IN THE

INTERNATIONAL COURT OF JUSTICE

MARCH-APRIL, 1974

INDUSTRIA ..... APPLICANT

v.

LATIA ..... RESPONDENT

MEMORIAL FOR RESPONDENT

TEAM NUMBER 18.

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SUMMARY OF ARGUMENT

Industria complains that Latia committed a breach of International law by interferring with the Mining operations which were being carried out by Tract HI./ The Ocean Mining Company - a Company of Industria's nationality. She also complains against the seizure of Carrier and the damage to Gatherer and its subsequent adjudication in prize.

But to all these charges, Latia in defence maintains that her claims and actions are legitimately directed towards the protection of her sovereignty over Tract HI. It is in pursuance of this right that she called upon the Ocean Mining Company of Industria to suspend operations in Tract HI. Latia had no alternative but to seize Carrier and damage Gatherer which she also adjudicated in prize because of Industria's intransigence and failure to comply with Latia's legitimate orders. Latia justifies her claim to Tract HI on the 1958 Geneva Convention on the Continental Shelf. She also maintains that other states have acquiesced to her claims over Tract HI and as such Industria cannot now be heard to contest the claim.

On these grounds therefore, Latia maintains that the Deep Ocean Mining Act (DOMA) which gave the Ocean Mining Company right to conduct mining operations in Tract HI is a violation of international law. This is so because the DOMA cannot confer such a right on the Company as the area in dispute is in Latia's territorial sea.

As a result, Latia contends that the various measures taken by her with regard to Ocean Mining Company's operations are justified in international law.

ARGUMENT

1. LATIA CONTENDS THAT HER CLAIM OF SOVEREIGNTY OVER TRACT HI IS WELL FOUNDED IN INTERNATIONAL LAW

The inability of states to agree on the limits of the territorial sea in the 1958 and 1960 Geneva Conferences on the breadth of the territorial sea sounded the death knell of the three mile limit formerly accepted by states. Since there is no positive rule of international law which prescribes the extent of the territorial sea of States, the unilateral transformation by Latia of her claimed 200 mile fisheries zone into her territorial sea in 1966 and her later claim of a 300 mile "economic resource zone" cannot be faulted.

This approach is supported by the dicta of the Permanent Court of International Justice in the case of the S.S. Lotus[1] to the effect that international law is facultative in nature. In the words of the P.C.I.J.:

> "The rules of law binding upon States ... emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."2

This is interpreted to mean that sovereign states may act freely unless they are clearly bound by limiting rules of international law since "the principle of sovereignty is buttressed by strong presumptions in its favour."[3] The onus is therefore on Industria to prove the existence of a principle of international law restricting the discretion of States to extend their maritime zones.

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1. P.C.I.J. Ser. A. No. 10.
2. Ibid. p. 18; See also Green: International Law through the cases 1959, pp. 161-171, at p. 162.
3. Schwarzenberger: International Law 3rd (ed.) Vol. 1 p. 199;

.../2.

Each nation therefore is now free to fix her own territorial sea in accordance with relevant local considerations. Where the breadth of the territorial sea is justified by the real needs of that state, the extension would be recognised as in accordance with international practice. It is also our contention that as there is no existing rule of international law regarding the width of fishery or economic resource zones limits, Latia's unilateral extention of her fishery zone to 200 miles and her economic resource zone to 300 miles can not be held to be illegal.

Latia is a poor under-developed country with peculiar "geographic and marine situation". It is therefore vital that she conserves her resources and, if necessary, extend the area of her sovereignty in doing so, so long as she does not violate international law. On grounds of policy therefore, Latia is justified to extend her territorial sea. Other states can restrict their claims because local considerations do not require a greater distance. This view was given judicial recognition in the Anglo-Norweigian Fisheries Case[4] where the I.C.J. said: "In these barren regions, the inhabitants of the coastal zone derive their livelihood essentially from fishing. Such are the realities which must be borne in mind in appraising the validity of the United Kingdom's contention that the limits of the Norwegian fisheries zone laid down in the 1935 Decree are contrary to International Law."[5]

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4. I.C.J. Reports (1951) page 116.
5. Ibid at page 128.

Drawing support from this we conclude that it is the peculiar economic position of Latia which was the prima consideration in the delimitation of her fisheries and economic resource zone.

Latia is not alone in extending her maritime zones. An analysis of jurisdictional limits currently claimed unilaterally by coastal states yields the following results:[6]

JURISDICTIONAL LIMITS	NUMBER OF STATES CLAIMING
3 MILES	13
4 - 10 "	8
12 "	69
18 - 30 "	3
100 -130 "	5
200 "	12

From the above table, it can be seen that as many as 89 states claim jurisdictional limits ranging from 12 to 200 miles while only 13 or so states still stick to the traditional 3 mile limits. One can conclude from the figures therefore, that states no longer recognise the 3 mile limit as "evidence of a general practice accepted as law."[7]

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6. (1973) 22 I.C.L.Q. at page 95; See also (1971) x Int. leg. materials 1255, et. seq.
7. Article 38 (1) (b) Statute of the International Court of Justice.

2. THE 1958 GENEVA CONVENTION ON THE CONTINENTAL SHELF (TO WHICH LATIA AND INDUSTRIA ARE PARTIES) JUSTIFIES LATIA'S CLAIM TO TRACT HI.:

As a party to the 1958 Geneva Convention on the Continental Shelf, Latia, in addition to basing her claim over Tract HI on territorial sea sovereignty over the area, grounds her claim over the tract on Article 1 (a) of the said convention which created rubber boundaries by fixing the outer limits of the continental shelf *inter alia* on the principle of exploitability. It is therefore a matter of no moment that "the bottom topography off Latia's shores is essentially a sharp drop near the coast to a depth of 600 meters."

Currently, Japan is claiming the Senkaku Islands with off-shore submarine oil deposits as part of the Ryukyu chain. This small group of islands stands on the Chinese continental shelf in the sense that current charts and surveys show no channels or trenches of more than 200 metres in depth separating them from the Shelf area which is uniformly less than 200 metres in depth. On the other hand, they are far closer to the Japanese administered Ryukyu Islands (as Tract HI is to Latia) but are separated from this substantial island chain by a trench of considerably greater depth than 200 metres[1] (as Latia is separated from Tract HI by *a* sharp drop 600 metres deep).

Latia, therefore, has a valid claim to Tract HI notwithstanding the geological gap separating them *and* thus breaking "the natural prolongation of its land territory into and under the sea" as contemplated by the ICJ in the North Sea Continental Shelf Case.[2] More importantly,

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1. See Vol. 66 AJIL (October 1972) pp. 829-835, at p. 834.
2. North Sea Continental Shelf Case (1969) ICJ Rep. 1, at p. 22.

the "exploitability principle" of the Geneva Continental Shelf Convention to which Latia and Industria are parties affirms Latia's claim to Tract HI. What matters is the possibility of exploitation, not proof of actual exploitation.

The "exploitability principle" cannot, however, be extended so as to justify the mining operations of Ocean Mining Company of Industria in Tract HI since the area over which the claim is made must have some relationship with the adjacent land territory.[3]

Even on extra legal considerations Latia is better qualified to make the claim over the area than a company incorporated in a state that might as well be half the world away from the disputed tract.

Article 2 paragraph 2 of the Continental Shelf Convention provides:

> "The rights conferred in paragraph 1 are exclusive in the sense that if the coastal state does not explore the continental shelf, or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal state."

It follows that any operation in the area of Tract HI without the express consent of Latia is unlawful and stands to be viewed seriously by Latia's appropriate law enforcement agencies.

The undeniable title of Latia to the area of Tract HI is more clearly seen if the above cited provision is read along with Article 2 paragraph 3 of the Continental Shelf Convention which provides:

> "The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or in any express proclamation."

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3. Ibid., at pp. 46-54.

It follows from this that it does not matter that Latia had not operated beyond 12 miles of her coast, or that she had not expressly declared her interest in the minerals in the area of Tract HI. By the extension of her waters to include this area, Latia has thereby acquired title to the natural resources in it.

Article 2 paragraph 4 of the said Convention defines natural resources as consisting -

> "... of the minerals and other non-living resources of the seabed and the subsoil together with the living organism belonging to sedentary species, that is to say, organisms which, at harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."

It follows from the foregoing that without any declaration of interest in particular resources, Latia has right to all the natural resources in Tract HI.

3. LATIA ALSO GROUNDS HER CLAIM TO TRACT HI ON THE ACQUIESCENCE OF OTHER STATES:

For several decades Latia has claimed and maintained a 200 mile exclusive fisheries zone which she transformed into her territorial sea since 1966 without any protests from the international community.

Acquiescence by states is one of the ways customary international law develops.[1] It was through acquiescence that the Truman Proclamation of 1945[2] acquired the character of customary international law - to the extent that it was accorded a "Special Status" in the North Sea Continental Shelf Case.[3]

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1. The Scotia, (1871), 14 Wallace 170.
2. Presidential Proclamation - 2667 Sept. 28, 1945.
3. 1969 I.C.J. Reports 3 at 32.

Again, in international law the party which by its recognition, its representation, its declaration, its conduct or its silence has maintained an attitude manifestly contrary to the right it is claiming before an international tribunal is precluded or estopped from claiming that right. The reasoning used and the jurisprudence developed as regards the doctrines of acquiescence and estoppel are well laid out in the separate opinion of Vice-President Alfaro in the Temple of Preah Vihear Case between Cambodia and Thailand.[4]

If the international community had acquiesced in Latia's maritime claims, no DOMA state, indeed, no member state of the international community can now be heard to question Latia's sovereignty over the relevant sea area off her coast.

Latia and 64 other states on the other hand protested DOMA, and again, Latia protested the grant of a licence to Ocean Mining Company to mine Tract HI. Finally, Latia in self-defence forcefully opposed the acquisition of such title by Industria through "Ocean Mining Company."

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4. Temple of Preah Vihear Case (1962) I.C.J. Rep., at p. 40.

4. THE DEEP OCEAN MINING ACT (DOMA) AND OPERATION UNDER IT ARE VIOLATIONS OF INTERNATIONAL LAW:

The Deep Ocean Mining Act[1] is just the paralled enactments of Industria, Westia, Jania and Anglia and a few other states who have passed similar Acts. It follows that it has no international legal character on which a DOMA state could rely as against a non-DOMA state.

Industria in so far as it purports under the DOMA to issue Licence to cover concessions in the Territorial Seas of Latia is an impostor. The DOMA itself is a void document in the international legal sense, and any right pursued under it is therefore bound to be equally void. Any injury which Industria may claim to have suffered in the course of operations under the DOMA licence should not be recognised as warranting a grant of reparation by this honourable court because such injury had arisen from an illegal act.

Whether the area of Tract HI is in the highseas as Industria alleges or in the territorial sea or continental shelf of Latia as we contend, the DOMA will still be invalid. This is because operating under its licence is an encroachment on the freedom of the high seas[2] as well as a violation of Latia's Territorial Sea and Continental Shelf.

Taking the DOMA on its face value, and even assuming some legitimacy in its enactment, we submit that its aims and purposes are selfish, discriminatory and unscrupulously greedy. For example, S. 4 (c) allows a licence for an alarming period of 20 years.

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1. Annex A (attached to the problem)
2. Article 2 of the Convention on the High Seas (1958).

This period has been selected in complete disregard of the efforts of the Preparatory Committee working on comprehensive study of all aspects of the law of the Sea.

Again, S. 5 of the DOMA provides for a fee of $5,000 to be paid by prospective licencees. This is rather presumptuous in view of our previous submission that Industria has no proprietory right to the area of Tract HI. Section 6 of the DOMA also contemplates setting up a fund for the aid of only developing "reciprocating states." This restrictive condition discriminates against all non-DOMA states, including Latia upon whose territory Industria is encroaching.

5. THE VARIOUS MEASURES TAKEN BY LATIA WITH REGARD TO OCEAN MINING COMPANY'S OPERATIONS ARE JUSTIFIED IN INTERNATIONAL LAW:

(a) SELF DEFENCE necessitated the capture of the "Carrier" and justified the adjudication in prize of the Gatherer. The capture of 'Carrier' even after it was beyond Latia's claimed 200 mile territorial sea is in accord with international law since the interception was in "hot pursuit" of the Carrier.[1]

"Hot pursuit" justifies arrest of vessels beyond the limits of the territorial sea so long as the pursued vessel has not entered its own territorial sea.[2] Since the pursuit of 'Carrier' by Interceptor started when 'Carrier' was 75 miles from Tract HI enroute to Francia, and Tract HI is

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1. Art. 23 Gen. Convention (The High Seas) 1958.
2. 'I'm Alone' (1935) U.N. Reports of International Arbitral Awards III 1909; See also 4 Whiteman 677 on "Hot Pursuit."

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located 120 miles off the coast of Latia, it therefore follows that the pursuit started when 'Carrier' was at least five miles inside Latia's claimed 200 mile territorial sea. The arrest of the "Carrier" out-side the territorial sea of Latia an hour later was therefore in "hot pursuit."

The right of hot pursuit, which a littoral state may rely upon for the enforcement of its local laws against an offending ship was not properly crystallised until the Geneva Conventions of 1958. However, the right of hot pursuit had the over-whelming support of state practice, judicial decisions and doctrine as an established part of customary international law before it was later codified in 1958.

The ingredients of hot pursuit are now enshrined in Article 23 of the Convention on the High Seas. Pursuit may take place where the coastal state has good reasons to believe that the foreign vessel being pursued has infringed its laws and regulations while in its territorial sea. The vessel may be pursued and apprehended even on the High Seas provided such a pursuit commences immediately while the vessel is still within the territorial sea and the pursuit is continuous.[3] A visual and auditory signal to stop must be given from such a distance as to be seen or heard by the fugitive ship.[4]

In the I'm Alone,[5] the question was whether the Government of the United States consistent with the Convention of 1924 between it and Great Britain had a right of hot pursuit where the offending vessel was

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3. Article 23 (1) Convention on the High Seas (1958).
4. Article 23 (3) of the same Convention on High Seas.
5. (1933: 1935) 3 R.I.A.A. 1609. See also Green: International Law through the Cases (1959), pp. 380, 477.

.../11.

within an hours sailing distance from the coast of the United States at the commencement of the pursuit and certainly beyond that distance at the time of its termination. The right was acknowledged and the Commissioners went further to hold that the United States might consistently with the convention use force for the purpose of effecting the objects of boarding, searching and bringing into port the suspected vessel.

Also in Church v. Hubbert[6] Marshall C.J. held that the right of hot pursuit could be exercised to enforce the local laws of a nation.

Assuming that Carrier of Industria raises the defence of innocent passage, this plea would fail. The burden is on the Carrier to show that the passage, its purpose and course were not prejudicial to the interests, economic security or other wise of Latia.

We therefore contend that the passage of Carrier was not innocent, since she was engaged in transporting nodules mined from Tract HI which is within the 200 mile territorial sea of Latia.

Latia has a right to protect the resources within her territorial sea. Therefore, the confiscation of Carriers cargo by Latia was lawful, since the nodules are the property of Latia. We would draw the attention of the Court to the action of the Soviet Union in 1950 when two British trawlers were apprehended for fishing in Soviet territorial waters off the coast of Murmansk and their masters fined and the catch confiscated.

We therefore submit that the pursuit of Carrier by Interceptor and the confiscation of its cargo of nodules were not contrary to international law.

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6. (1804) 6 U.S. 249.

In the same wise, the capture and adjudication in prize of the rig, "Gatherer" and its cargo of manganese nodules were also logical steps taken in consequence of Industria's violation of Latia's territorial integrity. The question whether the capture is justifiable is one for the Court to decide "according to the circumstances of each particular case".[7] But as Colombos also notes, "the cases where a Prize Court has taken the view that no circumstances of suspicion could be invoked by the captors in justification of seizure, are extremely few..."[8]

This principle of self-defence is well grounded in the policy decisions of states. Thus one justification of the Truman Proclamation of 1945 was that "self-protection compels the coastal nation to keep close watch over activities off its shores..."[9] Also in the 1970 Declaration of Montevideo nine Latin American States justified the exercise of jurisdiction to a distance of 200 miles from each state's coast on basically the same principle.[10] The Lima Declaration of 1970,[11] the Canadian Government's Arctic Waters Pollution Prevention Act, 1970[12] based on "the overriding right of self-defence," and the British Oil in Navigable Waters Act 1971[13] recognised and applied this principle.

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7. Colombos: A Treatise on the Law of Prize (3rd ed. 1949) p. 308; Same: International Law of the Sea, 5th ed. 1962, p. 734.
8. Colombos, International Law of the Sea, op cit., 735.
9. Presidential Proclamation 2667, Sept. 28, 1945 (1946) 40 A.J.I.L., Supplement 45.
10. See, 1970 IX Int. Leg. Mat. 1081.
11. See, (1971) X Int. Leg. Mat. 207
12. See (1970) IX Int. Leg. Mat. 607 at 610.
13. See R. Katz in I.C.L.Q. Vol. 22 Jan. 1973.

.../13.

(b) THE RULE IS THAT THE EQUIPMENTS OF A SHIP IN GENERAL FOLLOWS THE FATE OF THE VESSEL:

The possession by Latia of "all plans and technology" involved in the nodule recovery operations by Ocean Mining Company is in accord with international law. The British Naval Prize Act, 1864 S. 2, 27 and 18 Vic. C 25, the German Prize Ordinance of August 28, 1939 or 80 Reichsgeset (September 3) 1939, stipulate this rule. The French and other nations have prize laws to the same effect. Thus the Italian Prize Tribunal ruled in Ministero-della Marina v. Montagu (The Ljubica), 1943, that fittings in a yatch (The Ljubica) adjudicated is prize "are regarded as part of the vessel..."[14a].

(c) LATIA'S ACTIONS DO NOT VIOLATE THE UNITED NATIONS CHARTER INJUNCTION ON STATES TO SETTLE DISPUTES PEACEFULLY:

That special obligation imposed on states by Article 2 (3) or 2 (4) of the U.N. Charter which enjoins States to "refrain in their international relations from the threat or use of force" should be read together with Article 51 which recognises the inherent right of states to self defence.[14b] "Economic aggression," "propaganda aggression" or, if you like, "mining aggression" may under certain circumstances be just as disastrous as an armed attack - particularly to a developing state like Latia. "The charter should therefore be interpreted so as to accommodate the reality of these relatively new threats if it is to remain an acceptable frame work for the regulation of inter-state relationships"[14c]

14a. (1943) - (1945) Ann. Dig. 481, 488 No. 172.

14b. See, Bowett, Self-defence in International law pp. 187, 193.

14c. Katz, "Issues Arising in the Icelandic Fisheries Case" I.C.L.Q. Vol. 22, PT. 1 January, 1973, 4th Series.

(d) THE "GATHERER" HAD AMPLE CHANCE TO AVOID CONFRONTATION WHICH IT CHOSE NOT TO USE:

The Gatherer precipitated its arrest and subsequent adjudication in prize. The "Gatherer" ignored "Interceptor's positioning intended to prevent mining operations at Tract HI and the request to cease operations and withdraw its equipment. The "Gatherer" in fact returned a warning shot thereby serving a notice that it was prepared for a showdown.

In the Red Crusader[15] a Danish fishery patrol vessel boarded a British fishing trawler which was caught violating the fishing right of Danmark. The British trawler attempted to escape with the Danish boarding party on board but it was fired on and ultimately captured by the Danish patrol vessel. During Arbitration, the Commissioners felt that the attempt by the British trawler to escape with members of the boarding party on board might have justified some counter action; but the opening of fire exceeded legitimate use of armed force" since it consisted of "firing without warning of solid gunshots" and this created "danger to life on board the Red Crusader without necessity."

Had the Danish patrol boat fired warning shots as a prelude to the arrest of the Red Crusader, the Commissioner's findings might have been different.

We contend in this case that the Interceptor fired a warning shot to show her intention to use solid gunshots after the Gatherer had failed to heave to for boarding.

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15. 35, I.L.R. 485.

.../15.

Although in international law jurisdiction over vessels is that of the flag state, a coastal state is entitled to exercise jurisdiction over foreign private vessels passing through its territorial sea to the extent necessary to enforce applicable local laws and regulations and to ensure the innocence of the passage. What is innocent passage, is defined in Article 14 paragraph 4 of the Convention on Territorial Sea and Contiguous Zones as one which does not prejudice the peace, good order and security of the coastal state. The coastal state is permitted to take necessary steps in its territorial sea to prevent passage which is not innocent.[16]

The passage of the Gatherer could not have been innocent since she was engaged in activities within Latia's 200 mile territorial sea prejudicial to the interest of Latia.

When the laws of a coastal state have been violated by a ship, such state may exercise jurisdiction over the ship if, according to Article 19 (1) (a) of the Convention on the Territorial Sea and the Contiguous Zone, the crime committed by the ship extends to the coastal state.

On behalf of Latia, we contend that since the Gatherer has violated Latian laws, it was for the purpose of enforcing these laws that Gatherer was seized and adjudicated in prize and title in it transferred to the Latian Government.

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16. See Article 16 (1) Convention on Territorial Sea and the Contiguous Zone.

In Church v. Hubbert,[17] to which reference had previously been made, Marshall C.J. said:

> "The authority of a nation within its own territory is absolute and exclusive ... But its power to secure itself from injury may certainly be exercised beyond the limits of its territory ... Any attempt to violate the laws made to protect this right, is an injury to itself which it may prevent, and it has a right to use the means necessary for its prevention."[18]

Applying the principles in this case to the present dispute, we submit that since the Gatherer was engaged in mining operations within Latia's territorial sea, it automatically became amendable to her municipal laws. What Latia has done is simply to enforce her municipal laws and regulations.

Latia is a developing country and of necessity militarily weak. As Akehurst has rightly observed -

> "The military potential of the deep seabed is ... startling. The Seabed may soon contain listening stations for tracking the course of submarines, fixed installations for launching torpedoes against submarines and surface vessels, and launching pads for inter-continental missiles."[19]

Latia would therefore be exposing herself to the danger of interference in her internal affairs if she allows Ocean Mining Company to become her neighbour - just 120 miles off her coast - above the sea and below it,

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17. (1804) 6 U.S. 249.
18. Ibid. at pp. 264 - 265.
19. Akehurst, A Modern Introduction to International Law (2nd ed.) 1971 at p. 234.

IATIA IS JUSTIFIED IN DECIDING TO EXPLOIT THE AREAS SHE CLAIMS (INCLUDING TRACT HI) SUBJECT TO THE CONDITIONS SHE STIPULATED:

Since the 1958 Geneva Convention on the Law of the Sea from which resulted four conventions on the Law of the Sea,[1] several changes have occurred regarding the law of the sea. As law is an organic subject, international law including the Law of the sea cannot be an exception to this general characteristic of law. In 1967, a Maltese initiative involving a plan for declaring the seabed resources beyond the continental shelf of states to be the common heritage of mankind and to be developed with special regard to the developing nations led to a far reaching frame - work of the United Nations.

In the light of this, three important resolutions were passed between 1967 and 1969. On December 18, 1967 the General Assembly of the United Nations resolved to establish an ad hoc Committee to study the question of reserving for peaceful purposes the seabed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of national jurisdiction and that the resources be utilised in the interest of mankind.[2]

After receiving the report of the ad hoc Committee, the United

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1. Convention on the Territorial sea and the Contiguous Zone, U.N. Doc A/Conf. 13/L. 52 (1958), Convention on the High Seas: U.N. Doc. A/Conf. 13/L. 53 (1958); Convention on fishing and conservation of the Living Resources of the High Seas: U.N. Doc. A/Conf. 13/L. 54 (1958) and Convention on the Continental Shelf U.N. Doc. A/Conf./ 13/L. 55 (1958).
2. U.N. Resolution on the use of the seabed and Ocean floor A/Res. 2340 (XXII), December 18, 1967 - Vote of 99 in favour, none against no abstentions.

Nations General Assembly resolved to affirm that:

> "The exploitation and exploration of the resources of the sea-bed and ocean floor, the subsoil thereof should be carried out for the benefit of mankind taking into special consideration the interest and needs of the developing countries."3

Finally, by another resolution of December 1969, the United Nations re-affirmed that:

> "There exists an area of the seabed and ocean floor thereof which lies beyond the limits of national jurisdiction and that this area should be used for peaceful purposes and its resources utilised for the benefit of mankind."4

It may be argued that Latia cannot rely on any of the above resolutions as a defence to her action; because none of them is legally binding. Against this we can submit that although General Assembly resolutions are not legally binding yet the three resolutions represent the corporate conscience of states in matters concerning ocean resources.

In fact, there is a proposal to the effect that coastal states would act as trustees for the international community in a zone embracing the continental margins beyond a depth of 200 meters off the shore of the sea-bordering countries.[5] Therefore Latia's proposition to conduct these operations for all peoples and states particularly the developing countries which have the greatest need is in keeping with the generally accepted view that this open sea including its bed and subsoil is the common heritage of mankind.

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3. U.N. Resolution on the Reservation of the seabed and the Ocean floor for peaceful purposes A/Res./2467 of January 14, 1969 adopted Unanimously. Moratorium Resolution.
4. Res. 2574 (XXIV) of December 15, 1969. [illegible]
5. See 9 Int. Leg. Mat. 1046 (1970) Summarised in 65 AJIL, 179 (1971).

.../19.

We therefore implore the Court to imply from the above resolutions that Latia has acted rightly in deciding to hold the resources of its territorial sea or the seabed beyond its national jurisdiction in trust for nations of the world especially the developing nations.

Since Latia proposes to benefit not "reciprocating states" like the DOMA but all states and peoples, her non-discriminatory proposal is to be preferred especially as it is subject to future international arrangement as to terms of payment of royalties accruing from the operations.

It must be stressed that Latia is sovereign over Tract HI and could have claimed all the benefits of the operations for herself but she prefers instead to bend over backwards to help the international community with what is really hers.

For these reasons, the Government of Latia prays this honourable tribunal to decline to give effect to the remedies sought by the plaintiff/applicant and declare that no violation of international law on the part of Latia has been committed.

7. BY HER ACTIONS AND CLAIMS LATIA IS HELPING TO MAINTAIN INTERNATIONAL LAW:

As DOMA states are highly industrialised and therefore developed and powerful states, if they be allowed to maintain their claims, the concept of the freedom of the open sea would become a travesty and with it the view that the resources of the seabed are the common heritage of mankind would be compromised. Note for instance the wide area covered by Tract HI - a total of 75 square miles. It should also be noted that the licence under DOMA is grantable for up to 20 years

(Section 4 of of DOMA).

Depending on how rich a particular sea bed is, it is conceivable that under DOMA some seas would for all practical purposes be partitioned and colonised by mining companies. In that case the sea bed would become the heritage of a handful of states and their companies. Since DOMA states are all powerful states they could always have their way and last say in the matter. Already we have an idea of the frightening picture of over crowded oceans which will emerge if industrialised states like Industria have their way. This revealing photo copy of a Map which appeared in NEWS WEEK Magazine issue of Sept. 17, 1973 (p. 50) on manganese nodules which is attached as Annex A, speaks for itself.

On principle, therefore, it was best that deep sea exploitations await the establishment of an international regime in that regard, but pending that, a weak nation like Latia can exploit it in trust for humanity since she can be compelled by force if necessary to comply with the dictates of humanity were she to make extravagant claims or ignore an international regime.

Secondly, were Latia not to put paid to the mining operations over tract HI, mining licenses similar to the one granted to Ocean Mining Company would snowball. Were this to happen before the United Nations has had a chance to hammer out an international agreement the forthcoming conference on the law of the sea would be torpedoed thereby justifying the fears expressed by the non-DOMA states on the enactment of the DOMA.

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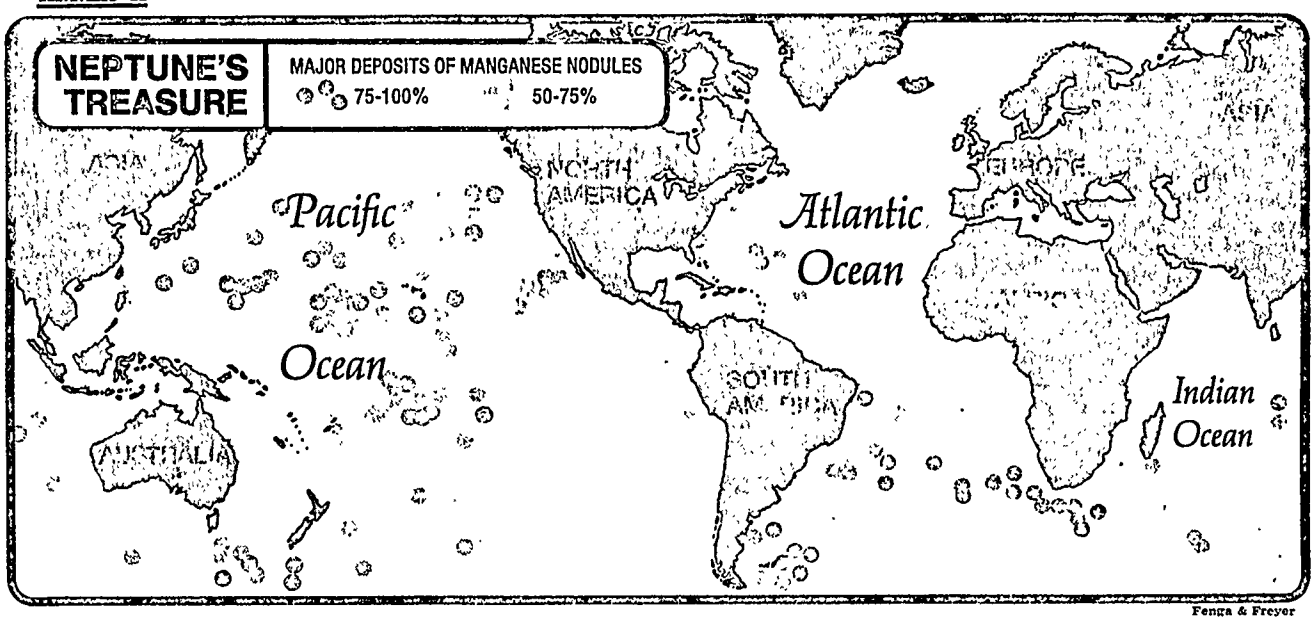
C O N C L U S I O N

We have shown in the foregoing pages that the allegations of the applicant are not maintainable. We have also amply demonstrated justification for the respondent's actions. We have in the process revealed that it is the applicant in fact who is in breach of international law which it is ironically attempting to call in aid.

We therefore ask this court to find the contested actions and claims of the respondent in accord with the principles of international law and practice.

ANNEX A



The Wealth of Oceans

One day last month, while delegates from 91 nations were arguing in Geneva over who should have jurisdiction of the international deep-sea beds, a gawkily rigged 618-foot ship, the Hughes Tool Co.'s Glomar Explorer, quietly weighed anchor in Philadelphia Harbor and set out on a top-secret voyage that will bring it with them." The actual amount has been estimated at billions of tons—more than enough to make the nodules an almost inexhaustible resource. Just how expensive it will be to refine the metallic riches contained in the nodules is unknown, but scientists are convinced that they will be able to do it economically.

Besides their quantity, the Pacific nodules have an extra attraction to mining

Equally simple in concept, if not in technology, is the technique the Glomar Explorer will probably use. This system is essentially a giant vacuum cleaner, connected to dredging equipment, that is dragged along the sea floor. The nodules are sucked up to the ship through a flexible hose.

In the long run, it is the legal problems of ocean mining that may prove the