

NILOS Moot Court Competition 2022

The RV Vilhelmina Case

(Republic of Freitas v. Kingdom of Selden)

[1]. The Republic of Freitas (hereinafter Freitas) is a continental coastal state, responsible for most of the world's renewable energy production and supply. The people of Freitas are predominantly vegetarians, but its traditional fishers are culturally revered. Indeed, during the annual *Oceans Day* festival, most Freitasians have a 'cheat day' and consume fish caught by the traditional fishers of Freitas. Freitas is a State Party to the 1982 United Nations Convention on the Law of the Sea (hereinafter 'UNCLOS') and has submitted a declaration under Article 287 of UNCLOS choosing the International Tribunal for the Law of the Sea (hereinafter 'ITLOS') as a means for the settlement of disputes concerning the interpretation or application of UNCLOS. Freitas has lawfully established and given due publicity to maritime zones, including a 12 nautical mile (hereinafter nm) territorial sea, 200nm exclusive economic zone and 200nm continental shelf extending from baselines which are established in a manner consistent with UNCLOS. Buzz LightMonth Inc. (hereinafter Buzz) is a private energy company, incorporated in Freitas since its inception. Buzz owns and operates numerous windfarms off the coast of Freitas and is responsible for installing all equipment associated with the supply of energy to diverse destinations. Buzz is the owner and operator of the Research Vessel (RV) *Vilhelmina*, and the Cable Ship (CS) *Digit*, both of which are registered and flagged in Freitas. The Buzz company website features a photo of the recently acquired RV *Vilhelmina*, presenting it as "part of Buzz LightMonth's ambition to contribute to sustainability at sea".

[2]. The Kingdom of Selden (hereinafter Selden) is an island state within the same region as Freitas. Selden is rich in fisheries resources but highly dependent on foreign

energy supply. Fisheries in the waters of Selden provide 90% of its people with their primary source of protein, while the sale of access rights to the surplus of allowable catch in the exclusive economic zone is a vital source of governmental income. Selden is a State Party to UNCLOS and has submitted a declaration under Article 287 of UNCLOS, choosing the ITLOS and the International Court of Justice as a means for the settlement of disputes concerning the interpretation or application of UNCLOS, without specifying that one has precedence over the other. Selden has lawfully established and given due publicity to maritime zones, including a 12nm territorial sea, 200nm exclusive economic zone and 200nm continental shelf extending from baselines which are established in a manner consistent with UNCLOS. Apart from 'Selden Island', Selden has undisputed sovereignty over a cluster of rocks ('the Tiles') located 140 nm east of Selden Island. The water surrounding the Tiles have been the site of uninterrupted traditional fishing (to an approximate distance of 16nm from its baselines), including fishers from across the region since time immemorial. Considerable international shipping normally passes through the exclusive economic zone of Selden and the 12nm territorial sea established around the Tiles.

[3]. Freitas and Selden are the region's leaders in the sustainable development of the blue economy. Following an amicable decolonisation process and Selden's independence, both nations maintain strong diplomatic relations. In the year 2000, Freitas fully funded the laying of a submarine data cable which brought internet to Selden Island for the first time. This connectivity provided a huge boost to the economic development of Selden. Since then, diplomatic relations between Freitas and Selden continued to blossom in all areas. The one exception to this is with respect to traditional fisheries. In April 2000 Selden closed areas beyond 12nm from the Tiles to traditional fisheries. Henceforth, traditional historic fishing was only allowed by Selden within 12nm of the Tiles. Since April 2000 Freitas has sent biannual diplomatic notes in protest, claiming that the restrictions on historic access and traditional fishing are incompatible with the rights of Freitasian fishers as affirmed in UNCLOS and customary international law.

[4]. Notwithstanding this ongoing fisheries dispute, Freitas and Selden have always been very active in the multilateral law-making processes, often sharing joint positions formally or informally. Both states have signed and ratified all relevant multilateral treaties applicable to ocean affairs. Likewise, they have sought to develop cooperative oceans governance at the bilateral level. For example, given the region's rich and diverse marine ecosystem and the need to promote transboundary scientific research, Selden and Freitas ratified a *2001 Bilateral Agreement on the Peaceful Settlement of Disputes*, providing that any mechanism accepted by a State Party pursuant to Article 287 of UNCLOS shall also have jurisdiction in respect of any dispute concerning marine scientific research which may arise.

[5]. In further pursuance of this enduring collaborative spirit, the Governments of Freitas and Selden agreed in January 2020 to facilitate the laying of a submarine power cable linking offshore windfarms of Freitas to Selden Island and its energy grid. The terms of the *2020 Memorandum of Understanding on Submarine Power Cables* (hereinafter MoU) signed by both Governments stated that “the parties commit to create favourable conditions for the licensing and installation of the proposed submarine power cable”.

[6]. In late January 2020, Freitas held a public procurement process. Buzz was the only company which bid for the project under this process. Freitas awarded Buzz the contract to install the submarine power cable with recourse to the *CS Digit*, whose crew includes seven citizens of Freitas and one citizen of Selden with temporary residence in Freitas. In February 2020, as part of the Environmental Impact Assessment (EIA) process required for transboundary projects which may result in significant and harmful changes to the marine environment, Buzz completed and submitted to the Freitasian environmental protection authority a study concerning the sections of the submarine power cable that were to be laid on the continental shelf of Freitas and on the Area. For technical reasons, Buzz proposed to the authorities of Freitas that the section of the submarine power cable laid across the continental shelf of Selden should follow a route directly adjacent to the existing submarine data cable. Following a public hearing in

Freitas which did not raise any opposition to the project, the Government of Freitas authorised Buzz to use the *CS Digit* and lay the submarine power cable along the entire proposed route from the offshore windfarms of Freitas to the outer limit of the territorial sea of Selden. The Government of Freitas also authorised the laying of the remaining power cable within the territorial sea of Selden, subject to Buzz and the *CS Digit* complying with any licencing and other conditions established by Selden therein.

[7]. As part of its commitments in the 2020 MoU, the Government of Selden immediately authorised Buzz to lay the submarine power cable throughout its maritime zones. This authorisation was however subject to the following conditions: (a) the submarine power cable follows a specific course through the territorial sea of Selden, (b) the submarine power cable remains at all times 30 meters from any pre-existing submarine cable or pipeline on Selden's continental shelf, and (c) within the maritime zones of Selden the *CS Digit* shall comply with all laws and regulations adopted by Selden in accordance with the provisions of UNCLOS and other rules of international law. Annexed to the authorisation delivered to Buzz was a compendium of the national law of Selden. Selden's 2005 *Environmental Protection Act*, which was included in this compendium, includes the following provisions:

Article 13

1. Nationals of the Kingdom of Selden may not own, operate, or crew any vessel involved in the laying of submarine cables or pipelines without the express prior authorisation of the Kingdom of Selden.

2. Subsection (1) shall apply to all parts of the sea that are not included in the territorial sea or internal waters of the Kingdom of Selden.

[...]

Article 31

1. Any person who contravenes Article 13 is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 12 months.

[8]. From March to June 2020, with all licensing completed, the *CS Digit* laid the submarine power cable across the continental shelf of Freitas, the Area and the continental shelf and territorial sea of Selden. The *CS Digit* laid the submarine power cable along the route that Buzz had originally proposed, and subsequently along the specific course set by Selden in respect of its territorial sea.

[9]. At the beginning of the *CS Digit*'s operations at sea in March 2020, the World Health Organization declared the existence of a global pandemic due to the increasing transnational spread of a highly infectious and sometimes lethal disease. Most new cases in Selden originated from people travelling to Selden from Freitas. However, the response by Freitas to monitoring and controlling the spread of this infectious disease were nothing short of lacklustre. As a result, the citizens of Selden started to put pressure on their government to take a stronger stance against Freitas. This pressure further increased in July 2020 when the international press published a story with concrete evidence demonstrating that the new submarine power cable was laid by Buzz in breach of the conditions imposed by Selden, and that it was installed with the involvement of a Seldenian national who was not authorized to conduct such activities. The Seldenian national involved, who was the master of the *CS Digit* during the entire laying of the submarine power cable, was convicted *in absentia*. A Seldenian judge then immediately issued an arrest warrant against the Seldenian national.

[10]. In July 2020, following extensive research and an earlier undisputed submission of preliminary information indicative of the outer limits of Selden's continental shelf beyond 200nm, the Government of Selden submitted its '*Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of Selden Island*'. Selden informed the Commission on the Limits of the Continental Shelf (CLCS) that there was an absence of any dispute between Selden and any other state concerning the area, and indeed there was an objective lack of any potential overlap of claims with respect to any other potential continental shelves beyond 200nm in the region. Selden was confident that the

CLCS would make recommendations that reflected its claim. A press release by the Government of Selden announced Selden's submission and received global attention as Selden's claim could result in the largest continental shelf in the region.

[11]. As of the beginning of 2021, relations between both states continued to be tense, but diplomatic channels remained open. To protect its population against the ravages of the pandemic, on the 5 January 2021 the maritime authority of Selden created an offshore anchorage in a sheltered bay at the Tiles for commercial vessels under quarantine or transiting commercial vessels in distress. A dedicated unit of the maritime authority distributed medical supplies and other essential supplies to all vessels therein until they were safe to depart. The maritime authority also issued a Notice to Mariners explaining that access to the port of Selden Island is prohibited for embarkation or disembarkation until the vessel quarantine is completed and all crew have tested negative for the disease. Given the highly infectious nature of the disease and the necessity of medical tracking and tracing, Selden also suspended all access and activities – including traditional historic fishing – in the vicinity of the quarantine anchorage until such time as the global pandemic is brought under control. Freitas once again sent a diplomatic note of protest, noting that *Oceans Day* would be celebrated on 8 June 2021 and urged “the unlawful suspension by Selden be lifted as soon as possible”.

[12]. In late January 2021, Freitas also sent a diplomatic cable to Selden with the following notice:

With a view to understanding the environmental impact of power cables, a private energy company registered in Freitas, Buzz LightMonth Inc., aims to undertake surveys in waters under the Kingdom of Selden's jurisdiction. This company will seek to gain information on how a power cable operation produces electromagnetic fields, heat, entanglement risk, pollution, and reef/reserve effects. The vessel to be used for the proposed Marine Scientific Research (MSR) activities is a Research Vessel owned by Buzz LightMonth Inc. and registered in the Republic of Freitas. Here are the details of the ship in question:

Name	<i>RV Vilhelmina</i>
Displacement	<i>5,700 tons (full load)</i>
Length	<i>108 m</i>
Beam	<i>17 m</i>
Installed power	<i>2 × 3000 hp electric motors 4 × 1500 kW Diesel Generators 2 × 1000 kW Diesel Generators</i>
Propulsion	<i>2 azipods with fixed pitch propellers 2 bow thrusters</i>
Speed	<i>15 kn</i>
Range	<i>8,000 nmi</i>
Endurance	<i>90 days</i>
Complement	<i>60</i>
Aviation facilities	<i>Helipad for 1 helicopter</i>
Boats & landing craft carried	<i>1 deep-diving autonomous underwater vehicle (Freitas-class Project xyz000)</i>

Proposed surveys are located along the existing power cable linking Selden to Freitas, near the edge of the maritime zones under Selden’s coastal state jurisdiction. The surveys will take place from the first to the last day of June 2021. The sponsoring entity is the state-funded Freitas Society for Maritime Energy, led by Director Mowgli Kaa, who is also in charge of this project. Due to the ongoing state of a global pandemic, and the distance of the project to our Republic’s ports, the Kingdom of Selden is kindly invited to participate in this project and facilitate access to its port to assist the RV Vilhelmina. The Government of the Republic of Freitas requests the Government of the Kingdom of Selden to provide clarification on any conditions for this MSR activity, since our legal department has found no applicable legal framework.

[13]. Following an extensive investigation, a report published by an international consortium of independent journalists in early February 2021 revealed that Buzz has close ties to the Government of Freitas and that the *RV Vilhelmina* was previously involved in military operations of the Navy of Freitas, albeit under a different name. Shortly thereafter, the Minister of Foreign Affairs of Selden announced during a press conference that a strong suspicion existed that one of Buzz's vessels, the *RV Vilhelmina*, was previously involved in wiretapping submarine data cables for the purpose of espionage. The Minister also informed the nation that diplomatic relations with Freitas would henceforth be suspended. The ambassador of Selden to Freitas was recalled.

[14]. The CLCS delivered its recommendations in March 2021, fully confirming Selden's submission concerning an extended 350nm continental shelf. The Government of Selden immediately deposited with the UN Secretary-General the charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. This moment was widely publicized in global media, including a photo of the King of Selden handing the new maritime charts of the Kingdom to the United Nations Secretary-General. In an interview to the press after that event, when asked about the risk of allowing activities of Freitas in the waters of Selden, the ruler stated that "consent would never be granted to any espionage activities in our seas".

[15]. The Government of Selden then moved on to designate the whole of its continental shelf beyond 200nm as an area "in which exploitation and detailed exploratory operations shall occur immediately and until further notice". This initiative from May 2021 was also widely publicized in global media, but the Government of Freitas received no official notification since all diplomatic channels remained closed.

[16]. With no official response to its request from Selden, and after four months of waiting, the Government of Freitas authorized Buzz to deploy the *RV Vilhelmina* in an area located 199nm from Selden's baselines, where research activities were to take place in accordance with the plans submitted. In April 2021 the *RV Vilhelmina* deployed an

underwater vehicle that tracked several marine mammals to observe their behaviour in the vicinity of the power cables. Six months after the initial request to Selden, and still with no official reply, the Government of Freitas authorized the *RV Vilhelmina* to use its underwater vehicle to perform drilling work near the two cables. The crew of the *RV Vilhelmina* undertook this activity in June 2021 at two different locations, one location at 199nm from Selden's baselines and another location at 201nm from Selden's baselines.

[17]. Meanwhile, Selden decided on 1 June 2021 to extend the suspension of all activities in the quarantine anchorage of the Tiles into an indefinite ban on all traditional historic fishing throughout the territorial sea of the Tiles. Selden reiterated its health concerns and publicly stated that the new ban was also motivated by the fact that Selden's limited maritime enforcement forces were increasingly immobilized by temporary pandemic-related domestic measures and therefore could not effectively monitor the Tiles area. Freitas sent a fresh diplomatic note of protest emphasising that its traditional fishers do not have access to any other fishing grounds.

[18]. During their activities at sea, three crewmembers of the *RV Vilhelmina* began to experience serious health issues consistent with the symptoms of the infectious disease causing the global pandemic. Fearful that lack of healthy and qualified crewmembers would result in the loss of priceless research equipment and in an environmental disaster, the Master of the *RV Vilhelmina* requested access to the port of Selden Island. This port was the nearest available port and the Master of the *RV Vilhelmina* fully informed the port authority of the health situation on-board the *RV Vilhelmina*, as well as the related concerns stated above. The port authority in Selden denied entry to port. The possibility of utilising the quarantine anchorage at the Tiles was not mentioned in Selden's communications to the *RV Vilhelmina*, and it is undisputed that the port authority of Selden did not consider granting the *RV Vilhelmina* access to the quarantine anchorage as an alternative to granting access to the port of Selden Island. The port authority's response was transcribed for future evidence of a tense exchange: "It is not in the interests of Selden to provide port access to the *RV Vilhelmina* and Selden will take

preventative measures as soon as the *RV Vilhelmina* enters the territorial sea”. That notwithstanding, a few days later the port authority of Selden decided to send medical supplies via helicopter to the *RV Vilhelmina* which was then located just beyond the outer limit of Selden’s territorial sea.

[19]. Reports of this situation caused outrage among citizens of Freitas. In an interview aired in July 2021, the President of Freitas answered a journalist stating that Freitas was attempting to reach out to the King of Selden to promote an amicable resolution of existing disputes which had arisen during 2020-2021. When prompted to comment on the newly established outer limits of the continental shelf of Selden, the President stated that “there has been no press release from the International Seabed Authority giving publicity to such limits and therefore those limits are not yet final and binding to the Republic of Freitas”.

[20]. In August 2021 the King of Selden responded to the advances of the President of Freitas and a *Freitas-Selden Leaders’ Retreat* proved a watershed moment in repairing diplomatic relations. The leaders of both nations signed a *2021 Joint Declaration*, which affirmed their intent to return to the fruitful years of bilateral cooperation and to jointly pursue the peaceful settlement of all remaining disputes, including the use of judicial measures.

[21]. Following the *2021 Joint Declaration*, in September 2021 Freitas submitted an application to ITLOS requesting the Tribunal to adjudge and declare that:

- a) By refusing the *RV Vilhelmina* access to the port of Selden Island and threatening to enforce ‘preventative measures’, the Kingdom of Selden has violated its obligations towards the Republic of Freitas.
- b) The Kingdom of Selden has unlawfully interfered with the traditional historic fishing activities of Freitasian fishers at the Tiles.

- c) By prescribing and enforcing requirements on the laying of a submarine power cable, the Kingdom of Selden has infringed upon the Republic of Freitas' freedoms and upon the Republic of Freitas' exclusive jurisdiction over the *CS Digit*.
- d) The Kingdom of Selden infringed on the right of the Republic of Freitas' to conduct marine scientific research under international law.

[22]. Selden submitted its response to ITLOS, requesting the Tribunal to adjudge and declare that:

- a) The Tribunal is without jurisdiction in respect of the dispute concerning the *RV Vilhelmina*'s request to access port and, in any event, the Kingdom of Selden enjoys absolute sovereignty over the port of Selden Island.
- b) The Tribunal is without jurisdiction in respect of the dispute concerning historic rights and, in any event, the Kingdom of Selden has exclusive jurisdiction over fisheries within its territorial sea and exclusive economic zone.
- c) The Kingdom of Selden is fully entitled to regulate the laying of submarine cables and the Republic of Freitas has infringed the rights and jurisdiction of the Kingdom of Selden over its continental shelf.
- d) The Kingdom of Selden acted in conformity with its sovereign rights and coastal state jurisdiction with regards to the activities of the *RV Vilhelmina* in areas under Selden's jurisdiction.