

IFLOS Summer Academy 2019
Moot Court

DISPUTE CONCERNING ACTIVITIES IN THE IFLOSIAN SEA
(ALKAZANIA V. RASONISTAN)



1. The case before the International Tribunal for the Law of the Sea concerns a dispute between the applicant Alkazania and the respondent Rasonistan over the activities of both parties in and around the Iflosian Sea.

2. Alkazania and Rasonistan are both developed States. They share a long border and an even longer history. In the past, Alkazania used to be an autonomous region of the larger, federally organised State *Union of Liberal Capitalist States Rasonistan (ULCSR)*, which was dominated by its largest region, Rasonistan. After ULCSR's economy declined rapidly, and struggles within and between the Union's regions proved to be uncontrollable to the central government, the Union collapsed in the early 1990s. Alkazania and other former regions of the ULCSR became independent States and have since then tried to build their nations independently of foreign influence, especially from Rasonistan. On the other hand, Rasonistan has accepted the role as successor State of the ULCSR, a development which has remained uncontested by the former regions or any other international actor. Rasonistan remains a powerful actor in the region, including politically, militarily, economically and culturally. Its influence on and within Alkazania is largely related to the ethnic composition of Alkazania's population. Ethnic Rasonians are the second-largest ethnic group, accounting for about 18% of the roughly 50 million citizens of Alkazania. Most of the ethnic Rasonians outside of Rasonistan live on the Mirk peninsula in the southeast of Alkazania.

3. The Mirk region borders the Violet Sea, a large and important international hub for maritime trade and traffic, with many coastal States benefiting from both its resources and uses for navigation. The Mirk peninsula, after which the region is named, is roughly hand-shaped and protrudes from the Alkazanian coast into the Violet Sea, almost completely enclosing a part of the Violet Sea between the peninsula's 'thumb' and the Rasonian coast. This basin is called the 'Iflosian Sea', named after the ancient capital of the region, Iflos, now a major port city on the Mirk peninsula and bordering the Iflosian Sea. The Iflosian Sea extends from West to East to a distance of 80.9 nautical miles (150 km), and from North to South to a distance of 156.5 nautical miles (290 km). Its only connection to the Violet Sea and the ocean is the 'Strait of König'. This Strait separates the Mirk peninsula from the Rasonian coastline and is at its narrowest point only 2.2 nautical miles (4 km) wide, while it spans about 21.5 nautical miles (40 km) in length.

4. In 2014, conflict erupted between Alkazania and Rasonistan after the Alkazanian government announced that it would realign its foreign policy towards one of Rasonistan's main adversaries, and that it would curtail minority rights enjoyed by ethnic Rasonians in Alkazania. Rasonistan strongly condemned this move and voiced its support for protests that had immediately broken out in Iflos against the new policy. These protests soon became violent. Armed groups occupied administrative buildings and airports on the Mirk peninsula. The sudden and widespread availability of small arms as well as larger weaponry such as tanks and anti-aircraft-weapons was attributed by many observers to Rasonistan; as was the emergence of surprisingly well organised and trained militia who wore uniforms that closely resembled those of Rasonian special forces. The alleged Rasonian intervention was strongly condemned by the international community, but immediately denied by Rasonistan.

5. A few months later, when Alkazanian security forces had been driven from the Mirk peninsula altogether, a referendum was held on the peninsula with the result that it shall no longer belong to Alkazania, but rather to Rasonistan. Rasonistan was the only major State to accept the outcome of that referendum, insisting that it reflects the 'will of the people', while Alkazania and other States questioned the legitimacy of the referendum as well as adherence to democratic standards during its execution. Following the referendum, Rasonistan swiftly took control of the peninsula, stationing troops and naval forces in its cities and harbours and has, since then, treated the Mirk peninsula as one of Rasonistan's provinces.

6. The situation in the Iflosian Sea has been heavily affected by the two States' shared history. Before the decline of the ULCSR, it had claimed full territorial sovereignty over the Iflosian Sea for several decades, and other States had never protested against this claim. Other States' ships were granted free access to the Iflosian Sea. In an attempt to facilitate commercial traffic in the area and thereby to preserve the healthy economy of both States after the separation, Alkazania and Rasonistan concluded the 'Treaty on Cooperation in the Use of the Iflosian Sea and the Strait of König', which entered into force in 2003.

7. In the time between the decline of the ULCSR and 2014, international maritime traffic continued to flow through the Strait of König and the Iflosian Sea to both Alkazanian and Rasonian ports alike, with no significant incidents or restrictions from either side. While Alkazania had claimed a territorial sea and EEZ in the Iflosian Sea following its independence, no delimitation agreement with Rasonistan had been concluded. After Rasonistan took power on the Mirk peninsula, however, Rasonistan declared a territorial sea and exclusive economic zone (EEZ) surrounding the peninsula's coast, including in the Iflosian Sea. While the Strait of König used to be located between the Rasonian coastline on one side and the Alkazanian Mirk coastline on the other side, both sides are now controlled by Rasonistan.

8. The new territorial situation in the area resulted in a difficult situation for Rasonistan. With the Mirk peninsula connected by land only to Alkazanian territory, all traffic between the Rasonian mainland and the new province has to pass through the Iflosian Sea. To facilitate the inclusion of Mirk into Rasonistan, it was decided to build a bridge across the Strait of König. This was met with strong criticism from Alkazania, which condemned the project (1) because it regarded and continues to regard Mirk as part of its territory, which is why Rasonistan would have no authority to build the bridge, and (2) because it feared that the bridge would hinder free navigation in and out of the Iflosian Sea. Finalised in early 2018, the bridge does indeed obstruct the passage of certain types of ships, as only ships with an air draft of less than 33 m can pass under the bridge. Many ships that have previously been transporting goods to Alkazanian ports in the Iflosian Sea are now unable to pass and have since ceased service into the Iflosian Sea altogether.

9. In addition to the restrictions imposed by the bridge, Rasonistan has implemented a duty of notification for ships approaching the Strait of König. Foreign-flagged vessels have to notify the Rasonian strait management authorities of their intent to pass the Strait 48 hours before their intended passage. Following this, such foreign-flagged vessels must then make contact and confirm again 24 hours and 4 hours before the intended passage. Passage can then be authorised by the authorities.

10. Alkazania has referred to these measures as 'economic blackmail' and a 'siege' of the Alkazanian cities on the Iflosian Sea's coast. Import and export businesses in Alkazanian ports report a loss of 30% in their revenue since construction of the bridge.

11. Another part of Rasonistan's integration policy related to the Mirk peninsula and its inhabitants was a comprehensive economic stimulus package which included, *inter alia*, the establishment of several high-end industrial sites and factories on the peninsula and in the surrounding sea. To this end, it was planned that a modern wind energy farm be constructed 20 nautical miles off the Mirkean coast. However, after the necessary platforms had been fixed to the seafloor, it turned out that the only available vessel equipped with the necessary technology to erect the piles and turbines on the platforms, the '*St. Peteri*', was owned by a private Alkazanian company ('Alkazanian Shipping and Transportation Realization Association (ASTRA)') and flew the flag of Alkazania. ASTRA entered into a construction contract with the State-owned Rasonian company tasked with the operation of the wind energy farm. All attempts by Alkazania to prevent ASTRA from concluding the contract and carrying out the construction project failed for reasons of domestic Alkazanian law. After

the *St. Peteri* had approached the platforms and started its construction activities, the competent Rasonian supervisory body realised that the safety standards aboard the *St. Peteri* did not meet the legal requirements of the Occupational Health and Safety Act of Rasonistan (OHSA), and ordered ASTRA to comply with the relevant legal requirements immediately. All legal steps taken by ASTRA before Rasonian courts against the application of the OHSA to its staff aboard the *St. Peteri* remained unsuccessful. In view of the risk of significant contractual penalties, ASTRA decided to comply with the OHSA standards. Alkazania denounced the conduct of the supervisory body of Rasonistan as a violation of its flag State jurisdiction.

12. Since the finalisation of the bridge, Alkazania has repeatedly voiced its fears that the Rasonian measures in the Iflosian Sea and the Strait of König could (and were indeed intended to) severely hinder freedom of navigation in the area to the detriment of Alkazania (both economically and militarily). For this reason, Alkazania began relocating parts of its navy from ports outside the Iflosian Sea to ones within. One such transfer was scheduled for 25 November 2018. Two artillery boats, the *Blankenese* and the *Nienstedten*, and one tugboat, the *Rothenbaum*, approached the Strait of König from the Violet Sea. After entering the area claimed as territorial sea by Rasonistan, three Rasonian coast guard ships embarked on an intercepting course, accused the Alkazanian vessels of violating Rasonistan's territorial sovereignty, and ordered them to leave the area immediately. When the *Rothenbaum*, the *Blankenese* and the *Nienstedten* refused – citing the 'Treaty on Cooperation' – and continued on their set course, one of the Rasonian coast guard ships repeatedly rammed the slow *Rothenbaum*. In an attempt to ram the faster and more agile artillery ships, the coast guard ships failed and instead collided with each other. Using the ensuing confusion, the Alkazanian ships managed to break away from the confrontation and continued to make their way towards the strait.

13. Following the incident, Rasonistan anchored a large cargo ship under the bridge, physically blocking the entrance to the Iflosian Sea, and deployed helicopters and a military plane to search the area for the Alkazanian vessels. Meanwhile, the Alkazanian ships were waiting in a so called 'waiting zone', an area for ships waiting for clearance to pass the bridge, located on the coast of the Rasonian mainland – on the Violet Sea side of the Strait. After waiting for 8 hours, the *Nienstedten*, the *Blankenese* and the *Rothenbaum* decided to abort their mission and return to their home port in the Violet Sea. 30 minutes after their departure from the waiting zone, Rasonian coast guard ships detected and pursued them. When they reached the fleeing vessels 14 nm off the Mirkean coast, the Rasonians opened fire, incapacitating the *Rothenbaum*. Together with the *Nienstedten* and the *Blankenese*, the tugboat was then seized, the respective crews arrested, and taken to an undisclosed Rasonian military port. The 24 crewmen were delivered to the local prosecutor's office, who proceeded to charge them with illegal crossing of the State border. Both the crew and the seized ships remain in Rasonian custody as of today. The cargo ship under the bridge was removed the day after the incident, and maritime traffic, as it was before the 25 November 2018 incident, returned to normal.

14. Alkazania denounced the incident as an 'act of armed aggression' and proof that Rasonistan still viewed Alkazania as its 'colony'. On the other hand, Rasonistan released a detailed chronology of events and stated that the Alkazanian warships had failed to notify their intended route to the Rasonian authorities in the Strait of König.

15. Alkazania asks that the Tribunal declare:

1. That the notification regime established by Rasonistan violates Alkazania's and other States' rights of passage through the Strait of König and access to the Iflosian Sea.
2. That the extension of the OHSA to the *St. Peteri* and the persons aboard violated Alkazania's jurisdiction as flag State.

3. That the incident of 25 November 2018 violated Alkazania's freedom of navigation as well as its sovereign immunity.
4. That the Tribunal has jurisdiction over all matters.

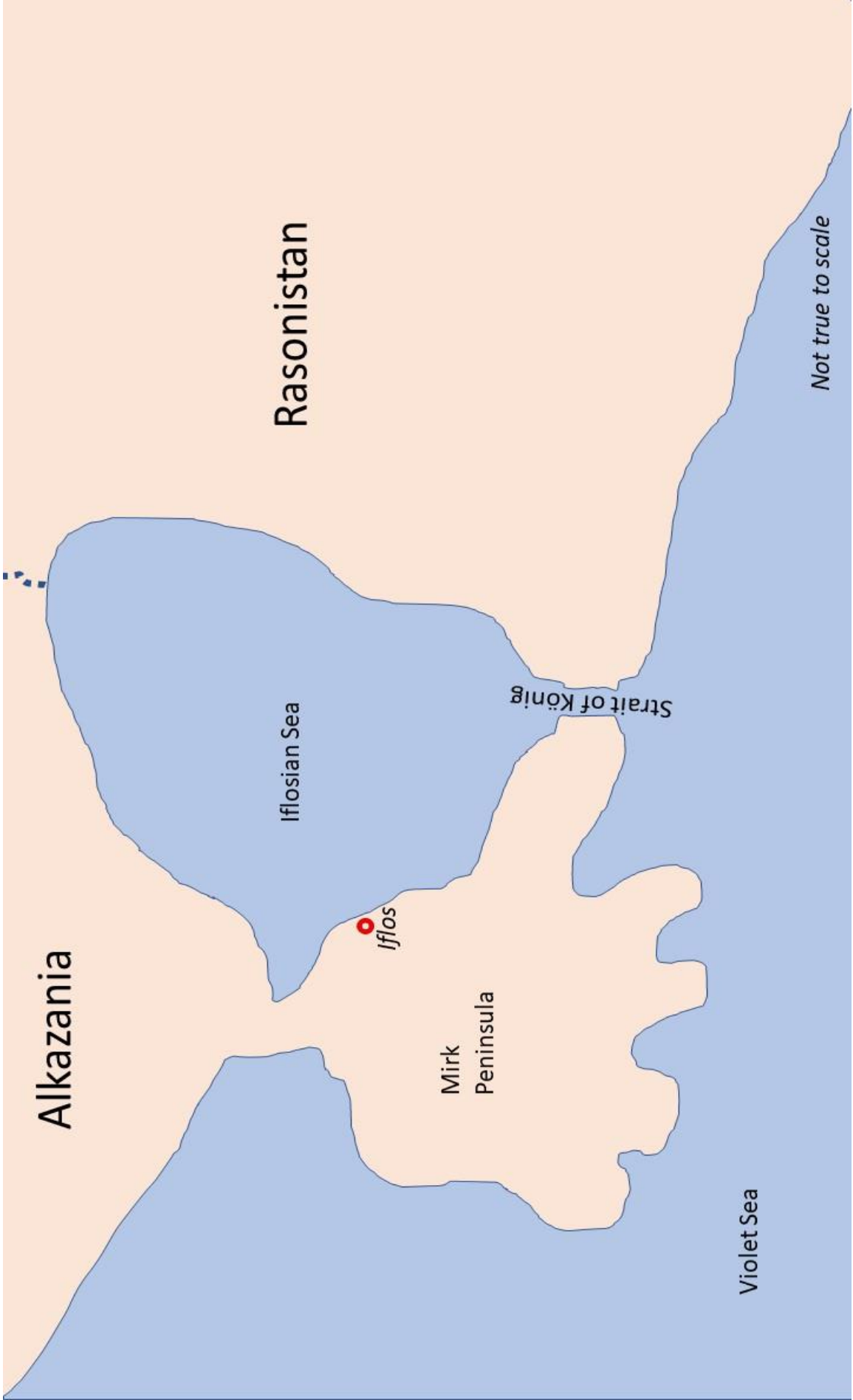
16. Rasonistan asks that the Tribunal declare:

1. That it lacks jurisdiction over all matters, also in light of the fact that the dispute between the parties is in reality one over the issue of territorial sovereignty.

However, should the Tribunal find that it has jurisdiction, Rasonistan asks it to declare:

2. That the establishment of the notification regime concerning passage through the Strait of König is in line with the international law of the sea.
3. That the extension of the OHSA to the *St. Peteri* and the persons aboard does not violate the jurisdiction of Alkazania as flag State of the vessel and is thus in line with the international law of the sea.
4. That the Alkazanian warships violated the integrity of Rasonistan's territorial sea on 25 November 2018, and that Rasonistan was therefore entitled to take the action it did.

17. Rasonistan and Alkazania are both members of the United Nations as well as parties to the 1982 United Nations Convention on the Law of the Sea (LOSC) and the 1969 Vienna Convention on the Law of Treaties (VCLT). Both States have submitted written declarations concerning their respective choice of procedure: In order of priority, Alkazania has chosen (1) the International Tribunal for the Law of the Sea and (2) the International Court of Justice. Rasonistan has chosen (1) the International Court of Justice and (2) the International Tribunal for the Law of the Sea. Upon ratification of the LOSC, both States had submitted declarations under Art. 298 Nr. 1 (b) LOSC, excluding arbitration on disputes concerning military activities.



Attachment: Sketch of the Mirk Area

All teams are expected to deliver a short, written statement containing their main arguments (not more than 6,000 words including footnotes but excluding the table of contents).

Deadline for the written statements:

Please send the written statement to summeracademy@iflos.org by **Sunday, August 10, midnight (24:00)** (failure to comply with deadline results in loss of points)

Rules for the Moot Court Competition

- I. There will be two oral rounds. Team 1 (Applicant) against Team 2 (Respondent) and Team 3 (Applicant) against Team 4 (Respondent).
- II. Each oral round consists of sixty (60) minutes of oral pleadings. Applicant and Respondent are each allotted thirty (30) minutes.
- III. Up to three (3) members from each team shall make oral presentations during the entire round. The division of claims and rebuttal (for Applicant) or surrebuttal (for Respondent) between the speakers is each team's prerogative. Each team shall additionally appoint one (1) Convenor and one (1) Agent. The Convenor will be the sole contact between the Team and the Summer Academy Administration if questions arise. The Agent will give a short introduction to the pleadings.
- IV. Any team member may act as an oralist. The Convenor may also act as a speaker.
- V. Prior to the presentations of a team, its Agent must indicate to the judges how it wishes to allocate its 30 minutes (a) among its oralists and (b) for rebuttal (for Applicant) or surrebuttal (for Respondent). The team may not allocate more than fifteen (15) minutes to a single oralist. Time allocated for but not used by one oralist may not be used by another oralist, or in the rebuttal or surrebuttal. The Agent has an extra three (3) minutes for the introduction.
- VI. Once an oralist has completed his or her main pleading, that oralist may not make any additional arguments except for rebuttal or surrebuttal. This applies irrespective of whether the pleading team uses all of the time it has allocated for the main pleading. Any time that is not used in the main pleading may not be used to extend the time allocated to rebuttal or surrebuttal.
- VII. Each team may reserve up to ten (10) minutes for rebuttal or surrebuttal. The Agent has to announce whether his or her team intends to reserve time for rebuttal or surrebuttal at the beginning of their oral argument, and how much time they intend to reserve.
- VIII. Judges are allowed to ask questions at any time during the pleadings and may, at their discretion, extend total team oral argument time beyond the thirty (30) minute allocation. Oralists asked to further expand upon arguments may, in this instance, appear for more than the fifteen (15) minute individual limit.