

IN THE
INTERNATIONAL COURT OF JUSTICE

April, 1973

CASE NO. 1

NEPTUNIUS,	Applicant
v.	
ATLANTICA,	Respondent

MEMORIAL FOR APPLICANT

Team No. 5

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JURISDICTION

Jurisdiction of the International Court of Justice "comprises all cases which the parties refer to it." I.C.J. STAT. art. 36, para. 1. Both Neptunius and Atlantica have accepted the jurisdiction of the court.

STATEMENT OF FACTS

An official statement of facts has been stipulated to by the parties to this controversy. However, a brief synopsis of the salient facts follows:

Since the turn of the century, the nation of Neptunius has fished off the coast of Atlantica. In an effort to conserve the fishery resources of the area, Neptunius and Atlantica concluded a two year bilateral treaty which would limit the annual haddock catch to 750 units for Neptunius and 4,000 units for Atlantica. After one year of the treaty's operation Atlantica alleged a severe depletion of its coastal fishery stocks including the haddock. As a result Atlantica unilaterally claimed an exclusive fishery zone of more than 200 miles and also passed legislation restricting the scientific research of foreign nations.

Finally, on March 15, 1971, a Neptunian vessel, the Poseidon, was seized 50 miles off the coast of Atlantica and fined for illegally fishing and for conducting scientific research without a permit.

QUESTIONS PRESENTED

1. Whether there has been a valid termination of the 1970 bilateral treaty?
2. Whether a coastal nation may extend its exclusive fishery jurisdiction beyond twelve miles?
3. Whether a coastal state may restrict the right of other nations to conduct scientific research on the high seas?

RELIEF REQUESTED

Neptunius respectfully requests the International Court of Justice to order Atlantica to return the \$25,000 fine imposed upon the fishing vessel Poseidon and to further order that Atlantica make appropriate reparations for her illegal denunciation of the 1970 bilateral treaty. Furthermore, it is requested that a determination be made that Atlantica's exclusive fishery zone violates international law and that Atlantica's research legislation be adjudged an illegal restraint on the right to conduct research on the high seas.

Finally, Neptunius requests such further relief as the Court may deem proper.

SUMMARY OF ARGUMENT

Atlantica's seizure and fining of the Neptunian fishing vessel Poseidon are illegal under both conventional and customary international law.

In 1970, Atlantica on her own initiative, entered into a bilateral treaty relating to haddock fisheries. Neither fundamental

change of circumstances nor mistake of fact can be invoked by Atlantica as justification for her unilateral termination of the treaty because neither principle has been accepted in international law. Even if Atlantica could invoke fundamental change or mistake of fact, she did not follow the proper procedural requirements for terminating a treaty.

In January, 1971, Atlantica passed legislation claiming (1) a 200 mile exclusive fishery zone and (2) the power to restrict scientific research in the area. Customary as well as conventional international law does not permit a coastal state to extend its jurisdiction beyond twelve miles. By excluding Neptunius from the 200 mile fishery zone claimed by Atlantica, Neptunius' historic fishing rights have been violated.

The restrictions placed by Atlantica on the right of foreign nations to conduct scientific research on the high seas is a violation of both Atlantica's treaty obligations and customary international law.

ARGUMENT

I. ATLANTICA HAS VIOLATED TREATY OBLIGATIONS OWED TO NEPTUNIUS.

On March 15, 1971, Respondent, the nation of Atlantica illegally seized a Neptunian fishing vessel, the Poseidon, and imposed a fine of \$25,000. The impact of this incident goes far beyond the isolated seizure of a small fishing boat. By seizing the Poseidon, Atlantica has openly defied the most fundamental of all international doctrines pacta sunt servanda,

which means literally, "treaties must be observed." In the interest of peace and security, no nation can tolerate the abrogation of treaty responsibilities.

The rules of international law derived from treaty are more numerous than those derived from any other source. In the last resort all the law created by treaty obligation depends on the rule of pacta sunt servanda. If this rule were to be easily abrogated or lightly construed, the whole superstructure of contemporary international law would be in danger of collapse.

Therefore, it is essential that a strict interpretation be given to any practice or any rule of international law which would derogate from the principle that "treaties must be observed" See M. SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW at 127 (1968).

In 1970, after several unsuccessful attempts, Atlantica and Neptunius concluded a bilateral treaty limiting the catch of the haddock species. However, after less than one full year's operation, Atlantica by the enactment of inconsistent legislation, attempted to abrogate unilaterally the bilateral treaty with Neptunius. See Record p. 3. Under international law, treaty provisions prevail over conflicting domestic legislation. It follows that a treaty is not legally repealed or abolished by a later inconsistent statute. See V G. HACKWORTH, DIGEST OF INTERNATIONAL LAW at 194-195 (1968). Atlantica has not terminated the 1970 bilateral treaty related to haddock fisheries. Consequently, Atlantica's seizure of the Neptunian fishing vessel violates her treaty obligations as well as the maxim pacta sunt servanda.

Based on the stipulated facts, the only possible grounds upon which Atlantica could attempt to terminate the haddock treaty are rebus sic stantibus or mistake of fact. However, neither of these grounds for terminating a treaty are applicable to the present controversy, nor in any event, has Atlantica taken the required procedural steps in order to invoke them.

A. REBUS SIC STANTIBUS CANNOT BE INVOKED IN ORDER TO TERMINATE THE BILATERAL TREATY.

The first possible argument Atlantica might assert in order to terminate the 1970 bilateral treaty is that of changed circumstances, often referred to as rebus sic stantibus. Acceptance of this principle as a rule of customary international law is at best doubtful. See 14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW at 478 (1970). The doctrine has received wide criticism, little support, and no uniform agreement among nations. Although states have occasionally invoked rebus sic stantibus to terminate a treaty, there are no recorded cases in which all parties have admitted its application. The International Court of Justice has never accepted nor applied the principle of changed conditions as a ground for unilaterally terminating a treaty. See I H. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW at 940 (8th ed. 1955); J. BRIERLY, LAW OF NATIONS at 335 (1963).

The Vienna Convention on the Law of Treaties, the most recent attempt to codify international treaty law, includes a provision concerning the doctrine of fundamental change. See

ARTICLE 62 Vienna Convention on the Law of Treaties adopted, May 23, 1969, U.N. DOC A/CONF. 39/27. However, the International Law Commission, in its comments to this provision, states that it is a mere proposal rather than a restatement of existing customary international law.

Even as a proposal, the Commission saw fit to emphasize the limitations in applying this principle by phrasing the proposal in the negative: a state may not invoke changed conditions as a ground for terminating a treaty unless strict conditions are met. See Reports of the International Law Commission on the Second Part of Its Seventeenth Session and on its Eighteenth Session (1966) 2 Y.B. INT'L. L. COMM'N. 169, 256 U.N. DOC. A/6309/Rev. 1 (1966) (hereinafter cited as "1966 I.L.C. YEARBOOK II"). The scope of this principle must be confined within very narrow limits. Therefore, even if the doctrine of fundamental change is recognized as a rule of law, it must be strictly construed and closely regulated in order to prevent abuse and misapplication.

Atlantica has not met the most basic condition of rebus sic stantibus. The burden is on Atlantica to prove that a fundamental change has occurred in those circumstances existing at the time the treaty was concluded. Atlantica alleges basic change has occurred with respect to the conservation of the had-dock species. However, Atlantica admits that her 1970 scientific data on the depletion of the fisheries is incomplete. See Record p. 3. Experts agree that in order to be authoritative,

data collected on conservation of fish must be complete and include such facts as life history, population magnitude, and geographical range. See Report of the International Technical Conference on the Conservation of the Living Resources of the Sea 3, U.N. DOC. A/CONF. 10/6 (1955); J. LUCAS, Regulation of the North Sea Fisheries under the Convention of 1946. 1955 ROME PAPERS 166, 167. Therefore, due to the inadequacy of her scientific data, Atlantica cannot legitimately assert a fundamental change of circumstances.

Furthermore, in order to invoke rebus sic stantibus the alleged change of circumstances must have been unforeseen by the parties. The Record shows that drastic changes had occurred in the haddock population during the period 1966 to 1970. See Record p. 2. Based on past experience further changes could reasonably be expected. In addition, at the time the haddock treaty was negotiated, the parties were aware of conflicting scientific data as to the maximum sustainable yield. These conflicting reports were provided by the Food and Agricultural Organization of which both parties are members.

The most severe limitation on the doctrine of rebus sic stantibus is that it has only been considered applicable to treaties of an indefinite duration rather than to those treaties containing a specified time limitation. See 1966 I.L.C. YEAR-BOOK II. The rationale for this limitation is that, where the treaty terminates at the end of a limited time, the parties themselves have provided a safety-valve to relieve them of

potentially burdensome obligations caused by changed conditions. The limited duration of the treaty (two years) evidences the fact that the parties foresaw the possibility of a change in circumstances relating to the haddock fisheries. Therefore, the doctrine cannot apply to the short "two year" agreement between Atlantica and Neptunius. Neither party was locked into a treaty for an indefinite number of years.

Finally, in order to invoke rebus sic stantibus, a state must prove that the change radically transforms the scope of obligations still to be performed. In the single year that still remained under the treaty, changed conditions did not in any way radically transform Atlantica's obligations. Atlantica would merely be required to reduce the quantitative amount of her haddock catch rather than to reduce her proportionate share of the maximum sustainable yield.

For all of the above reasons, Atlantica cannot assert changed conditions as a basis for unilaterally terminating her treaty obligations with Neptunius.

B. ATLANTICA'S CONSENT TO BE BOUND HAS NOT BEEN VITIATED BY ESSENTIAL ERROR.

The second ground that Atlantica might assert in order to justify her defiance of a treaty obligation is the controversial principle of essential error. Traditionally, this principle has been limited in its application to geographical mistakes. However, Atlantica now seeks to disregard this limitation. See

14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW at 262 (1970).

Even if Atlantica's interpretation is correct, the error must relate to a "fact or situation" existing at the time the treaty was concluded. The only alleged mistake of fact relates to the maximum sustainable yield. However, the concept of a "maximum sustainable yield" is merely a conclusion based on scientific data and is not a fact or situation itself. In addition, Atlantica cannot provide reliable information sufficient to establish that an error was in fact made when the treaty was concluded. Atlantica admits that her scientific research facilities lack sophistication and that her scientific data is incomplete. See Record p. 3.

Furthermore, a treaty may not be invalidated because of error if the nation's own conduct contributed to the mistake or the circumstances were such as to put it on notice. 1966 I.L.C. YEARBOOK II; 14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 262 (1970). Atlantica was put on notice of probable error, (1) by the conflicting report of the Food and Agricultural Organization, (2) by the incompleteness of her own scientific data, and (3) by her admitted lack of sophisticated research facilities. See Record pp. 1-3.

Therefore, Atlantica cannot invoke the principle of essential mistake to invalidate the 1970 bilateral treaty with Neptunius. Atlantica cannot prove an essential error existed, and even if she could, she is barred from invoking the mistake because her own negligence contributed to it.

C. THE BILATERAL TREATY WAS NOT TERMINATED DUE TO A
FAILURE TO FOLLOW PROPER PROCEDURAL REQUIREMENTS.

Neither changed conditions nor mistake of fact ipso facto terminates the operation of a treaty. "A state which wishes to avail itself of the right to terminate (a) treaty must do (so) in the form recognized by international law . . ." In Re Lopuschin, Switzerland Fed. Court Case No. 189 (1923) (2 Lauterpacht 323).

Articles 65, 66, and 67 of the Vienna Convention set forth the procedural requirements which must be fulfilled before a state may terminate a treaty: First, written notice must be given to the other parties. Second, such notice must contain the measure proposed and the reasons therefore. Third, upon objection by another signatory the parties must submit the dispute for peaceful settlement as provided by the United Nations Charter. See Vienna Convention on the Law of Treaties adopted, May 23, 1969, U.N. DOC. A/CONF. 39/27; U.N. CHARTER art. 33.

The Record indicates that after compiling what was admittedly incomplete data concerning the depletion of the fishery stocks, Atlantica was unable to reach further arrangements with Neptunius. See Record p. 4. The only inference which can be drawn from these facts is that Atlantica was dissatisfied with the terms of the treaty and sought modification rather than termination. As such, the unsuccessful negotiations did not fairly apprise Neptunius of Atlantica's intent to terminate.

In addition to the notice requirements, the United Nations Charter provides procedures to insure the peaceful settlement of disputes. See U.N. CHARTER art. 33. Taken in conjunction with Article 66 (b) of the Vienna Convention, at least twelve months of attempted renegotiation are required before a treaty may be terminated. Atlantica has failed to fulfill these requirements. See Record pp. 3-4.

Furthermore, Article 37 of the Charter of the United Nations states that, if all previous methods have failed, the dispute shall be submitted to the United Nations Security Council for resolution. This provision has also been ignored by Atlantica.

As a result, Atlantica has failed to follow proper procedures for peaceful settlement as set forth by the United Nations Charter as well as the Vienna Convention. Instead, Atlantica aggravated the dispute by passing the Fisheries Act of 1971, attempting unilaterally to abrogate her treaty responsibilities.

II. ATLANTICA'S FISHERY LEGISLATION VIOLATES INTERNATIONAL LAW.

A. CUSTOMARY AS WELL AS CONVENTIONAL INTERNATIONAL LAW PROHIBITS A COASTAL STATE FROM EXTENDING ITS JURISDICTION BEYOND TWELVE MILES.

Customary international law is defined as a generally recognized practice which is considered mandatory. Evidence of international custom can only be found by analyzing the actions, practices and policies of nations acting in various contexts.

See J. BRIERLY, THE LAW OF NATIONS at 60 (1963).

As of 1971 there existed 116 coastal states of which approximately eight out of every ten have refused to assert exclusive fishery claims beyond twelve miles. See generally II S. LAY, R. CHURCHILL & E. NORDQUIST, NEW DIRECTIONS IN THE LAW OF THE SEA at 835 et seq. (1973). Furthermore, the combined fish catch of those nations which have refused to go beyond twelve miles accounts for 75% of the total fish catch as well as approximately 52% of the world's coastlines. See generally 31 FOOD AND AGRICULTURAL ORGANIZATION, YEARBOOK OF FISHERIES STATISTICS at 12-17 (1971); L. ALEXANDER, THE LAW OF THE SEA at 72-75 (1967). As the above figures indicate, a vast majority in number and importance of the world's coastal nations have refused to extend their fishery claims beyond twelve miles.

In addition to violating customary international law, Atlantica has violated her own treaty obligations under the 1958 Convention on the Territorial Sea and Contiguous Zone. The combined effect of Atlantica's fishery and research legislation is to create a territorial sea. Such a maritime claim includes that area in which the coastal state claims specified sovereign rights. Due to the extensive restrictions placed by Atlantica upon travel through and exploitation of the sea in question, a territorial sea has been impliedly asserted.

Not only has Atlantica claimed exclusive fishing rights, but she has also claimed the right to restrict scientific research. This restriction on scientific research encompasses not only living resources, but also the non-living resources of the

seabed and subsoil. These restrictions, coupled with the \$1,000 per day research fee are so all encompassing as to leave practically no rights unobstructed to other nations. In fact, the only right common to a territorial sea which Atlantica has not claimed or impliedly restricted is the right to overflight. Atlantica's claim, therefore, must be clearly recognized as being one of a territorial sea, and must not be euphemistically labelled for what Atlantica would like other nations to think it to be.

The Convention on the Territorial Sea and Contiguous Zone, to which Atlantica is a signatory, provides that the contiguous zone "may not extend beyond twelve miles from the baseline from which the territorial sea is measured." Article 24, Convention on the Territorial Sea and Contiguous Zone in force, September 10, 1964, 15 UST 1606, TIAS 5639, 516 UNTS 205. This provision is significant, not only as a limit on the width of the contiguous zone, but also as excluding any possibility of creating a territorial sea greater than twelve miles in width. For if the contiguous zone can never extend beyond twelve miles from the baseline, it is also true that Atlantica's implied territorial sea cannot do so! See J. BRIERLY, THE LAW OF NATIONS at 208 (1963).

B. THERE ARE NO EXCEPTIONS TO THE TWELVE MILE LIMIT WHICH HAVE BEEN ESTABLISHED IN INTERNATIONAL LAW.

The 1958 Geneva Conference on the Law of the Sea considered a number of proposals dealing with the recognition of preferential

fishing rights beyond 12 miles. The first such proposal was presented by Iceland and stated that where a people is primarily dependent on its coastal fisheries for its economic development, the state concerned has the right to exercise jurisdiction up to whatever distance is justified by its dependence. See U.N. DOC. A/CONF. 12/C.3/L. 79. There was considerable opposition to this proposal and as a consequence it was modified to read as follows:

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal state shall have preferential rights . . . to the extent rendered necessary by its dependence upon the fishery. See U.N. DOC. A/CONF. 13/C.3/L. 79/Rev. 1. (emphasis added).

This modified proposal changed the original Icelandic resolution in two respects. First, it raised the standard of dependency from "primarily dependent" to "overwhelmingly dependent". Second, it reduced the coastal state's claim from "exclusive jurisdiction" to a mere "preferential right". In its modified form, this proposal was accepted by the Fisheries Committee of the 1958 Conference, passing by a vote of 25 nations in favor, 18 against, with 12 abstentions. However, even in its modified form the proposal failed to pass in plenary session. See U.N. DOC. A/CONF. 13/SR. 15 para. 44.

After the failure of the Icelandic proposal the Union of South Africa introduced an independent resolution in plenary session. See U.N. DOC. A/CONF. 15/L. 56. In essence this

South African Resolution recommended two special situations under which a coastal state might exert preferential rights in the high seas adjacent to its coast. The first situation might occur when the coastal population is overwhelmingly dependent upon the fishery resources of the area for its economic development. The second situation could occur when the coastal population depends primarily on coastal fisheries for the animal protein of its diet.

The 1958 resolution cannot constitute customary international law. A rule of customary international law only arises when a generalized practice is considered binding. No resolution by the United Nations General Assembly or any other such body can create customary international law. Moreover, the South African Resolution is even less authoritative by virtue of its permissive terminology. Thus, the Resolution cannot serve as the basis for a binding rule of international custom. See generally M. SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW at 128-143 (1968). Furthermore, after diligent research Applicant has been unable to find a single instance where a coastal state has used this Resolution as the basis for claiming preferential fishing rights in excess of twelve miles.

Therefore, the nation of Neptunius does not believe that the South African Resolution has been generally accepted by the community of nations as being customary international law. However, even if this court were to determine that the approval of a permissive Resolution could establish customary international

law, Neptunius asserts that Atlantica cannot show by documented scientific evidence that she is overwhelmingly dependent upon the fishery resources of the area for her economic development. Nor can Atlantica demonstrate that her population depends primarily upon the coastal fisheries for the animal protein of its diet.

C. ATLANTICA HAS NOT DEMONSTRATED ANY SPECIAL SITUATION WHICH WOULD ALLOW AN EXTENSION OF HER FISHERY JURISDICTION BEYOND TWELVE MILES.

One possible situation in which a nation might claim preferential fishing rights beyond twelve miles could occur if its population is overwhelmingly dependent on the coastal fisheries for economic development. The Record fails to establish that Atlantica is overwhelmingly dependent upon the high seas fisheries adjacent to her coast. The statement is made that " . . . recognizing the great dependence placed upon fishery resources by the nation, the legislature passed, and the chief executive signed, the Atlantica Fisheries Act of 1971." See Record p. 4. Such a statement is at best self-serving and cannot provide a basis for a claim of preferential rights.

Proof of overwhelming dependence can be provided only by objective research. No such proof is available. Furthermore, the criterion which must be met is "overwhelming dependence" and not merely "heavily dependent" (Record p. 1.) or even "greatly dependent" (Record p. 4). The concept of overwhelming dependence requires that the degree of dependence be complete

or something just short of absolute, whereas great or heavy dependence requires only a substantial amount of dependence, a degree that is far less than overwhelming. Therefore, Atlantica may not claim preferential fishing rights beyond twelve miles because she is not overwhelmingly dependent upon the fish or fish products for her economic development.

The only other situation that might allow a coastal state to exert preferential fishing rights in the high seas adjacent to its coast occurs if the local population is primarily dependent upon the coastal fisheries for the animal protein of its diet. The population of Atlantica is at most heavily dependent on the fish and fish products to maintain its nutritional standard. See Record p. 1. Such dependency falls short of the degree required to come within the second exception. Primary dependence is construed as first in rank or importance whereas heavily dependent requires that the dependency be in large amount or in great quantity. Absent a showing by documented evidence that Atlantica's population is primarily dependent upon the coastal fisheries for its animal protein requirements, there is no basis for granting preferential rights beyond twelve miles.

D. NEPTUNIUS HAS HISTORIC FISHING RIGHTS WHICH MAY NOT BE EXTINGUISHED BY ATLANTICA.

Even if Atlantica could demonstrate primary nutritional or overwhelming economic dependence, the historic fishing rights of Neptunius could not be extinguished. Neptunius has continuously fished off the coast of Atlantica since the beginning of

the 20th century and has thus acquired historic fishing rights. It is a well established principle of international law that a nation may acquire rights based on continued and historic use. See M. SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW at 156, (1968). Seventeen major fishing nations have recognized by treaty that historic fishing rights must be respected. See 1964 European Fisheries Convention in force, March 9, 1964, 581 UNTS 57.

This very court in its decision in the Anglo-Norwegian Fisheries Case recognized the existence of historic fishing rights. In that case, England complained of the system used by Norway in delimiting its territorial sea. The Court noted that since 1869 the system had been in force and unopposed. The Court in its holding stated, "The general toleration of foreign states with regard to the Norwegian practice is an unchallenged fact. For a period of sixty years the United Kingdom in no way contested it." See ANGLO-NORWEGIAN FISHERIES CASE (1951) I.C.J. REPORTS 131 at 133.

For approximately seventy years, Neptunius has fished off the coast of Atlantica and, except for a period of six years, the effort of fishing has been sustained year after year. See Record p. 1. Not only has Neptunius' presence been open and unopposed but Atlantica has in the past recognized Neptunius' rights. Evidence of such recognition can be found in the bilateral fishing treaty between Atlantica and Neptunius entered into in 1969. Therefore, even if Atlantica could justify exerting preferential fishing rights, such rights cannot be exerted to the exclusion of Neptunius.

E. DUE TO PRIOR OVERFISHING BY ATLANTICA SHE CANNOT BE GRANTED PREFERENTIAL RIGHTS.

Before any state will be granted preferential rights it must show by scientific data that there is a need to limit the amount of resources taken from a specific area. In limiting the amount that may be exploited, the primary consideration is to promote the most efficient use of the fishery resources. According to the figures compiled by the Food and Agricultural Organization in 1964, the maximum sustainable yield off the coast of Atlantica was approximately 3,700 units of haddock and 7,500 units of salmon per year. See Record p. 1. Between the years 1960 and 1967 Atlantica overfished the haddock species. Moreover, in the seven years between 1962 and 1968, Atlantica's yearly salmon catch exceeded the maximum sustainable yield on five separate occasions. Such abuses on the part of Atlantica can only defeat the goal of fair and efficient distribution of community resources.

Not only has Atlantica overfished but she has, by her domestic legislation, sought to prevent the international community from adequately conducting scientific research. Without the benefit of scientific data, it is virtually impossible for the community of nations to evaluate the legitimacy of Atlantica's fishery claim.

International tribunals are courts of conscience and equity and as such must render decisions in conformity with equitable principles. The nation of Neptunius urges that the Court's

decision should be fashioned in such a manner so as to prevent Atlantica from overfishing and burdening scientific research.

III. ATLANTICA'S RESEARCH LEGISLATION PLACES ILLEGAL RESTRAINTS ON THE RIGHT TO CONDUCT SCIENTIFIC RESEARCH ON THE HIGH SEAS.

The Atlantica Fishery Research Act states that, "Within the area of the exclusive fisheries zone (which extends 200 miles from the coast or to the edge of the continental margin, whichever is greater), no foreign national or vessel may engage in monitoring, testing, sampling, or any other form of scientific research related to the fishery resources or to the non-living resources of the seabed or subsoil, without the express consent of Atlantica." See Record Annex C.

Atlantica's restraint on research related to the fishery resources is in direct contravention of international law. Such a claim finds absolutely no support in either international custom or convention. As already stated, Article 24 of the Territorial Sea and Contiguous Zone Convention forbids a coastal state from creating a contiguous zone beyond twelve miles. Article 24, Convention on the Territorial Sea and Contiguous Zone in force, September 10, 1964, 15 UST 1606, TIAS 5639, 516 UNTS 205. Whether Atlantica's claim is to a contiguous zone or to a territorial sea, it is in violation of Article 24 in that it extends far beyond the permitted 12 miles.

Furthermore, that area beyond 12 miles from the coast is, according to international law, high seas. As such, the area is not susceptible to the jurisdiction of any coastal state. Both Atlantica and Neptunius are signatories to the 1958 Convention on the

High Seas. Article 2 of that convention states, "The high seas being open to all nations, no state shall validly purport to subject any part of them to its sovereignty." Article 2, Convention on the High Seas in force September 30, 1962, 13 UST 2312, TIAS 5200, 450 UNTS 11.

One of the stated purposes of Atlantica's research legislation is to " . . . make the gathering of data with respect to fisheries (which possibly could be the basis for allocation of portions of the catch to foreign fleets) a proprietary interest of Atlantica." See Record p. 5. No state may claim a proprietary interest in an area which is "open to all nations". Atlantica's restriction on the right of foreign nations to conduct research related to fishery resources is, therefore, a violation of Article 2 of the High Seas Convention.

The right of a nation to exert controls over the seabed and subsoil adjacent to its coast is defined by the 1958 Convention on the Continental Shelf, to which Atlantica and Neptunius are both signatories. Article 1 provides that the term "continental shelf" refers to the seabed and subsoil of the submarine area adjacent to the coast to where the depth of the superjacent waters allow the exploitation of the natural resources of the area. Article 1, Convention on the Continental Shelf in force, June 10, 1964, 15 UST 471, TIAS 5578, 499 UNTS 311. There has been absolutely no showing that Atlantica is capable of exploiting the area within her 200 mile claim.

In the North Seas Continental Shelf Cases, the International Court of Justice stated, "It is evident that by no stretch of the imagination can a point on the continental shelf situated

say a hundred miles or less, from a given coast, be regarded as adjacent to it, or to any coast at all, in the normal sense of adjacency. See North Sea Continental Shelf Cases, (1969) I.C.J. 3 at 30. Thus, on its face, Atlantica's research legislation violates the terms of the Geneva Convention delimiting the continental shelf with respect to the requirement of "exploitability" as well as "adjacency".

Although a coastal state may exploit the continental shelf adjacent to its coast, such exploitation must not infringe upon the fundamental right to conduct scientific research in the area. The Convention further provides that the consent of the coastal state shall be obtained for any research concerning the continental shelf. Nevertheless, this consent shall not normally be withheld if requested by a qualified institution with a view to conducting purely scientific research. Article 5, Convention on the Continental Shelf in force, June 10, 1964, 15 UST 471, TIAS 5578, UNTS 311.

The Atlantica Fishery Research Act provides that, even if permission is granted, a fee of \$1,000 per day must be paid to Atlantica for the "privilege" of conducting scientific research. See Record Annex C. This provision goes far beyond the "participation" stipulation of the Continental Shelf Convention. It is so onerous that it appears to be aimed at excluding research rather than facilitating it. Atlantica, has structured her research legislation so as to be prohibitory in nature and as a result that legislation violates the precepts of international law.

CONCLUSION

Based on the foregoing, Neptunius requests a declaration by the International Court of Justice that Atlantica violated her treaty obligations with Neptunius, that Atlantica's fishing and scientific research legislation violates international law, and, therefore, that the seizure and fining of the Neptunian fishing vessel Poseidon, constituted violations of international law.

Finally, Neptunius requests such further findings as the Court may consider appropriate in light of all the evidence and arguments presented.

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