

ALSA *INTERNATIONAL* MOOT COURT COMPETITION

ALSA INTERNATIONAL MOOT COURT COMPETITION Case 2016

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MINUTES OF THE FIRST SESSION OF THE ARBITRAL TRIBUNAL

JAN KONARSKI

vs.

THE GOVERNMENT OF THE REPUBLIC OF REDENTIA

(ICSID Case No. ARB/X/X)

Colombo, Sri Lanka, 16 February 2016

The first session of the Arbitral Tribunal was held on 16 February from 1 p.m. to 4 p.m. at the Supreme Court, Colombo, Sri Lanka.

Present at the session were:

The Members of the Tribunal

AAA, President

BBB, Arbitrator

CCC, Arbitrator

ICSID Secretariat

ABC, Secretary of the Tribunal

Attending on behalf of Jan Konarski (“Claimant”)

Frederick, Paxton & Marinov Ltd.

Attending on behalf of the Republic of Redentia (“Respondent”)

Walter Exact LLP

Opening of the Session

The President of the Tribunal opened the session and welcomed the participants. The President introduced the co-arbitrators and asked the parties to introduce their respective representatives. The President then proposed to go over the Agenda.

I. Procedural Matters

1. Constitution of the Tribunal and the Tribunal Members’ Declarations

1.1 The Tribunal had been duly constituted pursuant to Article 37(2) of the ICSID Convention and the ICSID Rules. The parties agreed that the Tribunal had been duly constituted.

1.2 Pursuant to ICSID Arbitration Rule 6(2), the members of the Tribunal timely and duly submitted their signed Declarations. Copies of the Declarations were distributed prior to the first session.

2. Representation of the Parties

2.1 It was noted that the Claimant is represented by Frederick, Paxton & Marinov Ltd.

2.2 It was further noted that the Respondent is represented by Walter Exact LLP.

3. Appointment of Costs and Advance Payments to the Centre

3.1 Pursuant to Article 61 of the ICSID Convention and R ICSID Administrative Rule 14, it was agreed that the expenses of the proceedings shall be borne equally by the parties, without prejudice to the final decision of the Tribunal as to costs.

3.2 The President recalled that the Centre had requested each party to pay an amount of US\$25,000 to defray the costs of the proceedings during its first three to six months. It was confirmed the Claimant had made the payment requested on 5 February 2016 and the Respondent on 5 February 2016.

4. Fees and Expenses of Tribunal Members

4.1 It was agreed that, in addition to receiving reimbursement for any direct expenses reasonably incurred, each member of the Tribunal would receive:

4.1.1 A fee of US\$3,000 (three thousand United States dollars), or such other fee as may be set from time to time in the Centre's Schedule of Fees, for each day of travel or meeting, or other work performed in connection with the proceeding or pro rata; and

4.1.2 Subsistence allowances and reimbursement for travel (in business class) and other expenses within the limits set forth in Rule 14 of the ICSID Administrative and Financial Rules and the Memorandum on the Fees and Expenses of ICSID Arbitrators.

5. Applicable Arbitration Rules

5.1 It was agreed that the proceedings would be conducted pursuant to the ICSID Arbitration Rules of April 10, 2006.

6. Place of Proceedings

6.1 The parties agreed that the place of proceedings would be at the Supreme Court of Sri Lanka.

7. Procedural Languages

It was agreed that:

7.1 The language of the proceedings shall be English.

7.2 The parties shall submit all documents in English.

7.3 Any decision and the Award shall be in English.

7.4 Communications from the Secretariat to the parties shall be in English.

8. Records of Hearings

8.1 The parties agreed that the Secretariat shall arrange for sound recordings of all sessions, conferences, and hearings.

9. Means of Communication and Copies of Instruments

It was agreed that:

9.1 ICSID Administrative and Financial Regulation 24 shall apply to communications between the parties.

9.2 The Secretary-General shall be the official channel of communications and written instruments among the parties during the pendency of the proceeding.

9.3 Instruments and documents shall be introduced into the proceeding by transmitting them to the Secretary-General.

9.4 The Secretary-General shall retain the original for the files of the Centre and arrange for appropriate distribution of copies.

10. Quorum

10.1 It was agreed that the presence of all Members of the Tribunal shall be required for its sittings.

11. Decisions of the Tribunal by Correspondence or Telephone Conference

11.1 Pursuant to ICSID Arbitration Rule 16(2), the Tribunal may make decisions by correspondence among its members, or by any other appropriate means of communication, provided that all members of the Tribunal are consulted. Decisions so taken shall be certified by the President of the Tribunal.

12. Delegation of Power to Fix Time-Limits and to Sign Procedural Orders on Behalf of the Tribunal

12.1 It was agreed that pursuant to ICSID Arbitration Rule 26(1), the President of the Tribunal shall have the power to fix and extend time limits for the completion of the various steps in the proceeding.

13. Pre-hearing Conferences

13.1 The parties agreed that ICSID Arbitration Rule 21 shall apply to matters concerning pre-hearing conferences.

14. Written and Oral Procedures

14.1 It was agreed that the proceedings shall consist of both written and oral procedures.

14.2 The Parties and the Tribunal agreed that at this stage of the procedure, the Tribunal shall only address the following:

14.2.1 Whether the tribunal has *jurisdiction rationale consensus* given that there is no ICSID arbitration clause within the Redentia-Artina BIT;

14.2.2 Whether the tribunal has *jurisdiction rationale personae* in view of the Claimant's dual citizenship;

14.2.3 Whether the Pro-Environment Measures enacted by the government of Redentia constitute expropriation and/or unfair discrimination of the Claimant's investment; and

14.2.4 Whether the government of Redentia can rely on the defence of necessity in respect of any liability it incurs as a result of enacting the Pro-Environment Measures.

14.3 A second phase of the proceedings on liability shall follow if the Tribunal confirms that it has jurisdiction to address this case.

15. Summary of the Parties' Contentions

The summary of the Parties' positions was agreed between the Parties and the Tribunal as follows:

15.1 Summary of Claimant's Position

Claimant contends that the tribunal has *jurisdiction rationale consensus* even though the Redentia-Artina BIT does not contain an ICSID arbitration clause. This is because Article 12(2) of the Redentia-Artina BIT is a Most-Favoured-Nation clause which gives Claimant the right to rely on Article 13 of the Redentia-Beginnia BIT, which is an ICSID Arbitration clause.

Claimant contends that the tribunal has *jurisdiction rationale personae* because he is a national of Artina. Claimant has been an Artinan citizen since birth.

Claimant contends that the Pro-Environment Measures introduced by the Respondent caused the value of Claimant's investments to drop substantially, and constitutes expropriation. In any event, Claimant contends that the Pro-Environment Measures constitute "unreasonable or discriminatory measures" as defined under Article 3 of the Redentia-Artina BIT. Accordingly, Claimant is entitled to compensation.

Claimant contends that no defence of necessity applies in this case, as the Pro-Environment Measures were not necessary to prevent any grave or imminent peril.

15.2 Summary of Respondent's Position

Respondent counters that the tribunal does not have *jurisdiction rationale consensus* as the Redentia-Artina BIT does not contain any ICSID arbitration clause. Moreover it is unclear if the parties to the Redentia-Artina BIT intended for Article 12(2) to apply to dispute resolution mechanisms.

Respondent counters that the tribunal does not have *jurisdiction rationale personae* as Claimant is effectively a Tronian citizen. Other than the fact that Claimant holds Artinan citizenship in name, Claimant has no real connection with Artina since the age of 8.

Respondent counters that there has been no expropriation and/or unreasonable discrimination at all. Respondent has not enacted any law or policy which directly affects the business operations of RPC. In any case, the Pro-Environment Measures were non-discriminatory regulatory measures reasonable and necessary for the protection of the public interest. In this connection, the Pro-Environment Measures were reasonable and necessary to protect the fishing and tourism industries of Redentia, which make up a substantial portion of Redentian GDP and are symbols of national pride.

Even if there has been an expropriation, Respondent counters that it is entitled to rely on the defence of necessity. The measures taken were proportionate and necessary to protect the right of the people in Redentia to a safe and clean environment.

16. Number and Sequence of Pleadings, Time Limits

16.1 The parties agreed that there shall be one simultaneous submission of written pleadings: a memorial by the Claimant and a counter-memorial by the Respondent, instead of four consecutive written pleadings (the Claimant's memorial, the Respondent's counter-memorial, a reply and a rejoinder).

16.2 Following discussion with both Parties and deliberation within the Tribunal, the President announced that the pleadings are to be submitted within the following time limits:

16.2.1 The Claimant shall file its memorial by 15 June 2016.

16.2.2 The Respondent shall file its counter-memorial by the same date, 15 June 2016.

17. Dates of Subsequent Sessions

17.1 Rule 13(2) of the ICSID Arbitration Rule 43 shall apply to the scheduling of sessions of the Tribunal following the first session.

17.2 The Parties agreed that the 20 August 2016 hearing shall be held at 9:00 a.m.

18. Publication of the Decisions Relating to the Proceedings and of the Award

18.1 The President of the Tribunal suggested that the Parties deliberate whether they would grant consent pursuant to Article 48(5) of the Convention to publish the Award.

19. The Award

19.1 Pursuant to ICSID Arbitration Rule 46, the Award shall be drawn up and signed within 120 days after closure of the proceeding. The Tribunal may, however, extend this period by a further 60 days if it would otherwise be unable to draw up the Award.

II. Other Matters

The President inquired both parties whether they wished to address any other matter before the Tribunal. Neither party had any other matter they wished to address.

Closing of the Session

There being no further business, the President of the Tribunal thanked the participants for their cooperation on behalf of the Tribunal and declared the first session closed at 4 p.m. Sound recordings were made of the session and deposited in the archives of the Centre.

Secretary of the Tribunal
Supreme Court of Sri Lanka,
February 16, 2016

President of the Tribunal
Supreme Court of Sri Lanka
February 16, 2016

ANNEX 1

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF REDENTIA AND THE REPUBLIC OF ARTINA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Redentia and Government of the Republic of Artina (hereinafter referred to as the “Contracting Parties”):

DESIRING to promote economic cooperation between them and to create and maintain favorable conditions for greater investment by investors, with respect to investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party, and

RECOGNIZING that the encouragement and reciprocal protection of such foreign investments under this Agreement will be conducive to the stimulation of business initiative and the economic prosperity of the Contracting Parties,

HAVE AGREED as follows:

Article 1 *Definitions*

For the purposes of this Agreement,

1. The term “**investment**” shall mean every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:
 - (a) movable and immovable property as well as any property rights, such as mortgages, liens and pledges;
 - (b) shares, debentures, stock and any other kind of participation in companies;
 - (c) claims to money or to any other performance having an economic value associated with an investment;
 - (d) intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, technical process, know-how and good-will; and
 - (e) business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.
2. The term “**investor**” shall mean any legal or natural person of one Contracting Party who invests in the territory of the other Contracting Party, and for the purpose of this definition, with respect to either Contracting Party:
 - (a) the term “natural person” shall mean any natural person who is a national of that Contracting Party; and

- (b) the term “legal person” shall mean any company, corporation, business association, partnership and other organization which is constituted or incorporated under the laws and regulations of that Contracting Party and has its seat, together with real economic activities, in the territory of the same Contracting Party.
3. The term “**returns**” shall mean the amounts yielded from investments, including in particular, though not exclusively, profits, dividends, interests, capital gains, royalties, fees and other legitimate income.
 4. The term “**territory**” shall mean the land territory, the airspace, the territorial sea, as well as the continental shelf and the exclusive economic zone over which the Contracting Party has sovereign and jurisdictional rights in accordance with international law.

Article 2 *Scope of Application*

This Agreement shall be applicable to investments whenever made by investors of either Contracting Party in the territory of the other Contracting Party. It shall not apply to events or disputes which arose prior to its entry into force

Article 3 *Promotion and Protection of Investment*

1. Each Contracting Party shall promote economic cooperation and encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.
2. Investments of the investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.
3. Subject to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment or disposal of the investments by the investors of the other Contracting Party.

Article 4 *Treatment of Investments*

1. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.
2. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the

other Contracting Party treatment no less favorable than that accorded to the investments and associated activities by its own investors or by the investors of any third State.

3. The provisions of Paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:
 - (a) any customs union, free trade area, economic union and any international agreement resulting in such unions or other forms of regional cooperation to which either Contracting Party is or may become a party;
 - (b) any international agreement or arrangement or any domestic legislation relating wholly or mainly to taxation.

Article 5 *Expropriation*

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated, either directly or indirectly through measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except if the following conditions are complied with:
 - (a) the expropriation is for the public interest;
 - (b) the expropriation is without discrimination;
 - (c) the expropriation is in accordance with domestic legal procedure; and
 - (d) the expropriation is accompanied by compensation.
2. Such compensation mentioned in Paragraph 1(d) of this Article shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation is taken or the impending expropriation becomes public knowledge. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall be made without delay, be effectively realizable and be freely transferable between the territories of the Contracting Parties. Valuation criteria shall include the going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.
3. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 6 *Compensation for Damages and Losses*

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situation in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favorable to the investors. Resulting payments shall be freely transferable without undue delay.

Article 7 *Transfers*

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, including:
 - (a) the initial capital plus any additional capital used to maintain or expand investment;
 - (b) returns;
 - (c) proceeds accruing from the sale or the total or partial liquidation of investments;
 - (d) payments made under a contract entered into by the investor, including payments made pursuant to a loan agreement in connection with investments;
 - (e) compensation pursuant to Article 6;
 - (f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment in the territory of one Contracting Party;
 - (g) payments arising out of the settlement of disputes
2. Transfers shall be made in the freely convertible currency in which the investment has been made or in any freely convertible currency at the prevailing market rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Party.
3. The Contracting Parties shall undertake to accord to transfers under this Article treatment no less favorable than that accorded to transfers of an investment made by an investor of any third State.

Article 8 *Subrogation*

If a Contracting Party or its authorized agency makes a payment to an investor under a guarantee or a contract of insurance against non commercial risks it has granted to an investment of such in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) the assignment, whether under the law or pursuant to a legal transaction in that State, of all rights and claims from investors to the former Contracting Party or its authorized agency, and
- (b) that the former Contracting Party or its authorized agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investors.

Article 9

Settlement of Disputes With Contracting States

1. Any dispute between the Contracting Parties concerning the interpretation or application of this agreement shall, as far as possible, be settled amicably by consultations through diplomatic channels.
2. If the dispute between the Contracting Parties cannot be thus settled within six months from the date of request for settlement, the dispute shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.
3. Such tribunal shall consist of three members and be constituted for each individual case. Within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator. Those two members shall, within a further two months, together select a national of a third State having diplomatic relations with both Contracting Parties, who, on approval by the two Contracting Parties, shall be appointed Chairman of the tribunal.
4. If the arbitral tribunal has not been constituted within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make the necessary appointments.
5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.
6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.
7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 10

Settlement of Disputes Between Investors and the Contracting Parties

1. Any legal dispute between a Contracting Party and an investor of the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through consultations between the parties to the dispute.
2. If the dispute cannot be settled through consultations within six months the investor of one Contracting Party should submit the dispute for settlement to the competent domestic court of the other Contracting Party.

Article 11

Relation Between Parties

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the two Contracting Parties.

Article 12

Application of Other Rules

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favorable to the cases of investors.
2. Where the provisions of law of either Contracting party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to treatment more favorable than that accorded by this Agreement, the more favorable treatment shall be accorded.

Article 13

Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing of the completion of their respective internal legal formalities necessary or the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten years. It shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration of the period specified.
3. After the expiration of initial ten years period, either Contracting Party may, by giving at least one year's written notice to the other Contracting Party, at any time thereafter terminate this Agreement.
4. With respect to investments made prior to the date of termination of this Agreement, the provisions of all other Articles of this agreement shall continue to be effective for a further period of ten years from such date of termination.
5. This Agreement may be amended by mutual written consent. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement.
6. Any amendment or termination of this Agreement shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the effective date of such amendment or termination.

IN WITNESS WHEREOF the undersigned representatives, duly authorized thereto, have signed this Agreement.

For the Government of
the Republic of Redentia:

Santina Morelli

For the Government of
the Republic of Artina:

Costas Pello

ANNEX 2

EXCERPTS FROM THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF REDENTIA AND THE REPUBLIC OF BEGINNIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

[ONLY ARTICLES 1, 7 AND 13 ARE PRODUCED HERE]

Article 1 *Definitions*

For the purposes of this Agreement,

1. The term “**investment**” shall mean every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:
 - (f) movable and immovable property as well as any property rights, such as mortgages, liens and pledges;
 - (g) shares, debentures, stock and any other kind of participation in companies;
 - (h) claims to money or to any other performance having an economic value associated with an investment;
 - (i) intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, technical process, know-how and good-will; and e) business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.
5. The term “**investor**” shall mean any legal or natural person of one Contracting Party who invests in the territory of the other Contracting Party, and for the purpose of this definition, with respect to either Contracting Party:
 - (c) the term “natural person” shall mean any natural person who is a national of that Contracting Party; and
 - (d) the term “legal person” shall mean any company, corporation, business association, partnership and other organization which is constituted or incorporated under the laws and regulations of that Contracting Party and has its seat, together with real economic activities, in the territory of the same Contracting Party.

2.

[...]

Article 7 *Expropriation*

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated, either directly or indirectly through measures having effect equivalent to

nationalization or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except if the following conditions are complied with:

- (e) the expropriation is for the public interest;
 - (f) the expropriation is without discrimination;
 - (g) the expropriation is in accordance with domestic legal procedure; and
 - (h) the expropriation is accompanied by compensation.
2. Such compensation mentioned in Paragraph 1(d) of this Article shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation is taken or the impending expropriation becomes public knowledge. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall be made without delay, be effectively realizable and be freely transferable between the territories of the Contracting Parties. Valuation criteria shall include the going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.
 3. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

[...]

Article 13

Settlement of Disputes Between Investors and the Contracting Parties

1. Any legal dispute between a Contracting Party and an investor of the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through consultations between the parties to the dispute.
2. If the dispute cannot be settled through consultations within six months the investor of one Contracting Party should submit the dispute for settlement to the International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965.
3. The arbitral tribunal established under this Article shall adjudicate according to the national laws and regulations of the Contracting Party involved in the dispute, the provisions of the present Agreement, and applicable rules of international law.
4. All arbitral awards shall be final and binding on the parties to the dispute and shall be enforced in accordance with the laws of the Contracting Party.

ANNEX 3

UNDISPUTED FACTS

Claimant's background

1. Claimant, Mr. Jan Konarski, was born in Artina on 6 July 1950, to a Tronian father and Artinan mother. At the age of 8, his parents decided to relocate back to Tronia, where Claimant's father was born and educated.
2. Claimant dropped out of school at a young age to pursue a career in oil trading. Though born in relatively modest circumstances, Claimant managed to ride on the oil industry boom in the 1970s and 1980s to become one of Tronian's youngest billionaires.
3. Since Claimant's birth, he has been a dual-citizen of Artina and Tronia. The laws of both states allow for dual citizenship. From birth, Claimant received his Artinan citizenship as his mother was Artinan, and received his Tronian citizenship as his father was Tronian.
4. From the age of 8 to the present time, Claimant has always lived and has been based in Tronia. While Claimant has invested in assets across numerous jurisdictions, it so happened that none of these assets has ever been located in Artina. Since the age of 8, the only relationship Claimant has with Artina is that he owns an Artina passport and has visited Artina a few times on holiday in his youth.

Respondent's background

5. The Respondent is the state of Redentia. Respondent is a democratic republic located in one of the most liberal and prosperous regions in the world. Respondent adopts a Westminster system of government. It is known for its beautiful mountains, strong fish-farming industry and commitment to protecting the environment.
6. In the last two decades, Respondent has actively pushed for foreign investment in order to boost the country's plateauing Gross Domestic Product growth. It has signed numerous Bilateral Investment Treaties ("BITs") with various states, including Artina and Beginnina. The Redentia-Artina and Redentia-Beginnina BITs were both signed in mid-2007 and came into force on 1 January 2008.
7. There is no investment treaty between Respondent and Tronia.

Claimant's investment

8. Many of Respondent's biggest corporations were badly affected in the 2009 Global Financial Crisis. This includes Redentia Petroleum Corporation ("RPC"), a fuel company whose revenue mainly comes from operating 40% of the fuel service stations in Redentia. Respondent got into action quickly and held many exploratory meetings and functions with high-net worth individuals, investment banks and

Fortune 500 companies hoping that some of these parties can buy over portions of troubled Redentian companies and thus inject capital into these companies.

9. Claimant was one of these high-net worth individuals contacted. In January 2010, Claimant decided to invest USD 2 billion of his own funds, in his personal capacity, to acquire a 30% stake in RPC.
10. With injection of capital from Claimant and other investors, RPC's fortunes flourished. From 2010 to 2013, RPC achieved steady growth in profits and revenue.

The Pro-Environment Measures

11. In mid-2013, Respondent held its General Elections. The Green Party, a pro-environment political party in Redentia, stormed into power with 60% of the popular vote and almost three-quarters of the parliamentary seats available. The Green Party promised to introduce policies that would improve the environment, as global warming and melting icecaps have caused irreversible damage to Respondent's famed fishing industry and lush mountains.
12. Also, sometime in mid-2013, there was a massive oil-spill off the Southern coast of Respondent. This was the result of an incident involving an oil tanker passing through the Straits of Redentia on its way to a neighbouring country. The oil-spill caused more than USD 2 billion dollars of damage to the fishing and tourism industries of Redentia. It also caused significant public outrage in Redentia. Environmental activists took to the streets to protest at the government's inaction against big oil companies, who were perceived as the players responsible for the environmental pollution.
13. In order to pacify the people of Redentia and also to fulfill its electoral promises, Respondent introduced several new laws and policies aimed at protecting the environment (the "Pro-Environment Measures"). In particular, it actively endorsed the activities of pro-environment groups (including anti-oil activists) and removed all taxes and tariffs on natural gas vehicles (vehicles running on natural gas fuels). The decision to remove all taxes and tariffs on natural gas vehicles was not taken lightly. It was implemented after Respondent consulted experts from the United Nations and the United States Department of Energy, all of whom are unanimous that natural gas vehicles produce lower emissions than vehicles running on petrol.¹
14. Respondent also replaced all public buses and governmental vehicles, formerly vehicles running on petrol, to natural gas vehicles. These changes were introduced in mid 2013 and were fully implemented by end 2013. The implementation of the Pro-Environment Measures was met with great public approval.

¹ See for example the International Gas Union Working Committee 5 – Utilisation of Gas Study Group 5.3 – Natural Gas Vehicles (NGV) and United Nations Economic Commission for Europe Working Party on Gas Joint Report on Natural Gas for Vehicles. The report is available at <http://www.ngva.eu/downloads/news/2012%20Final%20IGU%20UN%20ECE%20NGV%20Report%202012.pdf>.

15. As a result of the Pro-Environment Measures, ownership of petrol-engine vehicles dropped steadily from 2013 to 2015, while ownership of natural gas vehicles rose. At the beginning of 2013, 80% of Redentian vehicles ran on petrol, while only 10% ran on natural gas. By the end of 2015, the figures were 60% and 34% respectively.
16. Naturally, with less petrol-engine vehicles on the road, the revenues of the fuel companies plummeted. RPC's profits in 2015 were only half of what it used to be in 2012. Based on professional projections, should this trend continue, RPC is anticipated to incur losses by the year 2020.

The dispute

17. Claimant, concerned that his 30% shareholding in RPC is worth less and less each year, consulted his lawyers on his possible legal options. His lawyers advised him to communicate his concerns about the Pro-Environment Measures to Respondent with a view to an amicable settlement.

Following his lawyers' advice, Claimant sat down on several occasions for "without prejudice" negotiations with representatives of Respondent. However, no solution came out of these meetings. Respondent, now run by the Green Party, is determined to stick to its electoral promises and steer Redentia to a "clean and green future".

18. Frustrated, Claimant decided to take formal legal action against Respondent.
19. On 1 December 2015, Claimant's lawyers officially referred the dispute to ICSID arbitration. On 15 December 2015, the ICSID Secretary General registered the dispute for arbitration.