NO. 1974

IN THE
INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE
THE HAGUE, NETHERLANDS

THE STATE OF INDUSTRIA,
Applicant

V.

THE STATE OF LATIA,
Respondent

APRIL TERM
1974

On Submission to the
International Court of Justice

MEMORIAL FOR THE APPLICANT

Douglas M. Becker
John W. Berkel
Daniel K. Hedges
Agents for Applicant

April 9, 1974

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JURISDICTION

The parties have agreed to submit this dispute to the International Court of Justice for its determination (R. 5-6).

QUESTIONS PRESENTED

I. WHETHER LATIA HAS SOVEREIGNTY OVER THE MINERAL RESOURCES OR THE AREA OF TRACT # 1.

II. WHETHER DOMA IS A VALID INTERIM REGIME FOR MINING THE DEEP SEABED.

III. WHETHER LATIA'S SEIZURE AND EXPROPRIATION OF OCEAN MINING PROPERTY VIOLATE INTERNATIONAL LAW.

STATEMENT OF FACTS

The parties have stipulated to the facts before the Court (R. 7).

SUMMARY OF ARGUMENT

Latia's assertions of sovereignty over Tract # 1 are based on its continental shelf, its territorial sea, and its economic resource zone. The continental shelf doctrine does not give Latia sovereignty because Tract # 1 is located on the deep seabed. The claims of a two hundred mile territorial sea and a three hundred mile economic resource zone both violate customary international law.

Deep Ocean Mining Act (hereinaftêr cited as DOMA) is fully in accordance with both the general principle of res nullius and the customary international laws of mining. DOMA is an expressly interim program specifically designed to avoid interference with any future international regime.

Latia's seizure of Ocean Mining property violates not only the 1958 Geneva Conventions on the Law of the Sea but also basic principles of customary international law. Furthermore, Latia's use of force was in direct contravention of the United Nations Charter.

Finally, Latia's expropriation of Gatherer is not supported by international law. Latia is under a duty to fully compensate Ocean Mining for all property taken.

ARGUMENT AND AUTHORITIES

I. LATIA HAS NO SOVEREIGNTY OVER THE MINERAL RESOURCES OR THE AREA OF TRACT # 1.

The state of Latia asserts that Ocean Mining Company's operations in Tract # 1 interfere with Latia's sovereignty (R. 2). Based on this assertion, Latia attacks the validity of the DOMA and defends the seizure

and expropriation of Ocean Mining's property. Latia's claim of sovereignty is based on its continental shelf, its territorial sea, and its economic resource zone.

A. Latia cannot claim sovereignty on the basis of the continental shelf doctrine.

1. Tract # 1 is not "adjacent" to Latia.

Since Industria and Latia are both signatories to the Geneva Convention on the Continental Shelf (R. 7), the Convention must be viewed by the Court as "establishing rules expressly recognized by the contesting states." I.C.J. STAT. art. 38, para. 1. Article 2 of the Convention gives the coastal state exclusive rights over exploration and exploitation of its continental shelf. The Convention defines the continental shelf as follows:

> . . . the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. . . .

Convention on the Continental Shelf, April 29, 1958, art. 1 [1964], 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311. However, Tract # 1 is located at a depth of 2100 meters (R. 2), well beyond the Convention's two hundred meter criterion. Thus, if Tract # 1 is on Latia's continental shelf, it is only by virtue of the exploitability clause of the Convention.

This clause cannot be read in isolation from the rest of the definition. Rather it must be read in conjunction with the adjacency test found in the opening clause. J. ANDRASSY, INTERNATIONAL LAW AND THE RESOURCES OF THE SEA 83 (1970). Under this proper reading, the continen-

tal shelf consists of the area from the coast to the two hundred meter isobath, and any exploitable areas beyond that, provided that all such areas are adjacent to the coastal state. In the North Sea Continental Shelf Cases, [1969] I.C.J. 3, 30-31, this Court considered the legal meaning of adjacency. The Court defined the term to mean the natural prolongation of the land territory. This would embrace the continental terrace, which consists of the geological shelf and slope. Since Tract # 1 is not located on the continental terrace, it does not come within the definition of adjacency. It is not, therefore, located on Latia's legal continental shelf.

A brief review of Latia's offshore geology reveals that Tract # 1 is located well beyond the continental terrace. The geological continental shelf extends from the land at a gradient of up to .1 degree. A sharp break in the declivity generally occurs at a depth of about two hundred meters. Lumb, The 1973 Law of the Sea Conference: Significant Issues, 7 U. QUEENSLAND L.J. 256, 258 (1971). Since the "bottom topography off Latia's shores is essentially a sharp drop near the coast to a depth of 600 meters . . ." (R. 2), it appears that Latia has no geological continental shelf. The "sharp drop" matches in both gradient and depth the definition of the continental slope. The "gradual slope to the 2100 meter depth" (R. 2), describes the continental rise. Lumb, supra.

Thus, it is clear from the record that Tract # 1 is not on either the shelf or the slope of Latia. The record is ambiguous as to whether the abyssal depths begin at the 2100 meter mark or whether the rise continues to descend beyond that depth. Regardless of whether Tract # 1 is located

on the rise or on the ocean floor, the critical fact is that it is beyond the continental terrace. Any point beyond the terrace is not adjacent to the coastal state under this Court's definition of adjacency. Since Tract # 1 is not adjacent to Latia, it is not on Latia's continental shelf.

2. The legislative history of the Convention supports the adjacency test.

If the Court finds either the adjacency test or the exploitability clause ambiguous, it should turn to the legislative history of the Convention. Convention on the Law of Treaties, art. 32, U.N. Doc. A/CONF. 39/27 (1969). The exploitability clause was adopted as a compromise between those desiring solely the two hundred meter limit and those advocating a twenty mile rule. Oxman, Preparations of Article 1 of the Convention on the Continental Shelf, 3 J. MARITIME L. 245, 250-51, 281 (1972). None of the drafters intended the exploitability clause to lead to a division of the ocean floor among the coastal states. Garcia Amador of Cuba, the principal proponent of the exploitability clause, said that the final version included only the continental terrace. Oxman, supra 455 at 471. "In the context of the travaux preparatoires of the Convention, the inclusion of the entire terrace represents the most extensive universal limit that anyone ever had the temerity to suggest." Oxman, supra 683 at 716.

Latia will probably choose to ignore both the adjacency test and the legislative history of the Convention, and will insist upon a literal reading of the exploitability clause. However, as exploitation at greater depths becomes possible, such a reading would partition the oceans of the

world into "national lakes." This interpretation is now "summarily dismissed" by commentators. It directly conflicts with the accepted principle that there exists "an area of the sea-bed . . . underlying the high seas beyond the limits of national jurisdiction." Jennings, The Limits of Continental Shelf Jurisdiction: Some Possible Implications of the North Sea Case Judgment, 18 INT'L & COMP. L.Q. 819, 821 (1969). Some limit must be found to the extent of the continental shelf, and the adjacency test and the legislative history of the Convention both point to the terrace as that limit. Tract # 1 lies far beyond the terrace.

B. Latia cannot claim sovereignty on the basis of its asserted territorial sea.

1. A two hundred mile territorial sea violates customary international law.

The coastal state exercises the same sovereignty over its territorial sea that it does over its land territory. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 1, [1964] 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205. Latia cannot validly extend the limits of its territorial sea solely on the basis of a unilateral declaration. Although an extension of sovereignty over the seas is necessarily unilateral in its origin, its validity depends on international law. Anglo-Norwegian Fisheries Case, [1951] I.C.J. 116, 132. A proposal to give coastal states the exclusive authority to determine their own territorial sea limits was defeated at the 1958 Geneva Law of the Sea Conventions by a margin in excess of two to one. McDougal & Burke, Community Interest in a Narrow Territorial Sea, 45 CORNELL L.Q. 204, 210-11 (1960).

Latia's two hundred mile territorial sea violates customary international law. The traditional requirements for a new customary rule of international law are:

(a) concordant practice by a number of States with reference to a type of situation falling within the domain of international relations;
(b) continuation or repetition of the practice over a considerable period of time;
(c) conception that the practice is required by, or consistent with, prevailing international law; and
(d) general acquiescence in the practice of other States.

Z. SLOUKA, INTERNATIONAL CUSTOM AND THE CONTINENTAL SHELF 2 (1968).

The great majority of states have overwhelmingly rejected claims in excess of twelve miles. Over one hundred nations restrict territorial sea claims to twelve miles or less while only seven claim full two hundred mile territorial seas. NEW DIRECTIONS IN THE LAW OF THE SEA 835-54 (S. Lay, R. Churchill, & M. Nordquist eds. 1973). Seven states making such claims over a period of twenty-one years does not constitute even a trend, much less a practice. The two hundred mile claims have been vigorously contested by many nations, thereby negating any assertions of acquiescence. Finally, the International Law Commission has stated that international law does not permit an extension of the territorial sea beyond twelve miles. I.L.C. Report, 11 GAOR Supp. 9, at 12-13, U.N. Doc. A/3159 (1956).

2. Latia's territorial sea claim is devoid of equitable justifications.

Although equitable arguments cannot justify illegal two hundred mile territorial sea claims, most nations making such claims have at least offered some cultural, social, or economic rationalizations. In the Anglo-

Norwegian Fisheries Case, [1951] I.C.J. 116, 150, Judge Alvarez stressed: "In fixing the breadth of its territorial sea, the State must indicate the reasons, geographic, economic, etc., which provide the justification therefor." The only reasons offered by Latia are its narrow continental shelf and its poor economy. Since the Continental Shelf Convention specifically compensates for narrow shelves, this geographical factor cannot warrant an expansive territorial sea claim. Adequate economic reasons must be specific, such as Norway's historical dependence on fishing. General poverty is not such a reason. Latia's claim is not only violative of international law but also devoid of equitable justifications.

Determination that Latia's claim is proper would also encourage other nations to expand their territorial seas. Since the needs of individual states are dissimilar, the assertions of sovereignty might vary widely. This would aggravate the confusion caused by the presently diverse delimitations. It would also eliminate large areas of the high seas, thereby restricting free trade and commerce and placing a burden on navigation. Awareness of this problem is indicated by the numerous objections voiced against Latian claims (R. 4). Professor McDougal's condemnation of the Latin American two hundred mile seas applies with even greater force to Latia's unsupported claim.

> Should other states make comparable claims, there would be complete disintegration of the common interest and the Latin American states would suffer inestimable loss along with everybody else. Once states depart from the criterion of common interest, the only alternative is naked force.

McDougal, International Law and the Law of the Sea, in THE LAW OF THE SEA: OFFSHORE BOUNDARIES AND ZONES 8-9 (L. Alexander ed. 1967).

C. Latia cannot claim sovereignty on the basis of its asserted economic resource zone.

1. A three hundred mile economic resource zone violates customary international law.

Latia's third ground for alleging sovereignty over the mineral resources of Tract # 1 is its recently claimed economic resource zone "comprising all resources within 300 miles of its coastline" (R. 2-3). Within such a zone, a coastal state exercises exclusive or preferential rights with respect to economic resources.

Latia's three hundred mile economic resource zone violates customary international law. In the past two years only a small number of African and Latin American states have advocated the economic resource zone concept. Report of the African States Regional Seminar on the Law of the Sea, U.N. Doc. A/A.C. 138/79 (1972); Declaration of Santo Domingo, U.N. Doc. A/A.C. 138/80 (1972). The doctrine is in its infancy and finds no support in customary international law.

2. There is no "special circumstance" justifying Latia's economic resource zone.

In the Anglo-Norwegian Fisheries Case, [1951] I.C.J. 116, 132, this Court recognized the dependence of the Norwegian population upon fishing for its survival as a "special circumstance" justifying Norway's territorial sea claim in excess of three miles. The Latin American states have relied heavily upon this language to support their two hundred mile territorial sea claims. Comment, National Sovereignty and the Two Hundred Mile Limit: The Case for the Littoral State, 21 AM. U.L. REV. 593, 602 (1972).

Latia argues that its economic resource zone is essential to protect its offshore mineral resources. However, Latia cannot establish the historical and economic dependence on seabed mining which Norway established concerning fishing. Since Latia had to expropriate Ocean Mining's property and technology in order to recover the nodules, it is clear that the Latian economy is in no way dependent on such operations.

Economic resource zone claims are nothing more than an effort to achieve expanded jurisdiction over ocean resources while avoiding the widespread criticisms directed at excessive territorial sea claims. Admittedly, these new claims are unlikely to lead to interference with navigation on the high seas. But as land resources are depleted, the oceans are becoming far more important as sources of food and minerals than as highways. Economic zone claims by nations without the technology to exploit their own zones will deny the world community essential mineral resources.

Claims such as Latia's "national lake" continental shelf, its two hundred mile territorial sea, and its three hundred mile economic resource zone pose a grave and real danger to world peace. A leading international law scholar has warned that "the methodical undermining of the freedom of the seas, which is an inevitable consequence of the progressive appropriation of growing sections of the oceanbed by coastal nations . . . can end only in military, political and economic confrontation . . ." W. FRIEDMANN, THE FUTURE OF THE OCEANS preface (1971).

II. DOMA IS A VALID INTERIM REGIME FOR MINING THE DEEP SEABED.

In deciding international disputes this Court applies primarily international conventions recognized by both parties, general principles of law, and international custom. I.C.J. STAT. art. 38, para. 1. At present there is no international convention recognized by both Latia and Industria governing the mining of deep seabed mineral resources. DOMA is fully in accordance with both the general principle of res nullius and the customary international laws of mining.

A. The mineral resources of the deep seabed are res nullius and subject to appropriation by anyone.

1. Res nullius is a well established principle of international law.

It has long been accepted that while the high seas are common to all persons, the wealth of the high seas belongs to those who appropriate it. H. GROTIUS, FREEDOM OF THE SEAS 29 (McGoffin transl. 1916). Contemporary commentators agree that "once you are beyond the continental shelf . . . the natural resources are res nullius, the property of no one, and subject to capture and exploitation by anyone . . ." Krueger, Mineral Development on the Continental Shelf and Beyond, 42 CALIF. S.B.J. 515, 518 (1967).

Upon DOMA's passage, sixty-four states protested that the regime violated "the sovereign rights of peoples to the resources of the deep ocean" (R. 2). Following Latia's expropriation of Ocean Mining's property, Candia and sixty other states refused to recognize Industria's title to the mined

nodules on the ground that no state could have sovereignty over Tract # 1 (R. 4). Candia protested further that any recovered nodules must be held in trust for the peoples of the world. However, the record does not reveal that any formal protests were presented to the United Nations or to any other international body, indicating that the states may well have been making "paper protests" for propaganda purposes. It is doubtful that even serious diplomatic protests play "a constitutive role in the formation of international custom." A. D'AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW 99-100 (1971).

If the relevance of protests is nevertheless accepted in theory, the particular protests against DOMA must be rejected because they are contrary to the principle that the wealth of the high seas is res nullius. All of these protests are based on the view that mineral resources of the deep seabed are the "common heritage of mankind." While this phrase represents a laudable moral and political ideal, it is not a legal concept.

2. The "common heritage of mankind" is a moral and political concept rather than a principle of international law.

Latia will undoubtedly argue that DOMA is invalid under the United Nations Declaration on Principles Governing the Sea-Bed and the Ocean Floor, G.A. Res. 2749, 25 U.N. GAOR Supp. 28, at 24, U.N. Doc. A/8028 (1971). The resolution passed without a dissenting vote, and it does declare deep seabed resources to be the "common heritage of mankind." Its purpose was to set forth political guidelines for the upcoming Conference on the Law of the Sea. Those opposing DOMA apparently view the resolution as creating

"instant" international law. However, a United Nations resolution "whose aim is to set a political objective . . . may have great political importance, but from a legal point of view it has no relevance whatsoever." J. CASTANEDA, LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS 176 (Amoia transl. 1969).

Significantly, many of the states which supported the United Nations resolution have viewed the "common heritage of mankind" as "a moral and political complex of great value," but have denied that it has "any clear juridical significance." Gorove, The Concept of "Common Heritage of Mankind": A Political, Moral or Legal Innovation, 9 SAN DIEGO L. REV. 390, 400 (1972). Until an international regime is established, "[i]t is not arguable that the 'common-heritage-of-mankind' clause creates an international law condominium in the resources of the deepsea bed." Goldie, A General International Doctrine for Seabed Regimes, 7 INT'L LAW. 796, 820 (1973).

"Instant" international law can be created by a United Nations resolution only in areas where there is a "legal vacuum," such as in outer space prior to the outer space resolutions of the mid-sixties. There is no "legal vacuum" concerning the mineral resources of the deep seabed. Res nullius is a clear and ancient principle which cannot be swept aside by a statement of political goals.

3. DOMA does not violate the concept of "common heritage of mankind."

Although Industria would strongly disagree with a finding that deep seabed resources belong to the peoples of the world, such a finding would

certainly not invalidate DOMA. A designation of these minerals as the common property of all peoples does not mandate that they remain on the ocean floor benefiting no one. Section two of the United Nations resolution defines the substantive meaning of "common heritage of mankind." "The area shall not be subject to appropriation by any means . . . and no State shall claim or exercise sovereignty . . . over any part thereof." G.A. Res. 2749, supra § 2 (emphasis added). The only state seeking to exercise sovereignty over the area of Tract # 1 is Latia. Industria seeks only to mine the mineral resources of the tract, an activity which violates neither the letter nor the spirit of the United Nations resolution.

Some of the protests against DOMA may have been based on the United Nation's 1969 moratorium resolution. G.A. Res. 2574, 24 U.N. GAOR Supp. 30, at 11, U.N. Doc. A/7630 (1970). This moratorium called for cessation of exploitation of the deep seabed pending establishment of an international regime. All of the major industrial nations of the world have refused to declare such a ban. Friedmann, Selden Redivivus--Towards a Partition of the Seas?, 65 AM. J. INT'L L. 757 (1971). Latia and Industria agree that the mineral resources of the deep seabed must be mined. They disagree on the nature of the regime under which the mining should take place.

B. DOMA is not in violation of the customary international laws of mining.

1. DOMA satisfies all of the requirements of these laws.

The customary international laws of mining dictate that he who is first in time is first in right. These laws require announcements of claims,

due diligence in working ore bodies, and area limitations to prevent monopolies. Goldie, A General International Doctrine for Seabed Regimes, 7 INT'L LAW. 796, 813 (1973). DOMA meets all of these requirements. Section 2(c) limits tracts to between fifty and one hundred square miles. Section 4(a) assures public announcement of claims. The legislation also contains diligence requirements (R.ANNEX A, Note).

DOMA tracts are much smaller than those proposed in other regimes or recommended by mining interests. Auburn, The Deep Seabed Hard Minerals Resources Bill, 9 SAN DIEGO L. REV. 491, 506-07 (1972). An objective observer estimates that if twenty years of tenure is granted, as under DOMA, the miner should be assured of exclusive rights to an area in excess of one thousand square miles. Christy, Alternative Regimes for Marine Resources Underlying the High Seas, 1 NAT. RES. LAW. NO. 2, 63, 65-66 (1968). Through its requirements of recording claims, of exercising due diligence in working the claims, and of exceedingly conservative area limitations, DOMA fully complies with the customary international laws of mining.

2. DOMA will not interfere with the establishment of a permanent international regime.

Although DOMA is valid under both the general principle of res nullius and the customary international laws of mining, over sixty nations sought to condemn DOMA on equitable grounds. These nations protested that DOMA somehow "violated . . . the conduct of negotiations of the forthcoming Conference on the Law of the Sea" (R. 1-2). However, this Court decides cases ex aequo et bono, according to equity, only "if the parties

agree thereto." I.C.J. STAT. art. 38, para. 2. The record reveals no such agreement.

Even if such arguments were properly before the Court, they are simply not true. DOMA is expressly interim, "pending adoption of an international regime" (R. ANNEX A, § 1). By providing investment insurance under the Act (R. ANNEX A, Note) rather than requiring total indemnity for losses by the individual nations, DOMA assures that none of its signatories will have financial reasons for opposing an international regime. On the other hand, expansive claims, such as Latia's, will exclude vast portions of the mineral resources of the deep seabed from the jurisdiction of any future regime.

While the DOMA signatories support the implementation of an international system, they realize that it will not become a reality for several years. World needs mandate immediate development of deep seabed mineral resources. DOMA not only represents an interim program in keeping with customary international laws of mining, but also is specifically designed to avoid interference with the preparation of a permanent international regime.

C. Development of deep seabed mineral resources will benefit the world community.

Just as the Norwegian population depended on fishing for its survival in the middle of this century, the world population may well depend on the minerals found in deep seabed manganese nodules for its survival by the end of the century. The principal components of manganese nodules are

manganese, copper, cobalt, and nickel. It has been estimated that the known land reserves of copper, a mineral of countless essential uses, will be exhausted in approximately twenty years. Cobalt reserves will last for approximately fifty-three years and nickel for approximately forty-nine years. Humphreys, An International Regime for the Exploration for and Exploitation of the Deep Seabed--The United States Hard Minerals Industry Position, 5 NAT. RES. LAW. 731, 735-36 (1972). The reserves of manganese, a vital ingredient in all steel production, will be largely exhausted by the end of the century. D. BROOKS, LOW-GRADE AND NON-CONVENTIONAL SOURCES OF MANGANESE 8, 36 (1966).

Furthermore, the scale of production from the nodules will be such that medium level output by a single firm could drastically reduce the world market price of these minerals. Consequently, they would become more readily available to underdeveloped states. Christy, Alternative Regimes for Marine Resources Underlying the High Seas, 1 NAT. RES. LAW. NO. 2, 63, 64-65 (1968); Mero, A Legal Regime for Deep Sea Mining, 7 SAN DIEGO L. REV. 488, 490 (1970).

Latia's literal reading of the exploitability clause of the Convention on the Continental Shelf would lead to a division of the oceans among the coastal states. Consequently, mining concerns operating beyond their own nations' waters would have to deal with a multitude of coastal states. Their investments would be subject to expropriation and their revenues to increased royalties and taxes. Christy, supra at 71. Recent estimates of the total investment required to bring a single nodule site into commercial

production range from $166 million to $250 million. Note, Guarding the Treasures of the Deep: The Deep Seabed Hard Mineral Resources Act, 10 HARV. J. LEGIS. 596, 604 (1973). Investments of this size will simply not be made without the investment security offered by a program such as DOMA. The original DOMA signatories have recently been joined by the Soviet Socialist Republic of Eurasia (R. 6), indicating a desire for investment security by socialist government enterprises as well as by private enterprises.

DOMA provides a valid interim regime under which this essential mining can and will commence in an orderly fashion, thereby avoiding the chaos and danger to world peace of an unregulated "grab" for the mineral resources of the deep seabed.

III. LATIA'S SEIZURE AND EXPROPRIATION OF OCEAN MINING PROPERTY VIOLATE INTERNATIONAL LAW.

Since Latia lacks sovereignty over the area of Tract # 1, its seizure of Ocean Mining's property breaches international law. Even if Latia's claim of seabed sovereignty were upheld, its actions would nevertheless be illegal.

A. Latia's seizures violate the 1958 Geneva Conventions on the Law of the Sea.

1. Latia's seizures are not supported by the Continental Shelf Convention.

Article 3 of the Convention specifically states that continental shelf claims do not affect the legal status of the superjacent waters as high seas. Jurisdiction over the seabed does not convey jurisdiction over vessels on the

waters above. Exceptions or modifications to this principle are expressly prohibited. Convention on the Continental Shelf, supra art. 12. Latia's assertion of sovereignty directly contravenes article 3. Therefore, Latia's seizure of the Ocean Mining vessels is unauthorized under the Continental Shelf Convention.

2. Latia's seizures violate the High Seas Convention.

The Convention on the High Seas, April 29, 1958, art. 2, [1962] 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82, provides: "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty." The seizures occurred on the high seas where Latia had no right to exercise sovereignty.

Latia violated Industria's right of exclusive flag state jurisdiction over the seized vessels. Both Gatherer and Carrier were of Industria's flag (R. 3). Apart from enumerated exceptions, article 6 of the High Seas Convention states that a ship is subject to the exclusive jurisdiction of the flag state. No state may exercise any form of jurisdiction over a ship not of its flag. J. BRIERLY, THE LAW OF NATIONS 307 (6th ed. 1963). No state may question another ship's right to sail, nor may it interfere with a ship's movements. C. FENWICK, INTERNATIONAL LAW 499 (4th ed. 1965). "No arrest or detention of a ship . . . may be ordered by any authorities other than those of the flag state," even when dealing with serious navigational incidents such as collisions. High Seas Convention, supra art. 11, para. 3. By seizing the Industrian ships, Latia violated Industria's right of exclusive jurisdiction.

Latia's assertion that Gatherer and Carrier were engaged in piracy is clearly invalid. Article 15 of the High Seas Convention defines piracy as an act of depredation committed on the high seas for private ends by the crew of a private ship and directed against another ship or against persons or property on board such ship. Ocean Mining's activities were not directed against another ship or against persons or property on board such ship. Under these circumstances, the mining operation cannot be analogised to an act of piracy.

Latia seeks to further justify the seizure of Carrier on the basis of hot pursuit. However, article 23(1) of the High Seas Convention specifically states that pursuit must be commenced when the foreign ship is within the territorial waters or contiguous zone of the pursuing state. Since at no time did Carrier enter Latia's valid territorial sea or contiguous zone, Latia's attempt to justify seizure of Carrier must fail.

Further, Latia's hot pursuit legally commenced beyond even its asserted two hundred mile sea. Article 23(3) of the Convention proclaims that hot pursuit commences only after a visual or auditory signal to stop has been given. The record reveals that when the Latian vessel began following Carrier no communication of any kind was exchanged (R. ADDENDA II). Communication by means of gunfire was effected only after the two ships were beyond Latia's claimed two hundred mile territorial sea (R. 3). Hot pursuit legally commenced at this point. Since article 23(1) requires that hot pursuit commence within the territorial sea, Latia's seizure of Carrier on the basis of hot pursuit is totally without foundation under the High Seas

Convention.

Articles 20 and 22(3) both provide that if a ship has been seized on the basis of piracy, and the suspicions are later proven groundless, the state making the seizure shall be liable to the flag state of the seized ship for any loss or damage sustained as a result of the seizure. The High Seas Convention further provides in article 23(7) that where hot pursuit is unjustified, the pursued state shall be compensated for any loss or damage. Latia is liable for any and all losses suffered by Ocean Mining and Industria on account of the seizure.

B. Latia's actions violate customary international law.

Apart from the right of approach to identify nationality, customary international law forbids any interference in time of peace with ships of another flag on the high seas. 4 WHITEMAN, DIGEST OF INTERNATIONAL LAW 667 (1965). Once the flag is identified, even suspicious conduct does not justify interference. H. SMITH, THE LAW AND CUSTOM OF THE SEA 65 (1959). The vessel cannot be stopped, boarded or searched for purposes of investigation. G. DAVIS, ELEMENTS OF INTERNATIONAL LAW 493 (4th ed. 1915). Since the ships in question were clearly of Industria's flag (R. 3), Latia had no right to interfere.

The record reveals, however, that Latia not only interfered with the Industrian vessels, but also seized them, and subsequently adjudicated Gatherer in prize (R. 3-5). These were flagrant violations of customary international law. The right of capture and prize on the high seas is uniquely the right of a belligerent since it is by an act of war that title of the original

owner is divested. DAVIS, supra at 364. The right comes into existence only after the outbreak of war and is the exclusive prerogative of the hostile parties. C. COLUMBOS, INTERNATIONAL LAW OF THE SEA 271 (1959); M. TANDON, PUBLIC INTERNATIONAL LAW 789 (10th ed. 1965). If an illegal seizure occurs, as here, the authorities are in agreement that the government of the ship interfering with a commercial vessel is liable for all damages sustained. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 215 (1966).

C. Latia's actions violate the United Nations Charter.

1. Latia was obligated to submit this dispute to the United Nations.

Articles 2(3) and 2(4) of the United Nations Charter obligate a signatory state to settle its international disputes in a manner which does not endanger world peace and security. A state which fails to negotiate a settlement must submit the matter to the Security Council. U.N. CHARTER arts. 33-37. Moreover, article 35(1) allows Latia the prerogative of unilateral submission. As a United Nations member (R. ADDENDA I), Latia was bound by these established procedures. However, instead of peacefully submitting the dispute to the United Nations, Latia summarily resorted to armed force. This action was widely protested (R. 4). By its forceful seizure, Latia violated the United Nations Charter as well as the principles on which the Charter is based. Vindication of Latia's actions would both sanction the unilateral use of force to resolve doubtful claims and circumvent the necessity of resort to peaceful procedures.

2. Latia's justifications for the use of force are invalid.

Latia cannot justify its actions by asserting that they were permissible means of self help. In the Corfu Channel Case, [1949] I.C.J. 4, this Court condemned forcible self help to obtain redress, even where sovereign rights had already been violated. J. BRIERLY, THE LAW OF NATIONS 426 (6th ed. 1963).

Self defense is an invalid justification. Article 51 of the United Nations Charter permits self defense only in the event of an armed attack. Clearly no one attacked Latia. Neither cases nor custom support the proposition that a mining vessel on the high seas may be seized under a claim of self defense to prevent development of the seabed. Baxter, The Legal Consequences of the Unlawful Use of Force Under the Charter, 62 PROC. SOC'Y INT'L L. 68 (1968).

Latia cannot claim that her actions were valid reprisals. Reprisals excessive in relation to the injury suffered are illegal. J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 484 (7th ed. 1972). The use of armed force to seize mining vessels on the high seas and the forfeiture of property far exceed any warranted reprisals. In any event, reprisals require authorization by the United Nations. W. GOULD, AN INTRODUCTION TO INTERNATIONAL LAW 593 (1957). Latia has no basis in international law to justify forcible reprisals against vessels on the high seas.

Finally, Latia seeks to justify its actions by asserting that Ocean Mining's operations were endangering vital mineral interests. However,

Latia cannot show that the minerals were in danger of depletion. Latia was not dependent in any way upon the minerals. In fact, Latia did not possess the technology to develop Tract # 1. If the depletion level had been approached, Industria was fully able to reimburse Latia for damages. And even if the minerals had been vital to Latia's economy, the proper procedure was peaceful settlement through the United Nations. The use of armed force to secure lawful, vital rights has been expressly prohibited unless specifically ordered by the Security Council. Higgins, Legal Limits to the Use of Force, 37 BRIT. Y.B. INT'L L. 269, 315 (1961). Instead, Latia resorted to unilateral self-help without establishing any culpability on Industria's part. It did so in such a reckless manner, through the use of naval gunfire, that personal injury to some of Gatherer's crew was sustained (R. 4).

D. Latia's expropriation of Ocean Mining property without compensation is a violation of international law.

Seizure and adjudication in prize are restricted to belligerents. Since no state of war existed between Industria and Latia, the latter seeks to justify its seizure under the doctrine of expropriation.

1. Latia's expropriation is illegal.

Even if Latia is entitled to seabed jurisdiction, the high seas are not within Latia's sovereign domain. Although the right of expropriation within competent jurisdiction is generally conceded, a state may not expropriate property illegally subjected to its jurisdiction by seizure on the high seas. G. WHITE, NATIONALIZATION OF FOREIGN PROPERTY 106-07 (1961). In addition, expropriation is valid only if grounded in true public necessity.

National aggrandizement does not constitute such necessity. WHITE, supra at 5.

2. Full compensation must be paid even for property legally expropriated.

Latia expropriated the Ocean Mining equipment without any compensation whatsoever. International law recognizes that even if expropriation is excused, the minimum duty to pay just compensation remains. Comment, Foreign Seizure of Investments: Remedies and Protection, 12 STAN. L. REV. 606, 609 (1960). The universally recognized right of compensation is based on the theory of unjust enrichment. Kissam & Leach, Sovereign Expropriation of Property and Abrogation of Concession Contracts, 28 FORD. L. REV. 177, 192-94 (1959). The record does not reveal that Latia has expended any effort whatsoever to explore or exploit its deep sea resources or to develop any deep sea mining technology of its own. Therefore, failure to require compensation would result in clear unjust enrichment for Latia. Just compensation includes all elements of value that inhere in the expropriated property. I. FOIGHEL, NATIONALIZATION 116 (1957). Consequently, Latia is liable not only for Gatherer but also for all development costs and technology embodied therein.

Latia's seizure, expropriation and failure to pay compensation are unjustified under any tenable theory of international law.

CONCLUSION

Wherefore, for the reasons set forth above, Applicant respectfully prays that the International Court of Justice render its decision in favor of

Industria, finding that:

(1) Latia possesses no sovereignty over Tract # 1.

(2) The exploitation of Tract # 1 under DOMA does not violate international law.

(3) Latia violated international law by interfering with mining operations and commerce on the high seas.

(4) Latia must return the cargo of nodules and the ship Gatherer, reimburse all fines and assessments, and compensate for all other costs including lost profits on the mining operations.

Respectfully submitted,

Douglas M. Becker

Douglas M. Becker

John W. Berkel

John W. Berkel

Daniel K Hedges

Daniel K. Hedges

CERTIFICATE

We certify that this Memorial complies with the 1974 Rules of this competition.

Douglas M. Becker

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John W. Berkel

John W. Berkel

Daniel K Hedges

Daniel K. Hedges