

**Questions Relating to
Deep-Sea Mining and State Responsibility
(Federal States of Azarlus v. Republic of Rathearre)**



RECORD
Twenty-Seventh Annual
Stetson International Environmental
Moot Court Competition 2022–2023



Copyright © 2022, Stetson University College of Law. All rights reserved.

NOTIFICATION, DATED 01 AUGUST 2022, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF
AZARLUS AND THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF
RATHEARRE

The Hague, 01 August 2022.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 25 July 2022. I have the further honor to inform you that the case of Questions Relating to Deep-Sea Mining and State Responsibility (Federal States of Azarlus v. Republic of Rathearre) has been entered as 2022 General List No. 303. The written proceedings shall consist of memorials to be submitted to the Court by 11 November 2022. Oral proceedings are scheduled for 13–15 April 2023.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 25 JULY 2022, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 25 July 2022.

On behalf of the Federal States of Azarlus and the Republic of Rathearre, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between the Federal States of Azarlus and the Republic of Rathearre for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Deep-Sea Mining and State Responsibility, signed at Yaren, Nauru, on 16 June 2022.

For the Federal States of Azarlus:

/s/

Pam C. Leotilly
Minister of Foreign Affairs

For the Republic of Rathearre:

/s/

Cole A. Canth
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE FEDERAL STATES OF AZARLUS
AND
THE REPUBLIC OF RATHEARRE
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING
QUESTIONS RELATING TO
DEEP-SEA MINING AND STATE RESPONSIBILITY

The Federal States of Azarlus and the Republic of Rathearre,

Recalling that Azarlus and Rathearre are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Noting that Azarlus and Rathearre disagree as to Rathearre's activities related to the mining of polymetallic nodules,

Recognizing that differences have arisen between Azarlus and Rathearre concerning the actions of the *Baleen Warrior*, a vessel of the private organization Ocean Researchers and Cetacean Avengers for which Azarlus is the flag state,

Acknowledging that Azarlus and Rathearre have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as "the Court," consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

The Federal States of Azarlus and the Republic of Rathearre, hereinafter referred to as "the Parties," shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court's jurisdiction in the written or oral proceedings.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules for the 2022–2023 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a national or regional round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the national or regional round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Yaren, Nauru, this 16th day of June 2022, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Azarlus:

/s/ _____
Pam C. Leotilly
Minister of Foreign Affairs

For the Republic of Rathearre:

/s/ _____
Cole A. Canth
Minister of Foreign Affairs

ANNEX A

1. The Federal States of Azarlus is a sovereign island state located in the Southern and Eastern Hemispheres. Azarlus, which has a long fishing tradition, takes its name from the *Royal azarlus*, commonly known as the royal frilled shark, a fish that was thought to have gone extinct in the mid-1850s. Azarlus's economy, which the World Bank classifies as lower-middle income, is primarily based on tourism, fishing, timber, and mineral resources (principally gold).
2. The Republic of Rathearre is a sovereign state located in the Northern and Western Hemispheres. Rathearre has a diversified economy, which the World Bank classifies as high income. Rathearre is a geographically vast country with a relatively underdeveloped public transportation system. Public mass transit is generally only available in some metropolitan areas. Most Rathearreans commute to work and generally travel by private motor vehicle. In 2022, Rathearreans privately owned approximately 280 million automobiles.
3. Azarlus and Rathearre are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
4. Azarlus and Rathearre are Parties to the Vienna Convention on the Law of Treaties.
5. High-level representatives from Azarlus and Rathearre attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; the 2012 Rio+20 Conference; and the Stockholm+50 Conference. Azarlus and Rathearre were part of the consensus of any documents adopted at these conferences.
6. Azarlus and Rathearre voted in favor of United Nations Resolution 37/7, which adopted the World Charter for Nature.
7. Azarlus and Rathearre are Parties to the Convention on Biological Diversity (CBD). Azarlus and Rathearre ratified the CBD in 1993, becoming Parties to the CBD in the same year.
8. Azarlus is a State Party to the United Nations Convention on the Law of the Sea (UNCLOS), having ratified UNCLOS in 1990. Rathearre is a signatory to UNCLOS, having signed in 1988, but Rathearre has not ratified UNCLOS. The primary reason that Rathearre has not ratified UNCLOS is its concern that the deep-seabed mining regime could impose unnecessary burdensome regulations and thus deter development of mineral resources.
9. Rathearre asserts jurisdiction over a 200-mile exclusive economic zone (EEZ) based on customary international law.

10. Azarlus is a State Party to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Agreement), having signed the 1994 Agreement in 1994 and ratified it in 1996. Rathearre has neither signed nor ratified the 1994 Agreement.
11. Azarlus and Rathearre have actively participated in the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ), which the United Nations General Assembly decided to convene in Resolution 72/249.
12. Azarlus and Rathearre are Contracting Parties to the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), both having signed and ratified ReCAAP in 2006. Rathearre joined ReCAAP to facilitate its support, through multilateral cooperation, in addressing the threat of piracy and robbery against ships in the region's critical sea lanes and waters.
13. Azarlus and Rathearre are Parties to the United Nations Framework Convention on Climate Change (UNFCCC), both having signed and ratified the UNFCCC in 1992. Azarlus is a Non-Annex I Party, and Rathearre is an Annex I Party.
14. Azarlus is a Party to the Kyoto Protocol to the UNFCCC, having signed and ratified it in 1997. Rathearre signed the Kyoto Protocol in 1997 but did not ratify it. Rathearre removed its signature from the Kyoto Protocol in 2002, citing concerns that the emission reductions required by the Kyoto Protocol would damage the Rathearrean economy and that the Kyoto Protocol lacked meaningful participation by Non-Annex I Parties.
15. Azarlus and Rathearre are Parties to the Paris Agreement, both having signed and ratified the Paris Agreement in 2016.
16. Azarlus submitted its First Nationally Determined Contribution (NDC) under the Paris Agreement in November 2016. In its NDC, Azarlus voluntarily pledged to reduce emissions by 25% on its own efforts, and up to 40% with international support, against the business as usual scenario by 2030. Much of the reduction would be the result of shifting electric power generation from fossil fuels to hydropower and tidal barrages.
17. Rathearre submitted its First NDC under the Paris Agreement in 2016. In its First NDC, Rathearre voluntarily pledged to reduce emissions to 10% below 2005 levels by 2040. In December 2018, Rathearre submitted its Second NDC, which pledged to reduce emissions to 20-25% below 2005 levels by 2030. Much of the reduction would be the result of phasing out gasoline-powered motor vehicles and promoting the use of electric motor vehicles. The transportation sector in Rathearre accounts for approximately 30% of its annual greenhouse gas emissions.
18. In December 2018, in conjunction with submitting its Second NDC, Rathearre announced the establishment (by an Act of the Rathearrean Parliament) of the Verte Mining

Corporation, a wholly owned government corporation. Verte Mining's mission is to conduct prospecting, exploration, and exploitation of the deep seabed for polymetallic nodules that can be used in the production of electric motor vehicles.

19. In January 2019, Verte Mining announced that it intended to conduct prospecting and exploration in the abyssal plain of the Azarlus Fracture Zone (AFZ), which is five nautical miles beyond Azarlus's EEZ and is expected to have large concentrations of polymetallic nodules because of the intrusion of Antarctic bottom water and its close proximity to hydrothermal activity.
20. On 1 March 2019, the following diplomatic note was forwarded to the Government of the Republic of Rathearre:

The Embassy of the Federal States of Azarlus presents its compliments to the Government of the Republic of Rathearre and wishes to convey its concerns about the proposed activities of the Verte Mining Corporation in the Azarlus Fracture Zone.

Rathearre and the Verte Mining Corporation do not have the right under international law to conduct prospecting, exploration, or exploitation of mineral resources on the seabed or ocean floor beyond the limits of national jurisdiction. The United Nations Convention on the Law of the Sea (UNCLOS) has declared the seabed and ocean floor beyond the limits of national jurisdiction and any mineral resources located there to be the common heritage of humankind. The mineral resources that the Verte Mining Corporation wishes to exploit are not subject to alienation, except in accordance with the regulations of the International Seabed Authority (ISA). International law requires that any activity with respect to these resources must be carried out for the benefit of humankind as a whole.

While it is noted that Rathearre is not a State Party to UNCLOS, Rathearre has nevertheless asserted UNCLOS-created rights, such as those related to an exclusive economic zone. It would be inconsistent for Rathearre to assert these rights while claiming it is not bound by the obligations imposed by UNCLOS and customary international law. Proceeding with the proposed prospecting and exploration activities, without ISA authorization, would defeat a central object and purpose of UNCLOS. Azarlus therefore respectfully requests that the Verte Mining Corporation refrain from any activities on the seabed and ocean floor beyond the limits of national jurisdiction without ISA authorization.

Please accept the assurance of my highest consideration.

/s/
Sam Gannen
Ambassador

21. On 22 March 2019, the following diplomatic note was forwarded to the Government of the Federal States of Azarlus:

The Embassy of the Republic of Rathearre presents its compliments to the Government of the Federal States of Azarlus and has the honor to acknowledge receipt of the diplomatic note dated 1 March 2019. Rathearre has the right under customary international law to prospect, explore, and exploit mineral resources on the seabed or ocean floor beyond the limits of national jurisdiction. As a non-Party to the United Nations Convention on the Law of the Sea (UNCLOS), Rathearre is not bound by its terms.

Nevertheless, the Government of Rathearre observes that marine scientific research is permitted under UNCLOS, and prospecting and exploration surely falls under the broad umbrella of scientific research. Furthermore, the proposed activities of the Verte Mining Corporation will be done for the benefit of humankind, as they will be conducted with a view to reducing greenhouse gas emissions to mitigate the threat of climate change. The minerals obtained from polymetallic nodules will be critical to meeting the pledges made in our Second Nationally Determined Contribution under the Paris Agreement.

Accordingly, the Government of Rathearre respectfully declines the request of Azarlus to halt the proposed activities of the Verte Mining Corporation. In the spirit of good will, however, the Government of Rathearre will voluntarily abide by the principles of the International Seabed Authority's 2013 Regulations on Prospecting and Exploration for Polymetallic Nodules, exclusive of any notification or reporting requirements.

Please accept the assurance of my highest consideration.

/s/ _____
L.T. Coab
Ambassador

22. Verte Mining moved forward with its prospecting and exploration activities in the AFZ. On 5 June 2021, the Rathearrean Minister of Energy announced that the portion of the AFZ where Verte Mining prospected and explored had nodule abundance exceeding 35 kilograms per square metre which annually would yield 4 million tonnes of nodules rich in cobalt and manganese for at least 25 years. The Minister also announced that an environmental impact assessment had been conducted, finding that the harvesting of nodules was not likely to have a significant impact on the marine environment. Verte Mining therefore planned to proceed with mining operations.

23. An illustration of Verte Mining's method of nodule collection may be viewed [here](#).¹ Unwanted sediment would be returned to the deep ocean.
24. On 8 June 2021, the Government of Azarlus sent a diplomatic note to the Government of Rathearre that stated in part:

The Government of Azarlus wishes to express its grave concern and objection to the Verte Mining Corporation's plan to exploit an area governed by UNCLOS and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, a mere five nautical miles outside of the EEZ of Azarlus.

We have serious concerns about the potential impact of this activity on the marine environment. Rathearre has the responsibility, under both the Convention on Biological Diversity and customary international law, to ensure that activities within its jurisdiction or control do not cause damage to the environment of areas beyond the limits of national jurisdiction. It is particularly disheartening that Rathearre has decided to take this unilateral action in the midst of the BBNJ negotiations.

Given the uncertainties regarding and potential gravity of the damage to the marine environment, a precautionary approach is mandated. As such, the Government of Azarlus demands that the Verte Mining Corporation refrain from the proposed exploitation activities until the ISA issues regulations for exploitation and Rathearre agrees to fully comply with them.

25. On 25 June 2021, the Government of Rathearre sent a diplomatic note to the Government of Azarlus that stated in part:

The ISA has spent years considering Draft Regulations on Exploitation of Mineral Resources in the Area, and there appears to be no end in sight. Rathearre is not a State Party to UNCLOS, in part, because of the concern that the ISA would unduly burden mining activities. The ISA's inaction only confirms this concern.

The polymetallic metals are urgently needed to help with the transition to electric vehicles. There are environmental costs to delay and inaction. The Verte Mining Corporation will therefore proceed with its mining activities. Please be assured that the Verte Mining Corporation pledges to endeavor to avoid causing any serious harm to the marine environment.

¹ MIT Mechanical Engineering, *Visualizing Deep-sea Mining*, YouTube (Dec. 10, 2019), <https://www.youtube.com/watch?v=Lwq1j3nOODA>.

26. In July 2021, Verte Mining commenced mining activities in the AFZ. Environmental groups in Azarlus, including Ocean Researchers and Cetacean Avengers (ORCA), peacefully protested outside the Embassy of the Republic of Rathearre for three days.
27. ORCA is a non-governmental organization whose mission is to “protect the marine environment by any means necessary.” ORCA’s website asserts that the World Charter for Nature authorizes ORCA to act in a law enforcement role “to implement the applicable international legal provisions for the conservation of nature and the protection of the environment.” ORCA’s vessels have intentionally interfered with whaling vessels on the high seas in an effort to disrupt whaling operations for many years. From 2000- 2018, ORCA vessels rammed whaling vessels at sea, used prop foulers to render whaling vessels inoperative, and boarded whaling vessels. In 2018, after an ORCA vessel rammed and sank a shrimp trawler (which was operating without turtle excluder devices on its nets), all ORCA vessels were de-registered by their then-flag state, the Conch Republic. In 2019, all ORCA vessels registered with Azarlus as their flag state.
28. In September 2021, a fishing vessel, located within the Azarlusian EEZ and approximately six nautical miles from Verte Mining’s operations, captured a 2.5-metre royal frilled shark in its fishing net. A necropsy determined that the royal frilled shark had died prior to being captured in the net.
29. The discovery that the royal frilled shark was not extinct dominated the news in Azarlus. The Azarlus Ministry of Ocean Affairs created a Twitter page for the royal frilled shark—dubbed by the media as the “Lazarus fish”—that soon had more than 2 million followers.



Royal Frilled Shark @RoyalAzarlus ·

...

I’m not dead yet

[#MontyPython](#) [#SchrodingersCatFish](#)

30. In early October 2021, a fishing vessel in the same area of the Azarlusian EEZ netted two more dead royal frilled sharks. The celebratory mood concerning the royal frilled shark shifted to one of anger and concern. The Azarlus Minister of Ocean Affairs publicly questioned whether Verte Mining’s mining activities were killing the royal frilled sharks. At a press conference, the Azarlus Minister of Justice stated Azarlus’s intention to bring a case before the International Court of Justice if Rathearre did not halt Verte Mining’s exploitation activities.
31. In late October 2021, fishing vessels in the same area of the Azarlusian EEZ netted five additional dead royal frilled sharks. Environmental groups, including ORCA, resumed peaceful protests outside the Embassy of the Republic of Rathearre.
32. In early November 2021, fishing vessels in the same area of the Azarlusian EEZ netted three additional dead royal frilled sharks.

33. A clear causal connection between the actions of the Verte Mining Corporation and the dead royal frilled sharks has not been established.
34. On 9 November 2021, ORCA's vessel *Baleen Warrior*, which had previously engaged in encounters with whaling vessels, intentionally interfered with Verte Mining's vessel *The Crusher*. The captain of the *Baleen Warrior* positioned it to block *The Crusher* so that *The Crusher* could not maneuver, thereby disrupting mining operations. The *Baleen Warrior* crew then fired paint balls at *The Crusher* and its crew. Five crew members of *The Crusher* were struck with paint balls, which did not cause physical injury. The firing of the paint balls caused the crew to remain below deck, which also disrupted mining operations.
35. On 10 November 2021, the Rathearrean Minister of Justice condemned ORCA's actions and declared that the *Baleen Warrior* had engaged in piracy. She called on Azarlus to intercede, citing the obligations of flag states under customary international law, UNCLOS, and ReCAAP. She also invoked a flag state's responsibility as explained by the International Tribunal for the Law of the Sea in its Advisory Opinion of 2 April 2015 (*Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*).
36. On 11 November 2021, Azarlus communicated that it would not take any immediate law enforcement or military action against the *Baleen Warrior*. Later that day, the Rathearrean Minister of Defense announced that he had ordered a naval vessel to free *The Crusher*, but that it would take two days for the naval vessel to reach the area. Accordingly, he renewed the demand that Azarlus take immediate action against the *Baleen Warrior*. Azarlus declined to do so.
37. After engaging with *The Crusher* for approximately four days, the *Baleen Warrior* departed the area prior to the arrival of the Rathearrean naval vessel.
38. ORCA publicized the actions of the *Baleen Warrior* on its website and requested donations to "support ORCA's fight to protect ocean resources for the future generations."
39. On 10 December 2021, the Government of Rathearre sent a diplomatic note to the Government of Azarlus asserting that, as the flag state, Azarlus was responsible for the actions of the *Baleen Warrior* and demanding that Azarlus arrest and prosecute the *Baleen Warrior* captain and crew for piracy.
40. On 7 January 2022, the Government of Azarlus sent a diplomatic note to the Government of Rathearre renewing the demand that Verte Mining refrain from exploitation activities in the AFZ until the ISA issued regulations for exploitation and Rathearre agreed to fully comply with them. The diplomatic note also stated that Azarlus would not arrest and prosecute the *Baleen Warrior* captain and crew for piracy. Azarlus reported that its Ministry of Justice had conducted an investigation of the incident and concluded that, in its opinion, the actions of the *Baleen Warrior* captain and crew did not constitute piracy as defined by UNCLOS, in part because their actions were not "committed for private

ends.” Furthermore, the Azarlus Ministry of Justice stated that the criminal laws of Azarlus did not apply extraterritorially. The Azarlus Ministry of Justice did note, however, that Verte Mining could bring a civil lawsuit in Azarlus seeking damages from ORCA, if it wished to do so.

41. At a subsequent press conference, the Rathearrean Minister of Justice stated that ORCA’s fundraising activities established that the *Baleen Warrior*’s captain and crew had acted “for private ends.” She also stated that Azarlus had failed to abide by its international obligations to combat piracy and that, given ORCA’s history, Azarlus never should have permitted the *Baleen Warrior* to be registered with Azarlus as its flag state in the first instance.
42. Negotiations between Azarlus and Rathearre to resolve their differences were facilitated by the Government of New Zealand, to which Azarlus and Rathearre express their deep appreciation. As a result of the negotiations, Azarlus and Rathearre agreed to submit certain questions to the International Court of Justice (ICJ).
43. Azarlus opposes the claims in paragraph 44 below and seeks an order from the ICJ declaring that (1) Rathearre’s mining activities in the AFZ violate international law and (2) the actions of the *Baleen Warrior* captain and crew did not constitute piracy and Azarlus’s actions and inactions regarding the *Baleen Warrior* did not violate international law.
44. Rathearre opposes the claims in paragraph 43 above and seeks an order from the ICJ declaring that (1) Rathearre’s mining activities in the AFZ do not violate international law and (2) the actions of the *Baleen Warrior* captain and crew constituted piracy and Azarlus’s actions and inactions regarding the *Baleen Warrior* violated international law.