



1st NUALS NATIONAL MOOT COURT COMPETITION

ON

MARITIME LAW

21st – 23rd MARCH, 2014

MOOT PROPOSITION

Carrying a full cargo of soya bean, *m v Irrawady* a merchant vessel flying the flag of Republic of Persepolis was on voyage through the Andian Sea from Port Petra to Port Plomos.

She was owned by Equator Lines, a company registered in the Republic of Cremia which belonged to the group of companies headed by the Omerian shipping tycoon Claus Onasis. Meridian & Mercator LLC became the disponent owners of *Irrawady* and they in turn entered into a Ship Management Agreement with M/s. Rubi Maru Ship Management Pvt. Ltd. having its principal place of business in the Republic of Cremia. M/s. Kru Drefryes a leading commodity trader who had purchased the cargo of soya bean in bulk was transporting the same per vessel *Irrawady* to Port Plomos. A part of the cargo was to be delivered there to M/s. Kosomov Traders and the rest would be carried to Port Cature to be delivered to the Lavosky Mercantile Group who were the endorsee to the bill of lading issued by Meridian & Mercator wherein M/s. Kru Drefryes were shown as the consignee.

Republic of Persepolis is one among the four countries located along the rim of Andian Sea. The easiest route to reach Port Plomos from the Andian Sea is through the Strait of Hamurabi. The said strait connects the Bay of Bistis within the Andian Sea with the High Sea on the other side. Though it was also navigationally and hydrographically possible to reach Port Plomos circumnavigating the Island of Kirkira, substantial transit time which would be entailed to traverse the Kirkira sea route, was an attraction for merchant ships to sail through Hamurabi Strait to reach Port Plomos.

Socialist Republic of Moldova, which borders the strait of Hamurabi is a strife-torn country. It has a coast line opening into the Andian Sea through the Bay of Bistis. Recently there was a change of government in Moldova and a new regime under President Tutsi had taken over from the former dictator General Mobutu in a bloodless coup. General Mobutu who had the support of a faction of the Navy took over the control of certain coastal towns and vowed to oust President Tutsi using all means. The civil war that ensued in Moldova frequently spilled over to the strait of Hamurabi, compelling countries to send naval ships to escort their merchant marine passing through the said strait. A general warning was issued by the Maritime International Association (MIA) to all ships traversing the Andian Sea to reach Port Plomos, to prefer the Kirkira sea route over the transit route through the strait of Hamurabi for safety reasons.

M/s. Kru Drefryes, upon being informed of the fresh alerts issued by MIA against passing through Hamurabi straits, contacted M/s. Rubi Maru Ship Management Pvt. Ltd. and requested information regarding the proposed route of the vessel to the Port Plomos. After consulting the Captain of *Irrawady*, M/s. Rubi Maru informed M/s. Kru Drefryes that since the vessel was running behind schedule, the Captain had decided to pass through the Hamurabi strait rather than use the circuitous passage along the Kirkira Island. M/s. Kru Drefryes immediately cautioned against such a move and gave notice that they would hold the vessel, its owners and charterers liable for all consequences arising therefrom. Meridian & Mercator LLC decided to

ignore the notice and instructed the Captain to proceed through the Strait but with armed Private Maritime Security Guards (PMSGs) on board.

The Bay of Bistis is rich in mineral deposits including manganese nodules. Huge petroleum reserves have been identified along the coast of Persepolis within the Bay of Bistis. Persepolis claimed the whole of the Bay as its Exclusive Economic Zone. Overlooking objections by Moldova and other states situated along the rim of the Andian Sea, Republic of Persopolis permitted M/s Tobil, a company, majority shares of which are held by the Republic of Persepolis, to set up oil exploration platforms in the Bay of Bistis.

Andian sea is also home to a highly migratory species of Green Marlin fishes which is the principal source of livelihood for the *Matsyakars*, a community of fishermen living both in the Republic of Persepolis and the Socialist Republic of Moldova. The *Matsyakars* community in Moldova is larger than that in Persepolis and they have been traditionally fishing on the Green Marlins since time immemorial.

With the active consent and concurrence of the Government of Persepolis, an underwater oil well commenced extracting oil on an experimental basis within 22 nautical miles of the coast of Persepolis in the Bay of Bistis though it does not find mention in the official navigation charts issued by Persepolis.

Towards protecting the oil well and the platform, Persepolis also established an Air Defence Identification Zone (AIDZ) over the entire Bay. Republic of Cremia responded by duly complying with the AIDZ norms. However, Moldova, declined to accept the AIDZ and declared that it will challenge the unilateral imposition of the said Zone by Persepolis as it violates the freedom of navigation and overflight guaranteed under international law. General Mobutu threatened that unless the oil well disturbing the Green Marlin fishery zone was closed down, vessels flying the flag of Persepolis passing along the Strait of Hamurabi will be prevented from performing such transit. The new government under President Tutsi followed the policy of its

predecessor in office and threatened that the Strait will be closed for all vessels flying the flag of Persepolis.

Irrawaddy entered the Strait of Hamurabi and commenced transit through the strait in full throttle, which in normal course would have enabled her to complete the transit through the strait within twelve hours. When she had completed about 4 hours of her transit, weather turned for worse and one of her engines stopped functioning reducing her speed from 8 knots to 4 knots. After one more hour of sail, her propeller got jammed compelling the Captain to anchor within the strait and send divers down to repair the jammed propeller. While repair was being undertaken, the PMSGs on board *Irrawaddy* noticed a naval gun boat approaching the vessel. Contrary to the instructions of the Captain they immediately opened fire and a heavy gun battle ensued pursuant to which the gun boat was destroyed and all naval personnel on board the gun boat were killed. *Irrawaddy* after repairing her propeller managed to sail further through the strait, and entered the High Seas. However, she was followed and intercepted by a Coast Guard vessel of Moldova and was compelled to proceed back to a port in Moldova which was one among the coastal towns under the control of General Mobutu's faction. *Irrawady* was detained and the Captain and crew arrested. Her cargo of soya bean was transferred on to another merchant vessel *Pride of Moldova* which proceeded with its cargo to an unknown destination through the Andian Sea.

M/s Kosomov Traders and M/s. Kru Drefryes decided to move the High Court of Persepolis seeking to arrest and detain sister vessels belonging to Equator Lines. While proceeding to do so it was noticed that *Pride of Moldova* was passing through the coastal waters of Persepolis with the cargo of soya bean on board. M/s Kosomov Traders and M/s. Kru Drefryes moved the local criminal court in Persepolis seeking a direction to detain the Captain of *Pride of Moldova* and to confiscate the cargo of soya bean. The criminal court issued orders to detain the vessel and arrest the Captain. They also moved the local civil court seeking attachment of the vessel *Pride of Moldova* and her cargo for realising a civil claim. *Pride of Moldova* which

was located within 8 nautical miles of the coast of Persepolis was forcefully brought to a port in Persepolis and the Captain was arrested for allegedly transporting stolen property. The vessel was detained and the cargo of soya bean was confiscated and sold in auction. Proceeds there from were deposited with the civil court and actions were initiated by M/s Kosomov Traders and M/s. Kru Drefryes towards realising the amounts lying in deposit.

General Mobutu vowed to take revenge against Persepolis for the arrest and detention of *Pride of Moldova* and ill treatment of its Captain. A frigate within the command of the naval faction supporting General Mobutu, proceeded to the Bay of Bistis. While the frigate remained in the High Seas, a boat from the frigate stealthily approached the oil exploration platform run by M/s Tobil in the Contiguous Zone of Persepolis and planted explosives on it. In the huge explosions that followed, the platform was totally destroyed and personnel on board, all citizens of Persepolis, were killed. The explosion triggered an oil spill which threatened to spread all across the Andian Sea destroying the habitats of Green Marlines. A naval vessel of Persepolis which was on the High Sea at the relevant time, upon receipt of information commenced a hot pursuit of the boat. After pursuing it from the contiguous zone, the hot pursuit was carried on to the frigate by the Persepolis naval vessel. However, the naval vessel could not match the speed of the frigate and lost the latter's position. After a gap of nearly 6 hours, when it was noticed that the frigate had just entered the coastal waters of Republic of Cremia, a helicopter gun ship flew out from the Persepolis naval vessel and shot at the frigate immobilising it. The persons on board the frigate were apprehended and brought to Persepolis and they were tried for piracy in the criminal court at Persepolis. Moldovian Government retaliated by closing down the Strait of Hamurabi to all vessels flying the flag of Persepolis.

Perspolis claimed that the Maritime Zones Act, 1976 enacted by its Parliament empowers it to take steps to protect its security interest within its contiguous zone though international law may not include security as an interest which the coastal state could exercise within the contiguous zone.

Moldova, on the other hand, alleged that the Municipal statute of Persepolis to the extent it goes beyond the settled international legal norms is *non est*.

The stalemate continued with no side willing to relent and all attempts to settle the outstanding dispute failed primarily due to the pressure of the members of the family of the crew on board the detained vessels viz., *Irrawady* and *Pride of Moldova*. Republic of Persepolis and the Socialist Republic of Moldova are parties to the UNCLOS 1982. After exhausting all other avenues for peaceful settlement of outstanding disputes, Persepolis invoked the jurisdiction of ITLOS. Moldova responded by placing its claims before the ITLOS. The following contentions are raised by the parties, among others.

For Persepolis

- Prompt release of *Irrawady* and its crew.
- Transit right through the Strait of Hamurabi.
- Right of Persepolis to erect oil platform within its EEZ and the right to designate an AIDZ.
- Damages under appropriate heads

For Moldova

- Prompt release of *Pride of Moldova* and its crew.
- Protection of Green Marlin Fishes off Persepolis coast.
- Status of merchant vessels with PMSGs on board.
- Damages under appropriate heads.

(Teams are free to formulate any additional contentions appropriate to the facts and jurisdiction)

