



Symbiosis Law School
Pune

**8th SURANA & SURANA INTERNATIONAL TECHNOLOGY
LAW MOOT COURT COMPETITION – 2009**

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Surana & Surana
International Attorneys

**DISPUTE BEFORE THE INTERNATIONAL COURT OF JUSTICE
ON THE DIFFERENCES BETWEEN THE TWO STATES
ANTUSDIN (APPLICANT) & RUMOSA (RESPONDENT)
CONCERNING THE ENERGY DEVELOPMENT TECHNOLOGY AGREEMENT (EDTA)
BY SPECIAL AGREEMENT UNDER
ARTICLE 40(1) OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**

Jointly notified to the Court on 10 March 2009

FACTS

1. Rumosa and Antusdin entered into Energy Development Technology Agreement (EDTA) on 12 March 2008 for enhanced cooperation in the field of energy generation through nuclear power for civilian purpose.
2. Rumosa is a developed nation and a member of G5 and the UN Security Council. It is a declared nuclear weapons state (NWS) and the only state that has used nuclear weapons in war.
3. Antusdin is a de facto nuclear power nation. It has developed its own nuclear technology, which is quite advanced in nature and also pursues upgradation and refinement of nuclear technology. It has several nuclear facilities that generate power for its civilian use. Antusdin had tested on 5 occasions variants of nuclear devices that had multiple purposes. The technology adopted was acknowledged by developed nations as advanced and exemplary.
4. Antusdin has very little Uranium deposits and imports raw material from other countries commonly known as NSG. NSG came into existence after Antusdin exploded a nuclear device in 1974 – to deny nuclear fuel and technology from the 45 members countries global nuclear club. NWS has international obligation to keep their nuclear material and facilities for the security needs to be put under UN inspectors called IAEA.
5. Antusdin is opposed to signing the NPT or the CTBT as it contends; it is G5 nations' arm-twisting tool to bring nuclear capable states into submission. Antusdin could only join the NPT if it disarmed and joined as a Non Nuclear Weapons State, which is politically impossible.
6. Antusdin testing of 4 nuclear devices in the year 1998 raised the ire of international communities and sought to restrict its nuclear plans by way of sanctions.
7. Antusdin has always been scrupulous in ensuring that its weapons material and technology are guarded against commercial or illicit export to other countries. In December 2006 the Rumosa Congress passed legislation to enable nuclear trade with Antusdin. In July 2007 a nuclear cooperation agreement with Antusdin was finalized, opening the way for Antusdin's participation in international commerce in nuclear fuel and equipment and requiring Antusdin to put most of the country's nuclear power reactors under IAEA safeguards
8. On August 1, 2008, the IAEA approved the Antusdin's Safeguards Agreement and on September 6, 2008, Antusdin was granted the waiver at the NSG meeting held in Vienna, Austria. The consensus

was arrived after overcoming misgivings expressed by Austria, Ireland and New Zealand and is an unprecedented step in giving exemption to a country, which has not signed the NPT and the Comprehensive Test Ban Treaty (CTBT).

9. Following this on September 30, 2008 The State of Renfac a NWS and G5 member entered into a nuclear deal with Antusdin for supply of enriched Uranium for generation of civilian nuclear energy. Renfac a pioneer in reprocessing of nuclear fuel was aware of Antusdin's research on Thorium as an alternate nuclear fuel.
10. Antusdin was in the throes of an energy crisis since many of its nuclear reactors were not running at full capacity for shortage of fuel. Renfac promised to ship the fuel immediately on spot payment of 50% of cost and the rest by agreed terms on delivery. The deal was struck between Renfac and Antusdin. Renfac arranged for immediate shipment of agreed consignment. It was agreed the consignment would be delivered in two installments.
11. There was stiff opposition from most of the political parties of Antusdin. The main opposition Antusdin People's Party (APP) publicly announced that if it comes to power the EDTA would be revoked and renegotiated protecting national interests and sovereignty of Antusdin
12. Meanwhile there was a leak in newspapers of Rumosa that a new bill Broad-Side Act 2008 (BSA) has been tabled in Rumosa Senate that puts restrictions on EDTA. Rumosa senate would not clear EDTA unless it is in conformity with the Broad-Side Act.
13. The entire opposition of Antusdin cried foul of the game played by Rumosa but the head of Antusdin National Conglomerate (ANC), the ruling party, maintained that Antusdin's interests are protected and in no way its sovereignty compromised by Rumosa's Broad-side Act.
14. Meanwhile the economic bubble burst worldwide creating a financial chaos. Antusdin's big neighbor Peoples Republic of Nachi (PRN) was emerging as the new power center in the world scenario. As a member of the G5 and a declared NWS Nachi was opposed to EDT agreement between Rumosa and Antusdin. Nachi was wary of Antusdin's potential emergence as the region's super power. But Nachi's apprehensions were addressed by other G5 nations and NSG countries, and Nachi finally came round to accept ground realities.
15. The rise of the oil prices also compounded Antusdin's woes as a major portion of its economic resources was spent for import of oil and for defense expenditure. This resulted in considerable erosion in its foreign exchange reserves that was already strained by the global economic crises.
16. On December 20, 2008 Antusdin received the first installment of consignment from Renfac.
17. Antusdin had considerable problem with its neighbor Kapis that was supported by the powerful Nachi. Kapis also is a de facto nuclear nation. Kapis closely follows suit whenever Antusdin tests a nuclear device. Kapis also was not very reliable in containing its nuclear activities and stealthily sold its technology to rogue nations thus resulting in proliferation of nuclear technology in the region.
18. Rumosa and Nachi have effectively used their relationship with Kapis to keep Antusdin on a leash. This policy of Rumosa and Nachi has had a debilitating effect on Antusdin's economy compelling it to spend most of its resources on defense. This was also compounded due to its vast stretch of its border with Kapis and Nachi.

19. The opposition party APP exploited this situation. It created the awareness among the people of Antusdin that EDTA with Rumosa was not in its interest in the present form and if it comes to power it would renegotiate the deal with Rumosa. Also it would enact a law similar to Rumosa's Broadside Act to protect Antusdin's national interest.
20. The long-term goal of Antusdin's nuclear program is to develop an advanced heavy-water thorium cycle. This first employs the Pressurized Heavy Water Reactors (PHWRs) fuelled by natural uranium, and light water reactors, to produce plutonium.
21. Stage 2 uses fast neutron reactors burning the plutonium to breed U-233 from thorium. The blanket around the core will have uranium as well as thorium, so that further plutonium (ideally high-fissile Pu) is produced as well as the U-233.
22. Then in stage 3, Advanced Heavy Water Reactors (AHWRs) burn the U233 and this plutonium with thorium, getting about two thirds of their power from the thorium.
23. In the public election that followed in Antusdin, the ruling party ANC heavily lost and APP came into power. APP's main projection to the people was that Antusdin would be made a powerful nation and would develop strong deterrent to every kind of external threats, be it terrorism or stealth aggression. ANC quickly released a draft Energy Self Sufficiency Bill 2009 (ESS 2009) for debate and enactment as a counter to Rumosa's Broad-side Act.
24. Meanwhile Antusdin had a series of attacks by armed terrorists supported by Kapis military intelligence wing, which for long have been denied by them. Rumosa and Nachi were aware of this. In fact Rumosa had a strong doubt whether Nachi was involved in this. The damage caused was enormous and close to 300 people were dead.
25. This situation prompted APP to go on an overdrive mode. APP activated Antusdin Defense Research Wing (DDRW) fully to develop an alternate nuclear fuel based on Thorium. They wanted to avoid total reliance on uranium and total dependence on supplies from NSG. DDRW had already worked on such a model but were unable to make a breakthrough because of the nuclear policy of ANC. With APP at the helm, DDRW scientists worked with renewed vigor from where they left. DDRW was aiming at a multiple usage of the technology primarily for civilian purpose but can be augmented for military use in case of emergency.
26. DDRW attained a slim breakthrough wherein they could reprocess spent nuclear fuel and recycle it for further use. But to activate Thorium they had to work on a new chemical trigger that would capture the escaping neutrons that replenishes the spent fuel, further lengthening its core life. This needed field-testing. DDRW has developed a know-how that would accurately measure the daughter products that are rejected as waste in the nuclear reactor, and emit strong and alpha and gamma rays that contribute to the contamination of the environment and living beings. The experiment would help in studying and developing technology that would help contain these contaminants and also help in optimal use of nuclear fuel. This would also help in reduction of huge pile of nuclear wastes the storage of which is a nightmare to every nation in the world.
27. They obtained a go ahead from APP cabinet citing that international queries could be answered by claiming that it is a peaceful testing to study the output and continuous reaction of the new fuel mix. A small nuclear device with reprocessed fuel with uranium / plutonium / thorium combination as

base was exploded at its usual site. Since it was just a 50-kiloton device the entire operation was done very efficiently with utmost secrecy.

28. Since the 1998 explosion of Antusdin, Rumosa was closely monitoring its activities on the nuclear front. Its accurate measuring devices detected the low intensity vibrations and soon they announced that Antusdin has exploded a nuclear device. Closely following the announcement Rumosa imposed several sanctions on Antusdin including trade sanctions citing provisions of EDTA and by the compulsion imposed by Broadside Act.
29. Rumosa also informed all NSG members to blacklist Antusdin and immediately recall all consignments that were dispatched.
30. Several diplomatic communications and meeting took place at the highest level between Rumosa and Antusdin but of no avail.
31. Article 15 of EDTA – Settlement of disputes
 - A. Any dispute concerning the interpretation or implementation of the provisions of this Agreement shall be promptly negotiated by the Parties with a view to resolving that dispute
 - B. In the event of non resolution by negotiation, the Parties agree to approach the International Court of justice, Hague
32. Matter was finally agreed by both of them to be referred to the ICJ for resolution.

33. Issues

Antusdin:

1. EDTA allows Antusdin certain activities for protecting its territory and sovereignty
2. The exploded device was not a weapon but only a testing of the new chemical trigger
3. Antusdin's experiment would benefit the whole world that is short of energy
4. Broadside Act was Rumosa's internal issue and does not bind Antusdin

Rumosa:

1. Antusdin has violated the EDT agreement by conducting a nuclear test
2. Antusdin should return all nuclear fuel received by it as per EDTA
3. Antusdin is bound by IAEA and NSG agreements
4. Trade sanctions imposed on Antusdin is right in International Law

NB: The case is argued in ICJ at a future date (June 2009) contributing to the fact that the issues are hypothetical