, the "Clean & Alive" foundation that prepared the *Criticality Assurance Report*, also gave a green signal to the Morsin-kkkuyu FNPP for being complaint with all the environmental management, safety and compliance standards. Based on the approvals given by the IAEA and the "Clean & Air" foundation, the electricity production license for Morsin- kkkuyu site was issued by the Electricity Market License Regulation of Albrosa.

14) The Morsin-kkkuyu FNPP became fully functional on 31st January, 2014. The following month, an independent think-tank from the neighbouring island of Albrosa, the Bong Bong Islands published a detailed report raising doubts on the credibility of the report submitted by "Clean & Alive'' foundation and demanded that Albrosa produce the EIA and the *Criticality Assurance Report* in the public domain. Bong Bong asserted that under the Aarhus Convention, 1998, public opinion and consultation is *conditio sine qua non* before operationalizing a nuclear power plant. The report put up by Bong Bong claimed that almost 15 out of the 24 island nations were never made a part of the "Clean & Alive'' foundation report nor called for any inter-governmental meets. Further, the setting up of the FNPP at Morsin-kkkuyu site posed an imminent danger to the Bong Bong islands, located approximately 400 miles away from the FNPP. However, BPPEC did not consider the above concerns to be any reason to suspend the operations. Apparently, it was understood that the Bong Bong Island can have no authority to intervene in the matter of a solemn bilateral agreement between two independent nations.

15) On 21st June, 2014, the Bong-Bong Island was hit by an underwater earthquake which lead to the collision of an aircraft super-carrier with the FNPP at the Morsin-kkkuyu site. The collision produced equipment failures, which culminated in loss of coolant and was followed by a nuclear meltdown and release of radioactive material into the territorial waters of Bong-Bong, Kolra and Albrosa. The magnitude of destruction that ensued stirred memories of the Chernobyl nuclear disaster of 1986. The much manipulated official figures projected 18,500 deaths linked to short-term overexposure to radiation. A report by the WHO predicted that eventually, there would be additional 5000 fatalities and 20,000 cancer cases on account of accumulated radiation exposure. Further, the fishing industry of Kolra, Albrosa and Bong Bong had come to a standstill. Eco-tourism, which is the mainstay of the Bong Bong and Kolra economy, had also been hard hit by the nuclear disaster. A report by Buessler and other experts stated that both short-lived radioactive elements, such as iodine-131, and longer-lived elements, such as cesium-137, with a half-life of 30 years, could be absorbed by phytoplankton, zooplankton, kelp and other marine life. Thereafter, these radioactive elements are transmitted up the food chain, to fish, marine mammals and humans. To avert such consequences, the expert committee looking into the restoration of marine environment had suggested a ban on fishing for the next 3 years, tethering the future of Kolra and Bong Bong Islands to an inevitable and impending doom.

16) The Albrosan Atomic Energy Agency constituted an expert body to determine the cause underlying the nuclear disaster. A detailed investigation revealed that the shock caused by the earthquake and succeeding collision, disabled the power supply and the cooling of three FNPP reactors. Based on the said report, the State of Albrosa retorted that the snag in coolant supply was due to a latent defect in the nuclear reactor coolant and generators supplied by BPPEC,

which was contrary to the initial reassurances of BPPEC and hence was not seismically robust. Conversely, the BPPEC contended that since FNPPs are mounted on barges, therefore, a platform on the ocean floor remains unaffected by any seismic activity. Further, the nuclear reactor coolant and generators supplied by them had been duly approved by the IAEA and the "Clean & Alive" foundation. Extending the polemic, BPPEC argued that the Morsin-kkkuyu FNPP was deplorably understaffed and lacked trained technicians to operate the plant, as pointed out by the IAEA. Thus, it was the State of Albrosa that had been negligent in not maintaining the nuclear reactor coolant and generators from the routine wear and tear, which lead to equipment failure.

17) A petition was filed before the Supreme Court of Albrosa to declare BPPEC liable for the nuclear catastrophe and claim compensation from BPPEC under Section 23(c) of the CLNDA. On 28th September, 2014 the Supreme Court of Albrosa passed an *ex parte* judgment against BPPEC, who failed to appear for the trial. The Supreme Court held that the nuclear incident was caused by a latent defect in the equipment supplied by BPPEC and that the State of Albrosa had a right of recourse against the BPPEC under Section 23(c) of the CLNDA. The BPPEC asserted that the said judgment was void because the Supreme Court did not give BPPEC any opportunity to assign reasons for their non-appearance; and instead of adjourning the trial, the Supreme Court hastily passed an *ex parte* judgment against them. Thus, the judgment was against the tenets of natural justice, namely *audi alterem partem.*

18) As per the estimate report of the Nuclear Damage Claims Commission, Albrosa suffered damages to the tune of 400 million SDRs. The damages suffered by Bong-Bong and Kolra

cumulatively, were projected at 500 million SDRs. A compensation package of 150 million SDRs arising out of the nuclear insurance pool was apportioned between Albrosa, Bong-Bong and Kolra on a pro-rata basis, per the magnitude of damages incurred by the three states. The Albrosan government disbursed another 150 million SDRs in compensation to the victims from Albrosa, Bong-Bong and Kolra. Finally, Albrosa, Bong-Bong and Kolra turned to Brisselanta for outstanding compensation under the *Right of Recourse* (Section 23 (c) CLNDA).

19) The Socialist Government of Albrosa, vide an official notification dated 3rd February, 2015, placed an indefinite moratorium on the import of uranium from Brisselanta, with respect to the remaining 11 FNPPs and sought justification for its actions under Article XXX of the 123 Agreement. The Ministry of External Affairs of Brisselanta, in an official response to the State of Albrosa, denounced the indefinite moratorium as violative of Albrosa's obligations under the 123 Agreement to import 8,000 tonnes of uranium from BPPEC for a period of 10 years. Accordingly, Brisselanta condemned the indefinite moratorium for violating Article XV of the 123 Agreement.

20) The Republic of Albrosa, along with the island States of Bong Bong and Kolra, brings a claim before the International Court of Justice, claiming the outstanding compensation from the People's Democracy of Brisselanta for the nuclear disaster and the pollution of their marine environment, which reduced their economies to shambles. Brisselanta argues that the ICJ has no jurisdiction to hear the investment claims arising out of the 123 Agreement, which expressly vests jurisdiction in the ICSID. Conversely, the applicants contend that the Island States of Bong Bong and Kolra are not a party to the 123 Agreement. Thus, ICSID will not be able to

hear the claims of Bong Bong and Kolra, who are necessary parties as their rights and interests directly overlap with the cause of action. *Arguendo* that if Bong Bong and Kolra institute fresh proceedings before the ICJ, it will lead to a duplication of proceedings and entails the possibility of a conflict between the decisions of the ICJ and the ICSID.

21) Brisselanta further argues that even if the ICJ does find jurisdiction, the cause of action of the Applicants holds no ground because the nuclear disaster was a result of the operator's negligence in operating the Morsin-kkkuyu FNPP. Further, the amended Article V of the 123 Agreement provides an exclusive, no-fault liability of the operator without a right of recourse against the supplier. Albrosa justifies its claim on the ground that the amendment to Article V of the 123 Agreement was invalid as the said amendment was inconsistent with the CLNDA and lead to a no confidence motion being passed against the erstwhile government. Thus, the Applicants were justified in exercising the *Right of Recourse* under Section 23(c) of the CLNDA, read with Article V (3) of the pre-amendment 123 Agreement.

22) Brisselanta contends that the liability if any under the 123 Agreement is confined to the nuclear disaster, referable either to the operation and functioning of the nuclear system or due to reasons or causes occurring within the territorial jurisdiction of Albrosa and not for liability arising out of reasons beyond the territorial jurisdiction of Albrosa. Thus, Brisselanta specifically denies any liability arising out of an underwater earthquake around Bong Bong Island and Kolra.

23) Brisselanta also makes a counterclaim challenging the indefinite moratorium on uranium imports by Albrosa as violating Article XV of the 123 Agreement; which Albrosa defends under Article XXX of the 123 Agreement.

ANNEXURE-I

COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ALBROSA AND THE GOVERNMENT OF PEOPLE'S DEMOCRACY OF BRISSELANTA ON THE DEVELOPMENT OF THE PEACEFUL USES OF NUCLEAR ENERGY, 2010

The 123 Agreement

(EXCERPTS)

Article V

Apportionment of Liability in the Event of a Nuclear Disaster

(Liability Clause)

1) In the event of a nuclear disaster, there shall be a no-fault liability regime channeling exclusive liability on the operator.

   Provided the maximum amount of liability of the operator in respect of each nuclear incident shall be 300 million SDRs or such higher amount as the Central Government may specify by notification.

2) The Parties agree that a substantial portion of the operator's liability is to be covered by a nuclear insurance pool.

3) The Parties agree that the operator shall have no right of recourse against the supplier in the event of a nuclear disaster.

4) Each Contracting Party shall ratify the Supplementary Compensation for Nuclear Damage, 1997; the Vienna Convention on Civil Liability for Nuclear Damage, 1963 and the Paris Convention on Third Party Liability in the field of Nuclear Energy, 1960.[1]

Article VI

Liability in cases of a Grave Natural Disaster of an Exceptional Character

There shall be no waiver of liability under this Agreement for any nuclear damage caused due to a grave natural disaster of an exceptional character occurring within the territory of the Republic of Albrosa.

Article XV

General Elimination of Quantitative Restrictions

1) No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.
2) The provisions of paragraph 1 of this Article shall not extend to the following:
    a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
    b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

[1] Amended vide notification dated 22nd July, 2010.

c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

i. to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

ii. to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

iii. to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to subparagraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special

factors which may have affected or may be affecting the trade in the product concerned.

d) Import or export restrictions necessary to ensure the protection or promotion of international law accepted by the international community, including the aims set forth in the United Nations Charter.

Article XXX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

a) necessary to protect public morals;

b) necessary to protect human, animal or plant life or health;

c) relating to the importations or exportations of gold or silver;

d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

e) relating to the products of prison labour;

f) imposed for the protection of national treasures of artistic, historic or archaeological value;

g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

h) undertaken in pursuance to the obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to nondiscrimination;

j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

CHAPTER 7

Definitions

"*covered investment*" means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter;

"*enterprise*" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled;

"*investment*" means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk

"*investor of a Party*" means a Party or a national or an enterprise of a Party that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.

"nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, not only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

"*operator",* in relation to a nuclear installation, means the Central Government or any authority or corporation established by it or a government company which has been granted a license for the operation of that installation.

"supplier" shall include a person who

i. manufactures and supplies, either directly or through an agent, a system, equipment or component or builds a structure on the basis of functional specification; or
ii. provides build to print or detailed design specifications to a vendor for manufacturing a system, equipment or component or building a structure and is responsible to the operator for design and quality assurance; or
iii. provides quality assurance or design services

Non-Discrimination

1) Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors or to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2) Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to its own investors or to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

Minimum Standard of Treatment

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

Expropriation and Compensation

Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization except:

a) for a public purpose;
b) in a non-discriminatory manner;
c) on payment of compensation; and
d) in accordance with due process of law

Dispute Settlement

1) In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

2) In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation, a Contracting State (or any constituent subdivision or agency of a Contracting State) and a national of another Contracting State shall submit their legal dispute to the ICSID for arbitration.
3) To submit a claim to arbitrate before the ICSID, the parties must satisfy the requirements of Chapter II of the ICSID (Jurisdiction of the Centre).

   In the eventuality that the requirements of Chapter II of the ICSID are not satisfied, the Contracting States may approach the International Court of Justice for a settlement of their dispute.
4) The parties may approach the ICJ for the enforcement of an award passed by the ICSID.

Essential Security

Nothing in this Treaty shall be construed to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

ANNEXURE-II

CONVENTIONS TO WHICH THE STATES ARE PARTIES

Treaty	Albrosa	Brisselanta	Kolra	Bong Bong
United Nations Convention on the Law of Sea, 1984	Ratified	Signatory	Ratified	Ratified
Convention for Supplementary Compensation for Nuclear Damage, 1997	Signatory	Ratified	Signatory	Signatory
Vienna convention on Civil Liability for Nuclear Damage, 1963	Signatory	Ratified	Signatory	Signatory
Paris Convention on Third Party Liability in the Field of Nuclear Energy, 1960	Signatory	Ratified	Signatory	Signatory
Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971	Signatory	Ratified	Signatory	Signatory
The Brussels Convention on the Liability of Operators of Nuclear Ships, 1962 and the Joint Protocol	Signatory	Signatory	Signatory	----
Protocols to the Paris and Brussels Convention , 2004	Signatory	Signatory	----	-----
Convention on Biological Diversity, 1992	Ratified	Ratified	Ratified	Ratified
Aarhus Convention, 1998	Signatory	Signatory	Ratified	Ratified
IAEA	member	Member	NA	NA

ANNEXURE-III

The main issues raised by the parties before the ICJ can be summarized as follows:

I. Whether the ICJ has the jurisdiction to hear the present case?

II. Whether the Respondent, being a supplier of nuclear equipment and material, can be held liable to compensate the Applicants for the nuclear disaster?

III. Whether the Respondent is liable to compensate the Applicants for the pollution of their marine environment that gravely dented their economic interests?

IV. Is Albrosa's indefinite moratorium on uranium imports from Brisselanta violative of the 123 Agreement?

This problem was drafted by the **Moot Court Association under the supervision of **Ms. Pallavi Arora** & **Ms. Mary Sabina Peters***