

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN ALFURNA (APPLICANT)
AND THE STATE OF RUTASIA (RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE PARTIES
CONCERNING THE ALFURNAN MIGRANTS**

jointly notified to the Court on 14 September 2012

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE L'ALFURNA (DEMANDEUR)
ET L'ÉTAT DE LA RUTASIE (DÉFENDEUR)
VISANT À SOUMETTRE À LA COUR INTERNATIONALE DE JUSTICE
LES DIFFÉRENDS QUI OPPOSENT LES DEUX PARTIES CONCERNANT
LES MIGRANTS ALFURNIENS**

notifié conjointement à la Cour le 14 septembre 2012

**JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 14 September 2012

On behalf of Alfurna (“the Applicant”) and the State of Rutasia (“the Respondent”), in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Compromis for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the Alfurnan Migrants, signed in The Hague, The Netherlands, on the fourteenth day of September in the year two thousand twelve.

Martin Fatu
Prime Minister of Alfurna

Michael Denning
Ambassador of the State of Rutasia
to the Kingdom of The Netherlands

COMPROMIS

SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY ALFURNA AND THE STATE OF RUTASIA ON THE DIFFERENCES BETWEEN THEM CONCERNING THE ALFURNAN MIGRANTS

Alfurna and the State of Rutasia,

Considering that differences have arisen between them concerning the Alfurnan Migrants and other matters;

Recognizing that the Parties concerned have been unable to settle these differences by negotiation;

Desiring further to define the issues to be submitted to the International Court of Justice (hereinafter referred to as “the Court”) for settling this dispute;

In furtherance thereof the Parties have concluded the following Compromis:

Article 1

The Parties submit the questions contained in the Compromis (together with Corrections and Clarifications to follow) to the Court pursuant to Article 40(1) of the Statute of the Court.

Article 2

- (a) It is agreed by the Parties that Alfurna shall act as Applicant and the State of Rutasia as Respondent, but such agreement is without prejudice to any question of the burden of proof.
- (b) The Parties stipulate that any reference to “Alfurna” or its government officials, including Prime Minister Fatu, in this Compromis is without prejudice to Respondent’s contention that Alfurna is no longer a state.

Article 3

- (a) The Court is requested to decide the Case on the basis of the rules and principles of international law, including any applicable treaties.
- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgement on the questions presented in the Case.

Article 4

- (a) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the 2013 Philip C. Jessup International Law Moot Court Competition.
- (b) The Parties request the Court to order that the written proceedings should consist of Memorials presented by each of the Parties not later than the date set forth in the Official Schedule of the 2013 Philip C. Jessup International Law Moot Court Competition.

Article 5

- (a) The Parties shall accept any Judgement of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the transmission of any Judgement, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorized, have signed the present Compromis and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this fourteenth day of September in the year two thousand twelve, in triplicate in the English language.

Martin Fatu
Prime Minister of Alfurna

Michael Denning
Ambassador of the State of Rutasia
to the Kingdom of The Netherlands

The 2013 Philip C. Jessup International Law Moot Court Competition

****Compromis****

Alfurna v. the State of Rutasia

The Case Concerning the Alfurnan Migrants

1. Batri and Engili were two low-lying islands located in the Bay of Singri. They were settled by Finutafu in 1812, and in 1904 became the independent republic of Alfurna. Alfurna historically maintained a close relationship with Finutafu, a developed state on the western side of the Bay of Singri approximately 800 miles west of the islands.
2. For much of Alfurna's history, its economy was based on agriculture and the abundant fisheries in the Bay. In the mid-1960s, entrepreneurs were attracted by Alfurna's potential as a tourist destination. Initial investments proved to be very successful, and over the course of the next 20 years, investment in the Alfurnan tourism sector accelerated and the industry grew rapidly. With the increased income from tourism, and foreign development assistance in the form of grants and loans, Alfurna was able to expand and upgrade some of its basic infrastructure, including the national airport on Batri. In 2001, Alfurna's Gross Domestic Product had risen to USD 200 million, and its population was 53,000.
3. Nullatree Cove was a coastal village on Engili, whose residents had lived in isolation from other islanders since the mid-nineteenth century. They were of the same cultural and ethnic origins as other Alfurnans, but rejected urbanisation and technology. Nullatree Cove villagers maintained a subsistence lifestyle. The Nullatree Cove village population fluctuated over time, but was generally around 1,500 people.
4. Rutasia is a large developed state on the eastern side of the Bay of Singri, its coast lying approximately 350 miles east of Alfurna. Rutasia's head of state is President Eileen Millard. Rutasia has a diverse economy, but is heavily reliant on the burning of fossil fuels. Rutasia also lends and provides development assistance to other governments, particularly those in the Bay of Singri region, is a permanent member of the Paris Club, and has participated in a number of sovereign debt restructurings under Paris Club arrangements, including under the Heavily Indebted Poor Countries Initiative. Relations between Rutasia

and Alfurna have always been friendly, and for decades, many Rutasians travelled to Alfurna for tourism and business each year.

5. The climate of the Bay of Singri includes an annual monsoon season with strong cyclones and heavy and unpredictable winds preceding and following the monsoons. Occasionally, the Bay also experiences undersea earthquakes with resulting tsunamis that have devastated the surrounding coastal regions. The hydrology of the Bay is such that, in addition to water-level changes resulting from waves and tide, the average sea level varies throughout the year, and owing to such local factors as salinity, rainfall, riverine input, and evaporation, the Bay has exhibited a net water gain over the past two centuries.

6. Within the first decade of Alfurna's settlement it became clear that low-lying regions of its two islands were in frequent danger of being swamped during the Bay's extreme weather and earthquake events. In response to these vulnerabilities, seawalls were erected around the islands in the early twentieth century, although from the very beginning monitoring and maintenance of the seawalls were hampered by budgetary difficulties.

7. By 1990, the rate at which sea levels were rising had increased to such an extent that many parts of the islands were underwater even at low tide. Erosion from the inundation and the routine monsoon and cyclone activity accelerated the extent to which areas of the islands were becoming submerged, with parts of the seawalls falling into the Bay as the underlying land was washed away.

8. Rutasia signed and ratified the UN Framework Convention on Climate Change ("UNFCCC") in 1992. Later that year, in response to growing public alarm at the persistent inundation of parts of the islands and associated damage, the Alfurnan government sought grants and loans from various sources to finance a programme of repairs and remedial works. The Rutasian and Alfurnan governments swiftly reached agreement on a first step toward what were called "Rutasia-Alfurna Closer Economic Relations." The arrangement consisted of a "climate change loan" of USD 125 million, tied to the use of Rutasian expertise and resources for a long-term initiative styled the "Alfurna Climate Change Remediation Project" ("**ACCR Project**"). The climate change loan was made through the Rutasian International Cooperation Administration ("**RICA**"), a government agency.

9. The climate change loan agreement was executed on 5 June 1992. Disbursement was conditioned on the funds being applied to repairing the seawalls and related damage,

designing and implementing other remedies and preventative measures to combat inundation, and associated research. During the negotiations that resulted in the agreement, Rutasia insisted that the final document include a provision requiring Alfurna to use the services of Rutasian companies to perform substantial contracts, so long as properly qualified entities submitted bids. In accordance with that requirement, Alfurna contracted with Rutasia's largest private-sector construction company, Mainline Constructions Limited ("MCL"), to perform the construction and maintenance work on the seawalls. Excerpts from an official summary of the terms of the loan are set out in Annex A to this Compromis.

10. The climate change loan was widely reported by mass media around the world. The Tom Good Institute ("TGI"), a world-renowned and respected research institution committed to monitoring carbon emissions and lobbying national governments to address global warming, issued a press release on 10 June 1992, stating:

Rutasia has been slow to reform its carbon emission behaviour and has been a major contributor to the worsening effects of climate change. In these circumstances, the long-term benefits of Rutasia's making loans to nations severely affected by climate change, such as Alfurna, is unclear. We call on Rutasia, and other large-scale polluters of our planet's atmosphere, to demonstrate a more sincere commitment to abating the threats of global warming.

Rutasia promptly denied these charges, asserting that it had been working for years to lessen its emission of greenhouse gases, with considerable success.

11. Alfurna's central bank, the Alfurna Reserve Bank ("ARB"), had maintained an account in the Provincial Bank of Lando, one of Rutasia's provincial reserve banks, for many years. The loan arrangement required that funds be deposited into that account, then to be withdrawn for uses contemplated in the agreement.

12. Between 1992 and 1997, the full amount of the climate change loan funds were disbursed by RICA into Alfurna's Bank of Lando account. Most of the funds were used to pay for various ACCR Project activities, including scientific studies into the causes of and potential solutions for rising sea levels in the Bay of Singri. The studies concluded that one of the main causes was the warming of the Earth's climate.

13. Alfurna signed and ratified the UNFCCC in 1997 and the Kyoto Protocol to the UNFCCC in 1998. It promoted the Kyoto Protocol vigorously in various international fora,

and, on numerous occasions, called upon states to take measures to combat climate change, attempting to pass resolutions in the General Assembly to this effect. Alfurna also drew particular attention to the plight of low-lying island nations facing increasing challenges posed by rising sea levels, and made repeated calls on major nations to provide assistance.

14. Rutasia signed the Kyoto Protocol in 1998, but has not yet ratified it. From the mid-1990s, successive Rutasian governments committed to a massive public works programme of rebuilding and expanding the nation's aging network of roads, bridges, railways and other public infrastructure. According to uncontested academic studies, this initiative accelerated the generation of carbon emissions and soot by Rutasian industry.

15. In January 1999, the International Monetary Fund reported that Alfurna's debt had reached 120% of GDP. Later that year, Alfurna failed to pay any interest or principal as required under the climate change loan, and did not meet repayment obligations to various other members of the Paris Club. Having received correspondence from RICA and the other lenders regarding these failures to pay, Alfurna approached the lenders, including Rutasia, to negotiate relief on the basis of its current and anticipated financial pressures. As it did not qualify for restructuring of its debt under Paris Club rules, Alfurna engaged in a year of bilateral negotiations with each of the lender governments, at the conclusion of which it was able to secure varying forms of debt relief. Rutasia, for example, cancelled 25% of the climate change loan principal, reduced the annual interest rate from 2.0% to 1.5%, and rescheduled repayment over an additional 15 years (that is, to 2027).

16. In October 2001, Hurricane Caryl caused considerable damage throughout the Bay of Singri, including Alfurna. Addressing the damage to the islands required extensive financial commitments for which the Alfurnan government had not budgeted.

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

18. In July 2002, Alfurna's Treasury reported to Prime Minister Fatu that, based on a "best case" analysis, Alfurna would encounter severe debt servicing problems within three years, and had a high risk of missing principal payments again within the next five years. The news from the Treasury prompted Prime Minister Fatu once more to seek renegotiation of the climate change loan terms with RICA.

19. At the conclusion of the discussions in September 2002, Prime Minister Fatu and President Millard jointly announced an agreement that a further 25% of the loan would be cancelled, Alfurna would be granted a grace period on repayments of principal and interest until 15 September 2010, the interest rate would be reduced to 1.1%, and the period for repayment of the loan would be extended for a further 20 years (that is, to 2047). It was also agreed that, should Alfurna prevail in the MCL arbitration, the withheld funds would remain in the ARB account, their use restricted to the original purposes and governed by the procedures of the climate change loan.

20. In November 2002, the arbitrators issued their final award, in favour of Alfurna. The panel found that a substantial portion of the most recent damage to the collapsed seawalls was due to construction methods and selection of materials that did not adequately account for the rapid wear and tear caused by severe weather and frequent inundation of saltwater. The tribunal concluded that the failure to observe industry standards in construction of the seawalls by MCL actually accelerated their collapse, awarded damages of USD 35 million to Alfurna, and authorized the release of the USD 20 million that had been retained in the ARB account pending the tribunal's award. MCL promptly paid the damages award into the Lando Bank account held in the name of the ARB. President Millard ordered an emergency enquiry into MCL's work on the seawalls, and the Blue Ribbon Commission tasked with that assignment confirmed the findings of the arbitral panel.

21. Prime Minister Fatu established a "Climate Emergency Committee" ("CEC") comprising his most senior government ministers in early 2003, to examine the future prospects of Alfurna in light of recent developments. In August 2004, the CEC reported, based on its assessment of the scientific evidence, that the combination of earthquakes and extreme weather events would destroy the seawalls within a few years, with the consequence that sea levels even at low tide would overwhelm the islands. The CEC also noted that these issues were fast becoming impossible to address given Alfurna's other financial challenges. The CEC recommended that the government start making plans to evacuate the Alfurnan

islands. It advised the government to identify a new “homeland,” and/or countries willing to accept Alfunans who would be made homeless by the impending crisis.

22. In January 2005, the Fatu government decided to implement all of the CEC’s recommendations. Prime Minister Fatu made a televised address to the country, which concluded with the following words:

My fellow Alfunans, we face the greatest challenge in our history: a threat to our very survival as a nation. We must work together over the coming months and years to plan and execute a bold and unprecedented strategy – the transplanting of our people to a new land, to ensure that Alfurna, our people and our culture, can live on whilst Mother Nature takes our beloved islands from us. You will hear more in the coming days. But be assured that I will be asking all of our countrymen and countrywomen for unprecedented sacrifice, which I am confident you will accept in homage to our forebears, and in the interests of our future generations.

23. Immediately following the Prime Minister’s speech, to fund the CEC’s initiatives, the Alfunan Parliament passed legislation declaring a moratorium on servicing all debt to foreign lenders. Alfurna ceased repaying any of its loans. Prime Minister Fatu also approached the U.N. General Assembly, calling upon all states to assist Alfurna at what he termed “a time of unique tragedy and unique challenge.” “The fate of my country,” he concluded, “rests in the hands of the international community.” The Secretary-General pledged to do whatever he could to help avoid a humanitarian catastrophe.

24. Prime Minister Fatu delegated to the CEC the role of identifying suitable options for a new homeland and approaching other nations to acquire the necessary territory. The CEC was also tasked with seeking and negotiating emergency migration arrangements. The CEC asked several other countries in the region to accept substantial numbers of Alfunan migrants, but negotiations were slow, and no state expressed willingness either to cede territory or to provide refuge of potentially indeterminate duration to émigrés who might number in the tens of thousands.

25. In mid-2006, a major earthquake rendered much of Batri Island essentially uninhabitable, also causing significant damage to Rutasia. Over the course of the next few months, key agencies and the executive officers of Alfurna’s government relocated to Finutafu, occupying premises granted on temporary terms to be reviewed annually until the

Alfurnan government obtained a new homeland. Approximately 15,000 Batri Island residents were also able to relocate to Finutafu, whilst the remainder fled to Engili. A few months later, large sections of the seawall that had shielded Batri from the Bay of Singri were washed away, and swiftly thereafter, Batri Island was submerged permanently.

26. In light of that development, the CEC succeeded in securing a range of temporary emergency migration arrangements both within and outside the region, and was also able to interest several states in reaching an agreement to cede territory to Alfurna. The various negotiations ultimately stalled later in 2006, because the territories offered were too costly, too small, or lacked appropriate climate and topography. During this time, Prime Minister Fatu spoke again, as he put it, “to the people of the nation and to the nations of the world”:

We are making every effort to obtain a new homeland for all of our Alfurnan people. This is not easy. Properly identifying a suitable area and securing the necessary arrangements are taking time. In the spirit of cooperation and in recognition of our shared humanity, we call on all states to help us. Our people need shelter and other basic assistance, to ensure their survival in dignity and peace. And we vow that, with your help, all Alfurnans who wish to join in our future as a nation will be united once again in a new homeland.

27. In the second quarter of 2007, a series of increasingly severe storms in the region caused widespread flooding and damage to Engili. The remaining parts of the seawall around that Island were further damaged, and it became obvious that it was only a matter of time before they too collapsed.

28. The UN Committee on Contributions advised the General Assembly in mid-2007 that Alfurna had not paid its most recent UN membership dues. However, the General Assembly deferred discussion of this item in light of Alfurna’s circumstances.

29. Later in 2007, the CEC was able to persuade Finutafu to consider ceding Nasatima Island, which had been a national park and was inhabited only by park rangers. Formal negotiations for the sale and purchase of Nasatima Island commenced in November 2007.

30. Rutasia had borrowed heavily to fund its public works programme, and as a result in late 2008, as world credit markets tightened, it experienced severe financial pressure. Its own loan repayment obligations and the costs of attending to the consequences of the 2007 storms forced Rutasia to find alternative streams of funding to meet its immediate financial

commitments. Among various austerity measures, Rutasia ordered RICA to improve its recovery of development assistance loans to other states.

31. By 30 September 2008, Finutafu had agreed in principle to cede Nasatima Island to Alfurna, and the two countries' negotiators initialled a proposed treaty to accomplish that objective. One of the relevant operative clauses of the draft provided:

It being necessary and desirable that the people of Alfurna should have some territory with which they may recreate and maintain a homeland, the Republic of Finutafu cedes to the State of Alfurna the Island of Nasatima, to be possessed in perpetuity by Alfurna, and to be governed by such laws and regulations as Alfurna shall enact.

This development received widespread media coverage throughout the world. *Asahi Shimbun*, in an editorial, described it as a “happy solution not only for the people of Alfurna but for the whole world, providing a model of good cooperation and hope for the future of the international community, as the peoples of the Earth face the crisis of global warming together.”

32. By early 2009, the storms and earthquakes had made Engili practically uninhabitable. The Alfurnan government's evacuation plans and individual arrangements enabled all but approximately 3,000 Alfurnans to resettle elsewhere, with the majority relocating to Finutafu. Roughly half of the remaining Alfurnans were residents of the Nullatree Cove area, who had refused to take part in the emergency migration program because they did not wish to leave their ancestral land. A few of these individuals also had Alfurnan criminal records, meaning they did not meet the good moral character requirements imposed by all of the receiving states.

33. During 2009 and 2010, the Rutasian Navy encountered a number of overcrowded boats filled with Alfurnans in Rutasian territorial waters, drifting towards the coast. A total of 2,978 Alfurnans were intercepted and brought to Blocks A and B of the Woeroma Immigration Processing and Detention Centre (“the Woeroma Centre”), the only facility of its type maintained by the Rutasian Immigration Department.

34. Of the migrants brought to Woeroma, 1,492 were Nullatree Cove villagers, who requested that they be housed together. Rutasian authorities, believing that it would help to maintain order among the Alfurnan migrants, agreed, and housed the Nullatree Cove villagers in Block A, the larger and older Block. The other Alfurnans were housed in Block B.

35. Three of the Alfurnan migrants in Block B committed suicide and five died from dysentery during the first half of 2011. These events prompted calls from humanitarian organizations for Rutasia to investigate and improve the living conditions of the detainees.

36. In October 2011, the Immigration Ombudsman, an independent review authority within the Rutasian government, issued a report on conditions at the Woeroma Centre, which concluded:

The conditions at Block A are within acceptable standards for such facilities. The conditions in Block B, however, need to be improved significantly. Block B resembles a medium security prison with high fences and cages inappropriate for non-criminal detainees. Block B is also severely overcrowded, which has led to hygiene problems, inadequate food and water, and limited access to medical services.

The detainees at both Blocks are being subjected to indefinite detention which, according to psychologists who have visited the detainees, is having a severe impact on their mental health.

Rutasia's Immigration Department dismissed the concerns raised by the Ombudsman as factually inaccurate.

37. On 15 November 2011, a small earthquake in the Bay of Singri caused cracking in the walls of both Blocks of the Woeroma Centre. On inspection, the damage was found to be superficial, but the cracking in Block A revealed that the walls contained asbestos. Following an assessment of resulting health risks, the Immigration Department declared on 10 January 2012 that it could not continue to provide separate facilities for the Nullatree Cove villagers at Woeroma, and that the design and construction of new facilities would take two years, and would cost at least USD 110 million.

38. Because it could no longer accommodate the housing requests of the Nullatree Cove villagers in the short run, and could not commit to doing so in the longer term, Rutasia negotiated an agreement with the Republic of Saydee to transfer all of those detainees to Saydee by 28 September 2012. They were to be processed by Saydee's immigration authorities and housed in existing detention facilities. The agreement provided that all costs associated with the transfer, detention, health, and welfare of the transferees would be met by Rutasia.

39. The Republic of Saydee is a developing country that is a party to the International Covenant on Civil and Political Rights. However, it has not ratified the Convention Relating to the Status of Refugees or the 1967 Protocol, the International Covenant on Economic, Social and Cultural Rights, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Saydee's human rights record has been the subject of extensive criticism by the UN Human Rights Committee.

40. A number of international human rights non-governmental organisations vigorously protested the proposed transfer. One of these NGOs, World Immigration Watch, issued a report declaring in part:

WIW notes with concern the October 2011 report of the Rutasian Immigration Ombudsman detailing below-standard conditions in the Woeroma Centre. It now appears that, instead of improving conditions there, Rutasia is attempting to outsource its international humanitarian obligations to a nation with an objectionable human rights record. From the detainees' perspective, this is tantamount to being consigned from the frying pan into the fire.

The world is all too familiar with Saydee's history of ignoring its human rights obligations, despite its ratification of the ICCPR. Rutasia in particular is surely aware of Saydee's practices in relation to migrants kept in prisons during immigration processing. These detention facilities are prisons, and they are not fit for human habitation. Numerous reports from universally-respected human rights NGOs are unanimous on this. Hygiene is unacceptable, food is insufficient, and abuse by guards is the rule and not the exception.

Further, it has recently come to our attention that people housed in these prisons are required to perform manual labour, regardless of their fitness or suitability to engage in such tasks. Protests are not tolerated, and religious practices that differ from those commonly observed in Saydee are prohibited. Saydee has made no moves to deal with these problems. It is unbelievable that Rutasia would even contemplate transferring the detained Alfirmans to Saydee without obtaining guarantees that their human rights will not be abused.

41. Prime Minister Fatu immediately issued the following statement:

In light of the findings of various NGOs, such as World Immigration Watch, the government of Alfurna protests in the strongest terms Rutasia's proposed transfer of detained Alfurnan nationals to Saydee. We demand that Rutasia provide adequate shelter and provisions for these individuals until such time as Alfurnans may be reunited in a new homeland, or if it cannot do that, that it transfer custody over them to a state with a consistent record of honouring the human rights of detainees.

42. The government of Saydee responded with a diplomatic note accusing Prime Minister Fatu of ingratitude for "Saydee's voluntary agreement to assist in the interim protection of migrants from the inundated Alfurnan Islands." Prime Minister Fatu issued a short response indicating that Alfurna was not offering criticism of Saydee's domestic policies, but was merely attempting to ensure that its citizens would be accorded "all of the rights to which they are entitled in international law."

43. Representing the Alfurnan detainees, the International Legal Support Association ("ILSA"), an NGO based in Rutasia, immediately filed suit in that country's Supreme Court, which has original jurisdiction in immigration matters. A 25-year old Alfurnan migrant from Nullatree Cove, Christopher Keve, was the lead plaintiff. The suit requested an emergency stay of the proposed transfer of the Alfurnans housed in Block A, and sought damages for the alleged mistreatment of the detainees in both Blocks. The Court denied the motion and dismissed the case on 8 February 2012, on the grounds that adjudication would intrude into the exclusive constitutional role of the political branches of government in determining foreign policy.

44. On 26 December 2011, an earthquake destroyed the remaining sections of Alfurna's seawall, and Engili Island became permanently submerged under water even at low tide.

45. On 23 January 2012, the Nasatima Island negotiations collapsed. Finutafu blamed the inability of the Alfurnan government to demonstrate that it had access to sufficient funds to purchase the Island. However, after further pleas from the CEC and NGOs, Finutafu's government agreed to lease Nasatima Island to Alfurna. The term of the lease is for 99 years, at an initial rental of USD 1 million per year. The rent is to increase with an agreed measure of inflation. Alfurna is permitted to cancel the lease with five years' notice, if and when it procures a permanent homeland. The lease provides that Alfurna will have complete control over the Island, and its residents will have no claim to Finutafuan citizenship or to the protection of that country's laws.

46. RICA put Alfurna on notice on 10 February 2012 that it had been in default under the renegotiated loan agreement for over a year, and demanded that Alfurna remedy the default within 30 days. Alfurna did not respond to the notice. On 15 March 2012, President Millard officially declared that the entire loan balance (approximately USD 50 million) was due and payable, and that the government was proceeding to seize Alfurnan property in Rutasia to offset its losses. At the President's direction, the Provincial Reserve Bank of Lando closed the ARB's account and transferred the balance, then approximately USD 25 million, to the Rutasian government's general consolidated fund.

47. On 20 March 2012, Prime Minister Fatu responded with a diplomatic note denouncing the closure of the ARB account and the liquidation of its contents as violations of international law, and demanding that the actions be reversed. Rutasia did not respond.

48. Alfurnans in Finutafu and elsewhere petitioned Alfurna to address the plight of the migrants detained in Rutasia. The Alfurnan government sought discussions with the Rutasian authorities, which declined to entertain them. It then issued a communiqué calling on Rutasia to release the migrants from detention. The statement noted that the Alfurnan government was in negotiations with Finutafu to arrange for a staged repatriation of all Alfurnans to Nasatima Island. It further repeated Alfurna's call for the migrants to be treated with dignity, stating:

It is critical that all of Alfurna's sons and daughters be accorded the respect to which each and every human being is entitled under international law. It is our overriding objective to forge ahead on our new homeland, and to be together once again. To accomplish that goal, we will need the help and support and loyalty of every Alfurnan, wherever in the Diaspora he or she may be. And we, for our part, pledge our every effort to protecting and defending our compatriots.

49. During the General Assembly session in early 2012, Finutafu's ambassador to the UN proclaimed:

Rutasia's treatment of the Alfurnan refugees is in flagrant violation of its obligations under international law. It has failed to accord these unfortunate people the fundamental rights to which everyone is entitled. Rutasia's illegal seizure of the ARB account has merely compounded the problem, depriving Alfurnan authorities of the

resources they will need to chart the future of their nation. Finutafu joins Alfurna in calling on the United Nations to condemn Rutasia's actions.

Sixty-seven other states gave their support to Finutafu's comments about Rutasia's treatment of "the Alfurnan refugees," but none commented on the taking of funds.

50. Rutasia's ambassador to the UN responded to the criticisms raised in the General Assembly, declaring:

This Assembly needs to be clear that Alfurna has lost all of its territory and accordingly is no longer a state. Its right to participate as a member of the United Nations and to have its interests considered here has been extinguished.

Rutasia has no obligations under international law to accept the migrants from the former Alfurna into our society, whether under refugee law or otherwise. They are not, in any event "refugees." The migrants arrived in our sovereign waters illegally, and Rutasia reserves its rights to deal with them in accordance with our own national laws. There is evidence that some of these migrants may have visited Rutasia before, and may have been involved in financing illegal activities from our shores. We are currently reviewing whether any of them may have contravened any of our domestic criminal laws, and if we find evidence of illegal conduct, we will take whatever action we deem appropriate. These are entirely domestic matters, in which the United Nations has no legitimate interest.

In relation to the taking of the former Alfurna's funds, we did what we could over the years to help Alfurna cope with its debt burden. We agreed to cancel, to renegotiate, and to extend the borrower's obligations to repay its loans. Now, the funds of the former Alfurna no longer belong to any state. Rutasia must protect its own interests by using those funds to pay down at least a portion of the loans that we extended in good faith. It is appropriate that we apply these funds to the debt the former Alfurna would have been obliged to pay had it continued in existence.

51. The Secretary-General encouraged the governments of Rutasia and Alfurna to resolve their differences peacefully by bringing their dispute to the International Court of Justice. After several weeks of negotiation under the Secretary-General's auspices, in August 2012 the parties agreed to commence proceedings in this Court by way of special agreement, but

without prejudice to Rutasia's contention that Alfurna is no longer a state and is therefore no longer entitled to be a member of the UN.

52. Rutasia's earlier comments regarding Alfurna's status had prompted the Secretary-General to revisit the situation concerning Alfurna's UN membership dues. He announced:

Alfurna has not paid its UN membership dues since 2006. However, in the present circumstances, the questions of whether these dues are still owed and, if so, who should pay them, are very difficult to answer, and will require further time to consider. Since Alfurna's status as a state and its continuing entitlement to participate in the United Nations will be considered by the International Court of Justice, I will postpone further consideration of the question of membership dues and referral of this matter to the Credentials Committee, until the Court issues its judgement.

53. On the news of the prospective special agreement, ILSA filed an urgent application with the Supreme Court of Rutasia to revisit its decision denying a stay of the proposed transfer of Alfurnan migrants to Saydee. The Supreme Court agreed that the impending proceedings in the International Court of Justice made it appropriate to revisit its dismissal, and on 3 September 2012 granted a temporary stay until, and subject to the terms of, the judgement of this Court in the present case.

54. Rutasia and Alfurna became members of the United Nations in 1945 and 1947, respectively. Both parties have ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Vienna Convention on the Law of Treaties, the Convention Relating to the Status of Refugees, and the Protocol Relating to the Status of Refugees. Alfurna has also ratified the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts. Rutasia has ratified the Convention on Rights and Duties of States. In late 2000, both Alfurna and Rutasia joined in the adoption of the Millennium Declaration by the UN General Assembly.

55. Alfurna requests the Court to adjudge and declare that:

- (a) Alfurna is still a state, and accordingly, the Court may exercise jurisdiction over its claims;

- (b) Alfurna is entitled to make claims in relation to the migrants now in Rutasia, and Rutasia has failed to process those migrants and accord them status consistent with international law;
- (c) Rutasia's treatment of the detained Alfurnan migrants held in the Woeroma Centre, and the proposed transfer to Saydee, violate international law; and
- (d) Rutasia's conduct disentitles it to any relief from this Court in respect of its claims over Alfurna's assets, and in any event Rutasia's actions regarding those assets are in violation of international law.

56. Rutasia requests the Court to adjudge and declare that:

- (a) Alfurna is no longer a state, and accordingly the Court lacks jurisdiction over Alfurna's claims;

and in any event:

- (b) Rutasia has not violated international law in its treatment of the migrants from (former) Alfurna and, in any event, Alfurna is foreclosed from making claims with respect to those individuals because of its failure to take available affirmative steps to protect them;
- (c) the Alfurnan migrants held in the Woeroma Centre are being treated in accordance with Rutasia's obligations under international law, and their proposed transfer to Saydee is legal; and
- (d) Rutasia's conduct in respect of Alfurna's assets is also consistent with international law.

**Annex A: [Excerpts from] Summary of the Terms of the Climate Change Loan
as at 5 June 1992
Issued Jointly by the Parties**

- *Loan Principal:* USD 125 million
- *Repayment Schedule:* Principal repayments are due on 15 March and 15 September of each year, with the first principal repayment due on 15 March 1996 and the last on 15 September 2012.
- *Interest rate:* 2.0% per annum. Interest on the remaining principal balance is due semi-annually, on the same dates as principal repayments are due, beginning on 15 March 1996.
- *Disbursement of Loan Proceeds:* The proceeds of the Loan shall be disbursed by RICA as the progress of the Alfurna Climate Change Remediation Project renders it necessary and in accordance with the disbursement procedure. It is understood that all construction and maintenance projects of a total value of USD 5 million or more shall be contracted with companies of Rutasian nationality, so long as they possess the requisite experience.
- *Disbursement Procedure [in relevant part]:*
 - Alfurna, by notice to RICA, requests disbursement of a specified sum.
 - All required documents or evidence [as defined in the Loan Agreement] must be satisfactory in form and substance to RICA, so that it can confirm that all disbursed proceeds of the Loan are to be used solely for the purposes specified in the Loan Agreement.
- *Default:* the failure of the debtor to make a scheduled payment within 30 days of the date on which it is due shall constitute a default under the Loan Agreement. Once the debtor is informed of the default and fails to cure it within an additional 30 days, the entire principal balance of the Loan, with the interest accrued to that point, shall be treated as due and owing. The creditor may, at its election, seize for its own account any collateral or other property of the debtor subject to its control, without further notice and without the need for any judicial authorization, up to the amount of the then-current indebtedness.
- *Arbitration:* any dispute arising under the Climate Change Loan Agreement is to be submitted to binding arbitration under the Rules of the International Chamber of Commerce. Moreover, all contracts for the procurement of goods and services as part of the Alfurna Climate Change Remediation Project shall include similar arbitration provisions.