

**Questions Relating to a Nuclear Accident and  
Sovereign Debt  
(Federal States of Amuko/Republic of Rentiers)**

**RECORD**  
**Sixteenth Annual**  
**Stetson International Environmental**  
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**STETSON LAW**

NOTIFICATION, DATED 20 JUNE 2011, ADDRESSED TO  
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF AMUKO  
AND  
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RENTIERS

The Hague, 20 June 2011.

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 6 June 2011. I have the further honor to inform you that the case of Questions Relating to a Nuclear Accident and Sovereign Debt (Federal States of Amuko/Republic of Rentiers) has been entered as 2011 General List No. 116. The written proceedings shall consist of memorials to be submitted to the Court by 20 November 2011. Oral proceedings are scheduled for 30 March to 1 April 2012.

/s/

Registrar  
International Court of Justice

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JOINT NOTIFICATION, DATED 6 JUNE 2010, ADDRESSED TO  
THE REGISTRAR OF THE COURT

The Hague, 6 June 2011.

On behalf of the Federal States of Amuko and the Republic of Rentiers, 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 Amuko and the Republic of Rentiers for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to a Nuclear Accident and Sovereign Debt, signed at Granada, Spain, on 6 June 2011.

For the Federal States of Amuko:

/s/

M. Curie  
Minister of Foreign Affairs

For the Republic of Rentiers:

/s/

T. Bills  
Minister of Foreign Affairs

SPECIAL AGREEMENT  
BETWEEN  
THE FEDERAL STATES OF AMUKO  
AND  
THE REPUBLIC OF RENTIERS  
FOR SUBMISSION TO THE  
INTERNATIONAL COURT OF JUSTICE  
OF DIFFERENCES BETWEEN THEM CONCERNING  
QUESTIONS RELATING TO A NUCLEAR ACCIDENT AND SOVEREIGN DEBT

The Federal States of Amuko and the Republic of Rentiers,

Recalling that the Federal States of Amuko and the Republic of Rentiers 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 the Federal States of Amuko and the Republic of Rentiers are Member States of the International Atomic Energy Agency (IAEA) and are Parties to the IAEA Convention on Early Notification of a Nuclear Accident and the IAEA Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency,

Keeping in mind that the Federal States of Amuko and the Republic of Rentiers are Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management,

Bearing in mind the radiological damage suffered in the Federal States of Amuko,

Conscious of the economic difficulties facing the Republic of Rentiers,

Recognizing that differences have arisen concerning the response to the nuclear event at the Nihon Nuclear Power Plant,

Noting that the Federal States of Amuko and the Republic of Rentiers 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 Amuko and the Republic of Rentiers, 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.

## 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.
4. The Parties shall not contest the jurisdiction of the Court in their written pleadings or oral arguments.

## 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 of the 2011–2012 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 Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the 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 Granada, Spain, this sixth day of June 2011, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Amuko:

/s/

M. Curie

Minister of Foreign Affairs

For the Republic of Rentiers:

/s/

T. Bills

Minister of Foreign Affairs

## ANNEX A

1. The Federal States of Amuko (hereinafter Amuko) and the Republic of Rentiers (hereinafter Rentiers) share a common territorial border and have long enjoyed peaceful relations. Annex B is a map that provides the relative location of the states.
2. Amuko is an industrialized country with a population of approximately 10 million people. Nuclear power constitutes 25% of the share of its electricity production. It has a highly diversified economy, known for its financial sector.
3. Rentiers is an industrialized country with a population of approximately 70 million people. Rentiers has few natural resources and, until recently, nuclear power constituted 75% of the share of its electricity production. It also has a highly diversified economy.
4. Investment companies in Amuko have purchased approximately 3 billion tenge worth of sovereign bonds issued by Rentiers. One tenge, which is the currency used by Rentiers, is the equivalent of one euro. The purchases were made in November 2000 (approximately 1 billion tenge) and November 2005 (approximately 2 billion tenge). The maturity date for all these bonds was 30 November 2010. The bonds do not contain any reference to arbitration in case of dispute; instead, they contain a provision that states: “The parties agree that any claim or suit which may arise in relation to the Bonds issued shall be subject to the exclusive jurisdiction of the courts of the Republic of Rentiers, unless otherwise agreed to.”
5. The Diablo Canyon Fault is a continental transform fault that runs through the central portion of the territory of Rentiers.
6. Amuko and Rentiers are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
7. Amuko and Rentiers are Parties to the Vienna Convention on the Law of Treaties.
8. Amuko and Rentiers are Member States of the International Atomic Energy Agency (IAEA) and are Parties to the IAEA Convention on Early Notification of a Nuclear Accident and the IAEA Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency (IAEA Assistance Convention).
9. Amuko and Rentiers are Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.
10. Amuko and Rentiers are Contracting Parties to the Convention on Biological Diversity (CBD).
11. High-level representatives from Amuko and Rentiers 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, and the 2002 World Summit on Sustainable Development at Johannesburg.

12. Amuko and Rentiers are Parties to the Rentiers-Amuko Bilateral Business Investment Treaty, known as the RABBIT, which was signed and entered into force in March 2002.

13. In pertinent part, the RABBIT provides:

The Government of the Republic of Rentiers and the Government of the Federal States of Amuko (each hereinafter referred to as a “Contracting Party”);

Desiring to create favorable conditions for greater economic cooperation between them and in particular for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party based on the principles of equality, non-discrimination, and mutual benefit;

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiatives and increasing economic prosperity in both States;

Have agreed as follows:

#### Article 1: Definitions

For the purposes of this Agreement:

(1) The term “investments” means all kinds of assets that have been invested in accordance with the laws of the Contracting Party receiving them including though not exclusively any:

(a) movable and immovable property and other property rights such as mortgage, usufruct, lien, or pledge;

(b) title or claim to money or to any contract having a financial value;

\* \* \*

#### Article 10: Expropriation

(1) Neither Contracting Party shall take any measure of expropriation, nationalization, or other measures having effect equivalent to nationalization or expropriation (all of which measures shall hereinafter be referred to as “expropriation”)

against the investment of nationals or companies of the other Contracting Party unless the measures are taken for a purpose authorized by law, on a non-discriminatory basis, in accordance with its laws and in return for payment of just compensation, which shall be made without unreasonable delay. Such compensation shall be the value of the investment immediately before the expropriation, taking into account customary norms of international law.

\* \* \*

#### Article 13: Settlement of Disputes

(1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement that cannot be settled within a reasonable lapse of time by means of diplomatic negotiations shall, unless the Parties have otherwise agreed, be submitted at the request of either Party to mediation.

(2) If such dispute cannot be settled through negotiation or mediation, the Contracting Parties shall agree to submit the matter to an arbitral tribunal or the International Court of Justice.

\* \* \*

The RABBIT has been registered in accordance with Article 102 of the Charter of the United Nations.

14. Rentiers is a Party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Amuko is not a party to the ICSID Convention.
15. On 5 February 2010, an earthquake measuring 9.2 on the Richter scale struck the territory of Rentiers along the Diablo Canyon fault line.
16. The earthquake caused significant damage in the city of Nihon, Rentiers. More than 3000 people were killed, and another 500 people are missing and presumed dead. Approximately 40,000 people were injured. Property damage is expected to exceed 10 billion tenge, and more than 150,000 people were forced to live in temporary shelters. Furthermore, the privately-operated Nihon Nuclear Power Plant, which had two pressurized-water nuclear reactors, was affected. Although Reactor 1 suffered no damage, Reactor 2 had a partial core meltdown and the reactor building was contaminated. It was classified as Level 4 on the IAEA Nuclear Event Scale (accident with local consequences). Rentiers immediately notified the IAEA and Amuko of the event in accordance with the IAEA Convention on Early Notification of a Nuclear Accident.



17. On 7 February 2010, the Rentiers Nuclear Regulatory Agency (RNRA), a national agency, took control of the operations at the Nihon Nuclear Power Plant and directed containment and response efforts. Although the situation regarding the reactor core had stabilized, RNRA discovered that the pools where spent fuel rods were stored had ruptured and had developed a leak. Fuel rods from two fuel assemblies had been placed in the pools as recently as two weeks before the earthquake.

[For general information regarding spent nuclear fuel, see IAEA Introduction to the Nuclear Fuel Cycle, <http://www.iaea.org/newscenter/multimedia/photoessays/nuclearfuelcycle/>.]

18. On 8 February 2010, in accordance with Article 2.2 of the IAEA Assistance Convention, Rentiers requested assistance from Amuko. Rentiers requested that Amuko remove spent fuel rods from the leaking storage pools and transport them to a more secure facility located in Amuko.
19. On 9 February 2010, in accordance with Article 2.3 of the IAEA Assistance Convention, Amuko promptly responded that the Amuko Ministry of Energy (AME) would remove the fuel rods and transport them via highways in specially manufactured vehicles.
20. On 11 February 2010, the AME successfully removed the spent fuel rods and placed them in two appropriate vehicles.
21. On 12 February 2010, one of the vehicles, while in the territory of Amuko, crashed through a guard rail and tumbled down a 75-meter ravine. The accident was due to the negligence of the driver, an AME employee.
22. The driver and one security guard, also an AME employee, were killed due to the trauma associated with the accident.
23. As a result of the accident, the cooling system for the fuel rods failed. The metal housing surrounding the fuel melted. The fuel rod casings began to burn, releasing radioactive gases and particles into the environment. The fire was extinguished on 14 February 2010.
24. Because of health concerns associated with radiation exposure, AME ordered the evacuation of Robelynch, a village 2 kilometers from the accident site. Four hundred and sixty-six families were required to leave their homes and abandon their possessions. The area is now declared off-limits for human habitation.
25. On 26 February 2010, in an emergency session, the Amuko Congress established a compensation fund for people affected by the accident near Robelynch. The legislation provided for compensation for the families of the deceased driver and security guard. The legislation also compensated the former residents of Robelynch for the loss of their property and established a lifetime medical monitoring program. The former residents would be evaluated on a regular basis to determine whether their radiation exposure

resulted in health issues. If so, the compensation fund would cover all of their medical expenses.

26. On 10 March 2010, the following diplomatic note was forwarded to Rentiers:

The Embassy of the Federal States of Amuko presents its compliments to the Government of the Republic of Rentiers and wishes to convey its continued sympathy for the loss of life and damage associated with the 5 February 2010 earthquake.

\* \* \*

As you are aware, the Federal States of Amuko suffered damages as a result of the assistance provided to the Republic of Rentiers. Accordingly, in accordance with Article 10 of the IAEA Assistance Convention and general principles of international law, we request that the Republic of Rentiers take all the necessary measures to fully reimburse the Federal States of Amuko for the compensation program established by the Amuko Congress.

Please accept the assurance of my highest consideration.

/s/

Yuri Nium  
Ambassador

27. On 1 April 2010, the following diplomatic note was forwarded to the Government of the Federal States of Amuko:

The Embassy of the Republic of Rentiers presents its compliments to the Government of the Federal States of Amuko and has the honor to acknowledge receipt of the diplomatic note dated 10 March 2010.

As an initial matter, the Government of the Republic of Rentiers appreciates the assistance provided by the Government of the Federal States of Amuko. The swift and heroic actions of the Amuko Ministry of Energy likely averted an environmental catastrophe in the territory of Rentiers.

\* \* \*

It is, however, the position of the Government of the Republic of Rentiers that no reimbursement or compensation is owed. Any responsibility for compensation under the IAEA Convention is limited to damages suffered within the territory of the requesting State, and these damages occurred in the territory of the Federal States of Amuko. Moreover, even if the provisions of Article 10 applied, the

duty of the Republic of Rentiers is to “assume responsibility for dealing with legal proceedings and claims brought by third parties against the assisting party.” While we acknowledge that the residents of Robelynch had potential claims against the Government of the Federal States of Amuko, the Amuko Congress’s actions precluded and preempted the Republic of Rentiers from assuming responsibility to deal with such potential claims.

Please accept the assurance of my highest consideration.

/s/

P. Lou Tonium  
Ambassador

28. On 15 April 2010, the Government of the Federal States of Amuko replied to the Government of the Republic of Rentiers with a diplomatic note that stated in part:

We strongly disagree with your interpretation of Article 10 of the IAEA Assistance Convention. The phrase “within its [the requesting State’s] territory” only applies to environmental damage. It does not apply to the death or injury of persons or to the damage to or loss of property. The restrictive interpretation offered by the Government of the Republic of Rentiers would discourage assistance during nuclear accidents in the future, which would obviously be inconsistent with the purpose of the Convention.

Furthermore, AME and its employees removed and transported the fuel rods with the consent, under the authority of, and for the purposes of containment, response, and cleanup previously carried out by the RNRA. Accordingly, Rentiers is responsible, under customary international law, for any transboundary harm that resulted.

29. In the aftermath of the earthquake, RNRA conducted safety inspections of Rentiers’ remaining operational nuclear power plants. The inspections determined that five nuclear power plants near the Diablo Canyon fault posed an unreasonable risk to human health and the environment if another earthquake of a similar magnitude were to occur. Accordingly, on 17 September 2010, RNRA ordered a rapid closure of these power plants. Intentional rolling power outages throughout Rentiers resulted.
30. On 24 November 2010, Rentiers President Niall Ferguson issued a statement that because of the earthquake damage and the closure of the power plants, the economy of Rentiers had suffered greatly and that Rentiers would default on its sovereign bonds. The Rentiers stock market declined 20% after the announcement.
31. On 1 December 2010, in an emergency session, the Rentiers Parliament enacted a debt restructuring law, called the Fresh Start Act. The Fresh Start Act specifically provided

that Rentiers sovereign bonds were to be restructured such that investors would receive 10% of what they would otherwise be entitled to. The law applied equally to all bondholders, regardless of whether they were domestic or foreign investors.

32. On 8 December 2010, the following diplomatic note was forwarded to the Government of the Republic of Rentiers, which stated in part:

The default of the Republic of Rentiers on its sovereign bonds is a violation of a basic principle of international law: *pacta sunt servanda*—agreements, including contracts, must be performed in good faith. Moreover, the unilateral restructuring of the sovereign bonds, in which Amuko companies had invested 3 billion tenge, is an expropriation in violation of the RABBIT.

The Embassy of the Federal States of Amuko has the honor to request that the Republic of Rentiers enter into negotiations with the Federal States of Amuko to arrive at a just rate of compensation for this expropriation.

Please accept the assurance of my highest consideration.

/s/

Yuri Nium  
Ambassador

33. On 22 December 2010, the following response was forwarded to the Government of the Federal States of Amuko, which stated in part:

We observe that “[t]here is ample authority that failure to pay a sovereign bond does not engage the state’s international responsibility, even if it constitutes a default under the bond.” Michael Waibel, *Opening Pandora’s Box: Sovereign Bonds in International Arbitration*, 101 Am. J. Int’l L. 711, 746 (2007). With respect to the Fresh Start Act, we note that the restructuring was necessary due to extraordinary circumstances. The closing of numerous nuclear power plants was a prudent action, required by the precautionary principle. Furthermore, the ICJ has recognized that necessity may excuse a violation of international law in *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*. Closing the power plants, which led to the default and restructuring, was necessary for Rentiers to safeguard an essential interest from a grave and imminent peril.

\* \* \*

In addition, because of the 5 February 2010 earthquake and its aftermath, we may invoke *force majeure* to preclude the alleged

wrongfulness of any action that Rentiers has taken. The principle of *force majeure* is widely accepted in many domestic legal systems and has been recognized by the International Law Commission in its Draft Articles on Responsibility of States for Internationally Wrongful Acts.

Please accept the assurance of my highest consideration.

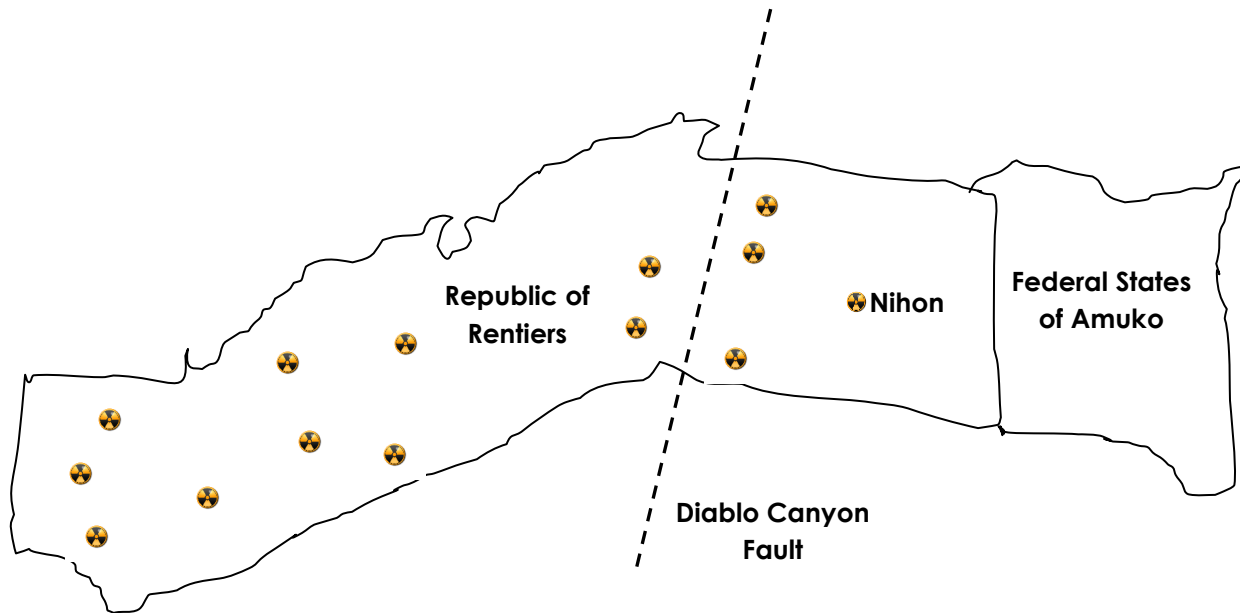
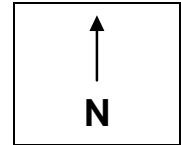
/s/


P. Lou Tonium  
Ambassador

34. On 6 January 2011, the Government of the Federal States of Amuko responded with a diplomatic note that stated in part:

It is inappropriate for Rentiers to invoke the precautionary principle or the doctrine of necessity or *force majeure*. Rentiers knew of the existence of the Diablo Canyon Fault and permitted the nuclear power plants to be built nevertheless.
35. The Amuko investment companies affected by the Fresh Start Act (and other affected bondholders including companies in Rentiers) sought compensation in the domestic courts of Rentiers. These claims were denied.
36. Additional negotiations between the Federal States of Amuko and the Republic of Rentiers failed to resolve the disputes regarding both the nuclear accident and sovereign debt, but the parties agreed to submit these matters to the International Court of Justice under a Special Agreement pursuant to Article 36, paragraph 1, of the Statute of the International Court of Justice.
37. The Federal States of Amuko opposes the claims in paragraph 38 and seeks an order declaring that the Republic of Rentiers violated international law by (1) failing to properly compensate and/or reimburse Amuko for expenses related to: the deaths of two Amuko Ministry of Energy employees; the property losses suffered by the former residents of Robelynych; and the medical monitoring and related medical expenses of the former residents of Robelynych, and (2) expropriating without just compensation the investments of Amuko companies in the sovereign bonds of Rentiers through default and debt restructuring.
38. The Republic of Rentiers opposes the claims in previous paragraph 37 and seeks an order declaring that the Republic of Rentiers has not violated international law and does not have any legal obligation to compensate and/or reimburse the Federal States of Amuko.

ANNEX B



 Location of nuclear power plants in the Republic of Rentiers