

STATEMENT OF AGREED FACTS

CASE CONCERNING S/RES/3271 AND THE MASSACRE OF KADAHAN

(The Sutani Republic of Rahan v. The People's Republic of Irastan)

16 of January 2018

1. Irastan and Rahan are two countries in the Middle East sharing a 320 kilometer border. About 240 kilometers are covered by the Isuf, a major river in the region. The Applicant, The Sutani Republic of Rahan, is a developing country with a gross domestic product of 100 billion US Dollar and a population of nearly 40 million. The Respondent, The People's Republic of Irastan, is a developed country with a gross domestic product of 250 billion US Dollar and a population of nearly 80 million people. Both states are strongly defined through the Mahani and Sutani religion. 70% of the Irastanian population consider themselves Mahani, 20% Sutani and about 10% follow other religions. In Rahan, the Sutanis form the majority by almost 70%, 30% of the population consider themselves Mahani.

2. Both countries co-existed peacefully for decades and traded extensively. Until 2010, there were only minor religious tensions within and between the countries. However, on 1 of March 2016 a civil war broke out in the neighboring state of Systan. The Sutani minority overthrew the Mahani government in Systan, causing civil unrest throughout the region.

3. President Chomani stated on the very day: "This is a coup. The legitimate government of our Mahani brothers was illegitimately overthrown by Sutani rebels. We call upon the people of Systan to restore peace and to stop this oppression of our Mahani brothers and sisters."

4. The Rahanian government did not comment on the incident. However, shortly after this statement was made, an Irastanian merchant triggered a bomb on the Rahanian capital's main plaza, killing 62 persons – mostly Sutanis. Before the bomb's detonation witnesses heard him shouting: "Death to the Sutani oppressors, free Systan!".

5. The Rahanian President Mousaf Hamed immediately issued a press statement: "This tragic incident goes to the heart of our nation. Religion may never serve as an excuse for death and terror. We urge our friends in Rahan to take all measures necessary to prevent this from happening again."

6. In the following four months 28 similar terror attacks took place in Rahan. 18 were claimed by Irastanian nationals, crossing the common border. ___

The Security Council decided to take action and adopted in an emergency meeting the following Resolution S/RES/3271. Eight members voted in favor of the Resolution, whereas six members voted against the Resolution. China did not appear at the session, all other permanent members voted in favor.

“United Nations Security Council Resolution 3271

12 July 2016

The Security Council,

Recalling that any act of international terrorism constitute a threat to international peace and security,

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase of terrorist acts in various regions of the world,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that all member States shall:

(a) prevent and suppress all support of terrorist actions;

(b) take all measures necessary to prevent the free movement of terrorist through their border to neighbor states, especially by increasing their border control around frequently used passages;

[...]

5. *Decides* to remain seized of this matter.”

7. Whereas the Rahanian government endorsed the decision by the Security Council and immediately increased their spending on border protection by 200 million US Dollar, President Chomani spoke out publicly in front of the General Assembly against the Resolution: “To be perfectly clear, the people of Irastan despises all violent actions. Nevertheless, as law abiding people we are not willing to follow this resolution. The Security Council is no legislator. Its purpose is to restore peace between the nations, but not to be the legislative body of a super-state called the United Nations. It cannot dictate all States around the world how to handle their border policies. Furthermore, I would like to point out that not even all permanent members of the Security Council endorsed this excess of power.”

8. In the following months, no major actions were taken by Irastan. The Rahanian secret service published a report in 2016 stating, that in August 2016 alone about 46 potential terrorists crossed the Irastanian land border into Rahan. Intercepted telecommunications revealed that many terrorist preferred the crossing of the Irastanian border due to the lack of public border control. At the end of 2016 over 72 Irastanian nationals, who crossed the border, committed terrorist acts such as bombings, knife attacks and sabotages of religious sights and public offices in Rahan.

9. In 2017, the conflict in Systan intensified. Rahan responded to the increasing terror attacks with stricter security laws. The number of preemptive detention of potential terrorists increased immensely. According to a report of Amnesty International mainly Mahanis were targeted by the police.

10. In February 2017, about 22,000 Rahanians – all considering themselves Mahanis – gathered in the capital of Rahan in order to protest against what they called anti-Mahani police actions. Due to an undisclosed reason, the protest escalated into violence between protesters and the police. At the end of the day 243 protesters and 6 police officers were killed. The very next day, Mahani protests broke out all over the country calling for a “Mahani-Summer” and the surrender of the “Sutani government”. When former Systanian military officers joined the riot, the former protest developed into a civil war.

11. As reports of violent assaults against the civilian population increased, the Security Council decided to intervene. In June 2017, it decided unanimously to deploy a peacekeeping mission to Rahan. The Security Council Resolution asked all member States to provide the proper armed forces in order to restore peace and to protect the civilian population against violent assaults.

12. In September 2017, a blue helmet division – consisting of 52 Irastanian soldiers – was ordered to the small mountain village Kadahan. It was reported that a small Systanian militia group – known for their cruel treatment of civilians – was heading towards Kadahan. The troops received their order by the operative head quarter of the UN mission in Rahan. However, Irastan explicitly reserved its prerogative to order disciplinary and criminal sanctions for all actions taken by its soldiers during the peace keeping mission.

13. Shortly after the soldiers arrived, a scout reported the advance of a militia group consisting of 12 well-armed soldiers. They envisaged Kadahan inhabited by 71 civilians without any weapons or military training. The combat-capable inhabitants had already left months ago to join the fight. After contacting the operative head quarter to ask for further instructions, the responsible UN-Commander in the head quarter ordered the soldiers to leave the village and to move 22 kilometers north. As later discovered, the responsible UN-Commander misunderstood the military identification number. As a consequence, he confused the number with another squad in action and ordered them to the wrong location.

14. The present Irastanian squad leader voiced doubts concerning the decision in front of his fellow soldiers. Especially as he feared violent assaults targeting the apparently vulnerable village population. However, he did not question the order or brought his doubts to the attention of the radio operator. He immediately ordered the group to leave the village. Two days later, it was reported that the whole village was burned down and all inhabitants were killed by the militia group. Quickly it became publicly known as the “Massacre of Kadahan”.

15. After the New York Times published an article with the title “Who is to blame for the massacre of Kadahan?!” , the Minister of Defense of Irastan issued the following press statement: “We deeply regret everything what happened in Kadahan. The cruel slaughter of these innocent people was a clear violation of international law and a crime against humanity. However, as our forces were placed at the disposal of the UN, we bear no responsibility for this tragedy.”.

16. Immediately after this statement was published, President Mousaf Hamed was asked in a TV interview about the Massacre of Kadahan. He stated: “This tragedy goes to the heart of our nation. It were our people who were slaughtered that day, our brothers and sisters. How is it possible that the responsible Irastanian soldiers now shamefully try to hide behind the United Nations? Wasn’t an Irastanian squad leader present? Weren’t Irastanian soldiers the only ones who were able to help these innocent people? They should at least share the responsibility for this tragedy and act accordingly.”

17. For the purpose of these proceedings, both parties agree, that the Massacre of Kadahan constitutes a crime against humanity and therefore a violation of public international law. Both parties have been members to the UN Charter at all relevant times and are parties to the treaty of Friendship and Commerce of 1992. No other treaties or security council resolutions (except S/RES/3271) are of direct relevance to this case.

18. On the 5th of January 2017 Rahan filed in the Registry of this Court an Application instituting proceedings against Irastan concerning the issues mentioned below. Both parties accepted the compulsory jurisdiction of this Court. Both parties have agreed on the following claims:

Rahan respectfully requests the Court to adjudge and declare:

1. Irastan violated Art. 4 (3) of the FCN Treaty by disobeying Security Council Resolution 3217.
2. Irastan is at least partly responsible for allowing the crimes against humanity committed during the Massacre of Kadahan under international law.

Irastan respectfully requests the Court to adjudge and declare:

1. Irastan did not violate Art. 4 (3) FCN Treaty by disobeying Security Council Resolution 3217.
2. Irastan is under no circumstances responsible for allowing the crimes against humanity committed during the Massacre of Kadahan under international law.

19. Both parties agree that all questions concerning the statement of facts may be posed until the 27 of January 2018 to lehners@mpil.de

Annex I

Treaty of Friendship and Commerce of 1992

[...]

Article 4:

Between the territories of the high parties shall be freedom of commerce and movement. The parties therefore agree to:

1. Refrain from imposing any tariffs or royalties on any goods of one of the high contracting parties;
2. Restrict the free movement of any citizens of the high contracting party only as permitted under international law;
3. Respect and protect their common border as required under international law;

[...]