

## **Case Concerning Land Reclamations in the Narrow Sea**

### **(Kingdom of Maristan v. Federal Republic of Alimea)**

1. The Federal Republic of Alimea (hereinafter “Alimea”) and Kingdom of Maristan (hereinafter “Maristan”) are located in the Dalaran region. Their coasts are opposite to each other and separated by the Narrow Sea, which has a width of 250 nautical miles at its narrowest part and 350 nautical miles at its widest part [Sketch-map: ANNEX I]. The two States sustained a generally peaceful relationship over a long time.

2. The Bonita Reef is a low-tide elevation located 130 nautical miles east of the coast of Alimea, and 8 nautical miles west of the median line between the coasts of Alimea and Maristan. It is in elliptic shape and covers an area of 20 square kilometers. The center of the Bonita Reef is 1.5 square kilometers in area (hereinafter “the Center Area”). Covered by sands, rocks and coral debris, few animals live in the Center Area. The rest of the Bonita Reef is covered by living corals and surrounded by sea animals of various kinds. As part of a rare ecosystem, it is home to dozens of plant and sea animal species listed in Annex I of the *United Nations Convention on the Law of the Sea* (hereinafter “UNCLOS”).

3. Alimea ratified the UNCLOS on 14 May 1995 and claimed an exclusive economic zone (“EEZ”) and continental shelf extending from its baseline to the line every point of which is 200 nautical miles from the nearest point on its baseline. Maristan ratified the UNCLOS on 24 January 1997. The *Law of the Kingdom of Maristan on Exclusive Economic Zone and Continental Shelf* [ANNEX II] entered into force on 1 June 1997.

4. In late 2016, Alimea embarked on large-scale land reclamation activities on

the Bonita Reef. The activities were carried out by dredging sands and rocks onto the Bonita Reef to make permanent structures. The project eventually covered an area of 2 square kilometers of the Bonita Reef.

5. Maristan noticed the project via satellite photography in early 2017 and contested and challenged the land reclamation activities on a number of occasions. On 1 March 2017, in the absence of a notification of the planned measures by Alimea before it authorized the land reclamation activities, Maristan sent a Note Verbale to Alimea protesting against such activities. Maristan claimed that the activities conducted by Alimea are located in the disputed marine area to be delimited, Alimea breached the obligations under Article 74 of the UNCLOS, and it's the obligations on the preservation and protection of the marine environment.

6. In response, Alimea insisted that the reclamation activities were conducted in an area located to the west of the median line. Within this undisputed marine area, Alimea is exclusively entitled to conduct land reclamation activities on the Bonita Reef. The project is to provide shelter, navigation aid, weather forecast and fishery assistance. Moreover, the construction was conducted in an area where no living coral or sea animals exist. According to the environment impact assessment ("EIA") report, it will not cause any harm to the marine environment.

7. Before permitting the land reclamation activities, Alimea had conducted the EIA pursuant to its national legislation. The Ministry of Ecology and Environment of Alimea released the full text of the EIA report on its official website on 17 March 2017. According to the report: (1) The activities will be conducted in the area where no coral or animal lives, the land reclamation activities on the Bonita Reef will have negligible negative impact on the marine environment; (2) During and after the construction, certain measures including setting trash collecting screens and monitoring system, were taken to minimize

the impacts on coral reefs. Maristan criticized the EIA report for a lack of consultations with Maristan as well as opinions of the public likely to be affected.

8. Professor David Adams, a prominent marine biologist at the National University of Maristan, told the *Maristan Daily*:

“Our generation holds the responsibility for passing the highly diverse and miraculously beautiful Bonita Reef to future generations. However, the conducts of Alimea put it in risk. The influence of the reclamation and construction activities on the Bonita Reef have wide-ranging and long-lasting environmental implications. The area buried by sands and rocks is damaged. Other areas on the Bonita Reef are suffering from the associated sedimentation, nutrient release, and change of hydrology now. The ecological system itself can do little with the death or decline of coral and organism, as the ecosystem may have been greatly disturbed and interfered. The various sea animals living around the Bonita Reef will also be negatively affected.”

9. Realizing the Bonita Reef and its environs would become one of the most valuable sites in the world for biodiversity and valuable scientific resource, the government of Alimea, exercising its authority endowed by Article 30 and 35 of the 1991 *Law on Environment Protection* [ANNEX III], declared to established the National Nature Reserve of Bonita Reef.

10. On 16 April 2017, Maristan requested Alimea to: (1) Suspend the land reclamation activities on the Bonita Reef; (2) Negotiate with Maristan to reach an agreement on the marine boundary through high-level meetings and (3) Establish a joint commission to monitor and protect the marine environment of the area. Alimea rejected all these proposals.

11. By September 2018, over 2 square kilometers of new sand land had been reclaimed on the Bonita Reef. The Bonita Reef and the newly created land did not extend beyond the median line. Several buildings designed for the accommodation of workers were erected on the reclaimed areas. Alimea confirmed that the reclamation and construction activities would continue and

would not “give way to any diplomatic or political pressure”.

12. On 31 December 2018, Maristan submitted the dispute to the International Tribunal for the Law of the Sea (hereinafter “ITLOS”), as both Alimea and Maristan have adopted declarations [ANNEX IV] pursuant to Article 287 of the UNCLOS, where they choose ITLOS as the preferred judicial dispute settlement procedure.

13. In its submission, Maristan asserts that the ITLOS shall have jurisdiction over this case, and requests the ITLOS to adjudge and declare that,

(1) The Bonita Reef is located within the disputed marine area between Kingdom of Maristan and the Federal Republic of Alimea.

(2) Alimea is in breach the obligations laid down in Article 74 of the UNCLOS

- by carrying out the land reclamations and construction of buildings, facilities and structures;
- by rejecting the proposals to suspend the land reclamation activities on the Bonita Reef, pending a final solution of the maritime delimitation dispute;
- by unilaterally establishing the National Nature Reserve of Bonita Reef.

(3) Alimea breached the obligations to notify and consult with Maristan prior to putting the land reclamation activities into operation under the UNCLOS, other relevant international convention and general international law;

(4) Alimea’s activities caused actual significant transboundary harm and it was in breach of its obligations on the preservation and protection of the marine environment under the UNCLOS, other relevant international conventions and general international law

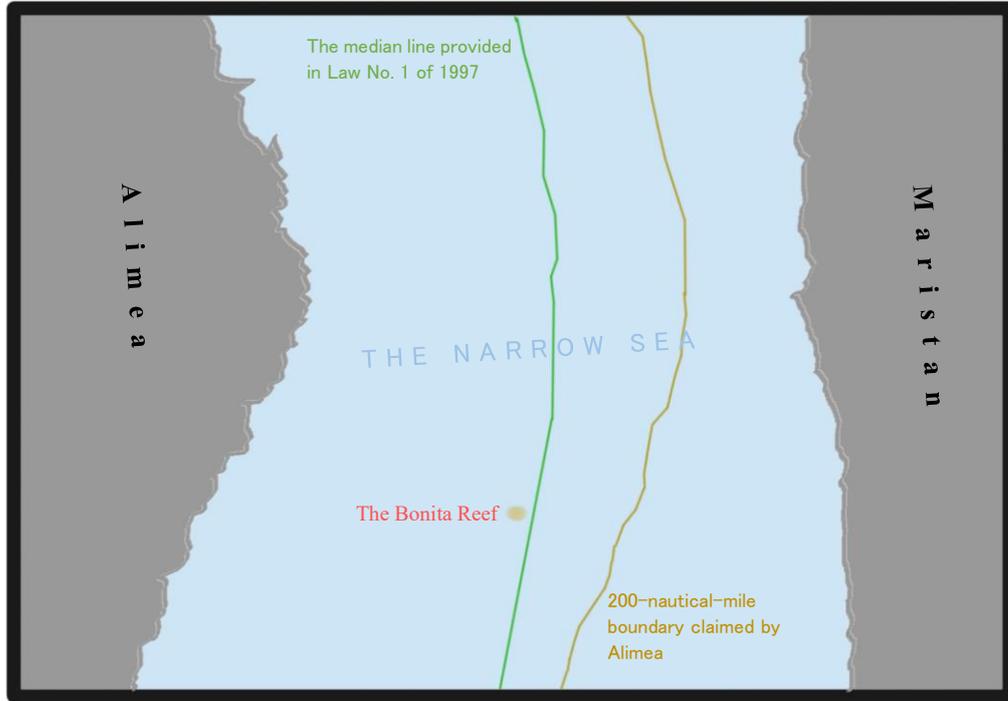
14. Alimea contests the jurisdiction of ITLOS over this case in two dimensions:

(1) Submission 1 of Maristan concerns disputes relating to sea boundary delimitations; (2) Submission 2 of Maristan concerns disputes related to an interpretation or application of Article 74(3) of UNCLOS. Both submissions are precluded by the written declaration of Alimea on 15 May 1995 [ANNEX IV] under Article 298(1)(a)(i) of UNCLOS. Alternatively, Alimea requested ITLOS to reject all the submissions of Maristan.

15. Both States are parties to the *Convention on Environmental Impact in a Transboundary Context* (“Espoo Convention”) and the *Convention on Biological Diversity* (“CBD”).

# ANNEX I

## Sketch-map



## **ANNEX II**

### **Law of the Kingdom of Maristan on Exclusive Economic Zone and Continental Shelf**

**(Law No. 1 of 1997)**

1. The exclusive economic zone of the Kingdom of Maristan covers the area beyond and adjacent to the territorial sea of the Kingdom of Maristan, extending to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.
2. The Kingdom of Maristan shall determine the delimitation of its exclusive economic zone in respect of the overlapping claims by agreement with the States with opposite or adjacent coasts, in accordance with the equitable principle and on the basis of international law.
3. The Kingdom of Maristan exercises its sovereign rights over the exclusive economic zone for the purpose of exploring, exploiting, conserving and managing the natural resources of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and in its other activities for economic exploitation and exploration of the zone, such as production of energy from water, currents and winds. The Kingdom of Maristan exercises jurisdiction over the establishment and use of artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment in the exclusive economic zone. The natural resources in the exclusive economic zone referred to in this Law consist of living and non-living resources.

## ANNEX III

### The 1991 Act on Environment Protection

**Article 30** The nature reserve provided in this law means the areas delineated according to relevant laws for special protection and administration in areas where typical natural ecological systems, and precious, rare or vanishing wildlife species are naturally concentrated.

...

**Article 35** In areas which meet one of the following requirements, a nature reserve shall be:

- (1) Typical physiographic areas, typical natural ecosystem areas, and those areas where the natural ecosystems have been damaged, but can be restored to the same category of natural ecosystems by proper protection;
- (2) precious, rare or vanishing wildlife species which are naturally concentrates;
- (3) Having marine and coastal areas, islands, wetland, inland water bodies, forests, grassland and deserts which are of special protection value.

## ANNEX IV

### **Declaration of the Federal Republic of Alimea in accordance with Article 287 and Article 298 of United Nations Convention on the Law of the Sea submitted to Secretary-General of the United Nations on 15 May 1995**

The Government of the Alimea declares, under paragraph 1 of Article 287 of the United Nations Convention on the Law of the Sea, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention, without specifying that one has precedence over the other:

- (a) The International Tribunal for the Law of the Sea established in accordance with Annex VI of the Convention; and
- (b) The International Court of Justice.

The Government of Alimea further declares, it does not accept any procedure provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention.

### **Declaration of the Kingdom of Maristan in accordance with Article 287 of United Nations Convention on the Law of the Sea submitted to Secretary-General of the United Nation on 8 April 1998**

The Kingdom of Maristan declares that it chooses the International Tribunal for the Law of the Sea established in accordance with Annex VI for the settlement of disputes concerning the interpretation or application of the UNCLOS.