THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

1974

Case Concerning a Dispute over
Deep Ocean Mining Rights,
Industria v. Latia, 1974.

Problem

1974 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

PROBLEM

The 1974 Jessup Problem has been reproduced by the American Society of International Law and the Association of Student International Law Societies, which have sponsored the Philip C. Jessup International Law Moot Court Competition since its inception in 1961.

2223 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Industria, a highly industrialized state with a continuing need to import metals, became disappointed with the slow pace of achieving agreement relative to deep ocean mining at the current U.N. preparations for a comprehensive Conference on the Law of the Sea. Industria anticipated that some of its industrial concerns would be able to provide directly or indirectly international market needs of copper, nickel, manganese, cobalt and other metals if they had adequate authority to conduct operations in the deep ocean to recover manganese nodules with security of tenure, that is, if they had defined rights to exploit a certain area of the seabed for a reasonable time period without interference from others. Industria, and several other states with a similar level of industrial development and technology, Anglia, Westia and Jania, adopted parallel legislation authorizing the grant of licenses to their nationals and corporations. The licenses permitted the conduct of operations to recover nodules and other deposits from on or under the ocean floor beyond the continental shelf in "licensed areas of depths greater than 200 meters and up to 100 square miles in area with a maximum 20 years period of tenure for operation in any one licensed area." A copy of this Deep Ocean Mining Act (DOMA) is attached to this problem as Annex A.

Upon passage of this legislation by Industria and the states mentioned above, 64 other states sent notes of protest variously stating that such legislation violated the freedom of the seas, the

declarations and statements adopted under United Nations auspices in recent years, the sovereign rights of peoples to the resources of the deep ocean, the conduct of negotiations of the forthcoming Conference on the Law of the Sea, continental shelf rights, national sovereignty, and the resource rights of nations. Industria and the other DOMA states rejected such protests.

Shortly thereafter a corporation of Industria, the Ocean Mining Company, applied for and received a license to recover manganese nodules in an area called "Tract #1' approximately 8 miles by 10 miles in size (for a total of 75 square miles) located 120 miles off the coast of the state of Latia in water 2100 meters in depth. This area is geographically closer to Latia than to any other state. The bottom topography off Latia's shores is essentially a sharp drop near the coast to a depth of 600 meters, and then a gradual slope to the 2100 meter depth. Because of its geographic and marine situation Latia for several decades has claimed a wide 200 mile fisheries zone, claiming and designating it as territorial seas of Latia in 1966. In fact, however, the only jurisdiction which Latia had exercised beyond 12 miles from its coast was an exclusion of fishing by foreign flag ships (except some fishing which was conducted under license from Latia). Upon the granting of Industria's license to Ocean Mining, Latia again protested to Industria and insisted that the granting of the license constituted an interference with Latia's sovereignty, its territorial sea, its continental shelf, and its "economic resource zone" (which

it had just proclaimed as comprising "all ocean resources within 300 miles of its coastline"). It declared that any acts conducted by any of Industria's nationals to exploit "Tract #1" would be opposed by force if necessary.

The Ocean Mining Company prepared its rig and ships for operation in Tract #1. As the site was a considerable distance from Industria, it had decided to process the nodules in another state, Francia, about 200 miles away from the mining site. Francia was not a DOMA state, nor had it protested DOMA. A large investment in the refining plant and its associated facilities was necessary, and Ocean Mining and Francia entered into an agreement which provided that Ocean Mining could import, process and export the nodules and processed metals. This agreement expressly recognized Ocean Mining's title to the nodules obtained from Tract #1.

On March 15, 1973, Ocean Mining's rig, Gatherer (of Industria's flag), arrived in the area of Tract #1 and began recovery operations. The first load of recovered nodules was placed on board Ocean Mining's ship, Carrier (of Industria's flag), which proceeded towards Francia. About 75 miles from Tract #1 Carrier was pursued by Latia's naval ship, Interceptor. Carrier was stopped by a warning shot about an hour later, when it was beyond Latia's claimed 200 mile territorial sea. After a brief examination which verified that Carrier was transporting nodules from Tract #1, Interceptor seized the ship and brought it into the capital port of Latia where the cargo was declared confis-

cated. Interceptor then proceeded to Tract #1 and on March 23 positioned itself so as to prevent the mining operations. Gatherer refused to comply with Interceptor's demands that it cease operations and withdraw its equipment from the ocean floor. Interceptor fired a warning shot, and, after a return warning shot from Gatherer, then fired several shots, one of which damaged the rig and made it inoperative, and another of which injured several persons on Gatherer. Finally, several days later with the assistance of other ships from Latia, Interceptor managed to bring Gatherer into Latia's major port.

The above events were accompanied by considerable attention and comment in the world press and in diplomatic circles. Numerous objections were voiced to the DOMA operations, to interference with commerce and navigation on the high seas, to the use of force rather than peaceful negotiations in the resolution of international disputes, and so on. One interesting set of diplomatic exchanges was initiated by Candia, a small copper exporting country, which protested both to Pacifica and to Francia and complained not only of the DOMA operations but also of Francia's providing a site for the refining operations. Candia asserted that title could not be created in the nodules as neither Industria nor any other state had sovereignty over Tract #1, and that any recovered nodules are held in trust for the peoples of the world. Francia as well as Industria rejected this protest of Candia. However, about 60 states joined Candia in stating that they would not recognize title to the nodules in Industria.

After these events, in late May Latia adjudicated the rig, Gatherer, in prize and transfered title to the Latian government for penalties and costs assessed because of the operations conducted in violation of Latian laws. Latia declared it would repair the rig and place it in operation. All the plans and technology involved in nodule recovery were now in the possession of Latia. Latia announced that operations would soon be resumed for the benefit of all peoples and states, and particularly the developing countries which have the greatest need, and that a plan to share the proceeds from the operation would be forthcoming in the near future. It invited proposals for a royalty regime.

At this point negotiations between Industria and Latia ceased. Carrier and its crew had been released, but its cargo of nodules was retained. The crew of Gatherer had been released about the time of its adjudication in prize.

Industria instituted proceedings in the International Court of Justice, alleging that Latia committed a breach of international law by interfering with mining operations on the high seas, and interfering with commerce on the high seas. It indicated it would demand return of the cargo of nodules, return of Gatherer, reimbursement of all fines and assessments, compensation for all other costs including lost profits on the mining operations, and a declaration that exploitation of Tract #1 under DOMA would not be unlawful. Latia and Industria specially agreed to the jurisdiction of the Court, jurisdiction with

respect to the case was established and memorials and arguments on the merits of the matter were ordered by the Court. Latia indicated that it would claim not only that its actions were lawful, but that it is entitled to conduct deep ocean mining operations in any area within its territorial sea or economic resource zone, and even beyond the national jurisdiction of states, provided it conducts these operations in "trust" for all people and states, and particularly the developing countries which have the greatest need, and gives effect to this trust by setting aside a reasonable royalty which would be payable on such terms as provided in future international arrangements. It announced that, based on information available to it, a 10% royalty based on the value of the nodules at Tract #1 would be reasonable in amount under the circumstances, and proposed to set such amount aside in trust.

Subsequent to the above events another state, the Soviet Socialist Republic of Eurasia, enacted the DOMA legislation and also protested the actions and claims of Latia. All in all, 32 states protested Latia's claims and position.

Francia was approached by Latia with a proposal that the two states enter into a bilateral agreement providing that the nodules be processed at the plant that Ocean Mining Company had set up in Francia. A specialized facility such as that plant, requiring a very sizable investment, would be required to process the nodules. As the Ocean Mining Company properties in Francia would have to be expropri-

ated in order to commit their use to processing the nodules recovered by Latia, Francia decided to await the outcome of this case in the International Court of Justice before taking any step, but indicated to Latia that if Latia was declared by the Court to have the right to exploit the valuable Tract #1 an arrangement would be entered into between the two states.

All the states mentioned above are parties to the 1958 Geneva conventions on the law of the sea.

The parties have stipulated to the above facts and circumstances (which it is therefore unnecessary to repeat in memorials filed before the Tribunal) and have waived any preliminary or other procedural objections.

# # # # # # # # # # # # #

ANNEX A

DEEP OCEAN MINING ACT

Sec. 1. This Act provides the Secretary of Natural Resources with authority to promote the orderly development and conservation of the hard mineral resources of the deep seabed, pending adoption of an international regime therefor.

Sec. 2. When used in this Act:

(a) "Secretary" means the Secretary of Natural Resources;

(b) "deep seabed" means the seabed and subsoil vertically below lying seaward and outside the Continental Shelf of states, as defined in the 1958 Convention on the Continental Shelf;

(c) "tract" means an area of the deep seabed, defined with reference to latitude and longitude, of not less than 50 square miles nor more than 100 square miles,

(d) "hard mineral" means any mineral, metalliferous mud, nodules and other depositions and other non-living substances, other than oil, gas and hydrocarbons;

(e) "development" means any operation of exploration or exploitation having the purpose of discovery, recovery, or delivery of hard minerals from the deep seabed;

(f) "person" means any government or juridical or natural person;

(g) "reciprocating state" means any foreign state having legislation or state practice or agreements consistent with and comparable to the provisions of this Act.

Sec. 3. The Secretary shall administer the provisions of this Act and may prescribe such regulations as are necessary to its execution. No person subject to the jurisdiction of this state shall directly or indirectly develop any portion of the deep seabed except as authorized by license issued pursuant to this Act or by a reciprocating state. Nothing in this Act or any regulation prescribed thereunder shall preclude, or impose any restriction upon, scientific research or pros-

pecting by any person of any portion of the deep seabed not subject to an outstanding license issued under this Act, or shall require any applicant for a license or any licensee to divulge any information which could prejudice its commercial position.

Sec. 4. Exclusive licenses; limitations and conditions.

(a) The Secretary shall issue licenses pursuant to Sec. 5, recognizing rights, which shall be exclusive as against all persons subject to the jurisdiction of this state or of any reciprocating state, to develop the tract designated in such license.

(b) No license shall preclude scientific research by any person in licensed areas where such activities do not interfere with development by the licensees.

(c) Every license issued under this Act shall remain in force for 20 years and, where commercial recovery of hard minerals has been achieved from a licensed tract within 20 years, such license shall remain in force so long as commercial recovery from the tract continues. The Secretary shall prescribe, as conditions for every license issued pursuant to this Act, minimum annual expenditures and requirements to protect the environment, prevent unreasonable interference with other ocean uses, and promote arbitral settlement of disputes. Where circumstances beyond the control of a licensee impair its ability to develop any portion of the deep seabed held under license, the term of the license and the dates for complying with any other license condition shall be extended for an equal length of time.

Sec. 5. A license as specified in Sec. 4 shall be issued by the Secretary to the first qualified person who makes written application and tenders a fee of $5,000 for the tract specified in the application. A person shall be deemed qualified for a license under this Act if and only if that person is a citizen of this state, or a corporation or other juridical entity organized under the laws of this state, and meets such technical and financial requirements as the Secretary may prescribe in order to assure effective and orderly development of the licensed portion.

Sec. 6. A fund shall be established for assistance to developing reciprocating states. This state shall deposit in this fund each year an amount equivalent to 25 percent of all license fees collected during that year by this state pursuant to Sec. 5 and an amount equivalent to 10 percent of all tax revenues derived by this state which are directly attributable to recovery of hard minerals from the deep

seabed pursuant to licenses issued under this Act, provided that the amount deposited per license issued shall not exceed the amount contributed for assistance to developing reciprocating states by other licensing reciprocating states (except developing states) per license issued by them. For the purposes of this section, "developing reciprocating state" means a reciprocating state designated by the Secretary, taking into consideration per capita gross national product and other appropriate criteria. This fund shall be distributed as hereafter provided by the Legislature.

Sec. 7. Licenses issued under this Act are subject to any international regime for development of the deep seabed hereafter agreed to by this state, provided that such regime fully recognizes and protects the exclusive rights of each licensee to develop the licensed tract for the term of the license.

Note: Omitted, because they were either complied with or are not pertinent to the problem, are the DOMA provisions dealing with technical and financial requirements, diligence requirements (to inhibit speculation and claim freezing), investment insurance (enacted in the DOMA states, except the Soviet Socialist Republic of Eurasia), and penalties prescribed for persons under the jurisdiction of the enacting state.