



Association of Student International Law Societies

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1984 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

CLARIFICATIONS TO THE PROBLEM

NATURALIA

v.

INDUSTRIA

1. Q. On pages 3 and 4 of The Problem: 560 million Naturalian dollars "represented the book value of the Project as of April 15, 1981, after depreciation and depletion." (emphasis added) Does "depletion" here refer to a credit to Naturalia for depletion of its natural resources - or a credit to Minex based on diminished expectation of return due to exhaustion of the mineral ores?

A. The reference is to depletion allowances pursuant to the Naturalian tax code: see the last line on page 1.

2. Q. On page 4 of The Problem: "The market rate as of April 15, 1981, was 5 Naturalian dollars for each U.S. dollar." (emphasis added) Does "market rate" here refer to an exchange rate countenanced by Naturalia, or to a "street market" or "black market" rate?

A. The reference is to an unofficial rate set by traders in international markets for currency.

3. Q. Was there any other judicial entity to which Minex could have appealed the final decision of the Compensation Tribunal? (in Naturalia)

A. No.

4. Q. Is either country a party to an International Arbitration Convention?

A. No.

5. Q. On page 4 of the facts it is indicated that "Industria requests the court to order the government of Naturalia to honor and perform the project agreement" and "compensation for the value of the project in U.S. dollars at the market rate of exchange." This would grant Industria "double the value" of the project; which may be an oversight in the problem.

We request clarification on whether it was intended that Industria requests both forms of recovery or was such a request made in the alternative; and the disjunctive phrase "or in the alternative" should be applied. It would appear that a typographical error has occurred and the word "or" should appear in the 11th line of the fourth page, in lieu of the word "and" following the phrase "honor and perform the project agreement."

A. The request for damages is "for any loss suffered by Lencot." Therefore, an award of all or part of the project value is requested by Industria if such loss was actually suffered by Lencot.

6. Q. On page 3 it is said that Minex submitted a claim for Naturalian dollars 1.6 billion (U.S. dollars 800 million), whereas the future earnings amount to U.S. dollars 1.5 billion. We would like to know exactly how Minex calculated its claim.
- A. The calculation is based upon present value discounted at a rate based upon anticipated future earnings.
7. Q. What is the Gross National Product of Industria and Naturalia? Further, what is the income per capita of both states?
- A. Belgium's GNP (1982) 3,546 billion Belgium Franks
Zaire's GNP (1981) 230.1 millions of Zaire
8. Q. Is a company/corporation established under the law of Naturalia a separate legal entity from the shareholders of the said company/corporation?
- A. Yes.
9. Q. Lencot owned 80% of the shares of Minex and provided 80% of the capital (page 1). Are we to assume that Lencot has proportional proprietary rights over Minex eg. voting rights?
- A. It can be assumed that Lencot held 80% of the voting shares of Minex.
10. Q. Were the profits obtained by Minex independently audited?
- A. Yes.
11. Q. When is the financial or accounting year ending of Minex?
- A. Minex used a calendar-year basis.
12. Q. "On December 1, 1981, Minex submitted a claim for Naturalian dollars 1.6 billion (US dollars 800 million), which it deemed to be the fair market value of the Project..."(Page 3). Who assessed "the fair market value of the Project?
- A. This figure was deemed by Minex to be the fair market value on the basis of the calculation set out in the compromis.
13. Q. In their action against the Government of Naturalia and Natmin on May 10, 1982, Minex and Lencot, inter alia, "attached quantities of alumina from the Project..."(page 4)". Were these quantities of alumina and/or material sold to customers before April 15, 1981?
- A. No.

14. Q. Industria did not vote on the Charter of Economic Rights and Duties of States and the NIEO. (page 5). Did Industria vote against, or abstained from voting on, the above Charter and the NIEO?
- A. Industria voted against both instruments.
15. Q. Are Industria and Naturalia signatories to the UNGA Resolution 1803 on Permanent Sovereignty Over Natural Resources?
- A. No.
16. Q. Re: Statement of facts, p.1 "the applicable tax regime", does this refer to the standard tax regime of Naturalia or to an individually agreed tax regime?
- A. The reference is to the standard tax regime.
17. Q. What are the terms of the operating contract; specifically, does Lencot demand a fee for services rendered?
- A. Lencot did get a fee.
18. Q. Re: Statement of facts, p.3 line 3: Wherein lies the difference in economic terms between "the Project" on the one hand and "all assets of Minex" on the other?
- A. "The Project" refers to the site, as well as to all contractual rights, past, present and future, in addition to the tangible assets of Minex.
19. Q. Is it correct to assume that Industria demands compensation in US dollars at the market rate of exchange because Industria cannot ignore the possibility of non-availability of funds at the Central Bank of Naturalia to exchange the compensation received on the free market?
- A. It may be assumed that this is one possibility.
20. Q. Minex had a "property interest," "mining rights," in the land for the duration of the agreement. Does Naturalia retain title to the minerals until they are extracted from the land, or do Minex's property interests include title to minerals in the land?
- A. Minex had title to minerals in the land.
21. Q. Was the intention to expropriate Minex and other mining interests made public at any time before April 15, 1981?
- A. No.

22. Q. In regard to the materials which were located on the high seas when they were attached: Were the shipping arrangements F.O.B. seller's place of business or F.O.B. buyer's place of business, or did the arrangements contemplate the risk of loss in some other manner? If so, how?
- A. The arrangements were f.o.b. port of shipment.
23. Q. The Standard referred to by the Naturalian Compensation Tribunal was Book Value. Please define book value as applied. Does the term refer to the historic cost of assets alone or to the value of the shareholders' equity in Minex?
- A. Book value refers to the historic cost of assets after depreciation and depletion.
24. Q. Does any market exist for Naturalian bonds?
- A. Yes.
25. Q. Were any other companies or industries nationalized by the new administration of Naturalia in this decree or any other decrees?
- A. Yes. Countries other than Industria were affected.
26. Q. Whether the statement "[t] here is no dispute as to the jurisdiction of the ICJ or as to the fact that counterclaims are 'directly connected with the subject-matter of the claim' in the sense of Article 80 of the Rules of the Court" (p.5) is also intended by the Committee to eliminate any standing issues.
- A. It is not.
27. Q. Page 1, last sentence: "The P.A. stipulated the royalties to be paid to the Government of Naturalia and the applicable tax regime including depreciation and depletion allowances."
- a. Are the royalties to be paid to the Government of Naturalia and the applicable tax regime?
- or
- b. Did the P.A. simply (i) stipulate that royalties were to be paid to the Government of Naturalia and (ii) stipulate (name) the applicable tax regime to which taxes were to be paid by Minex?
- A. (b) is correct.
28. Q. Did the project agreement between Minex and the Government of Naturalia include a controlling currency provision?
If so, which currency was to be controlling?
Did the agreement specify the method of determining the exchange rate if the currency of Industria were controlling?

- A. The P.A. specified that payment was to be in U.S. dollars. Currency exchange was to be the responsibility of Naturalia, thus no exchange rate was specified.
29. Q. Should participants assume that the countries are not members of any international agreements other than those listed in the fact statement?
- A. Yes.
30. Q. What were the losses of the Minex Projects before 1977?
- A. From the spring of 1975 until July 1977 the Project lost U.S. \$150 million.
31. Q. What "property" is referred to in item 3 different from the "project" for which compensation is asked in item 2?
- A. Certain tangible property was confiscated, as well as the rights to land and minerals
32. Q. Were the metals mined by Minex in Naturalia exported solely to Industria?
- A. No.
33. Q. For what purpose(s) were the bank accounts of Naturalia and the Central Bank of Naturalia located in Industria established?
- A. For various business purposes, as well as to fund diplomatic and other governmental functions, and for general reserves.
34. Q. Where did the negotiations and final signing of the Project Agreement take place (Naturalia or Industria)?
- A. In both countries.
35. Q. Did Naturalia collect royalties and taxes on mining before the Project Agreement was signed?
- A. Yes.
36. Q. How much Bauxit remained in the mine?
- A. Considerable bauxite remains in the mines.
37. Q. Has Naturalian government ever been recognized? (by Industria).
- A. Yes.

38. Q. For what purposes are the Naturalian funds in Industrian banks?

A. For various business purposes, as well as to fund diplomatic and other governmental functions, and for general reserves.

39. Q. By the phrase "These profits (reduced by losses incurred prior to July 1977)..." do you mean that the \$80 million profit (after tax) per year was further reduced by the loss carryover, or do you mean the \$80 million profit already reflected those losses?

A. The \$80 million profit (after tax) was reduced by loss carryover before distribution.

40. Q. Has Industria consistently voted with western industrialized nations on U.N. resolutions concerning sovereign economic rights?

A. Yes.

41. Q. Has Naturalia consistently voted with developing nations on U.N. resolutions concerning sovereign economic rights?

A. Yes.

42. Q. Nationalization

a. Did Naturalia nationalize all the mining, manufacturing, and agricultural enterprises in the State?

b. If not all enterprises were nationalized, then what percentage of those nationalized were foreign-owned? (Please break down by industry, ie. mining, manufacturing, agriculture).

c. How was compensation determined for the other foreign-owned enterprises that were nationalized?

d. If local enterprises were nationalized, was compensation given; and if so, how was it determined?

A. a. No.

b. Clarification declined, because the term "foreign-owned" is vague.

c. The Tribunal applied various formulas based upon the arguments of the parties before it in each case.

d. Yes, in the same way as for all other enterprises nationalized.

43. Q. Remedies: On page 5 of the Compromis, it is stated that:

In particular, Industria requests the Court to order the Government of Naturalia to honor and perform the Project Agreement, and to award damages to Industria for any loss suffered by Lencot, directly or indirectly, in consequence of the Decree of April 15, 1981, including:

1. lost of rights and profits resulting from termination of the P.A.;
2. compensation for the value of the project in U.S. dollars at the market rate of exchange;
3. the value of the property confiscated; and
4. counsel fees.

Which of the following remedies is Industria seeking:

- a. specific performance of the Project Agreement in addition to all the damages listed;
- b. specific performance of the Project Agreement and a portion of the damages listed, ie, only items (1) & (4);
- c. either specific performance or all the damages listed; or
- d. just all the damages listed?

A. Industria seeks specific performance and damages of the types listed for any loss suffered by Lencot.

44. Q. The plaintiffs, in the courts of Industria, attached quantities of Alumina. Was this also for the purpose of assuring that property would be available from which to satisfy an eventual judgment as it was the purpose in attaching the bank accounts?

A. Yes, although there may have been other purposes as well.

45. Q. Did the trial court of Industria rule on the issue of breach of contract?

A. No.

46. Q. Is Naturalia a member of International Bauxite Association?

A. No.

47. Q. Were all foreign manufacturing, mining, and agricultural enterprises nationalized. If not, what percent were?

A. Yes.

43. Q. Are the two countries members of the IMF?

A. No.

49. Q. Is Natmin both an agency and a juridical entity?(R.3)

A. Yes.

50. Q. What exactly was meant by "an eventual judgment", ie. an eventual judgment by whom? (R.4)

A. A judgment in favor of Minex and Lencot against Naturalia and Natmin.

51. Q. Record, page last, line eleven - should that read "...project agreement, [or] to..."

A. No. Even if specific performance were granted, Industria may claim that it has suffered compensable injury.

52. Q. When did Industria and Naturalia become members of the United Nations?

A. Industria: 1945. Naturalia: 1960.

53. Q. Did Naturalia nationalize all mining "assets" in the state?

A. No.

54. Q. Are the exchange rate values on page three evaluated on an exchange through the Central Bank of Naturalia or at market rate of exchange?

A. Official Rate.

55. Q. For the alumina on the vessels, has a bill of lading been issued to a shipper for delivery to Industrian clients? What is the nationality of the shipper?

A. The shippers, i.e. the sellers, have received bills of lading in the normal course. The shippers were generally of Naturalian nationality.

56. Q. Was there an arbitration provision in the Project Agreement?

A. No.

57. Q. Have funds for exchange been routinely available through Naturalia's Central Bank?

A. Yes, except during periods of short supply or crisis.

58. Q. What was the total value of all property nationalized, excluding Minex?

A. The answer would depend upon the theory of valuation applied. In any event, it is in excess of U.S. \$20 billion.

59. Q. When was Natimin organized?

A. 1980.

60. Q. Did Minex conduct any business other than that connected with the Project Agreement?

A. No.

61. Q. Do the counsel fees which are claimed by both parties relate to the counsel fees of the pleadings before the domestic courts of Industria and Naturalia or to the pleadings before the I.C.J. or to both of them?

A. Both.

62. Q. Does the phrase on page 4 of the problem, "some of the materials in question had been in inventory at the Project..." mean that this part of the seized Alumina was in Naturalia on April 15, 1981?

A. Yes.

63. Q. Should we consider that the Natmin bank accounts which were seized in Industria include the assets of Minex, which at the time of naturalization, were found in the banks of Industria?

A. That should not be assumed.