

International Law Moot Court Competition “Asia Cup 2017”

The Case concerning the *Challenger*

Amber / Ratvan

1. Amber is a developing country with a population of approximately 5,000,000 people. More than 40 percent of its population is engaged in agriculture or fisheries. Traditionally, one of Amber’s main industries is fish processing. The minced fish product, a specialty of Amber, has attracted many tourists to the country. Ninety-five percent of the country’s population belongs to the Amber ethnicity, and the official language of Amber is Amberian. Malcom Yasmin took the oath of office as Amber’s new president in 1980. Since then, the country has been governed by Yasmin’s one-party dictatorship.
2. Ratvan is a developing country with a population of 80,000,000 people. The country has continued to reform its economy, resulting in stable economic growth of 5-6 percent each year since 2005. Ninety-five percent of the population belongs to the Ratvan ethnicity, a different race from the Amber ethnicity. Ratvan’s official language is Ratvanese, which belongs in a different language system than Amberian. Since the 2000s, public sentiment against the neighboring state of Amber has changed for the worse. Ratvan has a parliamentary cabinet system.
3. Narma is an island country located outside of the Sea of Sultana. Ninety-nine percent of its population belongs to the Amber ethnicity and the country’s official language is Amberian. In the late 1960s, Narma had shifted its economy from relying on fisheries and agriculture: the country took advantage of its rich phosphate deposits and the national economic policy came to focus on exporting phosphate to Ratvan. As a result, all other economic industries in Narma gradually shrunk. However, after the late 1990s, the amount of phosphate rock exports started to decrease, unavoidably leading to higher unemployment. Today, about thirty percent of Narma’s population has gone abroad to seek work. According to a 2010

report by Amnesty International, some criminal organizations have become involved in workers' migration from Narma. Narma's nationals are often targeted as victims of human trafficking by such organizations.

4. Both Amber and Ratvan face the Sea of Sultana, and the distance between the baselines of each country's territorial seas ranges from a minimum of 200 nautical miles to a maximum of 350 nautical miles. Amber and Ratvan signed a maritime delimitation agreement in 2000, which defines the median line between such baselines as the boundary of both the continental shelf and exclusive economic zone ("EEZ") appertaining to the two states. The marine area around the boundary of the EEZ's has a rich amount of fishing resources. Following the conclusion of the maritime delimitation agreement, these states also entered into the fisheries agreement which provides that each party shall exercise their sovereign rights and jurisdiction within each side of the median line, in accordance with the United Nations Convention on the Law of the Sea ("UNCLOS"). The fisheries agreement also states that both parties shall hold an annual bilateral consultation to determine the operating conditions for the fishery in each EEZ by each vessel, including catch limit and maximum number of fishing vessels for every fishing season. The fishing vessels of one party may conduct fishing operation in the EEZ of the other party beyond the median line, subject to and in accordance with the fishing permit issued by the relevant authority of the latter.
5. The Government of Amber has significantly loosened the requirements on ship profile authentication and reference checks for owners and crews, in order to promote the ship registration to Amber. Since around 2010, Amberian ships have often operated illegal or unauthorized fishing within Ratvan's EEZ. It is also said that several Amberian ships have worked in concert to obstruct Ratvan's fishing operations and have sometimes destroyed or despoiled fishing equipment in Ratvan's EEZ set by Ratvan ships.
6. It has been suggested that Bader, a crime organization based in Amber, has gotten involved in such fishing operations in Ratvan's EEZ. In 2010, Amnesty International

released a report claiming that Bader forced human trafficking victims from Narma to work in fish processing, sales, and exports in Amber. Responding to this report, the Ratvan government imposed a ban on the imports of minced fish products from Amber.

7. Ratvan enacted the Ratvan Fisheries Act in 1982, which provides that fishing operations by foreign nationals in Ratvan's waters require precertification by Ratvan's Fisheries Agency. In 2010, Ratvan amended the Act and set forth that any person who operates fisheries in a manner that contravenes or fails to comply with this Act shall be subject to a term of imprisonment not exceeding 10 years. Although the Act authorizes the Ratvan Coast Guard to confiscate fishing vessels and their fishing gear if the people on the vessels are engaged in unauthorized fishing, it has no provisions on the demolition of ships. The excerpt of the Ratvan Fisheries Act is attached hereto as Annex 1. With the amendment of the Act, the Ratvan government also decided to increase the number of the fishery patrol vessels in Ratvan's EEZ.

8. Ratvan became a party to the Convention against Transnational Organized Crime in 2000. At the same time it enacted the Act on Punishment of Organized Crimes, which set forth that in the event a vessel is suspected to have committed organized crime outside of Ratvan's territorial water, the Ratvan Coast Guard is authorized to board the suspected vessel and conduct an inspection subject to the consent of its flag state and, if necessary, tow it into port for further investigation.

9. During bilateral consultation in 2013 under the fisheries agreement, the government of Ratvan requested that Amber's government tighten control over illegal and unauthorized fishing by Amberian vessels in Ratvan's waters. However, as no specific steps had taken by Amber, Ratvan, at the consultation in 2014, notified Amber that they were suspending the catch quota and fishing permission of Amberian vessel in Ratvan's EEZ until Amber improves the situation. Amber replied that it would do the same to Ratvan's fishing vessels. Since then, the bilateral talks under the fisheries agreement have ceased, and neither Amber nor Ratvan has granted vessels from the other country fishing permission.

10. Meanwhile, the unauthorized fishing by Amberian vessels has become more frequent and often escalated into violence. Several Amber's vessels have robbed Ratvan fishing vessels of fish and gear, which sometimes resulted in gunfire between the Amberian vessels and Ratvan Coast Guard. In October 2015, a collision between a Ratvan Coast Guard vessel and an unidentified ship broke out, when the unidentified ship dashed itself against the Coast Guard's vessel as the Coast Guard was preparing to conduct a boarding inspection of an Amberian fishing boat suspected to have committed illegal fishing in Ratvan's EEZ. The boat fled the scene, but the Ratvan Coast Guard arrested the ship that caused the crash. The ship was stateless and its crew, including the captain, were all Amberian nationals. The Ratvan government announced, "We, the government of Ratvan, can no longer overlook such mindless vandalism. The time has come for us to take a zero-tolerance approach." They then confiscated the ship's fishing gear and demolished the ship concerned. After this incident, Amberian law enforcement vessels began to cross over into Ratvan's EEZ more frequently.

11. In May 2016, at the 150 nautical mile mark within Ratvan's EEZ, Ratvan Fishery Patrol Vessel, *RFPV 301*, encountered an Amberian fishing vessel, named the *Challenger*, while on patrol. *RFPV 301* sent a small boat, containing four Ratvan officers, and notified the *Challenger* that the Ratvan Coast Guard would conduct a boarding inspection on suspicion of unauthorized fishing. When two of the Coast Guard officers stepped on board, the *Challenger* suddenly dashed itself against the Ratvan boat and desperately tried to flee. *RFPV 301* asked for support from the Ratvan Navy Ship, the *RNS Lancer*, which was on piracy patrol in the vicinity, and the *RNS Lancer* immediately gave chase to the *Challenger*. Shooting the body of the vessel, the *RNS Lancer* gained ascendancy over it within the Ratvan's EEZ in the vicinity of the boundary of EEZ and continental shelves between Amber and Ratvan. However, they did not fire a warning shot before doing so.

12. The *RFPV 301* officers conducted a boarding inspection of the *Challenger* after it was under the control of the *RNS Lancer*. The Ratvan Officers found that among 20 crew

members, 15 were clearly in poor health and wore shabby clothes. They turned out to be Narman nationals who were supposedly forced to work on the vessel. The officers transferred these 15 crewmembers to the *RNS Lancer*, taking them under Ratvan's protection, and confined the rest of the crew and the captain—all Amberian nationals—to the *Challenger's* pilothouse. The inspection also discovered the poached fish resources in its shipping space, such as a huge amount of horse mackerels and jewelry corals living in the neighborhood.

13. During the investigation, *RFPV 301* received radio communication from the Amber Coast Guard's vessel, *ACG Esda*, inquiring about the *Challenger's* suspected offense and the justification for arresting the vessel. Responding to the inquiry, *RFPV 301* said it was properly enforcing the laws within Ratvan's EEZ, but the *ACG Esda* asked again for the suspected offense and altered its path toward *RFPV 301*. The *RNS Lancer*, informed of the situation, strongly urged *ACG Esda* to promptly leave Ratvan's EEZ. However, the *ACG Esda* ignored the request. Responding to the situation, the *RNS Lancer* came around behind the *ACG Esda* and shot its stern. As the result, the *ACG Esda* altered its course and left Ratvan's EEZ.
14. After the *ACG Esda* left, *RFPV 301* towed the *Challenger* into the closest Ratvan port. Taking Captain Jona Zandal onshore, the Ratvan authority told Zandal it would prosecute him for violation of the Ratvan Act on Punishment of Organized Crimes. The four crewmembers of the *Challenger* were released after paying a fine for the violation of the Act. However, Captain Zandal was arrested and Ratvan's authority promptly instituted penal proceedings against him.
15. After mooring the *Challenger* in port for several days, the Ratvan authority confiscated the vessel in accordance with the Fisheries Act, and blew it up on Ratvan's offshore area. A coastal resident shot the demolition scene of the *Challenger* and released the video on the Internet video site. This video triggered a wave of comments, such as "Amber, it serves you right!" posted by a group of people calling themselves Ratvan nationals.

16. In response, the Amberian government released the following statement of protest:

“The measures taken by the Ratvan authority against the *Challenger* and its captain clearly exceeded the confines of the authority Ratvan can exercise in its EEZ as a coastal state. Therefore they were illegal and violate Amber’s rights as the flag state of the *Challenger* and the state of the crew. The use of force that Ratvan resorted against the *Challenger* and our law enforcement vessel constitutes a material breach of international law. The government of Amber strongly condemns such disorderly behavior at sea.”

17. In response, Ratvan objected as follows:

“The measures taken by our government against the *Challenger* were meant to prevent illegal fishing and human trafficking at sea. In taking these measures, we fulfilled our due responsibility as a coastal state and as a member of the international community. The government of Ratvan has enforced relevant rules in accordance with the spirit of the rule of law, and it strongly believes the measures in the present case remained within proper law enforcement measures.”

18. In January 2017, Amber proposed that Ratvan refer the dispute regarding the *Challenger* and *RFPV 301* to the International Court of Justice (“the Court”), and Ratvan agreed. Subsequently, both states jointly submitted the dispute to the Court by concluding the Special Agreement based on Article 40 (1) of the Statute of the Court. The Special Agreement provides, “It is agreed by the Parties that Amber shall act as Applicant and Ratvan as Respondent; however, such an agreement is without prejudice to any questions as to the burden of proof.”

19. Amber and Ratvan are both members of the United Nations and are parties to the Statute of the International Court of Justice; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the United

Nations Convention on the Law of the Sea; the Vienna Convention on the Law of Treaties, and the Convention against Transnational Organized Crime. Neither Amber nor Ratvan ratified the other treaties that can be relevant to the present dispute.

20. The Applicant, the Government of Amber, respectfully requests that this Court adjudge and declare that:

(1) Ratvan acted in violation of international law by asserting and exercising jurisdiction over the conduct of *Challenger* within its EEZ, including the confiscation and demolition of the *Challenger*;

(2) Ratvan used excessive force in boarding and arresting the *Challenger* in violation of international law;

(3) Ratvan lacks criminal jurisdiction over the captain of the *Challenger*, Jona Zandal; and

(4) Ratvan acted in breach of the principle of non-use of force enshrined in Article 2(4) of the Charter of United Nations in excluding *ACG Esda* from its EEZ.

21. The Respondent, the Government of Ratvan, respectfully requests that this Court adjudge and declare that:

(1) Ratvan did not act in violation of international law by asserting and exercising jurisdiction over the conduct of *Challenger* within its EEZ, including the confiscation and demolition of the *Challenger*;

(2) Ratvan did not use excessive force in boarding and arresting the *Challenger* in violation of international law;

(3) Ratvan is entitled to exercise criminal jurisdiction over the captain of the *Challenger*, Jona Zandal; and

(4) Ratvan complied with the principle of non-use of force enshrined in Article 2(4) of the Charter of United Nations in excluding *ACG Esda* from its EEZ.

Annex 1

Ratvan Fisheries Act of 1983 (Act 94 of 2 February 1982 /latest amendment made by Act 140 of 30 May 2010)

Section 10: Fishing by foreign fishing vessel

No foreign fishing vessel shall fish or attempt to fish in Ratvan waters unless authorized so to do under an international fishery agreement in force between the Government of Ratvan and the government of the country to which such vessel belongs, and under a permit issued under section 15.

...

Section 15: Permit in respect of foreign fishing vessel

Every application for a permit in respect of a foreign fishing vessel shall be made to the Director General of the Fisheries Agency.

...

Section 20: Offence under Act

Any person who contravenes or fails to comply with any provisions of this Act shall be subject to a fine not exceeding five thousand tagit* or a term of imprisonment not exceeding ten years or both.

...

Section.30: Enforcement

For the purpose of ensuring compliance with the provisions of this Act, any authorized officer may where he has reason to believe that an offence has been committed under this Act, without a warrant—

(a) stop, board and search any vessel within Ratvan waters and make any enquiry, examination and inspection concerning the voyage and seaworthiness of that vessel, its crew, equipment, or fish carried on board that vessel;

(b) ...

Section. 35: confiscation

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo), whether national or foreign, carrying out fishing activities in Ratvan waters, without having obtained the permit required under Sections 10 and 15 of this Act, will be confiscated by decision of the Chief of the Coast Guard.

*1 tagit = 10 US dollars