



IBDMAR

Instituto Brasileiro
de Direito do Mar

BILOS

Brazilian Institute
for the Law of the Sea

2018 ITLOS MOOT COURT COMPETITION

CASE

IN PARTNERSHIP WITH:

Universidade Federal da Bahia



Republic of Disali Vs. Kingdom of Brismania

1. Cagarras is the second largest in extension and the third most populous continent of the Earth. The vestiges of the human occupation in this continent date from IV century B.C.; since then, it has already housed many civilizations and empires, a decisive factor for the current ethnic and cultural plurality of the region.

2. In relation to the surrounding waters of Cagarras, the Sea of Corals stands out for its natural beauties. Tourists from all over the world are attracted by its calm waters and white-sand beaches that bathe the coasts of three countries: (1) To the West, the Kingdom of Brismania; (2) To the North, the People's Republic of Nova Bahia; and (3) To the East, the Republic of Disali. A detailed picture of the complex geographical configuration of the region can be found in Annex I of this document, and it is also important to note that the Kingdom of Brismania and the Republic of Disali have opposite coasts.

3. To the West, the Kingdom of Brismania is a parliamentary monarchy, with about 42,700,000 (forty-two million and seven hundred thousand) inhabitants. In the last decades, the country reached high levels of economic and social development from an industrialized economy, focused on the export of consumer goods. To the East, the Republic of Disali is a federation composed of four states. According to United Nations data, 40% of its population, estimated at 23,400,000 inhabitants (twenty-three million four hundred thousand), live in extreme poverty and misery. Economically, the country depends on the exports of agricultural products and fishing in the Sea of Corals region.

4. The Kingdom of Brismania and the Republic of Disali were former colonies of the "Belenian Empire", extinguished in 1922. The Republic of Disali was the last of the former colonies to become independent only in 2008 after a long and violent secession war with the People's Republic of Nova Bahia of which it was a province and later an UN peacekeeping operation (1997 – 2008). The Republic of Disali has not yet reached full social and political stability, and since 2011 faces an internal armed conflict between state forces and internal armed groups that maintains control over some regions in the south of the country. These internal armed groups operate in various criminal activities, including serious human rights violations such as murder, systematic extortion of companies, historical artifacts and human trafficking.

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5. Both the Kingdom of Brismania and the Republic of Disali are members of the UN and of the Cagarras Regional Organization of States (CROS). Both States have ratified the United Nations Convention on the Law of the Sea (UNCLOS) and have accepted the jurisdiction of the International Tribunal for the Law of the Sea (ITLOS) for the settlement of disputes concerning the application and interpretation of UNCLOS by means of *written declarations* under paragraph Article 287 of UNCLOS. In addition, both are States Parties to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, and to the UN Human Rights Conventions, such as the 1951 Convention relating to the Status of Refugees and its 1967 Additional Protocol, the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.

6. After its independence, the Republic of Disali questioned the delimitation of its maritime border. In 1952, an area of the Sea of Corals was at the core of a maritime dispute between the Kingdom of Brismania and the People's Republic of Nova Bahia submitted to the arbitration of Pope Pius XII. On one hand, the Republic of Disali now claims that under the United Nations Convention on the Law of the Sea (UNCLOS), part of this area, which has been arbitrated by Pope Pius XII, is part of its Exclusive Economic Zone – henceforth, EEZ. On the other hand, the Kingdom of Brismania argues that according to the arbitral award of 1952, such area is part of its EEZ. Since 2008, the *gray area* of the Sea of Corals has been subject of a maritime dispute between the Republic of Disali and the Kingdom of Brismania.

7. Although both States are involved in a dispute over their maritime limits in the great area of the Sea of Corals, it should be pointed out that due to the historical complexity of the dispute, the physical and scientific particularities of the region and the participation of a third State in the 1952 arbitration, the Republic of Disali and the Kingdom of Brismania exchanged several diplomatic notes on the conflict, agreeing that the best way to deal with this controversial maritime delimitation would be to decide the case *ex aequo et bono*, in case one of the States resorts to jurisdictional means.

8. In 2011, the Royal Navy of the Kingdom of Brismania – henceforth, RNB – began a coastal zoning project for monitoring the region's living resources and delimiting possible

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areas of mineral extraction in the seabed. The Sea of Corals, which bathes the east coast of Brismania, is rich in biological diversity, one of the only spots on the planet where it is possible to observe shoals of the *bright-green fin tuna*, threatened with extinction.

9. Following the opening of diplomatic negotiations between the governments of Brismania and Disali with the exchange of diplomatic notes and unsuccessful settlement of the dispute, the RNB began zoning the area in the Sea of Corals in July 2015. Despite having completed the coastal zoning project of this region in March 2016, the Kingdom of Brismania did not make available the detailed results of the zoning project. In March 2016, the following note was released to the press by the RNB Communications Office:

“New Conception, March 24, 2016

The Royal Navy of the Kingdom of Brismania, by means of this note, makes public that the maritime zoning project of every part of the Sea of Corals, that composes the brismanian territory, was completed. One of the goals of this zoning project was to monitor the living resources in the region, especially the *bright-green fin tuna*, a species critically endangered. The final results of this study indicate that the amount of these fish in the Sea of Corals has been drastically reduced since 1996, the year of the last official check.

Communications Office of the Royal Navy of Brismania”

10. In the light of these RNB data from August 2016, the Parliament of the Kingdom of Brismania has approved the Tuna Protection Act (TPA) banning the *bright-green fin tuna* fishing on every part of the sea under its jurisdiction. The TPA also makes it illegal to use the so-called “trawling” fishing method, which is widely used for catching the *bright-green fin tuna* and severely criticized by environmental groups, as it causes serious damage to the fragile ecosystems of the seabed.

11. On 17 December 2016 during a surveillance operation in the brismanian Kingdom EEZ, the RNB seized the vessel M/V “Glasdra” flying the flag of the Disali State. After

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certification of the vessel's documentation by RNB agents, the M/V "Glasdra" and its crew were detained and sent to the Port of New Conception, the capital of the Kingdom, located on its the northeast coast. During the seizure of the M/V "Glasdra", the electricity and water supply of to the vessel were cut off. Also, the use of force by the Officers of the Kingdom of Brismania Port Authority was reported during and after the seizure of the vessel. According to the geolocation instruments of the M/V "Glasdra", at the time of the seizure, the ship was returning from the Sea of Corals region, which is under a maritime dispute between the Kingdom of Brismania and the Republic of Disali.

12. In an official statement, the RNB reported that the seizure of the M/V "Glasdra" was the first one carried out in accordance with the new guidelines established by the TPA. The communication also states that some equipment found in the vessel has been retained, among them, (a) Fishing equipment, some specific for the catching of the *bright-green fin tuna*; (b) Diving equipment at high depths; and (c) One mini submersible. According to the documentation submitted by the disalian State Authorities, the mini submersible was rented by the crew of the M/V "Glasdra" and did not fly the flag of any State.

13. Days after the release of the note by the RNB, the "*Brismanian Institute for the Law of the Sea – BILOS*" NGO, based in New Conception, reported that M/V "Glasdra" had not carried out any fishing activity in the Sea of Corals region. That NGO had access to the documentation of the vessel seizure, without any reports of fish in it.

14. On January 31, 2017, following the imposition of a bond by the Kingdom of Brismania to the Republic of Disali and the installation of a radar monitoring system on the M/V "Glasdra", the High Court of Brismania released the vessel and its crew. However, the mini submersible remained under the jurisdiction of the Kingdom of Brismania, kept in a RNB warehouse in the Port of New Conception.

15. In February 2017, the "Wikileaks" website released a series of official and confidential documents of the Kingdom of Brismania. Among all these documents there was the final Report of the coastal zoning project for the Sea of Corals region, subject to the maritime dispute between States. According to that document, a "rare and remarkable variety of archaeological objects" was found in the area.

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16. Disclosed by the “Wikileaks” website, other official documents from the Kingdom of Brismania also indicated that more detailed studies were carried out in the region. A file titled “Archaeological Research Report”, stamped with the brismanian Ministry of Environment, Culture and Historic Heritage emblem – hereafter “MinECHH” – described the discovery of a large archaeological site submerged in the Sea of Corals region. Submerged ruins of a city probably dated from 204 B.C. are reported in this document.

“... from a depth of 800 meters there was a large archaeological site with several buildings, artifacts and objects ... the site is divided into three large and interconnected zones ... the structure appears to be the ruin of an ancient city ... some buildings resemble temples and palaces found in parts of Southeast Asia, such as Angkor Wat ... many objects such as amphorae, coins and statues were sighted at various points in the archaeological site ...”

17. On March 15, 2017, the Ministers of Defense, Environment, Culture and Historical Heritage and the Foreign Affairs of the Kingdom of Brismania held a press conference announcing “the discovery of an archaeological site submerged in the brismanian EEZ”. At the same time, the Minister of Defense announced a joint operation with “MinECHH” to intensify inspection of vessels in the Sea of Corals region, with the direct involvement of the RNB.

18. In view of this position of the Kingdom of Brismania, the Minister for Foreign Affairs of Disali held an open-air statement affirming that the Kingdom of Brismania would be “looting archaeological artifacts from the country, which historically belong to the people of Disali”. On the occasion, the Minister for Foreign Affairs made reference to ancient historical accounts of the southern part of the State on a city that disappeared by force of water. After this pronouncement, the Disali Ambassador in Brismania was called by the government to return to Disali.

19. In April 2017, the surveillance operations announced by the Minister of Defense of the Kingdom of Brismania began. Led by the RNB, the actions sought to monitor activities

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related to illegal fishing and to check the area where the archaeological site was discovered. In June 2017, the BILOS NGO denounced RNB's approaches, showing that vessels flying the Disali flag accounted for 90% of all approaches to that period. The NGO also stated that the RNB kept warships in several points of its EEZ border with Disali and Nova Bahia EEZs as a way to discourage the shipping of Disali and Nova Bahia vessels on its coast.

20. In the meantime, in the Republic of Disali, internal armed conflicts intensified in early 2017, forcing thousands of disalians to seek refuge in other countries, such as the Kingdom of Brismania. Many of these asylum seekers sought to reach the territory of the Kingdom of Brismania crossing the Sea of Corals aboard precarious and overcrowded vessels. On several occasions, these vessels were intercepted by the RNB before they even entered into the brismanian EEZ and sent back to the disalian coast. The international press also reported these occurrences in the disputed zone between Brismania and Disali. According to the BILOS NGO data, at least eleven incidents occurred from March to May 2017.

21. On July 15, 2017, MinECHH published a partial Report on the operation carried out in partnership with the RNB. The official document pointed to such a joint operation as a promising practice for the conservation of living resources, presenting data on seizures of materials related to illegal fishing, as well as surveys indicating the presence of specimens of *bright-green fin tuna* in areas where it was not seen for decades. In relation to the monitoring of the archaeological site, the Report highlights the fact that the traffickers of historical artifacts in the Sea of Corals region are well known and that all necessary measures for the conservation of the cultural heritage of Brismania are being carried out to.

22. On August 26, 2017, during a surveillance operation in its contiguous zone, the RNB reported an intercurrence involving the M/V "Hocms", flying the disalian flag. According to the Navy, the M/V "Hocms" was requested to board brismanian authorities for the purpose of inspecting the vessel's documentation. However, after several unsuccessful contact attempts, the RNB began a hot pursuit of the ship. Also according to the Navy, the attempt to arrest the M/V "Hocms" extended until the ship approached the limit of the Kingdom of

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Brismania EEZ, when 6 (six) shots were fired by RNB Officials towards the M/V “Hocms”. At the end of the operation, one of the crew members of the M/V “Hocms” was killed, Mr. Mohamed Lee, a national of Brismania. Three amphorae and one mini submersible were also found on the vessel.

23. According to the BILOS NGO, the RNB entered the waters of the Nova Bahia EEZ during the course of the hot pursuit, which was later proven by the analysis of the Frigate localization instruments used at that time by the Navy of the Kingdom of Brismania.

24. On January 10, 2018, unfruitful the initial attempts to diplomatically settle the core of the dispute, the Republic of Disali filed an application against the Kingdom of Brismania before the International Tribunal for the Law of the Sea (ITLOS), according to the Rules of Court so that:

- (i) Declares that the International Tribunal for the Law of the Sea (ITLOS) has jurisdiction to entertain the Case;
- (ii) Declares that the maritime operations carried out by the Royal Navy of the Kingdom of Brismania are unlawful;
- (iii) Declares the illegality of the arson attacks made by the Kingdom of Brismania in the large area of the archaeological site submerged in the Sea of Corals determining the suspension of any new extractions until the negotiation of an Agreement between the Parties;
- (iv) Declares that the arrest of the M/V “Glasdra” and the hot pursuit of the M/V “Hocms” carried out by the Kingdom of Brismania are both unlawful;
- (v) Declares that the approaches of asylum-seekers from the Republic of Disali in the Sea of Corals region made by RNB are unlawful and the death of Mr. Mohammed Lee during the hot pursuit operation of the M/V “Hocms” is under the responsibility of the Kingdom of Brismania.

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25. The Kingdom of Brismania respectfully requests that ITLOS:

- (i) Declares that it does not have jurisdiction to entertain the Case;
- (ii) Declares that the maritime operations carried out by the Royal Navy of the Kingdom of Brismania are lawful;
- (iii) Declares the legality of all activities carried out by the Kingdom of Brismania in the large area of the archaeological site submerged in the Sea of Corals;
- (iv) Declares that the arrest of the M/V “Glasdra” and the hot pursuit of the M/V “Hocms” carried out by the Kingdom of Brismania are both lawful;
- (v) Declares that the approaches of asylum-seekers from the Republic of Disali in the Sea of Corals region made by RNB are lawful and the death of Mr. Mohammed Lee during the hot pursuit operation of the M/V “Hocms” is not a violation of International Law.

* After the filling of the Application before the International Tribunal for the Law of the Sea (ITLOS), the Parties diplomatically agreed to submit the dispute on the delimitation of its maritime borders in the *gray area* of the Sea of Corals region to an *ex aequo et bono* decision of ITLOS, without any later interference of the Parties to the dispute, in accordance with Article 293, paragraph 2, of the UNCLOS.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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ANNEX I: MAP OF THE SEA OF CORALS

