

**INTERNATIONAL COURT OF JUSTICE**

**STATEMENT OF AGREED FACTS**

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

**ORDER OF 15 SEPTEMBER 2017**

**COUR INTERNATIONALE DE JUSTICE**

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

**ORDONNANCE DU 15 SEPTEMBRE 2017**

INTERNATIONAL COURT OF JUSTICE

2017  
15 September  
General List  
No. 59

YEAR 2017

**15 September 2017**

**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,

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

*(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. 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.
11. 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.”
12. 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.

13. 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.

14. 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.

15. 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.

16. Anduchenca attended the 8 May 2017 session of the Security Council and opposed the draft of Resolution 3790.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.
25. 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.
26. On 19 June 2017, the Security Council adopted a Resolution affirming an agreement concluded the night before 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.
27. 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.

28. 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. Anduchenca has never been elected to the United Nations Security Council, and has not signed, ratified, or acceded to the NPT. 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.
29. 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. 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.
30. Anduchenca respectfully requests that the Court adjudge and declare:  
Anduchenca did not violate Article 16 of the FCN Treaty by commissioning and operating the Ibra; and
31. Rukaruku respectfully requests that the Court adjudge and declare:  
Anduchenca violated Article 16 of the FCN Treaty by commissioning and operating 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.