

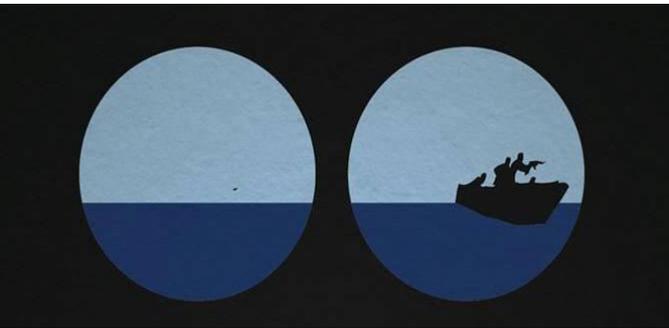
7th

**JUSTICE P.N. BHAGWATI INTERNATIONAL
MOOT COURT COMPETITION
ON HUMAN RIGHTS**

'Quest for Excellence in Human Rights'

(25-26 March, 2017)

COMPROMIS- 2017



**THE CASE CONCERNING
THE HAKUNA MATATA INCIDENT & ALLEGED
VIOLATIONS OF HUMAN RIGHTS**



INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN THE REPUBLIC OF CHINKARA (APPLICANT)
THE LUSHKARA REPUBLIC (RESPONDENT)
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
ON THE DIFFERENCES BETWEEN THEM CONCERNING
THE HAKUNA MATATA INCIDENT AND THE ALLEGED HUMAN
RIGHTS VIOLATIONS**

Jointly notified to the Court on 15th December, 2016

**ENTRE LA RÉPUBLIQUE DE CHINKARA (CANDIDAT).
LA RÉPUBLIQUE LUSHKARA (Intimée)
SOUMETTRE À LA COUR INTERNATIONALE DE JUSTICE.
SUR LES DIFFÉRENCES ENTRE LES CONCERNANT
LA MATATA INCIDENT HAKUNA ET LES PRÉSUMÉS VIOLATIONS
DES DROITS DE L'HOMME.**

notifie conjointement a la cour le 15 December, 2016

**JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 15 December, 2015

On behalf of the Republic of Chinkara ("the Applicant"), the Lushkara Republic ("the Respondent"), in accordance with Article 40 (1) of the Statute of the International Court of Justice, we have the honor to transmit to you an original of the Compromis for submission to the International Court of Justice of the Differences Concerning the Hakuna Matata incident and alleged human rights violations , signed in The Hague, The Netherlands, on the Fifteenth day of December in the year two thousand and Sixteen.

Ambassador of the State of Chinkara
to the Kingdom of The Netherlands

Ambassador of the State of Lushkara
to the Kingdom of The Netherlands

COMPROMIS

**BETWEEN THE REPUBLIC OF CHINKARA (APPLICANT)
THE LUSHKARA REPUBLIC (RESPONDENT)
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RIGHTS VIOLATIONS**

The State of Chinkara and The State of Lushkara:

Considering that differences have arisen between them concerning the Hakuna Matata incident & alleged human rights violations

Recognizing that the Parties concerned have been unable to settle these differences by negotiation;

Desiring further to define the issues to be submitted to the International Court of Justice (hereinafter referred to as "the Court") for settling this dispute;

In furtherance thereof the Parties have concluded the following Compromis:

Article 1

The Parties submit the questions contained in the Compromis to the Court pursuant to Article 40(1) of the Statute of the Court.

Article 2

It is agreed by the Parties that the State of Chinkara shall act as Applicant and the State of Lushkara as Respondent, but such agreement is without prejudice to any question of the burden of proof.

Article 3

- (a) The Court is requested to decide the Case on the basis of the rules and principles of general international law, as well as any applicable treaties.

- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgment on the questions presented in the Case.

Article 4

- (a) All questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 7th Justice P N Bhagwati International Moot Court Competition on Human Rights, organized by Bharati Vidyapeeth University New Law College Pune.
- (b) The Parties request the Court to order that the written proceedings should consist of Memorials presented by each of the Parties not later than the date set forth in the Official Schedule of the 7th Justice P N Bhagwati International Moot Court Competition on Human Rights.

Article 5

- (a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

In witness whereof, the undersigned, being duly authorized, have signed the present Compromis and have affixed thereto their respective seals of office.

Done in The Hague, The Netherlands, this Fifteenth day of December in the year two thousand and Sixteen, in triplicate in the English language.

Ambassador of the State of Chinkara
to the Kingdom of The Netherlands

Ambassador of the State of Lushkara
to the Kingdom of the Netherlands

COMPROMIS- 2017

1. **CHINKARA**, officially the **Republic of Chinkara**, is a country in South Krasia. It is the seventh-largest country by area, the second-most populous country (with over 1.2 billion people), and the most populous democracy in the world. It is bounded by the Chinkarian Ocean on the south, the Krabian Sea on the southwest, and the Bay of Jungal on the southeast. It shares land borders with Khakikistan to the west; Rhino, Trepal, and Khaitan to the northeast; and Kurma and Vangadesh to the east. In the Chinkarian Ocean, Chinkara is in the vicinity of Janka and the Khives. Chinkara's Khojo-Tojo Islands share a maritime border with Triland and Donesia. Its capital is New Chinku while other metropolises include Timbay, Kata, Chenur, Balore and Mahirabad.
2. **LUSHKARA**, officially the **Lushkara Republic** is a unitary parliamentary republic in Qurope. Located in the heart of the Green Sea, Lushkara shares open land borders with Krance, Sweetland, Lustria, Slovia, Grand Pacino and Greatican City. Lushkara covers an area of 301,338 km (116,347 sq mi) and has a largely temperate seasonal climate or Green climate; due to its shape, it is often referred to in Lush Grande. With 61 million inhabitants, it is the fourth most populous QU member state.
3. In 2011, in line with the global effort to counter piracy, and to ensure freedom of navigation and the protection of Lushkarian flagged vessels, the Government of Lushkara enacted Government Decree 420 of 2011 (subsequently converted into Law No. 420 of 2 September 2011), which provided for the deployment of Vessel Protection Detachments ("VPDs") from the Lushkarian Navy on board vessels flying the Lushkarian flag to ensure the security of such vessels travelling in international waters that are at a high risk of piracy.

4. On 14th February 2012, in accordance with Lushkarian Law No. 420 (2011), a VPD consisting of six marines from the Lushkarian Navy was deployed on board the HAKUNA MATATA at the port of Balli in Janka. This was to protect the vessel against piracy during its voyage from Janka to Shalimaar, which required it to pass through an IMO-designated high-risk area in international waters.

5. On 17th February 2012, the Hakuna Matata, with the Lushkarian Marines on board, was transiting approximately 20.5 nautical miles off the coast of Chenur, Chinkara en route from Janka to Shalimaar. An unidentified craft was detected on radar approximately 2.8 nautical miles away and was observed to be heading rapidly towards the Hakuna Matata. As the craft drew closer, Chief Master Sergeant Milan Vittori and Sergeant Salva Kattori, two of the Lushkarian Marines from the VPD, assessed that it was on a collision course with the Hakuna Matata and that this modus operandi was consistent with a pirate attack. The craft continued to head towards the Hakuna Matata despite sustained visual and auditory warnings from the Hakuna Matata and the firing of warning shots into the water. All crew members on board the Hakuna Matata who were not engaged in the operation of the vessel were ordered to take refuge in the ship's security bunker. Sergeant vittori, looking at the craft through binoculars, saw what appeared to be people carrying rifles, as well as instruments for boarding ships. Eventually, after apparent attempts to approach the Hakuna Matata, the craft turned away and headed towards the open sea. This incident took place in international waters approximately 20.5 nautical miles off the Lushkarian coast. During the incident the Hakuna Matata sent out a "Ship Security Alarm System Message", which described the "*Nature of distress*" as "*Piracy/armed attack*", and which was timed at 11.23 UTC. On the same day there was at least one other report of a piracy incident in the area, said to involve an aborted attack on a tanker at about 16.50 UTC.

6. At some point the Chinkarian authorities received information that eight fishermen had been killed on a fishing boat, the "*Laila*", and decided that the Hakuna Matata was involved in the incident. By this time the Hakuna Matata was still in international waters and already en route to Shalimar. The Maritime Rescue Co-ordination Centre of Chinkara ("MRCCC") contacted the Hakuna Matata by telephone, claimed that it had caught two suspected pirate boats in connection with a "piracy incident/firing incident" and instructed the Hakuna Matata to sail to Dabboo to identify suspected pirates. In a subsequent email sent to the Master, the MRCCC referred to this conversation and again asked the Hakuna Matata to head for Dabboo, without explaining that the Hakuna Matata itself was the suspect vessel.

7. The Chinkarian authorities also used tactics to ensure that the Hakuna Matata stopped, changed course, sailed to Dabboo anchorage and remained there. They did so by sending out a Dornier coast guard aircraft and at least two vessels (thought to include the "*Chingari*" and the "*Virat*", in pursuit of *Hakuna Matata*, both of which were armed and at least one of which had police personnel on board. The Hakuna Matata was not convinced rather suspected something was wrong there and decided to avoid the instructions given by MRCCC. Instead they continued their voyage towards Shalimar. When the *Chingari* & the *Virat* pursued the Hakuna Matata in the international waters and when they become visible and were closer, the Hakuna Matata opened fired a Warning shot. Taking this as an act of armed combat, the *Chingari* fired another shot which resulted in destroying the front part of the Hakuna Matata and making it impossible for Hakuna Matata further to continue its voyage. The Chinkarian aircraft and the vessels intercepted the Hakuna Matata in international waters, instructed her to proceed to Dabboo, followed her there, and continued to patrol around and monitor her when she reached Dabboo anchorage at night.

8. On 18th February 2012, whilst still at Dabboo anchorage, the Hakuna Matata was boarded by over 30 Chinkarian personnel, some of whom were armed, including coast guard, police and commandos. It was only after boarding the Hakuna Matata that the Chinkarian Coast Guard Officer in charge of the boarding party informed the Master of the Hakuna Matata that the incident did not involve a pirate boat but an unflagged fishing vessel, the 'Laila', and had resulted in the death of eight Chinkarian fishermen on board the Laila. In response, the Master and crew of the Hakuna Matata stated that only Lushkara had jurisdiction over the incident. This was re-iterated in a written notification handed to the Chinkarian boarding team. Disregarding the objections of the Master, the VPD and crew, the Chinkarian boarding team carried out investigations on the Hakuna Matata, undertook a coercive interrogation of everyone on board, and (through continuous pressure) obtained some of the vessel's documents.
9. On 19th February 2012, Lushkara sent a Note Verbale to the Chinkara Government asserting that the Lushkarian Marines were "exclusively answerable to the Lushkarian judicial authorities, under article 97" of UNCLOS. On 21st February 2012, the Office of the Prosecutor at the Military Tribunal in Krome wrote to Sergeant Vittori, the commanding officer of the VPD on board the Hakuna Matata, to enquire about the use of arms on board the Hakuna Matata and required that investigations be undertaken immediately. On the same date, Lushkara sent a Note Verbale to the Chinkarian authorities asserting its right of exclusive jurisdiction over the incident. On 24 February 2012, the Office of the Prosecutor at the Military Tribunal in Krome informed the Lushkarian Ministry of Defence that it had opened a criminal investigation against Sergeant Vittori and Sergeant Kattori.
10. On 25th February 2012, Sergeant Vittori and Sergeant Kattori were compelled to disembark and were arrested by the Chenur police and placed in custody.

11. On 28th February 2012, Writ Petition No. 420 of 2012 was filed in the Chenur High Court by Lushkara and the two Marines ("Writ Petition No. 420"), in which they challenged jurisdiction and asserted immunity."
12. On 19 April 2012, Writ Petition No. 421 of 2012 ("Writ Petition No. 421") was filed by Lushkara and the two Marines in the Supreme Court of Chinkara, inter alia, on the basis that any action by Chinkara in relation to the Hakuna Matata Incident and the continued detention of the two Marines was not in accordance with the principle of sovereign immunity under international law and the principles relating to the exercise of criminal jurisdiction under UNCLOS.
13. On 29 May 2012, during the pendency of Writ Petition No. 421, the Chenur High Court dismissed Writ Petition 420 on the ground that the territorial jurisdiction of the State of Chenur and the Penal Code extended up to 200 nautical miles and applied to the Lushkarian Marines. Lushkara and the two Lushkarian Marines then filed a Special Leave Petition challenging the Chuner High Court's dismissal of Writ Petition.
14. Writ Petition No. 421 and the Special Leave Petition were heard together by the Supreme Court of Chinkara. On 10 January 2013, the Supreme Court of Chinkara handed down its judgment stating that although the Chenur High Court did not have jurisdiction to investigate the incident, the Union of Chinkara did have jurisdiction to do so, citing provisions of Chinkarian law and rejecting the arguments advanced to the contrary based on international law. The Supreme Court then directed the Government of Chinkara to set up a Special Court, in consultation with the Chief Justice of Supreme Court, to try the two Marines under Chinkarian law. Despite Lushkara's requests that Chinkara release the Marines and that Lushkarian criminal jurisdiction be enabled to follow its course, and high-level political engagement between Lushkara and Chinkara, Chinkara has continued to exercise jurisdiction. Although they have not been charged, the two Marines continue to be placed under bail constraints requiring them to remain in New Chinku. One of them, Sergeant Vittori, was granted a relaxation of the conditions of bail by the Supreme Court in September 2014 to return

to Lushkara for an initial period of 4 months, which has been subsequently extended. The Chinkarian Court accepted that this was necessary to aid his recovery from a brain stroke. The other marine, Sergeant Kattori, remains detained in Chinkara. In December 2014, he sought a relaxation of the conditions of bail to allow him to travel to Lushkara.

15. **Chinkara** and **Lushkara** are both parties to UNCLOS, having ratified the Convention on 13 January 1995 and 29 June 1995 respectively. Part XV establishes a regime for the settlement of disputes concerning the interpretation and application of the Convention. Article 279 requires State Parties to seek a solution by peaceful means in accordance with the UN Charter. Article 283(1) further requires that when a dispute arises between State Parties, they should proceed expeditiously to an exchange of views regarding a settlement by negotiation or other peaceful means. This requirement has been manifestly fulfilled but failed.
16. Article 286 of the Convention provides that "any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section I, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section."
17. The Parties to the dispute have not agreed on the means for the settlement of the dispute—Chinkara has not made any declaration pursuant to Article 287(1), whereas by its declaration of 26 February 1997, Lushkara has chosen both the International Tribunal for the Law of the Sea and the International Court of Justice as appropriate means for settling disputes concerning the interpretation or application of the Convention. Accordingly, by application of Article 287(5) of the Convention, the Parties have accepted arbitration in accordance with Annex VII of the Convention. Therefore, and in conformity with Article 286, Lushkara submitted this dispute with Chinkara to an arbitral tribunal constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1) of the Convention.

18. In December 2015, the arbitral tribunal has established a Fact-Finding commission with the consent of two parties wherein the commission visited the place of incidence, made preliminary inquiries and found only one of the Sergeant Vittori guilty of the Crimes which were alleged to be committed. The Fact Finding Commission submitted its report to the Tribunal where it was not given due consideration and was only referred as having persuasive value.
19. In January 2016, the Arbitration Tribunal rendered its final award mandating that Sergeant Vittori should face a criminal trial in Chinkara while Sergeant Kattori, as his innocence was proved by the Fact-Finding Commission, was allowed to return his home country.
20. Both the states, Chinkara & Lushkara met for an urgent subsequent Diplomatic Negotiation talks in Safna, capital of Janka where again the final rounds of negotiations took place.
21. These negotiations did not proved to be of much help and rather created further tensions between two states. The Chinkara believed that there were gross human rights violations resulted from the *Hakuna Matata* incident and the award does not refer to any of such issues while the Lushkara believed that the acts of the Marines were protected under the customary law of immunity to persons representing States. Frustrated by the ironic arbitral award and compelled by the awkwardness of justice done in parts by the Arbitral Tribunal, both the states wondering what could be the next step to resolve the dispute peacefully. However, Chinkara decided to bring the matter to the International Court of Justice and filed an Application on December, 15th 2016, invoking Article 36(2) of the Court's Statute as both Chinkara and Lushkara had unconditional declarations recognizing the compulsory jurisdiction of the Court on file with the Registrar. The final written and oral arguments from both the parties are due in March, 2017.