Foreign Direct Investment International Arbitration Moot

2016 Case

List of documents

Request for Arbitration
Answer to Request for Arbitration
Procedural Order No 1
  Uncontested Facts
Exhibit C1 (Oceania-Euroasia BIT)
Exhibit C2 (Oceania EO Imposing Sanctions)
Exhibit R1 (Oceania-Eastasia BIT)
Procedural Order No 2
Procedural Order No 3

13 March 2016

Case Committee

www.fdimoot.org

1 Correction to PO No 1 §4.(a).
By courier
The Secretariat of the International Court of Arbitration
International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris
France

11 September 2015

Dear Madam/Sir

On behalf of my client, Peter Explosive, Unicorn Valley 3601-200 Fairyland, Euroasia, T +28 4 386 6600, E-mail explosive.pete@rocketbombs.co.ea, I hereby submit the enclosed Request for Arbitration pursuant to the Rules of Arbitration of the International Chamber of Commerce, Article 4. A copy of the Power of Attorney authorising me to represent Peter Explosive in this arbitration is also enclosed.

My client’s claims and requests for relief are outlined more fully in the attached Request for Arbitration.

The advance payment of US$ 3,000 for administrative expenses (Article 4(4)(b) ICC Arbitration Rules and Article 1(1) of Appendix III) has been made. The relevant bank confirmation is attached.

The treaty giving rise to this arbitration does not provide for the seat of arbitration. The arbitration agreement provides for three arbitrators. Peter Explosive hereby nominates Ms Johanna Valls and requests that the ICC appoint the president of the arbitral tribunal.

The required documents for the Request are attached.

Sincerely yours,

Marcella Mine

Attachments:
Request for Arbitration with Exhibits C1 and C2
Power of Attorney
CV of Ms Johanna Valls
Proof of Payment of Advances
REQUEST FOR ARBITRATION

Claimant
Peter Explosive
Unicorn Valley 36
01-200 Fairyland
Euroasia
T +28 4 386 6600 E-mail explosive.pete@rocketbombs.co.ea

Legal Representative of Claimant
Marcella Mine
Mine & Associates
Pegasus Street 12
01-202 Fairyland
Euroasia
T +28 6 450 1750 F +28 1 255 600 E-mail: mine@mine_associates.ea
A power of attorney is attached [intentionally not reproduced here].

Respondent
Republic of Oceania
c/o Nicole Blue-Sea
Procurator of the Treasury, Ministry of Finance
Neatstreet 10
1200 Valhalla
Oceania
T +15 1 240056 F +15 1 668712 E-mail: n.blue@mof.gov.oc

Terms of the Arbitration Agreement

This Request for Arbitration is submitted pursuant to Article 8 of the Agreement between the Republic of Oceania and the Republic of Eastasia for the Promotion and Reciprocal Protection of Investments dated 1 January 1992, which entered into force on 1 April 1993 (the “Eastasia BIT”). Claimant relies on this provision by virtue of Article 3 (“MFN Clause”) of the Agreement between the Republic of Oceania and the Republic of Euroasia for the Promotion and Reciprocal Protection of Investments dated 1 January 1992, which entered into force on 23 October 1995 (“Euroasia BIT”).
The Claimant hereby informs that he notified the Oceanian Ministry of Foreign Affairs (with copies to the Ministry of Finance, Ministry of Defence and Ministry of Environmental Protection) of his dispute with Oceania and of the Claimant’s intention to initiate arbitral proceedings against the Respondent if Oceania fails to negotiate with the Claimant. As of the date of filing of this Request for Arbitration, Oceania has not responded.

**Circumstances of the dispute**

The Claimant, Peter Explosive, is a national of Euroasia and resident of Fairyland, which is a province that was formerly part of Eastasia and is now a region of Euroasia. The Claimant invested in the Republic of Oceania in February 1998 by purchasing 100% of the shares in the company, “Rocket Bombs Ltd”, and subsequently became its president and sole member of its board of directors. Rocket Bombs Ltd specialised in arms production.

When the Claimant purchased Rocket Bombs Ltd, the company was a decrepit enterprise as it had lost its environmental license necessary for arms production operations. The suspension of arms production had also caused massive redundancies, leaving a lot of workers from the local town of Valhalla without a means to make a living.

The Claimant managed to improve Rocket Bombs Ltd from its state of operations at the time of purchase. He started to modernise the production line to meet the requirements of the Oceanian Environment Act 1996. On 23 July 1998, Peter Explosive obtained an environmental license from the Oceanian National Environment Authority, which allowed for the commencement of arms production at Rocket Bombs Ltd. Subsequently, the Claimant managed to obtain a number of contracts for arms production. The most crucial contract was concluded with the Ministry of National Defence acting on behalf of the Republic of Euroasia on 23 December 1998, effective as of 1 January 1999. The situation allowed the Claimant to commence arms production and to rehire the workers from Valhalla. Life in that town improved immensely.

The contract with the Ministry of National Defence acting on behalf of the Republic of Euroasia was set to expire on 1 January 2014. The Claimant had not yet managed to conclude any substitute contract. It seemed that the production line would have to be partially closed, with
many workers being made redundant once again. However, before the situation became too challenging, the Ministry of National Defence of the Republic of Euroasia proposed the conclusion of another contract. It was concluded on 28 February 2014, effective as of 1 April 2014.

Historically, the region of Fairyland had been part of the Republic of Euroasia. However, due to multiple wars over the last 100 years, the province found itself within Eastasian territory. On 1 November 2013, the residents of Fairyland decided, in a referendum, that Fairyland should be reunited with its homeland – the Republic of Euroasia. On 1 March 2014, the region of Fairyland was peacefully re-united with the Republic of Euroasia. On 23 March 2014, the Republic of Euroasia officially declared that Fairyland had been returned to the motherland and formed a Euroasian region.

The Republic of Oceania did not accept the reunification of Fairyland to Euroasia. It subsequently imposed sanctions on all entities operating within the territory of the Republic of Oceania that had any contractual relationship with the Republic of Euroasia, even though no violation of international law by Euroasia in this regard has been adjudicated and the people of Fairyland were merely exercising their right of self-determination. Sanctions were imposed on Rocket Bombs Ltd and Peter Explosive.

Consequently, Peter Explosive became unable to sell his shares in Rocket Bombs Ltd. Furthermore, the value of shares was reduced almost to zero. All contracts with entities operating in the territory of the Republic of Oceania were terminated by virtue of the Executive Order of the President of the Republic of Oceania of 1 May 2014 on Blocking Property of Persons Contributing to the Situation in the Republic of Eastasia. The Executive Order caused a complete standstill in arms production, as all suppliers of Rocket Bombs Ltd were operating within the territory of the Republic of Oceania. As a result, Rocket Bombs Ltd was unable to meet any of its contractual obligations towards entities from outside of the Republic of Oceania.

**Request for Relief**
The Claimant requests that the Arbitral Tribunal:
1. find that the Republic of Oceania has expropriated the Claimant’s investment by the implementation of the sanctions and introduction of Executive Order of 1 May 2014;

2. award the Claimant compensation in value no less than 120,000,000 USD, with interest as of the date of issuance of the award.

Procedural issues:

The Claimant submits that pursuant to the Euroasia BIT, a three-person arbitral tribunal should be established in the case at hand. The Claimant nominates Ms Johanna Valls as arbitrator in the case.

Ms Johanna Valls
Valls Industries
Majoritenhall 23/20
Gotham
Eastasia

The Claimant requests that the proceedings be conducted in English since the English version of the Euroasia BIT prevails.

Receipt of all notified authorities of the Respondent are attached hereto (intentionally not reproduced).

For and on behalf of Peter Explosive, Claimant
Marcella Mine
Mine & Associates
11 September 2015

28000/AC
Peter Explosive vs Republic of Oceania

Ms Marcella Mine
Mine & Associates
Pegasus Street 12
01-202 Fairyland
Euroasia

By Email: mine@mine_associates.ea

Dear Madame,

Further to your correspondence dated 11 September 2015, the Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("Secretariat") draws your attention to the following:

I – REQUEST FOR ARBITRATION ("REQUEST")

The Secretariat acknowledges receipt of your Request for Arbitration ("Request") dated 11 September 2015. Your Request was received today. Pursuant to Article 4(2) of the ICC Rules of Arbitration in force as from 1 January 2012 ("Rules"), this arbitration commenced on 11 September 2015.

We acknowledge receipt of the US$ 3,000 non-refundable filing fee, which will be credited towards the provisional advance.

II - GENERAL INFORMATION

1) Caption

The caption and the reference of this case are indicated above. Please ensure that the caption is accurate and include the reference 28000/AC in all future correspondence in the arbitration.

2) Reference to the Rules

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

3) Your Case Management Team

Mr Counsel...................................................(direct dial number: +33 1 49 53 00 01)
Ms Deputy Counsel...........................................(direct dial number: +33 1 49 53 00 02)
Your case management team will write to you concerning the notification of the Application and of the Request, as well as other relevant information.

Finally, please find enclosed a note that highlights certain key features of ICC arbitration, as well as a Note on Administrative Issues. We invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Secretary General
ICC International Court of Arbitration

encl. - Note to the Parties in Proceedings under the 2012 Rules
- Note on Administrative Issues
- ICC Rules of Arbitration (see also www.iccarbitration.org)
- ICC Dispute Resolution Brochure (see also www.iccarbitration.org)

(The attachments are not provided for the purposes of the FDI Moot problem)

(The Notes are available on the ICC electronic Dispute Resolution Library at: http://www.iccdrl.com/practicenotes.aspx.)
Dear Sirs,

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("Secretariat") draws your attention to the following:

I – REQUEST FOR ARBITRATION ("REQUEST")

1) Request

The Secretariat notifies Republic of Oceania that on 11 September 2015, it received a Request for Arbitration ("Request") from Peter Explosive ("Claimant") represented by Ms Marcella Mine, that names the Republic of Oceania as Respondent.

Pursuant to Article 4(2) of the ICC Rules of Arbitration ("Rules"), this arbitration commenced on 11 September 2015.

We enclose a copy of the Request and the documents annexed thereto (Rules, Article 4(5)).

2) Answer to the Request

Respondent’s Answer to the Request ("Answer") is due within 30 days from the day following receipt of this correspondence (Rules, Article 5(1)).

Please send us 5 copies of the Answer, together with an electronic version.

Respondent may apply for an extension of time for submitting its Answer by nominating an arbitrator (Rules, Article 5(2)). Such information will enable the International Court of
Arbitration of the International Chamber of Commerce ("Court") to take steps towards the constitution of the arbitral tribunal.

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration will proceed notwithstanding such refusal or failure (Rules, Article 6(8)).

3) Joinder of Additional Parties

No Additional Party may be joined to this arbitration after the confirmation or appointment of any arbitrator, unless all parties including the Additional Party otherwise agree (Rules, Article 7(1)). Therefore, if Respondent intends to join an Additional Party and seeks an extension of time for submitting its Answer, it must inform us in its request for such extension.

4) Constitution of the Arbitral Tribunal

The arbitration agreement provides for three arbitrators. Claimant has nominated Ms Johanna Valls as co-arbitrator.

Respondent is required to nominate a co-arbitrator in its Answer or in any request for an extension of time for submitting its Answer (Rules, Article 12(4)). If Respondent fails to nominate an arbitrator within 30 days from the day following its receipt of this correspondence, the Court will appoint a co-arbitrator on its behalf (Rules, Article 12(4)).

The Court will appoint the president, unless the parties agree upon another procedure (e.g. the co-arbitrators nominating the president) (Rules, Article 12(5)). Claimant has indicated its preference for the Court to select the president.

5) Place of Arbitration

The arbitration agreement does not provide for the place of arbitration. After proper consultations with the parties, the Court shall determine the seat in accordance with the Rules, Article 18.

6) Language

The arbitration agreement provides for English as the language of the arbitration.

7) Provisional Advance

The Secretary General fixed a provisional advance of US $230,000 to cover the costs of arbitration until the Terms of Reference are established (Rules, Article 36(1)), based on an amount in dispute quantified at US$ 120,000,000 and three arbitrators.

8) Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value of the dispute (Rules, Article 22(1)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has
conducted the arbitration in an expeditious and cost-effective manner (Rules, Article 37(5)).

II - GENERAL INFORMATION

1) Caption

The caption and the reference of this case are indicated above. Please ensure that the caption is accurate and include the reference 28000/AC in all future correspondence in the arbitration.

2) Reference to the Rules

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: “(Article ***)

3) Communications with the Secretariat

Please provide your fax number and/or email address as we may transmit notifications and communications by fax and/or email.

4) Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

5) Your Case Management Team

Mr Counsel .................................................. (direct dial number: +33 1 49 53 00 01)
Ms Deputy Counsel ................................. (direct dial number: +33 1 49 53 00 02)
Mr Deputy Counsel ................................. (direct dial number: +33 1 49 53 00 03)
Ms Deputy Counsel ................................. (direct dial number: +33 1 49 53 00 04)
Ms Assistant ........................................... (direct dial number: +33 1 49 53 00 05)
Ms Assistant ........................................... (direct dial number: +33 1 49 53 00 06)
Mr Assistant ........................................... (direct dial number: +33 1 49 53 00 07)

Fax number ............................................. +33 1 49 53 00 10
Email address ........................................ ica100@iccwbo.org

While maintaining strict neutrality, the Secretariat is at the parties’ disposal regarding any questions they may have concerning the application of the Rules.

Finally, please find enclosed a note that highlights certain key features of ICC arbitration, as well as a Note on Administrative Issues. We invite you to visit our website
at [www.iccarbitration.org](http://www.iccarbitration.org) to learn more about our Dispute Resolution services.

Yours faithfully,

Counsel  
Secretariat of the ICC International Court of Arbitration

encl. Request for Arbitration with documents annexed thereto  
- Note to the Parties in Proceedings under the 2012 Rules  
- Note on Administrative Issues  
- ICC Rules of Arbitration (see also [www.iccarbitration.org](http://www.iccarbitration.org))  
- ICC Dispute Resolution Brochure (see also [www.iccarbitration.org](http://www.iccarbitration.org))  
- Financial Table  
- Payment Request for the provisional advance

(The attachments are not provided for the purposes of the FDI Moot problem)

(The Notes are available on the ICC electronic Dispute Resolution Library at: [http://www.iccdrl.com/practicenotes.aspx](http://www.iccdrl.com/practicenotes.aspx).)
30 September 2015

By courier

The Secretariat of the International Court of Arbitration
International Chamber of Commerce
38 Cours Albert 1er
75008 Paris
France

*Re ICC Case 28000/AC: Peter Explosive vs Republic of Oceania: Answer to Request for Arbitration*

Dear Madam/Sir

On behalf of my client, the Republic of Oceania, I hereby submit the enclosed Answer to the Request for Arbitration pursuant to the Rules of Arbitration of the International Chamber of Commerce, Article 5. A copy of the Power of Attorney authorising me to represent the Republic of Oceania is also enclosed.

Sincerely yours,

Nikola Vujtović

Attachments
Request for Arbitration with Exhibit R1
Power of Attorney [intentionally omitted here]
CV of Mr Rico Vasquez [intentionally omitted here]
Answer to Request for Arbitration

ICC Case 28000/AC

30 September 2015

Respondent
Republic of Oceania
c/o Nicole Blue-Sea
Procurator of the Treasury, Ministry of Finance
Neatstreet 10
1200 Valhalla
Oceania
T +15 1 240056 F +15 1 668712 E-mail: n.blue@mof.gov.oc

Legal Representative of Respondent
Nikola Vujtović
Vujtović & Todorov
Volna Avenue 13
1220 Valhalla
Oceania
T +15 3 231123 F +15 2 101523 E-mail: nikola.vujtovic@vt.oc

Claimant
Peter Explosive
Unicorn Valley 36
01-200 Fairyland
Eastasia
T +28 4 386 6600 E-mail: explosive.pete@rocketbombs.co.ea

Legal Representative of Claimant
Marcella Mine
Mine & Associates
Pegasus Street 12
01-202 Fairyland
Eastasia
T +28 6 450 1750 F +28 1 255 600 E-mail: mine@mine_associates.ea

This Answer to the Request for Arbitration is submitted pursuant to Article 5 of the ICC Arbitration Rules.
The Respondent hereby declares that it rejects all claims and allegations made by the Claimant in the Request for Arbitration as false and unsubstantiated. Furthermore, the Respondent denies that the Arbitral Tribunal has jurisdiction over this case.

**Circumstances of the dispute**

In its Request for Arbitration, the Claimant makes several inappropriate and unsubstantiated factual allegations in order to pursue its claims. Respondent submits that the Arbitral Tribunal lacks jurisdiction to hear this case, and therefore, the Respondent raises a number of jurisdictional objections.

Firstly, the Claimant may not rely on the Agreement between the Republic of Oceania and the Republic of Euroasia for the Promotion and Reciprocal Protection of Investments dated 1 January 1995, which entered into force on 23 October 1995 (the “Euroasia BIT”). The Claimant is a national of Eastasia. Euroasia’s annexation of Fairyland was unlawful, and therefore no rules on succession of states in treaty law are applicable in this case.

Secondly, if the Tribunal decides that the Euroasia BIT is applicable, the Respondent notes that, pursuant to this Euroasia BIT, the Claimant should abide by certain obligatory pre-arbitral steps. Namely, Article 9 of the aforementioned BIT requires a dispute to be resolved amicably and, if this is not possible, to be submitted to competent domestic courts of the host state (in this case, to the Oceanian courts). However, Peter Explosive has failed to do so and instead submitted the dispute directly to international arbitration.

Thirdly, Claimant may not invoke Article 3 of the Euroasia BIT to access and rely upon the dispute resolution provisions of the Eastasia BIT.

Fourthly, even if the Tribunal accepts that the MFN clause of the Euroasia BIT may be invoked to access the dispute resolution provision of the Eastasia BIT, the Eastasia BIT contains a “clean hands” clause (Article 1.1), whereby investments must be made “in accordance with the laws and regulations” of the host state. The Claimant’s investment may not enjoy protection, since the Claimant breached Oceanian domestic laws. The circumstances in which Peter Explosive secured an environmental license, especially his private meeting with the President of the
National Environment Authority of Oceania, cast a serious shadow over the legality of the investment. The ‘clean hands’ doctrine must be applicable to Claimant’s investment even if the Arbitral Tribunal finds that it has jurisdiction by virtue of the Euroasia BIT’s MFN clause. Therefore, Claimant’s investment in Rocket Bombs Ltd should not be granted any protection.

Notwithstanding all the above, Respondent submits that Peter Explosive’s investment was not expropriated. The Respondent introduced sanctions against investors from Euroasia as part of an international response to condemn an illegal act of annexation of Fairyland by Euroasia. Oceania was obliged under the principles of public international law not to recognize the effects of unlawful actions, and to take active steps to wipe out the consequences of such unlawful behaviour. The Respondent exercised its sovereign powers with the view of maintaining international peace and security.

Finally, the Claimant contributed to the damage suffered by his investment by virtue of his own conduct. The Claimant’s behaviour, in particular, its continued supply of weapons to Euroasia even after Peter Explosive should have known of Euroasia’s intention to incorporate Fairyland into its territory by direct military intervention if necessary, led to the imposition of sanctions upon Rocket Bombs Ltd, which resulted in the deterioration in the company’s financial situation.

**Request for Relief**

The Respondent requests the Arbitral Tribunal find that:

1. the Arbitral Tribunal has no jurisdiction over the case at hand under the Agreement between the Republic of Oceania and the Republic of Euroasia for the Promotion and Reciprocal Protection of Investments dated 1 January 1995;

2. even if the Arbitral Tribunal finds that it has jurisdiction over the case, the Claimant’s investment is not protected under the BIT, since the Claimant breached the ‘clean hands’ doctrine in connection with its investment;

3. the Claimant’s investment was not expropriated by the Respondent; and

4. the Claimant contributed to the damage suffered by its investment.
**Procedural issues**

The Respondent submits that pursuant to the Euroasia BIT, a three-person arbitral tribunal should be established in the case at hand. The Respondent accordingly nominates Mr. Rico Vasquez as arbitrator in the case.

**Mr. Rico Vasquez**  
Vasquez Legal Practice  
Paradise Square 15  
Valhalla  
Oceania

Respondent agrees that the proceedings should be conducted in English.

For and on behalf of the Republic of Oceania  

Nikola Vujtović  
Vujtović&Todorov
7 October 2015

28000/AC
Peter Explosive vs Republic of Oceania

Ms Marcella Mine
Mine & Associates
Pegasus Street 12
01-202 Fairyland
Euroasia

By Email: mine@mine.associates.ea

Ms Nikola Vujtović
Vujtović&Todorov
Volna Avenue 13
1220 Valhalla
Oceania

By Email: nikola.vujtovic@vt.oc

Dear Mesdames,

The Secretariat encloses a copy of the Statement of Acceptance, Availability, Impartiality and Independence (“Statement”), as well as the curriculum vitae of:

- Ms Johanna Valls nominated by Claimant as co-arbitrator, and

- Mr. Rico Vasquez nominated by Respondent as co-arbitrator.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

encl. Statements and Curriculum Vitae of Ms Johanna Valls and of Mr. Rico Vasquez
Acceptance

X I agree to serve as arbitrator under and in accordance with the 2012 ICC Rules of Arbitration ("Rules"). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules).

Non-Acceptance

I decline to serve as arbitrator in this case. (If you tick here, simply date and sign the form without completing any other sections.)

2. AVAILABILITY

X I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 30 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Principal professional activity: Lawyer (e.g. lawyer, arbitrator, academic):

Number of currently pending cases in which I am involved (i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):

<table>
<thead>
<tr>
<th></th>
<th>As tribunal chair / sole arbitrator</th>
<th>As co-arbitrator</th>
<th>As counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrations</td>
<td>0</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Court litigation</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td></td>
</tr>
</tbody>
</table>

Furthermore, I am aware of commitments which might preclude me from devoting time to this arbitration during the following periods (please provide details regarding such periods below or on a separate sheet):

Hearing dates scheduled: 1-5 November 2015, 3, 8 and 12 December 2015, 5-10 January 2016 and 12-14 September 2016
3. INDEPENDENCE and IMPARTIALITY (Tick one box and provide details below and/or, if necessary, on a separate sheet)

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying \textit{inter alia} relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

- **Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

- **Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

**Date**: 6 October 2015  
**Signature**: [Johanna Valls]

\textbf{Disclaimer}: The information requested in this form will be considered by the ICC for its Dispute Resolution Services, and will be stored in case management database systems. Pursuant to the French Law on "Informatique et Libertés" of 6 January 1978, particularly Articles 32 and 40, you may access this information and ask for rectification by writing to the Court’s Secretariat.
Acceptance

I agree to serve as arbitrator under and in accordance with the 2012 ICC Rules of Arbitration (“Rules”). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules).

Non-Acceptance

I decline to serve as arbitrator in this case. (If you tick here, simply date and sign the form without completing any other sections.)

2. AVAILABILITY

the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 30 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Principal professional activity: Lawyer (e.g. lawyer, arbitrator, academic):

Number of currently pending cases in which I am involved (i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):

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<td>Court litigation</td>
<td>Not applicable</td>
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</tr>
</tbody>
</table>

Furthermore, I am aware of commitments which might preclude me from devoting time to this arbitration during the following periods (please provide details regarding such periods below or on a separate sheet):

Hearing dates scheduled: 15-20 December 2015, 13 April, 9-16 May, 21-25 July and 20 August 2016
3. INDEPENDENCE and IMPARTIALITY (Tick one box and provide details below and/or, if necessary, on a separate sheet)

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 6 October 2015

Signature: [Rico Vasquez]

Disclaimer: The information requested in this form will be considered by the ICC for its Dispute Resolution Services, and will be stored in case management database systems. Pursuant to the French Law on “Informatique et Libertés” of 6 January 1978, particularly Articles 32 and 40, you may access this information and ask for rectification by writing to the Court’s Secretariat.
18 September 2014

28000/AC
Peter Explosive vs Republic of Oceania

Prof Louise de Funès
123 Boulevard de la Croisette
Dunedin, Caledonia

By FedEx & email lfunes@dunedin.ac.cd

Ms Johanna Valls
Valls Industries
Majoritenhall 23/20
Gotham
Eastasia

By FedEx & email jv@valls.co.ea

Mr. Rico Vasquez
Vasquez Legal Practice
Paradise Square 15
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By FedEx & email rico@vasquez.legal.oc

Ms Marcella Mine
Mine & Associates
Pegasus Street 12
01-202 Fairyland
Euroasia

By Email: mine@mine_associates.ea

Nikola Vujtović
Vujtović&Todorov
Volna Avenue 13
1220 Valhalla
Oceania

By Email: nikola.vujtovic@vt.oc

Dear Mesdames and Sir,

The Secretariat draws your attention to the following:

I – DECISIONS BY THE COURT

On 18 September 2014, the Court:

- confirmed Ms Johanna Valls as co-arbitrator upon Claimant's nomination (Article 13(1));
- confirmed Mr. Rico Vasquez as co-arbitrator upon Respondent’s nomination (Article 13(1));

- appointed Prof Louise de Funès as president of the arbitral tribunal (Article 13(4) (a)).

Enclosed for your information, are a copy of the curriculum vitae, of Prof de Funès and her Statement of Acceptance, Availability, Impartiality and Independence.

- fixed the advance on costs at US $764,366, subject to later readjustments (Article 36(2)/36(4)).

The advance on costs is intended to cover the arbitral tribunal’s fees and expenses, as well as the ICC administrative expenses (Article 36 and Article 1(4) of Appendix III to the Rules).

The Court fixed an advance on costs based on an amount in dispute which is now estimated at US $120,000,000, and three Arbitrators. Depending on the evolution of the arbitration, the Court may readjust the advance on costs.

The parties are invited to pay the advance on costs as follows (Article 36), within 30 days from the day following receipt of this correspondence:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>US $149,183 (US $382,183 less US $233,000 already paid)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respondent</td>
<td>US $382,183</td>
</tr>
</tbody>
</table>

III – TRANSMISSION OF THE FILE TO THE ARBITRAL TRIBUNAL

As the provisional advance has been fully paid, we are transmitting the file to the arbitral tribunal today (Article 16).

1) Efficient Conduct of the Arbitration

The arbitral tribunal and the parties must make every effort to conduct the arbitration in an expeditious and cost effective manner, having regard to the complexity and value of the dispute (Article 22(1)). We draw your attention to Appendix IV of the Rules, which contains suggested case management techniques.

We enclose a Note to the Arbitral Tribunal on the Conduct of Arbitration which sets forth the time limits under the Rules that you must observe and relevant information concerning the conduct of the proceedings.

2) Jurisdiction

The Court, being prima facie satisfied that an arbitration agreement under the Rules may exist, has decided that this arbitration will proceed (Article 6(4)). You must decide on your own jurisdiction (Article 6(5)).

3) Communications

As from now, the parties should correspond directly with the arbitral tribunal and send copies of their correspondence to the other parties and to us. Please provide us with copies of all your correspondence with the parties in electronic form only.

Yours faithfully,
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - List of Documents and documents mentioned therein
- Case Information
- Financial Table
- Payment Request
- Note to the Arbitral Tribunal on the Conduct of Arbitration
- Note on Administrative Issues
- ICC Award Checklist
- *Curriculum vitae* of fellow arbitrators

*(The attachments are not provided for the purposes of the FDI Moot problem)*

*(The Notes are available on the ICC electronic Dispute Resolution Library at: [http://www.iccdrl.com/practicenotes.aspx.]*
2012 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Family Name(s): de Funès  
Given Name(s): Louise

Please tick all relevant boxes.

1. ACCEPTANCE

Acceptance

X I agree to serve as arbitrator under and in accordance with the 2012 ICC Rules of Arbitration ("Rules"). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules).

Non-Acceptance

I decline to serve as arbitrator in this case. (If you tick here, simply date and sign the form without completing any other sections.)

2. AVAILABILITY

X I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 30 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Principal professional activity: Lawyer (e.g. lawyer, arbitrator, academic):

Number of currently pending cases in which I am involved (i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):

<table>
<thead>
<tr>
<th></th>
<th>As tribunal chair / sole arbitrator</th>
<th>As co-arbitrator</th>
<th>As counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrations</td>
<td>2</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Court litigation</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td></td>
</tr>
</tbody>
</table>

Furthermore, I am aware of commitments which might preclude me from devoting time to this arbitration during the following periods (please provide details regarding such periods below or on a separate sheet):

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 13 October 2015

Signature: [Prof de Funès]

Disclaimer: The information requested in this form will be considered by the ICC for its Dispute Resolution Services, and will be stored in case management database systems. Pursuant to the French Law on “Informatique et Libertés” of 6 January 1978, particularly Articles 32 and 40, you may access this information and ask for rectification by writing to the Court’s Secretariat.
Prof Louise de Funès  
123 Boulevard de la Croisette  
Dunedin,  
Caledonia  

To: Ms Marcella Mine  
Mine & Associates  
Pegasus Street 12  
01-202 Fairyland  
Euroasia  

Ms Nikola Vujtović  
Vujtović&Todorov  
Volna Avenue 13  
1220 Valhalla  
Oceania  

Braluft, 10 February 2016  

ICC Case: 28000/AC - Peter Explosive vs/ Republic of Oceania  

Dear Colleagues,  

Please find enclosed Procedural Order No 1 in the above referenced arbitration proceedings.  

Both Parties are requested to comply with the orders made, and the Arbitral Tribunal reserves the right to draw negative inferences from any non-compliance with Procedural Order No 1.  

The signed Terms of Reference have been forwarded to the ICC.  

Yours sincerely,  

(signed)  
Louise de Funès  
President of the Arbitral Tribunal  

Encl.: Procedural Order No 1
The Claimant is Peter Explosive and the Respondent is the Republic of Oceania (together “the Parties”). After consultation with the Parties inter alia by a conference call held on 10 January 2016, in accordance with Article 23 of the ICC Arbitration Rules, the Tribunal adopts the following Terms of Reference governing the Proceedings:

1. In view of the circumstances of this arbitration, and having given the parties a reasonable opportunity to make written comments, the Court has determined, pursuant to Article 18 of the ICC Arbitration Rules, that the seat of the Arbitration shall be Braluft, Silverige.

2. The proceedings shall be governed by the ICC Arbitration Rules 2012 and the Official Rules of the Foreign Direct Investment International Arbitration Moot, as agreed between the Parties. In case there is an inconsistency between the two, the latter shall prevail to the extent of the inconsistency.

3. The language of the Proceedings shall be English.

4. The Tribunal and the Parties have agreed that although the issues that Claimant and Respondent have raised typically might be addressed in two or more stages (jurisdiction/admissibility, merits, and remedies) of these proceedings, they shall be addressed in a “main stage” followed by a “costs stage”. The Main Stage will address:

   (1) Whether the Tribunal may exercise its jurisdiction under the Agreement between the Republic of Oceania and the Republic of Euroasia for the Promotion and Reciprocal
Protection of Investments dated 1 January 1995 (“the Euroasia BIT”) with respect to whether:

(a) Claimant is an investor pursuant to Article 1.2 of the Euroasia BIT; and

(b) Claimant was required to comply with the pre-arbitral steps as provided in the Article 9 of the Euroasia BIT prior to bringing his claims before the Tribunal; or

(c) Claimant may invoke Article 8 of the Agreement for the Promotion and Reciprocal Protection of Investments between the Republic of Oceania and the Republic of Eastasia dated 1 January 1992 (“the Eastasia BIT”) pursuant to Article 3 of the Euroasia BIT;

(2) If the Tribunal finds that it has jurisdiction, whether:

(a) Claimant made a protected investment, especially in the light of the “clean hands” doctrine with reference to Article 1.1 of the Eastasia BIT;

(b) Claimant’s investment was expropriated by the Respondent; and

(c) Claimant contributed to the damage suffered by his investment.

During the Main Stage the Tribunal will hold a hearing on the issues of Jurisdiction, Liability, and Remedies, and subsequently render an Award.

The subsequent Costs Stage will address the costs of the proceedings and their allocation among the parties. On its conclusion the Tribunal will then issue a Separate Award on Costs.

5. As agreed between the Parties and the Tribunal, the evidence that may be relied on in this arbitration will be limited to (i) facts and assertions contained in the Request for Arbitration and the Answer to it, the “Statement of Uncontested Facts” appended to this Order (with no admission being made by either of the Parties as to correctness of the inferences from facts asserted by the other Party in its respective submission); (ii) publicly available information; and (iii) responses to the questions presented by the Parties’ counsel in accordance with the procedure described below:

- By 1 June 2016 factual questions that require clarification shall be posted in accordance with the procedure described at http://fdimoot.org/teams/clareqs.php;

- The Parties shall then confer and seek to agree as soon as practicable on the responses to those questions. The Parties’ agreed responses shall be appended to the case file at http://fdimoot.org/problem.pdf;

- By 8 August 2016 another set of factual questions may be posted in accordance with the same procedure referenced above. The responses to those questions shall be appended as described above.
6. The provisional timetable for the Proceedings shall be the following:

Main Stage of the Proceedings:

- Only one round of written submissions shall be made by the Parties. The Statement of Case is to be submitted to the Tribunal no later than 19 September 2016; the Statement of Defence is to be submitted to the Tribunal no later than 26 September 2016. The Tribunal may direct the Parties to submit Skeleton Briefs if it finds them necessary for the proper consideration of the issues in dispute.

- Considering that it is appropriate to hold hearings in the present case, both Parties are invited to attend the hearings scheduled for 4 to 6 November 2016 at University of Buenos Aires, Argentina.

Costs Stage of the Proceedings: The Tribunal will schedule the costs stage of the proceedings and set the provisional timetable for its conduct in consultation with the Parties after the Tribunal issues the Award on Jurisdiction, Liability and Remedies.

7. In accordance with Articles 24 and 26 of the ICC Arbitration Rules, the Tribunal has set aside the following dates for hearings and subsequent deliberations in respect of the issues to be canvassed at the Main Stage of the Proceedings: [dates intentionally omitted].

10 February 2015

President Prof. Louise de Funès

/signature/

Ms. Johanna Valls

/signature/

Mr. Rico Vasquez

/signature/
Statement of Uncontested Facts


2 In February 1998, Peter Explosive, a resident of Fairyland, who at the time was undisputedly a national of Eastasia, acquired shares in a decrepit company called Rocket Bombs Ltd. ("Rocket Bombs") located in Oceania and became its 100% shareholder. Then, in March 1998, he also became a president and sole member of the board of directors of the company. Rocket Bombs operated in the arms industry and specialised in arms production. Before Peter Explosive acquired his shares, Rocket Bombs had lost its environmental license containing an approval for arms production. The downtime in the arms production was actually the reason behind the deteriorating situation of the company.

3 Rocket Bomb’s loss of its license in November 1997 and the suspension of arms production also took its toll on the local community. The factories of Rocket Bombs were located in the suburb of Valhalla and a large number of its residents were employed in those factories. The deteriorating situation of the company led to the mass redundancies and to the decline of the town itself.

4 In order to resume arms production, Rocket Bombs was obliged by the environmental law of Oceania to obtain a license from the National Environment Authority of Oceania containing an environmental approval for the commencement of arms production. To obtain such a decision, Rocket Bombs was obliged to adjust its production line to the environmental requirements contained in the Environment Act 1996. Peter Explosive
lacked the financial resources to finance the adjustment of Rocket Bombs’ production line, as the required environmental-friendly technology was very expensive.

5 To gain the necessary financial resources, Peter Explosive needed Rocket Bombs to resume production as soon as possible and to generate income necessary to cover the initial expenses. He decided to turn to the Ministry of Environment of Oceania with a request for a subsidy for the purchase of the environmental-friendly technology. The Environment Act 1996 provided for such a possibility; yet, the threshold was very high. In fact, since the introduction of the Environment Act 1996, not a single entity had succeeded in receiving such a subsidy.

6 Even with the required financial resources, the adjustment process of the production line and the administrative procedure to obtain an environmental decision from the National Environment Authority of Oceania is very long and time consuming. Thus, Peter Explosive decided to try to expedite the decision of the Ministry of Environment regarding the subsidy and to secure the resumption of arms production in the factories of Rocket Bombs. In July 1998, he managed to have a private meeting with the President of the National Environment Authority of Oceania. On 23 July 1998, the National Environment Authority issued an environmental license approving the commencement of arms production by Rocket Bombs.

7 On 3 August 1998, the Ministry of Environment of Oceania denied the request of Rocket Bombs for the subsidy. Such a negative decision meant that Rocket Bombs lacked the resources to resume the arms production. Peter Explosive decided to act in order to secure the necessary financial resources elsewhere.

8 In September 1998, Peter Explosive approached his long-time friend, John Defenceless, who was now Minister of National Defence in the Republic of Euroasia (“Euroasia”).
Peter Explosive and John Defenceless both had studied at the East Dot University in Oceania and since that time they remained close friends.

9 John Defenceless revealed to Peter Explosive that the contract between the Ministry of National Defence acting on behalf of Euroasia and Super Missiles Ltd. (“Super Missiles”) for the arms production would expire on 31 December 1998. Euroasia was still in the process of modernising the equipment for its land forces. Thus, John Defenceless promised that a new contract for the arms production will be concluded with Rocket Bombs. On 23 December 1998, Peter Explosive met with representatives of the Ministry of the National Defence, including the Minister himself, John Defenceless. On that day, they concluded a contract for the arms production, effective as of 1 January 1999. The contract was concluded for a period of fifteen years with a possibility for renewal.

10 Under the contract, Rocket Bombs was obliged to deliver the ordered weapons in five instalments. An instalment was to be delivered every three years. Most importantly, the contract of 1 January 1999 guaranteed to Rocket Bombs advances payable on 1 February 1999. The rest of the payment was to be transferred to Rocket Bombs in tranches, after each instalment of the ordered weapons had been delivered and accepted.

11 As soon as Rocket Bombs received the advance, its arms production was commenced. Peter Explosive rehired the previous employees of the factories from Valhalla and concluded a number of contracts with Oceanian companies for the delivery of the materials necessary for the arms production.

12 Over the years, Rocket Bombs became a very prosperous company and one of the largest arms producers in Oceania. Peter Explosive managed to conclude, on behalf of Rocket Bombs, a great number of contracts for arms production and opened several new factories. The prosperity of the company also benefited the local community and
Valhalla itself. More people from Valhalla than ever before were working for Rocket Bombs.

13 As the business became increasingly profitable, Peter Explosive started to modernise the production line and to adjust it to the requirements set forth in the Environment Act 1996. The production line fully complied with the legal requirements in Oceania by 1 January 2014.

14 The vast majority of people living in Fairyland are of Euroasian origin as historically it was a part of the territory of Euroasia. They do not identify with Eastasia and preferred to be re-united with Euroasia. The family of Peter Explosive also has its roots in Euroasia. In August 2013, the authorities of Fairyland decided to hold a referendum on the secession of Fairyland from Eastasia and its reunification with Euroasia. On 1 November 2013, the referendum was held and the majority decided in favour of secession. The national government of Eastasia declared that the referendum was unlawful and had no effect on the shape of the Eastasian territory. In this situation, the authorities of Fairyland wrote an official letter to the Minister of Foreign Affairs of Euroasia, asking for an intervention. After a long debate, the government of Euroasia decided to intervene and annex Fairyland to Euroasia. On 1 March 2014, the armed forces of Euroasia entered the territory of Fairyland. The annexation was bloodless and rather peaceful as Eastasia did not send any armed forces to protect its territory. On 23 March 2014, Euroasia officially declared Fairyland a part of the Euroasian territory. A few days later, on 28 March 2014, Eastasia declared the annexation to be illegal and in the light of the public international law, on 1 April 2014, it sent a notification to Euroasia, breaking off diplomatic relations between the two countries.

15 Before the Euroasian armed forces entered Fairyland, in February 2014, Peter Explosive on behalf of Rocket Bombs started negotiations with John Defenceless, still the Minister of the National Defence, for the conclusion a new contract for arms production, aiming at completing the modernisation process of the equipment for the Euroasian armed forces.
On 28 February 2014, they concluded a contract, effective of 1 April 2014, for a period of another six years.

16 The annexation of Fairyland by Euroasia divided the international community into two camps. One camp was outraged and declared that the annexation was unlawful under public international law. The other camp recognised the annexation. Oceania belonged to the first camp and on 1 May 2014 the President of the Republic of Oceania issued an Executive Order on Blocking Property of Persons Contributing to the Situation in the Republic of Eastasia. The Executive Order introduced a system of sanctions. The sanctions were introduced against the persons engaged in certain sectors of the Euroasian economy, including those producing arms for Euroasia. The sanctions also included a ban on business operations with such persons, suspending existing contracts and making future contracts with them illegal.

17 The sanctions were applied to Rocket Bombs, as well as to Peter Explosive. In fact, in the arms production sector, it was the only company designated by the sanctions. It resulted in the deterioration of Rocket Bombs’ business and in a rapid decrease in the value of its shares. Peter Explosive was unable to sell the shares in the company to a third person. Simultaneously, all the Oceanian companies that contracted with Rocket Bombs issued formal notices, declaring that pursuant to the Executive Order they were no longer bound by the provisions of the respective contracts and that they had no intention to perform them. Peter Explosive could neither conduct the business, nor sell it.

18 Throughout 2013, the General Prosecutor’s Office of Oceania was conducting an investigation regarding the corruption in the National Environment Authority of Oceania. The investigation was caused by an anonymous denunciation alleging that the officials of the National Environment Authority suggested to the author of the denunciation that it would be possible to expedite the issuance of an environmental license if they received a pecuniary gratification. On 21 November 2013, the investigation resulted in a formal initiation of criminal proceedings against those officials, including the President of the
National Environment Authority of Oceania. The latter seemed to be the main target of
the General Prosecutor’s Office.

19 The President of the National Environment Authority of Oceania has been in the office
since the introduction of the Environment Act 1996. On 1 February 2015, the President
of the National Environment Authority, along with the other officials, was convicted of
accepting bribes. The scandal heavily engaged the media and the public of Oceania.
Such pressure resulted in the commencement of numerous investigations by the General
Prosecutor’s Office. The interest of those investigations focused on people who bribed
the NEA President and other officials. On 5 May 2015, Peter Explosive was informed
that he was under investigation with regard to the environmental license obtained on 23
July 1998 for Rocket Bombs. On 23 June 2015, the General Prosecutor’s Office
officially initiated criminal proceedings against Peter Explosive.
17 February 2016

28000/AC
Peter Explosive vs/ Republic of Oceania

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Oceania

By Email: nikola.vujtovic@vt.oc

Dear Mesdames and Sir,

The Secretariat transmitted the Terms of Reference signed by the parties and the arbitral tribunal on 10 February 2016 to the Court at its session of 17 February 2016 (Article 23(2)).

Case Management Conference
The case management conference took place on 10 February 2016 (Article 24(1)).
Procedural Timetable

The Secretariat transmitted the procedural timetable to the International Court of Arbitration of the International Chamber of Commerce at the same session (Article 24(2)). Any subsequent modifications of the procedural timetable must be communicated to the Court and the parties.

Time Limit for Rendering the Final Award

The Court fixed 31 January 2017 as time limit for the final award based upon the procedural timetable (Article 30(1)). The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so (Article 30(2)).

The Court expects arbitral tribunals to submit draft awards within three months after the last hearing concerning matters to be decided in such award or the filing of the last authorised submission concerning such matters, whichever is later.

Yours faithfully,

Counsel

Secretariat of the ICC International Court of Arbitration
EXHIBIT C1

Agreement between the Republic of Oceania and the Republic of Euroasia for the Promotion and Reciprocal Protection of Investments

1 January 1995

Preamble

The Republic of Oceania and the Republic of Euroasia (hereinafter referred to as the “Contracting Parties”),

Desiring to promote greater economic cooperation with respect to investment by nationals and enterprises of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement on the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties,

Agreeing that a stable framework for investment will maximise effective utilization of economic resources and improve living standards,

Recognising the importance of providing effective means of asserting claims and enforcing rights with respect to investments under national law as well as through international arbitration;

Desiring to achieve these objectives in a manner consistent with the protection of health, safety and the environment,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term “investment” comprises every kind of asset directly or indirectly invested by an investor of one Contracting Party in the territory of the other Contracting Party and shall include, in particular:

   (a) movable and immovable property as well as any other property rights, such as mortgages, liens or pledges;

   (b) shares of companies or any other form of participation in a company;

   (c) claims to money or to any performance under contract having a financial value associated with an investment;

   (d) intellectual property rights, such as trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

   (e) any right conferred by laws or under contract and any licenses and permits pursuant to laws, including concession to search for, extract, cultivate or exploit natural resources;


2016 FDI Moot Problem / 40
any alteration of the form in which assets are invested shall not affect their classification as investment.

2. The term “investor” shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party, and for the purpose of this definition:

(a) the term “natural person” shall mean any natural person having the nationality of either Contracting Party in accordance with its laws;

(b) the term “legal person” shall mean, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having the seat in the territory of that Contracting Party.

3. The term “territory” shall mean:

(a) in respect of the Republic of Oceania, the territory of the Republic of Oceania over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;

(b) in respect of the Republic of Euroasia, the territory of the Republic of Euroasia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.

4. The term “returns” means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees.

**Article 2 Admission and protection of investments**

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

2. Each Contracting Party shall in its territory accord investments by investors of the other Contracting Party fair and equitable treatment as well as full protection and security.

3. Neither Contracting Party shall in its territory impair by arbitrary or discriminatory measures the activity of investors of the other Contracting Party with regard to investments, such as in particular management, maintenance, use, enjoyment or disposal of such investments.

4. Returns from an investment, as well as returns from reinvested returns, shall enjoy the same protection as the original investment.

**Article 3 National Treatment and Most-Favoured Nation Provisions**

1. Each Contracting Party shall, within its own territory, accord to investments made by investors of the other Contracting Party, to the income and activities related to such investments and to such other investment matters regulated by this Agreement, a treatment that is no less favourable than that accorded to its own investors or investors from third-party countries.

2. The provisions set forth in paragraph 1 of this Article shall not apply to advantages and privileges accorded by either Contracting Party to any third country by virtue of that Party’s binding obligations that derive from its membership in a customs or economic union, common market, or free trade area, or as a result of regional or subregional
agreements, multilateral international agreements or double taxation agreements, or any other tax-related arrangements or agreements to facilitate cross border trade.

**Article 4 Expropriation**

1. Investments by investors of either Contracting Party may not directly or indirectly be expropriated, nationalized or subject to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation must be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or other measure became publicly known.

2. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that State accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payment must be freely transferable.

**Article 5 Compensation for Losses**

Where investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events attributable to authorities in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third state, whichever is more favourable. Any payment made under this article shall be, without delay, freely transferable in convertible currency.

**Article 6 Free Transfer**

1. Each Contracting Party guarantees to investors of the other Contracting Party the free transfer of payments related to investments and returns. The transfer shall be made in a freely convertible currency, without any restrictions and undue delay. Such transfers shall include in particular:

(a) the principal and additional amounts to maintain or increase the investment;

(b) the returns;

(c) the repayment of loans;

(d) the royalties and other fees resulting from license rights and from commercial, administrative or technical assistance;

(e) the proceeds from liquidation or the sale of the whole or any part of the investment;

(f) wages and other kind of remuneration accruing to national of the other Contracting Party who were permitted to work in connection with an investment in the territory of the other Contracting Party;
(g) the compensation provided for in Article 4.

2. For the purpose of this Agreement, exchange rate is the prevailing exchange rate for current transaction applicable at the date of the transfer, unless otherwise agreed by the parties to the transaction.

3. Transfers shall be considered to have been made without any “undue delay” in the sense of paragraph 1 of this Article when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed three months.

**Article 7 Subrogation**

1. If a Contracting Party or its authorised agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its authorised agency, as well as that he former Contracting Party or its authorised agency is entitled by virtue of subrogation to exercise the rights and enforcement the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

**Article 8 Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled amicably by the Governments of the two Contracting Parties.

2. If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to arbitration in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted for each case in the following way. Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the arbitral tribunal. Within three months from the appointment of the two members by the Contracting Parties, these two appointed members shall appoint a national of a third state as a chairman of the arbitral tribunal.

4. If the periods specified in paragraph 3 have not been observed, either Contracting Party, in the absence pf any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President also is a national of either Contracting Party or he is also otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Its decisions shall be final and binding. Each Contracting Party shall bear the costs of its own member of the
arbitral tribunal and of its representatives in the arbitration proceedings; the costs of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

6. In all other aspects, the arbitral tribunal shall determine its own procedure.

Article 9 Settlement of Disputes between Investors and Contracting Parties

1. Any dispute regarding an investment between an investor of one of the Contracting Parties and the other Party, arising out of or relating to this Agreement, shall, to the extent possible, be settled in an amicable consultations between the parties to the dispute.

2. If the dispute cannot be settled amicably, it may be submitted to the competent judicial or administrative courts of the Contracting Party in whose territory the investment is made.

3. Where, after twenty four months from the date of the notice on the commencement of proceedings before the courts mentioned in paragraph 2 above, the dispute between an investor and one of the Contracting Parties has not been resolved, it may be referred to international arbitration.

4. From the time arbitration proceedings are commenced, each party to the dispute shall take any such measures as may be necessary to dismiss any pending court proceedings.

5. Where the dispute is submitted to international arbitration, the investor may choose to refer the dispute either to:

   a) The International Centre for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965, provided that each Party to this Agreement is a signatory State to such Convention. Where such condition is not met, each Contracting Party hereby consents to submit the dispute to arbitration in accordance with the ICSID Additional Facility Rules regarding conciliation and arbitration, or

   b) The International Chamber of Commerce. The arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce and the dispute shall be settled by three arbitrators appointed in accordance with the said Rules, or

   c) An ad hoc arbitration tribunal established for each particular case. The arbitration shall be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted by the United Nations General Assembly on 15 December 1976. The panel shall consist of three arbitrators.

7. The arbitral tribunal shall decide the dispute in accordance with the laws of the Contracting Party involved in the dispute – including its rules on conflict of laws, the provisions of this Agreement, the terms of any possible specific agreement concluded in relation to the investment as well as with the applicable principles of international law.

8. The arbitral award shall be final and binding on the parties to the dispute. Each Party undertakes to comply with any such award in accordance with its domestic laws and the relevant international conventions in force for both Contracting Parties.
9. The Contracting Parties shall refrain from pursuing, through diplomatic channels, any matter related to any pending court proceedings or the arbitration until the relevant proceedings have been concluded, unless either party to the dispute has failed to comply with the arbitral award or court decision, in accordance with the terms of compliance set forth in such award or decision.

**Article 10 Essential Security Interest**

Nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfil its obligations with respect to the maintenance of international peace or security.

**Article 11 Scope of Application**

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party and also to the investments existing in the territory of the other Contracting Party on the date this Agreement entered into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

**Article 12 Relations between the Contracting Parties**

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

**Article 13 Entry into Force, Duration, Termination**

1. This Agreement shall enter into force on the date of the last written notification through diplomatic channels of the fulfilment by the Contracting Parties of all necessary internal procedures for bringing this Agreement into force.

2. This Agreement shall remain in force for a period of twenty years. It shall continue to be in force thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party within the period of twelve months before its expiration. After the expiry of the period of twenty years, this Agreement may be denounced at any time by either Contracting Party upon the twelve months’ notice.

3. In respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of twenty years from the date of the termination of this Agreement.

IN WITNESS WHEREOF, the undersigned duly authorised have signed this Agreement.

DONE in duplicate at Oceania this day of 1 January 1995, in Oceanian, Eurasian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Oceania,  
[intentionally omitted]  
Minister of Foreign Affairs

For the Republic of Euroasia,  
[intentionally omitted]  
Minister of Foreign Affairs
Agreement between the Republic of Oceania and the Republic of Eastasia for the Promotion and Reciprocal Protection of Investments

1 January 1992

The Republic of Oceania and the Republic of Eastasia (hereinafter referred to as the “Contracting Parties”),

Desiring to develop economic co-operation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favourable and stable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments requires stimulating business initiatives with investors from both Contracting Parties,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term “investment” comprises every kind of asset directly or indirectly invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular:

   (a) movable and immovable property as well as any other property rights, such as mortgages, liens or pledges;

   (b) shares of companies or any other form of participation in a company;

   (c) claims to money or to any performance under contract having a financial value associated with an investment;

   (d) intellectual property rights, such as trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

   (e) any right conferred by laws or under contract and any licenses and permits pursuant to laws, including concession to search for, extract, cultivate or exploit natural resources;

any alteration of the form in which assets are invested shall not affect their classification as investment.

2. The term “investor” shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party, and for the purpose of this definition:

   (a) the term “natural person” shall mean any natural person having the nationality of either Contracting Party in accordance with its laws;
(b) the term “legal person” shall mean, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having the seat in the territory of that Contracting Party.

3. The term “territory” shall mean:
   (a) in respect of the Republic of Oceania, the territory of the Republic of Oceania over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;
   (b) in respect of the Republic of Euroasia, the territory of the Republic of Euroasia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.

4. The term “returns” means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees.

Article 2 Admission and protection of investments

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

2. Each Contracting Party shall in its territory accord investments by investors of the other Contracting Party fair and equitable treatment as well as full protection and security.

3. Neither Contracting Party shall in its territory impair by arbitrary or discriminatory measures the activity of investors of the other Contracting Party with regard to investments, such as in particular management, maintenance, use, enjoyment or disposal of such investments.

4. Returns from an investment, as well as returns from reinvested returns, shall enjoy the same protection as the original investment.

Article 3 Expropriation

1. Investments by investors of either Contracting Party may not directly or indirectly be expropriated, nationalized or subject to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation must be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or other measure became publicly known.

2. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that State accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payment must be freely transferable.

Article 4 Compensation for Losses
Where investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events attributable to authorities in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third state, whichever is more favourable. Any payment made under this article shall be, without delay, freely transferable in convertible currency.

**Article 5 Free Transfer**

1. Each Contracting Party guarantees to investors of the other Contracting Party the free transfer of payments related to investments and returns. The transfer shall be made in a freely convertible currency, without any restrictions and undue delay. Such transfers shall include in particular:
   (a) the principal and additional amounts to maintain or increase the investment;
   (b) the returns;
   (c) the repayment of loans;
   (d) the royalties and other fees resulting from license rights and from commercial, administrative or technical assistance;
   (e) the proceeds from liquidation or the sale of the whole or any part of the investment;
   (f) wages and other kind of remuneration accruing to national of the other Contracting Party who were permitted to work in connection with an investment in the territory of the other Contracting Party;
   (g) the compensation provided for in Article 4.

2. For the purpose of this Agreement, exchange rate is the prevailing exchange rate for current transaction applicable at the date of the transfer, unless otherwise agreed by the parties to the transaction.

3. Transfers shall be considered to have been made without any “undue delay” in the sense of paragraph 1 of this Article when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed three months.

**Article 6 Subrogation**

1. If a Contracting Party or its authorised agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its authorised agency, as well as that the former Contracting Party or its authorised agency is entitled by virtue of subrogation to exercise the rights and enforcement the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.
Article 7 Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled amicably by the Governments of the two Contracting Parties.

2. If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to arbitration in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted for each case in the following way. Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the arbitral tribunal. Within three months from the appointment of the two members by the Contracting Parties, these two appointed members shall appoint a national of a third state as a chairman of the arbitral tribunal.

4. If the periods specified in paragraph 3 have not been observed, either Contracting Party, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President also is a national of either Contracting Party or he is also otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Its decisions shall be final and binding. Each Contracting Party shall bear the costs of its own member of the arbitral tribunal and of its representatives in the arbitration proceedings; the costs of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

6. In all other aspects, the arbitral tribunal shall determine its own procedure.

Article 8 Settlement of Disputes between Investors and Contracting Parties

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably between the parties to the dispute.

2. If the dispute cannot be settled amicably within six months, it shall, at the request of an investor of the other Contracting Party, be submitted to arbitration. The two Contracting Parties hereby declare that they unreservedly and bindingly consent to the dispute with an investor being submitted to one of the following dispute settlement mechanisms chosen by the investor:

   a) arbitration under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965, provided that both Contracting States are members of this Convention, or

   b) arbitration under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of
Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965 in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, provided that at least one Contracting Party is a member of the Convention, or

c) arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC), or

d) an individual arbitrator or an ad-hoc arbitral tribunal which is established in accordance with the rules of the United Nations Commission on International Trade (UNCITRAL) as in force at the commencement of the proceedings.

3. The award shall be binding and shall not be subject to any appeal or remedy other than those provided in the Convention or arbitral rules on which the arbitral proceedings chosen by the investor are based. The award shall be enforced by the Contracting parties as a final and binding ruling under the domestic law.

Article 9 Essential Security Interest

Nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfil its obligations with respect to the maintenance of international peace or security.

Article 10 Scope of Application

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter after this Agreement entered into force.

Article 11 Relations between the Contracting Parties

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 12 Entry into Force, Duration, Termination

1. This Agreement shall enter into force on the date of the last written notification through diplomatic channels of the fulfilment by the Contracting Parties of all necessary internal procedures for bringing this Agreement into force.

2. This Agreement shall remain in force for a period of twenty years. It shall continue to be in force thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party within the period of twelve months before its expiration. After the expiry of the period of twenty years, this Agreement may be denounced at any time by either Contracting Party upon the twelve months’ notice.

3. In respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of twenty years from the date of the termination of this Agreement.

IN WITNESS THEREOF, the undersigned duly authorised have signed this Agreement.
DONE in duplicate at Oceania this day of 1 January 1992, in Oceanian, Eastasian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Oceania, 
[intentionally omitted] 
Minister of Foreign Affairs 

For the Republic of Eastasia, 
[intentionally omitted] 
Minister of Foreign Affairs
Exhibit C2

Excerpt from

EXECUTIVE ORDER OF 1 MAY 2014 ON BLOCKING PROPERTY OF PERSONS CONTRIBUTING TO THE SITUATION IN THE REPUBLIC OF EASTASIA

By the authority vested in me as President of the Republic of Oceania, I hereby find that the actions and policies of the Government of the Republic of Eurasia, including its annexation of Fairyland and its use of force in the Republic of Eastasia, continue to undermine democratic processes and institutions in the Republic of Eastasia; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the Republic of Oceania.

Accordingly, I hereby order:

Section 1

(a) All property and interests in property that are in the Republic of Oceania that are or hereafter come within the possession or control of any person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) persons operating in such sectors of the Euroasian economy such as financial services, energy, metals and mining, engineering, and defense, in particular arms production services, and related materiel;

(ii) persons having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(iii) persons being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of Section 1 shall be understood to extend to the prohibition to engage professionally in any way with the blocked person. By the power of this Executive Order, any contract concluded with the blocked person is declared to be no longer effective and any contracting party of the blocked persons is released from its contractual obligations towards the latter. Any person who engages in the business dealings with the blocked person, even in the unrelated matter, will be automatically treated as such a blocked person.

[...]

Section 4

The prohibitions in Section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and
(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

**Section 5**

(a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Section 6. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

[…]

**Section 9**

This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law by any party against the Republic of Oceania.
Prof Louise de Funès  
123 Boulevard de la Croisette  
Dunedin,  
Caledonia

To: Ms Marcella Mine  
Mine & Associates  
Pegasus Street 12  
01-202 Fairyland  
Euroasia

Ms Nikola Vujtović  
Vujtović&Todorov  
Volna Avenue 13  
1220 Valhalla  
Oceania

Braluft, 22 June 2016

ICC Case: 28000/AC - Peter Explosive vs/ Republic of Oceania

Dear Colleagues,

Please find enclosed Procedural Order No 2 in the above referenced arbitration proceedings.

Yours sincerely,

(signed)
Louise de Funès  
President of the Arbitral Tribunal

Encl.: Procedural Order No 2
After extensive consultations with the parties following an exchange of requests for clarification concluded on 1 June 2016, the Tribunal has made the following determinations supplementing those of its Procedural Order No. 1 of 10 February 2016:

Environmental License and Subsidy

1 To obtain an environmental license approving the commencement of arms production, an arms producer in Oceania must fulfil a number of conditions under its Environment Act 1996. Essentially, an arms producer must provide the National Environment Authority evidence that its production line complies with the environmental requirements set forth in the Environment Act 1996. After the National Environment Authority is satisfied with the required documentation, it visits the arms production site to verify compliance. Arms production may not be commenced before an arms producer obtains an environmental license. A subsidy may be granted to help off-set the cost of (a) adjusting a production line to meet the requirements of the Environment Act 1996 or (b) enhancing a production line by reducing environmental impacts in pursuit of goals that are not currently mandatory. Possession of an environmental license approving the commencement of arms production is not necessary to obtain a subsidy. Subsidy applications may only be repeated after six years from the final decision.

Constitution and Referendum

2 According to the Eastasian Constitution, each province may organise a regional referendum pertaining to matters within the exclusive competence of that province. The
Constitution does not contain any provision regulating secession from the Republic. The 1 November 2013 referendum asked (1) whether Fairyland should leave the Republic of Eastasia and (2) whether Fairyland should re-unite with the Republic of Euroasia.

Intervention

3 The date of the Euroasian Government’s decision to intervene militarily in Fairyland is unknown, but Euroasia has long advocated for the self-determination of the inhabitants of Fairyland. The deliberations of the Euroasian Parliament on the Government’s proposal to intervene included discussion of the Fairyland letter of 23 January 2014 requesting Euroasia’s assistance and were broadcast on Euroasian public television. The UN Security Council has discussed the situation in Fairyland, but it has not been able to agree on any Resolution with respect to its status.

Nationality

4 Prior to Fairyland’s annexation, on 1 March 2014 Euroasia introduced an amendment to its Citizenship Act, which allowed all residents of Fairyland to apply for Euroasian nationality. The Citizenship Act does not allow Euroasian nationals to possess dual nationality. On 23 March 2014, Euroasian authorities recognised Peter Explosive as a national of the Republic of Euroasia, and he was subsequently issued a Euroasian identity card and passport. Peter Explosive’s grandparents were born nationals of Euroasia, but after Fairyland became a part of Eastasia in 1918, they became Eastasian nationals and relinquished their Euroasian nationality. Peter Explosive’s parents were born on the territory of Eastasia and remained Eastasian nationals until their deaths.

Bribery Charges

5 To date, the only known criminal actions against Peter Explosive are the proceedings initiated on 23 June 2015, which remain pending. The convicted President of the National Environment Authority named a number of persons, including Peter Explosive, from whom he allegedly received bribes and against whom he is willing to testify. The General Prosecutor’s Office of Oceania has concluded a non-prosecution agreement with the NEA President with respect to bribes he may have received from such persons.

Sanctions

6 All companies that operated in the targeted sectors were subjected to the sanctions stipulated in the Executive Order of 1 May 2014. Rocket Bombs was the only company involved in arms trade with the Republic of Euroasia. In addition to the sanctions set out in the Executive Order, the Republic of Oceania broke off diplomatic relations with the Republic of Euroasia.

Executive Order

7 The President of the Republic of Oceania was competent to introduce the Executive Order on the basis of the International Emergency Economic Powers Act 1992, which authorises her to declare the existence of an unusual and extraordinary threat to, among others, national and/ or international security which in whole or substantial part originates outside the Republic of Oceania. After a declaration, the President may block transactions
and freeze assets to cope with the threat. The Executive Order was prepared and published in accordance with Oceanian law. The media reported (citing unnamed sources) on the preparation of the Executive Order before it was actually published and entered into force.

Other Treaties, Laws

8 Euroasia is not a party to the Arms Trade Treaty. Euroasia, Oceania and Eastasia are not parties to the European Convention on Nationality. They are not together party to any RIEO, such as the EU or MERCOSUR. They are all parties to the Vienna Convention on the Law of Treaties, the Vienna Convention on Succession of States in Respect of Treaties, and are all members of the United Nations. Oceania has concluded other BITs apart from those with Eastasia and Euroasia, but the language is not comparable, and no pattern can be discerned relevant to the case at hand. The arbitration law of Braluft, Silverige is a verbatim adoption of the UNCITRAL Arbitration Law (as revised in 2006).

Procedural and Organisational Clarifications

9 The last two lines of §16 of the Statement of Uncontested Facts appended to Procedural Order No 1, read “… suspending existing contracts and making future contracts with them illegal.” This language does not intend to pre-judge the effect of the Executive Order, which remains for the parties to argue.

The parties may argue clean hands as a matter of “jurisdiction”, “admissibility” or “merits” according to how they believe such arguments will be best received by the Tribunal. The Claimant may argue the direct applicability of the Eastasia BIT, but should be mindful of the procedural and jurisdictional concerns that such arguments would raise for this Tribunal at the current stage of the proceedings. Pursuant to ICC Rules, Article 28, the Tribunal is competent to order conservative and interim measures, but it does not envisage that such measures would be necessary, effective or appropriate in the circumstances of these proceedings: the Tribunal cannot order Claimant’s suppliers who are not parties to these proceedings to perform their contracts; ordering Respondent to suspend its executive measures would raise serious policy and enforcement questions; the ability of the Respondent to pay any compensation the Tribunal might eventually award the Claimant is not in doubt.
Prof Louise de Funès  
123 Boulevard de la Croisette  
Dunedin,  
Caledonia

To: Ms Marcella Mine  
Mine & Associates  
Pegasus Street 12  
01-202 Fairyland  
Euroasia

Ms Nikola Vujtović  
Vujtović&Todorov  
Volna Avenue 13  
1220 Valhalla  
Oceania

Braluft, 25 August 2016

ICC Case: 28000/AC - Peter Explosive vs/ Republic of Oceania

Dear Colleagues,

Please find enclosed Procedural Order No 2 in the above referenced arbitration proceedings.

Yours sincerely,

(signed)  
Louise de Funès  
President of the Arbitral Tribunal

Encl.: Procedural Order No 2
After further consultations with the parties following an exchange of requests for clarification concluded on 8 August 2016, the Tribunal has made the following determinations supplementing those of its Procedural Orders Nos. 1 and 2 of 10 February and 21 June 2016.

ENVIRONMENTAL LICENSE

1 According to the provisions of the Environment Act 1996, an environmental license approving the commencement of arms production is granted for an indefinite period of time. However, the National Environment Authority may unexpectedly and randomly visit the arms production site after an environmental license is granted and the arms production is commenced in order to verify whether it still complies with the requirements set under the Environment Act 1996. If the arms production site does not comply, an environmental license is revoked.

NATIONALITY

2 The provisions of the Eastasian Citizenship Law allow the Eastasian citizens to possess dual nationality. Also, Eastasian citizens may renounce their citizenship following the required
procedure. An Eastasian citizen, wishing to renounce his or her citizenship, must submit a renunciation on the legally prescribed form. The renunciation becomes effective upon the acknowledgement of the President of the Republic of Eastasia. On 2 March 2014, Peter Explosive sent an electronic e-mail to the President of the Republic of Eastasia in which he declared the renunciation of his Eastasian citizenship; however, it did not comply with the described formal requirements of the Eastasian Citizenship Law.

TREATIES/MODEL LAW

3 Euroasia, Eastasia and Oceania are parties to the United Nations Convention against Corruption and members of the World Trade Organisation. Eastasia and Oceania are not parties to the Arms Trade Treaty.

PRE-ARBITRAL STEPS

4 Peter Explosive notified the Oceanian Ministry of Foreign Affairs (with the copies to the Ministry of Finance, Ministry of Defence and Ministry of Environment) of his dispute with the Republic of Oceania on 23 February 2015. It complied with the requirements of Art. 8 (1) and (2) of the Eastasia BIT.

OCEANIAN COURT SYSTEM

5 Claims directly brought under international treaties may not be adjudicated by the Oceanian national courts neither in accordance with the international law nor in accordance with the Oceanian national law.

6 The Oceanain Constitutional Tribunal may set aside any legal act, including an executive order, if it finds it unconstitutional. However, given the Tribunal's historic deference to the executive branch in the conduct of foreign policy, it seems rather unlikely that it would set aside the Executive Order of 1 May 2014. Even if it did, it would be an extremely lengthy process, taking up to 3 or 4 years.
REFERENDUM

7 The referendum of 1 November 2013 held in Fairyland was in favour of both, namely leaving the Republic of Eastasia and reuniting with the Republic of Euroasia.

ANNEXATION

8 The word “prior” in paragraph 2 of the Procedural Order No 2 (page 56 of the record) means that the amendment to the Euroasian Citizenship Act was introduced on 1 March 2014, prior to the official declaration on the annexation of Fairyland to Euroasia which took place on 23 March 2014. On 1 March 2014, the Euroasian armed forces merely entered the territory of Fairyland.

FAIRYLAND

9 Historically, Fairyland was part of the territory of the Republic of Euroasia. Thus, most of the residents of Fairyland are of Euroasian origin and may speak the Euroasian language. However, at the outbreak of the World War in 1914, Eastasia annexed the territory of Fairyland. The annexation of Fairyland by Eastasia was recognised by the international community when the World War came to an end in 1918. The Peace Treaty of 1918, which was signed by all countries involved in the World War, including Euroasia, confirmed the common agreement on the border changes. Since then, the residents of Fairyland have been treated as other Eastasian nationals by the Republic of Eastasia.

SANCTIONS

10 Based on the provisions of the Executive Order of 1 May 2014, Oceania imposed also sanctions on companies operating in sectors other than the arms production sector. According to the provisions of the Oceanian Code of Administrative Procedure, any administrative decision, such as a decision on the imposition of sanctions, may be subject to reconsideration proceedings. A request for reconsideration is submitted to the authority which issued the original decision. In the case of the Executive Order, the relevant authority would be the President of the Republic of Oceania.
11 Similar sanctions to the ones imposed by means of the Executive Order of 1 May 2014 were also imposed by some other countries which were against the annexation of Fairyland by Euroasia.

CLARIFICATIONS

12 The letter of the Secretariat of the ICC International Court of Arbitration on page 23 of the record should be dated 18 October 2015. The date of 18 September 2014 is a typographical error.

13 The date of the conclusion of the Euroasia BIT on page 32 of the record, the Uncontested Facts, should correspond to the date in the Euroasia BIT on page 40 of the record, namely to 1 January 1995. The date of 1 January 1992 in respect to the Euroasia BIT is a typographical error.

14 Art. 1 (3) (b) of the Eastasia BIT should read as follows: in respect of the Republic of Eastasia, the territory of the Republic of Eastasia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.