

THE PLIGHT OF THE DANDY NARWHALS

1. Alfania and Barbarossa are neighbouring States that have enjoyed good relations for hundreds of years. The States are located in the middle of a continent and are separated by a large lake, Lake Theth, which covers an area of 58,000 km². Lake Theth itself lies entirely in Barbarossa, with the border between the two States following the shoreline of the lake for almost 1000km.
2. In 1955, the two States formalised their friendly relationship by concluding the Treaty of Amity, Commerce, and Kinship (the “TACK” Treaty), which covers a wide range of matters related to commerce, diplomacy, and defence.
3. The Preamble of the TACK Treaty states that:

“The Parties, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, have agreed as follows”.

Article II of the TACK Treaty provides that:

“Each Party shall refrain from imposing on natural or legal persons of the other Party any discriminatory measures that would impair their legally acquired rights and interests.”

4. For the majority of the twentieth century, Barbarossa has been classified as a Least Developed Country (LDC) by the United Nations (UN) due to its low gross national income (GNI) per capita, economic vulnerability, and low development of human capital. Its agricultural sector is barely sufficient to sustain its population and its manufacturing sector produces small handicrafts that are rarely exported to other markets. It relies heavily on aid from other States to sustain its population and maintain its infrastructure in good order.
5. In the 1990s and early 2000s, the tourism industry in both countries starts to expand rapidly as a result of a joint campaign by the Albanian and Barbarossan tourist boards that highlights the natural beauty of the neighbouring States. Due to their remote location, tourists often combine trips to both Alfania and Barbarossa, travelling across Lake Theth to reach the other State.
6. The growth of the tourism industry is a boon for Barbarossa, which, in a short period of 5 years, graduates from LDC to developing country status. However, a large proportion of the extra revenue gained from the growth in the tourism industry is not reinvested into infrastructure or education, leaving Barbarossa heavily reliant on the thousands of tourists that visit its (happily) very picturesque mountains and lakes. In 2012, the tourism industry accounted for 60% of the Albanian economy and 75% of the Barbarossan economy.
7. The tourism market in the two States is dominated by one Albanian firm, Rocacorba Holidays, and one Barbarossan firm, Angels Tours. Cumulatively, the two firms hold 95% of the market share of tourist holidays in the area. Rocacorba invested heavily in boats that are moored on the shores of Lake Theth in order to provide all-inclusive holiday packages that allow tourists to see the highlights of both Alfania and Barbarossa.

Angels Tours owns and operates the most popular hotels in both States, which provide 90% of the beds available to visitors. Rocacorba and Angels recognise each other's comparative advantage and enter into an agreement whereby they offer holiday packages that include transport, accommodation, and sightseeing tours in both States.

8. On 1 January 2009, as part of its plan for economic development, Barbarossa announces that it will provide generous tax incentives for firms that operate within its jurisdiction to incorporate under Barbarossan domestic law. In March 2010, in order to take advantage of these tax incentives and to facilitate its development in Barbarossa, Rocacorba incorporates a local subsidiary in Barbarossa, Sacalm Holidays, which owns, manages, and operates its boats moored on the shores of Lake Theth.
9. By far the most popular trip offered is a one-day voyage 100 nautical miles into the middle of Lake Theth to the breeding grounds of the mythical 'Dandy Narwhal', an aquatic mammal that is so-called because of the distinctive pink colouring around its neck. The Dandy Narwhals hold an important place in Barbarossan culture, with several indigenous tribes venerating the creatures as the messengers of the gods. Rituals, customs, and official holidays all revolve around the annual migration of the Dandy Narwhals to their breeding ground each year from the depths of Lake Theth.
10. Dandy Narwhals have been listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as a "species threatened with extinction" since 1992. The Minister of the Environment of Barbarossa, knowing the value of tourism to the Barbarossan economy, has stated publicly that:

"The protection of the Dandy Narwhals is of paramount importance to us. They are at the heart of our culture and we want to be able to share the splendour of the Dandy Narwhals in their natural environment with visitors from all over the world. Lake Theth is the only remaining natural habitat of Dandy Narwhals in the world and we will ensure their continued survival."
11. Trips to the Dandy Narwhals' breeding grounds are operated by large-capacity, high-speed catamarans owned by Sacalm Holidays that depart from the old Barbarossan town of Enices. Sacalm's catamarans are the only vessels that can make the return trip in one day, with slower vessels taking 3 days to make the voyage. As a result, 95% of those that make the trip to the breeding grounds are transported by Sacalm, which operates 10 trips per day.
12. On 14 January 2014, the Government of Barbarossa voices concern regarding the declining population of Dandy Narwhals, sightings of which are becoming increasingly rare. This has a knock-on impact on tourism numbers, which decrease dramatically as tourists decide to visit the Alfania Alps instead of visiting Lake Theth on the off-chance that they will see the Dandy Narwhals. The number of visitors to Barbarossa drops sharply from 100,000 in 2012 to 10,000 in 2014.
13. As its economy is highly reliant on tourism, Barbarossa suffers from the decline in tourist numbers. In calendar year from January 2014 to January 2015, Barbarossa's economy moves into recession (from previous annual growth of 2% in the years 2012-2013 and 2013-2014), the percentage of the population living in poverty increases from 5% to 12%, and its infrastructure falls into disrepair.

14. On 3 March 2015, the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States announces that it is considering reclassifying Barbarossa as an LDC because of its low GNI per capita. In a speech before the General Assembly, the High Representative states that:

“The income of Barbarossa has dropped because of its one-dimensional economy. As a result, its population is now vulnerable to famine. This is exacerbated by the recent drought that has occurred in the region, which has wiped out 90% of Barbarossa’s agricultural crops. The only hope for Barbarossa’s continued economic development is that the tourism industry regains momentum in the near future.”

15. In order to understand the cause of the Dandy Narwhals’ decline, the Government of Barbarossa contracts the University of Barbarossa (UoB) to conduct scientific assessments and present their report to the Government. The UoB Report, delivered in January 2016, states that the catamarans used by Sacalm Holidays emit large quantities of a chemical, *cafea calida*, and states that the chemical is highly toxic to the Dandy Narwhal population. The Report finds that there is a direct correlation between the decrease in the Dandy Narwhal population since the late 1990s, which has plummeted from an estimated 2000 to less than 200, and the increase in Sacalm’s catamaran trips to the Dandy Narwhals’ breeding grounds. If *cafea calida* emissions continue at the current rate, the Report estimates that the Dandy Narwhal population will be wiped out within two years. It notes further that *cafea calida* is regulated in six other States for environmental reasons.

16. After delivery of the UoB report, the Government of Barbarossa holds public hearings on the possible prohibition of vessels that emit *cafea calida* from Lake Theth. Members of the public are invited to submit their comments and suggest whether such a ban would be the appropriate response to the problem. Those that take part in the consultations, including environmental non-governmental organisations and the Association of Barbarossan Tourism Firms, show overwhelming support for a ban on Sacalm’s catamarans.

17. On 1 September 2016, Barbarossa establishes the “Lake Theth Protected Area” around the breeding grounds of the Dandy Narwhal, which prohibits any vessel that emits *cafea calida* from entering the Area. The Minister of the Environment of Barbarossa issues a public statement in order to explain the establishment of the area, in which she states that:

“The establishment of the Lake Theth Protected Area is the only means to protect the Dandy Narwhals from *cafea calida* emissions and to allow the population to recover to its original level. The Dandy Narwhals are an important part of our heritage and we will do everything necessary to protect our economy, environment, and citizens from the injury caused by Sacalm’s actions.”

18. As a result of the establishment of Lake Theth Protected Area, Sacalm’s catamarans are prohibited from operating tourist voyages to the Dandy Narwhals’ breeding grounds. All Barbarossan firms that offer voyages to the breeding grounds, on the other hand, are

unaffected, as their small boats do not emit *cafea calida*. As a result, these firms experience a surge in custom whilst Sacalm's revenues plummet.

19. On 25 March 2017, Sacalm announces that it will cease operations as a result of the loss of business caused by the establishment of Lake Theth Protected Area. Rocacorba, its parent company, announces a significant loss of revenue. The Albanian Minister of Commerce accuses Barbarossa of breaching the terms of the TACK Treaty by establishing the Lake Theth Protected Area, noting that the establishment of the Area has had a grave effect on Rocacorba and Sacalm.
20. The Lake Theth Protected Area proves to be highly effective. Within one year of the establishment of the Area, the Dandy Narwhal population has recovered from less than 200 (at the time of the UoB Report) to an estimated 450. Sightings are becoming increasingly common but tourist numbers have not yet recovered to their pre-2013 levels. The Government of Barbarossa states that it considers the continued operation of the Area to be necessary to protect the Dandy Narwhals' long term future.
21. In order to settle their dispute, Alfania and Barbarossa (both members of the United Nations) conclude a special agreement on 31 August 2017 to submit the following question to the International Court of Justice:

“Alfania and Barbarossa request the International Court of Justice to decide, in accordance with international law, the following questions:

 - i) Does Article II of the TACK Treaty apply to measures imposed on Sacalm Holidays, an enterprise that is incorporated in Barbarossa?
 - ii) Has Barbarossa, by establishing the Lake Theth Protected Area, breached Article II of the TACK Treaty?
 - iii) Can Barbarossa's conduct be justified by necessity?”
22. Both Parties agree that no issues of exhaustion of local remedies arise. Both States have ratified the Vienna Convention on the Law of Treaties 1969 and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).