

**THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT
COURT COMPETITION**

1968

**Case Concerning Passage Through the
Gulf of Aqaba, United Arab
Republic v. United States, 1968.**

Problem

1968 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION PROBLEM

Pursuant to Article 36(1) of the Statute of the International Court of Justice the United States and Egypt have submitted the following dispute to the Court for adjudication. The facts, except as indicated, have been stipulated.

On May 22, 1967, President Nasser of the United Arab Republic announced that the armed forces of the Republic had occupied Sharm el Sheik, at the Southern end of the Gulf of Aqaba. That action, he declared, "is an affirmation of our rights and our sovereignty over the Straits of Tiran. The Straits of Tiran constitute our Egyptian territorial waters. Under no circumstances will we allow the Israeli flag to pass through the Straits of Tiran." On May 24, 1967, the United Arab Republic states that it had ordered its Navy to intercept and to turn back any Israeli vessels attempting to pass through the Straits of Tiran and to inspect the ships of other nations seeking to use the Straits to determine whether they were carrying cargoes to Israel.

In his speech of May 22, President Nasser gave the following explanation for the above actions. On May 12, the leaders of Israel had made a statement that "Israeli commanders...would carry out military operations against Syria in order to occupy Damascus and overthrow the Syrian Government;" On May 13, the United Arab Republic had received accurate information that Israel was concentrating large armed forces on the Syrian border; and the United Arab Republic had acted after consultations with the Syrian government in which it had been decided that if Syria was attacked the United Arab Republic would come to its assistance. (The United States disputes the accuracy of the United Arab Republic's view of the situation existing on May 22, but it concedes that at all relevant times the United Arab Republic had a good faith belief in its version.)

After declarations of May 22 and May 24, the Government of Israel called upon the United States to assert its rights of free and innocent passage through the Straits of Tiran in accordance with its undertaking of February 11, 1957. On that date, in an aide Memoire to Israeli Ambassador to the United States Abba Eban, Secretary of State Dulles had declared that "the United States believes that the Gulf comprehends international waters and that no nation has the right to prevent free and innocent passage in the Gulf and through the Straits giving access thereto.... In the absence of some overriding decision to the contrary, as by the International Court of Justice, the United States, on behalf of vessels of United States registry, is prepared to exercise the right of free and innocent passage and to join with others to secure general recognition of this right."

The United States accordingly made a formal protest to the United Arab Republic in which it asserted its right to free passage through the Straits of Tiran and denied the right of the United Arab Republic to intercept or to inspect its vessels. After an exchange of notes had failed to resolve the controversy, the United States sent a final note in which it announced its intention unilaterally to maintain its right of free and innocent passage and warned the United Arab Republic against any interference with that right.

Thereafter the United States received a request from a merchant vessel of United States registry for a naval escort through the Straits of Tiran and the Gulf of Aqaba to the Israeli port of Elath. The vessel was carrying a load of grain for delivery in Elath and, in view of the tense diplomatic situation, was loath to attempt passage without the support of the United State government. On July 1, 1967, in response to the merchant vessel's request, a destroyer of the United States Navy was ordered to escort the merchant vessel through the Straits of Tiran and to Elath. The order, which the destroyer obeyed, directed the destroyer to maintain its guns in fore and aft position (the normal alignment at sea) with crews at action stations. If the ships were fired upon by coastal guns, the destroyer was to return the fire.

In accordance with these orders the two vessels were steaming through the Enterprise Passage in the Straits of Tiran into the Gulf of Aqaba, when, on July 2, 1967, they received radio instructions from the coastal authorities of the United Arab Republic to stand by for inspection. The vessels signalled their intention to proceed without submitting to inspection, whereupon three shots were fired by the coastal batteries, one in front of the line, one over the line, and one short. The United Arab Republic contends these were warning shots. The destroyer returned the fire and silenced the offending coastal battery, with the loss of five soldiers of the United Arab Republic. In order to avoid further hostilities within the Gulf of Aqaba, the destroyer and the merchant vessel reversed course and returned to the Red Sea.

All of these declarations and actions of the parties were reported to the appropriate United Nations organs by the party taking the action or making the declaration. In addition, the United States, prior to July 1, 1967, reported to the United Nations its intention unilaterally to maintain its rights of innocent passage in the Straits of Tiran and the Gulf of Aqaba. The United Nations were not requested to take any action and did not do so.

The Court is requested to determine whether the United States is responsible under international law to compensate the United Arab Republic for the deaths of its nationals and the destruction of its coastal battery?