



Association of Student International Law Societies

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THE 1983 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

THE CHESTERFIELD HIGHWAY CASE

FEDERATION OF RICHMOND

v.

REPUBLIC OF BELTERRE

THE PROBLEM

The Governments of the Federation of Richmond and the Republic of Belterre have submitted the following matter to the International Court of Justice. The Applicant is the Federation of Richmond. The Respondent is the Republic of Belterre. The parties have stipulated that the information in the Statement of Facts is true.

This is a hypothetical problem drafted exclusively for use in the 1983 Jessup Competition. The Statement of Facts is not necessarily intended to portray actual situations.

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The Federation of Richmond and the Republic of Belterre are adjacent independent states. Richmond is bordered by Belterre on the west, and by the Utopia Ocean on the east. Belterre is entirely landlocked. On January 1, 1965, the two states agreed to a treaty granting Belterre certain rights to the use of the highway between Richmond's port of Xanadu and Chesterfield, the capital of Belterre. A copy of the Chesterfield Highway Treaty is attached as Exhibit I. From 1965 to 1977, Belterre used the Highway without major incident, making payment therefore in accordance with the treaty.

In 1978, the world press began to report that the citrus crops of New Hostia were infested with dreadfly (*Drosophila terribilis*). New Hostia is an independent, agricultural nation whose eastern border is the northwestern frontier of Belterre. The most southeasterly point in New Hostia is 700 miles from Richmond.

While no fruit carrying dreadfly had actually been found outside New Hostia by June 1, 1979, the rumors of widespread infestation prompted the New Hostian authorities to call in an inspection team from the World Health Organization. The WHO report was issued in December 1979. It concluded that there was some dreadfly present in New Hostian orange and lemon groves; and that the damage to the crops was not yet serious but conditions were ideal for rampant proliferation of the pest. WHO recommended that the New Hostian authorities begin immediately a program of chemical spraying of all citrus groves in the country, concentrating upon the province closest to Belterre, which is where the live dreadflies were found.

Both Belterre and Richmond also depend heavily upon exportation of citrus fruits. The threat of dreadfly is especially dangerous for them, for the dreadfly is capable of rendering fruit commercially valueless.

Although there was at that time no evidence to suggest the presence of dreadfly in Belterre, the Federation of Richmond delivered the following diplomatic note to the Ambassador from Belterre on April 1, 1980: "The Federation of Richmond notes with increasing alarm the plague of dreadfly at the western frontier of Belterre. In order to keep this scourge from destroying our land, the Government of Richmond demands that Belterre make available for inspection all shipments of citrus fruits or citrus products to be carried along the Chesterfield Highway until further notice."

Through diplomatic channels, Belterre declined this demand, but suggested a counter-proposal: each vehicle transporting citrus which originated in the western parts of the country would carry a certificate of inspection issued by the Belterrian Health Ministry stating that the shipment was free of dreadfly. This counter-proposal was declined by Richmond on August 15, 1980, for the following reasons, which were communicated orally to the Belterrian Ambassador:

- 1) Richmond believed that neither it nor the Belterrian authorities could identify citrus fruit as coming from the western parts of the country;
- 2) Richmond had no confidence in the reliability of the Belterrian Health Ministry; and
- 3) Richmond believed that the counterproposal would not guarantee that cargoes transiting Richmond were not contaminated.

After explaining these positions to Belterre's Ambassador, the Foreign Minister of Richmond handed her the following note: "The Government of the Federation of Richmond reiterates with urgency its demand communicated to Your Excellency on April 1, 1980. The threat to our economic well-being posed by the dreadfully menace is of the utmost concern. Richmond therefore advises Belterre that, if the right to inspect shipments of citrus along the Chesterfield Highway before they enter Richmond's territory is not accorded to the Richmond Agricultural Service by September 1, 1980, this Government will have no choice but to suspend the use of the said Highway by Belterre on that date."

On August 20, Belterre replied in the following terms: "The Republic of Belterre declares that the Chesterfield Highway is used by its nationals in full conformity with international law and with the Treaty that regulates access to the Highway. Such use poses no threat of harm to the inhabitants or to the economy of Richmond. Belterre takes this occasion to remind Richmond that Belterre vehicles lawfully travelling on the Chesterfield Highway are not subject to the jurisdiction of the authorities of Richmond, and Belterre would regard any interference with such vehicles as a matter of utmost seriousness."

Beginning on the morning of September 1, 1980, Richmond established an "Agricultural Checkpoint" on the Chesterfield Highway at the Belterre-Richmond border. The Checkpoint included a sign posted on the Highway which read: "STOP. All vehicles carrying agricultural produce are required to submit to inspection by Richmond Agricultural Service." Nevertheless, transport vehicle drivers, under orders from Belterre authorities, refused to stop

and generally ignored the Agricultural Checkpoint.

On September 22, 1980, a Richmond citrus farmer located near the western end of the Chesterfield Highway found a dead insect inside a lemon. The University of Western Richmond confirmed that the insect was a dreadfly. Immediately, the Government of Richmond erected concrete barricades on the Highway at the border with Belterre and at the entrance to the Highway at the port of Xanadu. President Karafa announced at a press conference that the Highway Treaty was suspended, that the entire border with Belterre would be sealed, and that no Belterre vehicles would be permitted to cross Richmond territory or airspace. Richmond recalled its Ambassador from Belterre and expelled the Belterre Ambassador.

Three days later, the President of Belterre ordered the immediate blocking of all assets of Richmond nationals, both natural and juridical, "within the geographical limits of Belterre." The blocking order forbade any "dealing in" blocked assets by persons within Belterre, as well as the performance of any contract for the benefit of Richmond or any Richmond national. It had the immediate effect of suspending \$1.2 billion in development projects then being conducted within Richmond by Belterre corporations.

Belterre began to export goods - by air and by railway lines over neighbors other than Richmond. It is estimated that this added 10% to the cost of imported goods in Belterre, and 5% to the cost of Belterrian exports.

Richmond, in response to the blocking order, on October 15 acted to confiscate all property located at the port of Xanadu

awaiting transportation to Belterre. This included privately owned goods valued at \$5 million, Government property worth \$1.5 million, and two paintings of inestimable value belonging to the Belterre Art Museum, which were being returned from exhibition abroad.

On November 1, the President of Belterre announced an amendment to the assets blocking order of September 25. The President stated in a formal Executive Decree that Nationals of Belterre were suspected of evading or planning to evade the order by the use of offshore holdings as conduits for dealings in Richmond assets, and that thenceforward the order would encompass:

- (i) all natural persons who are citizens of Belterre;
- (ii) all natural persons who are physically present in Belterre;
- (iii) all corporations or other commercial enterprises organized under the laws of Belterre, and
- (iv) all commercial enterprises anywhere in the world which are owned or controlled by any person or entity described in (i), (ii), or (iii) above.

The immediate effect of this Decree was to cause Tropical Fruits, Ltd. to suspend its marketing contract for Richmond citrus. Tropical Fruits, Ltd. held a virtual monopoly on citrus exports from Richmond, worth \$35 million during 1979. It is a corporation legally headquartered in the Idyllic Islands (a recently independent archipelago in the Caribbean), 75% of whose stock is owned by Belterre investors.

Belterre's citrus exports have not been interrupted, although their price has increased because of higher transportation costs and there has been a minor diminution in volume. No country has ordered any company subject to its laws

to disobey the Belterre blocking order, and diplomatic requests by Richmond that the Idyllic Islands Government protest on behalf of Tropical Fruits, Ltd. have gone unanswered. No large scale outbreak of dreadfully infestation has been confirmed.

Belterre has not acted to nationalize the blocked assets within its jurisdiction, but in January 1982 it asked all of those claiming to own property at the port of Xanadu, and all others with claims against Richmond, to file reports with the Richmond Claims Administration. The total of claims filed was \$74.8 million.

With respect to the frozen assets, little has changed since the blocking in 1980. Liquid assets are held in interest-bearing accounts; other goods are subject to official control and are immune from Belterre's legal process.

Both Belterre and Richmond are members of the United Nations and parties to the Vienna Convention on the Law of Treaties. Neither nation is a party to the United Nations Law of the Sea Treaty of 1982.

In April 1982, the parties agreed to submit their disputes to the International Court of Justice. Richmond as Applicant, asks that the Court:

- 1) declare that its actions in closing the Chesterfield Highway were not in violation of any legal obligation;
- 2) declare that the blocking of Richmond assets by Belterre is in violation of international law, and
 - a) order that Belterre and non-Belterre entities release property held by them and/or perform contracts whose completion was interrupted by that decision; or, in the alternative

- b) award to Richmond damages measured by the costs of replacing property or procuring alternative contractual performance at market rates prevailing on the date of the Court's order; and
- 3) award to Richmond damages for the loss of sales and sales opportunities for its citrus crop since November 1, 1980.

Belterre asks the Court to hold that Richmond acted illegally in closing the Chesterfield Highway, and that Belterre's blocking orders were in conformity with international law. In addition, Belterre asks the Court to deny relief to the Applicant, and to award to the Respondent damages for increased costs resulting from the need to supply Belterre and to export by means costlier than the Chesterfield Highway, and also to order the release of (or payment of damages in the value of) the Belterre goods nationalized by Richmond at the port of Xanadu.

EXHIBIT I

TREATY CONCERNING THE USE OF
XANADU HARBOR AND THE CHESTERFIELD HIGHWAY

The Federation of Richmond and the Republic of Belterre hereby agree, in the spirit of international cooperation, this 1st day of January 1965, as follows:

- 1) The purpose of the instant Treaty is to assure that the people of Belterre shall not be disadvantaged by the accident of geography which has denied Belterre direct access to the sea.
- 2) The Federation of Richmond hereby grants to the Republic of Belterre in perpetuity free access to and use of the vehicular highway connecting the port of Xanadu with the city of Chesterfield ("the Chesterfield Highway").

In consideration for the said grant, Belterre agrees to pay Richmond five million U.S. dollars each year for ten years beginning upon the date hereof.

- 3) Goods transported over the Chesterfield Highway, or intended to be so transported, by or on behalf of Belterre pursuant to this Treaty, shall not be considered to be within the customs territory of Richmond, and shall not be subject to inspection, attachment, sequestration, or interference of any kind by the authorities of Richmond.

- 4) The Republic of Belterre covenants to use the Chesterfield Highway in a manner consistent with international law and respectful of the territorial sovereignty of Richmond.
- 5) This Treaty may not be terminated except by mutual agreement before January 1, 1975.

Thereafter, it may be terminated by either State Party upon two years' express written notice to the other State Party.

DONE at Chesterfield this 1st day of January, 1965.

/s/

Sylvester Bonhomme
President
Republic of Belterre

/s/

Alfonse Karafa
President
Federation of Richmond

