

Harvesting of Antarctic Krill
(Commonwealth of Subere/Republic of Rossland)

RECORD

Thirteenth Annual

International Environmental

Moot Court Competition

2008-2009



NOTIFICATION, DATED 23 JUNE 2008, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE COMMONWEALTH OF SUBERE
AND
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF ROSSLAND

The Hague, 23 June 2008.

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 16 June 2008. I have the further honor to inform you that the case of Harvesting of Antarctic Krill (Commonwealth of Subere/Republic of Rossland) has been entered as 2008 General List No. 113. The written proceedings shall consist of memorials to be submitted to the Court by 21 November 2008. Oral proceedings are scheduled for 25-28 March 2009.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 16 JUNE 2008, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 16 June 2008.

On behalf of the Commonwealth of Subere and the Republic of Rossland, 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 Commonwealth of Subere and the Republic of Rossland for Submission to the International Court of Justice of Differences Between Them Concerning the Harvesting of Antarctic Krill, signed at Buenos Aires, Argentina, on 16 June 2008.

For the Commonwealth of Subere:

For the Republic of Rossland:

/s/

Elon Girostris
Minister of Foreign Affairs

/s/

R.E. Byrd
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE COMMONWEALTH OF SUBERE
AND
THE REPUBLIC OF ROSSLAND
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE OF DIFFERENCES
BETWEEN THEM CONCERNING
THE HARVESTING OF ANTARCTIC KRILL

The Commonwealth of Subere and the Republic of Rossland,

Recalling that the Commonwealth of Subere and the Republic of Rossland are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that the Commonwealth of Subere and the Republic of Rossland are Contracting Parties to the Antarctic Treaty,

Conscious that the Commonwealth of Subere and the Republic of Rossland are Parties to the Convention on Biological Diversity and the International Convention for the Regulation of Whaling,

Considering that Antarctic krill is critical in the Antarctic food chain,

Bearing in mind the nutritional needs of the people of the Republic of Rossland,

Recognizing that differences have arisen concerning current and proposed harvesting of Antarctic krill,

Noting that the Commonwealth of Subere and the Republic of Rossland have been unable to settle their differences through mediation and 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 Commonwealth of Subere and the Republic of Rossland, 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.

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.
4. The Parties shall not contest the jurisdiction of the Court in their written pleadings or oral arguments.

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 of the 2008-2009 International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the 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 Buenos Aires, Argentina, this sixteenth day of June 2008, in two copies, each in the English language, and each being equally authentic.

For the Commonwealth of Subere:

For the Republic of Rossland:

/s/

Elon Girostris
Minister of Foreign Affairs

/s/

R.E. Byrd
Minister of Foreign Affairs

ANNEX A

1. The Commonwealth of Subere is a developed country located in the Southern Hemisphere with a population of approximately 25 million people. It has long had a reputation as a strong protector of the environment. Its recent initiatives include: supporting a recommendation that the current commercial whaling moratorium under the International Convention for the Regulation of Whaling be made permanent; funding activities that reduce greenhouse gas emissions in China through the Kyoto Protocol's Clean Development Mechanism; and encouraging domestically (through subsidies) the development of alternative sources of energy, such as wind and biofuels.
2. Based in part on its relative proximity to and its exploration of Antarctica, the Commonwealth of Subere historically has claimed a portion of the territory of continental Antarctica. This claim, which is not recognized by any other state, includes waters designated as Statistical Division 58.4.1 pursuant to the Convention on the Conservation of Antarctic Marine Living Resources. The Commonwealth of Subere is an original party to the Antarctic Treaty, however, and as such, its claim is subject to Article IV of the Treaty. It is a Consultative Party to the Antarctic Treaty.
3. The Republic of Rossland is a developing country in the Northern Hemisphere with a population of approximately 125 million people. Traditionally, much of the protein sources for the population have come from the sea. Accordingly, for food security reasons, the government of the Republic of Rossland has long subsidized domestic fishing companies, many of which engage in distant water fishing. More recently, the government of the Republic of Rossland has supported the expansion of aquaculture, including shrimp farms, on its territory. Due to rising food prices, riots occurred in several of the Republic of Rossland's major cities in 2006 and 2007.
4. The Republic of Rossland is a party to the Antarctic Treaty. It has no territorial claim to Antarctica and is a Non-Consultative Party to the Antarctic Treaty.
5. The Commonwealth of Subere and the Republic of Rossland are Members of the United Nations, and are Parties to the Statute of the International Court of Justice.
6. The Commonwealth of Subere and the Republic of Rossland are Parties to the Vienna Convention on the Law of Treaties.
7. The Commonwealth of Subere is a Party to the Convention for the Conservation of Antarctic Seals and the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol). The Republic of Rossland has signed neither the Convention for the Conservation of Antarctic Seals nor the Madrid Protocol.
8. The Commonwealth of Subere is a Party to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) and a Member of the CCAMLR

Commission. The Republic of Rossland is neither a Member of the CCAMLR Commission nor a CCAMLR Party.

9. The Commonwealth of Subere and the Republic of Rossland are States Parties to the United Nations Convention on the Law of the Sea.
10. The Commonwealth of Subere is a State Party to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement). The Republic of Rossland has signed, but has not ratified, the Fish Stocks Agreement.
11. The Commonwealth of Subere and Republic of Rossland are Contracting Parties to the Convention on Biological Diversity. The Commonwealth of Subere and Republic of Rossland are also Parties to the International Convention for the Regulation of Whaling.
12. High-level representatives from the Commonwealth of Subere and the Republic of Rossland 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, and the 2002 World Summit on Sustainable Development at Johannesburg.
13. Krill are crustaceans, tiny shrimp-like animals. Antarctic krill (*Euphausia superba*) are found in the Southern Ocean, living in large schools. Krill form a critical part of the Antarctic ecosystem, providing a major source of food for species such as whales, seals, and penguins.
14. On 16 September 2007, RakerMarine, a company incorporated and based in the Republic of Rossland, announced that its fishing fleet in the Southern Ocean would now begin to harvest Antarctic krill in CCAMLR waters. With government loans, RakerMarine had purchased state-of-the-art trawlers that are specifically designed for krill harvesting. The trawlers use harvesting technology sometimes called “continuous trawling,” rather than the more conventional nets. With continuous trawling, the krill is brought on board the trawlers alive, and processing begins immediately. The company president stated that “the bottom line of all this is that instead of one fleet catching 100,000 tons in a season, one boat can catch 100,000 tons in one season.”
15. On 23 September 2007, the following diplomatic note was forwarded to the Government of the Republic of Rossland:

The Embassy of the Commonwealth of Subere presents its compliments to the Government of the Republic of Rossland and has the honor to request that the Republic of Rossland enter into consultations with the Commonwealth of Subere concerning the

proposed krill harvesting activities of RakerMarine. The Government of the Commonwealth of Subere notes that krill are the foundation of the Antarctic ecosystem, and recent advances in harvesting technology can upset the delicate balance established by nature, threatening the viability of whale, seal, and seabird populations. While krill has not been recently overharvested, the Government of Commonwealth of Subere is concerned about the precedent that RakerMarine's activities may establish, as well as the possibility of an escalation of krill harvesting by non-CCAMLR Members. Accordingly, the Government of the Commonwealth of Subere welcomes the opportunity to discuss these matters at the highest levels.

Please accept the assurance of my highest consideration.

/s/

Eva L. Lentini
Ambassador

16. On 30 October 2007, the following diplomatic note was forwarded to the Government of the Commonwealth of Subere:

The Embassy of the Republic of Rossland presents its compliments to the Government of the Commonwealth of Subere and has the honor to acknowledge receipt of the diplomatic note dated 23 September 2007.

As an initial matter, the Government of the Republic of Rossland appreciates the concerns of the Government of the Commonwealth of Subere over the fate of animal species such as whales and seals. The Government of the Republic of Rossland notes, however, that the krill harvesting operations undertaken by RakerMarine can be done in a sustainable manner.

* * *

Furthermore, we are obliged to point out that the Republic of Rossland has recently suffered from food shortages. The krill harvesting will assist with the continuing development of our nation's aquaculture industry. It will also provide our companies the opportunity to produce omega-3 fatty acids and other products, which can then be exported.

* * *

We look forward to a continued dialogue, keeping in mind the nutritional needs of our people. Please accept the assurance of my highest consideration.

/s/

D. Mawson
Ambassador

17. After further discussion between representatives of the Commonwealth of Subere and the Republic of Rossland, it was disclosed that the krill harvesting projections for RakerMarine, which were approved by the Government of the Republic of Rossland, were as follows:

<u>Fishing season</u>	<u>Krill harvest</u>
2007/2008	300,000 tons
2008/2009	400,000 tons
2009/2010	500,000 tons
2010/2011	600,000 tons
2011/2012	600,000 tons

The krill harvesting would take place in CCAMLR Statistical Division 58.4.1. A map indicating CCAMLR Statistical Divisions is attached as Annex B.

18. On 30 November 2007, the Government of the Commonwealth of Subere provided the Government of the Republic of Rossland with a diplomatic note that stated in part:

While we remain sympathetic to your nation's food concerns, we note that these marine resources must be managed in a collective fashion through the CCAMLR Commission. This is especially the case with respect to areas such as Statistical Division 58.4.1. CCAMLR Conservation Measure 51-02 (2006) establishes a precautionary catch limitation of *Euphausia superba* in this area of 440,000 tons per fishing season. RakerMarine, with the support of the Republic of Rossland, intends to exceed this limit. Accordingly, we urge the Government of the Republic of Rossland to work through the CCAMLR Commission, and we observe that UNCLOS and the Fish Stocks Agreement impose the obligation on the Republic of Rossland to participate in and cooperate with regional fisheries management organizations.

19. In early December 2007, in part based on increasing dissatisfaction and turmoil associated with rising food prices, the Parliament of the Republic of Rossland passed a "no confidence" in the government and new elections were held. R.A. Mundsén was elected as the new Prime Minister of the Republic of Rossland.

20. In a 6 January 2008 televised speech on the subject of food security, Prime Minister Mundsden mentioned the discussions between the Commonwealth of Subere and the Republic of Rossland over the issue of krill harvesting. He stated:

The Commonwealth of Subere wants us to be bound by treaties that we have not signed and ratified. How presumptuous, and how typical. We have seen how the Antarctic Treaty is run like a club for the rich countries, and now the Commonwealth of Subere and other developed countries wish to place unreasonable limits on our right to fish – indeed, on our right to feed our people. And why? To protect whales and seals? Their concern about animals and their utter lack of concern about hungry people are intolerable. Not only do I reject their demands that we limit our krill harvesting, but I have authorized our nation's fishing fleets to harvest twice as much as the previous government authorized.

21. On 13 January 2008, the Government of the Commonwealth of Subere provided the Government of the Republic of Rossland with a diplomatic note that stated in part:

We also note that, beyond any treaty obligation, the Republic of Rossland is obligated to adhere to both the ecosystem approach and the precautionary approach as a matter of customary international law.

We again urge the Republic of Rossland to conduct its krill harvesting through CCAMLR and its Commission. If RakerMarine vessels flying the flag of the Republic of Rossland engage in this activity in CCAMLR waters, the Commonwealth of Subere reserves the right to take appropriate enforcement actions, including the use of force.

22. On 20 January 2008, the Government of the Republic of Rossland provided the Government of the Commonwealth of Subere with a diplomatic note that stated in part:

The Republic of Rossland rejects the notion that the precautionary principle is part of customary law. This amorphous rule cannot somehow be made operational to limit the Republic of Rossland's obligation to feed its people and develop its economy. Similarly, we do not believe that the ecosystem approach has risen to the level of customary international law.

We also reject the notion that the Republic of Rossland must work through CCAMLR. Indeed, even if the Republic of Rossland were a CCAMLR Party and a Member of the CCAMLR Commission, we would still have the right to reject Conservation Measure 51-02, in

accordance with CCAMLR Article IX, paragraph 6 and CCAMLR Article XII, paragraph 1.

Finally, we deplore the Commonwealth of Subere's threat of force, which violates the United Nations Charter. CCAMLR does not authorize the use of force. CCAMLR Conservation Measure 10-7 (2006), which deals with enhancing cooperation with non-parties, suggests that the most extreme response should be port or trade restrictions. Obviously, the use of force would violate this Conservation Measure.

23. On 28 January 2008, the Government of the Commonwealth of Subere provided the Government of Republic of Rossland with a diplomatic note that stated in part:

Suffice it to say that we disagree with your legal analysis and find it odd that the Republic of Rossland would invoke the protections of a Conservation Measure of a treaty regime that it rejects. In any case, the Fish Stocks Agreement, through Articles 8 and 20, also provides the Commonwealth of Subere the legal authority to take enforcement actions to ensure that Conservation Measure 51-02 is not violated.

Article 8, paragraph 4, of the Fish Stocks Agreement states that “[o]nly those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.” Thus, the Republic of Rossland and vessels flying its flag may not have access to CCAMLR waters at this time. Moreover, Article 20, paragraph 7, of the Fish Stocks Agreement states that a member of a regional fisheries management organization, such as the CCAMLR Commission, “may take action in accordance with international law . . . to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures” of organizations such as the CCAMLR Commission.

24. On 1 February 2008, three RakerMarine vessels, flying the flag of the Republic of Rossland, were harvesting krill in Statistical Division 58.4.1. The Government of the Commonwealth of Subere gave the Government of the Republic of Rossland formal notice that it would seize the vessels if they did not halt krill harvesting and leave the area immediately. Two vessels left Statistical Division 58.4.1, but one RakerMarine vessel, the *Iaste*, remained.
25. At a news conference on 4 February 2008, Prime Minister Mundsén denounced the Commonwealth of Subere's threat of enforcement actions, calling them a threat to

international peace and security, and vowed that the *Iaste* would continue to harvest krill in Statistical Division 58.4.1.

26. On 14 February 2008, a naval vessel of the Commonwealth of Subere seized the *Iaste* and arrested the crew. The *Iaste* was brought to a port in the Commonwealth of Subere.
27. Expressing its outrage, the Republic of Rossland denounced the Commonwealth of Subere's actions as a violation of the United Nations Charter, withdrew its Ambassador from the Commonwealth of Subere, and ordered the Commonwealth of Subere's Ambassador to the Republic of Rossland to leave the country.
28. Former United Nations Secretary General Kofi Annan offered to mediate the dispute. His intervention resulted in the release of the crew and the posting of a bond for the vessel. He urged further negotiations between the parties.
29. Additional negotiations between the Commonwealth of Subere and the Republic of Rossland failed to resolve the dispute, but the parties agreed to submit this matter to the International Court of Justice under a Special Agreement pursuant to Article 36, paragraph 1, of the Statute of the International Court of Justice.
30. The Commonwealth of Subere opposes the claims in paragraph 31 and seeks an order declaring that the actions of the Republic of Rossland with respect to krill harvesting (including authorizing a vessel flying its flag to violate marine conservation measures) violated international law, and that the Commonwealth of Subere's enforcement action was consistent with international law.
31. The Republic of Rossland opposes claims in previous paragraph 30 and seeks an order declaring that its actions with respect to krill harvesting did not violate international law, and that the Commonwealth of Subere's enforcement action violated international law.

ANNEX B

