

**47th Annual Telders International Law
Moot Court Competition 2024**

**IN THE
INTERNATIONAL COURT OF JUSTICE**



**AT THE PEACE PALACE
THE HAGUE, NETHERLANDS**

2023 General List No. 17

Case concerning the Island of Hemret

REPUBLIC OF DIHAV v. REPUBLIC OF MISAN
(The Applicant State) (The Respondent State)

1. The Republic of Dihav ('Dihav') is an island State situated in the southwestern region of the Nari Ocean on the continent of Eyahal, covering approximately 3,820 square kilometers. Similarly, the Republic of Misan ('Misan') is another island State located within the Nari Ocean on the continent of Eyahal, encompassing an approximate area of 2,000 square kilometers. The island of Hemret lies 2,200 kilometers to the northeast of Dihav and 1,000 kilometers to the northwest of Misan. Dihav and Misan are both recognized as States Parties to the United Nations Charter ('UN Charter'), Vienna Convention on the Law of Treaties ('VCLT'), and United Nations Convention on the Law of the Sea ('UNCLOS'), having ratified these instruments without any reservations or declarations.
2. The island of Hemret also features maritime areas lying between Dihav and Misan. In 2000, a groundbreaking report by the international scientific organization known as Energy Watch, revealed that beneath the sustainable but uninhabited island of Hemret lies an astonishing geological treasure trove. This landmass has emerged as a potential global energy hub, boasting reserves of oil and gas that rival those found in some of the world's most renowned producing regions.
3. Historically, the island of Hemret was under the jurisdiction of Dihav. However, in 1802, the Republic of Lihar ('Lihar'), a land-locked State located on the continent of Edyel, took control of Dihav, which included the island of Hemret. From that point onwards, the administration of the island of Hemret fell under the governance of Lihar. Through the Treaty of Sunrise in 1810 with Dihav, Lihar, acting as the colonial power in Dihav, formally separated the island of Hemret and, in accordance with the prevailing international legal norms of that era, assumed sovereignty over the island of Hemret. Lihar is recognized as a State Party to the UN Charter, VCLT, and UNCLOS, having ratified these instruments without any reservations or declarations.
4. The maritime boundary between Dihav, Lihar and Misan in relation to Hemret has never been formally delimited. However, owing to the strong diplomatic ties between Lihar and Misan, Misan has consistently enjoyed unrestricted access to the island of Hemret and its maritime zones.
5. After a long fight, Dihav restored its independence in 1948. On 23 July 1950, Dihav and Misan entered into a Treaty of Amity, a long and technically sophisticated agreement containing detailed rules regulating many complex commercial and investment issues. Among its provisions, it includes the following stipulations:
 - ...
 - Article 7: There shall be freedom of commerce and navigation between the territories of the two States.
 - ...
 - Article 9: Any dispute between the States Parties as to the interpretation or application of the present Treaty shall be submitted to the International Court of Justice.
 - ...

6. Subsequently, on 12 January 1951, the three States of Dihav, Misan, and Lihar entered into a political accord known as the Friendship Declaration. Within this declaration, among various provisions, it was stipulated that:
 - Principle 1) Each of the three States, the Republic of Dihav, the Republic of Misan, and the Republic of Lihar, has solemnly committed to abstain from using force or intervening in the internal affairs of the others.*
 - Principle 2) Lihar undertakes the responsibility of returning complete sovereignty over Hemret island to Dihav within a timeframe of 20 years.*
 - Principle 3) To ensure the effective execution of Principles 1 and 2, a Commission composed of three distinguished international experts, one appointed by each of the three governments, shall be established.*
7. Despite the passage of 20 years since the timeframe outlined in the Friendship Declaration, Lihar has failed to take any actions to fulfill this commitment. As a result, since 1971, Dihav has been consistently voicing its dissatisfaction with Lihar's non-compliance with Principle 2 of the Friendship Declaration.
8. On 26 February 1951, Misan submitted the following Optional Clause declaration ('Optional Clause'):
 - The Government of Misan makes the following declaration: Pursuant to Article 36(2) of the Statute of the International Court of Justice, the Government of Misan recognizes as compulsory ipso facto and without special agreement on condition of reciprocity, the jurisdiction of the Court in relation to any other State accepting the same obligation regarding the interpretation or application of international law rules over the following matters:*
 - (a) disputes related to outer space;*
 - (b) maritime disputes; and*
 - (c) jurisdictional immunities of the State.*
9. Dihav, classified as a developing nation, embarked on its journey to economic growth in the 1970s, initiating ambitious power plant projects that hinged on a substantial supply of oil and gas. Nevertheless, the sole source available to Dihav for fulfilling these energy needs was the island of Hemret. In any event, due to Lihar's failure to honor the terms of the Friendship Declaration, Dihav remained unable to access the resources of Hemret, casting a shadow over its energy development prospects.
10. In 1989, Dihav underwent a transformative revolution, leading to the emergence of a more assertive government that vocally asserted its claim over the island of Hemret. This significant shift in Dihav's stance prompted the nation to actively engage in negotiations during multiple international conferences, emphasizing Lihar's legal obligation to bring an end to the colonization of Hemret and return sovereignty over this island to Dihav. At the initiative of Dihav, the UN General Assembly debated the 'Hemret island issues' during its regular session in 2021. Following this debate, Dihav's spokesperson, during a press conference, when questioned about the island's legal

status, unequivocally affirmed, ‘*There is no doubt that the island of Hemret belongs to the people of Dihav and no one else.*’

11. In contrast, Lihar has consistently maintained its position, asserting that it remains the rightful sovereign of Hemret, emphasizing that the decision to transfer the island’s sovereignty to Dihav rests solely within Lihar’s discretion. This ongoing controversy has fueled international discussions and diplomatic efforts aimed at resolving the complex issue surrounding the sovereignty over Hemret.
12. Merely two months following the 2021 General Assembly debate, various non-governmental organizations and international entities became active participants in this ongoing discourse, aligning themselves with either Dihav or Lihar. Recognizing the need for a definitive legal perspective on the matter, on 25 January 2022, the United Nations General Assembly took the initiative to formally request an advisory opinion from the International Court of Justice (‘Court’) to address a pivotal question: ‘What are the implications, in terms of international law, resulting from the enduring administration of Hemret island by Lihar?’ This momentous step marked a significant development in the global effort to untangle the complex web of legal issues surrounding the island of Hemret.
13. In its Advisory Opinion, which was issued on the morning of 11 September 2023—with a vote of 10 Judges in favour and five against—the Court delivered several key findings and conclusions, including:
 87. The Court notes that the obligations arising under international law require Lihar, as the administering power, to respect the territorial integrity of Dihav.
 - ...
 112. Lihar must have brought to an end its continued administration of the island of Hemret by 1971.
14. During a multilateral conference on intercontinental cooperation held in the afternoon of 25 September 2023, Ms. Cornelia Grotius, the Minister of Foreign Affairs for Lihar, expressed strong condemnation of the Advisory Opinion. In her statement, she firmly asserted that Lihar would not adhere to the Advisory Opinion, asserting that it lacked binding authority and did not possess the legal force to compel any party. Furthermore, she emphasized that ‘*the misuse of the UN’s principal judicial organ by certain States resulted in a poorly framed question, consequently yielding an ambiguous response that fails to definitively address any key aspect of the matter, including the issue of sovereignty.*’
15. On 10 November 2023, Misan officially communicated to Lihar its intention to send two non-military submarines, Alpha I and Alpha II, to Hemret’s territorial sea in order to submerge and conduct hydrographic surveys, aimed at creating up-to-date and precise nautical charts to improve navigation in the area. Following this communication, Lihar duly accepted the proposal. However, swiftly responding to these announcements, on 13 November 2023, Dihav informed Misan that Misan’s

submarines would be granted only the right of innocent passage in Hemret's territorial sea, without any additional privileges.

16. On 30 November 2023, the Intelligence Services Department of Dihav issued a warning to Mr. Harry Bushy-Beard, the Minister of Foreign Affairs of Dihav, emphasizing that both submarines were equipped with underwater surveillance devices and had been consistently operating underwater in the vicinity of Hemret's maritime area. Consequently, Dihav issued a notice to Misan, urging the cessation of what Dihav termed 'troubling activities' within its territorial sea.
17. In response, Mr. Melvin Chrome-Dome, the Minister of International Affairs of Misan, asserted that Hemret did not fall under Dihav's sovereignty. Furthermore, Misan contended that its submarines' presence in Hemret's territorial sea was solely for the purpose of gathering hydrographic data and had no ulterior motives.
18. On 6 December 2023, Dihav issued a final ultimatum, demanding that Misan withdraw its submarines. On the following day, Dihav's maritime patrol aircraft managed to detect Alpha I and compel it to leave the area. The aircraft's subsequent mission was to repeat this process with Alpha II.
19. On 8 December 2023, Ms. Wendy Wavy-Locks, Misan's Minister of Defense, made the following statement:

To put an end to Dihav's violations of UNCLOS, the resilient nation of Misan cannot remain passive. Therefore, in alignment with international legal norms, Misan has initiated specific measures aimed at compelling Dihav to adhere to its international obligations.
20. Consequently, on the night of 11 December 2023, as what Misan perceived as 'countermeasures to transgressions by Dihav,' Misan executed cyber-attacks targeting Dihav's capital. These cyber-attacks resulted in significant damage to Dihav's critical infrastructure and facilities. In the context of the cyber-attacks, an operation codenamed 'Operation Disruptor' unfolded, orchestrated by Misan against Dihav. With meticulous precision, a sophisticated malware known as 'CyberStorm' was unleashed upon the critical infrastructure of Dihav. This malicious software wormed its way into vital systems, targeting everything from power grids to financial institutions, and even compromising key government databases, effectively disrupting Dihav's ability to detect Alpha II. Although the attack as such was carried out once, its aftereffects continue.
21. Misan, holding the proverbial key to unlock the situation, delivered an ultimatum to Dihav: '*Comply with your international law obligations or face continued consequences.*' As a result, the deactivation code, known only to Misan, became a bargaining chip in a high-stakes geopolitical showdown.
22. The following morning, on 12 December 2023, Dihav issued a statement in which it proclaimed that it '*will undertake the requisite and efficacious actions, as permitted*

under Article 51 of the UN Charter, to safeguard its territorial integrity and sovereign rights against Misan's aggressive policies.' Additionally, Dihav asserted that '*Misan will have to bear full responsibility for the consequences of the fire they have set.'*

23. On 14 December 2023, Dihav submitted the following Optional Clause:

The Government of Dihav accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes other than disputes in regard to which the parties have agreed or shall agree to have recourse to some other method or methods of settlement.

24. On 14 December 2023, immediately after submitting the Optional Clause, Dihav filed in the Registry of the Court an Application instituting proceedings against Misan concerning disputes in relation to the maritime rights and the alleged use of force. Together with the Application, Dihav submitted a Request for the indication of provisional measures under Article 41 of the Court's Statute.

25. In its Application and Request for Provisional Measures, Dihav sought to found the jurisdiction of the Court on the declarations made, pursuant to Article 36, paragraph 2, of the Statute of the Court, by Dihav on 14 December 2023 and by Misan on 26 February 1951, as well as Article 9 of the Treaty of Amity.

26. After Dihav initiated the proceedings, the President of the Court held consultations with Agents formally designated by each party, as per Article 31 of the ICJ Rules of Court. In its Order dated 25 December 2023, the Court directed the parties to include in their respective Memorials responses to the four submissions outlined in the next paragraph. In addition, the Court instructed the parties to present their arguments in the following sequence: first, provisional measures phase (1st submission); secondly, preliminary objections phase (2nd submission); and thirdly, merits phase (3rd and 4th submissions). Differing from the preliminary objections phase, where the Respondent initiates its arguments before the Applicant responds, in the other two phases, the Applicant presents its arguments first, followed by the Respondent's submissions.

27. The measure requested in the Request and the relief sought in the Application by Dihav are as follows. It requested the Court to:

(a) Issue an immediate order for provisional measures compelling Misan to stop its attacks by giving the deactivation code to Dihav.

(b) Affirm its jurisdiction to adjudicate the present case and declare the Applicant's claims as admissible.

(c) Adjudge and declare that, in contrast to the allegations by Misan, no violation of UNCLOS had been committed by Dihav.

(d) Adjudge and declare that Misan's actions, pertaining to the alleged countermeasures, infringe upon Article 7 of the Treaty of Amity as interpreted in the light of law on the use of force.

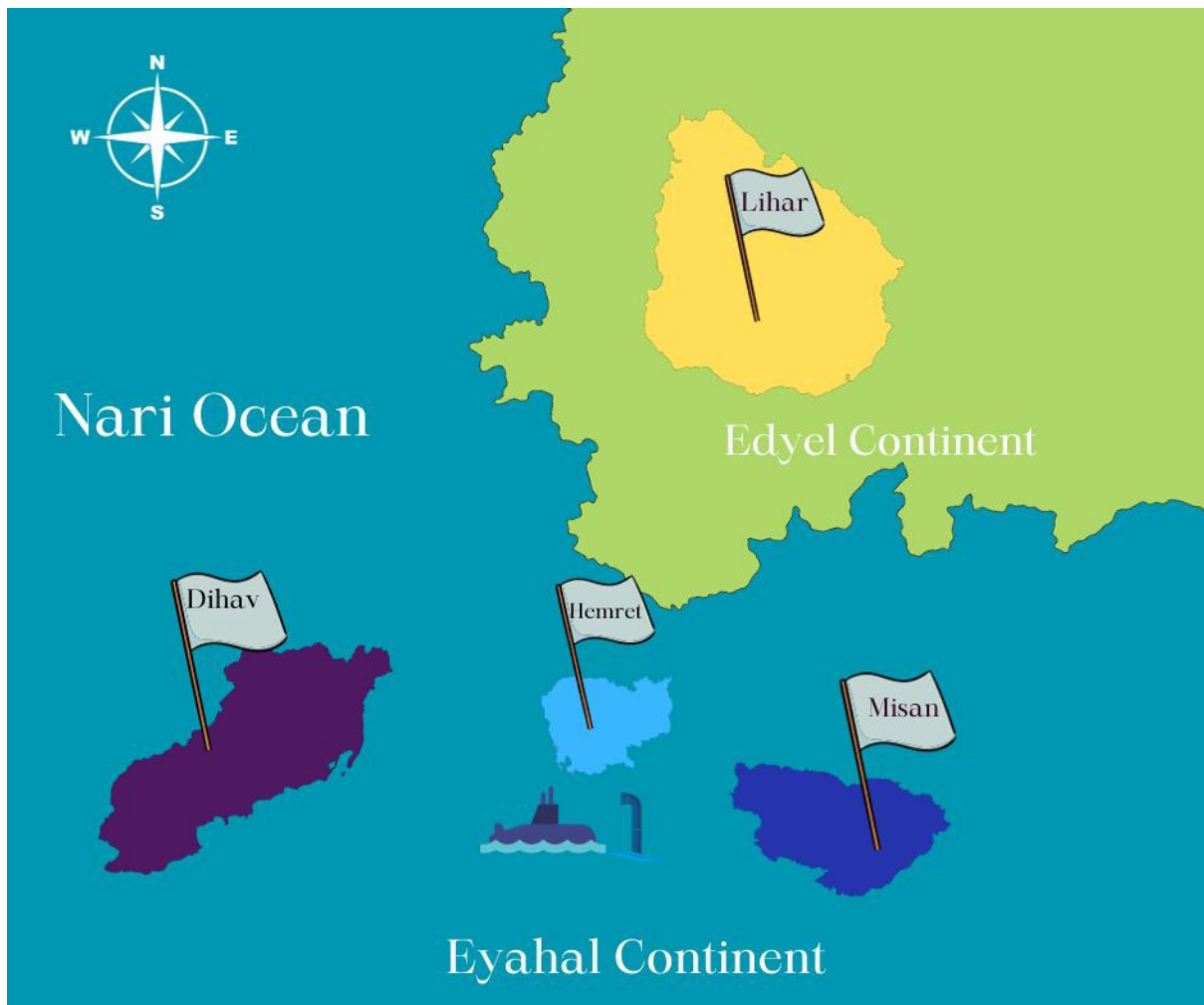
28. Subsequently, in a press release dated 31 January 2024, Misan condemned Dihav's action brought before the Court. In particular, Misan declared that:

First of all, we will appear in the proceedings to respectfully ask the Court to determine that the prerequisites for issuing an order for provisional measures have not been met.

Second, Misan will request the Court to declare that it lacks jurisdiction to rule in this case, and that Dihav's claims are inadmissible.

Third, in the event the Court determines it has jurisdiction and deems the claims admissible, Misan requests the Court to affirm that Dihav had violated UNCLOS.

Fourth, we will demonstrate that Misan's actions, concerning the countermeasures, do not contravene the Treaty of Amity.



* In the event of any inconsistency between the map and the document, the latter shall take precedence.
