

**International Law Moot Court Competition “ASIA CUP 2016”:  
Case Concerning the Delfino Archipelago Marine Protected Area  
(Asteria v. Ratona)**

1. Both Asteria and Ratona are states bordering the Sirena Sea, and their coastlines face each other across the sea. Asteria is a least developed country, and the majority of its population lives inland. Its economy is predominantly agriculture dependent. As the Asterian coastline along the Sirena Sea is not suitable for farming, in this region, the population is scarce and the inhabitants engage in only small-scale fishing. Since 1990, following the discovery of a major inland oil field, Ratona, which used to be a developing country, has achieved rapid economic growth. The country has also undergone significant industrialization, and it is currently considered one of the leading newly industrialized countries.
2. The Delfino Archipelago is a group of islands situated in the Sirena Sea, which belongs to the territory of Ratona. Until 2000, the population of the Delfino Archipelago was small and the inhabitants depended on fishing for their living. In fact, since the 5th century, the fisherfolk of Asteria have fished in the waters surrounding the Archipelago. Their cultural tradition is rooted in the ocean, and they self-sufficiently meet their living needs mainly through fishing. The Delfino Archipelago has a rich natural environment, and the ocean waters surrounding it abound with rare marine organisms on a global scale.
3. Asteria and Ratona are both original members of the United Nations Convention on the Law of the Sea (hereinafter, UNCLOS). In 1995, through an agreement, both the governments delimited the maritime boundary in the Sirena Sea and determined the delimitation of the exclusive economic zone (hereinafter, EEZ) in the waters surrounding the Delfino Archipelago. Until 1995, neither Asteria nor Ratona had established an EEZ in the waters surrounding the Delfino Archipelago.
4. During the delimitation negotiation, Asteria demanded special consideration concerning the fishing conducted in the waters surrounding the Delfino Archipelago by Asterian fisherfolk even after the delimitation of EEZs. Ratona replied that it is aware of Asteria’s concern regarding fishing in that area. In response, the foreign minister of Asteria explained to *Daily Asteria*

(an Asterian newspaper) that the Government of Asteria would agree with Ratona on the maritime delimitation subject to the guarantee that the fishing rights of Asterian nationals would be preserved. However, in the agreement between the governments of Asteria and Ratona, there was no reference to the issue concerning the fishing rights of the Asterian fisherfolk. Since ratification of this agreement, Asteria and Ratona have not negotiated the fishing operations of the Asterian fisherfolk in the EEZ surrounding the Delfino Archipelago; however, at the beginning of each year, Ratona issues a notification permitting Asterians to fish in the EEZ.

5. Over the years, owing to its rapid economic growth, Ratona's national income has significantly increased. Since approximately 2000, this economic progress has resulted in the development of the Delfino Archipelago as a resort area, and consequently, the population of the Archipelago has risen sharply. Most of the inhabitants of the Archipelago, who had been fisherfolk in the past, are currently working in tourism industries. On the other hand, due to the economic development of the Archipelago as a resort destination, some of the Asterian fisherfolk who fish in the surrounding waters have started selling fish to the fish traders based in the Archipelago.
6. In Ratona, the growth of environmental awareness among people has been paralleling the rapid growth of its economy, and NGOs calling for environmental protection have gained widespread support from the public. In particular, people are very concerned about the negative impact of the development of the Delfino Archipelago on its natural environment, and this has led to the active engagement of the NGOs in campaigns targeting environmental conservation. In July 2013, an international environmental NGO named Utopia publicly proposed the establishment of a Marine Protected Area (hereinafter, MPA) in the waters surrounding the Delfino Archipelago, stating that "the Archipelago, as a treasury of rare species, needs immediate and sufficient environmental protection measures."
7. In January 2014, the general election was held in Ratona, in which the Green Party, whose party line is environmental protection, grabbed the second largest number of seats in the national parliament. In this election, no party was able to win the majority in the parliament; accordingly, three parties, including the Green Party, formed a coalition government. In this tripartite coalition government, several members of the Green party were assigned ministerial posts, including the post of the environment minister.

8. In March 2015, the environment minister of Ratona announced a new policy according to which an MPA would be established in the territorial sea and the EEZ surrounding the Delfino Archipelago and the taking of any natural resource, whether living or nonliving, would be prohibited within the MPA. Ratona's environment minister stated that "it is our duty to preserve and protect the Delfino Archipelago and its surrounding waters, one of the most valuable sites in the world having a pristine environment, for our future generations. We, the Government of Ratona, will enact the legislation to establish the MPA within this year."
9. In response to this announcement, the foreign minister of Asteria released the following statement: "it is a complete surprise to us that Ratona wants to designate the waters surrounding the Delfino Archipelago as an MPA. If the exploration and exploitation of living resources in the Delfino Archipelago is completely prohibited, we, the Asterian fisherfolk, cannot continue the fishing that has traditionally been carried out in that area. Asteria views this action to be totally unacceptable and calls for an immediate consultation with Ratona regarding the creation of the MPA."
10. In April 2015, bilateral negotiations between Asteria and Ratona on the establishment of an MPA around the Delfino Archipelago took place. As part of these negotiations, Asteria requested Ratona to withdraw its plan of establishing the MPA and begin a consultation process regarding the management of the waters surrounding the Delfino Archipelago. Ratona replied that as the protection of the marine environment of the waters surrounding the Archipelago is an urgent issue, it did not have the option of withdrawing the plan and would establish the MPA within 2015. However, both the states agreed to continue the negotiations.
11. In May 2015, the Government of Ratona submitted the draft legislation for the establishment of an MPA around the Delfino Archipelago to the Ratonan parliament. According to this draft, taking of any natural resource, whether living or nonliving, is prohibited within the territorial sea and the EEZ surrounding the Archipelago, except for conducting marine scientific research. The draft legislation also created a penal offence of unlawful fishing within the MPA.
12. In July 2015, the second round of negotiations between Asteria and Ratona took place. The Government of Asteria stated that it is most regrettable that

Ratona had submitted the draft legislation based on a unilateral decision and again called on Ratona to withdraw its plan regarding the establishment of the MPA. In addition, Asteria stated that due consideration should be given to its historical dependence on fishery resources if an MPA is to be established. Ratona replied that it did not have the option of revising the plan. On the other hand, the Ratonan minister of the environment stated that some kind of compensation might be proposed to the Asterian fisherfolk; however, it would be decided by the then government. Therefore, in the second round of negotiations, Asteria and Ratona could not reach an agreement.

13. In August 2015, the Ratonan newspaper *Ratona Post* reported an allegation of corruption concerning a resort development project in the Delfino Archipelago. The media reported that a senior member of the Green Party in Ratona had received a large amount of money from a company planning a new development project in the Archipelago to obtain permission for the project. Due to this report, criticism against the Green Party mounted in Ratona, and the approval rating for the coalition government dropped sharply. This spread distrust among the coalition partners of the Green Party: some even said that the coalition government should be dissolved to form a new government.
14. In September 2015, the third round of bilateral negotiations took place between Asteria and Ratona. Once again, Asteria called for the withdrawal of the plan for establishing the MPA. During the negotiation talks, Asteria stated that “the proposal of possible compensation made by Ratona is less than adequate for safeguarding the rights of Asterian fishermen; therefore, it is unacceptable to Asteria.” Ratona replied as follows: “protection of the marine environment around the Delfino Archipelago is a pressing issue, which requires the establishment of an MPA as soon as possible. It is not an option for delaying the enactment of the legislation on the MPA. So far, we have negotiated faithfully and made every effort to find a compromise.” As a result, no agreement was reached in the third round of negotiations.
15. Subsequent to the third round, the *Ratona Post* revealed that the environment minister of Ratona had received the support of several environmental NGOs for the Green Party’s campaign in the past general election in exchange for a commitment to establishing the MPA around the Delfino Archipelago. Referring to this news report, the environment minister stated that “our Green Party has constantly and actively exchanged opinions

with our supporters. This is a fact, no more and no less.”

16. In October 2015, the Ratonan parliament passed the legislation on establishing an MPA around the Delfino Archipelago. The government railroaded the draft legislation and ignored the opposition's aggressive questioning regarding the allegation of corruption concerning the resort development project. On November 2015, the new law entitled “the Act to Establish the Delfino Archipelago Marine Protected Area” (hereinafter, MPA Act) came into force. Regarding the new law, Ratona’s minister of the environment stated that “the establishment of the MPA Act is an important milestone in protecting one of the most valuable natural environments in the world. Our government will vigorously enforce this new law.” The president of Asteria condemned the establishment of the MPA Act by Ratona as follows: “Ratona did not negotiate with Asteria in good faith and has unilaterally established the MPA. This is tantamount to violating the international law applicable to both countries, and this is totally unacceptable for us.” The text of the MPA Act is attached as an annex.
17. In December 2015, a patrol boat belonging to the Ratonan Coast Guard inspected an Asterian fishing vessel within the Ratonan EEZ around the Delfino Archipelago in suspected violation of the MPA Act. The Ratonan authorities did not arrest and impose any penalty on the vessel. However, the foreign minister of Asteria strongly protested against Ratona’s actions, stating that “the boarding inspection by Ratona of our vessels is illegal.” On the other hand, the foreign minister of Ratona released a statement that “the Government of Ratona has exercised its legitimate jurisdiction on the basis of international law and our domestic legislation. Therefore, these are no grounds for blaming us.”
18. In January 2016, Asteria proposed to Ratona to refer the dispute concerning the MPA around the Delfino Archipelago to the International Court of Justice, to which Ratona agreed. Subsequently, both the states jointly submitted the dispute to the Court by concluding the Special Agreement based on Article 40(1) of the Statute of the International Court of Justice. The Special Agreement provides that “it is agreed by the Parties that Asteria shall act as Applicant and Ratona as Respondent; however, such an agreement is without prejudice to any questions as to the burden of proof.”
19. Both Asteria and Ratona are parties to the UNCLOS; the Charter of the

United Nations; the Statute of the International Court of Justice; the Vienna Convention on the Law of Treaties; the International Covenant on Civil and Political Rights; the Convention on Biological Diversity; the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; and the United Nations Convention against Corruption.

20. The Applicant, the Government of Asteria, asks the Court to adjudge and declare that

- (1) the establishment of the Delfino Archipelago MPA and the measures taken by Ratona based on the MPA Act constitute violations of international law.
- (2) accordingly, Ratona must assume responsibilities including the abolishment of the MPA Act.

21. The Respondent, the Government of Ratona, asks the Court to adjudge and declare that

- (1) the establishment of the Delfino Archipelago MPA and the measures taken by Ratona based on the MPA Act have not constituted violations of international law.
- (2) accordingly, Ratona does not assume any responsibility. If Ratona were to have violated international law, the Government of Asteria does not have the right to ask the Court to order the abolishment of Ratona's MPA Act.

## **ANNEX**

### **The Act to Establish the Delfino Archipelago Marine Protected Area (Excerpts)**

#### **Article 1: Purpose**

This Act, noting the United Nations Convention on the Law of the Sea and other international agreements, for the purpose of conserving the marine environment surrounding the Delfino Archipelago and the rare ecosystems therein, shall establish a Marine Protected Area in the ocean area stipulated in Article 2 of the Act.

#### **Article 2: Scope**

This Act shall apply to the territorial sea and the exclusive economic zone belonging to Ratoná, which have been established by Ratonan law and accepted in accordance with international law.

#### **Article 3: Prohibition on taking**

In the area stipulated in Article 2 of this Act, the taking of any natural resource, whether living or nonliving, except in the case of marine scientific research conducted in accordance with Article 246 of the United Nations Convention on the Law of Sea, shall be prohibited.

[...]

#### **Article 10: Implementation**

If there is reasonable ground for suspicion of violation of Article 3 of this Act, the Ratonan Coast Guard may take necessary measures, including arrest and boarding, under the United Nations Convention on the Law of the Sea.

#### **Article 11: Penalty**

A person who has violated Article 3 of this Act shall be punished by a fine of no more than US\$100,000.