

**Questions Relating to
Protection of Bats and International Trade Measures
(Federal States of Alducra v. Republic of Runbeti)**

RECORD
Twenty-Fifth Annual
Stetson International Environmental
Moot Court Competition
2020–2021



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NOTIFICATION, DATED 31 JULY 2020, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ALDUCRA
AND
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RUNBETI

The Hague, 31 July 2020.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 24 July 2020. I have the further honor to inform you that the case of Questions Relating to Protection of Bats and International Trade Measures (Federal States of Alducra v. Republic of Runbeti) has been entered as 2020 General List No. 299. The written proceedings shall consist of memorials to be submitted to the Court by 13 November 2020. Oral proceedings are scheduled for 25–27 March 2021.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 24 JULY 2020, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 24 July 2020.

On behalf of the Federal States of Alducra and the Republic of Runbeti, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between the Federal States of Alducra and the Republic of Runbeti for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Protection of Bats and International Trade Measures, signed at Mexico City, Mexico on 22 April 2020.

For the Federal States of Alducra:

/s/

Wayne Bruce
Minister of Foreign Affairs

For the Republic of Runbeti:

/s/

Bree Z. Aeolus
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE FEDERAL STATES OF ALDUCRA
AND
THE REPUBLIC OF RUNBETI
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING
QUESTIONS RELATING TO
PROTECTION OF BATS AND INTERNATIONAL TRADE MEASURES

The Federal States of Alducra and the Republic of Runbeti,

Recalling that the Federal States of Alducra and the Republic of Runbeti are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that bats are ecologically important to Alducra, Runbeti, and numerous other countries,

Noting that countries may consider alternative energy sources to help address the climate crisis and meet their commitments under international treaties,

Recognizing that differences have arisen between the Federal States of Alducra and the Republic of Runbeti concerning Runbeti's wind farm project and Alducra's international trade measures,

Acknowledging that the Federal States of Alducra and the Republic of Runbeti have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as "the Court," consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

The Federal States of Alducra and the Republic of Runbeti, hereinafter referred to as "the Parties," shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court's jurisdiction in the written or oral proceedings.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules for the 2020–2021 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a national or regional round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the national or regional round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Mexico City, Mexico, this 22nd day of April 2020, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Alducra:

/s/ _____
Wayne Bruce
Minister of Foreign Affairs

For the Republic of Runbeti:

/s/ _____
Bree Z. Aeolus
Minister of Foreign Affairs

ANNEX A

1. The Federal States of Alducra and the Republic of Runbeti are neighboring sovereign states. The countries are located on the continent of Architerpo in the Northern Hemisphere. Alducra is considered to have a developed economy, and Runbeti is considered to have a developing economy. Both countries' economies rely heavily on agriculture. Alducra is approximately 1,100,000 km², and Runbeti is approximately 1,300,000 km². There are eight other smaller countries on Architerpo.
2. Alducra and Runbeti are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
3. Alducra and Runbeti are Parties to the Vienna Convention on the Law of Treaties (VCLT).
4. Alducra and Runbeti are Contracting Parties to the Convention on Biological Diversity (CBD).
5. Alducra and Runbeti are Contracting Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS).
6. Alducra and Runbeti are Parties to the Agreement on the Conservation of Populations of European Bats (EUROBATS).
7. Alducra and Runbeti are Contracting Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
8. Alducra and Runbeti are Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.
9. Runbeti is a Member of the World Trade Organization (WTO), but Alducra is not. Alducra withdrew from the WTO and all WTO-related agreements in 2004. At the time, Alducra's President expressed concerns that the WTO's dispute resolution process could interfere with national sovereignty, environmental protection efforts, and labor standards.
10. High-level representatives from Alducra and Runbeti attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro. Alducra and Runbeti were part of the consensus of any documents adopted at these conferences.
11. Runbeti is well known for producing and exporting tapagium, an agave spirit that tastes similar to tequila and is made in the same way as tequila. Alducra also produces some tapagium. Farmers in both countries grow agave, which is used to make tapagium. Although farmers in Alducra grow agave and Alducra produces some tapagium

domestically, Alducra also imports a significant volume of tapagium from Runbeti (approximately 10 million liters each year). The other countries on Architerpo do not grow agave or produce tapagium; they import tapagium from Alducra and Runbeti.

12. Alducra, Runbeti, and the other countries on Architerpo also trade many other products with each other and have done so for centuries. To support and further bolster their trade relations, Alducra, Runbeti, and the other countries on Architerpo entered into a regional trade agreement in 2000. The agreement, formally called the Architerpo Regional Trade Agreement (ARTA), was primarily modeled on the General Agreement on Tariffs and Trade (GATT) and also contains a few provisions modeled on the Agreement Establishing the World Trade Organization and the Agreement on Technical Barriers to Trade (TBT). The ARTA was properly registered in accordance with Article 102 of the Charter of the United Nations.
13. Potentially relevant excerpts from the ARTA include the following, most of which closely or exactly mirror language from the GATT, the Agreement Establishing the World Trade Organization, and the TBT:

ARCHITERPO REGIONAL TRADE AGREEMENT

The Parties,

Acknowledging their extensive, productive history of trade relations,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Desiring to contribute to these objectives by entering into a reciprocal and mutually advantageous arrangement directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce,

Seeking to further strengthen trade relations and cooperation on other matters between the Parties,

* * *

Agree as follows:

Article I: Applicability

1. All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

* * *

Article VII: General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 3 of Article VIII, any advantage, favour, privilege, or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

* * *

Article VIII: National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution, or use of products, and internal quantitative regulations requiring the mixture, processing, or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.
2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.
3. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

* * *

Article IX: 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.

* * *

Article X: General Exceptions

1. 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;
 - (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;

* * *

Article XV: Dispute Settlement

1. Any differences or disputes between the Parties concerning the interpretation or application of this Agreement or any arrangements arising therefrom shall be settled through negotiation. If the Parties are unable to resolve the matter through negotiation, the Parties agree that the matter may be submitted to the International Court of Justice.
2. Decisions by GATT and WTO panels or appellate bodies shall be considered subsidiary sources of law with respect to the interpretation of the terms of this Agreement.

* * *

[ARTA excerpts end here.]

14. Thirteen species of bats live on Architerpo, including in Alducra and Runbeti. The species include the royal noctule (*Nyctalus royalis*), an insectivorous bat species that is almost identical in appearance and behavior to the common noctule (*Nyctalus noctula*) except that it is endemic to Architerpo, and the Architerpan long-nosed bat (*Leptonycteris architerpae*), a nectarivorous bat species that is almost identical in appearance and behavior to the lesser long-nosed bat (*Leptonycteris yerbabuena*) except that it is endemic to Architerpo. Bats are ecologically important to the countries on Architerpo, acting as indicator species and providing benefits such as pollination, seed dispersal, and insect control. The royal noctule and Architerpan long-nosed bat are listed as vulnerable on the IUCN Red List and are listed in CITES Appendix II, CMS Appendix II, and EUROBATS Annex 1. Both species also are protected under Alducra's national laws.
15. For decades, Architerpan long-nosed bats fed on and pollinated agaves at farms in Alducra and Runbeti. To meet the growing demand for tapagium, about 20 years ago, agave farmers in both countries turned to using clones from the mother plant and cutting the stalks instead of allowing the agaves to flower. Concerned about the impacts on the Architerpan long-nosed bat, Alducra passed domestic legislation in January 2015 requiring all agave farmers in Alducra to use bat-safe farming practices. Among other things, the statute mandated that agave farmers allow 5% of their agave crops to flower (as verified by an independent scientific organization).¹ The statute required domestic farmers to transition to bat-safe farming practices by the end of 2015.
16. In April 2015, as part of the Government of Runbeti's efforts to meet its commitments under the UNFCCC and in anticipation of the Paris Agreement, the Government of Runbeti announced a new program that would provide substantial government subsidies to approved alternative energy projects in Runbeti. Pursuant to the Paris Agreement, in May 2016, the Government of Runbeti submitted its first nationally determined contribution (NDC), which included the subsidy program for approved alternative energy projects.
17. The Government of Runbeti received several promising project proposals, including a submission from Pinwheel Energy Co. (PECO) for a large, multi-phase wind farm. The proposed wind farm project would consist of four construction phases in 2016, 2021, 2024, and 2026, with the possibility of additional phases depending on the success of the initial phases. The project would be the first large-scale wind farm in Runbeti. The first phase would include construction of 150 2.0 MW wind turbines (each approximately 115 meters tall) built on 75 km² of a large undeveloped tract of land owned by PECO. The land is located along a portion of the border between Runbeti and Alducra. Part of the property is a known migration route for the royal noctule between Runbeti and Alducra, and the property also includes several critical feeding and roosting areas and commuting routes for the royal noctule. The first phase would be constructed 5 km from the border; the proposed location includes part of the known royal noctule migration route, feeding

¹ The legislation was inspired by the efforts of the Universidad Nacional Autónoma de México (UNAM) and the Tequila Interchange Project (TIP) through their Bat Friendly Project. To learn more, visit <https://www.batfriendly.org>.

and roosting areas, and commuting routes. Subsequent phases would be constructed on other sections on the same tract of land owned by PECO.

18. Because of the proposed location for the wind farm project, a regional bat conservation group, the Chiroptera Crusaders, repeatedly expressed concerns to the Government of Runbeti and PECO about the potential negative impacts (including collision, barotrauma, and other effects) of the wind farm project on bats, particularly the royal noctule. The Chiroptera Crusaders also notified Alducra about the proposed project.
19. During the second half of 2015, the Government of Runbeti conducted an extensive environmental impact assessment (EIA) for the first phase of the wind farm project. After conducting and reviewing the EIA, the Government of Runbeti approved the wind farm project and issued the necessary permits for the first phase. Construction began in January 2016, and the first phase of the project was completed and began operating in December 2016.
20. Before and during construction of the first phase of the project, the Chiroptera Crusaders urged the Government of Runbeti and PECO to implement mitigation measures for the construction and operation of the wind turbines and supporting infrastructure to help protect the royal noctule and other bat species. Although the Government of Runbeti and PECO declined to do so, they agreed to let the Chiroptera Crusaders monitor the area after construction was complete to determine the wind farm's impact on the bats.
21. The Chiroptera Crusaders regularly monitored the wind farm during 2017 and 2018, and they reported the results of their surveys to PECO, the Government of Runbeti, and the Government of Alducra. The Chiroptera Crusaders found 237 dead royal noctules near the wind turbines in 2017 and 356 in 2018. They also found several dead specimens of other bat species.
22. On 4 January 2019, the following diplomatic note was forwarded to the Government of the Republic of Runbeti:

The Embassy of the Federal States of Alducra presents its compliments to the Government of the Republic of Runbeti and wishes to convey its concerns about the large government-subsidized wind farm in Runbeti. The Government of Alducra has received the results from the Chiroptera Crusaders' surveys, and our citizens are understandably upset and alarmed by the results. Unfortunately, we do not even know how the construction process may have impacted bats, but during the first two years of operation, the wind turbines have already had a significant negative effect on the royal noctule, an ecologically significant migratory species that is protected internationally and nationally in Alducra. As Runbeti is no doubt aware, the wind farm is on land that is part of a migration route and includes feeding and roosting areas and commuting routes for the royal noctule.

It is Alducra's position that Runbeti has violated and continues to violate conventional and customary international law. Runbeti's actions contravene several provisions of the CBD and CMS, including CMS Resolutions 7.5 and 11.27. Furthermore, Runbeti has violated provisions of EUROBATS and EUROBATS Resolution 8.4. The project is causing transboundary harm to Alducra and defies the precautionary principle. The project also infringes on various principles under the Rio Declaration.

The Government of Alducra formally requests that the Government of Runbeti immediately shut down the wind farm and implement appropriate mitigation measures before it resumes operations. Alducra also requests that Runbeti cancel future phases of the project unless mitigation measures are required. The bats are a shared resource between our countries, and we must work together to ensure their protection and survival.

Please accept the assurance of my highest consideration.

/s/ _____
Rodrigo Agavos
Ambassador

23. On 8 January 2019, the following diplomatic note was forwarded to the Government of the Federal States of Alducra:

The Embassy of the Republic of Runbeti presents its compliments to the Government of Alducra and has the honor to acknowledge receipt of the diplomatic note dated 4 January 2019. Runbeti has the sovereign right to use its natural resources and in this instance, has done so in an effort to comply with its commitments under the UNFCCC and Paris Agreement. Runbeti believes that using alternative energy sources is necessary to address climate change.

While the bat mortalities are indeed unfortunate, Runbeti certainly has not violated conventional or customary international law. In any event, the CBD provisions include limiting language, and the Rio Declaration and referenced treaty resolutions are non-binding.

Runbeti also fails to see how the wind turbines have caused any transboundary harm in Alducra, and if anything, Runbeti has acted in accordance with the precautionary principle as it relates to the pressing climate crisis.

The Government of Runbeti respectfully declines Alducra's request to shut down the wind farm and plans to move forward with the next phase.

Please accept the assurance of my highest consideration.

/s/
Wendy A. Nemoi
Ambassador

24. On 10 January 2019, the Government of Runbeti and PECO informed the Chiroptera Crusaders that they would no longer be allowed to access the wind farm for monitoring.
25. Between March and May 2019, the Government of Alducra attempted to convince the Government of Runbeti to pass legislation requiring bat-safe agave farming practices in Runbeti. The Government of Runbeti responded that it had more pressing issues to address and indicated that it would not try to pass such legislation in Runbeti.
26. In November 2019, Alducra passed a statute to institute certain requirements related to the import and sale of tapagium in Alducra. The stated objective was to encourage bat-safe farming practices for tapagium production to protect the environment, bats (particularly the Architerpan long-nosed bat), other biodiversity, and farmers. First, the statute imposed a 20% tax on all sales of tapagium that had been produced using agave from farms that did not implement bat-safe farming requirements that were the same or equivalent to the bat-safe farming requirements imposed under Alducra's 2015 statute. All funds collected through the tax would be contributed directly to regional bat conservation organizations or projects. Second, the statute imposed a labeling provision requiring that all tapagium imported and/or sold include a specific label (6 cm in diameter) on the bottle indicating whether the tapagium was "bat safe" or was "not bat safe" (see Appendix 1 for the required labels). The tax requirement applied to all tapagium sold in Alducra. The labeling requirement applied to all tapagium imported into Alducra and to all tapagium sold in Alducra, including tapagium produced domestically. The statute went into effect on 1 December 2019 but gave other countries until 29 August 2020 to comply with its provisions.
27. On 13 December 2019, the Government of Runbeti sent a diplomatic note to the Government of Alducra that stated in part:

The Government of Runbeti wishes to express its grave concern and vehement objection to the protectionist and retaliatory international trade restrictions that Alducra passed in its November 2019 legislation. These provisions clearly favor and give advantage to Alducra's domestic products, and the statute is a blatant violation of the ARTA. Runbeti and Alducra have had favorable trade relations for decades, and Alducra's actions threaten to destroy the positive, productive relationship between our countries.

Runbeti reminds Alducra that Runbeti is a country with a developing economy, and its farmers may not be able to afford compliance with Alducra's legislation and may lose significant income as a direct result.

Alducra is wrongfully trying to impose its own environmental policy agenda on other countries, and Runbeti respectfully requests that Alducra immediately repeal the trade restrictions.

28. On 30 December 2019, the Government of Alducra sent a diplomatic note to the Government of Runbeti that stated in part:

Alducra's recently passed statute was enacted to protect the environment, bats, and farmers. Growing demand for tapagium has caused farmers to use practices that are detrimental to bats and the environment and thus are ultimately detrimental to the farmers themselves. The statute is not protectionist, as Alducra's farmers are subject to the labeling requirements. Alducra strongly disagrees that its tax and labeling requirements violate the ARTA. The legislation complies with the ARTA's provisions, but even if it could be considered a trade restriction in violation of the ARTA, the measures are justified under the ARTA exceptions.

By trying to protect the environment, biodiversity, and bats, especially the Architerpan long-nosed bat, Alducra's legislation works to further the goals and requirements of the CBD, CMS, and EUROBATS. Runbeti has been unwilling to help protect bats, but Alducra has and will continue to work to save these essential, magnificent creatures. As such, Alducra respectfully declines Runbeti's request to repeal the statute.

29. Further negotiations between Alducra and Runbeti failed to resolve the dispute, and the two countries entered into a Special Agreement to institute proceedings in the International Court of Justice (ICJ). The Government of Runbeti agreed to postpone issuance of the permits for the second phase of the wind farm project until after the ICJ renders a decision.
30. The Federal States of Alducra seeks an order from the ICJ declaring that (1) the Republic of Runbeti violated international law with respect to its wind farm project, and (2) the Federal States of Alducra did not violate international law with respect to its trade measures for tapagium products.
31. The Republic of Runbeti opposes the claims in paragraph 30 above and seeks an order from the ICJ declaring that (1) the Republic of Runbeti did not violate international law with respect to its wind farm project, and (2) the Federal States of Alducra violated international law with respect to its trade measures for tapagium products.

Appendix 1: Required Labels for Tapagium

(Note: labels below have been enlarged to show detail)

