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IN THE  
INTERNATIONAL COURT OF JUSTICE

March, 1969

CASE NO. 1

PACIFICA, Applicant,

v.

OCEANIA, Respondent.

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MEMORIAL FOR APPLICANT

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Brian Hoyle,  
Myron Nordquist,  
Agents for Pacifica.

On the Memorial:  
Richard Speare

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1 JURISDICTION

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3 Jurisdiction of the International Court of  
4 Justice "comprises all cases which the parties  
5 refer to it." Stat. Int'l Ct. Just. art. 36, para. 1.  
6 Both Pacifica and Oceania accept the jurisdiction  
7 of the Court.

8 STATEMENT OF FACTS

9  
10 Late in 1968, following the discovery of a sea  
11 shallow in the high seas (approximately 25 metres under  
12 the surface, and one mile in circumference, at a  
13 distance of 45 miles from the coast of Oceania),  
14 Pacifica proceeded to construct an artificial island  
15 on top of the sea shallow. After completion, the flag  
16 of Pacifica was hoisted and a small garrison left on  
17 the island, over which Pacifica proclaimed sovereignty.  
18 The seabed surrounding the shallow gradually descended  
19 to a maximum depth of 180 metres between the sea  
20 shallow and Oceania.

21 Following the proclamation of sovereignty over  
22 the island, the government of Pacifica constructed a  
23 dock adjacent to the island, and licensed a broad-  
24 casting company, registered in the Bahamas, in which  
25 the government of Pacifica held 51% of the shares.

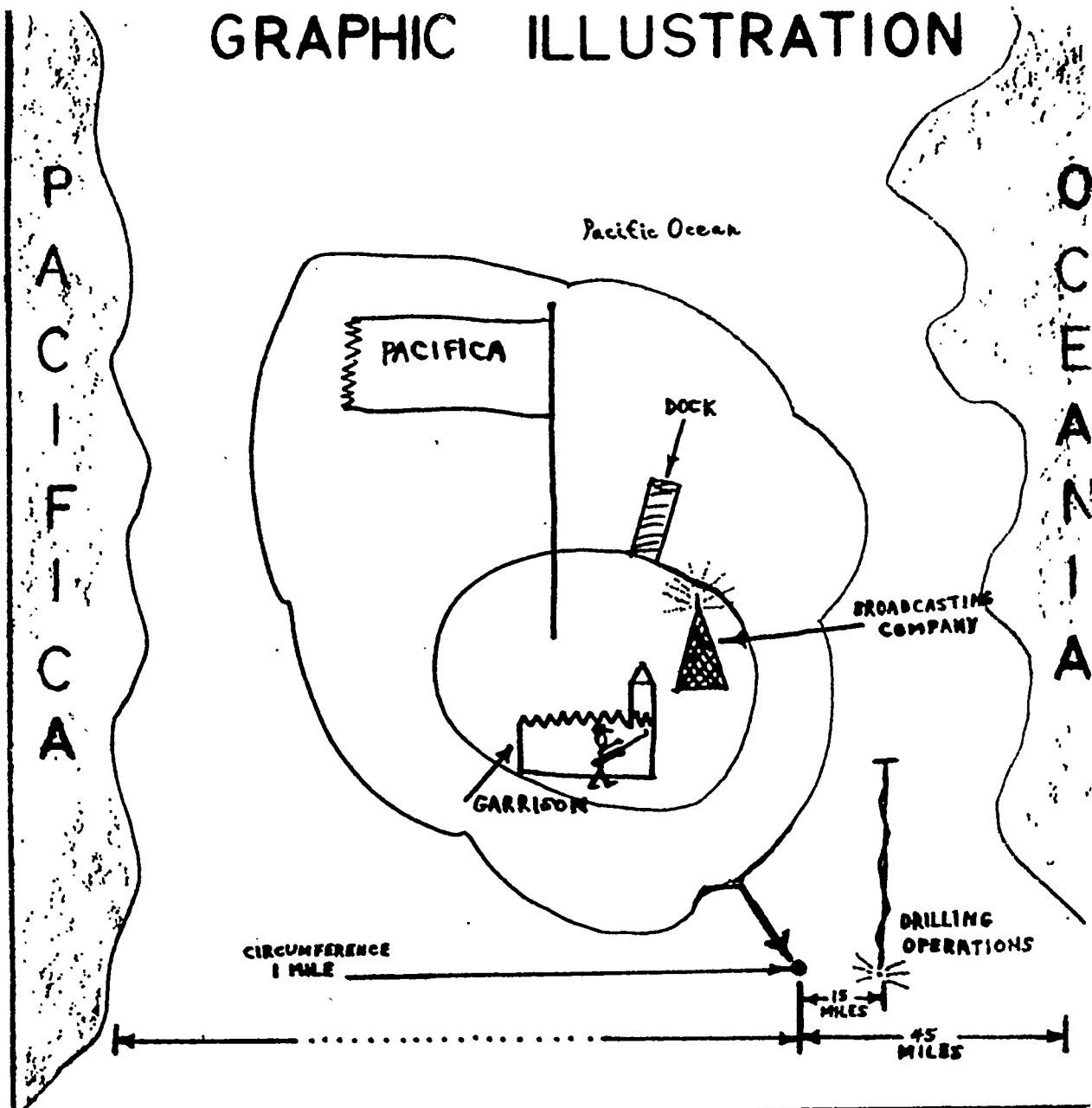
1 It also issued a license for the exploration and ex-  
2 ploitation of oil and other minerals to a British company  
3 which commenced drilling operations at a distance  
4 of 15 miles from the island and at a depth of 150  
5 metres. The broadcasting company, in its daily  
6 political broadcasts, frequently attacked the government  
7 of Oceania.

8 In the spring of 1969, Oceania sent a naval task  
9 force which occupied the island, seized the garrison,  
10 which it sent back to Pacifica, and destroyed the  
11 dock, the drilling equipment, and the broadcasting  
12 installations.

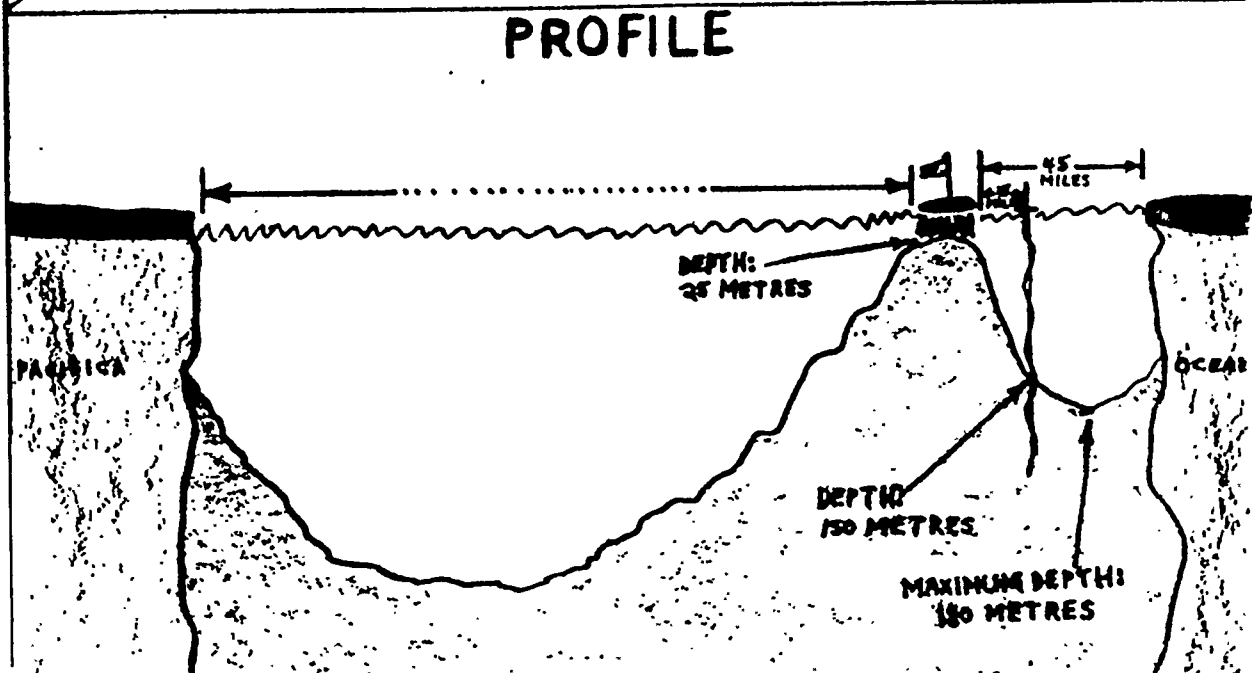
13 After unsuccessful attempts to settle the matter  
14 by negotiation, the parties agreed to submit the dispute  
15 to the International Court of Justice. Both nations  
16 are signatories to the Geneva Conventions on the Law  
17 of the Sea and members of the United Nations.

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# GRAPHIC ILLUSTRATION



## PROFILE



QUESTIONS PRESENTED

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1. Whether sovereignty may be established by one State over an artificial island constructed in the high seas on the continental shelf adjacent to another State.
  
2. Whether one State, in vindication of what it regards as a violation of international law, may use force against another State.

RELIEF REQUESTED

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3 Pacifica respectfully requests that the Court  
4 order Oceania to restore to Pacifica the island and  
5 all destroyed facilities, including the broadcasting  
6 station and equipment, and the oil exploration and  
7 drilling equipment. In the alternative, Pacifica  
8 requests that the Court order Oceania to make  
9 full compensation in damages for the destruction  
10 of Pacifica's property. In addition, Pacifica requests  
11 compensation for the seizure and deportation of the  
12 garrison.  
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1           Under present international law, the only legal,  
2 unilateral use of force is in self-defence. None of  
3 the conditions which would have justified Oceania's  
4 use of arms in self-defence existed. Therefore, the  
5 employment of armed force was illegal.

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1 extensive deliberations. U.N. Doc. A/CONF. 13 Vol. VI,  
2 12, p. 19 (1958). In the words of one authority:  
3 "With the term 'sovereign rights' the Commission  
4 would not confer full sovereignty upon the coastal  
5 state, it merely said that the coastal State exercised  
6 these rights for a specific purpose." Mouton, "The  
7 Continental Shelf," I RECUEIL DES COURS 343, 416 (1954).  
8 The Commission's Rapporteur, Professor Lauterpacht,  
9 explained that the superincumbent seas were excluded  
10 from the rights bestowed by the Convention. The  
11 intent of this section was to create a horizontal  
12 conception conferring rights restricted to the seabed  
13 and subsoil of the submarine areas adjacent to the  
14 coastal State. See U.S. v. Ray, Trial Memorandum on  
15 Behalf of Intervener, Civil No. 65-271, (So. Dist.  
16 Fla. 1969) p. 13. There was some apprehension lest  
17 the word "sovereignty" invite farfetched speculations  
18 in relation to the superjacent waters." Mouton, supra  
19 416.

20 There may have been a basis for that concern. The  
21 term "sovereignty" as distinguished from a lesser  
22 interest such as "sovereign rights," denotes a nation's  
23 legal capacity to forbid virtually any activity within  
24 the area claimed. But deliberately, such powers  
25 were not conferred. The intention of the signatories,  
26

1 delineated by the language of the Conventions, in light  
2 of the preparatory discussions, clearly was to grant  
3 a coastal State only restricted rights. As a coastal  
4 State, Oceania has a continental shelf claim con-  
5 sisting of horizontal rights which may be asserted  
6 only to the extent necessary to explore and to exploit  
7 natural resources.

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9 B. OCEANIA'S CONDUCT ESTOPS HER CONTESTING  
10 PACIFICA'S CONSTRUCTION OF THE ISLAND

11 The rule of estoppel as applied by international  
12 tribunals precludes one party from denying a factual  
13 representation made to another whereby the other has  
14 relied to his detriment. The effect of such voluntary  
15 conduct is to estop a party from asserting rights,  
16 either of property or of remedy, which might otherwise  
17 have existed." Bowett, "Estoppel Before International  
18 Tribunals and Its Relation to Acquiescence," 34 Brit.  
19 Yb. Int'l L. 176 et seq. (1957).

20 The United States argued in The Shufeld Claims  
21 that the conduct of Guatemala, in treating a concession  
22 to Shufeld as valid, prohibited Guatemala from denying  
23 the validity of the concession before the Tribunal.  
24 Dept. of State Arb., Ser. 3, (1932) p. 851. Referring  
25 to this asserted estoppel, the Arbitrator said:

1 "I have no doubt that the contention of the United  
2 States is sound and in keeping with the principles of  
3 international law and I so find."

4 The legal concept of estoppel was also recognized  
5 in the Anglo-Norwegian Fisheries dispute, 1951 I.C.S.  
6 Rep. 116. Great stress was laid upon the absence of  
7 protest against conflicting claims to territorial  
8 rights.

9 In the North Sea Continental Shelf case, No. 69/2,  
10 20 February 1969, p.5, the Court stated that the  
11 doctrine of estoppel could lend substance to the  
12 contention of Denmark and the Netherlands. It  
13 recognized the principle of detrimental reliance on  
14 prior conduct, whereby another State changes position.

15 In this case, the area in question was less  
16 than 300 yards in radius and a full 45 miles from  
17 Oceania's coast. There are authorities, including  
18 the United Nations Secretary of the 1958 Committee  
19 on the Continental Shelf, who question the application  
20 of Article 1 to the situation under consideration.  
21 He expresses doubt over the extent to which areas  
22 are "adjacent to the coast." There is evident  
23 concern about allowing a coastal State to claim wide  
24 expanses stretching far out to sea. Bowett, The  
25 Law of the Sea, (1966)

1           The construction of an artificial island involves  
2 considerable planning and expenditure. Moreover, such  
3 a substantial improvement of an area entails much  
4 activity. With modern communications and detection  
5 techniques, Oceania must be held to have been actually  
6 or constructively aware of Pacifica's activities.  
7 Oceania's failure to protest and inaction in the  
8 face of such notice warranted Pacifica in reasonably  
9 relying to her detriment on the propriety of constructing  
10 the island. Pacifica had no reason to suspect there  
11 would be difficulties as there was no indication that  
12 Oceania intended to assert a conflicting claim. At  
13 the minimum, Oceania should have notified Pacifica  
14 of what she considered an infringement on her rights.  
15 Peaceful proceedings could then have been instituted  
16 to settle the dispute.

17  
18           C. PACIFICA EFFECTIVELY OCCUPIED THE ISLAND

19           Under traditional requirements of international  
20 law, occupation must be "effective" to support a claim  
21 of sovereignty to a res nullius. Island of Palma  
22 Arbitration, 2 U.N. Rep. Int'l. Arb. Awards 831, 846  
23 (1928). Pacifica complied with recognized requirements  
24 of international law in perfecting its sovereignty  
25 over the island.

1           The subsoil, seabed, subsurface waters, surface  
2 and territory above the surface must be distinguished.  
3 Differing rights and liabilities attach to each. For  
4 example, the coastal State is given sovereign rights  
5 in the subsoil and seabed of its continental shelf  
6 for the limited purpose of exploration and exploitation.  
7 Universal "rules of the road" govern certain uses of  
8 the subsurface waters and surface.

9           Article 1 of the Convention on the High Seas  
10 defines high seas as: "...all parts of the sea that  
11 are not included in the territorial sea or in the  
12 internal waters of a state." Under Article 2, no  
13 State may subject the high seas to its sovereignty.

14           Pacifica's sovereign claims are compatible with  
15 the legal regime of the high seas as they are based  
16 on traditional acquisition of territorial principles.  
17 Further, rights to territorial waters or contiguous  
18 zones are not in issue before this Court. Some  
19 might contend that freedom of the high seas is involved.  
20 Pacifica's position is that her use has been with  
21 reasonable regard for the interests of other States.

22           In essence, Pacifica claims unoccupied territory  
23 which projects above the sea. Land not occupied by  
24 any nation is known in international law as "no  
25 man's land" or terra nullius or res nullius. The  
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1 sovereign rights of a settler of such an area were  
2 recognized in the early United States Supreme Court  
3 case of Johnson v. McIntosh, 9 Wheat. 543 (1823).

4 Justice Marshall stated:

5 If...possession...be taken under the authority  
6 of an existing government, which is acknowledged  
7 by the emigrants,...the country becomes a part  
8 of the nation... [which took possession].p.595.

9 Other authorities support Pacifica's contention  
10 that valid sovereignty can be acquired by occupation.

11 One case, Jacobsen v. Norwegian Government, Norske  
12 Retstidende, p. 511 (Sup. Ct. of Norway, May 3, 1933)  
13 is reported in Lauterpacht, Digest of Public  
14 International Law Cases (1933-34), Case No. 42, p. 109  
15 (1940).

16 Jacobsen involved conflicting proprietary  
17 rights to a part of an island occupied by the plaintiff,  
18 Professor Lauterpacht, compiler of the above digest,  
19 comments:

20 Lawful occupation of a vast area in no man's  
21 land such as that which was disputed in this  
22 case presupposed certain manifest acts showing  
23 that the possession was effective and in  
24 earnest. The first step in this connection  
25 would, as a general rule, be the construction  
26 of houses and the placing of notice boards  
stating the fact of occupation. These acts  
must normally be followed by acts aiming at an  
economic exploitation of the land. p. 110.

Miss Marjorie M. Whiteman, the senior United  
States delegate to the 1958 Conference on the Law

1 of the Sea has analyzed the leading authorities  
2 on territorial acquisition. She has stated the  
3 elements of acquisition by occupation. Whiteman's  
4 Digest of International Law, Dept. of State Publ.  
5 7553, Vol. 2, pp. 1028-1061 (1963).

6 Miss Whiteman points out that title may be  
7 established by occupation, a "series of acts amounting  
8 to the taking and maintenance of possession of land  
9 which was previously res nullius." The requirements  
10 of "effective occupation" are twofold: "(1) the  
11 intention and will to act as sovereign (i.e., animus  
12 occupandi) and (2) some actual exercise or display  
13 of such authority (i.e., corpus occupandi),"p. 1031.

14 Evidence of animus occupandi may consist either of  
15 published assertions of title or of acts of sovereignty.  
16 Id. Corpus occupandi requires an occupation that is  
17 "(a) peaceful, (b) actual, (c) sufficient to confer  
18 a valid title to sovereignty, and (d) continuous."  
19 Id. at 1032.

20 "Peaceful" means "no more than that the first  
21 assertion of sovereignty must not be a usurpation of  
22 another's subsisting occupation nor contested from  
23 the first by competing acts of sovereignty." "Actual"  
24 means only that "the exercise or display must be  
25 genuine and not a mere paper claim dressed up as an  
26

1 act of sovereignty." Id.

2 The third element, sufficiency, is gathered from  
3 all the factual circumstances. In general, "The  
4 state activity must be such as to show that the  
5 claimant really acted as an international sovereign  
6 would have acted in the circumstances." Id. at 1035.  
7 "The degree of continuity, like the degree of the  
8 sufficiency, of the occupation varies according to  
9 the circumstances." Id. at 1034. The essential  
10 requisite seems to be a showing of continuous State  
11 activity.

12 Pacifica hoisted her flag, proclaimed sovereignty  
13 and garrisoned personnel on the island. These acts  
14 clearly constituted a claim of sovereignty  
15 sufficient to establish an animus occupandi. More-  
16 over, the occupation was effectuated without violence.  
17 It was certainly genuine in that inhabitants lived on  
18 the island, and quarters and a dock were constructed  
19 on it. Pacifica acted as a sovereign by licensing  
20 broadcasting and mineral exploration and exploitation.  
21 Because of the varied accomplishments, there can be  
22 no question that there was continuous State activity  
23 up to the time of Oceania's invasion of the island.  
24 Therefore, all essential elements of a corpus occupandi  
25 were met. Pacifica effectively occupied the island

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and under traditional rules of international law subjected the territory to her sovereignty.

D. PACIFICA WAS AUTHORIZED TO LICENSE BROADCASTING AND DRILLING OPERATIONS

One of the incidents of sovereignty is the power to authorize activities conducted within the granting State's jurisdiction. Thus, Pacifica had the right to license broadcasts emanating under her authority and to allow exploration and exploitation of oil and other minerals on her continental shelf.

1. THE BROADCASTING WAS NOT PIRATICAL

According to Professor Brownlie, the Convention on the High Seas was essentially a codification of existing customary law. Principles of Public International Law, 213 (1966). The fundamental policy underlying international law prescriptions on piracy has been to maintain order on the high seas by countering deprivations imposed by persons acting without the authorization and responsibility of a State. McDougal and Burke, The Public Order of the Oceans, 808 (1965). Article 15(1) of the Treaty defines piracy as follows:

1 (1) Any illegal acts of violence, detentions  
2 or any act of depredation, committed for  
3 private ends by the crew or the passengers  
4 of a private ship or a private aircraft,  
5 and directed:  
6 (a) on the high seas....  
7 (b) against...property in a place outside  
8 the jurisdiction of any state: [Emphasis added.]

9 At the 1958 Conference, an effort was made by  
10 the delegate from Czechoslovakia to change the  
11 conception of piracy to eliminate the notion of  
12 private ends. In presenting that amendment, he  
13 advocated the draft did not include all acts which  
14 were "in theory and practice within the concept."  
15 He cited "the most serious omissions...the failure  
16 to mention piracy for political reasons." This  
17 attempt to change existing customary law apparently  
18 had little appeal and was rejected 37 to 11, with 1  
19 abstention. McDougal, supra at 820.

20 Pacifica licensed broadcasting by a  
21 company in which she holds 51% of the shares.  
22 Oceania's charge that the broadcasting is piratical  
23 cannot be sustained. Broadcasts licensed by a  
24 sovereign State having a controlling interest in the  
25 company are clearly not in the realm of acts done  
26 for "private ends." McDougal, supra at 819. In  
addition, political broadcasts are not within  
Article 15, or the customary definition of piracy,

1 as the Czechoslovakian proposal to include political  
2 matters was explicitly rejected by the delegates.

3 There is another reason for casting doubt upon  
4 the argument that national sovereignty precludes  
5 unauthorized foreign communications into a nation's  
6 territory. Smith, "Pirate Broadcasting," 41 So. Cal.  
7 L.R. 769, 770 (1968). Article 19 of the Universal  
8 Declaration of Human Rights provides:

9 Everyone has the right to freedom of opinion  
10 and expression; this right includes freedom  
11 to hold opinions without interference and  
12 to seek, receive, and impart information  
and ideas through any media regardless of  
frontiers. U.N. G.A.O.R. 7 (1948).

13 2. THE DRILLING OPERATION WAS LAWFULLY  
14 CONDUCTED ON PACIFICA'S CONTINENTAL  
SHELF

15 Article 1 (b) of the Convention on the Continental  
16 Shelf states that the continental shelf includes "the  
17 sea bed and subsoil of similar areas adjacent to the  
18 coasts of islands." As Pacifica established sovereignty  
19 over the island and is a Party to the Convention, she  
20 is a coastal State entitled to the sovereign rights  
21 granted by the treaty on the continental shelf.

22 Article 6 of the Continental Shelf Convention  
23 discusses the principle of equidistance. It provides:  
24

1 1. Where the same continental shelf is  
2 adjacent to the territories of two or  
3 more States whose coasts are opposite each  
4 other, the boundary of the continental shelf  
5 appertaining to such States shall be  
6 determined by agreement between them. In  
7 the absence of agreement, and unless  
8 another boundary line is justified by  
9 special circumstances, the boundary is the  
10 median line, every point of which is  
11 equidistant from the nearest points of  
12 the baselines from which the breadth of  
13 the territorial sea of each State is  
14 measured.

9 The North Sea Continental Shelf cases, official  
10 press release, No. 6912, 20 February 1969, related  
11 to delimitation of the continental shelf between  
12 the Federal Republic of Germany and Denmark on  
13 the one hand, and the Netherlands on the other.  
14 As Germany had not ratified the Convention, the  
15 Court held Article 6 inapplicable. Nevertheless,  
16 the Court observed that "...no other method of  
17 delimitation had the same combination of practical  
18 convenience and certainty of application." p.4.

19 As the island was 45 miles from the coast of  
20 Oceania, Pacifica was entitled, absent agreement,  
21 to claim sovereign rights over the shared continental  
22 shelf area. These rights would extend to a distance  
23 in excess of 15 miles from the island. A natural  
24 incident of these sovereign rights was the legal  
25 capacity to license a British company to explore  
26 and exploit oil and other minerals.

1           Regarding potentially conflicting interests, the  
2 Committee of Technical Experts assigned to the Inter-  
3 national Law Commission commented:

4           If the principle of equidistance from the  
5           respective countries does not lead to an  
6           equitable solution, then [resolution of  
7           the dispute] should be arrived at by  
8           negotiations. 52 A.J.X.L. 649 (1958).

9           It would also seem that if Oceania were to assert  
10          that "special circumstances" were involved, she would  
11          have an obligation to initiate negotiations to  
12          discuss the matter. Regardless, the very minimum  
13          respect for international law principles would  
14          dictate that negotiations precede unilateral use  
15          of force against a sister State's citizens and  
16          property.

17          **II. THE MILITARY ACTION INITIATED BY OCEANIA  
18          CONSTITUTED AN ILLEGAL USE OF FORCE**

19                 **A. OCEANIA VIOLATED A DUTY TO SEEK  
20                 ADJUDICATION OF ITS CLAIMS BEFORE  
21                 RESORTING TO SELF-HELP**

22          Both Pacifica and Oceania were signatories to  
23          the Optional Protocol to the Geneva Conventions on  
24          the Law of the Sea, I:6466, 450 UNTS 168. By signing  
25          the Optional Protocol, Oceania obligated herself  
26          to submit disputes arising under the Conventions  
27          on the Law of the Sea to the International Court

1 of Justice for peaceful adjudication. Article I  
2 of the Optional Protocol provides:

3 Disputes arising out of the interpretation  
4 or application of any Convention on the Law  
5 of the Sea shall lie within the compulsory  
6 jurisdiction of the International Court of  
7 Justice, and may accordingly be brought before  
8 the Court by an application made by any  
9 party to the dispute being a Party to this  
10 Protocol.

11 The claims of Oceania clearly fall within the  
12 provisions of the Optional Protocol. The dispute  
13 arose from differences in interpretation of the  
14 Conventions on the Law of the Sea, to which the  
15 two nations are Parties. Pacifica relied on its  
16 interpretation of the Conventions, in establishing  
17 the island 45 miles from the coast of Oceania.

18 In contrast, Oceania took the view that it  
19 had jurisdiction over the continental shelf bordering  
20 its coast. Without attempting to settle this conflict  
21 peacefully, Oceania dispatched a naval force which  
22 seized the island and destroyed the property of  
23 Pacifica and her subjects. Such conduct was in  
24 direct violation of the obligations imposed by the  
25 Optional Protocol.

26 At no time before seizing the island did  
Oceania seek a peaceful settlement of the dispute,  
in compliance with its duties as a member of the  
United Nations. Article 33 of the United Nations

1 Charter requires that, in any dispute involving danger  
2 to international peace, the parties shall, "first of  
3 all, seek a solution by negotiation, enquiry, mediation,  
4 conciliation, arbitration, judicial settlement,...  
5 or other peaceful means of their own choice." See  
6 also North Sea cases, supra 8.

7 Similarly, Articles 2(3) and 2(4) impose upon all  
8 members of the United Nations the duty to settle  
9 their disputes without the use of force. Article  
10 2(3) provides:

11 All Members shall settle their international  
12 disputes by peaceful means in such a manner  
13 that international peace and security, and  
14 justice, are not endangered.

15 In addition Article 2(4) states:

16 All Members shall refrain in their inter-  
17 national relations from the threat or  
18 use of force against the territorial  
19 integrity or political independence of any  
20 state, or inconsistent with the Purposes  
21 of the United Nations.

22 According to the Publicists, Article 33, Article  
23 2(3), and Article 2(4), read together prohibit  
24 the employment of the classic methods of "force  
25 short of war" in settling international disputes.  
26 Briggs, The Law of Nations, 964(2nd, ed., 1952).  
These hostile measures short of war, traditionally  
regarded as lawful remedial measures of self-help  
in settling disputes, have ceased to be lawful

1 if they involve the threat or use of armed force.  
2 Jessup, A Modern Law of Nations, 157 (1948). These  
3 measures evolved because of the inadequate  
4 development of international organization and the  
5 lack of available means of redress for international  
6 disputes.

7 The political character of these methods was  
8 their dominant feature. Each State decided as a  
9 matter of policy whether to employ the threat or  
10 use of force, with the result that the basis of such  
11 action was sheer power, rather than law. Brierly,  
12 The Law of Nations, 403 (6th Ed., 1963).

13 In light of the development of competent  
14 international organizations for the pacific settlement  
15 of disputes under the United Nations, the need for  
16 resort to force no longer exists. Thus, the conduct  
17 of Oceania violated the duty of a State to settle  
18 its international disagreements peacefully, without  
19 resorting to armed conflict.

20 Even if Oceania had legitimate claim to the  
21 territory over which Pacifica had established  
22 sovereign rights, the resort to armed intervention was  
23 illegal. Where territorial sovereignty is disputed,  
24 as it was in the present case in regard to the island  
25 and the adjacent sea and subsoil, the principle of  
26

1 de facto occupation ought to be applied, so that the  
2 threat or use of force against the territory in  
3 de facto occupation of another state should be  
4 characterized as delictual under Article 2(4) of the  
5 Charter. Bowett, Self-Defence in International Law,  
6 154 (1958).

7 This is not to suggest that a de facto occupation  
8 which is illegal must be perpetuated. Article 2(3)  
9 requires that the occupying state submit the question  
10 of sovereignty to peaceful solution. Oceania violated  
11 this principle by failing to request that Pacifica  
12 submit the issue of sovereignty to adjudication, as  
13 provided for in the Optional Protocol. Such conduct  
14 flouted the basic principles of international law and  
15 showed Oceania's contempt for the family of nations.

16  
17 B. OCEANIA'S USE OF FORCE WAS NOT A LEGITIMATE  
ACT OF SELF-DEFENCE

18 Under the United Nations Charter the only legitimate  
19 unilateral use of armed force is self-defence. Every  
20 use or threat of force may now be characterized as  
21 either a sanction authorized by a competent organ  
22 of the United Nations, or as self-defence, or as  
23 delictual. Bowett, supra at 11.

1           A sanction must be authorized by a competent organ  
2 of the United Nations. This could not include a  
3 unilateral act of a State which has decided to  
4 administer its own interpretation of international  
5 law. The employment of force by Oceania did not  
6 constitute a valid sanction; therefore, the attack  
7 on the island must have been either an act of self-  
8 defence or an illegal display of armed power. Under  
9 the circumstances, the attack was illegal.

10           The circumstances under which a Member of the  
11 United Nations may employ armed forces in its self-  
12 defence are delineated by Article 51 of the  
13 Charter. Article 51 provides that:

14           Nothing in the present Charter shall impair  
15 the inherent right of individual or  
16 collective self-defence if an armed attack  
17 occurs against a Member of the United  
18 Nations, until the Security Council has  
19 taken measures necessary to maintain  
20 international peace and security.

21           As the "inherent" right of self-defence exists  
22 today much as it did before the Charter, many of the  
23 general principles limiting the use of force in self-  
24 defence remain unchanged. However, since the dis-  
25 tinctions between just and unjust wars are no longer  
26 recognized and aggressive war has been designated an  
international crime, a critical need exists to keep  
the use of ~~armed~~ self-defence within strict limits.

1           Nearly every aggressive act is sought to be  
2 portrayed as an act of self-defence. The right of  
3 self-defence was pleaded at Nuremberg and Tokyo  
4 on behalf of the German and Japanese war criminals  
5 and was rejected by both War Crimes Tribunals. The  
6 Nuremberg Tribunal specifically endorsed the statement  
7 of Secretary Webster in the Caroline case as ex-  
8 pressing proper limits of the right of self-defence.  
9 At the time of the Caroline incident, Secretary  
10 Daniel Webster stated that preventative action in  
11 foreign territory is justified only in case of an  
12 "instant and overwhelming necessity for self-defence  
13 leaving no choice of means and no moment of deliberation."  
14 Brierly, supra at 406.

15           An important qualification of the traditional right  
16 of self-defence has been added by Article 51. That  
17 Article restricts the use of armed force in self-  
18 defence to those situations in which an armed attack  
19 has taken place on the territory of the defending  
20 state. Briggs, supra at 986. Armed force in self-  
21 defence must not be exercised in response to  
22 other violations of the legally protected interests  
23 of a Member. Kelsen, Law of the United Nations, 209,  
24 797,798 (1950). This provision is a codification of  
25 the immediacy and proportionality principles which  
26

1 demand that a defending State use no more force  
2 than is absolutely required to protect itself.

3       These principles, read in light of the United  
4 Nations Charter, limit the use of force in self-  
5 defence to those instances in which there is a clear,  
6 immediate, and dangerous threat to the political  
7 and territorial integrity of the nation employing  
8 self-defence. The obligations of Articles 2(3) and  
9 2(4) require that the defending State exercise armed  
10 force only against threats which are delictual under  
11 Article 2(4). Thus, a State may only employ armed  
12 force in the event its political or territorial  
13 sovereignty are threatened by an immediate danger  
14 of foreign armed intervention.

15       Against other delicts, not involving the use  
16 of immediate threat of armed force, the measures  
17 of self-defence must involve some form of diplomatic,  
18 political, or economic defence, not employing armed  
19 force. For example, if the broadcasting in the present  
20 case could be considered delictual, Oceania might be  
21 justified in jamming the broadcast. It can not  
22 vindicate using force to destroy the broadcasting  
23 station and equipment. Oceania might be justified  
24 in taking economic measures against Pacifica if Pacifica  
25 were delictual in establishing an economic base on

26

1 the continental shelf. But military action violates  
2 the principle of proportionality.

3 There is no indication that there was any immediate  
4 threat to Oceania. Only an immediate threat would  
5 have justified Oceania's failure to seek a pacific  
6 settlement of the conflicting claims. Oceania sat  
7 by without protest while Pacifica constructed the  
8 island and exercised its sovereign rights thereto.  
9 During the period from the winter of 1969 to the  
10 spring of 1980, Oceania could have sought a peaceful  
11 solution of the dispute. Instead, Oceania remained  
12 silent, then suddenly struck with naval and military  
13 force to achieve her ends. Such conduct was in gross  
14 violation of international law principles regarding  
15 self-defence.

16 In classifying the action of Oceania, that action  
17 would be an intervention under the classic methods of  
18 self-help. An intervention is a dictatorial inter-  
19 ference by one State in the internal affairs of another  
20 by force. Brierly, supra at 402.

21 As the Court said in the Corfu Channel Case, I.C.J.  
22 Reports, 1949, pp. 4, 26:

23 The Court can only regard the alleged right of  
24 intervention as the manifestation of a policy  
25 of force, such as has in the past given rise  
26 to most serious abuses and such as cannot, what-  
ever be the present defects in international  
organization, find a place in international law.

1           In view of the proscriptions of the United  
2 Nations Charter and the provisions for pacific  
3 settlement of disputes in the Convention on Optional  
4 Protocol, Oceania's use of armed force was a flagrant  
5 breach of her obligations to the family of nations.

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CONCLUSION

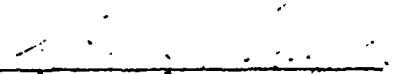
Pacifica respectfully requests a declaration by the Court that the whole Oceanian operation was an illegal invasion of her sovereign rights, and that Oceania restore the island and all the destroyed facilities, or make full and prompt reparation thereof, and that reasonable compensation be made for seizure and deportation of the garrison.

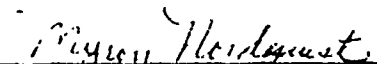
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CERTIFICATE

We have counted the number of words in our memorial, and we certify that our memorial contains fewer than the maximum allowable number of words as defined in Section V-F-3 of the 1969 Rules of the Philip G. Jessup International Law Moot Court Competition.

Respectfully submitted,

  
\_\_\_\_\_  
Brian Hoyle

  
\_\_\_\_\_  
Myron Nordquist  
On the Memorial

  
\_\_\_\_\_  
Richard Speare

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