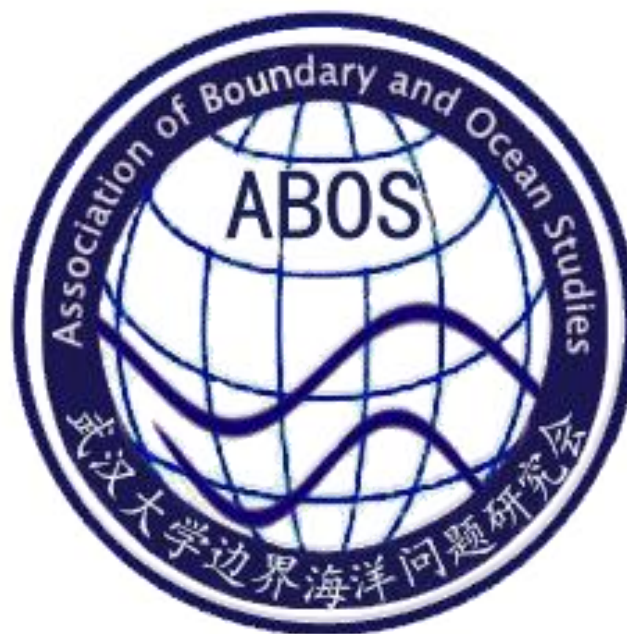


The 2017 Law of the Sea Moot Court Competition
(LOS-MCC)



Wuhan, 2017

Case



Sponsors:



武汉大学
WUHAN UNIVERSITY



武汉大学中国边界与海洋研究院
Wuhan University China Institute of Boundary and Ocean Studies



国家海洋局
State Oceanic Administration People's Republic Of China



Joint Notification of a Special Agreement

The Hamburg, 30 December 2016

To be addressed to the Registrar

Dear Sir,

Pursuant to article 55 of the Rules of the Tribunal, on behalf of the Republic of Allbek and the Republic of Krensburg, we have the honor to notify the International Tribunal for the Law of the Sea of a Special Agreement to submit a dispute to the Tribunal between the Applicant and the Respondent on 16 December 2016, regarding maritime boundary delimitation and related issues between Allbek and Krensburg in the Gulf of Orliz.

Yours faithfully,

Allbek

Krensburg

Special Agreement
Submitted to the International Tribunal for the Law of the Sea
By the Republic of Allbek and the Republic of Krensburg
Concerning Maritime Boundary Delimitation and Related Issues in
the Gulf of Orliz

The Government of the Republic of Allbek (“the Applicant”) and the Government of the Republic of Krensburg (“the Respondent”) (hereinafter “the Parties”);

Considering that a dispute has arisen between them concerning maritime boundary delimitation and related issues between Allbek and Krensburg in the Gulf of Orliz;

Desiring that this dispute should be settled by a decision of the International Tribunal for the Law of the Sea (“the Tribunal”);

Have agreed as follows:

Article 1

The Parties submit the questions contained in the Special Agreement (together with Corrections and Clarifications to follow) to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal.

Article 2

It is agreed by the Parties that the Republic of Allbek shall act as Applicant and the Republic of Krensburg as Respondent, but such agreement is without prejudice to any question of the burden of proof.

Article 3

(a) The Tribunal is requested to decide the case on the basis of the United Nations Convention on the Law of the Sea and other rules of international law not incompatible with it.

(b) The Tribunal is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgment on the questions presented in the case.

Article 4

(a) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the 2017 Law of the Sea Moot Court Competition.

(b) The Parties agree that the written proceedings should consist of Memorials presented by each of the Parties not later than the date set for in the Official Schedule of the 2017 Law of the Sea Moot Court Competition.

Article 5

(a) The Parties shall accept any Judgment of the Tribunal as final and binding upon them and execute it in its entirety and in good faith.

(b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

Article 6

The present Agreement shall enter into force upon signature. In witness whereof the undersigned, being duly authorized thereto, have signed the present Agreement.

Done in duplicate at Wuhan, on 16 December 2016, both texts being equally authoritative.

Allbek

Krensburg

**THE CASE CONCERNING MARIME BOUNDARY DELIMITATION AND
RELATED ISSUES IN THE GULF OF ORLIZ**

ALLBEK V. KRENSBURG

1. The Republic of Allbek (“Allbek”) and the Republic of Krensburg (“Krensburg”) are States with adjacent coasts in the Gulf of Orliz. The claims asserted by Allbek and Krensburg create a disputed area of approximately 26,000 square kilometers, calculated from the coast to the 200-nautical-mile line.

2. Allbek is a coastal state with a population of 30,367,940 bordering the Gulf of Orliz along a 438 km long coastline between the Kingdom of Amedessa and the Republic of Krensburg. The total land area is 239,560 square kilometers. Allbek is a contracting party to the United Nations Convention on the Law of the Sea (“the Convention”, or “UNCLOS”), having signed the Convention on 10 December 1982 and ratified it on 7 June 1983. Oil is a major source of revenue of Allbek, a politically stable country with a fast-growing economy that also yields gold and cocoa.

3. Krensburg is a coastal state with a population of 18,573,360 bordering the Gulf of Orliz along a 520 km long coastline between the Federative Republic of Febastea and the Republic of Allbek. The total land area is 352,468 square kilometers. Krensburg is also a contracting party to the Convention, having signed the Convention on 10 December 1982 and ratified it in March 1984. Krensburg, the world’s top producer of cocoa, is also growing strongly after years of political turmoil. While drilling only a handful of exploration wells during a decade-long political crisis that ended in 2011, Krensburg is now seeking to develop its potentially lucrative offshore oil and gas sectors.

4. Fishery resources in the Gulf of Orliz are abundant (**See Figure 1**). The fishermen of the countries along the coast have always depended on the Gulf of Orliz fisheries as their fishing grounds and this fishing activity has long constituted an important part of the countries’

overall national economy and a dominant part of the regional economy of the Orliz Free Trade Area (hereinafter “OFTA”) as well. The Gulf of Orliz also deposits organic sediments over millions of years which become crude oil. Oil exploration in the Gulf of Orliz has accelerated since Allbek discovered the giant Bydos offshore oil and gas field in 2007.

5. Coff Island is the only island in the Gulf of Orliz situated 95 nautical miles south of the terminus of the land boundary between Allbek and Krensburg. The minimum distance from the mainland of Allbek is approximately 48 nautical miles, while from Krensburg about 67 nautical miles. The island measures approximately 12 kilometers in length, and almost 4 kilometers at its widest point. At high tide its surface area is approximately 20 square kilometers, at low tide 32 square kilometers.

6. There are multiple buildings, a lighthouse, a runway, and port facilities on Coff Island. The population of Coff Island has increased rapidly from about 1,000 in 1958 to about 8,000 at present. Most inhabitants are fishermen, even though the business is not very lucrative largely due to the absence of the appropriate infrastructure. In addition, there is a scarcity of fresh water on the island. The soil on Coff Island is naturally formed, has existed for more than 1,000 years, and can be utilized for native plant growth as well as agricultural production. During the occupation by the Kingdom of Amedessa in World War II, an expert of Amedessa had done scientific research and concluded that, “... the soil on Coff Island is sandy, calcareous, has a high pH, and lacks some major nutrients.”

7. The waters surrounding Coff Island have been a traditional fishing ground for the fishermen of Allbek and Krensburg since ancient times. According to *the 1961 Treaty of Friendship and Good Neighborliness*, Krensburg recognized Allbek’s sovereignty over Coff Island and they drew a delimitation line (hereinafter referred to as the “1961 Treaty Line”) in the Gulf from the terminus of the land boundary between Allbek and Krensburg. And the surrounding waters have continued to serve as a traditional fishing ground for fishermen,

including those from Krensburg. Fishes caught surrounding the island – primarily using spear and net fishing methods – have historically included sardines, cods, black porgies, talakitoks, sand borers, herrings and other species of fish found beneath or near rocks.

8. The fishing vessels of the coastal countries, especially Krensburg and Allbek, have been accustomed from time immemorial, to fishing in the area, near Coff Island. Fishermen from these countries freely undertake activities, including fishing and selling their catch on the local markets, regardless of their national political affiliation or their place of habitual domicile.

9. In 1968, Allbek divided the maritime area along its coast into 18 oil concession blocks for lease to petroleum companies. In the same year, Krensburg also proceeded to demarcate its own concession blocks in the Qarisiya Area and signed a concession agreement with Mexwell, one of its domestic oil companies.

10. In 1970, Allbek adopted *the Law Delimiting the Maritime Zones under the National Jurisdiction of the Republic of Allbek*. Article 2 of the law established a 200-nautical-mile exclusive economic zone. Article 8 provides that “with respect to adjoining coastal states, the territorial sea and the zone referred to in Article 2 of this law shall be delimited by agreement in conformity with equitable principles and using, if necessary, the median line or the equidistance line, taking all pertinent factors into account”.

11. Since 1975, Nastle, a multinational oil and gas exploration company headquartered in Houston, began its operation in the Kakrit Area under the permission of Allbek. It took various operations to manufacture and install subsea infrastructure:

- drilling in the subsoil of 24 exploration wells and development wells;
- engineering, manufacture and installation on the subsoil of pipes and pipelines more than 150 km in length;

- installation of subsea systems, including subsea well heads, in the subsoil.

Those operations were completed by 1978 and the first barrels of crude oil were set to be delivered in mid-1979. Soon after, Nastle held a press conference and announced that the first barrels of crude oil were delivered successfully.

12. On 12 July 1983, a Krensburg's fishing vessel found oil spills in the Kakrit Area (**See Point A in Figure 2**) and reported the situation to the authorities of Krensburg. After receiving the report, the Minister of Foreign Affairs of Krensburg expressed concerns and demanded explanation from the government of Allbek. And Allbek indicated that the operation of Nastle was under its permission and promised to urge Nastle to inspect the subsea infrastructures. However, the details of the permission and inspection were not released then.

13. On 31 October 1997, the Allbek National Petroleum Corporation sent a letter to the Minister of Petroleum and Energy of the Republic of Krensburg requesting authorization to conduct seismic recordings in Krensburg's exclusive economic zone near the maritime boundary between Allbek and Krensburg. Krensburg granted the approval and asked for the exchange of the results of such surveys.

14. In September 2007, the Bydos oilfield was discovered in the Bydos Area by Nastle. The Bydos Appraisal and Development Program was initiated by Allbek at the end of 2007. Parallel to the Appraisal Program, Phase I of the Development Program of the core field has progressed at a rapid pace since July 2008. In fact, development operations in the Bydos field were started by Nastle between March and May 2008, before the environmental impact assessment was finalized.

15. In June 2008, Krensburg presented a note verbale to Allbek calling for a stop to all Nastle's activities in the Bydos. In the letter, Krensburg reiterated that part of the Bydos field

was located in Krensburg's exclusive economic zone and extended beyond the customary maritime boundary line. (See **Figure 2**)

16. On 1 April 2009, a telegram was sent by Krensburg's Minister of Foreign Affairs to its Ambassador in Allbek with the instruction to propose to Allbek that, pending a planned meeting of the two States' boundary experts, both States should refrain from further activities in the relevant waters. But there was no record of such proposal made by Krensburg's Ambassador to Allbek.

17. Correspondence was conducted between Krensburg and Allbek on this issue and the two States decided to set up an Allbek-Krensburg Joint Commission to negotiate solutions to their disputes. From 2009 to May 2014, Allbek and Krensburg met on ten occasions, attempting to resolve their disputes within the Joint Commission.

18. The OFTA member States--the Federative Republic of Febastea, the Republic of Allbek, the Republic of Krensburg, and the Kingdom of Amedessa--met on Coff Island from 24 to 26 February 2009. During the meeting, the States discussed the issues concerning the limit of adjacent and opposite maritime boundaries and produced the *Guidelines for the Delimitation in the Gulf of Orliz*, some articles of which read as follows:

...

Article 1

The States reaffirmed their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations.

...

Article 6

The States undertook to exercise self-restraint in the conduct of activities that

would complicate or escalate disputes and affect peace and stability of the OFTA.

...

Article 12

Issues of adjacent/opposite boundaries shall continue to be discussed in a spirit of cooperation to arrive at a definite delimitation after the presentation of the preliminary information/submission, the States would therefore write “no objection note” to the submission of the outer limit of the continent shelf of their neighboring States.

...

19. On 26 March 2010, Krensburg submitted to the Commission on the Limits of the Continental Shelf (hereinafter the “Commission”) information on its extended continental shelf. Krensburg’s claim denied Allbek any portion whatsoever of its continental shelf beyond 200 nautical miles. On 29 March 2010, Allbek submitted its information to the Commission. It described and justified its entitlement to an extended continental shelf, beyond 200 nautical miles from its coastal baselines, in the very areas where Krensburg asserted claims in its submission to the Commission.

20. On 6 October 2011, Krensburg’s President Mr. Darva paid an official visit to Allbek. The Presidents of the two countries signed a Joint Communiqué, in which they reaffirmed their shared determination to deepen the bilateral relations and cooperation between Krensburg and Allbek. Part III of the Communiqué reads that:

“On the issue of the common maritime boundary between Allbek and Krensburg heightened by the oil discovery in the Bydos Area, the two sides noted with satisfaction the progress so far made in consultations and negotiations regarding boundary delimitation and reaffirmed their shared disposition to continue working towards achieving an amicable and mutually acceptable conclusion of their deliberation on the issue.”

21. When asked by Nastle in 2011 about the status of the disputed area, the Ministry of Energy of Allbek replied, “As regards the maritime boundary, as you are aware, it has always been publicly known that Allbek and Krensburg have not yet delimited their maritime boundary. It is also publicly known that in recent years the two governments have met in an effort to negotiate their maritime boundary in accordance with international law. Those negotiations remain ongoing.”

22. On 6 November 2012, Mr. Finope won the presidential election and took over the presidency of Krensburg. The new President suspended the negotiations between Krensburg and Allbek for one year. Beginning in May 2013, a series of incidents occurred between Krensburg’s and Allbek’s vessels at Coff Island that aggravated tensions between the two sides. Allbek increased the deployment of its own law enforcement ships in response, leading to a series of confrontations in relevant waters.

23. Efforts to negotiate a mutual withdrawal of government vessels were not successful, and by early July 2013, Allbek had deployed a fleet of boats around Coff Island, guarding against the entrance of foreign vessels. As tensions intensified, fishermen activities in the vicinity of Coff Island were affected by the dispute.

24. Since May 2015, when Allbek took substantial control of Coff Island, Krensburg’s fishermen found it difficult to enter the surrounding waters of the island because Allbek’s law enforcement vessels created a “no fishing zone” around it. Allbek’s patrol vessels enforced this zone by threatening Krensburg’s fishermen who attempted to fish around Coff Island. During other periods, however, fishermen were occasionally permitted to continue to fish.

25. The Krensburg protested that Allbek breached international law and especially violated its obligations under the Convention. Allbek reiterated that it has sovereignty over Coff Island and therefore its exercise of sovereign rights stands on solid legal ground.

26. In September 2015, President Finope visited Allbek, and the two sides resumed bilateral talks. Both sides agreed that Krensburg's fishermen could come back for fishing around Coff Island under the law of Allbek. They also agreed to delimit the maritime boundary step by step. However, there is a substantial divergence of the delimitation line between the two countries.

27. Allbek insisted on an equidistance line. It contended that the appropriate form of the delimitation, within the geographical and legal framework constituted by the mainland coasts of Allbek and Krensburg, as well as taking into account Coff Island, is a single maritime boundary in the form of a median line, every point of which is equidistant from the nearest points on the baselines from which the territorial seas of the Parties are measured.

28. Allbek also contended that Coff Island should be attributed full effect. In addition, Allbek claimed that it has been entitled to an outer continental shelf extending 350 nautical miles towards the center of the Gulf of Orliz from its coast because the Gulf of Orliz is the natural prolongation of its eastern coast based on the existence of an accretionary prism that extends no more than 50 nautical miles from the shore.

29. However, Krensburg asserted that the equidistance method proposed by Allbek is not applicable according to UNCLOS since such application would lead to an inequitable solution. It proposed a customary line which is the southward extension of the "1961 Treaty Line" (**See Figure 3**), amounting to the bisector-angle line. It maintained that Allbek has accepted the customary line for a long time, whether in the fishing activities or oil development activities. It further contended that Coff Island is an enclave.

30. Krensburg argued that the delimitation line proposed by itself will not alter the existing situation and historical practices, that it will not have a catastrophic effect on local fishermen or the local or national economy of both sides. Conversely, the delimitation line proposed by Allbek will indeed alter the existing situation and historical practices and will have a catastrophic or at least a severely adverse effect on the local fishermen or its regional economy.

31. Allbek held the view that, at present, fishing in the Gulf of Orliz is by and large dominated by Allbek in artisanal fishermen who catch their fish in Gulf of Orliz and around Coff Island and other small offshore islands. The line suggested by it will respect the historical practice of both sides, will not displace or adversely affect Krensburg's fishing activity, and will be an equitable result for both Parties.

32. Krensburg alleged that it is entitled to the outer continental shelf beyond 200 nautical miles because only Krensburg has an entitlement under the 1982 Convention, that is, only the landmass of Krensburg has a natural prolongation extending to these areas of the outer shelf. It pointed out that Allbek enjoys no entitlement in these areas because, as a matter of fact and law, its land territory has no natural prolongation into the Gulf of Orliz beyond 200 nautical miles.

33. On 30 November 2015, a pipeline ruptured and caused marine pollution in the Bydos area (**See Point B and C in Figure 2**). And about 72,000 tons of crude oil and toxic mud were spilt in the ocean, polluting large areas of sea. It was more disturbing for Krensburg since the prevailing winds in the Gulf of Orliz created a westward surface flow in the form of a broad current, which caused slicks of pollutants to drift to the west. The oil caused a "visible sheen" on the water, and odor problems persisted in the area. The hazards caused by uncontrolled oil activities in the Bydos area seriously threatened the life of marine species that habitually

inhabited the Gulf of Orliz. On the same day, the Ministry of Petroleum and Energy of the Republic of Krensburg informed Nastle that, "...all current or planned activities in the Bydos area by Nastle without official authorization from Krensburg must cease immediately".

34. Failing bilateral negotiations in the past year, Allbek and Krensburg decided to turn to ITLOS under the rules set out by the Convention.

35. As for the delimitation of the continental shelf within 200 nautical miles and the exclusive economic zone, Krensburg stated that the Tribunal should identify a single line to delimit the seabed and subsoil and the superjacent waters. Allbek also stated that the Parties agree in asking the Tribunal to draw a single maritime boundary for the subjacent waters, the seabed and subsoil, that is for the exclusive economic zone and the continental shelf.

36. Both Krensburg and Allbek asserted claims to an outer continental shelf beyond 200 nautical miles. The claims of Krensburg and Allbek in the outer continental shelf overlap with each other and all of the outer continental shelf claimed by Krensburg is claimed by Allbek as well.

The points that may divide the Parties include, *inter alia*,

- (1) whether there exists a customary line delimiting the respective exclusive economic zone and continental shelf of the parties;
- (2) if the answer to the first question is NO, what is the appropriate method of delimitation;
- (3) what is the status of Coff Island and its effect in the maritime boundary delimitation;
- (4) whether the Tribunal has jurisdiction to delimit the continental shelf beyond 200 nautical miles;

...

Parties may also argue about other possible and proper points.

