

**BEFORE THE  
INTERNATIONAL COURT OF  
JUSTICE  
March, 1973**

**ADJUDICATION  
BETWEEN**

**NEPTUNIUS, Applicant**

**and**

**ATLANTICA, Respondent**

---

**MEMORIAL FOR APPLICANT**

---

**Counsel for Neptunius  
Rhea G. Bucy  
Jesse W. Hill  
Edward H. Johnson  
Lawrence H. Lissitzyn  
Wayne H. Scott**

TABLE OF CONTENTS

Index of Authorities. . . . .21

Jurisdiction. . . . . 4

Statement of Facts. . . . . 4

Questions Presented. . . . . 4

Summary of Argument. . . . . 4

Argument:

I. ATLANTICA'S ENFORCEMENT OF ITS FISHERIES AND FISHERIES RESEARCH ACTS VIOLATES ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW. . . . . 6

A. Taken together, the Geneva Conventions on the Law of the Sea, international custom, the practice of maritime nations, general principles of law recognized by civilized nations, and the acknowledged interest of the world community in the conservation and rational exploitation of ocean resources establish a rule of international law prohibiting the enforcement of unilateral claims to exclusive national fisheries and scientific research jurisdiction over the high seas. . . . . . 6

B. International law recognizes no exception to the prohibition of exclusive high seas jurisdiction which would validate the enforcement of Atlantica's two Acts. . . . . . 11

C. Judicial endorsement of Atlantica's actions in this case would seriously jeopardize the development and maintenance of a rational legal order of the high seas. . . . . .12

II. ENFORCEMENT OF THE 1971 ACTS AGAINST THE POSEIDON VIOLATED ATLANTICA'S TREATY OBLIGATIONS TO NEPTUNIUS. . . . . 13

A. Atlantica has violated its treaty obligations to Neptunius under the Geneva Conventions and the 1970 haddock agreement. . . 13

B. Atlantica's failure to honor its treaty obligations to Neptunius cannot be justified by changed circumstances. . . . . . 13

C. Atlantica's treaty violations cannot be justified as necessary conservational measures. . . . . . 16

III. ENFORCEMENT OF THE 1971 ACTS AGAINST THE POSEIDON VIOLATED NEPTUNIUS'S CUSTOMARY PROPERTY RIGHT IN THE FISHERY RESOURCES OFF ATLANTICA'S COAST. . . . . 18

IV. THE SEIZURE OF THE POSEIDON, ITS CAPTAIN AND CREW CONSTITUTED A VIOLATION OF ATLANTICA'S LEGAL OBLIGATIONS. . . . .19

Conclusion. . . . .20

## 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 jurisdiction of the Court. Compromis, at 5.

## QUESTIONS PRESENTED

1. Whether Respondent may enforce its unilateral claim of exclusive high seas fisheries jurisdiction against Applicant.
2. Whether Respondent may enforce its unilateral claim of exclusive high seas scientific research jurisdiction against Applicant.
3. Whether Respondent's seizure of the Poseidon, its captain and crew constitutes a violation of its international legal obligations.

## STATEMENT OF FACTS

The facts as stipulated by the parties in the compromis are incorporated by reference in Applicant's memorial.

## SUMMARY OF ARGUMENT

A decision upholding Atlantica's actions in this case would seriously jeopardize the continuing efforts of the international community to establish and maintain a rational policy governing the use of the high seas. International law prohibits the enforcement by a coastal state of a unilateral claim to exclusive fishery and scientific research jurisdiction over the high seas. This rule is established by the cumulative effect of the Geneva Conventions on the Law of the Sea, international custom, the practice of maritime nations, and general principles of international law recognized by civilized nations. This rule best serves the nutritional, conservational, developmental, and scientific needs

of the world community. International law accordingly recognizes no exception to the prohibition of exclusive high seas resource jurisdiction which would be applicable in the instant case.

Atlantica's enforcement of the 1971 acts violates its treaty obligations to Neptunius under the Geneva Conventions and the 1970 haddock agreement. Atlantica's failure to honor these obligations cannot be justified by changed circumstances or conservational requirements.

A decision by this Court that the fishery resources of the high seas are subject to unilateral appropriation would not validate Atlantica's attempted exclusion of Neptunius' fishing vessels from the contested area. Neptunius has acquired customary property rights in the fish resources off Atlantica's coast which international law requires Atlantica to recognize.

The seizure of the Neptunian fishing vessel constituted a violation of Atlantica's legal obligations. The seizure constituted a threat or use of force, prohibited under the U.N. Charter, and violated Atlantica's obligation to seek a peaceful settlement of its dispute with Neptunius.

For these reasons, the seizure of the Poseidon, its captain and crew and the prosecution of its captain were violations of international law.

I. ATLANTICA'S ENFORCEMENT OF ITS FISHERIES AND FISHERIES RESEARCH ACTS VIOLATES ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW.

- A. Taken together, the Geneva Conventions on the Law of the Sea, international custom, the practice of maritime nations, general principles of law recognized by civilized nations, and the acknowledged interest of the world community in the conservation and rational exploitation of ocean resources establish a rule of international law prohibiting the enforcement of unilateral claims to exclusive national fisheries and scientific research jurisdiction over the high seas.

Recognized principles of international law forbid the enforcement by a coastal state of unilateral claims to exclusive fisheries and scientific research jurisdiction over the high seas. This conclusion is based upon the cumulative effect of five distinct but interrelated elements: the Geneva Conventions on the Law of the Sea; international custom; the practice of maritime nations; general principles of law recognized by civilized nations; and the acknowledged interest of the world community in the conservation and rational exploitation of the living resources of the high seas. Taken together, these elements establish the primary source of international law -- the consent of nations.

The consent of nations to the prohibition of enforcement of unilateral claims to exclusive national fisheries jurisdiction over the high seas is specifically shown by the four Geneva Conventions on the Law of the Sea.<sup>1</sup> Article 2(2) of the High Seas Convention expressly guarantees to all nations the freedom of fishing in the high seas, which are defined in Article 1 as all parts of the sea outside a state's territorial waters. Atlantica has claimed a territorial sea of three miles.<sup>2</sup> The framers of the Geneva Conventions, moreover, recognized the invalidity in international law of territorial sea claims in excess of twelve miles.<sup>3</sup> Article 24 of the Territorial Sea Convention reinforces the guarantee of freedom of fishing in the high seas by excluding fisheries jurisdiction from the limited class of permissible extraterritorial exercises of coastal state authority. The Continental Shelf Convention states in Article 3

that national rights in the continental shelf do not affect the legal status of superadjacent waters as high seas. Article 5(1) of this Convention, moreover, specifically acknowledges international freedom of fishing in these superadjacent waters. Additionally, in Article 1(1) the Fishing Convention states its basic premise that the nationals of all states have the right to fish in the high seas.

The Geneva Conventions also demonstrate international consent to the right of all nations to free access to the wealth of scientific information in the high seas. Freedom to engage in scientific research is one of the freedoms of the high seas guaranteed to all nations by Article 2 of the High Seas Convention.<sup>4</sup> Extraterritorial jurisdiction over scientific research is not permitted by Article 24 of the Territorial Sea Convention. Article 5(1) of the Continental Shelf Convention forbids interference with scientific research in superadjacent high seas. Article 6(2) of the Fishing Convention expressly acknowledges the equal right of all nations to conduct scientific research in the high seas.

Atlantica's clear violation of the provisions of the Geneva Conventions gives compelling support to the Neptunian claim in the instant proceedings. The Geneva Conventions, both individually and collectively, are the most recent and authoritative source of the law of the sea. Indeed, the Preamble to the High Seas Convention states explicitly that its provisions are declaratory of established principles of international law. Atlantica, moreover, is a party to three of the Conventions, to two of which Neptunius is also a party.<sup>5</sup> This Court is therefore required by Article 38 of its Charter<sup>6</sup> to apply the Geneva Conventions to the instant dispute both as international conventions expressly recognized by the parties and as an authoritative manifestation of international customary law.

International custom requires that the shared use by the world community of important natural resources outside existing national boundaries be given

legal protection. The U.N. Draft Convention on the Sea Bed, for example, characterizes the resources of the sea bed beyond existing limits of national jurisdiction as the common heritage of mankind.<sup>7</sup> The Convention, therefore, forbids appropriation of these resources by individual nations<sup>8</sup> and guarantees the freedom of scientific research from national regulation.<sup>9</sup> Four separate Resolutions further demonstrate the resolve of the General Assembly to immunize the physical and scientific resources of the sea bed from exclusive national control.<sup>10</sup> Similarly, the Outer Space Treaty declares that outer space, including the moon, is not subject to national claim,<sup>11</sup> and the Antarctica Treaty prohibits any new claims to sovereignty over that area.<sup>12</sup> Both of these Treaties, moreover, specifically require and protect international cooperation in scientific research.<sup>13</sup> These multinational agreements demonstrate a customary rule of international law characterizing important natural resources outside existing national boundaries as the common property of mankind over which no nation may enforce unilateral claims to exclusive jurisdiction.

The consistent practice of maritime nations indicates specific consent that the principle requiring strict limitations on exclusive national jurisdiction over important world resources applies to the high seas.<sup>14</sup> No coastal state has enacted legislation claiming exclusive jurisdiction over high seas scientific research.<sup>15</sup> No nation has asserted an exclusive fisheries zone as broad as that claimed in Atlantica's Fisheries Act.<sup>16</sup> Over 80 percent of all coastal states limit their exclusive fishery claims to twelve miles or less.<sup>17</sup> This consistent national practice was reflected in the near unanimity expressed at both the 1958 and 1960 Law of the Sea Conferences that a coastal state's fisheries jurisdiction should not extend beyond twelve miles.<sup>18</sup> International consent to limited fisheries jurisdiction is further demonstrated by multilateral treaties. The thirteen states parties to the European Fisheries Convention, for example, have agreed to exercise fisheries jurisdiction only within twelve miles of their

respective coastlines.<sup>19</sup> This consistent practice of the overwhelming majority of maritime nations establishes a legal norm condemning extensive claims of exclusive fisheries and scientific research jurisdiction. That a few nations have violated this legal norm does not affect the validity of the rule, nor do the violations of a few authorize progressively greater violations by others.<sup>20</sup>

Enforcement of Atlantica's Research Act independently violates established rules of customary international law. The Act broadly prohibits all forms of scientific research without prior authorization.<sup>21</sup> To determine that a vessel was engaged in none of the prohibited activities, Atlantican authorities would have to board and inspect all foreign ships passing through the contested zone. Such action by a coastal state constitutes a blatant violation of the firmly established right of innocent passage.<sup>22</sup>

Civilized nations recognize a general principle of law that unoccupied areas containing depletable resources of great value to the community must be immunized from private appropriation and preserved for the benefit of the whole community. This principle has been accepted by developed and developing nations alike. The United States, for example, has passed the Wilderness Act;<sup>23</sup> Kenya has established game preserves;<sup>24</sup> India has provided for tiger sanctuaries;<sup>25</sup> and the U.S.S.R. has created national parks.<sup>26</sup> The municipal laws of individual nations thus demonstrate a consensus that unoccupied areas containing resources of great value to the community are to be protected from exclusive unilateral control by individual members of the community.

The acknowledged nutritional, conservational, and developmental needs of the world community require the establishment of a rational program of maintenance and exploitation of the living resources of the high seas. Unilateral extensions of exclusive fisheries zones would place the achievement of this goal in serious jeopardy. The recognized needs of the world's population make effective exploitation of the fishery resources of the high seas essential.<sup>27</sup> Coastal nations,

however, have frequently proved unable,<sup>28</sup> and in some instances have been unwilling,<sup>29</sup> continually to extract the maximum sustainable yield from exclusive coastal fishing zones. The acknowledged need for effective fisheries conservation requires multinational cooperation in the development of coordinated programs of fisheries management.<sup>30</sup> Exclusive national fisheries zones bearing no relation to the migratory patterns of fish stocks<sup>31</sup> would pose formidable obstacles to the integration and implementation of effective multinational conservation programs.<sup>32</sup> Allocation of the living resources of the oceans on the basis of length of national coastlines or extent of continental margins serves no rational community purpose. Such an allocation would place over 40 percent of the world's oceans, and a far greater percentage of productive fishing areas, under exclusive national control.<sup>33</sup> This would pose a severe nutritional and developmental threat to the landlocked and shelflocked states who together comprise a third of the world's nations.<sup>34</sup> Recognition of extensive exclusive fishery zones would also defeat the needs of developing coastal nations. Underdeveloped coastal states would be encouraged to devote scarce economic resources to the establishment of high seas fishing industries; the dangers of heavy economic dependence on high seas fishing, however, make such industries unsuitable for the achievement of developmental goals.<sup>35</sup>

International cooperation in the scientific investigation of the marine environment is a prerequisite to the establishment of a rational program of conservation and exploitation of high seas fishery resources.<sup>36</sup> Unilateral claims to exclusive research jurisdiction modelled on Atlantica's Research Act would place an intolerable burden upon this research effort.<sup>37</sup> The duplication by other coastal states of Atlantica's failure to make any commitment to engage in marine research or to share the products of any research it may undertake would pose a serious additional threat to the acknowledged world need for scientific understanding of the marine environment.

It is arguable that each of the above indicia of international law independently condemns the enforcement of Atlantica's two Acts. Neptunius's position, however, does not depend upon the validity of any one or all of these individual arguments. In this instance, the whole is greater than the sum of its parts, for taken together, the Geneva Conventions, international custom, the practice of nations, general principles of law recognized by civilized nations, and the acknowledged interests of the world community establish the consent of nations to a rule of law that condemns enforcement of Atlantica's Fisheries and Fisheries Research Acts.

B. International law recognizes no exception to the prohibition of exclusive high seas jurisdiction which would validate the enforcement of Atlantica's two Acts.

Atlantica has the burden of establishing a specific permissive rule of international law justifying its conduct. Atlantica's enforcement of the two Acts was an extraterritorial exercise of national jurisdiction. Such actions were held presumptively invalid in The S.S. "Lotus":<sup>38</sup>

"[J]urisdiction . . . cannot be exercised by a state outside its territory except by virtue of a permissive rule derived from international custom or convention."

Quite apart from this presumption, Neptunius has established a prima facie case against the legality of Atlantica's actions. The legal burden is thus upon Atlantica either to disprove the existence of the rule of law invoked by Neptunius or to demonstrate a relevant exception to it.<sup>39</sup>

International law recognizes no exception to the prohibition of exclusive high seas resource jurisdiction which would permit Atlantica to enforce her two Acts. Maritime nations have tolerated unilateral extensions of coastal state authority over limited areas of the high seas for the purposes of pollution prevention, internal security protection, and fisheries conservation. Atlantica's two Acts do not, by their terms, fall within any of these putative exceptions to the general rule. None of these exceptions, moreover, provides a proper analogy

to Atlantica's statutes. The two Acts have no similarity to hovering acts, anti-smuggling statutes, and other measures designed to prevent eventual infringements of a state's laws within its own territory.<sup>40</sup> Tolerated pollution and conservation statutes are nondiscriminatory against foreign vessels, carefully tailored to meet specific environmental crises, and designed to promote maximum multinational cooperation in achieving environmental goals.<sup>41</sup> Such statutes bear no essential resemblance to Atlantica's two Acts, which are wholly discriminatory, unlimited in spatial or temporal application to any alleged conservational need, and utterly preclude the possibility of multinational cooperation. Suggestions that underdeveloped nations<sup>42</sup> or nations able to demonstrate a special biological unity between their land mass and the living resources in adjoining ocean waters<sup>43</sup> can exercise a greater degree of authority over the adjacent high seas have been repeatedly rejected by the international community.

C. Judicial endorsement of Atlantica's actions in this case would seriously jeopardize the development and maintenance of a rational legal order of the high seas.

A decision upholding Atlantica's seizure of the Poseidon, its captain and crew, would seriously jeopardize the continuing efforts of the international community to establish and maintain a rational policy governing the use of the high seas. Other nations would then be forced to choose between continuing to honor their international obligations and abrogating the Geneva Conventions by asserting their own exclusive claims. Given the economic importance of the oceans, a decision for Atlantica could be expected to provoke numerous denunciations of the Geneva Conventions. Such action would utterly destroy the existing legal framework for the cooperative exploitation, conservation, and exploration of the high seas for the benefit of the community of nations as a whole. If the provisions or underlying principles

of the Conventions are to be altered, this is the responsibility of the upcoming 1974 Law of the Sea Conference.<sup>44</sup> There the international community will have the opportunity either to reaffirm its consent to the principles of the Geneva Conventions or to change those legal principles. Until such a change is made, Atlantica's conduct must be held to violate established rules of international law.

II. ENFORCEMENT OF THE 1971 ACTS AGAINST THE POSEIDON VIOLATED ATLANTICA'S TREATY OBLIGATIONS TO NEPTUNIUS.

A. Atlantica has violated its treaty obligations to Neptunius under the Geneva Conventions and the 1970 haddock agreement.

It is a fundamental and universally recognized principle of international law that treaties must be observed.<sup>45</sup> The 1971 Acts conflict with Atlantica's obligations under the Geneva Conventions to recognize the right of Neptunian nationals to engage in fishing and scientific research in the high seas off Atlantica's coast.<sup>46</sup> The 1971 Acts similarly constitute a prima facie denial of Neptunius's superior legal right under the 1970 haddock agreement to fish in the contested area during the 1971 season.<sup>47</sup> Atlantica has made no attempt to withdraw from the Geneva Conventions or the 1970 agreement. Enforcement of the two Acts against the Poseidon must, therefore, be condemned by this Court as a clear violation of Atlantica's treaty obligations to Neptunius.

B. Atlantica's failure to honor its treaty obligations to Neptunius cannot be justified by changed circumstances.

The doctrine of rebus sic stantibus -- suggesting that a nation may be excused from its treaty obligations by a substantial change in circumstances -- is of dubious validity as a principle of international law.<sup>48</sup> The doctrine has never been applied by this Court.<sup>49</sup> Recognition of the principle has been, and should continue to be, withheld to prevent its use "merely to excuse the breach of a treaty obligation that a state finds it inconvenient to fulfill."<sup>50</sup>

Rebus sic stantibus is inapplicable to the facts of the instant dispute.

The most progressive formulation of this rule by the international legal community is Article 62 of the Vienna Convention on the Law of Treaties.<sup>51</sup> This Convention requires a party invoking the principle to demonstrate: (a) a fundamental change of circumstances; b) that a continuation of the existing circumstances constituted an essential basis of consent of the parties; c) that the change was not foreseen; and, d) that the effect of the change is radically to transform the extent of the obligations still to be performed under the treaty. Atlantica has failed to demonstrate any essential element of this exception to the cardinal requirement of the treaty observance.

a) Atlantica has offered insufficient evidence of a fundamental change of circumstances. The only change of circumstances alleged by Atlantica is a severe depletion of the fishery resources in the high seas off its coast.<sup>52</sup> Atlantica has conceded, however, that its fisheries research facilities and personnel are "lacking in sophistication"<sup>53</sup> and that the conclusion of severe stock depletion was based on "indications" of incomplete data.<sup>54</sup> There is no evidence that Atlantica has published these data. The findings of Atlantica's fishery research scientists have deviated significantly in the past from conclusions reached by sophisticated multinational research organizations.<sup>55</sup> The Fisheries Research Act effectively excludes from the contested area more qualified and perhaps less biased marine research by which Atlantica's claims might be either confirmed or contradicted. Atlantica's conclusory claim of severe stock depletion thus rests upon an insufficient evidentiary foundation to be accepted by this Court.

b) There is no indication in the compromis that the continued existence of any particular or minimum level of fish population in the contested area was an essential basis for the consent of the parties to the Geneva Convention or the haddock agreement. The purpose of the Geneva Conventions to which Atlantica and Neptunius are parties was to codify the international law of the sea.<sup>56</sup> Recognition

of the international rights embodied in the Convention is not conditioned upon the existence of any particular high seas fishery resources. There is no evidence of any formal or informal reservation by the parties to their consent to the Conventions. Similarly, the haddock agreement was neither expressly nor implicitly conditioned upon any given level of haddock population. The objectives of the agreement were clearly to restrict the Neptunian share of the haddock catch in exchange for a guarantee of Neptunius's right to extract up to the maximum permissible amount of haddock. That the total maximum annual catch permitted by the 1970 agreement exceeded the total catch of the last preceding season clearly negates any suggestion that the agreement was essentially aimed at preventing a continuation of the alleged over-fishing of the previous season. Atlantica has thus failed to prove any change in the circumstances essential to the consent of the parties to existing treaty obligations.

c) Atlantica is chargeable with foresight of the alleged decrease in fishery resources. Atlantica has been aware of an alleged need to conserve its offshore fishery resources since 1964.<sup>57</sup> The compromis, however, indicates no attempt by Atlantica to restrict exploitation of these resources for the following six years, during which period the alleged crisis situation was permitted to develop unimpeded. Similar foresight of the alleged emergency depletion of the haddock stock during the 1970 season must be charged to Atlantica by virtue of its consent to an increase in haddock catch in the 1970 agreement.

d) Atlantica's treaty obligations have not been radically transformed by the alleged depletion of fishery resources. Atlantica's obligations under the Geneva Conventions are to avoid interference with the rights of other parties to engage in fishing and scientific research. These obligations are unaffected by the presence or absence of fishery resources in the high seas off its coast. Atlantica's remaining obligations under the 1970 agreement are to permit the location and extraction by Neptunius of up to 750 units of haddock during the 1971

season and to prevent its domestic fishing industry from extracting more than 4,000 units of haddock during this period. Observance of the alleged 3,500 unit maximum sustainable yield for haddock during the 1971 season is in no way inconsistent with these obligations; Atlantica has merely to limit its domestic haddock catch during 1971 to 2,750 units -- a decrease of only 250 units from 1969,<sup>58</sup> which is the last year for which Atlantica has provided its actual catch figures.

C. Atlantica's treaty violations cannot be justified as necessary conservation measures.

Neither the Geneva Conventions nor the 1970 agreement permit a party to escape its obligations because of conservational necessity. Even if such an exception were to be implied, it would be inapplicable to the present dispute. Atlantica has failed to show that the establishment of its extraordinary exclusive fishing zone will have any net conservatory effect.

Atlantica has submitted mere conclusory assertions that the alleged decrease in fish stocks was the result of overfishing or other human acts. The science of marine biology, which is yet at a very early stage of development, has demonstrated a multitude of variables that may cause fish population levels in given areas of the high seas to rise or fall dramatically.<sup>59</sup> The level of fishing activity is but one of these variables, and is perhaps of less significance than natural factors.<sup>60</sup> "It is feasible that overexploitation of a particular stock, in combination with some other factors, may accelerate a redistribution of the stock to another area, but even this modest hypothesis is likely to remain unproved for a long time yet."<sup>61</sup> Atlantica has offered no direct evidence establishing a causative relationship between exploitation of the haddock and salmon stocks and their allegedly decreased presence off its coast. The conclusory assertion that the alleged decrease is subject to remediation by controls over human actions must, therefore, be deemed to be unsupported in this case.

Atlantica has not shown that exclusion of foreign fishing from the contested

area will remedy the alleged adverse effects of overfishing. Atlantica is clearly unable to offer significant protection to the haddock, whose existing migratory pattern carries them into readily accessible waters off the coasts of other nations for much of the year. Indeed, it is quite possible that any overfishing of haddock that may have occurred in prior seasons took place off these other coasts. The protection of salmon from exploitation in coastal waters is of slight significance. Their conspicuous mass movements during their spawning cycle render salmon uniquely susceptible to exploitation far from shore by sophisticated long-range fishing fleets.<sup>62</sup> Atlantica, moreover, has offered no evidence concerning the effect of exclusion of foreign fishing on other fish stocks off its coast. Atlantica has thus failed to provide an evidentiary foundation for a conclusion that exclusion of foreign fishing will have any net beneficial conservatory effect on the high seas fishery resources off its coast.

The compromis contains no evidence of a commitment by Atlantica to a program of rational fishery conservation within the exclusive zone. The Fisheries Act imposes no direct or implied restrictions on the activities of Atlantica's domestic fishing fleet. Atlantic has submitted no evidence that it has since instituted any conservational regulations within the exclusive zone. The history of Atlantica's fishing activities, moreover, provides no basis from which to infer that Atlantica can or will institute effective conservational controls over its own domestic fisherman. In 1964, Atlantica was advised of a need to conserve the haddock stocks. Nevertheless, for the next three years Atlantikan fishermen were allowed to extract haddock in amounts greatly in excess of the upper limit of maximum sustainable yield estimates of Atlantica's fishery research scientists.<sup>63</sup> Similarly, despite the alleged aggravation of the haddock shortage by overfishing in 1969 and prior years, Atlantica offered apparent encouragement to its domestic fishing fleet by the terms of the 1970 haddock agreement to increase the total haddock catch off its coast for the next two years. Thus justifications of At-

lantica's treaty violations as necessary conservation measures must be wholly re-  
jected by this Court.

### III. ENFORCEMENT OF THE 1971 ACTS AGAINST THE POSEIDON VIOLATED NEPTUNIUS'S CUSTOMARY PROPERTY RIGHT IN THE FISHERY RESOURCES OFF ATLANTICA'S COAST.

A decision by this Court that the fishery resources of the high seas are subject to unilateral claim would not validate Atlantica's attempted exclusion of Neptunian fishing vessels from the contested area. Neptunius has acquired a nonexclusive prescriptive right to share in the exploitation of the fish in these waters. International law recognizes the validity of prescriptive rights in high seas fisheries.<sup>64</sup> Such rights have frequently been acknowledged by coastal maritime nations.<sup>65</sup> The elements necessary to establish this right are: the acquiring state must not have acknowledged sovereignty or inconsistent title in another; the exercise of the right must have been peaceful and uninterrupted; the exercise of the right must have been public; the exercise of the right must be of long duration.<sup>66</sup> Neptunius has satisfied these requirements. Neptunius has never acknowledged the right of another state to exclude Neptunian fishermen from the exploitation of these resources. Neptunian exploitation has always been peaceful. There has been no substantial interruption of Neptunian fishing operations in the contested area. Neptunian fishing activities have been carried out publicly. Neptunian exploitation of these resources for a period in excess of fifty years exceeds the necessary durational requirements. Thus, Atlantica may not enforce her 1971 Acts against Neptunius in derogation of Neptunius's prior and superior nonexclusive prescriptive right in these fish stocks.

Atlantica is estopped to deny the Neptunian property right. The essentials of an estoppel in international law are a clear and unambiguous representation, voluntarily made, upon which the other party has relied to its detriment.<sup>68</sup> These elements are clearly satisfied by the negotiation of the 1970 haddock agreement. Atlantica represented that it recognized Neptunius's right to share in the exploi-

tation of the contested resources. Atlantica's entry into negotiations was entirely voluntary; it was, in fact, the moving party. Neptunius's agreement to halve its haddock catch for the two following seasons in reliance upon Atlantica's representations was a clear detriment to Neptunius. Atlantica is thus precluded from denying Neptunius's customary property right to share in the exploitation of the contested fish stocks.

#### IV. THE SEIZURE OF THE POSEIDON, ITS CAPTAIN AND CREW CONSTITUTED A VIOLATION OF ATLANTICA'S LEGAL OBLIGATIONS.

Atlantica's seizure of the Poseidon constitutes an illegal use of force in violation of Article 2(4) of the Charter of the United Nations.<sup>69</sup> A vessel on the high seas is an extension of the nation under whose flag it sails and is assimilated to the territory of the flag state.<sup>70</sup> Thus the threat or use of force inherent in the seizure of the Poseidon by the Atlantikan Coast Guard was a "threat or use of force against the territorial integrity" of Neptunius in direct violation of Article 2(4). Atlantica's seizure of the Poseidon was not authorized by the U.N., nor was it a legitimate act of self defense under Article 51.<sup>71</sup> As was stated in the Caroline case, force may be used only if there exists "an instant overwhelming (necessity) leaving no choice of means and no moment for deliberation."<sup>72</sup> The presence of the Poseidon 50 miles off the coast of Atlantica did not constitute a threat of this nature or magnitude.

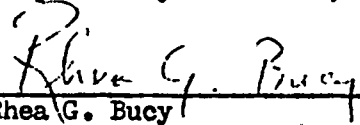
Atlantica's seizure of the Poseidon violated its obligation as a member of the United Nations to seek a peaceful settlement of its dispute with Neptunius. Article 2(3) of the U.N. Charter provides: "All members shall settle their international disputes by peaceful means...."<sup>73</sup> Article 33 calls upon all nations to settle their disputes by negotiation.<sup>74</sup> The Optional Protocol<sup>75</sup> and the Fishing Convention<sup>76</sup> provide international machinery through which disputes arising under the Geneva Conventions can be adjudicated. Atlantica's failure to attempt peacefully to resolve its disputed claim by resort to established machinery for this specific purpose is a clear violation of its obligations under Article 2(3).

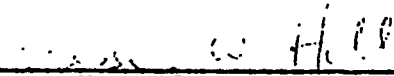
The seizure of the Poseidon violated Atlantica's obligation under the Geneva Convention on the High Seas to respect the exclusive jurisdiction of Neptunius over the Poseidon. Article 6(1) of the High Seas Convention grants the flag State exclusive jurisdiction over a ship on the high seas except for exceptional situations "expressly provided for in international treaties or in these articles." No provision of the High Seas Convention supports Atlantica's seizure of the Poseidon. No international treaty to which Atlantica and Neptunius are parties provides for seizure of a fishing vessel on the high seas by a coastal state. The requirements of Article 23(1) for the exercise of the right of hot pursuit were clearly not met in the instant case. Thus, Atlantica is expressly required by Article 23(7) to respond in damages for its unlawful act.

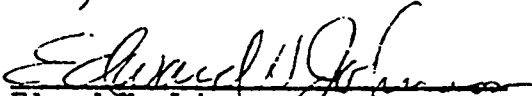
CONCLUSION

Neptunius respectfully requests this Court to declare that Atlantica's prosecution of the captain of the Poseidon constituted a breach of international law and to order Atlantica to respond in damages for its actions.


Respectfully submitted,

  
\_\_\_\_\_  
Rhea G. Bucy

  
\_\_\_\_\_  
Jesse W. Hill

  
\_\_\_\_\_  
Edward H. Johnson

  
\_\_\_\_\_  
Lawrence H. Lissitzyn

  
\_\_\_\_\_  
Wayne H. Scott

INDEX OF AUTHORITIES

|  | <u>footnote</u>  |
|--|--|
| <u>TREATIES AND OTHER INTERNATIONAL AGREEMENTS</u> . . . . . | 1,6,11,12,19,51,<br>69,75                              |
| <u>CASES</u> . . . . .                                       | 38,39,67,72  |
| <u>U.N. MATERIALS</u> . . . . .                              | 3,4,7,9,10,27,28,<br>29,30,35,36,42,<br>43,44,60,62,65 |
| <u>TREATISES</u> . . . . .                                   | 14,20,30,31,32<br>34,35,37,43,50<br>59,61              |
| <u>JOURNALS</u> . . . . .                                    | 18,24,25,26,28<br>40,41,45,48,49<br>59,64,66,68        |
| <u>STATUTES</u> . . . . .                                    | 23,41,53   |
| <u>MISCELLANEOUS</u> . . . . .                               | 15,16,33   |

FOOTNOTES

1. Convention on Fishing and Conservation of the Living Resources of the High Seas, done April 29, 1958, T.I.A.S. No. 5969, 559 U.N.T.S. 285 (in force, Mar. 20, 1966) (hereinafter Fishing Convention); Convention on the Territorial Sea and the Contiguous Zone, done April 29, 1958, T.I.A.S.No. 5639, 516 U.N.T.S. 205 (in force, Sept. 10, 1964) (hereinafter Territorial Sea Convention); Convention on the Continental Shelf, done April 29, 1958, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (in force, June 10, 1964) (hereinafter Continental Shelf Convention); Convention on the High Seas, done April 29, 1958, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (in force, Sept. 30, 1962) (hereinafter High Seas Convention).
2. Compromis, Annex D.
3. Int'l L. Comm'n, Report, (1956) 2 Y.B. INT'L L. COMM'N 255-56, U.N. Doc. A/3159 (1956).
4. See Int'l L. Comm'n, Summary Records of the Seventh Session, (1955) 1 Y.B. INT'L L. COMM'N 222, ¶¶ 30,36, U.N. Doc. A/CN.4/SER.A (1955).
5. Compromis, Annex D.
6. I.C.J. Stat. art. 38(1)(a),(b).
7. U.N. Draft Convention on the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction art, 1, U.N. Doc. A/AC.138/L.18/Add.3.
8. Id. art. 4.
9. 26 U.N. GAOR, Supp. 21, Annex I.11, U.N. Doc. A/8421 (1971).

10. G.A. Res. 2574 (XXIV) (1969); G.A. Res. 2749 (XXV) (1970); G.A. Res. 2750 (XXV) (1970); G.A. Res. 2881 (XXVI) (1971).
11. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (Outer Space Treaty) art. II (1967) 18 U.S.T. 2410, T.I.A.S. No. 6347.
12. Antarctica Treaty art. IV(2), (1961) 12 U.S.T. 794, T.I.A.S. No. 4780.
13. Outer Space Treaty, supra note 11, art. I; Antarctica Treaty, supra note 12, art. III.
14. C. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA §73 (6th ed. 1967).
15. Telephone conversation with Fennan D. Jennings, Head of the Office for the International Decade of Ocean Exploration, National Science Foundation, Washington, D.C., Jan. 6, 1973.
16. U.S. DEP'T OF STATE, NATIONAL CLAIMS TO MARITIME JURISDICTION (Int'l Boundary Study, Ser. A, Limits in the Seas No. 36, 1972).
17. Id.
18. See Loring, The United States-Peruvian "Fisheries" Dispute, 23 STAN. L. REV. 391, 412 (1971).
19. European Fisheries Convention, opened for signature Mar. 9, 1964, (1966) G. Brit. T.S. No. 35, Cmnd. 3011 (in force, Mar. 15, 1966).
20. J. BRIERLY, THE OUTLOOK FOR INTERNATIONAL LAW 4-5 (1944).
21. Atlantica Fisheries Research Act of 1971, §1, Compromis, Annex C.
22. C. COLOMBOS, supra note 14, at §333.
23. 16 U.S.C. §§1131-36 (1970).
24. The Economic Development of Kenya, REP'T OF THE IRBD, JOHNS HOPKINS UNIV. (1963).
25. Environment Newsletter, WORLD, Jan. 30, 1973, at 71.
26. The U.S.S.R.'s National Parks, AMERICAN FORESTS, Jan. 1967, at 31, 49.
27. FAO, FISHERIES IN THE FOOD ECONOMY 60 (Freedom from Hunger Campaign, Basic Study No. 19, 1968); FAO, MILLIONS STILL GO HUNGRY 65-70 (12 Rep't Director General), U.N. Doc. A/Conf.13/3 (1957).
28. McDougal & Burke, The Community Interest in a Narrow Territorial Sea, 45 CORNELL L.Q. 171, 214 (1960); cf. FAO, THE ECONOMIC IMPORTANCE OF FISHERIES IN DIFFERENT COUNTRIES, U.N. Doc. A/CONF.13/16 (1957).
29. See, e.g., TECHNICAL APPRAISAL OF LIBYA, U.N. Doc. No. ST/TAA/K/Libya/1 (1952).
30. G.A. Res. 2413 (XXIII) (1968); Kasahara, International Aspects of Exploitation of the Living Resources of the High Seas, PACEM IN MARIBUS 120 (Borgese ed. 1972).
31. BOTTEMANNE, PRINCIPLES OF FISHERY DEVELOPMENT 23-25 (1959); NETHERLANDS ECONOMIC INSTITUTE, THE DEVELOPMENT OF OFFSHORE FISHERIES AND THE ECONOMICS OF CHOICE 25 (1958).
32. McDOUGAL & BURKE, THE PUBLIC ORDER OF THE OCEANS 642 (1962); Burke, Consequences for Territorial Sea Claims of Failure To Agree at the Next Law of the Sea Conference, THE LAW OF THE SEA: A NEW GENEVA CONFERENCE 52 (L. Alexander ed. 1972).

33. U.S. DEP'T OF STATE, THEORETICAL AREAL ALLOCATIONS OF SEABED TO COASTAL STATES (Int'l Boundary Study, Ser. A, Limits in the Seas No. 46, 1972).
34. G.A. Res. 2750B (XXV) (1970); Brown, The 1973 Conference on the Law of the Sea: The Consequences of a Failure To Agree, THE LAW OF THE SEA: A NEW GENEVA CONFERENCE 12-13 (L. Alexander ed. 1972).
35. Oda, International Law of the Resources of the Sea, II RECUEIL DES COURS 426 (1969); FAO Statement on its possible contribution to preparation for the Conference on the Law of the Sea, at 2, U.N. Doc. A/AC.138/32, cited in Brown, supra note 34, at 30; Szczepanik, Problems of Fish Marketing in the Indo-Pacific Region, 9 FAO FISHERIES BULL. 85 (1956).
36. G.A. Res. 2560 (XXIV) (1969); Int'l Technical Conference on the Conservation of the Living Resources of the Seas, Report 3, U.N. Doc. No. A/Conf.10/6 (1955).
37. Sullivan, Freedom of Scientific Inquiry, LAW OF THE SEA: NATIONAL POLICY RECOMMENDATIONS 364 (L. Alexander ed. 1969); Schaefer, The Changing Law of the Sea - Effects on Scientific Investigation, LAW OF THE SEA: THE FUTURE OF THE SEA'S RESOURCES 113 (L. Alexander ed. 1967).
38. (1927) P.C.I.J.. Ser. A, No. 10.
39. Fisheries Case, (1951) I.C.J. 116, 152.
40. Jessup, The Pacific Coast Fisheries, 33 AM. J. INT'L L. 129, 136 (1939).
41. See, e.g., Truman Proclamation, Exec. Order No. 9634, 10 Fed. Reg. 12305 (1945). See generally Jacobson, Bridging the Gap to International Fisheries Agreement: A Guide For Unilateral Action, 9 SAN DIEGO L. REV. 454,457 (1972); Fishing Convention arts. 6(1), 7(1),(2)(c).
42. GENEVA CONFERENCE REPORTS 5, 158, U.N. Doc. A/Conf.13/C.3/L79/Rev.1 (1958); GENEVA CONFERENCE, RECORDS OF THE 13TH PLENARY MEETING ¶12 (1960).
43. ROME TECHNICAL REPORT 2 (1955); See also H. PH. VISSER'T HOOFT, LES NATIONS UNIES ET LA CONSERVATION DES RESSOURCES DE LA MER 58-63 (1952).
44. See G.A. Res. 2750 (XXV) (1970).
45. Harvard Research in Int'l Law, Treaties, 29 AM. J. INT'L L. 778, 780 (Spec. Supp. 1935).
46. See text accompanying notes 1-4 supra.
47. Compromis, at 3.
48. Briggs, The Attorney General Invokes Rebus Sic Stantibus, 36 AM. J. INT'L L. 89, 90 (1936).
49. Lissitzyn, Treaties and Changed Circumstances (Rebus Sic Stantibus), 61 AM. J. INT'L L. 895 (1967).
50. J. BRIERLY, THE LAW OF NATIONS 244 (4th ed. 1949).
51. Vienna Convention on the Law of Treaties art. 62, in 63 AM. J. INT'L L. 875 (1969).
52. Compromis at 3-4
53. Compromis, at 1.
54. Compromis, at 3.

55. Compromis, at 2.
56. High Seas Convention Preamble.
57. Compromis, at 1.
58. Compromis, at 2.
59. Sinclair, Canada and the Abstention Principle, BIOLOGICAL AND ECONOMIC ASPECTS OF FISHERIES MANAGEMENT 122 (J. Crutchfield ed. 1960); Johnson, The Japan-United States Salmon Conflict, 43 WASH. L. REV. 1 (1967).
60. Schaefer, The Scientific Basis for a Conservation Programme, 1955 ROME PAPERS 23.
61. JOHNSTON, INTERNATIONAL LAW OF FISHERIES 14 (1965).
62. Royal, The International Fraser River Sockeye Salmon Fishery, PAPERS PRESENTED AT THE INTERNATIONAL TECHNICAL CONFERENCE ON THE CONSERVATION OF THE LIVING RESOURCES OF THE SEA 243,247 (1956).
63. Compromis, at 1-2.
64. Johnson, Acquisitive Prescription in International Law, 27 BR. YB. INT'L L. 332, 343 (1957).
65. See, e.g., 16 U.S.C. § 1091 (1970). See also United States-Canada Resolution, Second U.N. Conference on the Law of the Sea, U.N. Doc. No. A/Conf.19/L.12, Annex (1960).
66. Chamizal Arbitration, 5 AM. J. INT'L L. 782-833 (1911).
67. Direct U.S. Cable Co. Ltd. v. Anglo-American Telephone Co. Ltd., (1877) L.R. 2 App. Cas. 394.
68. Bowett, Estoppel Before International Tribunals and its Relation to Acquiescence, 33 BR. YB. INT'L L. 176 (1950).
69. U.N. CHARTER art. 2(4).
70. The S.S. "Lotus", (1927) P.C.I.J., Ser. A, No. 10.
71. U.N. CHARTER art. 51.
72. The Caroline, 2 MOORE, DIGEST OF INTERNATIONAL LAW 409-414 (1906).
73. U.N. CHARTER art. 2(3).
74. U.N. CHARTER art. 33.
75. Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, 450 U.N.T.S. 82 (1963).
76. Fishing Convention arts. 9-12.