

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN THE PEOPLE'S DEMOCRACY OF PSHAD
AND REPUBLIC OF ARGUNIA TO SUBMIT TO THE
INTERNATIONAL COURT OF JUSTICE THE
DIFFERENCES ARISING BETWEEN THE STATES
CONCERNING THE INTERPRETATION OF THE
EASTERN JIMM ECONOMIC PARTNERSHIP
AGREEMENT**

Jointly notified to the Court on July 17, 2010

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE LA DÉMOCRATIE POPULAIRE DE PSHAD ET
REPUBLIQUE DE ARGUNIA visant à soumettre à LA COUR
INTERNATIONALE DE JUSTICE Les écarts ENTRE LES
ÉTATS CONCERNANT L'INTERPRETATION DE LA
Jimm ORIENTALE ACCORD DE PARTENARIAT
ÉCONOMIQUE**

Ont conjointement notifié à la Cour le 17 Juillet, 2010



JOINT NOTIFICATION

ADDRESSED TO THE REGISTRAR OF THE COURT:

The Hague, 1 August, 2009

On behalf of the People's Democracy of Pshad ("the Applicant") and the Republic of Argunia ("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 Applicant and the Respondent arising out of the Eastern Jimm Economic Partnership Agreement.

Highest consideration,

Ambassadors of the Democracy of Pshad and the Republic of Argunia



COMPROMIS

THE DEMOCRACY OF PSHAD V. THE REPUBLIC OF ARGUNIA

The Case Concerning Eastern Jimm Economic Partnership Agreement

1. The Republic of Argunia (“RA”) is an industrialized country located on a peninsula. Its only border is the one shared with the People’s Democracy of Pshad. RA’s population has enjoyed the fruits of development for over a century, managing to maintain their democratic values even as national politics sometimes became acrimonious. The diversified economy has had stable, moderate growth for the past fifty years. However, RA’s historical lead over its economic rivals in technology development and professional services sectors has lessened over the last fifteen years.

The People’s Democracy of Pshad (“Pshad”) is a rapidly industrializing country on the eastern border of RA. Fifty years ago, Pshad’s strongman leader led the push for economic development, spending huge sums to develop Pshad’s high-technology capacity to the point of competitiveness with the most industrialized countries in the world in the area of spacecraft and aeronautics. Much of the early development left the rest of the country’s population in traditional agriculture, but the past twenty years have witnessed Pshad’s rise from its feudal past to become one of the most progressive countries of the region in terms of social policy and, for the past ten years, one of the most liberal economically. Not yet fully competitive in agriculture and poor in natural resources, much of Pshad’s population is increasingly struggling to remain above the poverty line. On the other hand, Pshad has been able to continue to develop its high technology industry, and in fact has become the second-largest producer of telecommunications and surveillance satellites in the world. The very high incomes in that branch ensure that the top 5 percent of the Pshadi enjoy a life of opulence.

2. The increasing differential in wealth division in Pshad has led to threats of social unrest. Free health care and schooling, plus highly subsidized food has prevented the realization of these threats, but there are voices calling for political agitation. The last three years have also witnessed an increase in poverty-driven emigration, particularly to the Republic of Argunia. Unwelcomed in Argunia, illegal Pshadi are often exploited as cheap unskilled



labor. Emigration is also looked upon unfavorably by the Pshadi government, and returned Pshadi face a high probability of mistreatment by border officials.

3. Laudi is a border city in the Republic of Argunia. Like many RA cities, Laudi is home to a soccer team that has captured the fierce loyalty of its hometown fans. While most of the fans turn out to encourage their team with banners and cheers, a small group acts otherwise. For the past decade soccer “hooligans” have begun to regularly – and with increasing intensity – disturb the sportsman-like fun. Destruction of stadium property, intimidation of the opposing team’s fans, storming of the field to threaten the players, and fights with police who try to maintain control are all aspects of this rowdiness. In the last month, police have even report that they have uncovered evidence of a soccer-terrorism cell that had planned to make “serious trouble” for outside teams. The police will not reveal further details of their findings, causing some to doubt the truth of them while others have voiced fear of going to games.
4. In 2004, a particularly violent riot broke out when Laudi’s team lost to the visiting team from Pshadi for the Jimm Regional Championship play-off game. Rowdies from both teams’ fanclubs clashed both inside and outside the stadium in a mass battle that left automobiles burned, lampposts destroyed, and both hooligans and peaceful fans injured.
5. “Eye Out” (EO) is a private security firm founded by Rita Sen, a Pshadi immigrant to Laudi, in 2000. Laudi’s public police force is hindered by the lack of funds for hiring the necessary number of police, so EO has grown rapidly, with an increasing number of clients from both the private and public sectors. As a result of EO’s explosive growth, Sen incorporated the company under the laws of RA in 2005. She maintained a holding of 30% of the shares herself; another 40% is owned by a pension fund in neighboring Democratic Republic of Pshad (of whom her cousin is the managing director); and the other shares are owned by various high-value individuals in the two countries.
6. Following the 2004 riots, EO received an exclusive contract from the city for maintaining the security of Laudi’s sports stadium. EO prides itself on keeping up with the latest security technology to fulfill its contractual duties and is widely regarded as a highly competent company. Nevertheless, for several months after the contract was awarded, rumors circulated that Sen’s close friendship with the mayor of Laudi was more important to the award of the contract than was EO’s qualification.



7. EO's latest move to improve its services was the September 2008 launching of a satellite to improve its ability to maintain surveillance over the entire RA-Pshad border area. The satellite maintained a height of 1000 km above the Earth. With a capability of detecting even license plate numbers on cars pulling into the stadium's parking garage, the satellite promised to revolutionize the tracking down of football "holligans". Indeed, within the first six months of its operation, EO was able to coordinate its forces during matches. Additionally, it was in a position to assist the local police in prosecuting 350 fans who damaged property in riots following the games by selling its videos to the authorities for examination. By April 2009, newspapers were reporting "dramatic reductions" in football violence.
8. Not everyone is pleased about the surveillance made possible by this technological advance, however. Civil society groups and scholars in RA have voiced their concern over the potential of the satellite's collected information to violate right to privacy, and several political dissidents from Pshad claim that the information could be taken by their government to control political opposition and to pursue emigrants or their families.
9. For the moment, however, opposition voices have been quieted – by an event that had nothing to do with them. In May 2009, EO's satellite collided with an object in space and was put out of function. From what expert investigators could figure out from recovered pieces of their own satellite, the object in question was a piece of "space junk" – a dislodged portion of a satellite that had been taken out of the space program twenty years ago but left to orbit. The only countries that had satellites that long ago were Oxia and Pshad. Satellites produced and registered in Pshad were launched from Oxia until five years ago, when Pshad built its own launching facility.
10. Sen and EO's executives were outraged at their loss. Costing millions of dollars for the hardware alone, the satellite was also their main advantage over their competitors in a current tender for RA border control services. Laudi authorities, influenced by EO, took the matter to the federal parliament. The parliamentary Committee for Science and Technology took prompt action, calling for an indefinite moratorium on space technology exports to Pshad.
11. RA and Pshad are parties to the Eastern Jimm Economic Partnership Agreement (EJEPA). The Agreement, aiming to foster "holistic development" and peaceful relations



of its members, provides for liberalized trade and investment protection between the partners. In addition, the EJEPA calls for transfer of technology to developing country partners from industrialized country partners. The Agreement's non-economic provisions recognize the importance of sustainable social and political policies to development, requiring adherence to basic individual rights and the rule of law. The EJEPA also allows for regime-internal countermeasures in the case of violation of any of the provisions by one of the Parties. In case of dispute, the Parties are to apply to the International Court of Justice for a peaceful resolution of their differences.

12. Pshad brings a claim based on RA's export prohibition on space technology. Pshad claims that RA's decision violates Article 15 of the EJEPA, which forbids the Parties from imposing quantitative restrictions on each other and cannot be excused by any of the exceptions of the Agreement.
13. RA claims that the export prohibition is excused by the general exceptions of Article 30 EJEPA. In the alternative, RA says the prohibition is an actual and preemptive countermeasure to Pshad's human rights violations against returned Pshadi citizens.
14. RA also makes counterclaims on the basis of the investment provisions contained in Chapter 7 of the EJEPA. It demands on behalf of Sen that Pshad pay her the value of the satellite and lost profits until a new satellite can be brought into operation.
15. Pshad rejects all of RA's claims regarding the export prohibition. It also alleges that the Court has no jurisdiction to hear the investment claims, and that even if the Court does find jurisdiction, that RA's counterclaims cannot be upheld under international law.



ANNEXURE
EASTERN JIMM ECONOMIC PARTNERSHIP AGREEMENT
(EXCERPTS)

Article 15

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;
 - (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 30

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, trade marks 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 of 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 non-discrimination;
- (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. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.



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;

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

Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise that would be violated or circumvented if the benefits of this Treaty were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Treaty to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

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. the claimant, on its own behalf, may submit to arbitration under this Section a claim that the respondent has breached an obligation under this Chapter and that the claimant has incurred loss or damage by reason of that breach; and
 - b. the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the respondent has breached an



obligation under this Chapter and that the claimant has incurred loss or damage by reason of that breach; and

- c. either Party, on behalf of a national, may submit to arbitration under this Section a claim that the respondent has breached an obligation under this Chapter and that its national has incurred loss or damage by reason of that breach.

Consent of Each Party to Arbitration

1. Each Party consents to the submission to the International Court of Justice of a claim to arbitration under this Section.
2. The consent under paragraph 1 and the submission of a claim to arbitration shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre).

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.