

NILOS Moot Court Competition Case 2020

Case concerning Mining and Fishing Activities in the Wittel Ocean

(Federal Republic of Pastorius v. Republic of Zawinul)

1. The Republic of Zawinul (Zawinul) and the Federal Republic of Pastorius (Pastorius) are adjacent coastal States of the Wittel Ocean. Both States have established an exclusive economic zone upon their ratification of the United Nations Convention on the Law of the Sea (Convention). Zawinul ratified the Convention on 17 December 1997 and Pastorius did so on 10 July 1999. Neither Pastorius nor Zawinul have made a declaration under article 287 of the Convention. Zawinul upon ratifying the Convention made a declaration under article 310 of the Convention that any question concerning the implementation of article 76 of the Convention in relation to the continental shelf beyond 200 nautical miles has to be effected in accordance with the procedures set out in article 76 of and Annex II to the Convention.

2. Zawinul made a submission to the Commission on the Limits of the Continental Shelf (CLCS) on the outer limits of its continental shelf in two distinct areas on 12 April 2002. In one case, this concerns the Rainbow Ridge, which according to the information contained in the Executive Summary of the submission of Zawinul, is a natural component of the continental margin of Zawinul. The Executive Summary of the submission indicates that the outer limits of the continental shelf are located 60 nautical miles beyond the foot of the continental slope along the Rainbow Ridge as determined by Zawinul. The most seaward point of the outer limits of the continental shelf contained in the submission of Zawinul is 436 nautical

miles from the baselines of Zawinul. The other area that is included in the submission of Zawinul is the Egedra Basin. The fixed points of the outer limits of the continental shelf in the Egedra Basin contained in the submission of Zawinul are located between 220 and 380 nautical miles from the baselines of Zawinul.

3. Fisheries is an important sector of the economy of Pastorius and traditionally it has been fishing on the high seas in the Wittel Ocean. One of the stocks that fishing vessels of Pastorius have been harvesting is the Egedra lobster. Fishing for the Egedra lobster started in the 1960s and since 1971 is managed by the Wittel Ocean Fisheries Commission (WOFC). The WOFC has been established by the Wittel Ocean Fisheries Agreement (WOFA), which has been ratified by Pastorius, Zawinul and their western neighbors, the Republics of Ingram and Teldec.

4. In 2001 an amendment to the WOFA entered into force that defines the regulatory area of the WOFC as the high seas area of the Wittel Ocean beyond the outer limits of the exclusive economic zones of the parties to the WOFA as established in their national legislation. During the 2003 annual meeting of the WOFC, Zawinul indicates that it considers that the WOFC is not competent to set quota for the fishery of the Egedra lobster because it is a sedentary species of the continental shelf beyond 200 nautical miles of Zawinul in the Egedra Basin. The other members of the WOFC disagree with Zawinul, claiming that the 2001 amendment of the WOFA gives the WOFC the competence to deal with all fish stocks beyond the 200-nautical-mile limit of its member States and that Zawinul as a member of the WOFC in the past has participated in the management of the whole stock of the Egedra lobster beyond 200 nautical miles. In accordance with the rules of procedure of the WOFC, a proposal of Pastorius on the total allowable catch and national quota for the Egedra lobster for 2004 is accepted by a three-quarters majority. Zawinul objects to the decision of the WOFC and unilaterally determines the

total allowable catch for the Egedra lobster for 2004, and accords quota to two of its national fishing companies, *Ocean Seafood* and *River People Seafood*.

5. In December 2004, the coast guard of Zawinul arrest the *Vazquez* and the *Rio Negro*, two fishing vessels flying the flag of Pastorius that hold a license from Pastorius for lobsters in the regulatory area of the WOFC. The vessels are charged with illegally fishing for Egedra lobster on the continental shelf of Zawinul. Their catch is confiscated and the captains of both vessels are required to pay a fine of 2,500,000 Zawinul rupee.

6. To avoid further escalation of the dispute over the Egedra lobster, the member States of the WOFC conclude a provisional arrangement on 2 February 2005. The provisional arrangement is concluded for a period of five years and after that period is automatically renewed for one year unless one of the parties to the arrangement informs the other parties in writing that it wants to discontinue the arrangement. The arrangement provides that it is without prejudice to the positions of the parties on any matter relating to the law of the sea.

7. Prospecting along the Rainbow Ridge in the 1980s indicated that it had a significant potential for commercial mining of rare earth metals. The increased demand for rare earth metals in the 1990s led to a decision of the Zawinul to grant a license for the exploration and eventual exploitation of rare earth metals in a rectangular area along the central axis of the Rainbow Ridge to the *Marquee Mining Company* (MMC). The landward limit of the license area largely coincides with the 200-nautical-mile limit of Zawinul's exclusive economic zone, while the seaward limit is located at 410 nautical miles from the baselines of Zawinul. In a press release of 14 July 2002, MMC announces that it will start commercial production of scandium in Block 21 of its license area, which is the most seaward of the licensed blocks.

8. During a meeting in August 2002 with Julia Ingeva, the President of Zawinul, the Prime Minister of Pastorius, Radikahn Acosta, expresses a concern that the area of Block 21 is part of the international seabed area (Area) and its resources have to be mined in accordance with the regime contained in Part XI of the Convention. This view is rejected by President Ingeva. At the end of their meeting President Ingeva and Prime Minister Acosta sign a joint statement (2002 Joint Statement), in which they agree that Zawinul and Pastorius will “settle any dispute concerning the law of the sea on the basis of friendly relations and cooperation between the two countries in the spirit of the United Nations Charter as well as of the 1982 United Nations Convention on the Law of the Sea”.

9. On 11 July 2015, the CLCS adopts recommendations in relation to the submission of Zawinul on the outer limits of its continental shelf along the Rainbow Ridge and the Egedra Basin. The recommendations indicate that the outer limit along the Rainbow Ridge at its seaward end is defined by points that are located at 350 nautical miles from the baselines of Zawinul. In relation to the Egedra Basin, the Commission recommends Zawinul that it can establish the outer limits of its continental shelf. The outer limits of the continental shelf contained in the recommendations of the CLCS coincide with the outer limits contained in the submission of Zawinul in relation to the Egedra Basin.

10. On 30 August 2015, the Foreign Ministry of Pastorius presents a Note verbale to the Embassy of Zawinul in Pastorius. The Note verbale observes that a review of the recommendations of the CLCS to Zawinul indicates that the outer limits beyond 200 nautical miles in the Egedra Basin have been determined from baselines that are not in accordance with the Convention. According to the Note verbale baselines determined in accordance with the Convention would result in an outer limit of the continental shelf and the exclusive economic

zone that is landward of the actual 200-nautical-mile limit in the area concerned as determined by Zawinul its national legislation.

11. On 15 September 2015, Zawinul, acting on the basis of the recommendations of the Commission and article 76(9) of the Convention, deposits with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf in the Egedra Basin. On the same day, Zawinul's Foreign Minister Ekaterina Erskine makes a statement concerning the outer limits of the continental shelf of Zawinul along the Rainbow Ridge:

The Republic of Zawinul lodged its submission with the Commission on the Limits of the Continental Shelf in 2002. A sub-commission of Commission started the consideration of the submission in 2011. The Republic of Zawinul has attended various meetings of the sub-commission to discuss the classification of the Rainbow Ridge. In this connection, the Republic of Zawinul has also closely collaborated with the Republic of Teldec, which made a submission in relation to the Igeyo Ridge in 1999.

The Commission made recommendations to the Republic of Teldec in 2009. These recommendations observe that the Igeyo Ridge and the Rainbow Ridge are part of a complex of seafloor highs that has been formed by the thinning, extension and rifting of the continental crust. In light of that conclusion, the Commission recommended that the outer limits of the continental shelf along the Igeyo Ridge be established by outer limit points beyond 350 nautical miles from the baselines of the Republic of Teldec.

In 2012, after the elections for the Commission by the Meeting of States Parties, the sub-commission considering the submission of The Republic of Zawinul had to be reconstituted. This sub-commission did not agree with the classification of the Rainbow Ridge as part of a complex of seafloor highs. The Commission subsequently agreed with the sub-commission and has recommended the Republic of Zawinul to establish the outer limit of its continental shelf at 350 nautical miles.

As a matter of justice and equity, the Republic of Zawinul cannot accept the difference of treatment between the Republic of Teldec and itself. The Republic of Zawinul holds that the outer limits of the continental shelf contained in its submission have been established in accordance with the substantive provisions of article 76 of the Convention and will apply these limits in exercising its sovereign rights over the continental shelf. The Republic of Zawinul reserves the right to make a new or revised submission in relation to the Rainbow Ridge at an appropriate time in the future.

12. In December of 2016, Pastorius informs the International Seabed Authority (Authority) through a notification to the Secretary General of the Authority that is has granted *Mount ISA*

Inc. a license for prospecting for polymetallic sulphides on the Rainbow Ridge in an area between 350 and 400 nautical miles from the baselines of Zawinul. At the same time, Pastorius indicates that it intends to act as the sponsoring State of *Mount ISA Inc.* if the prospecting activities will result in a decision by the company that it wants to move to the stage of exploration. On 2 January 2017, the Secretary General of the Authority informs *Mount ISA Inc.* that the notification has been recorded on 24 December 2016.

13. On 8 January 2017, the Foreign Ministry of Zawinul presents a Note verbale to the Embassy of Pastorius in Zawinul. The Note verbale observes that prospecting activities by *Mount ISA Inc.* on the Rainbow Ridge will constitute an infringement of Zawinul sovereign rights over its continental shelf. In reply, the Foreign Ministry of Pastorius presents a Note verbale to the Embassy of Zawinul in Pastorius. The Note observes that the prospecting activities have been duly recorded by the Secretary General of the Authority and that Zawinul as a Member State of the Authority is obliged to accept that the prospecting by *Mount ISA Inc.* will go ahead as planned.

14. To resolve their disputes concerning mining on the Rainbow Ridge and fisheries in the Wittel Ocean, on 16 November 2018 Zawinul and Pastorius agree to set up a bilateral commission. The parties agree that the commission will be responsible for developing proposals for a comprehensive settlement taking into account the rules of international law applicable between the parties and on the basis of the 2002 Joint Statement. The first meeting of the bilateral commission takes place in December of 2018. A press communique issued by the Foreign Ministry of Zawinul after the meeting indicates that the bilateral commission has made good progress and during its next meeting, which will be held in April of 2019, will discuss a draft proposal to be prepared by the Foreign Ministry of Zawinul.

15. On 17 March of 2019, Pastorius presents a Notification and Statement of Claim to Zawinul initiating arbitration proceedings in accordance with Annex VII of the Convention. In its Statement of Claim, Pastorius has made the following submissions:

- a. By unilaterally regulating the fishery of the Egedra lobster, the Republic of Zawinul is in breach of its obligations under the WOFA and the Convention;
- b. The Republic of Zawinul is in breach of its obligations under article 76 and other relevant provisions of the Convention by establishing the outer limits of its continental shelf in the Egedra Basin and applying the limits as contained in its submission to the CLCS in determining the outer limits of its continental shelf along the Rainbow Ridge and all of these limits are not opposable to the Federal Republic of Pastorius;
- c. By allowing MMC to start the commercial production of scandium in Block 21 of its license area, the Republic of Zawinul is in breach of its obligations under Part XI of the Convention; and
- d. By objecting to the prospecting activities of *Mount ISA Inc.*, the Republic of Zawinul is in breach of its obligations as a Member State of the Authority.

16. In reply to the Notification and Statement of Claim, the Foreign Ministry of Zawinul presents a Note verbale dated 24 March 2019 to the Embassy of Pastorius in Zawinul. The Note verbale contains the following submissions:

- a. An arbitral tribunal established under Annex VII lacks the jurisdiction over the dispute submitted by the Federal Republic of Pastorius;
- b. The Republic of Zawinul is entitled to regulate the fishery of the Egedra lobster in accordance with article 77 of the Convention;
- c. The Republic of Zawinul has acted in accordance with its obligations under article 76 and other relevant provisions of the Convention in determining the outer limits of its continental shelf in the Egedra Basin and along the Rainbow Ridge and these outer limits are opposable to the Federal Republic of Pastorius;
- d. The Republic of Zawinul in allowing MMC to start the commercial production of scandium in Block 21 of its license area has acted in accordance with its rights and obligations under Part VI of Convention; and
- e. The Republic of Zawinul has not breached its obligations as a member State of the Authority by objecting to the prospecting activities of *Mount ISA Inc.* on the Rainbow Ridge.

Annex

Statement under article 310 of the United Nations Convention on the Law of the Sea

The Government of the Republic of Zawinul understands that any question concerning the implementation of article 76 of the Convention in relation to the continental shelf beyond 200 nautical miles has to be effected in accordance with the procedures set out in article 76 of and Annex II to the Convention.