

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING THE EGART AND THE IBRA

(PEOPLE'S DEMOCRATIC REPUBLIC OF ANDUCHENCA v.
FEDERAL REPUBLIC OF RUKARUKU)

ORDER OF 15 SEPTEMBER 2017

2017

COUR INTERNATIONALE DE JUSTICE

AFFAIRE CONCERNANT L'EGART ET L'IBRA

(RÉPUBLIQUE DÉMOCRATIQUE POPULAIRE D'ANDUCHENCA c.
RÉPUBLIQUE FÉDÉRALE DE RUKARUKU)

ORDONNANCE DU 15 SEPTEMBRE 2017

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(PEOPLE’S DEMOCRATIC REPUBLIC OF ANDUCHENCA

v.

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ORDER

The International Court of Justice,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45(1), 48, 49, and 80 of the Rules of Court,

Having regard to the Application filed in the Registry of the Court on 3 July 2017, whereby the Government of the People’s Democratic Republic of Anduchenca (“Anduchenca”) instituted proceedings against the Federal Republic of Rukaruku (“Rukaruku”) with regard to a dispute concerning alleged violations by Rukaruku of the Treaty of Friendship, Commerce and Navigation between Anduchenca and Rukaruku signed on 12 March 1947 (“the FCN Treaty”);

Whereas the Application was communicated to Rukaruku on the day it was filed;

Whereas Anduchenca and Rukaruku have appointed their respective Agents;

Whereas, on 10 July 2017, Rukaruku informed the Registrar and the Agent of Anduchenca of its intention to file counter-claims under Article 80 of the Rules of Court;

Whereas, at a meeting with the Vice-President of the Court, exercising the functions of the Presidency, on 4 August 2017, the Agents of the Parties agreed to have all the claims and counter-claims heard together in a single set of proceedings;

Whereas, at the same meeting, the Agents agreed to prepare jointly a Statement of Agreed Facts, including a formulation of the claims and counter-claims to be adjudicated by the Court;

Whereas, after negotiations, the Agents of the Parties jointly communicated the attached Statement of Agreed Facts to the Court on 23 August 2017;

Whereas the Agents have agreed that they shall each submit one written Memorial and make oral pleadings solely on the claims and counter-claims presented in the Statement of Agreed Facts;

Whereas the Agents of the Parties have agreed that a “dispute” between the Parties exists with respect to each of the aforementioned claims and counter-claims within the meaning of Articles 10 and 20 of the FCN Treaty, and that all of the counter-claims are “directly connected with the subject matter” of at least one of the claims within the meaning of Article 80 of the Rules of Court;

Taking into account the agreement of the Parties,

Fixes the dates for the filing of the written Memorials and for the oral pleadings as the dates set forth in the Official Schedule of the 2018 Philip C. Jessup International Law Moot Court Competition; and

Adopts the Official Rules of the 2018 Philip C. Jessup International Law Moot Court Competition.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this fifteenth day of September, two thousand and seventeen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Governments of Anduchenca and Rukaruku.

(Signed)
Vice-President

(Signed)
Registrar

STATEMENT OF AGREED FACTS

CASE CONCERNING THE EGART AND THE IBRA

(People's Democratic Republic of Anduchenca
v.
Federal Republic of Rukaruku)

23 AUGUST 2017

1. The Odasarra Region comprises five independent States, three of which have a coast on the Kumatqesh Ocean. Applicant, the People's Democratic Republic of Anduchenca ("Anduchenca"), and Respondent, the Federal Republic of Rukaruku ("Rukaruku"), are two of the three coastal States. They do not, however, share a land or maritime boundary. Anduchenca is located in the northern part of the region, whereas Rukaruku is located in the southern part. Since the Middle Ages, the nations of the Odasarra Region have been heavily dependent on trade amongst themselves and across the Kumatqesh Ocean.
2. Anduchenca is a developing country with a population of 20 million and a gross domestic product of US\$200 billion. Its leading exports are natural gas, cotton, and uranium, and 20% of its electricity production comes from its nuclear power plants. It spends approximately 15% of its annual national budget on its military, most of which goes to the Anduchencan Navy, based at the Fudichou Naval Base on the Kumatqesh coast. The Anduchencan Navy includes 20 surface ships and submarines, and it maintains an Advanced Electronic Warfare Division.
3. Rukaruku is a developed country with a population of 100 million and a gross domestic product of US\$5 trillion. Since the middle of the seventeenth century, Rukaruku has been the dominant military, diplomatic, and economic power in the Odasarra Region. Its economy is currently driven by the manufacturing, electronics, and military technology sectors. It spends approximately 7% of its annual national budget on its military, a substantial part of which is allocated to the Rukarukan Navy. The Rukarukan Navy consists of two aircraft carriers and more than 100 other surface ships and submarines.

4. World War II devastated the northern and central parts of the Odasarra Region. All of the Odasarran States, with the exception of Rukaruku, served as major fronts during the War, and were left with decimated civil infrastructures, shattered economies, and a proliferation of small arms and light weapons among the civilian populations. As a consequence, the Odasarra Region has for decades been a hub for illicit international arms trafficking.
5. After the War, Rukaruku embarked on a substantial program intended to promote stability in the Region. It provided economic aid packages to the four other Odasarran States, helped them implement large-scale disarmament programs, and expanded its Navy, which was deployed along the Kumatqesh coast to protect commercial ships of all nations from pirate attacks, dangerous shoals, and leftover mines. It regularly shared data collected by its Navy with all of the States of the Region. In addition, between 1946 and 1948, Rukaruku concluded bilateral Treaties of Friendship, Commerce and Navigation with each of the other Odasarran States. Each bilateral treaty included provisions promoting the disarmament of the Odasarra Region.
6. On 12 March 1947, Anduchenca and Rukaruku signed their Treaty of Friendship, Commerce and Navigation (“the FCN Treaty”) (attached in relevant part as Annex I), which entered into force on 22 May 1947, was duly registered with the Secretariat of the United Nations, and remains in force to this day. In the following 20 years, Rukaruku provided US\$4.5 billion (present-day US\$33.8 billion) in economic aid to Anduchenca, part of which was earmarked to develop cooperative disarmament programs. That period was marked by a strong, positive relationship between the political leaders of the two countries.
7. Anduchenca suffered from significant economic depression and government corruption in the years following World War II, which gave rise to increasingly restive political factions. On 26 October 1967, Anduchenca’s military, with the support of the country’s socialist movement, staged a successful *coup d’état*. General Rafiq Tovarish was installed as the country’s Head of State and government, with the title of “Brotherly Leader of the Revolution.” In his inaugural address, General Tovarish declared that he would “ensure

that Anduchenca takes its deserved place as one of the most important countries in the world.”

8. Under the leadership of General Tovarish, Anduchenca adopted a socialist political ideology. It developed close relations with other socialist countries that began to provide Anduchenca with economic aid and to help it to develop its military. In early 1969, Rukaruku terminated its economic assistance to and disarmament programs in Anduchenca. However, Rukaruku continued to deploy its navy along the entire Kumatqesh coast of the Odasarra Region. The *coup* and subsequent ideological shift were roundly criticized by the other Odasarran States. Throughout the 1970s, their leaders frequently engaged in verbal disputes with Anduchenca in newspapers and diplomatic forums. These arguments never escalated to the level of violence.
9. On 1 July 1968, all of the Odasarran States, except Anduchenca, signed the Treaty on the Non-Proliferation of Nuclear Weapons (“the NPT”) as non-nuclear-weapon States, and ratified it shortly thereafter. Anduchenca has declined to sign, ratify, or accede to the NPT because, as its Ministry of Foreign Affairs has stated on numerous occasions over the past 50 years, the Treaty “establishes and aggravates an inherent inequality between nuclear-weapon States and non-nuclear-weapon States.”
10. In December 1982, all of the Odasarran States, again with the exception of Anduchenca, signed and ratified the United Nations Convention on the Law of the Sea (“UNCLOS”). Anduchenca has not signed, ratified, or acceded to UNCLOS. Its Ministry of Foreign Affairs has explained its position by citing what it called the “unnecessary compulsory dispute settlement mechanism in Part XV of the Convention.”
11. Beginning in 1995, the Rukarukan Navy implemented an aggressive interdiction strategy designed to end what it termed “the rampant illicit small-arms trade in the region.” Over the last 22 years, Rukarukan vessels have engaged arms traffickers on at least 40 occasions, exchanging fire with, capturing, or sinking more than 80 vessels suspected of trafficking. None of the traffickers was alleged to have been tied to any State in the region.

12. In August 2010, Anduchenca adopted a maritime security law requiring that any foreign government vessel proposing to enter its territorial sea, which it had for decades considered to have a breadth of 12 nautical miles from its coastal baseline, obtain prior authorization. Rukaruku's Ambassador to Anduchenca objected to this law as inconsistent with international law, but the Rukarukan Navy nonetheless ordered its vessels to remain at least 12 nautical miles away from the Anduchencan coast to avoid conflict.
13. In August 2015, the Rukarukan Navy began employing autonomous underwater vehicles ("AUVs") in some of its naval operations within and outside the Odasarra Region. Rukarukan AUVs operating in the vicinity of Anduchenca's coast were programmed to remain at least 12 nautical miles away from the coastline.
14. The Rukarukan AUVs, all identical, are 3.6 meters in length and 0.5 meters in diameter, and weigh approximately 400 kilograms. They are programmed to navigate autonomously for one week, and then to return to the ship from which they were deployed. Equipped with an integrated technology outfit, including sophisticated optical, acoustic, and sonar systems, as well as an advanced sense-and-avoid system, they have the capability to detect, identify, and lift objects weighing less than five kilograms from the ocean floor.
15. The Anduchencan press began accusing Rukaruku of using "spy drones" to conduct surveillance of Anduchenca's naval activities. On 25 September 2015, during his address before the United Nations General Assembly, General Tovarish declared:

The sending of spy drones into another sovereign State's waters is a hostile act, inconsistent with international law and threatening to international peace and security. My country will not tolerate espionage in our waters, just as we would resist armed invasion of our land. Nor will we commit such acts of aggression against others. I hereby give notice to all States, whether they wish to be friends or foes, that if we find their spy drones in our territorial sea, they will be captured and not returned, and we will take appropriate measures to ensure that such incursions are not repeated.

16. At 3:00 p.m. local time on 29 October 2015, the Chief of Staff of the Anduchencan Navy issued the following statement:

This morning, the Anduchencan Navy took possession of a Rukarukan spy drone, which we found to be operating without permission less than 11

nautical miles from our coast. It was a very simple operation. After we detected an unauthorized underwater vehicle in our territorial sea, we jammed its communication links and transmitted false GPS coordinates to its navigation system so that it would surface and come to our shore. Upon investigating the drone, we easily identified it as Rukarukan and quickly learned that it had been collecting optical and acoustic data, which could be used to undermine the national security of Anduchenca. We intend to continue to study the electronics of this vehicle in order to determine to what extent it has been conducting operations in violation of our sovereign rights as well as international law.

17. Hours later, a spokeswoman for Rukaruku's Ministry of External Relations called a special press conference to address the incident. She stated:

Earlier today, the Anduchencan Navy captured one of Rukaruku's autonomous underwater vehicles, called the Egart, which was apparently apprehended 11 nautical miles from Anduchenca's coast. The Egart had been programmed to remain at least 12 nautical miles away at all times; we have not yet had time to determine why it navigated closer to the shore. In any event, its mission was the collection of optical and acoustic data, which the Rukarukan Navy uses to ensure the safe passage of all ships, of all nationalities, transiting those waters. The vessel was doing nothing illegal; to the contrary, it was a vital part of our long-standing program to promote safety and to facilitate friendly trade and commerce in the Odasarra Region. Its presence was not hostile to any coastal State, least of all Anduchenca. We respectfully insist that Anduchenca return the Egart to Rukaruku immediately.

18. Following the press conference, the Ambassador of Rukaruku to Anduchenca delivered a formal demand for the return of the Egart. The Government of Anduchenca did not respond.
19. The dispute over the Egart was the subject of diplomatic conversation between the two States throughout November 2015. On 1 December 2015, the Prime Minister of Rukaruku, Kakak Dage, publicly offered to travel to Anduchenca to negotiate the return of the Egart. The following day, General Tovarish replied:

There is nothing to negotiate. Rukaruku's spy drone was unlawfully in our territorial sea. We took possession of it, as we are allowed to do, and we are studying it. We will not return it. And our answer will be the same the next time Rukaruku invades our waters. If you wish to stop losing your drones, then stop sending them into the sovereign waters of other States.

20. On 20 December 2015, Rukaruku instituted arbitration proceedings against Anduchenca under Article 10(a) of the FCN Treaty. In its Request for Arbitration, Rukaruku claimed that Anduchenca's capture of the Egart violated Article 7 of the FCN Treaty and requested the tribunal to order its return. The Request for Arbitration was duly delivered to the Anduchencan Embassy in Rukaruku. Anduchenca did not respond.
21. In its Request for Arbitration, Rukaruku named Bhrasht Moyet, a judge of Rukarukan nationality elected to the International Court of Justice ("ICJ") in 2008, as its party-appointed arbitrator. Over the previous decade, Judge Moyet had been appointed by Rukaruku as an arbitrator in four investor-state arbitrations.
22. Anduchenca did not select an arbitrator within 60 days of receipt of the Request for Arbitration. In accordance with Article 10(a) of the FCN Treaty, on 28 February 2016, the ICJ President, Judge Alice Bacal, appointed the two remaining members of the tribunal. She appointed Judge Mou Tong of the International Tribunal for the Law of the Sea, on behalf of Anduchenca, and appointed herself as the presiding arbitrator. Neither Judge is of Rukarukan or Anduchencan nationality. Notification of these appointments was sent to Anduchenca.
23. Two days later, Anduchenca sent a Note Verbale to Rukaruku and the members of the tribunal. It contained a single paragraph related to the substance of the dispute, which read as follows:

The People's Democratic Republic of Anduchenca will neither participate in the arbitration proceedings nor recognize the validity of any award that might result from them. The dispute concerning the Egart is not arbitrable; it manifestly does not fall within the scope of Article 7 of the FCN Treaty, which was intended to enable commercial vessels to navigate freely between the two States on the high seas. It has nothing to do with Rukarukan government vessels, such as the Egart, and particularly not when they are conducting illegal spying operations in Anduchenca's territorial waters. Such vessels and operations are governed by general international law, which is neither incorporated in nor displaced by the FCN Treaty. Consequently, the tribunal is not now nor could it ever be seized of this dispute without our express consent, and we will not participate in what promises to be a charade and nothing more.

24. The tribunal decided to continue with the arbitral proceedings in Anduchenca's absence. In a procedural order, it stated that it would treat the Note Verbale as an objection to its jurisdiction, and would consider questions on jurisdiction, admissibility, and the merits together in a single stage.
25. Over the following 13 months, the tribunal held one round of written pleadings and one round of oral argument. Rukaruku submitted a memorial and presented its arguments at the scheduled hearing. The tribunal directed that all communications and materials in the arbitration be transmitted to Anduchenca, invited Anduchenca to comment on all procedural questions, gave it equal time to submit a written response to Rukaruku's memorial, and invited it to present its arguments at the oral hearings. Anduchenca did not avail itself of any of these opportunities and did not otherwise communicate with the tribunal.
26. On 2 March 2017, the tribunal rendered a 30-page award on both jurisdiction and the merits of the arbitration, concluding that it was properly seized of the dispute, and resolving it in favor of Rukaruku. In the award, the tribunal detailed the procedural history of the arbitration, recited the arguments set out by Rukaruku in its memorial and oral arguments and by Anduchenca in its Note Verbale, and resolved the dispute in a *dispositif* signed by all three arbitrators. The award was made publicly available online. With respect to jurisdiction, the tribunal held:

Article 10(a) of the FCN Treaty governs the tribunal's jurisdiction. It provides in relevant part: "Any dispute between the Contracting Parties concerning the interpretation or application of Articles 1 to 9 of the present Treaty shall be submitted at the request of either Contracting Party to arbitration." Article 7 of the FCN Treaty provides: "Between the territories of the two Contracting Parties there shall be freedom of commerce and navigation." The tribunal is of the opinion that the present dispute does indeed concern the interpretation and application of Article 7 because the parties dispute whether the Egart was lawfully navigating in the territorial sea of Anduchenca. Therefore, the tribunal's jurisdiction is properly founded on the basis of Article 10(a) of the FCN Treaty.

27. The tribunal devoted the remainder of the award to the merits, concluding that Anduchenca's capture of the Egart "was inconsistent with the mutual commitment of the

parties to freedom of navigation,” and therefore violated Article 7 of the FCN Treaty. The tribunal ordered that Anduchenca return the Egart to Rukaruku.

28. At a weekly press conference the following day, the spokeswoman of the Ministry of Foreign Affairs of Anduchenca declined to answer reporters’ questions about the award, stating only that it was “null and void” because the tribunal was “manifestly without jurisdiction.”
29. The Institute for Legal Studies of Arbitration (“ILSA”) is a international non-governmental organization that publishes investigatory reports on high-profile arbitrations with the aim of promoting transparency in international dispute settlement mechanisms. In recent years, ILSA has often reported on what it has called the improper conduct of arbitrators and has gained a significant following through its strong online media presence.
30. On 21 March 2017, ILSA published a report on its website entitled “The Ruka Ruse.” The report provided a summary of the arbitration between Anduchenca and Rukaruku and concluded that the tribunal’s jurisdictional holding was “questionable and insufficiently supported.” It revealed three pieces of information that had not been previously disclosed, but which Anduchenca and Rukaruku for purposes of these proceedings have accepted as accurate and authentic.
31. First, the ILSA report reproduced transcripts of three private telephone conversations, which took place before and during the tribunal’s deliberations, between Judge Moyet and Mr. Bouc Chivo, a lawyer in the Ministry of External Relations, who was one of Rukaruku’s counsel in the arbitration. On each call, Mr. Chivo requested that Judge Moyet emphasize to the other members of the tribunal certain parts of Rukaruku’s arguments already presented in the written and oral proceedings, and Judge Moyet agreed to do so. ILSA characterized this as “deeply troubling, as it shows that the independence of Judge Moyet has been irreparably compromised.”
32. Second, the ILSA report revealed that the tribunal had appointed an “assistant,” Mr. Mikkel Orvindari, without disclosing his hiring to either Anduchenca or Rukaruku until the submission of the tribunal’s final accounting for payment of its fees. The accounting

showed that Mr. Orvindari spent 522 hours on the case, whereas the three arbitrators billed between 57 and 62 hours each. The tribunal sought payment for Mr. Orvindari's time for "summarizing the parties' arguments and evidence," "attending tribunal deliberations," "drafting memoranda to the President of the tribunal," and "drafting award."

33. Third, in the course of its investigation, ILSA discovered and published a draft of the arbitral award, identical to the final version, with a cover note from Judge Tong to President Bacal. The note read, "Alice, I have reviewed Mr. Orvindari's draft. I'm prepared to sign off on it, and I have nothing to add."
34. After publishing the report, ILSA tweeted a link to the report and commented: "Who wrote this award?!? This is the most unethical arbitration ever! #rukaruse." The report was widely retweeted and republished in electronic and print media around the world. Mr. Chivo resigned from his position in the Rukarukan Ministry.
35. Hours after the report was published, General Tovarish issued a press release, which said in part: "I thank the hard-working investigators at ILSA for revealing the truth about the illegitimate arbitration over the Egart. Not only, as we have always contended, was the tribunal without jurisdiction, but it now appears that it was also mired in corruption."
36. On 27 March 2017, a spokesperson for Rukaruku's Ministry of External Relations addressed the ILSA report during a regular meeting with the national media:

We have reviewed ILSA's evidence and its conclusions, and we agree that there were some technical irregularities. Our own investigation confirms that Mr. Bouc Chivo was acting on his own initiative in communicating with Judge Moyet. He should not have done that. Ex parte communications with arbitrators about substantive matters should not generally take place, and we have accepted Mr. Chivo's resignation from the Ministry. We are also disappointed to learn that Judge Moyet accepted those phone calls without any apparent objection. Nevertheless, there was no serious impropriety in the arbitral proceedings or in the award. These few communications did not significantly influence the final decision. Nor does the other information revealed by ILSA, even if accepted as accurate, call into question the procedures followed or the conclusions reached by the three world-renowned jurists who made up the tribunal, on either jurisdiction or the merits. There is no reason to call the arbitral award into question; it stands as a correct application of the law to the facts. We therefore call upon Anduchenca to act

as directed by the tribunal, to stop making excuses, and to return the Egart to its rightful owners without further delay.

37. On 2 April 2017, *The Sydney Morning Herald* published an article based upon interviews with numerous people it said were intelligence operatives indicating that Anduchenca had commissioned a nuclear-armed submarine, called the Ibra. Other news sources around the world corroborated the report. Governments, media outlets, and non-profit organizations called on Anduchenca to confirm or deny what the Secretary-General of the United Nations called “a potentially destabilizing development in a particularly volatile part of the world.”
38. A week later, General Tovarish called a special press conference to address the matter. He began the conference by reading a statement, which began with this passage:

I am proud to announce that our noble Navy has augmented its power through the nuclear submarine that we have named the Ibra. It is equipped with the world’s greatest nuclear weapons, along with cutting edge ballistic missile technology. It will serve as a firm deterrent against any who would persist in infringing our sovereignty. We will deploy the Ibra, as is our right, in such a way as to optimize promotion of that objective.

General Tovarish would not disclose how or from whom Anduchenca acquired the nuclear weapons, and Anduchencan government officials have categorically refused to comment on the matter.

39. In response to a question from a reporter, General Tovarish added that Anduchenca, which had sent a representative to the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons in March 2017, would not attend the second substantive session in June and July 2017, and would not sign any treaty that might emerge from those meetings.
40. On 23 April 2017, the Minister of Foreign Affairs of Anduchenca issued the following statement:

Over the past few weeks, many States have expressed to us their concerns over the Ibra. They are overreacting. There is no threat to peace and security. Or if there is, it is not one we have created. Our position remains the same and will not change. In accordance with international law it is our right, and as a sovereign nation it is our duty to our citizens and to future generations,

to possess nuclear weapons, if in our discretion we believe we need them to defend our interests. We will never give up this right, nor are we aware of any persuasive argument that we should.

41. On 8 May 2017, the Security Council adopted Resolution 3790 (attached in relevant part as Annex II) by a vote of nine to six. During the Council's discussions, Rukaruku's representative to the Security Council spoke in favor of the Resolution, saying in part:

Today, the Security Council proposes to take a much-needed step in confronting the threat that nuclear weapons pose to the entire world, and to the Odasarra Region in particular. In accordance with this Resolution, when it is adopted, Rukaruku will take its accustomed place among law-abiding States, and will most certainly do what is necessary to promote peace and stability in the region.

42. The Minister of Foreign Affairs of Anduchenca submitted a letter on his government's behalf to the Security Council. The letter stated in relevant part:

The United Nations Charter confers no authority on the Security Council to engage in this unprecedented interference in our domestic affairs. The Ibra is not a threat to anyone, except those who seek impunity to violate international law and our sovereignty. Anduchenca cannot be required by this body to comply with the NPT, a treaty to which we have not subscribed and whose premises we do not accept. Furthermore, let me send a very clear message to anyone who may look at this Security Council Resolution as justification for acts of violence against my country: even Resolution 3790, which we reject as lawless, does not authorize coercive measures against the Ibra or against the State that proudly claims it as its own. We have the sovereign right to possess this vessel, and an attack on it is an attack on Anduchenca itself.

43. On 6 June 2017, at 4:00 a.m. local time, two Rukarukan warships fired 12 cruise missiles at the Covfefe, a supply ship located on the high seas 250 nautical miles away from the Anduchencan coast. Four of the missiles hit their target. According to plans now confirmed by Anduchenca, the Covfefe was en route to a rendezvous point, also on the high seas, where it was to deliver provisions and personnel to the Ibra. The attack killed 10 Anduchencan sailors and seven civilians employed by a private contractor engaged by the Anduchencan Navy.

44. Later that day, Prime Minister Dage made the following televised announcement:

A few hours ago, I ordered our brave military forces to disable a vessel that we learned was about to deliver supplies to Anduchenca's illegal and provocative nuclear submarine. My decision was not an easy one, but after consulting my senior military staff, I came to the conclusion that it was the right thing to do. As your Prime Minister, it is my duty to abate any serious hazard that we cannot allow to continue. The strike was intended to deprive the Ibra of supplies, which would require it to surface. Once the vessel is sailing in the Kumatqesh Ocean, we are confident that we can capture it.

We have learned that the attack was successful. As I speak to you tonight, I am confident that our valiant Navy will now be able to apprehend and to arrest this vessel, whose very existence has been condemned by the international community.

Although we regret the loss of life, I want one thing to be perfectly clear. Rukaruku's goals have always been to maintain peace and stability in the Odasarra Region. What we have done in promoting the capture of the Ibra was intended not to lead to war, but to prevent it. Acting under the authorization of Security Council Resolution 3790, our sole aim is to neutralize the threat posed by this nuclear-armed submarine in our neighborhood.

Our fleet is now in pursuit of the submarine itself. I will have another statement to present to you, our peace-loving people, within days. And I assure you and the people of the world, we will succeed, and peace will be restored for us all.

45. Later that day, General Tovarish declared in a speech to the nation:

Rukaruku's attack on our naval vessel is a gross, unprovoked, and unprecedented violation of the most basic rules of international law. It is stunning in its arrogance and audacity, and shocking in its cavalier disregard for the lives of our fellow citizens. Even the Security Council's Resolution, adopted under a trumped-up pretext, did not authorize the murder of innocent civilians and military personnel. We will not stand by and let this abuse continue. I have instructed the General Command of our military services to respond in any way necessary to prevent and to stop assaults against this nation and against international order, and to vindicate our national honor.

46. Eight days later, on 14 June 2017, the Rukarukan Navy located the Ibra approximately 20 nautical miles from the Anduchencan coast. Six Rukarukan warships were sent to the area and immediately began enclosing the submarine. The warships fired a series of torpedoes that forced the Ibra to surface. After one of the ships swept the submarine's deck with

machine-gun fire, and the Ibra showed no signs of activity, a boarding party gained access to and seized operational control of the submarine. The personnel on board immediately surrendered, and the Rukarukan fleet escorted the Ibra to a naval base in Rukaruku. The crew of the Ibra was detained for questioning, after which all members were delivered to the Anduchencan Embassy in Rukaruku for repatriation.

47. On 19 June 2017, the Security Council adopted a Resolution affirming an agreement between Rukaruku, the International Atomic Energy Agency (“IAEA”), and two NPT nuclear weapon States that provided for the complete dismantling of the Ibra and the disposal of all nuclear materials on board under IAEA monitoring and supervision. Six weeks later, nuclear experts from the IAEA certified that the agreement had been carried out.
48. Anduchenca and Rukaruku have at all relevant times been Member States of the United Nations, and parties to the Statute of the International Court of Justice, the Vienna Convention on the Law of Treaties, as well as the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. Rukaruku has been elected to serve as a non-permanent member of the United Nations Security Council four times, most recently on 15 October 2015, and has at all relevant times been a non-nuclear-weapon State Party to the NPT, as well as a State Party to UNCLOS. Anduchenca has never been elected to the United Nations Security Council, and has not signed, ratified, or acceded to the NPT or UNCLOS. Neither Anduchenca nor Rukaruku has signed, ratified, or acceded to any of the four Geneva Conventions on the Law of the Sea of 1958. Anduchenca and Rukaruku are not parties to any other treaty of potential relevance to this case.
49. On 3 July 2017, Anduchenca filed in the Registry of the Court an Application instituting proceedings against Rukaruku concerning the issues that were later set out in this Statement of Agreed Facts, invoking the FCN Treaty as the basis for the Court’s jurisdiction. President Bacal and Judge Moyet recused themselves from the case, and the Vice-President assumed the role of Acting President. On 10 July 2017, Rukaruku indicated its intention to file counter-claims, also invoking the FCN Treaty as its jurisdictional basis. The Parties

have agreed on the formulation of their claims and counter-claims in the following two paragraphs.

50. Anduchenca respectfully requests that the Court adjudge and declare:

1. ~~The arbitral award of 2 March 2017 is not valid;~~
2. ~~Rukaruku violated Article 6 of the FCN Treaty when the Egart operated in Anduchenca's territorial sea, but Anduchenca did not violate Article 7 of the FCN Treaty when it captured the Egart;~~
3. Anduchenca did not violate Article 16 of the FCN Treaty by commissioning and operating the Ibra; and
4. Rukaruku violated Article 17 of the FCN Treaty when it attacked the Covfefe and when it captured the Ibra.

51. Rukaruku respectfully requests that the Court adjudge and declare:

1. ~~The arbitral award of 2 March 2017 is valid;~~
2. ~~Even if the arbitral award is not valid, Rukaruku did not violate Article 6 of the FCN Treaty when the Egart operated in Anduchenca's territorial sea, but Anduchenca violated Article 7 of the FCN Treaty by capturing the Egart, which it therefore must return to Rukaruku;~~
3. Anduchenca violated Article 16 of the FCN Treaty by commissioning and operating the Ibra; and
4. Rukaruku did not violate Article 17 of the FCN Treaty by attacking the Covfefe or by capturing the Ibra.

ANNEX I

Treaty of Friendship, Commerce and Navigation between the People's Democratic Republic of Anduchenca and the Federal Republic of Rukaruku

12 March 1947

[excerpts]

The People's Democratic Republic of Anduchenca and the Federal Republic of Rukaruku ("the Contracting Parties"), desirous of strengthening the friendly relations that have prevailed between their peoples, of ensuring perpetual peace and stability in the Odasarra Region, of encouraging mutually beneficial trade and investment, of strengthening cultural relations and understanding, and of regulating consular relations, have resolved to conclude this Treaty of Friendship, Commerce and Navigation.

[...]

ARTICLE 6

Each Contracting Party shall respect the sovereign territory and sovereign waters of the other Contracting Party as required under international law.

ARTICLE 7

Between the territories of the two Contracting Parties there shall be freedom of commerce and navigation.

[...]

ARTICLE 10

- (a) Any dispute between the Contracting Parties concerning the interpretation or application of Articles 1 to 9 of the present Treaty shall be submitted at the request of either Contracting Party to arbitration. The arbitral tribunal shall be composed of three arbitrators, of which each of the Contracting Parties shall appoint one. The two party-appointed arbitrators shall then jointly appoint the presiding arbitrator. In the event that fewer than three arbitrators have been appointed 60 days after the receipt of the request for arbitration, the President of the International Court of Justice shall appoint the arbitrators not yet appointed.
- (b) Any dispute between the Contracting Parties concerning the validity of an arbitral award rendered under Article 10(a) of the present Treaty shall be submitted at the request of either Contracting Party to the International Court of Justice. In the event that the Court finds that the

award is not valid, it may annul the award and render a judgment on the merits of the underlying dispute.

[...]

ARTICLE 16

Each Contracting Party shall prohibit the export and import of weapons and ammunition without the express approval of appropriate government departments, and shall comply with all disarmament obligations binding on it under international law.

ARTICLE 17

Each Contracting Party shall refrain from the threat or use of force against the territorial integrity or political independence of the other Contracting Party, except as permitted under international law.

[...]

ARTICLE 20

Any dispute between the Contracting Parties concerning the interpretation or application of Articles 11-19 of the present Treaty shall be submitted at the request of either Contracting Party to the International Court of Justice.

[...]

(Signed)

(Ms.) Schaft Freund

Minister of External Relations

Federal Republic of Rukaruku

(Signed)

(Mr.) Mitrata Persahabatan

Minister of Foreign Affairs

People's Democratic Republic of
Anduchenca

ANNEX II

United Nations Security Council Resolution 3790

8 May 2017

[excerpts]

The Security Council,

Reaffirming its commitment to the Treaty on the Non-Proliferation of Nuclear Weapons (“the NPT”), and the need for all States Party to that Treaty to comply fully with their obligations thereunder,

Recalling that the proliferation of nuclear, chemical, and biological weapons, as well as their means of delivery, continues to constitute a threat to international peace and security,

Determining that the current situation along the Kumatqesh coast in the Odasarra Region constitutes a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations:

1. *Calls upon* all Member States to take such actions as may be appropriate to support the implementation of the NPT and to restrict the proliferation of nuclear weapons and nuclear-armed vessels, whose very existence constitutes a threat to peace;

2. *Notes* that the volatile situation in the Odasarra Region raises legitimate concerns that the presence of nuclear weapons could provoke an international incident that could escalate into a serious and uncontrollable conflict;

3. *Takes note* that the People’s Democratic Republic of Anduchenca appears to have developed a nuclear-armed submarine, the Ibra, and to have deployed the Ibra to undisclosed locations in the Kumatqesh Ocean, creating an unacceptable threat to the stability of the States of the Region;

4. *Decides* to authorize Member States acting nationally or through regional organizations to take all measures commensurate with their specific circumstances in confronting the Ibra, with the goal of neutralizing the threat that it poses to international peace and security;

[...]

7. *Decides* to remain seized of the matter.

**2018 PHILIP C. JESSUP
INTERNATIONAL LAW MOOT COURT COMPETITION**

CORRECTIONS AND CLARIFICATIONS TO THE STATEMENT OF AGREED FACTS

The following corrections and clarifications to the Statement of Agreed Facts have been agreed to by the parties, and the text jointly communicated to the Court on 23 August 2017 should be considered amended accordingly. The Registrar of the Court reminds all parties and participants of the following:

1. The Statement of Agreed Facts reflects a negotiated stipulation. Its words have been carefully chosen, and they are the result of extensive negotiation. The parties decline to “clarify” matters about which they are unlikely to agree. The parties will not stipulate as to which legal principles are relevant, or which arguments are acceptable or unacceptable.
2. Any request for clarification not addressed in the following paragraphs has been considered by the parties to be redundant, inappropriate, or immaterial, or the parties were unable to reach agreement on a mutually acceptable answer.
3. Except to the extent that corrections and clarifications are set out below, participants are to assume that the Statement of Agreed Facts is accurate and complete in all respects. In particular, both parties stipulate as to the authenticity of all documents and of the signatures on all documents referenced in the Statement of Agreed Facts.
4. With respect to the pronunciation of the various proper names used in the Statement of Agreed Facts, all parties and the Court have agreed that they will not take formal or informal offense at any reasonable effort to pronounce proper names correctly.
5. Anduchenca and Rukaruku are not parties to any relevant bilateral or multilateral treaties, conventions, or accords other than those referenced within the Statement of Agreed Facts.

CORRECTIONS

1. In the first sentence of Paragraph 47, the words “concluded the night before” should be inserted after the words “an agreement.”

CLARIFICATIONS

1. When the Egart was captured on 29 October 2015, it was 11 nautical miles from Anduchenca’s coast and was collecting optical and acoustic data.
2. Rukarukan AUVs employ a navigation system that requires them to periodically surface to receive GPS signals.
3. At one of its first meetings, the arbitral tribunal adopted its own set of *ad hoc* procedural rules. The rules do not contain any provisions relevant to determining the validity of the arbitral award.

4. The paragraph from the arbitral tribunal's award recited in Paragraph 26 is the only part of the award that discusses the tribunal's jurisdiction.
5. The ballistic missiles aboard the Ibra had a range of over 5,500 kilometres, allowing them to accurately strike targets throughout the Odasarra Region from anywhere in the Kumatqesh Ocean.
6. Anduchenca attended the 8 May 2017 session of the Security Council and opposed the draft of Resolution 3790.
7. Rukaruku immediately reported to the Security Council (1) its firing of missiles at the Covfefe on 6 June 2017; and (2) its dispatching of warships on 14 June 2017 to the area in which the Ibra was located and its firing of the torpedoes that forced the Ibra to surface. In its communications, Rukaruku expressly invoked both Article 51 of the U.N. Charter and Resolution 3790.
8. High Seas Supplies (HSS), which owned and operated the Covfefe, is a privately held company registered in Anduchenca. HSS charts a fleet of supply vessels, including submarine tenders and offshore platform suppliers. HSS specializes in refueling, rearming, restocking, and rescuing vessels at sea. HSS's board of directors comprises 12 former high-ranking Anduchencan naval officers. In 2012, the Anduchencan Navy awarded HSS a contract to be the primary provider and operator of supply vessels to the Navy. According to the Covfefe's manifest, on 6 June 2017, it was transferring 10 Anduchencan sailors as well as carrying in its cargo: bedding, medical supplies, communications equipment, food, and water. Seven HSS civilian employees were also on board and manning the Covfefe.
9. On 6 June 2017, between 3:22 and 3:53 a.m. local time, Rukarukan warships made six attempts to communicate via radio with the Covfefe, which did not respond to the calls or change its course. The Covfefe, an unarmed vessel, sank within an hour of the 6 June 2017 attack, and no survivors were found.
10. On 11 September 2017, the Director General of the IAEA, Kilinda Vrede, provided an update to the Board of Governors on the Agency's work in monitoring Anduchenca's nuclear activities. She informed the Board that a team had been formed within the IAEA's Department of Safeguards "to enhance our ability to monitor any future Anduchencan development of nuclear capabilities while maintaining our preparedness as an Agency to play a more active role in the Odasarra Region if called upon." Vrede clarified that investigations concerning the development of Anduchenca's nuclear capabilities were ongoing. Initial findings indicated that the weapons found on the Ibra, including its nuclear weapons, had been manufactured in Anduchenca.