

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

1970

**Case Concerning the Nationalization
of the United Petroleum Company,
United States v. Amazonia, 1970.**

Problem

PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

1970 COMPETITION PROBLEM

I. BACKGROUND

The United States and Amazonia, a small Latin American nation, are members of both the United Nations and the Organization of American States. For some years, the United States has extended aid under its foreign assistance programs to Amazonia, pursuant to agreements "subject to termination upon notice by either party." This aid, together with earnings from Amazonia sales of sugar to the US at premium American "sugar quota" prices, has, in recent years, supplied over 40 per cent of Amazonia's import and foreign exchange needs.

Foreign interests have long dominated much of the Amazonian economy. In 1905, the arbitrary repudiation by the Amazonian government of a concession agreement with an American company led to an American naval blockade of Amazonia's principal port, the blockade being lifted only upon Amazonian payment of compensation to the concessionaire and Amazonia's entering into a treaty with the US providing that: "Amazonia will accord the most constant protection to all interests of United States nationals or enterprises in Amazonia and will treat its commitments to United States nationals or enterprises as inviolable". While the United States has not invoked this treaty since its conclusion, it is currently listed in the Department of State's publication Treaties in Force: A List of Treaties and Other International Agreements of the U.S.

The major foreign investor in Amazonia is United Petroleum Company (UPC), a Canadian corporation 98 per cent owned by Yankee Oil Co. of California. Through its various facilities, UPC accounts for over 95 per cent of Amazonian oil production. UPC's dominant position is based upon its exclusive exploitation of the Tacos tract, a 50 square mile area embracing Amazonia's only substantial oil field. UPC's rights to the tract are based on a 1923 grant from the Amazonian government, conveying to UPC "full and irrevocable title" to the tract, "including sole ownership of all subsoil resources", in return for payment to Amazonia of certain royalties and taxes as long as the tract is exploited. This was duly ratified in 1924 by the Amazonian legislature through a statute which also provided a minimal scheme of regulation, as well as moderate taxation, of the company's operations. UPC values its present physical plant and equipment in Amazonia at \$75 million. Responsible observers estimate its average annual net earnings from Amazonian petroleum operations over the past decade at about \$15 million.

It is widely believed in Amazonia - though evidence in support of the belief has not been advanced - that UPC originally acquired the grant and maintains its political influence through improper means, including bribery of certain corrupt Amazonian officials and legislators. In this regard, it is noted that

prevailing Latin American and Amazonian legal doctrine has long held that ownership of subsoil resources remains in the state, and that such resources can be exploited by private concerns only under special concession contracts with the state which do not convey ownership of those resources. A 1936 Amazonian legislative investigation into alleged foreign investment abuses and related pressures by foreign countries led to adoption of a Calvo-clause" type amendment to the Amazonian Constitution*.

*The 1936 amendment reads:

"Only Amazonian citizens or corporations may be granted concessions for exploiting subsoil resources in Amazonia. Where aliens are granted such rights, they shall be deemed to agree to consider themselves as Amazonians in respect of such rights, and to bind themselves not to invoke the protection of their governments in matters relating thereto, under penalty, in case of non-compliance, of forfeiture to the nation of property and rights so acquired."

II. The 1969 Dispute

In May, 1969 a strongly nationalist government took control of Amazonia, proclaiming a broad program of economic reform and development in the national interest. As one of its first acts, it announced the nationalization of the Amazonian petroleum industry, including the expropriation of all related businesses and their assets. The action was based on a 1964 Amazonian statute which authorizes the state to take property for public purposes subject to a duty to pay "appropriate compensation"; any compensation is to be determined by a five-man National Compensation Board whose judgement is "final and nonreviewable." The new government also replaced the existing members of the Compensation Board by members generally sympathetic toward the new government's political views.

Amazonian troops promptly took over UPC's facilities and UPC thereupon filed a suit in the Amazonian courts to restrain the taking, asserting that its 1923 grant was "irrevocable and inviolable." The Amazonian High Court, meeting under a statute permitting direct consideration of such challenges, declared that the original grant to UPC of "title" to subsoil resources was void as in excess of administrative or legislative powers; further, even if the Compensation Board should decide that UPC was in effect granted a lawful concession to exploit the field, that concession was in any event subject

to termination under the 1964 statute. UPC then filed claims with the Compensation Board for \$400 million, based on a valuation of \$75 million for its physical plant and a complex calculation of \$325 million for the taking of its rights to future exploitation of the Tacos tract. The Amazonian government counter-claimed that any rights obtained by UPC were improperly obtained and hence void ab initio. UPC consequently had been "unjustly enriched" in the amount of some \$900 million worth of oil removed from the Tacos tract since 1923 and should restore that amount to the state. On September 25, 1969, the Compensation Board awarded UPC \$70 million for its physical plant, but at the same time accepted the substance of the government's argument and held that the government could withhold this amount in partial payment for some \$600 million owed by UPC to the government for "unjust enrichment".

On October 3, 1969, the US Government sent the Amazonian Government a strongly worded note protesting and denouncing "the confiscation of American property by the Amazonian government, in violation of the principles of international law", and requesting "immediate and full compensation" for both incidents. The US also announced that it was" (1) requesting an immediate meeting of the OAS Organ of Consultation "to consider measure to deal with the flagrant breaches of international law and threat to hemispheric peace created by the Amazonian actions"; (2) immediately

terminating aid agreements and suspending all aid shipments to Amazonia; (3) suspending all "sugar quota" imports of Amazonian sugar into the UD; and (4) blocking some \$40 million in Amazonian government and private funds in the US.

On October 7, 1969, after the OAS meetings had commenced, Amazonia requested an emergency meeting of the United Nations Security Council, at which it charged the US with "intervention in its internal affairs" and "military and economic aggression." A US motion that the Security Council adjourn consideration until the OAS has completed its action on the question was defeated by a 2-8-5 vote. A Soviet-proposed resolution, (1) "finding that a dispute exists, the continuance of which is likely to endanger the maintenance of international peace and security", (2) "reaffirming the right of Amazonia and all other states to exercise, as Amazonia has done, its permanent sovereignty over its natural resources", and (3) "calling on all states concerned to apply unswervingly, without the exercise of any form of pressure, the norms of international law, and to take no action which might further exacerbate the situation", was then adopted by an 11-0-4 vote (the US, in deference to its position of never having exercised its veto, and the United Kingdom, France and China abstaining).

On October 10, the OAS Organ of Consultation recommended that the parties submit their dispute to the International Court of Justice, and, pending the decision of the Court, avoid any

further action likely to cause a further deterioration of the situation. In accordance with this recommendation, the US and Amazonia signed a special agreement requesting the ICJ "to determine whether either state is internationally responsible to the other" with respect to any of the above described actions or events. The US appears as applicant and Amazonia as respondent. The parties have stipulated to the above background and facts (which it is therefore unnecessary to repeat in briefs filed before the Court) and have waived any preliminary objections.