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

COUNTER MEMORIAL FOR THE RESPONDENT

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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 AND THE AREA OF TRACT # 1.

II. WHETHER THE DOMA REGIME VIOLATES INTERNATIONAL LAW.

III. WHETHER LATIA'S SEIZURE AND CONFISCATION 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 has sovereignty over the mineral resources and the area of Tract # 1. First, the Continental Shelf Convention establishes that a coastal state has sovereignty over adjacent offshore areas which are exploitable. Tract # 1 is clearly exploitable. It is adjacent to Latia because it lies on the natural prolongation of Latia's submerged continental land mass. Second, Latia's territorial sea and economic recourse zone, which are similar devices to achieve the same result, give Latia sovereignty over Tract # 1. Latia's justifications for its two hundred mile territorial sea fulfill all legal requirements. Its economic resource zone is not violative of international custom.

The Deep Ocean Mining Act (hereinafter cited as DOMA) regime violates international law. DOMA violates the principle of res communis. Ocean Mining's operations are not justified by the principles of either res communis or res nullius. Finally, DOMA poses serious difficulties for any future international regime.

Latia's defense of her sovereign rights through seizure and confiscation is valid under international law. The ships involved were committing acts of piracy. The High Seas Convention grants to Latia the right to seize pirates. Further, the Continental Shelf Convention implies a right to enforce exclusive grants of sovereignty.

Latia has the right to enforce its valid seabed claims under the principle of protected interests. Latia also has the right to enforce its laws when the consequences of the actions at sea extend to Latia's territory.

Finally, Latia's actions were legal reprisals against Industria.

Since their dispute was, at the time of the seizure, within Latia's domestic jurisdiction, Latia was not obligated to submit the dispute to the United Nations. Even if the dispute was international in character, Latia's seizure was a legal affirmation of rights illegally and forcibly denied.

Latia is under no duty to pay compensation for her legal confiscation of Ocean Mining property.

ARGUMENT AND AUTHORITIES

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

Latia's claim of sovereignty is based on its continental shelf, territorial sea, and economic resource zone. All three bases are supported by international law. Moreover, pending adoption of an international regime, the coastal state is the "most appropriate and convenient agency" to regulate activities in the contiguous ocean waters. The Trucial Coast Case, in 1 INT'L & COMP. L.Q. 247, 256 (1952).

A. Latia has sovereignty over Tract # 1 under the continental shelf doctrine.

Since Industria and Latia are signatories to the Geneva Convention on the Continental Shelf (R. 7), the Convention establishes "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. The continental 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. Although Tract # 1 lies beyond the two hundred meter depth, it is nonetheless part of Latia's continental shelf by virtue of the exploitability and adjacency criteria.

1. Tract # 1 is exploitable.

The exploitability test is objective since the Convention requires merely that Tract # 1 be exploitable by anyone. L. HENKIN, LAW FOR THE SEA'S MINERAL RESOURCES 16-17 n.43 (1967). Commentators unanimously support this interpretation of the test. D. BOWETT, THE LAW OF THE SEA 34 n.4 (1967). The moment Ocean Mining's operations began, the exploitability criterion was satisfied. Some respected publicists argue that exploitability is a wholly independent basis for sovereignty. Oda, The Geneva Conventions on the Law of the Sea: Some Suggestions for their Revision, 1 NAT. RES. LAW. NO. 2, 103, 106 (1968). However, Latia's claim of sovereignty is justified under an even stricter interpretation of the Convention.

2. Tract # 1 is adjacent to Latia.

The second criterion of sovereignty established by article 1 of the Convention is adjacency. In the North Sea Cases, this Court explicitly

established the true test for adjacency.

> [T]he rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory . . . exist ipso facto and ab initio, by virtue of its sovereignty over the land . . . for the purpose of exploring the sea-bed and exploiting its natural resources.

North Sea Continental Shelf Cases, [1969] I.C.J. 3, 22 (emphasis added). Because Tract # 1 lies on the natural prolongation of Latia, it is "adjacent." Latia's sovereignty, rooted in article 2 of the Convention, does "not depend on occupation, effective or notional, or on any express proclamation." Id. Rather, the limits of this sovereignty depend upon the contours of Latia's offshore topography.

The "bottom topography off Latia's shores is essentially a sharp drop near the coast to a depth of 600 meters . . ." (R. 2). Thus, Latia has little or no geological continental shelf. Latia does have a defined geological continental slope and continental rise (R. 2). The slope is the "sharp drop" to 600 meters. The rise is the gradual descent to 2100 meters. J. ANDRASSY, INTERNATIONAL LAW AND THE RESOURCES OF THE SEA 3-4 (1970). There is no break in this chain of coastal appurtenances until at least 2100 meters. Tract # 1, located at 2100 meters (R. 2), lies on Latia's continental margin, which is comprised of shelf, slope, and rise.

The natural prolongation encompasses the entire continental margin. There is strong scientific support for the proposition that "[m]uch, if not all, of the continental rise appertains to the adjacent continent. . . ." Finlay, The Outer Limit of the Continental Shelf, 64 AM. J. INT'L L. 42, 45 (1970). The rise is largely composed of sediments of the continent which

over time have drifted down the slope. Jennings, The Limits of Continental Shelf Jurisdiction: Some Possible Implications of the North Sea Case Judgment, 18 INT'L & COMP. L.Q. 819, 830 (1969). Therefore, there is no justification for Industria's assertion that the shelf and slope are within the natural prolongation of the continental land mass, and the rise is not. This Court's opinion in the North Sea Cases directly contradicts such an assertion.

In summary, Tract # 1 is located on Latia's geological continental margin. The continental margin is coextensive with the legal continental shelf. Therefore, Tract # 1 is "adjacent" and lies on Latia's legal continental shelf.

3. Adjacency is not synonymous with proximity.

Industria argues that Latia's claim fails the adjacency test because Tract # 1 is 120 miles from Latia (R. 2). In contending that adjacency is synonymous with proximity, Industria relies upon this Court's statement that, ". . . it is evident that by no stretch of imagination can a point on the continental shelf situated say a hundred miles . . . from a given coast, be regarded as 'adjacent' to it . . . in the normal sense of adjacency. . . ." North Sea Continental Shelf Cases, [1969] I.C.J. 3, 30 (emphasis added). However, the Court made it abundantly clear that there is a distinction between adjacency "in the normal sense" and adjacency as used in the Convention. There is "no necessary, and certainly no complete identity between the notions of adjacency and proximity." Id. at 30. In fact, this Court expressed its willingness to recognize that points as much as 170 miles offshore might be considered part of a coastal state's continental shelf.

4. The Continental Shelf Convention seeks to compensate nations with narrow shelves.

The enormous disparities among nations' geological continental shelves is well known. The Soviet Union has over 1.3 million square miles of shelf, while Latia has virtually none. Knight, The Draft United Nations Conventions on the International Seabed Area: Background, Descriptions, and Some Preliminary Thoughts, 8 SAN DIEGO L. REV. 459, 465 n.16 (1971). Nations with extensive geological shelves already possess a huge advantage because exploitation will always be cheaper and easier off their coasts. The International Law Commission has consistently sought to remedy these inequities of nature. M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 673 (1962). The exploitability and adjacency tests of the Continental Shelf Convention seek to provide such a remedy. ANDRASSY, supra at 84.

B. Latia has sovereignty over Tract # 1 on the basis of its territorial sea and economic resource zone.

Coastal states' extensions in recent years of their territorial seas and contiguous economic resource zones are essentially "interchangeable devices for achieving the same result." Baxter, The Territorial Sea, 1956 PROC. SOC'Y INT'L L. 116, 122. Advancing technology and increasing economic interdependence among the nations of the world are primarily responsible for these striking trends. The impact of economic disparity has displaced military inequality as the primary concern of the developing states. Emerging coastal states must have the right "to protect their own concerns of self-preservation and self-development." Comment, National Sovereignty

and the Two Hundred Mile Limit: The Case for the Littoral State, 21 AM. U. L. REV. 593, 601 (1972).

Every state has the right

> to defend its integrity and independence; to provide for its conservation and prosperity; and to organize itself as it sees fit; to legislate its interest; administer its services and to define the jurisdiction and competence of its courts.

Consideration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G.A. Res. 2327, 22 U.N. GAOR Supp. 16, at 96-97, U.N. Doc. A/6316 (1968). Latia claims a two hundred mile territorial sea and a three hundred mile economic resource zone (R. 2, 3). Tract # 1 lies within each of these limits. These territorial sea and economic resource zone claims are valid means of implementing Latia's natural rights.

1. Latia's two hundred mile territorial sea does not violate international law.

The principal components of international custom are concordant practice by a number of states and repetition of the practice over a number of years. A. D'AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW 37 (1971). In 1930, apparently only the Soviet Union claimed a territorial sea as wide as twelve miles. M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 536 (1962). Since 1945, however, ten nations have claimed two hundred miles, five have made claims between twelve and two hundred miles, and twenty others have functionally extended their territorial seas beyond twelve miles. D. JOHNSTON & E. GOLD, THE ECONOMIC ZONE IN THE LAW OF THE SEA 45-50 (1973). The

two hundred mile territorial sea satisfies both requirements of custom.

The principles supporting this trend have been codified at the conferences of Santiago in 1952, and Montivideo and Lima in 1970. States throughout the world with diverse economic circumstances have strongly supported these extensive territorial sea claims. Comment, National Sovereignty and the Two Hundred Mile Limit: The Case for the Littoral State, 21 AM. U.L. REV. 593, 597 (1972).

This Court has identified the factors which give such extensions of the territorial seas validity in international law. 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." Latia has both geographic and economic reasons for its two hundred mile sea. The absence of a geological continental shelf forces Latia to seek other means of protecting its offshore resources. In addition, Latia is an underdeveloped nation (R. ADDENDA II) which must "utilize all available resources to alleviate stringent economic situations and to provide for the living communities." B. AUGUSTE, THE CONTINENTAL SHELF 303 (1960). Thus, Latia's claim is not violative of international law.

Industria was bound to negotiate in good faith with Latia before commencing mining operations. Balancing the relevant interests, Industria's need precipitously to commence mining cannot outweigh Latia's natural right and obligation to safeguard the welfare of its own peoples.

2. Latia's three hundred mile economic resource zone does not violate international law.

Latia recently claimed an economic resource zone "comprising all ocean resources within 300 miles of its coastline" (R. 2-3). While the term "economic resource zone" is quite recent, the exercise of limited jurisdiction for limited purposes is a well established principle. Over forty years ago, Judge Jessup wrote that, "Nations have quite generally if not universally attempted to exercise some authority on the high seas adjacent to their territorial waters." P. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 459 (1927). For example, as early as the nineteenth century, the United States and Great Britain "commonly made" extended claims for limited purposes, such as the regulation of slave trading and liquor traffic. M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 588 (1962). By 1956, approximately twenty-five states had claimed sovereignty over mineral resources in waters outside their territorial seas, generally without protest. Id. at 637.

In the past two years, the concept has gained remarkable acceptance among the developing nations of the world. In June, 1972, seventeen African nations at Yaounde expressed support for expansive economic zones. Also, in June, 1972, ten South American nations adopted at Santo Domingo a resolution favoring such zones. 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). Such support has led commentators to conclude

> that there is an established trend towards a reformulation of the rights, privileges, and special responsibilities of the coastal state around the core concept of an exclusive economic zone, within which coastal states would have exclusive or privileged access to the offshore resources.

D. JOHNSTON & E. GOLD, THE ECONOMIC ZONE IN THE LAW OF THE SEA 8 (1973).

Furthermore, "[r]ecognition by the general community of particular contiguous zones for particular purposes is not, therefore, tantamount to an invitation to states to create comprehensive zones for all purposes." M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 519 (1962). The extent of the zone is less important than "the functional relationship between authority claimed and the exclusive interest allegedly requiring protection." Id. at 584. Latia's claim is fully in accord with this "functional relationship" standard. Its need for economic improvement (R. ADDENDA II) and its right to control the development of its offshore mineral resources are no less vital than any allegedly immediate need of developed states to continue to feed their hungry factories. Latia seeks not to deprive Industria or any other state of needed raw materials, but merely to exert its rightful control over the exploitation of any seabed area within its economic resource zone.

II. THE DOMA REGIME VIOLATES INTERNATIONAL LAW.

Latia's claims are supported by international law. However, if this Court rejects Latia's position, it must reject Industria's as well. Industria's claim to sovereignty over Tract # 1 cannot be upheld because DOMA violates international law.

A. The deep seabed is res communis.

The deep seabed is res communis, like the high seas, and hence belongs to all peoples. It is subject to the sovereignty of none. Industria argues that the deep seabed is res nullius, like the land of the continents, and hence subject to the sovereignty of the first to occupy it. However, this Court has never held that the seabed is res nullius. In the Trucial Coast case, a leading international arbitration, the arbitrator held:

> To treat this subsoil [of the deep seabed] as res nullius--"fair game" for the first occupier--entails obvious and grave dangers. . . . It invites a perilous scramble. . . . [I]t is difficult to imagine any arrangement more calculated to produce international friction. . . .

Trucial Coast Case, in 1 INT'L & COMP. L.Q. 247, 257 (1952). The result of such decisions has been to "isolate . . . proponents [of res nullius] from the mainstream of developing international law." Wilkes, Foreward: Law of the Sea Needs for the 1970's, 8 SAN DIEGO L. REV. 453, 454 (1971) (emphasis in original).

The declarations of states closely parallel the cases. President Johnson of the United States proclaimed in 1966:

> Under no circumstances . . . must we ever allow the prospects of rich harvest and mineral wealth to create a new colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings.

L. HENKIN, LAW FOR THE SEA'S MINERAL RESOURCES 8 (1968) (emphasis added). Ambassador Pardo's description of the deep seabed as the "common heritage of mankind" has also been widely acclaimed and accepted. Krueger,

The Convention of the Continental Shelf and the Need for Its Revision and Some Comments Regarding the Regime for the Lands Beyond, 1 NAT. RES. LAW. NO. 3, 1, 9-10 (1968).

The United Nations Resolution of December 17, 1970, provides:

> (1) The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction . . . as well as the resources of the area, are the common heritage of mankind.
>
> (2) The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

G.A. Res. 2749, 25 U.N. GAOR Supp. 28, at 24, U.N. Doc. A/8028 (1971) (emphasis added). Both Latia and Industria are members of the United Nations (R. ADDENDA I). This Resolution, adopted by the United Nations General Assembly without a single dissenting vote, is an unambiguous declaration of the law of the deep seabed. It "is a pronouncement of the Organization, which is legally definitive, and against which there is no legal recourse . . . thus the individual dissident attitude lacks juridical relevance." J. CASTANEDA, LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS 121 (Amoia transl. 1969) (emphasis in original).

B. DOMA violates the principle of res communis.

Industria insists that even if the ocean floor is res communis, its resources are nevertheless subject to appropriation by anyone. Industria grounds this argument on the Grotian distinction between the high seas as res communis and the fish of the seas as res nullius. H. GROTIUS, FREEDOM OF THE SEAS 29 (McGoffin transl. 1916). However, mineral resources of the deep seabed cannot be analogized to the fish of the high seas.

The analogy fails for several reasons. First, fish are self-productive, while minerals are not. It takes approximately 100,000 years for manganese nodules to form by natural processes. Mero, Mineral Deposits in the Sea, 1 NAT. RES. LAW. NO. 3, 130, 137 (1968). The finite nature of such resources makes the res nullius approach of unlimited individual appropriation inapplicable. Second, unlike fishing, seabed mining requires permanent or semi-permanent occupation. In fact, DOMA specifically provides rights of occupation for at least twenty years. Under certain circumstances, such occupation can become permanent (R. ANNEX A § 4c). Third, the DOMA mining operations may well become a serious hazard to navigation. In the Gulf of Mexico, for example, the proliferation of mining operations has necessitated fairlanes for shipping. W. FRIEDMANN, THE FUTURE OF THE OCEANS 26 (1971). Fourth, mining ocean resources will drastically affect world mineral markets. Underdeveloped nations now supply 23.1 percent of the world's manganese production. LaQue, Deep-Ocean Mining: Prospects and Anticipated Short-Term Benefits, PROCEEDINGS OF THE PACEM IN MARIBUS CONFERENCE 131, 142 (E. Borgese ed. 1971). The scale of production from manganese nodules will be such that medium level output by a single firm could depress world market prices "to the point where all operations might become uneconomical." Christy, Alternative Regimes for Maritime Resources Underlying the High Seas, 1 NAT. RES. LAW. NO. 2, 63, 65 (1968). The economic impact would be disastrous for the world community. Thus, the results of DOMA's mining operations would be completely antithetical to the principle of res communis.

The United Nations has supported the view that the resources of the ocean floor should not be exploited for national profit. The Moratorium Resolution of 1970 declares that

> (a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;
>
> (b) No claim to any part of that area or its resources shall be recognized.

G.A. Res. 2574, 24 U.N. GAOR Supp. 30, at 11, U.N. Doc. A/7630 (1970). Ocean Mining Company's operations blatantly violate both the letter and the spirit of this Resolution. On the other hand, Latia's proposal to conduct these operations "in 'trust' for all peoples and states" (R. 6) is fully in accord with the principles of the Resolution.

> . . . [E]xploitation of the resources of the sea-bed beyond the limits of national jurisdiction should be carried out for the benefit of mankind as a whole . . . taking into account the special interest and needs of the developing countries.

G.A. Res. 2574, supra. Latia's position is fully consistent with the principle of res communis.

Industria's conduct has so clearly violated this principle that sixty states have refused to recognize title to the nodules in Industria (R. 4). DOMA offers benefits solely to member nations. Such nations will receive no royalties and only a minimal percentage of licensing fees and tax revenues (R. ANNEX A § 6). Conversely, Latia has invited proposals for a royalty regime (R. 5).

Latia now possesses the technology and facilities for the development of Tract # 1 (R. 5-7). In accordance with the principle of res communis,

and contrary to the exclusionary policies of DOMA, Latia will carry out this mining for the benefit of mankind.

C. DOMA will interfere with the establishment of a permanent international seabed regime.

Proposals strikingly similar to DOMA have been severely criticized as being "incompatible with a future international regime." Auburn, The Deep Seabed Hard Mineral Resources Bill, 9 SAN DIEGO L. REV. 491, 508 (1972). DOMA purports to be interim. However, its licensees' claims will be subject to a subsequent international regime only if "such regime fully recognizes and protects the exclusive rights of each licensee . . ." (R. ANNEX A § 7). Every such claim will probably represent an investment of over $150 million. Note, Guarding the Treasures of the Deep: The Deep Seabed Hard Mineral Resources Act, 10 HARV. J. LEGIS. 596, 604 (1973). It is inconceivable that the DOMA nations will support any system that poses a potential threat to the security of these investments. Just as clearly,

> . . . the developing nations would never accept a regime which would acknowledge prior rights of licensees. Such a regime would be contrary to what they interpret as the meaning of common heritage of mankind. . . .

Id. at 612.

This impasse can be avoided only through the strict implementation of the principle of res communis. In support of res communis, Latia seeks to act as the "agent or custodian, as it were, of the international community. . . ." Nelson, The Patrimonial Sea, 22 INT'L & COMP. L.Q. 668, 681 (1973). The principal strength of the custodianship idea is that "it enables the coastal State to enjoy rights in its patrimonial sea, but not

to the detriment of real international community interests." Id. at 682.

III. LATIA'S SEIZURE AND CONFISCATION OF OCEAN MINING PROPERTY DO NOT VIOLATE INTERNATIONAL LAW.

A. Latia's seizure was a valid exercise of sovereignty over its territorial sea.

The sovereignty of a coastal state extends to the seabed of its territorial sea. Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, art. 2, [1964] 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205. Consequently, there is no difference between the unauthorized taking of seabed minerals and a similar taking of terrestial resources. Both are theft.

Assuming Latia's territorial sea claims are valid, the seizure of Gatherer was well within the bounds of international law. A coastal state has absolute police power jurisdiction over its territorial sea. M. TANDON, PUBLIC INTERNATIONAL LAW 302 (10th ed. 1965). The seizure for theft of minerals from Latian territory clearly falls within such police power jurisdiction.

Under the doctrine of hot pursuit, the apprehension of Carrier is also justified. Hot pursuit must commence within the pursuing state's territorial sea. Once properly initiated, pursuit of the offending vessel may continue on the high seas. Seizure on the high seas is legal if the pursuit has not been interrupted. Convention on the High Seas, April 29, 1958, art. 23, [1962] 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. Carrier was engaged in transporting the illegally appropriated minerals to a processing site located in Francia (R. 3). Latia's ship, Interceptor, commenced pursuit of the Industrian vessel while the latter was within the territorial sea. The uninter-

rupted pursuit culminated in seizure on the high seas. The application of the hot pursuit doctrine to these circumstances clearly establishes the legality of Latia's seizure of Carrier.

B. Latia's seizure was a valid exercise of seabed sovereignty over its continental shelf and economic resource zone.

If this Court rejects the two hundred mile territorial sea, Latia nonetheless retains seabed sovereignty by virtue of its continental shelf and economic resource zone claims. Assuming that Latia's two hundred mile territorial sea claim is rejected, seabed sovereignty independently justifies Latia's actions under well established principles of international law.

1. Latia has the right and obligation to protect its seabed mineral interests.

Latia's interests in protecting its seabed minerals provide legal justification for its actions. The Continental Shelf Convention states that no other nation may exploit the coastal state's continental shelf without express permission. Convention on the Continental Shelf, April 29, 1959, art. 2, para. 2, [1964] 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311. This provision would be a meaningless and hollow pronouncement of Latia's sovereignty if the concomitant right of enforcement were not implied. Even a restrictive interpretation of the provision encompasses a right to protect what has been expressly granted as an exclusive province.

It is axiomatic in law and reason that competence to prescribe must include competence to enforce. M. McDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 621 (1962). Otherwise, the competence to prescribe is a nullity. Nations unquestionably have the right to protect substantial

state interests against external injury. McDougal, The Maintenance of Public Order at Sea and the Nationality of Ships, 54 AM. J. INT'L L. 25, 95 (1960). The practice of states extending judicial authority to protect their interests undoubtedly falls within the limits of permissible competence. Id. at 93. The enforcement of customs and sanitary zones illustrates this principle.

Latia has seabed sovereignty over valuable mineral resources. Latia must have the necessary authority to protect these interests. Industria's actions threatened these resources and Latia was clearly justified in acting to prevent unlawful exploitation.

2. The mining of Latia's seabed was an act of piracy.

The Convention on the High Seas, supra art. 15(1), defines piracy, in part, as any act of depredation, committed for private ends by the crew of a private ship, and directed against persons or property in a place outside the jurisdiction of any state. Gatherer was a private ship engaged in appropriating minerals from Latia's seabed. This was a clear act of depredation. Gatherer's actions were undertaken solely for the profit of Ocean Mining, an Industrian private corporation. The piratical acts occurred on the high seas, 120 miles from shore, and thus outside the jurisdiction of any state. Hence, Gatherer's actions constituted piracy under article 15(1) of the High Seas Convention.

Article 15(3) of the Convention provides that any act ". . . intentionally facilitating an act [of piracy] . . ." will also be classified as piracy. Thus Carrier, in knowingly transporting the illegally obtained minerals appropriated by Gatherer, is equally responsible for the piratical actions.

Since Gatherer and Carrier were pirate ships, Latia's seizure and confiscation were warranted by article 19. This article provides not only that any state may seize a pirate ship and its property on the high seas but also that the courts of the seizing state may assess penalties in regard to both the ships and the property on board.

It should be noted that Interceptor is a Latian naval vessel. Article 21 of the Convention, which stipulates that only warships may seize pirate vessels, is therefore fully satisfied.

3. The seizures were valid acts of reprisal.

Reprisals consist of the forcible seizure of property belonging to an offending state or to its citizens. Such seizures may be made within the territory of the offended state, or on the high seas. G. DAVIS, ELEMENTS OF INTERNATIONAL LAW 264 (1915). Reprisals may be undertaken in all cases of international delinquency when the injured state cannot obtain reparation through other means. W. GOULD, AN INTRODUCTION TO INTERNATIONAL LAW 590 (1957).

Although private acts are not generally considered international delinquencies, a state is responsible for injurious acts done by its citizens under the principle of vicarious responsibility. 1 H. LAUTERPACHT, OPPENHEIMS INTERNATIONAL LAW 306 (7th ed. 1962). If the responsibility is not discharged, the state is subject to reprisals. 2 H. LAUTERPACHT, OPPENHEIMS INTERNATIONAL LAW 137 (7th ed. 1962). A reprisal must be proportionate to the offense committed.

Industria was notified far in advance of Latia's intention to protect its interest (R. 3). Nonetheless, Industria authorized Ocean Mining Company to send its mining vessels for the purpose of mining Latia's seabed. This was done under color of Industrian law and was licensed under Industria's DOMA legislation. Interceptor proceeded to Tract # 1 and confiscated the vessels. As property of Industrian nationals, Carrier and Gatherer were subject to valid seizure in reprisal. Latia's actions were fully supported by international law.

4. Latia's actions are valid under the protective principle of criminal jurisdiction.

Under the protective principle, a state has jurisdiction over any crime committed outside its territory by an alien against the territorial integrity of the state. K. VON SCHUSCHNIGG, INTERNATIONAL LAW 115 (1959). It is the effect of the crime which confers jurisdiction on the state. C. RHYNE, INTERNATIONAL LAW 117 (1971). This principle finds support in the case of The S.S. Lotus, [1927] A.C.I.J. Series A, No. 10, which affirmed Turkish jurisdiction over a foreign naval officer for a crime committed against Turkish property on the high seas. Further, article 19 of the Territorial Sea Convention provides that criminal jurisdiction may be exercised over a ship if the consequences of the crime extend to the coastal state.

In the present case, the ships of Ocean Mining Company took minerals belonging to Latia. Even though the crime was committed on the high seas, the consequences extended to Latia, giving Latia the right to apprehend the offending vessels.

C. Latia was unable to submit this dispute to the United Nations.

The United Nations Charter requires signatories to settle their international disputes by peaceful means without resort to the use of force. U.N. CHARTER art. 2, paras. 3 & 4. Industria asserts that Latia, as a United Nations member (R. ADDENDA I), was required to refrain from self help and to submit the dispute to the United Nations.

1. The United Nations had no jurisdiction over this dispute.

If negotiations between contesting states fail, they should seek to refer a legal dispute to this Court as the judicial arm of the United Nations. U.N. CHARTER art. 36, para. 3. However, "[o]nly states may be parties in cases before the Court." I.C.J. STAT. art. 34, para. 1 (emphasis added). At the time of the seizure, the dispute was between Latia and Ocean Mining Company, a private corporation. Ocean Mining Company could not be a proper party before this Court.

Thus, at the time the seizure was made, this Court and the United Nations were without jurisdiction. The dispute was then within the domestic jurisdiction of Latia and subject to Latia's domestic authority under article 2(7) of the United Nations Charter.

It should be noted that as soon as Industria chose to espouse Ocean Mining's claim before this Court, Latia immediately agreed to voluntarily submit this dispute to peaceful international adjudication.

2. Self help in defense of sovereign rights does not violate the United Nations Charter.

Threat and use of force is not contrary to the United Nations Charter if it is in affirmation of rights illegally and forcibly denied. Waldock, The Regulation and Use of Force by Individual States in International Law, 81 HAGUE RECUEIL 455, 500 (1952). Further, member nations have, in practice, suspended the application of the Charter to reprisals meeting previously stated conditions. G. VON GLAHN, LAW AMONG NATIONS 500-01 (2d ed. 1970). A wronged state is not bound to submit to the lawless use of force by another but may lawfully assert its rights by the threat and use of force. J. BRIERLY, THE LAW OF NATIONS 429 (6th ed. 1963). This Court upheld that precise principle in the Corfu Channel Case, [1949] I.C.J. 4. In order to assert legal rights which Albania had forcibly denied, the United Kingdom violated Albania's territorial sea. This Court stated that the legality of the British act could not be disputed and that the United Kingdom was not bound to refrain from forcibly asserting illegally denied rights.

Latia has exclusive seabed sovereignty. That right was forcibly denied by Ocean Mining Company. Latia was not required to allow the abusive and flagrant violation of its sovereignty without asserting its legal authority. Industria's accusation that Latia used illegal force has no foundation in international law.

D. Latia's confiscation without compensation does not violate international law.

Any state, as a matter of domestic jurisdiction, has the power to take foreign property within its control for securing the common good. B.

WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 23 (1959). The right to take is an attribute of sovereignty and is recognized by all nations. 3 M. HACKWORTH, DIGEST OF INTERNATIONAL LAW 662 (1962).

Although the duty to compensate for property taken is generally recognized, there is no absolute rule forbidding the taking of an alien's property without compensation. J. BRIERLY, THE LAW OF NATIONS 284-85 (1963). One of the most important exceptions to the compensation doctrine is confiscation of property as a penalty for criminal action. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 435 (1966). No claim for compensation need be entertained if the seizure evolved from a criminal act. WORTLEY, supra at 40. Latia properly confiscated the vessels for criminal activity and is under no duty to compensate for any property taken.

CONCLUSION

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

(1) Latia has sovereignty over Tract # 1.

(2) The exploitation of Tract # 1 under DOMA violates international law.

(3) Latia's actions concerning Ocean Mining property did not violate international law.

(4) Latia does not owe Industria compensation.

Respectfully submitted,

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CERTIFICATE

We certify that this Counter-Memorial complies with the 1974 Rules of this Competition.

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