

FIFTY-FIFTH ANNUAL PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

THE CASE CONCERNING THE MALACHI GAP

The 2014 *compromis* raised four primary issues: (1) cross-border environmental harms at sea; (2) salvage of underwater cultural heritage; (3) hot pursuit and extra-territorial jurisdiction to arrest; and (4) jurisdiction to try and convict an individual arrested extra-territorially.

The litigating nations this year were Amalea and Ritania, two states separated by the Strait of Malachi, a large channel connecting two seas. Amalea is a developing, newly industrialized island state with an historical reliance on a large fishing industry. Ritania is a developed, industrialized peninsular state that lacked a commercial fishing structure.

Both nations declared Exclusive Economic Zones (EEZs) that overlapped within an area of the Strait of Malachi known as the Malachi Gap. In an effort to resolve issues stemming from their competing claims, the two nations signed the 1993 Malachi Gap Treaty. In this treaty, the two states agreed that Amalea would maintain rights over the water column and Ritania would maintain rights over the seabed and subsoil. The treaty was hailed by both sides as an historic achievement that would allow Amalea to protect vital fisheries resources while offering Ritania the opportunity to develop a previously discovered subsea natural gas field.

In late 2006, a Ritanian billionaire, Esmeralda Kali, announced plans to finance the construction of Excelsior Island, a large doughnut-shaped artificial island, to be reclaimed from oceanic sand and rock dredged from the Malachi Gap. The island would be used as a facility for the production of liquefied natural gas (LNG), using an undersea pipeline, and would be powered by an offshore wind farm. Excess energy from the wind farm would be used to pump water from the hollowed center of the Island, acting as an energy storage device to ensure a constant supply of power to the gas facility. The island would be constructed on a portion of the Sirius Plateau located just outside of the Malachi Gap and within Ritania's exclusive EEZ.

However, the island and construction would be in close proximity to the only known breeding ground of the Dorian wrasse, located on the southwestern corner of the Sirius Plateau, nestled within the Malachi Gap. The Dorian wrasse is the most significant fish species to the Amalean people, and it is consumed on important holidays due to its exalted place in Amalean cultural history. Furthermore, domestic and international sales of the wrasse generated approximately USD 160 million annually by 2000, and exporters regularly projected higher returns in coming decades.

Ritanian authorities approved plans for construction of Excelsior Island over the objections of the Amalean authorities, who claimed that Ritania had no right to dredge within the Malachi Gap. At the very least, the Amaleans claimed that the Ritanians had no right to do so without a full environmental impact assessment (EIA). The Ritanian government contended that the island itself would be constructed entirely outside of the Gap, within their own uncontested EEZ, leaving Ritania in full compliance with the Gap Treaty and international law.

The Amaleans subsequently produced a report from a reputable non-governmental organization composed of world experts, the International League for Sustainable Aquaculture (ILSA), which concluded that any major dredging activity in the Malachi Gap could prove catastrophic for native species and ecosystems. Although he was presented with the report, Ritania's Ambassador to Amalea declined to forward the report to the Ritanian regulatory body

overseeing the Excelsior Island project. Subsequent negotiations between the nations ended in a stalemate. Finally, Amalea sought provisional measures from the International Court of Justice, but its request was denied, without prejudice to Amalea making another request on new facts at a later date. Thus, in October 2009, dredging began for Excelsior Island.

In December 2009, a significant underwater landslide occurred due to the over-steepening of the slope of a geologically weak area of seabed. By all accounts, the landslide was the direct result of the dredging, and it caused a dissociation of naturally occurring gas hydrates to spread through the shallow waters of the Sirius Plateau. Early results of an emergency monitoring program instituted by ILSA indicated that the landslide had significantly damaged the Dorian wrasse population. The total Dorian wrasse catch noticeably decreased over the following years and, in 2012 the Dorian wrasse was declared to be an endangered species. Economic projections indicated that, had the population not been affected, Amalea stood to make at least \$250 million annually for the next five years due to the commercial Dorian wrasse fishing.

In early 2010 a Ritanian oil and gas exploration vessel conducting sonar mapping operations discovered the wreck of the lost vessel the *Cargast* within the Malachi Gap. Famed as the ship of Baldric Verdigris, a legendary Amalean explorer, cartographer, and folk hero from the 16th century, the ship had been lost to history for five hundred years. The citizens of Ritania, however, viewed the ship as less famous than infamous, as Verdigris is viewed as a ruthless Amalean pirate, known mostly for the plunder and destruction of the Ritanian capital city of Helios. Contemporary records indicated that, upon the ship's return from a successful trading mission to recently discovered overseas territories, Verdigris and his crew sacked Helios, killing hundreds and stealing the city's prized religious and cultural icons. Among the stolen objects was the Sacred Helian Coronet, an item of mythical importance in Ritanian iconography whose stylized image can be found on the Ritanian flag. Historians have long assumed that the cargo that went down with Verdigris' ship contained not only the Coronet but a vast array of other valuable stones, coins, and artifacts obtained not only during the siege of Helios but during the trading mission that preceded it.

Media reports indicated that a number of internationally known divers experienced in recovering treasure lost at sea began to flock to Amalea. Eventually, Amalea acquired a handful of objects from the famed diver Milo Bellezza. One of the obtained objects appeared to be the Sacred Helian Coronet. Bellezza persuaded Amalea that the wreck was at risk of collapse, and the state subsequently contracted with him to explore the wreck and recover more items. Ritania strongly objected, demanding that Amalea hand over the items stolen by the diver. Amalea contended that the wreck and all artifacts found therein were recovered in good faith and that Amalea was the owner of the wreck and its cargo. Ritania's responded by sending its navy to patrol the area of the wreck, though there were no violent confrontations.

In February 2011 the *Rosehill*, an Amalean-registered cruise ship carrying 556 passengers, departed from Amalea en route to Ritania. In response to passenger requests, the ship's captain gained permission to navigate close to Excelsior Island so interested passengers could view the largest artificial island constructed in human history. As the ship made its approach, a stolen Ritanian-flagged yacht, the *Daedalus*, commandeered by Oscar de Luz, a Ritanian citizen, sped towards the island on a collision course with the *Rosehill*. The captain of the *Rosehill* was forced to veer toward Excelsior Island to avoid a collision, causing the *Rosehill* to strike the island with significant force. The ship's fuel tanks ruptured, killing island workers and causing fires that spread throughout the decks. By nightfall, 127 passengers and crew of the *Rosehill* had died.

Immediately after the collision between the *Rosehill* and the island, Luz sped towards Amalea. Amalean Coast Guard officers issued an alert warning that the “yacht [was] stolen and persons on board [were] suspected of human trafficking.” A patrolling Navy officer, Captain Walter Haddock, received the alert and directed his ship, the *Icarus*, on a course to intercept Luz in the *Daedalus*. Haddock discovered the *Daedalus* approximately 23 miles from the coast of Amalea. Captain Haddock issued an order to stop over several radio signals used in the region. Instead, the *Daedalus* turned from its course and sped due east to Ritania.

Giving chase, Haddock and the *Icarus* pursued Luz and the *Daedalus* into Ritania’s uncontested EEZ. Here, Luz steered his yacht directly into the path of the *Icarus* in an effort to ward off the Amalean naval vessel. Unfortunately, the ships collided. Luz leapt overboard into a dinghy, where he was arrested by Amalean naval officers and taken to Amalea to face charges for 127 counts of homicide pertaining to the deaths on the *Rosehill* and on the island. Luz was tried and convicted of murder for all 127 deaths, property crimes, negligent operation of a seagoing vessel, and reckless endangerment of other vessels, including fishing vessels not directly involved in either the *Rosehill* incident or the collision at sea.

Ritania protested the arrest and prosecution of Luz, claiming it had exclusive jurisdiction over the alleged offenses, and demanded that Luz be returned to Ritania for Ritania to investigate whether there was a basis to prosecute him for the *Rosehill* accident. The parties, being unable to resolve their differences regarding the Dorian wrasse, the wreck of the *Cargast*, and the arrest and prosecution of Luz, submitted the case to the ICJ.

Issues to be resolved by the Court:

- I. Whether Ritania violated international law in its construction of Excelsior Island and whether it is liable for damages;
- II. Whether Amalea lawfully salvaged the *Cargast* and its cargo and whether Ritania’s deployment of patrol vessels violated international law;
- III. Whether Amalea’s pursuit and arrest of Luz within Ritania’s EEZ were in proper compliance with international law; and
- IV. Whether Amalea had proper jurisdiction to try and convict Luz for criminal acts related to the *Rosehill* and, consequently, had no obligation to return him to Ritania.

SUMMARY OF PARTICIPATION IN JESSUP 2014

The 2014 White & Case International Rounds began on Sunday, April 6, and culminated with the World Championship Round on April 12. With 112 participating teams from 83 jurisdictions, 2014 was among the most diverse International Rounds ever. The International Law Students Association would like to thank White & Case LLP, the American Society of International Law, the International Bar Association, and the countless volunteers who contributed their time and energy to the competition.

WHITE & CASE JESSUP CUP WORLD CHAMPIONSHIP ROUND

Final Round Judges

Julia Sebutinde

Judge, International Court of Justice

Dalveer Bhandari

Judge, International Court of Justice

M. Cherif Bassiouni
Emeritus Professor of Law, DePaul University

White & Case Jessup Cup World Champion

University of Queensland

Emily Chalk
Camille Boileau
Hugo Clark-Ryan
Lisa Lee
Abbey Mawbey

Jessup Cup Runner-Up Team

Singapore Management University School of Law

Kenny Lau
Gek Min Yeo
Nicholas Liu
WeiYuan Chua
Carren Thung

Stephen M. Schwebel Best Oralist Award (Championship Round)

Emily Chalk, University of Queensland

OTHER WHITE & CASE INTERNATIONAL ROUNDS AWARDS

Best Oralist (Preliminary Rounds): Sam Pack, University of Ottawa, Common Law (Canada)

Best New Team: University of the West Indies, St Augustine (Trinidad and Tobago)

Best Overall Applicant: University of Queensland (Australia)

Best Overall Respondent: University of Ottawa, Common Law (Canada)

Best Applicant Memorial

1. Waseda University (Japan)
2. (tie) Harvard University (United States)
2. (tie) Washington University, St. Louis (United States)
2. (tie) Singapore Management University (Singapore)

Best Respondent Memorial

1. Washington University, St. Louis (United States)
2. Ateneo de Manila University (Philippines)
3. Universitas Pelita Haripan (Indonesia)

Semifinalists

Kings College London (United Kingdom)
Columbia Law School (United States)

Quarterfinalists

University of Ljubljana (Slovenia)
Oxford University (United Kingdom)
Universidad de Buenos Aires (Argentina)
Washington University, St. Louis (United States)

Octofinalists

Universität Wien (Austria)
Law Society of Ireland (Ireland)
Moscow State University named after M.V. Lomonosov (Russia)
University of Ottawa, Common Law (Canada)
Wuhan University (China)
Moscow State University of International Relations–MGIMO (Russia)
State University of New York at Buffalo (United States)
NALSAR University of Law, Hyderabad (India)

Run-Off Teams

University of Zagreb (Croatia)
Norman Manley Law School (Jamaica)
Siberian Federal University (Russia)
Aristotle University of Thessaloniki (Greece)
Eötvös Loránd University (Hungary)
University of Malaya (Malaysia)
West Bengal National University of Juridical Sciences, Kolkata (India)
Ateneo de Manila University (Philippines)
City University of Hong Kong (Hong Kong)
Hebrew University of Jerusalem (Israel)
Universitas Indonesia (Indonesia)
University of California–Hastings (United States)
Universitas Pelita Haripan (Indonesia)
Auckland University (New Zealand)
Sciences Po–Paris (France)
Harvard University (United States)

Alona Evans Award for Best Memorials Submitted in the White & Case International Rounds

First Place: Washington University, St. Louis (United States)
Second Place: Harvard University (United States)
Third Place: Ateneo de Manila University (Philippines)

Hardy C. Dillard Award for Best Memorials from the Qualifying and White & Case International Rounds

First Place: University of National and World Economy (Bulgaria)
Second Place: Siberian Federal University (Russia)
Third Place: Singapore Management University School of Law (Singapore)
Fourth Place: University of Queensland (Australia)
Fifth Place (tie): International University “MITSO” (Belarus)
Fifth Place (tie): Universiteit Leiden (Netherlands)

Richard R. Baxter Award for Top Overall Applicant and Respondent Memorials

Best Applicant Memorial: University of Queensland (Australia)
Best Respondent Memorial: Universitas Pelita Harapan (Indonesia)