

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

DISPUTE CONCERNING  
THE SALVATORE EMPIRE

THE GALATIAN REPUBLIC v. THE REPUBLIC OF MAGESIA

**MARCH 2016**

**FACTS LEADING UPTO THE DISPUTE**

1. The Galatian Republic (hence forth Galatia) is a country which is situated on the continent of Mopia, and, The Republic of Magesia (hence forth Magesia) is a country which is located on the continent of Bename.
2. This case concerns an incident that occurred at approximately 50 nautical miles off the coast of Magesia. The Salvatore Empire (hence forth Empire) is an oil tanker flying the Galatian flag. In 2009 in line with the global efforts to counter piracy, Galatia enacted a law on 25<sup>th</sup> August 2011 which provided for the deployment of Galatian Navy personnel on board vessels flying the flag of Galatia.
3. These efforts were initiated in response to the growing threats of piracy in international waters, especially areas designated as high risk by the International Maritime Organisation (IMO). There were growing instances of pirate attacks on ships on High Seas since the year 2008.
4. On 15<sup>th</sup> February 2012, in accordance with the Galatian law a detachment of six Navy personnel of the Galatian Navy were deployed on the Empire. The Empire was meant to take a journey from Nilinka a country which lies off the south eastern coast of Magesia, to Fonseca which lies on the continent of Moreland. The route is designated as a high risk area by the IMO.
5. On 20 March 2012 Empire was travelling approximately 50 miles off the coast of Flask a state in Magesia, enroute to from Nilinka to Fonseca. An unidentified vessel was spotted by the Navy personnel on the radar approximately 2.8 miles away. After confirming that the unidentified vessel was heading directly towards the Empire, the Navy personnel alerted the crew on board the Empire to take cover in the security bunker of the ship. Two navy personnel named Chief Master Captain Mario Facini and Major Roberto Donadoni were among the six navy personnel on board. Maria and Roberto concluded on the basis of the movement of the unidentified vessel that it was on a collision course, and that it was pirate attack.
6. Despite giving enough auditory and visual signals the unidentified vessel kept moving towards the Empire, at about 3.30.p.m Maria and Roberto opened fire on the unidentified vessel. At about 10.30.p.m the same day the vessel was asked to abort its intended journey, by the Marine Rescue Coordination Center of Magesia, and asked to return to the coast of Magesia and join the investigation in the shooting of the unidentified vessel.
7. The unidentified vessel was registered as Chetta Ships (hence forth Chetta) in Magesia and was engaged in fishing. On the day of the incident the vessel was carrying a crew of eleven, of which two Mohan and Mekin were fatal victims. At about 5.40.p.m. on 20 March 2012 the local police station situated in the state of Flask received information from Chetta, that they had been attacked by uniformed personnel from Empire. That this led to the death of two fisherman and also endangering the lives of other crew member. The police station in Flask lodged a complaint on the basis of statement made by the crew and owner of Chetta.
8. The police of Flask initiated investigation. The bodies of the deceased victims and the vessel Chetta were used as evidence. The bodies of the victims were subjected to post mortem. The police were able to conclude that the ballistic reports establish that the bullets originated from the Empire. They concluded that both Mario and Roberto were responsible for firing on Chetta and sought their arrest.

9. Mario and Roberto were arrested on 25<sup>th</sup> March 2012, as Empire was required to hand them over for further investigation. The Flask police charged the two of murder on the basis of the investigation that was carried out. They were then handed over to judicial custody.
10. Mario and Roberto were charged under Section 3 of Suppression of Unlawful Acts against the safety of Maritime Navigation and Fixed Platforms on the Continental Shelf Act, 2002, which attracts the death penalty.
11. Both Mario and Roberto then approached the High Court of the state of Flask and sought to set aside the criminal investigation. Their contention was that the investigation and subsequent arrest is without jurisdiction. They pleaded that they be handed over to the Galatian authorities for prosecution, that they enjoyed sovereign immunity that the Galatian authorities were the appropriate authority. The High Court of Flask dismissed the petition on the ground that the Magesian Penal Code has extended the jurisdiction of the Courts to 200 nautical miles.
12. Mario and Roberto then approached the Supreme Court of Magesia on the same contentions raised above. The Supreme Court held that the Flask High Court had no jurisdiction to try Mario and Roberto, they directed that a special court be set up to try them. They also directed that Mario and Roberto raise the issue of sovereign immunity before the Special Court.
13. On 25 March 2013, the Supreme Court of Magesia allowed both Mario and Roberto to travel Galatia to participate in the elections. Subsequently the Galatian's refused to send back the two back to Magnesias, causing a diplomatic crisis. The Ambassador of Galatia had guaranteed the return of the two navy personnel before the Supreme Court of Magesia. It appeared now that the Galatians were not going to honour that commitment. This was followed by repeated requests by Magesia towards Galatia to honour its commitments, and transfer the two accused navy personnel for prosecution.
14. This triggered a Notification to the Tribunal (ITLOS) under article 287 and Annex VII, article 1 of UNCLOS and statement of claim and grounds, from Galatia to Magesia instituting arbitral proceedings under Annex VII to UNCLOS concerning the Empire incident. The following contentions were raised by Galatia
  - i. That an arbitral tribunal be constituted under Annex VII to the United Nations Convention on the Law of the Sea (UNCLOS).
  - ii. That Magesia has acted and is acting in breach of international law by asserting and exercising jurisdiction over the Empire, Mario and Roberto.
  - iii. That Magesia has acted in violation of its international obligation to uphold the sovereign immunity of the Empire and the navy personnel.
  - iv. That Galatia has exclusive jurisdiction over Empire and both the navy personnel.
  - v. Magnesias should cease to exercise jurisdiction over both Mario and Roberto.
  - vi. That Magesia has violated the UNCLOS.
15. The Registrar having regard to the UNCLOS has notified the parties to the UNCLOS of the Application of Galatia, further the United Nations Secretary General has also been notified. The Registrar having regard to the fact that both Galatia and Magesia are signatories to the UNCLOS, has forwarded the notification as required to

Magesia, and written observations were submitted by Magesia with the following contentions

- i. Magesia contends that the incident arose from the killing of two fisher men on board a Magesian fishing vessel.
  - ii. The origin of the dispute is in the exclusive economic zone of Magesia
  - iii. That the subject matter of the dispute does not fall under the jurisdiction of the UNCLOS.
  - iv. That the subject matter does not fall under article 97 of the Convention.
  - v. That legal proceedings commenced in Magesia were under relevant provisions of Magesia
  - vi. That the navy personnel are not protected by sovereign immunity.
16. Considering that both parties agree that there is a dispute between them on law and fact. Considering that both parties have made no declarations or reservations to the UNCLOS. Considering that the President of the Tribunal had a telephonic conversation with the Agents of the parties to the dispute concerning the order and duration of the presentation, has set 7<sup>th</sup> March 2016 as the date for hearing.

**Note:**

- Both parties have appointed their respective agents.
- Both parties are signatories and have ratified the UNCLOS.
- Learners will be required to draft memorials elaborating on the contentions raised above by both the parties to the dispute.
- Subsequently the date for oral hearing has been set by the Tribunal.
- The laws of Magesia and Galatia are in *pari materia* with the laws of India and Italy.

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