

**THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT
COURT COMPETITION**

1977

**Case Concerning an Attempt to
Halt the International
Proliferation of Nuclear
Weapons Technology, Pandora
v. Shangri-La, 1977.**

Problem

THE 1977 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

KINGDOM OF SHANGRI-LA

v.

UNITED REPUBLIC OF PANDORA

THE PROBLEM

The Governments of the Kingdom of Shangri-La and of the United Republic of Pandora have submitted the following controversy for resolution by the International Court of Justice.

The Applicant is the Government of the Kingdom of Shangri-La. The Respondent is the Government of the United Republic of Pandora.

The parties have stipulated that the information in the Statement of Facts is true. The memorials to be prepared by contestants need not include a statement of facts, although participants may do so if they wish.

This is a hypothetical problem drafted exclusively for the purposes of the 1977 Jessup Competition. Neither the facts nor the annexed international agreements are intended to portray actual situations or treaties.

Participants are not limited to discussion of the issues presented in the Statement of Facts alone, but may address any corollary issue deemed essential to the resolution of the problem.

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STATEMENT OF FACTS

(Prepared for the exclusive purpose of the 1977 Jessup Competition)

The United Republic of Pandora is one of the world's leading nuclear powers. The United Republic of Pandora conducted key nuclear explosive tests in the 1950's and 1960's. It is the second rank country in terms of the value of its exports of nuclear facilities and materials. On March 5, 1970, Pandora became a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

The Kingdom of Shangri-La is a small country that straddles the border between India and China. In 1830 Shangri-La declared its independence and since then has been tolerated by its powerful neighbors. There are groups of outstanding nuclear scientists at the Nuclear Physics Institute and at the Eternal Light University, both government institutions. An indigenously developed unsafeguarded research reactor is located at each institution. In recent times, Shangri-La has become increasingly concerned about its continued security.

Both the United Republic of Pandora and the Kingdom of Shangri-La are members of the International Atomic Energy Agency (IAEA).

On June 12, 1963, Pandora and Shangri-La signed a bilateral nuclear energy cooperation agreement, which entered into force pursuant to the necessary notifications on August 8, 1963. The relevant provisions of this agreement are set forth in Annex A.

On August 1, 1969, representatives of Pandora, Shangri-La and the IAEA signed a trilateral agreement for the application of safeguards, which entered into force pursuant to the necessary notifications on August 30, 1969. The relevant provisions of this agreement are set forth in Annex B.

In January 1971, the officer in charge of the Shangri-La desk in the Pandora foreign ministry delivered a diplomatic note personally to the deputy chief of mission of the Shangri-La embassy. The note indicated, in the relevant part, that after reviewing its obligations under the NPT, the United Republic of Pandora wished to make clear its understanding that Article X(A) (2) of the Cooperation Agreement precluded the use of material, equipment, or devices supplied by the United Republic of Pandora, or material produced by the use of them, in connection with any nuclear explosive device, whether characterized as "peaceful" or not. The deputy chief of mission said upon receipt of the note, "You know we do not share this understanding," but no formal

diplomatic response was ever sent by Shangri-La to Pandora.

Under a September 1964 contract, two power reactors have been transferred by Pandora to Shangri-La. Long-term fixed commitment fuel supply contracts were also entered into in September 1964, obligating private companies in the United Republic of Pandora to fuel the two reactors. The reactors have been fueled since the commencement of their operations, in 1971 and 1972, respectively. These reactors provide one-fifth of the electric power essential to the industry of Shangri-La. Shangri-La does not have local sources of nuclear fuel.

In 1971, Shangri-La informed Pandora that it had decided to commence construction of a small wholly indigenous reprocessing plant in order to recycle spent fuel from its reactors. Pandora responded that there was absolutely no economic justification for this step, noted that the proliferation dangers resulting from such a step would be great, and urged Shangri-La to abandon the plan. Shangri-La did not.

China exploded its first nuclear device in 1963. With the explosion in 1974 of the Indian nuclear device, there was much concern in Shangri-La. In parliament, the minority party urged that the government develop its own nuclear explosives. In response, the Shangri-La defense minister would only say, "We must keep open the nuclear option." When pressed on several subsequent occasions by the Pandorian foreign minister to join the NPT, the foreign minister of Shangri-La responded that Shangri-La would gladly do so when all the countries in the region also joined the treaty.

In July 1976, with the reprocessing plant expected to be completed in the near future, Shangri-La requested the approval of Pandora to reprocess Pandorian origin fuel under IAEA safeguards in this plant. This request was soon leaked to the press in the United Republic of Pandora--and it could not have come at a worse time. Both the public and the legislature in the United Republic of Pandora in the last two years had become increasingly concerned about the dangers of proliferation inherent in the production of plutonium by reprocessing plants. Virtually irresistible pressures to tighten export policy had mounted.

At an August 20, 1976, news conference, carried by nationwide television in the United Republic of Pandora, the Pandorian President was asked whether Pandora intended to approve the Kingdom of Shangri-La request for permission to reprocess fuel supplied by Pandora. He answered: "We have no doubts about the integrity of the Kingdom of Shangri-La. Shangri-La has committed itself to apply safeguards to the reprocessing plant, and we have determined that they can be effectively applied. We have no other legal option, therefore, but to approve reprocessing of fuel supplied by the

United Republic of Pandora."

The United Republic of Pandora legislature reacted strongly. Two weeks later a new law was enacted that prohibited future fuel shipments to any country unless (a) that country joined the NPT or put its entire fuel cycle under IAEA safeguards, and (b) agreed not to use the fuel directly or indirectly for any nuclear explosive device.

On September 20, 1976, the United Republic of Pandora sent Shangri-La a diplomatic note which made the following points:

(1) The United Republic of Pandora had determined that the Kingdom of Shangri-La reprocessing facility was not "acceptable," and therefore, in accordance with Article VIII(F) of the Cooperation Agreement, denied approval for reprocessing. If the Kingdom of Shangri-La reprocessed any fuel supplied by the United Republic of Pandora, the United Republic of Pandora would consider this a material breach of the Cooperation Agreement and would discontinue further nuclear cooperation.

(2) The United Republic of Pandora would no longer transfer fuel to Shangri-La unless Shangri-La accepted IAEA safeguards on all its nuclear activities and agreed to the interpretation in the United Republic of Pandora's note of January 1971. The United Republic of Pandora was justified in taking this step because:

(a) In view of its obligations under the NPT, The United Republic of Pandora could not supply fuel unless the recipient accepted IAEA safeguards "on all source and special fissionable material in all peaceful nuclear activities within (its)...jurisdiction."

(b) The United Republic of Pandora had a right under Article XII(A) of the Cooperation Agreement to determine whether the safeguards being applied under the trilateral agreements are adequate.

(c) Under Article II of the Cooperation Agreement, continued nuclear cooperation between the United Republic of Pandora and the Kingdom of Shangri-La is subject to the laws and regulations in force in the United Republic of Pandora.

Shangri-La contested and rejected all of these points.

Consequently, in a note of September 30, 1976 Pandora notified Shangri-La of the termination of all future fuel shipments to Shangri-La. As of that date Shangri-La had only enough fuel to maintain its reactors for eleven months.

Shangri-La charged the United Republic of Pandora with a material breach of the Agreement for Cooperation and said that both the Cooperation Agreement and the trilateral agreement would be considered as terminated unless Pandora withdrew its termination order and continued to supply fuel.

At this point, in an effort to find some basis for continued nuclear cooperation, the United Republic of Pandora and the Kingdom of Shangri-La agreed to submit the matter to the International Court of Justice. They stipulated that the text of all the relevant provisions of the bilateral Cooperation Agreement and the trilateral agreement are accurately set forth in Annexes A and B, respectively. They also stipulated that the facts as set forth above are accurate.

Shangri-La requests that the Court examine the validity of the contentions raised by the Pandorian note of September 20, 1976 and additional issues raised by either party, and that the Court determine the rights and remedies available to the respective parties under international law.

Annex A

Selected Provisions from the Agreement for Cooperation Between the Government of the United Republic of Pandora and the Government of the Kingdom of Shangri-La Concerning Civil Uses of Atomic Energy. (Prepared for the exclusive purpose of the 1977 Jessup Competition.)

ARTICLE I

For the purposes of this Agreement:

....

(3) "Atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separate and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

....

(9) "Safeguards" means a system of controls designed to assure that any materials, equipment and devices committed to the peaceful use of atomic energy are not used to further any military purpose.

ARTICLE II

A. Subject to the provisions of this Agreement, the availability of personnel and materials, and the applicable laws, regulations, and license requirements in force in their respective countries, the Parties shall cooperate with each other in the achievement of the uses of atomic energy for peaceful purposes.

....

ARTICLE VII

A. Under terms and conditions as may be agreed, uranium enriched in the isotope U-235 may be transferred by the Government of the United Republic of Pandora or authorized persons under its jurisdiction to the Government of the Kingdom of Shangri-La or authorized persons under its jurisdiction for use as fuel within the Kingdom of Shangri-La in reactors for power application;...

....

ARTICLE VIII

....

E. Within the limitations contained in Article IX, the quantity of uranium enriched in the isotope U-235 transferred under the jurisdiction of the Government of the Kingdom of Shangri-La for the fueling of reactors or reactor experiments shall not at any time be in excess of the quantity necessary for the loading of such reactors or reactor experiments, plus such additional quantity as, in the opinion of the Parties, is necessary for the efficient and continuous operation of such reactors or reactor experiments.

F. When any special nuclear material received from the United Republic of Pandora pursuant to this Agreement requires reprocessing, or any irradiated fuel elements containing fuel material received from the United Republic of Pandora are to be altered in form or content, such reprocessing or alteration shall be performed in facilities acceptable to both Parties upon a joint determination that the provisions of Article XI may be effectively applied.

....

ARTICLE IX

The uranium enriched in the isotope U-235 transferred under this Agreement from the United Republic of Pandora to the Kingdom of Shangri-La for power applications shall not exceed that necessary to support the fuel cycles of reactors having a total installed capacity of two thousand (2,000) megawatts (electric).

ARTICLE X

A. The Government of the Kingdom of Shangri-La guarantees that:

(1) Safeguards provided in Article XI shall be maintained.

(2) No material, including equipment and devices, transferred to the Government of the Kingdom of Shngri-La or authorized persons under its jurisdiction by purchase or otherwise pursuant to this Agreement, and no special nuclear material produced through the use of such material, equipment or devices, will be used for atomic weapons, or for research on or development of atomic weapons, or for any other military purpose.

....

ARTICLE XI

A. The Government of the United Republic of Pandora and the Government of the Kingdom of Shangri-La emphasize their common interest in assuring that any material, equipment or devices made available to the Government of the Kingdom of Shangri-La or any authorized persons under its jurisdiction pursuant to this Agreement shall be used solely for civil purposes.

B. Except to the extent that the safeguards rights provided for in this Agreement are suspended by virtue of the application of safeguards of the International Atomic Energy Agency, as provided in Article XII, the Government of the United Republic of Pandora, notwithstanding any other provisions of this Agreement, shall have the following rights:

....

(2) With respect to any source material or special nuclear material made available to the Government of the Kingdom of Shangri-La or to any authorized person under its jurisdiction under this Agreement by the Government of the United Republic of Pandora or any person under its jurisdiction and any source material or special nuclear material utilized in, recovered from, or produced as a result of the use of the following materials; equipment or devices so made available:

(a) source material, special nuclear material, or moderator material,

(b) reactors, and

(c) any other equipment or devices made available on the condition that the provisions of this paragraph B(2) will apply,

(i) to require the maintenance and production of operating records and to request and receive reports for the purpose of assisting in ensuring accountability for such materials, and

(ii) to require that any such material in the custody of the Government of the Kingdom of Shangri-La or any person under its jurisdiction be subject to all of the safeguards provided for in this Article and the guarantees set forth in Article X;

....

(4) To designate after consultation with the Government of the Kingdom of Shangri-La, personnel who, accompanied, if either Party so requests, by personnel designated by the Government of the Kingdom of Shangri-La shall have access in the Kingdom of Shangri-La to all places and data necessary to account for the source material and special nuclear material which are subject to paragraph B(2) of this Article to determine whether there is compliance with this Agreement and to make such independent measurements as may be deemed necessary;

(5) In the event of non-compliance with the provisions of this Article or of the guarantees set forth in Article X and the failure of the Government of the Kingdom of Shangri-La to carry out the provisions of this Article within a reasonable time, to suspend or terminate this Agreement and to require the return of any materials, equipment and devices referred to in paragraph B(2) of this Article;...

C. The Government of the Kingdom of Shangri-La undertakes to facilitate the application of safeguards provided for in this Article.

....

ARTICLE XII

A. The Government of the United Republic of Pandora and the Government of the Kingdom of Shangri-La, recognizing the desirability of making use of the facilities and services of the International Atomic Energy Agency, agree that the Agency will be promptly requested to assume responsibility for applying safeguards to materials and facilities subject to safeguards under this Agreement. It is understood that, without modification of this Agreement, the safeguards rights accorded to the Government of the Republic of Pandora by Article XI of this Agreement will be suspended during the time and to the extent that the Government of the Republic of Pandora agrees that the need to exercise such rights is satisfied by a safeguards agreement to be negotiated between the Parties and the Agency.

....

ARTICLE XIV

This Agreement shall enter into force on the date on which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for entry into force of such Agreement and shall remain in force for a period of forty (40) years.

Annex B

Selected Provisions from the Agreement between the IAEA, the United Republic of Pandora and the Kingdom of Shangri-La for the Application of Safeguards by the International Atomic Energy Agency to the United Republic of Pandora - Kingdom of Shangri-La Cooperation Agreement. (Prepared for the exclusive purpose of the 1977 Jessup Competition).

....

Section 2

The Government of the Kingdom of Shangri-La undertakes that it will not use in such a way as to further any military purpose any material, equipment or facility while it is listed in the Inventory for the Kingdom of Shangri-La.

....

Section 4

The Agency undertakes to apply safeguards in accordance with the provisions of this Agreement to materials, equipment and facilities while they are listed in the Inventories to ensure so far as it is able that they will not be used in such a way as to further any military purpose.

....

Section 6

The Government of the United Republic of Pandora agrees that its rights under Article XI of the Agreement for Cooperation to apply safeguards to equipment, devices and materials subject to that Agreement will be suspended with respect to materials, equipment and facilities while they are listed in the Inventory for the Kingdom of Shangri-La.

....

Section 10

(This section requires the Agency to establish an Inventory for the Kingdom of Shangri-La which includes all equipment, facilities and materials subject to Article XI(B)(2) of the Agreement of Cooperation.)

....

Section 20

The Agency shall make subsidiary arrangements with each Government concerning the implementation of safeguards procedures. The Agency shall have the right to request information and to make inspections.

Section 21

If the Agency determines that there has been any non-compliance with this Agreement, the Agency shall call upon the Government concerned to remedy such noncompliance forthwith, and shall make such reports as it deems appropriate. If the Government fails to take fully corrective action within a reasonable time:

(a) The Agency shall be relieved of its undertaking to apply safeguards under Section 4 for such time as the Agency determines that the Agency cannot effectively apply the safeguards provided for in this Agreement; and

(b) The Agency may take any measure provided for in Article XII.C of the Statute of the International Atomic Energy Agency.

The Agency shall promptly notify both Governments in the event of any determination by the Agency pursuant to this Section.

....

Section 30

(a) This Agreement shall be signed by the Director General of the Agency or his representative and by the authorized representatives of each Government.

(b) This Agreement shall enter into force on the date on which the Agency shall have received from the two Governments written notification that they have complied with all statutory and constitutional requirements for its entry into force.

Section 31

This Agreement shall remain in force during the term of the Agreement for Cooperation, as extended from time to time, unless terminated sooner by any Party upon six months' notice to the other Parties or as may otherwise be agreed. It may be prolonged for further periods as agreed by the Parties and may be terminated sooner by any Party on six months' notice to the other Parties or as may be otherwise agreed.