

## 2011 Clarifications to the Record

Q1. What other information did Rentiers provide Amuko when it notified Amuko about the earthquake?

A1. Assume that Rentiers provided all information required by the IAEA Convention on Early Notification of a Nuclear Accident as well as any additional information that Amuko requested.

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Q2. Are Amuko and Rentiers also parties to other conventions, such as the Organization for Economic Cooperation and Development Convention on Third Party Liability in the Field of Nuclear Energy, the Paris Convention Third Party Liability in the Field of Nuclear Energy and the Basel Convention?

A2. No.

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Q3. When did Rentiers find out about the existence of the fault line?

A3. The fault line has been known for centuries.

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Q4. When exactly did Rentiers conduct tests on the power plants after the earthquake?

A4. Summer 2010.

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Q5. Did Rentiers conduct an Environmental Impact Assessment (EIA) before and after the earthquake?

A5. Rentiers conducted EIAs before authorizing the construction of nuclear power plants. Assume that the safety inspections mentioned in Paragraph 29 were the functional equivalent of EIAs.

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Q6. Was AME created by Amuko's Congress? If not, how was it created?

A6. AME was created by Amuko's Congress.

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Q7. Did Rentiers undertake any safety standard prior to the building of the power plants?

A7. See A5 above. The nuclear power plants in Rentiers satisfied accepted industry safety standards at the time of construction.

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Q8. What particular entity/agency/office of Rentiers issued the sovereign bonds?

A8. The Ministry of Finance.

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Q9. For what specific purpose were the sovereign bonds purchased?

A9. The Record is silent on this point, but it is reasonable to assume that purchasers of bonds sought a financial return.

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Q10. What is the percentage of the sovereign bonds issued to Amuko investors out of all existing sovereign bonds?

A10. Amuko investors purchased 80% of the bonds. Investors in Rentiers purchased 10%, and the remaining 10% were purchased by investors in other countries.

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Q11. What is the market value of the sovereign bonds prior to the declaration of default?

A11. Prior to President Ferguson's 24 November 2010 statement, the market value of the bonds was 80% of their value at maturity.

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Q12. What are the respective GDPs of Amuko and Rentiers?

A12. Both are industrialized countries. The per capita GDP of each is similar.

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Q13. What, if any, national laws pertaining to environmental liability compensation do Rentiers and Amuko have?

A13. The Record is silent on this point. You may assume that each country has laws that permit injured parties to seek compensation through a domestic judicial process

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Q14. What, if any, national institutions does either country have to plan, manage, and control environmental resources?

A14. Each country has a comparable Ministry of Environment.

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Q15. Under the Convention on Biological Diversity, which both countries are party to, "national arrangements for emergency responses" are required. Do Rentiers and Amuko have these arrangements?

A15. Yes.

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Q16. Did Rentiers, per Article 69 of Chapter X of ICSID, take measures to make the provisions of the Convention effective in the territory of Rentiers?

A16. Yes.

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Q17. Did Rentiers and/or Nihon perform a comprehensive evaluation of the nuclear reactor site location according to IAEA guidance?

A17. Yes.

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Q18. Did the decision by Rentiers Nuclear Regulatory Agency to allow the nuclear reactor at this site include a consideration of possible seismic activity and its effects?

A18. Yes.

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Q19. How often does Rentiers experience earthquakes measuring around 9 on the Richter scale?

A19. Seismic activity is common in Rentiers. Earthquakes of a magnitude of 7 on the Richter scale occurred five times in the past 20 years. An earthquake measuring 9 on the Richter scale had not occurred for at least two hundred years.

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Q20. Had the Rentiers Nuclear Regulatory Agency (RNRA) previously conducted inspections of the Nihon Nuclear Power Plant to assure that the plant was properly constructed to prevent a meltdown in case of an emergency?

A20. Yes.

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Q21. Were the spent fuel assemblies designed to accepted safety specifications?

A21. Yes.

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Q22. Does the Diablo Canyon Fault Line commonly experience seismic activity?

A22. Yes. See A19 above.

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Q23. Has Rentiers engaged in debt restructuring before?

A23. No.

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Q24. Are there any relevant domestic laws in Rentiers regarding insolvency?

A24. Not beyond the legislation discussed in the Record.

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Q25. Does RABBIT include any sort of emergency clause?

A25. No.

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Q26. Did Rentiers notify the ICSID Centre of any relevant disputes that it did not want to submit to the Jurisdiction of the Centre?

Q26. No.

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Q27. What percent in value had the sovereign bonds dropped to following the 24 November 2010 announcement, before the Fresh Start Act was passed?

A27. The market value was 40% of the bonds' value at maturity.

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Q28. Were there any calculations made regarding the potential value of the bonds immediately following a default?

A28. See A27 above.

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Q29. Did the debt restructuring in the Fresh Start Act prevent Rentiers from defaulting on its bonds?

A29. Investors were paid in accordance with the Fresh Start Act.

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Q30. Do the provisions of RABBIT apply retroactively to investments made before the treaty was signed? If not, was there any agreement made regarding those investments?

A30. The Record is silent on this point. Assume that the RABBIT makes no explicit statement one way or the other.

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Q31. Were any other measures to prevent a default considered by Rentiers prior to passing the Fresh Start Act?

A31. The Record is silent on this point.

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Q32. Do these countries have any additional bilateral agreements for transboundary cooperation?

A32. No.

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Q33. Is either country a signatory to any of the following:

- a. Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material
- b. Protocol on Liability and Compensation for Damage Resulting from Transboundary Movement of Hazardous Wastes and Their Disposal
- c. 1960 Paris Convention on Nuclear Third Party Liability
- d. 1963 Vienna Convention on Civil Liability for Nuclear Damage

A33. No.

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Q34. In Paragraph 13 of Annex A, Article 10 of RABBIT regarding expropriation, what is the difference between “purpose authorized by law” and “in accordance with its laws”?

A34. That is a matter of interpretation.

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Q35. Is the ‘Diablo Canyon Fault’ referred to in Paragraph 5 and thereafter in Annex A the same as it exists in the real world? If not, has any earthquake ever struck along this ‘Diablo Canyon Fault’ in the past and if so, of what measure on the Richter Scale?

A35. Do not equate the Diablo Canyon Fault with any existing fault. See A19 for information regarding past earthquakes.

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Q36. Questions concerning outside assistance:

- a. Can the coach look at our memorial and tell us if we have overlooked/missed any issues? Generally or specifically?
- b. Can the coach take a look at our memorial and tell us if we have overlooked any international law principles? Generally or specifically?
- c. Can the coach take a look at our memorial and help us re-organize sections?
- d. Can we ask a layman—someone with on international law knowledge, to read our memorial for general feedback?

A36. The simple, direct answer to the questions is no, but let us explain. The rules provide that students may talk or discuss with professors or others affiliated with the law school about general questions of international environmental law; however, no one besides the team members should review or read the team’s memorials. The written product—the research, writing, and editing of the memorial—should be the students’ product.

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Q37. What is meant by “the value of investments” pursuant to the article 10 of RABBIT? Is it face value or fair value? If none of the above mentioned, please specify.

A37. That is a matter of interpretation.

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Q38. Claims of Amuko companies are said to be denied in courts of Rentiers. On what stage were the cases were denied? Has there been any ground explained to Amuko regarding the denial?

A38. The courts upheld the Fresh Start Act under domestic law.

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Q39. Are investment companies of Amuko privately owned or do they belong to public sector?

A39. They are private companies.

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Q40. Has the continental transform fault caused any problems, such as causing an earthquake, to Rentiers before the earthquake on 5 February 2010?

A40. See answers above.

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Q41. In reference to Paragraph 29 of the Record, had the RNRA determined that the Fault did not pose unreasonable risk prior to the occurrence of the earthquake on 5 February 2010?

A41. See answers above.

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Q42. Was Amuko negligent in putting out the fire caused due to the nuclear accident on 12 February 2010?

A42. There is nothing in the Record to suggest that Amuko was negligent in the aftermath of the 12 February 2010 accident.

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Q43. Has Rentiers made any declarations under Article 10(5)(b) of the Nuclear Assistance Convention?

A43. No.

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Q44. Are Rentiers and Amuko parties to the

- a. Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention;
- b. Convention on Supplementary Compensation for Nuclear Damage;
- c. Paris Convention on Third Party Liability in the Field of Nuclear Energy; or
- d. Vienna Convention on Civil Liability for Nuclear Damage?

A44. No.

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Q45. Was there any provision in the RABBIT with regard to its applicability to investments made prior to it?

A45. No. See A30.

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Q46. Was the dispute between the two countries with regard to expropriation of the sovereign bonds submitted to the mediation in accordance with Article 13(2) of the RABBIT?

A46. The dispute was the subject of negotiation, but not formal mediation.

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Q47. RABBIT—entered into force in March 2002—governs the sovereign bonds purchased by Amuko's investment companies. There were two purchases: the 2000 purchases and 2005 purchases. Does RABBIT apply to the 2000 purchases, 2005 purchases, or both?

A47. See answers above.

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Q48. Did Amuko notify Rentiers about the vehicle crash near Robelynch pursuant to the IAEA Convention on Early Notification of a Nuclear Accident?

A48. Yes.

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*List finalized Monday, October 3, 2011*