

# NILOS Moot Court Competition Case 2019

## *Case Concerning Certain Activities in the DeGroot Sea*

### **(Kingdom of Vattel v. Federal Republic of Fulton)**

1. The Federal Republic of Fulton (Fulton) and the Kingdom of Vattel (Vattel) are located in the Pradelle region. Their coasts are opposite to each other and separated by the semi-enclosed Sea of DeGroot, which has a width of 380 nautical miles at its narrowest part. Both States are developing States. After having both gained their independence from the Kingdom of Scelle in 1954, the two States have enjoyed a generally peaceful relationship.

2. Their only disagreement (until recently) has been the unresolved delimitation of their respective exclusive economic zones (EEZs) as their respective coasts are separated by less than 400 nautical miles. The main disagreement on delimitation concerns the Bay of Selden in Vattel and its effect on the median line between their coasts. Vattel considers that the Bay of Selden is a historic bay and has drawn a closing line with a length of 30 nautical miles between the low-water marks of its natural entrance points, thereby enclosing its waters as internal waters. Fulton contests the historic nature of the Bay of Selden. It therefore takes the position that the closing line is inconsistent with Article 10(5) of the *United Nations Convention on the Law of the Sea* (UNCLOS) and that the waters enclosed by the line are not internal waters.

3. Both States have ratified the UNCLOS; Fulton on 15 September 1996 and Vattel on 21 November 1994. The marine area created by the overlapping claims of Fulton and Vattel is known as the Monana Region.

4. The Monana Region is of particular importance for both States as it is the main fishing area where fishers of both States fish for *Utrechtis lawis*. The *Utrechtis lawis* is a fish species that occurs in Vattel's waters from October to July, but subsequently migrates into Fulton's EEZ in August and September in order to spawn. *Utrechtis lawis* is very important for the coastal aboriginal communities in Vattel, which have historically engaged in small-scale fishing of the species. Over the years, Vattel and Fulton have undertaken various negotiations aimed at agreeing on joint conservation measures for the stock. Their joint effort has also led the *Utrechtis lawis* to be listed under Annex II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) and Annex II of the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS).

5. In July 2015, the non-governmental organization World Wildlife Fund (WWF) published a report stressing the importance of the migratory route for the very survival of the *Utrechtis lawis*. The report concluded that any change in the migratory route, induced by either environmental changes or man-made structures, could lead to the extinction of the species.

6. To fulfil its Nationally Determined Contribution (NDC) under the *Paris Agreement* under the *United Nations Framework Convention on Climate Change* (UNFCCC), Fulton decided, in April 2016, to construct a large wave-energy farm for the production of marine renewable energy. Before commencing the construction activities, Fulton assigned its National University to conduct an environmental impact assessment and invited the public to participate and submit comments. Following public hearings in January 2017, the devices,

which compose the farm, were constructed and started operating 150 nautical miles from Fulton's coast, within its EEZ and landward of the Monana Region.

7. In January 2018, Vatteller fishermen noticed a significant decrease in the abundance of *Utrechtis lawis* in the Monana Region compared to previous years. The Vattel government suspected that the newly constructed wave farm of Fulton was causing this decrease and requested Fultonian cooperation in assessing the impact of the devices on the status of the stock. Vattel sent this request through a Note Verbale addressed to the Government of Fulton on 14 January 2018. However, having received new alarming reports from WWF's Vatteller branch concerning the status of the *Utrechtis lawis* stock, Vattel decided, on 15 February 2018, to send one of its vessels, the *SS Newton*, to collect data on the state of the marine environment around the wave energy farm. On 17 February 2018, a Fultonian coast guard vessel approached the *SS Newton* and, after having ascertained that the *SS Newton* had not obtained prior authorization for data collection, requested that the *SS Newton* leave the area, a request with which the *SS Newton* complied. Two days later, Ms Reena Stroming, president of Fulton, made the following public declaration to address the incident:

“Conducting marine scientific activities in our waters is a violation of our sovereign rights in our EEZ. Vattel cannot unilaterally decide to undertake this until it has complied with the necessary procedures, and obtained prior authorization. Indeed, the construction of the wave farm was built following an environmental impact assessment conducted by independent academics, and public consultations took place. There is no proof that the decreased abundance of the *Utrechtis lawis* in the Monana Region is a consequence of the construction and operation of the wave energy farm in our EEZ. Fulton has complied with all of its obligations under international law concerning the conservation of the *Utrechtis lawis* as the stock's abundance in Fultonian waters has actually increased over the last two years.”

Exasperated by the situation and still concerned by the declining state of the fish stocks, Vattel sent the *SS Newton* back to the site of the wave energy farm on 24 August 2018. Once again, the *SS Newton* was asked to leave the area by the Fultonian coast guard, and the scientific vessel retreated into Vatteler waters.

8. Following the events and in light of the fact that the Note Verbale of 14 January 2018 remained unanswered, Vattel decided to submit the dispute to the International Tribunal for the Law of the Sea (ITLOS) as both Fulton and Vattel have adopted a declaration pursuant to Article 287 of the UNCLOS where they choose ITLOS as the preferred judicial dispute settlement mechanism.

9. In its submission to the ITLOS Registry, Vattel sustains that:

- By constructing the wave energy farm Fulton is violating its international obligations related to cooperation, including those under relevant conventions;
- Fulton's actions are inconsistent with its obligations on the protection and preservation of the marine environment and the conservation and management of transboundary fish stocks under international law;
- The exclusion of the *SS Newton* was an infringement of Vattel's freedoms existing in Fulton's EEZ.

10. Fulton contests the jurisdiction of ITLOS on two main grounds: (a) because there was no real and clear attempt by Vattel to solve the dispute by other means; and (b) because of the exceptions included in its declaration pursuant to Article 287 of the UNCLOS. Alternatively, Fulton respectfully requests ITLOS:

- To reject each of Vattel's claims; and
- To declare that Vattel has infringed the sovereign rights of Fulton by sending the *SS Newton* to conduct marine scientific activities in Fulton's EEZ on two occasions.

11. Fulton and Vattel are parties to the UNCLOS, the *Fish Stocks Agreement* (UNFSA), the *Convention on Biological Diversity* (CBD), the CITES, the CMS, the *Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo Convention), and the *Paris Agreement* under the UNFCCC.

Annex

**Declaration of the Kingdom of Vattel under Article 287 of the UNCLOS**

The Kingdom of Vattel declares, under paragraph 1 of article 287 of the United Nations Convention on the Law of the Sea done at Montego Bay on the tenth day of December one thousand nine hundred and eighty-two that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention, without specifying that one has precedence over the other:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI of the Convention; and
- (b) the International Court of Justice.

**Declaration of the Republic of Fulton under Article 287 of the UNCLOS**

In the absence of any other peaceful means to which it would give preference, the Government of the Republic of Fulton hereby chooses one of the following means for the settlement of disputes concerning the interpretation or application of the [United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea] in accordance with article 287 of the Convention on the Law of the Sea, in the following order:

1. The international Tribunal for the Law of the Sea established in accordance with Annex VI;
2. A special arbitral tribunal constituted in accordance with Annex VIII; and
3. The International Court of Justice.

Also, in the absence of any other peaceful means, the Government of the Republic of Fulton hereby recognizes as of today the validity of special arbitration for any dispute concerning the

interpretation or application of the Convention on the Law of the Sea relating to fisheries, the protection and preservation of the marine environment, and navigation, including pollution from vessels and by dumping.