



# Association of Student International Law Societies

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THE 1984 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

NATURALIA

v.

INDUSTRIA

## The Problem

The Governments of Naturalia and Industria have submitted the following matter to the International Court of Justice. The Applicant is Naturalia. The Respondent is Industria. 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 1984 Jessup Competition. The Statement of Facts is not necessarily intended to portray actual situations.

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Naturalia is a state in the early stages of economic development which is dependent for its foreign exchange upon exports of agricultural commodities and nonferrous metals. Minex is a corporation established in 1969 under then existing laws of Naturalia for development of a large project for the mining of bauxite and production of alumina. When Minex was established, eighty percent of its shares were owned by Lencot, a corporation organized under the laws of Industria, an industrialized state, and wholly owned by nationals of Industria. The remaining 20% of the shares of Minex were owned by nationals of Naturalia. Lencot provided 80% of the capital and 100% of the technology for the project and managed the mine and factory under the terms of an operating contract with Minex.

The rights and duties of Minex in relation to the project were established in a Project Agreement between Minex and the Government of Naturalia concluded on June 1, 1970. The Project Agreement (P.A.) which was approved by the legislature of Naturalia on July 1, 1970, pursuant to the Basic Law of that country, was for a term of twenty-five years, subject to further extension by agreement of the parties. Under the P.A. Minex had a property interest in the land, *i.e.*, "mining rights", for the duration of the agreement. The P.A. stipulated the royalties to be paid to the Government of Naturalia and the applicable tax regime including depreciation and depletion allowances.

The Project Agreement included the following:

ARTICLE XXII

All questions relating to the interpretation, application, termination or extension of this Agreement shall be governed by the laws of Naturalia in force as of the date of this Agreement and such rules or principles of international law as may be applicable. No change shall be made in any provision of this Agreement without the consent of both Parties.

The Basic Law of Naturalia on the date of the Agreement included the following provision:

Foreigners in the territory of Naturalia are entitled to all civil rights afforded to citizens of Naturalia; foreigners may not claim greater rights than those afforded to citizens of Naturalia.

After five years of construction, preparation and training, production began in the spring of 1975. By July, 1977, the Project became profitable and Minex showed net (after-tax) profits for the next three years of U.S. dollars 80 million a year, or 20% of the original capital investment of U.S dollars 400 million. These profits (reduced by losses incurred prior to July 1977) were distributed to the shareholders as dividends. By 1980 exports of bauxite and alumina from the Project accounted for 60% of the foreign exchange earned by Naturalia, and Lencot was preparing to make additional investments in the Project.

In late 1980, following a peaceful election conducted pursuant to the Basic Law of Naturalia, a new administration assumed power in Naturalia. In accordance with its political party's platform, the new government took steps to nationalize a number of manufacturing, mining, and agricultural enterprises

in the country. A lawfully promulgated Special Decree of April 15, 1981 (1) repealed the law which approved the Project Agreement, (2) terminated the Project Agreement, (3) nationalized the Project and all assets of Minex, (4) vested those assets in Natmin, an agency of the Government of Naturalia, and (5) established a Compensation Tribunal composed of the Chief Justice of the Supreme Court of Naturalia and two officials, one a lawyer and one a mines engineer, to be appointed by the Minister of Mines. The Tribunal was empowered to "review the assets and liabilities of Minex and to determine the "appropriate" compensation that should be paid to Minex for the assets taken over by the State pursuant to this Decree. The determinations of the Compensation Tribunal shall be final."

Pursuant to this Decree, Natmin took control of the Project as of April 15, 1981. Natmin is a juridical entity with capacity under Naturalian law to sue and be sued. Its Board of Directors is composed of senior officials of the Ministry of Mines of Naturalia. Natmin is engaged in a variety of commercial activities in Industria and other countries including the marketing of mineral products of Naturalia and the purchase of goods, services and technology.

The Compensation Tribunal in Naturalia was organized on November 1, 1981, and invited the submission of claims. On December 1, 1981, Minex submitted a claim for Naturalian dollars 1.6 billion (U.S. dollars 800 million), which it deemed to be the fair market value of the Project, i.e., the present value, discounted at 9% of the future stream of earnings over the life of the P.A. of U.S. dollars 1.5 billion. On May 1, 1982, the Tribunal determined that Minex should be paid in bonds of Naturalia with a face value of Naturalian dollars 560 million redeemable in ten annual installments of Naturalian dollars 56 million each and bearing 6% interest until redeemed. The Naturalian dollars 560 million figure represented the book value of the Project as of April 15,

1981, after depreciation and depletion. Naturalian dollars were and are freely convertible at the official rate of exchange, which is 2 Naturalian dollars for each U.S. dollar, at the Central Bank of Naturalia subject to availability of funds. The market rate as of April 15, 1981, was 5 Naturalian dollars for each U.S. dollar. Minex rejected the Naturalian tribunal's determination as inadequate.

On May 10, 1982, Minex and Lencot brought an action in the courts of Industria against the Government of Naturalia and Natmin for breach of contract and for the uncompensated taking of the Project. The courts of Industria adhere to the restrictive theory of sovereign immunity. At the time they filed the lawsuit, in order to assure that property would be available from which to satisfy an eventual judgment, the plaintiffs attached the bank accounts of Natmin and of the Central Bank of Naturalia in banks located in Industria. They also attached quantities of alumina from the Project found in warehouses in Industria which were awaiting delivery to customers in Industria. Some of the material in question had been in inventory at the Project located in Naturalia on April 15, 1981. The rest had been on the high seas on that date en route to Industria aboard vessels registered in Naturalia.

The Government of Naturalia and Natmin appeared in court for the sole purpose of contesting the jurisdiction of the courts of Industria over agencies and property of Naturalia. On September 1, 1982, the trial court ruled that it was required to exercise full jurisdiction in the matter under the law of Industria, and it confirmed the attachments, which were in the full amount claimed by Minex as full market value of its claims. The rulings were affirmed by the Court of Final Appeals, the highest court in Industria, on December 21, 1982.

On March 1, 1983, the parties agreed to submit their dispute to the International Court of Justice, and filed this Compromis. Naturalia requests a

declaration that the attachments issued by the courts of Industria and the assertion of jurisdiction in this matter by those courts are in violation of international law. Naturalia requests the Court to direct that the attachments be vacated, or in the alternative, to award it damages in the amount of the value of the property attached in Industria, including the bank accounts of Natmin and of the Central Bank located in Industria, the quantities of alumina warehoused in Industria, and counsel fees.

Industria opposes these claims, and asserts counterclaims against Naturalia for alleged violations of international law arising out of the Decree of April 15, 1981. 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 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.

Both Naturalia and Industria are members of the United Nations, and are parties without reservation to the jurisdiction of the International Court of Justice under Article 36 of the Statute of the Court. Naturalia voted for the Charter of Economic Rights and Duties of States and the NIEO; Industria did not. No friendship, commerce and navigation (FC?) treaty has been signed between the parties.

The parties have stipulated that the information in the above statement of facts is true. There is no dispute as to the jurisdiction of the ICJ or as to the fact that the counterclaims are "directly connected with the subject-matter of the claim" in the sense of Article 30 of the Rules of the Court.