

46TH ANNUAL TELDERS INTERNATIONAL LAW

MOOT COURT COMPETITION 2023

**IN THE
INTERNATIONAL COURT OF JUSTICE**



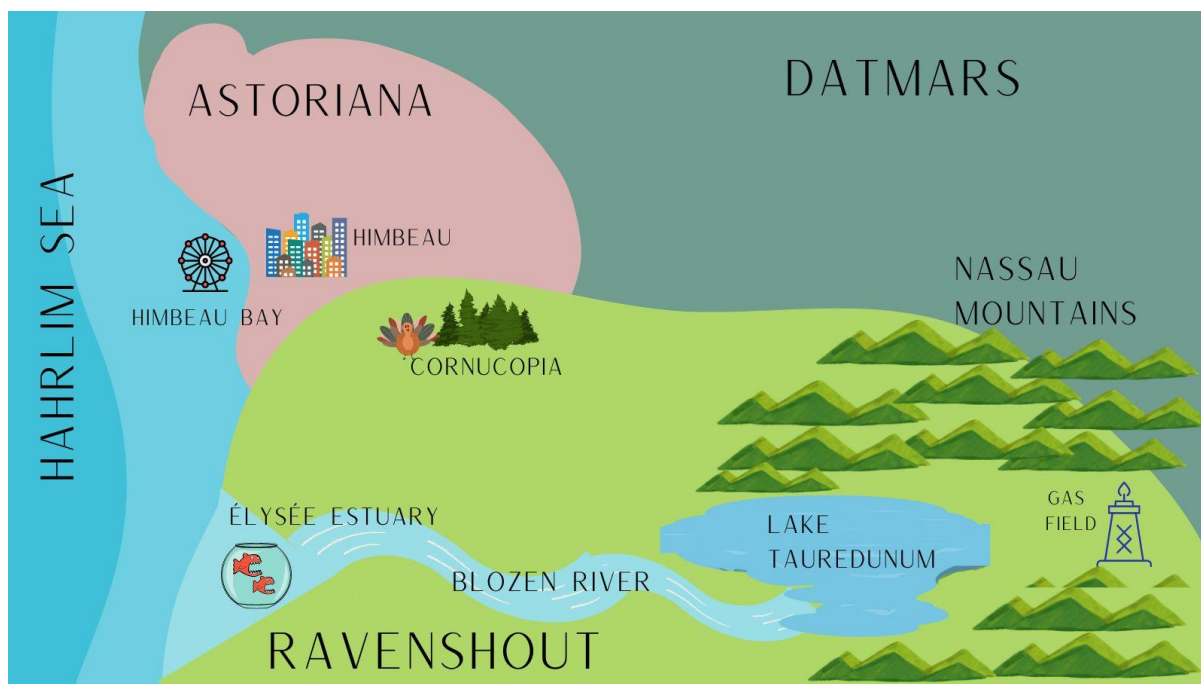
**AT THE PEACE PALACE
THE HAGUE, NETHERLANDS**

BRACKFISH IS SERVED

ASTORIANA
(The Applicant State)

v.

RAVENSHOUT
(The Respondent State)



1. Astoriana is bounded to the west by a cold corner of the Hahrlim Sea, a saltwater body which gives it access to the world's oceans. It is bounded to the north and east by the People's Republic of Datmars, and to the south by the Principality of Ravenshout. It achieved statehood in 1979, when a peaceful revolution led to the formal division of the Confederacy of Datmars into Astoriana and the People's Republic of Datmars. Weeks earlier, the legislative body representing the canton of Astoriana had issued a proclamation stating that "[i]n conformity with international law and to the extent defined by it, Astoriana considers itself bound, as of the date of the dissolution of the Confederacy of Datmars, by treaties to which the Confederacy of Datmars was a party on that date". Astoriana ratified the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) in 1981, the United Nations Convention on the Law of the Sea (UNCLOS) in 1989, and the Convention for the Pacific Settlement of International Disputes (1907 Hague Convention) in 1991. It became a Member of the United Nations (UN) in 1996, and a Member of the Organisation for Economic Co-operation and Development in 2000. Its head of state is President Athena Green.
2. Ravenshout's territory runs southward along the coast to the Élysée Estuary, and eastward into the Nassau Mountains, a geologically young range that has become increasingly eroded due to climate change. Ravenshout, a founding UN Member, ratified the ICCPR and ICESCR in 1970, UNCLOS in 1983, and the 1907 Hague Convention in 2001. Its head of state is Prince Fritz V.
3. Ravenshout and the Confederacy of Datmars concluded the Peace Treaty for the Settlement of Disputes in 1922. It was first invoked in 2022. Its *travaux préparatoires* remain in a closed archive of the Datmartian Ministry of Foreign Affairs. In 1965, these states also concluded the Datmars-Ravenshout Investment Pact. The government of Ravenshout has since stated that it considers this treaty to apply to investments in its territory by Astoriani nationals. An Astoriani corporation later became the largest investor in the construction of the massive Scherpeiland gas field, located in a clearing of the Nassau Mountains in Ravenshout's easternmost region. Operation of the Scherpeiland field began in 1991. In response to rising consumer energy usage in Ravenshout, operations expanded in 2015 to employ techniques such as hydraulic fracturing.

4. Ravenshout is home to a healthy population of wild turkeys. Due to the religious observances of the majority of its citizens—who consider the omnivore a holy animal—Ravenshout forbids the sale or import of turkeys for human consumption. While they have been known to graze far into the Nassau Mountains, their ‘home’ is an area in the foothills region known as Cornucopia, near Ravenshout’s inland border with Astoriana. Prince Fritz I established Cornucopia long ago as a nature preserve for wild turkeys to roam freely and feast on, inter alia, nuts and insects.
5. Shortly after ascending the throne, Prince Fritz IV ordered the mass production of a highly effective fertilizer made from turkey droppings collected at Cornucopia. Today, these exports comprise a rising share of Ravenshout’s GDP, as food insecurity increases demand. Astoriana became Ravenshout’s largest importer of fertilizer when the two concluded the 2015 Fertilizer Import Treaty, under which Ravenshout agreed to keep 35% of its stock reserved for sale to Astoriana, and they agreed to jointly establish an oversight board to facilitate this arrangement.
6. Global food crises have been particularly challenging for Ravenshout. A developing country with a GDP of 5 billion USD and a burgeoning population packed near its coast, it has a shortage of arable land outside of Cornucopia. With his country’s deep reliance upon food imports becoming increasingly untenable, Prince Fritz IV consulted with the world’s brightest minds in food science and animal husbandry to develop a bold solution. Having made his country’s plight a cause célèbre, he obtained sufficient investment and international aid to start work on an audacious public works project that would solve Ravenshout’s food insecurity.
7. In 2008, Ravenshout undertook development of a plan to bioengineer and mass-produce a new species of large, protein-rich and nearly boneless fish, to be grown and harvested in a sprawling aquaculture complex and adjoining production facility. After conducting several studies and assessments of risks and alternatives, Ravenshout began construction and subsequent operation of this project in the brackish waters of the Élysée Estuary. The genetically engineered organism—dubbed the ‘brackfish’—was derided by bioethicists and environmentalists, but was deemed safe for human consumption. The first shipments to markets arrived in 2015 with a government publicity campaign that included a hashtag and slogan (“#brackfish is served”).
8. On the morning of 16 June 2018, Ravenshout had its first major earthquake in decades. The epicentre was located in a sparsely populated area of the Nassau Mountains. This caused a mountainside to collapse into Lake Tauredunum and sent a great wave towards the western end of the lake, channeling an enormous surge of water into the Blozen River. The resulting tsunami moved swiftly downriver towards the Élysée Estuary, dislodging the aquaculture complex’s infrastructure, and launching tens of millions of newly liberated brackfish into open water.
9. Entering the Hahrlim Sea, the brackfish population migrated en masse up the coastal waters of Ravenshout. Upon arriving in Astoriana’s Himbeau Bay during the afternoon, the brackfish began a feeding frenzy that continues to haunt local residents of Himbeau, the country’s most popular seaside resort town. Within hours, brackfish stripped the seafloor bare of kelp, a common food staple in Astoriani culture. At the local marina, they ripped the barnacles off boats so violently that they capsized. Throngs of brackfish lunged at plant and animal life on the long wooden support beams of Himbeau’s pleasure piers, causing a restaurant, iconic ferris wheel, and bungee jumping facility to tumble into the water within minutes. 270 perished, including local band Himbeau Party Patrol and the film crew with whom it had been shooting a video for its debut single, ‘I Miss Your Salty Air’. While most victims were eviscerated by brackfish as friends and neighbours watched in horror from the shore, some drowned first.

10. Having depleted this food supply, the brackfish population dwindled as the feeding frenzy shifted to cannibalism. This traumatic saga concluded on 18 June 2018, as the day's strong tide flung the remaining brackfish population's bloated bodies across the beach and onto Himbeau's boardwalk promenade. On 19 June, the front page of the Himbeau Times showed piles of brackfish, debris, and human bones piled against 'The Seaweed Eater', a much-loved public sculpture that depicts a very tall man cartoonishly dropping a frond of kelp into his own mouth.
11. In the hours following the arrival of the brackfish in Himbeau Bay, and again on 19 June 2018, Astoriani President Athena Green called Prince Fritz IV of Ravenshout to urgently request a meeting. While she had been unable to reach Prince Fritz earlier, the two spoke on 19 June. On the call, President Green stressed that "many Astoriani have based our diets on kelp—and our life expectancy data reflects it". An astonished Prince Fritz asked, "when you eat turkeyburger, do you wonder 'could topping this with kelp make it even worse'?" Their call ended thusly:
 - GREEN: Your Highness, your experiment has turned the jewel of the Hahrlim riviera into an environmental and humanitarian disaster zone. What are we going to do about it?
 - FRITZ: Madame President, we will each work to repair this unavoidable tragedy. I know all true Ravenshouters join me in sending our many thoughts and prayers to your riviera.
 - GREEN: Is that all?
 - FRITZ: No. I also give you my big thanks for your interest in Ravenshout—peace be with you.
12. On 20 June 2018, a high-ranking government scientist in Ravenshout, Dr. Gene Probleem, defected to Datmars, and was soon thereafter given Datmartian citizenship. Dr. Probleem had been involved in the aquaculture project from its inception, but had over the years become privately critical of decisions taken during the development and operation of the project. As his abandoned wife told a TV interviewer on 21 June, their marriage had been difficult because "Gene kept screaming about brackfish in his sleep, and I teach high school at 7:30 a.m."
13. During the summer of 2018, Ravenshout was consumed by pressing matters. The untimely death of Prince Fritz IV gave rise to a succession crisis, in which Prince Fritz V ultimately prevailed. Upon ascending the throne, Fritz V was thrust into a serious crisis of food scarcity resulting from the destruction of the aquaculture complex. Fritz V, a prominent advocate of grain-based diets, responded by flooding the country's markets with wheat, barley, and maize. The state took on debt to dramatically increase grain imports, a situation which remains today.
14. On 21 September 2018, Astoriana instituted arbitration proceedings against Ravenshout pursuant to Annex VII to UNCLOS. While Astoriana had never deposited a choice-of-forum declaration pursuant to Article 287 of the Convention, Ravenshout had deposited such a declaration at the time of its ratification, in which it declared its preference that the International Court of Justice (ICJ) hear "any disputes concerning the interpretation or application of the Convention for which no settlement has been reached in accordance with Section 1 of Part XV thereof". In submissions annexed to its Notice of Arbitration, Astoriana requested an arbitral tribunal to rule that Ravenshout breached its obligations toward Astoriana under Articles 192, 194, 196, 198, 206 and 207 of UNCLOS. The Notice of Arbitration also referred to customary rules and general principles, such as those concerning transboundary harm and due diligence.
15. On 22 September 2018, the government of Ravenshout declared that it would not participate in the arbitration. It stated without elaboration that Astoriana's allegations were entirely without merit, and that any tribunal established in this case would manifestly lack jurisdiction.

16. A tribunal was constituted on 30 November 2018 in accordance with Article 3 of Annex VII to UNCLOS. It issued its Procedural Order No. 1 on 24 December 2018, annexing its Rules of Procedure. In its Order, it found Ravenshout’s public statement raised a “plea concerning the tribunal’s jurisdiction”, which it would hear alongside the merits and address in a final award.
17. As noted in its adopted Rules of Procedure, the tribunal had requested the Permanent Court of Arbitration (PCA) to administer the proceedings. On 14 February 2019, Datmars sent a request to the PCA that it be permitted to intervene in the arbitration. In its request, Datmars noted that it had “an interest in Ravenshout’s destabilization of the region and degradation of the marine environment, and information which may be critical to the tribunal’s assessment of this case”.
18. As its Rules of Procedure did not refer to the participation of third states, the tribunal sought the views of the parties on Datmars’ request. Astoriana argued that the tribunal should admit Datmars’ intervention. Ravenshout did not respond to the tribunal’s request, and its government made no contemporaneous public statements on the case. On 17 March 2019, the tribunal issued its Procedural Order No. 2, in which it admitted Datmars’ intervention in the arbitration and outlined the terms of Datmars’ participation in the written and oral proceedings.
19. After reciting the procedural history of the arbitration, the tribunal’s award of 1 May 2022 observed in a one-paragraph section entitled ‘Jurisdiction and Admissibility’ that it was “satisfied that it had been seized of a dispute concerning the interpretation or application of [UNCLOS]”, and that it saw “no compelling reason to refrain from exercising its jurisdiction”.
20. In its reasoning on the merits of the case, the tribunal’s award referred to evidence produced by Datmars during the arbitral proceedings: highly classified documents which Dr. Problem had provided to Datmars upon defecting from Ravenshout. Having reviewed these assessments of the brackfish project’s location and physical integrity, the tribunal concluded that Ravenshout had disregarded grave risks that contributed to the disaster. It ultimately ruled that Ravenshout was responsible for breaching the articles of UNCLOS invoked by Astoriana. After addressing damages in relation to life, property, and the marine environment—including an extensive tabulation of clean-up costs—the tribunal ordered Ravenshout to pay 3 billion USD.
21. On 2 September 2022, after Ravenshout had failed to respond to a series of increasingly testy notes verbales, President Athena Green gave a press conference in which she strongly criticized Ravenshout for its refusal to implement the tribunal’s award. She blamed it for “the indignity which Astoriana bravely endures, but which we will not suffer in silence—since justice will be served”. When asked if she was concerned as to how her most fervent supporters might interpret these words, she replied: “No. Our best patriots know to stand back, and stand ready”.
22. On 10 October 2022—Turkey Day, a major religious holiday in Ravenshout—a group of roughly 2,000 Astoriani nationals crossed into the territory of Ravenshout through an unguarded inland border area. The group was comprised of members of The Convocation, an organization which bills itself as devoted to “physical fitness, weapons training, and radical leftist ideology”. The Convocation’s largest donor, Astoriani Minister of Health Scott Mangan, holds a ceremonial position within the group. During Astoriana’s 2018 elections, the group publicly campaigned with President Athena Green, who later instructed the Ministry of Defence to allow The Convocation to take part in training exercises on Astoriani military bases. The group has since served as an auxiliary force with a range of responsibilities, such as taking part in internal security and law enforcement actions under the orders of Astoriani police.

23. Upon entering Cornucopia under the cover of night, The Convocation proceeded to herd approximately 75 percent of Ravenshout’s turkey population into waiting vehicles. Before the daring operation concluded shortly after dawn, arriving religious pilgrims had livestreamed the unsettling scene from some of the fenced-off areas where tourists are permitted in Cornucopia. Many of the selfies shared online that day featured clouds of turkey feathers in the background.
24. In an 11 October 2022 speech, Prince Fritz V declared a national period of mourning, and scolded “the barbarians who so cowardly stole our beloved birds, to be bred and slaughtered for this travesty they call turkeyburger”. He stated he had written to Astoriana terminating the Fertilizer Import Treaty with immediate effect, and had suspended all fertilizer shipments to Astoriana. He also denounced the 1 May 2022 award as “a mockery of law and dead on arrival”.
25. On 31 October 2022, Astoriana instituted proceedings against Ravenshout before the ICJ, concerning both the 1 May 2022 award and Ravenshout’s 11 October 2022 cancellation of a series of scheduled fertilizer shipments under the Fertilizer Import Treaty. As the basis of the Court’s jurisdiction, Astoriana invoked Article I of the Peace Treaty for the Settlement of Disputes, which provides that “[a]ll disputes with regard to which the Parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, unless the Parties have agreed otherwise, without prejudice to Article II herein”. Article II states only that “[t]he Parties agree that the Permanent Court of International Justice shall not have jurisdiction over any disputes which may arise between them concerning fisheries”.
26. Following the institution of proceedings, the President of the Court consulted with Agents duly appointed by each party, in accordance with Article 31 of the ICJ Rules of Court. In its Order of 7 November 2022, the Court has instructed the parties to address in section (g) of their respective Memorials each of the four submissions set out below.
27. In the prayer for relief included in its application, Astoriana requests the Court to:
 - (1) find that it has jurisdiction to rule in this case, and that the dispute before it is admissible;
 - (2) declare that the 1 May 2022 award is valid and binding under international law, and order Ravenshout to provide the compensation awarded to Astoriana therein;
 - (3) if the 1 May 2022 award is not valid and binding, declare that Ravenshout is responsible for having breached the UNCLOS provisions raised therein, and order it to make full reparations to Astoriana;
 - (4) declare that Ravenshout is responsible under international law for having breached the Fertilizer Import Treaty, and order it to make full reparations to Astoriana.
28. In a response transmitted to the Court during these consultations, Ravenshout requests it to:
 - (1) find that it lacks jurisdiction to rule in this case, or is not seised of an admissible dispute; *or*
 - (2) declare that the 1 May 2022 award is not valid and binding under international law, and dismiss Astoriana’s request to affirm the compensation awarded therein;
 - (3) declare that Ravenshout is not responsible for any alleged breach of UNCLOS, and dismiss Astoriana’s request to order reparations;
 - (4) declare that Ravenshout is not responsible for any alleged breach of the Fertilizer Import Treaty, and dismiss Astoriana’s request to order reparations.