



# Association of Student International Law Societies

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Cable "AMINTLAW"

THE 1985 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

## THE NUCLEAR FREE ZONE CASE

ICBAM

v.

MIRVA\*

### THE PROBLEM

The Governments of Icbam and Mirva have submitted the following matter to the International Court of Justice. The parties have stipulated that the Statement of Facts is true.

This is a hypothetical problem drafted exclusively for use in the 1985 Jessup Competition. The Statement of Facts is not necessarily intended to portray actual situations.

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## COMPROMIS

The sovereign States of Icbam and Mirva hereby apply to the International Court of Justice to adjudicate their dispute pursuant to Article 16 of the Constitution of the Conclave of Eurasian Unity (see Appendix) and Article 36 of the Statute of the International Court of Justice. This Statement of Facts has been stipulated after negotiation between the undersigned.

Icbam and Mirva are members of the Conclave of Eurasian Unity ("Conclave") and of the United Nations. Since 1973 the Conclave has been comprised of all fifteen nations in its region, all being at roughly similar levels of economic and military development.

The nations of Eurasia have what may be described as common cultural roots and a history of fraternal relations. Nevertheless, the peace of the region was disrupted during the last half of the 1970s when Icbam's pursuit of irredentist claims led to a series of armed border conflicts with both members and non-members of the Conclave. Though the fighting was in a number of instances rather intense, in all cases it stopped short of full-scale war, and there has been no fighting of any consequence since March of 1980.

As of two years ago, all members of the Conclave except Icbam had ratified the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT"), 729 U.N.T.S. 161 (signed July 1, 1968, entered into force March 5, 1970). The members of the Conclave, by resolution, urged Icbam, which had signed the NPT, to ratify it. However, elections were held in Icbam which led to a parliamentary majority of the Fundamentalist Party. When the Fundamentalist Party took office, it withdrew Icbam's signature from the NPT and declared its intention never to ratify the NPT. The Party did, however, ratify the irredentist policies of the previous government.

Five months later, under the auspices of the Conclave, all the members of the Conclave with the exception of Icbam drafted, adopted, and ratified the Treaty of Telleraviv, declaring the Eurasian region to be a nuclear-free zone within the meaning of Article VII of the NPT. Article 2 of the Treaty of Telleraviv, which has entered into force, provides that:

The Contracting parties undertake to refrain from engaging in, encouraging or authorizing, or in any way participating directly or indirectly in, the testing, use, manufacture, production, possession or deployment of any nuclear weapon.

Over the next three months, reliable reports began to reach member states of the Conclave that Icbam, which had long possessed peaceful nuclear technology, was constructing a facility for manufacturing nuclear weapons. The project, located in a guarded military compound in the Sorgred Desert in Icbam, was aided by technicians from various countries acting unofficially and as independent contractors. Icbam was also known to be negotiating with several state and non-state sources for the purchase of uranium and plutonium.

On September 22, the Conclave passed a resolution (Icbam voting against) calling upon the government of Icbam to dismantle its Sorgred

nuclear project and to become a party to the Treaty of Telleraviv and to the NPT. A further resolution was passed (Icbam again objecting) approving the text of a telegram, which was sent to the U.N Security Council, bringing to the Council's attention the existence of a dispute between Icbam and the other members of the Conclave of Eurasian Unity that was likely to endanger the maintenance of international peace and security.

On September 29, the Security Council, after several days' debate, resolved to table the matter indefinitely when it became apparent that any action on the matter would be blocked by a veto.

On December 14, Icbam formally replied to the September 22 Conclave resolution as follows:

1. Icbam asserts its inherent sovereign right to organize its self-defense as a matter of its domestic jurisdiction. It will take whatever action is necessary to protect its historic patrimony.
2. The government of Icbam is in the process of developing, and expects to have by the end of the year, a nuclear weapons capability.
3. All nuclear weapons manufactured will be exclusively for defensive purposes against states external to the Conclave of Eurasian Unity.
4. Icbam is acting in the best interests of the Conclave, as many states external to the Conclave have stockpiles of nuclear weapons.

On December 21, the Conclave (Icbam voting against) adopted a resolution urging Icbam to reconsider its position on nuclear weaponry. The delegate of Icbam present at the meeting stated that he would not convey the resolution to his government, and that Icbam would boycott any further meetings of the Conclave that deal with the matter of Icbam's nuclear weapons.

On January 1, 1984, an early morning meeting of the Conclave was held.

The representative from Icbam was not present. At the meeting, which began at 8 a.m. and ended at noon, all decisions were approved by a vote of 14-0. At 10 a.m., the Icbamese facility in the Sorgred Desert was attacked from the air by Mirvan jets and destroyed. The following telegram was adopted at the meeting and delivered to the Secretary-General of the United Nations:

The Conclave of Eurasian Unity regretfully informs you that at a meeting this morning we authorized our Member State Mirva to proceed with a surgical aerial strike, using precision-guided conventional explosive weapons, against the illegal Icbam nuclear weapons facility in the Desert of Sorgred. The strike took place at 10 a.m. today, Sunday, January 1st. The date was dictated by the imminence of the plant becoming operational, and by the likelihood of minimal injury to persons. Our intelligence indicated that few if any persons would be on the site on New Year's Day. The State of Mirva was designated to discharge this function because of its demonstrated ability to handle a military action with technological sophistication and minimal injury to persons.

We regret the necessity for this peace-keeping action which we have taken pursuant to the purposes and principles of the Charter of the United Nations and for our collective self-defense. We previously exhausted all peaceful means to bring the Government of Icbam to its senses. We believe that our action today will eventually be understood by the people of Icbam as safeguarding their true long-range interests.

Madame Secretary-General, nuclear weapons constitute an unprecedented peril to the survival of the peoples of the United Nations. Nuclear weapons are per se illegal under international law, and the Eurasian nuclear-free zone has been established in recognition of the peril posed by these illegal weapons. Our action today is designed to uphold international law and keep our region free of nuclear weapons. Icbam's nuclear capability would have threatened the very survival of our Member States and their populations. Since international law is built upon the premiss of survival, Icbam's attempt to obtain for itself these weapons of mass destruction violates the most fundamental norms of customary international law.

Icbam now requests this Court to:

1. Declare illegal the armed attack on and military bombardment of its property in the Desert of Sorgred;
2. Order Mirva to pay to Icbam 234,999,999 opecs (one opec hereby being fixed at the rate of exchange equal to one American dollar) as compensation for the physical damage and the loss of life of three technicians who were on the premises at the time the bombardment took place, the total amount of the damages having been stipulated by the parties without prejudice to the question of liability.

Mirva asks this Court to:

1. Find that Mirva's surgical strike was consistent with customary and conventional international law and in furtherance of the purposes and principles of the United Nations;
2. Declare Mirva to be without liability for damages to Icbam.

The Parties confine their compromis exclusively to the facts and language herein given, and agree that they should be the sole parties before the Court in this dispute.

Done this 4th Day of September, 1984:



I. Reinfred

Foreign Minister of Icbam,  
on behalf of the State  
of Icbam



A. Modat

Minister of Foreign Affairs  
of Mirva, on behalf of  
the State of Mirva

## APPENDIX

CONSTITUTION OF THE CONCLAVE OF EURASIAN UNITY  
[SELECTED PROVISIONS]

ARTICLE 1. By this Treaty, the Contracting Parties establish among themselves the Conclave of Eurasian Unity, having the powers and functions hereinafter specified.

ARTICLE 2. This Conclave shall be a regional agency within the meaning of Article 52(1) of the Charter of the United Nations, and shall comprise all fifteen of the Sovereign states in this Eurasian region.

ARTICLE 3. Neighboring States may be admitted as full members of this Conclave, but only by unanimous decision of the existing Member States.

ARTICLE 4. The major purposes of this Conclave shall be:

- (a) to promote co-operation among the Member States at the regional and international levels, having due regard to the Charter of the United Nations;
- (b) to promote unity and solidarity among the Member States and to defend their sovereignty, territorial integrity and independence;
- (c) to assist the Member States in the realization of their obligations and responsibilities to the international community with due regard to the role of international law as a standard of conduct in their relationship;
- (d) to seek to achieve the fullest possible harmonization of foreign policy among the Member States; to seek to adopt, as far as possible, common positions on international issues and to establish and maintain, wherever

possible, arrangements for joint overseas representation and/or common services;

- (e) to promote economic integration among the Member States;
- (f) to pursue said purposes through its respective institutions by discussion of questions of common concern and by agreement and common action.

ARTICLE 5. To achieve the purposes set forth in Article 4, the Member States will endeavor to co-ordinate, harmonize and pursue joint policies particularly in the fields of --

- (a) External Relations including overseas representation;
- (b) International Trade Agreements and other External Economic Relations;
- (c) Financial and Technical Assistance from external sources;
- (d) International Marketing of Goods and Services including Tourism;
- (e) External Transportation and Communications including Civil Aviation;
- (f) Economic Integration among Member States;
- (g) Matters relating to the sea and its resources;
- (h) The Judiciary;
- (i) Currency and Central Banking;
- (j) Audit;
- (k) Statistics;
- (l) Income Tax Administration;
- (m) Customs and Excise Administration;
- (n) Tertiary Education including University;
- (o) Training in Public Administration and Management;

- (p) Scientific, Technical and Cultural Co-operation;
- (q) Mutual Defense and Security; and
- (r) Such other activities calculated to further the purposes of the Conclave as the Member States may from time to time decide.

ARTICLE 6. Decisions of this Conclave shall be made at meetings called by any Member State. All decisions, except those taken under Articles 3 or 7(b), shall be achieved through a simple majority vote of the Members present at such meetings.

ARTICLE 7. (a) If the peace of the region is endangered by an armed attack, an aggression which is not an armed attack, an extra-regional or intra-regional conflict, or by any other fact or situation, the Conclave shall meet immediately in order to agree on the measures to be taken for the maintenance or restoration of the peace and security of Eurasia.

(b) Decisions taken under Article 7(a) shall, if they involve the use of armed force, require an 80 percent vote of the Members.

ARTICLE 8. [Foreign Affairs Committee]

ARTICLE 9. [Defense and Security Committee]

ARTICLE 10. [Economic Affairs Committee]

ARTICLE 11. [General administration of the Conclave]

ARTICLE 12. [Auditing]

ARTICLE 13. [Budget]

ARTICLE 14. Nothing in this Treaty shall preclude any Member State from participating in other arrangements either with other Member States or non-Member States, provided that its participation in such arrangements does not derogate from the provisions of this Treaty.

ARTICLE 15. The Conclave shall seek to establish such relations with other international organizations and other countries as may facilitate the attainment of its purposes. To this end, the Conclave may conclude formal agreements or establish effective working relationships with such organizations and governments of other countries.

ARTICLE 16. The Member States agree to accept without reservation the compulsory jurisdiction of the International Court of Justice in all disputes where all the contesting parties are Member States. The Member States further agree to comply fully with the decisions and orders of the International Court, and that those decisions and orders shall be final and binding on Member States.

ARTICLE 17. The Conclave as an international organization shall enjoy legal personality. It shall have in the territory of each Member State the legal capacity required for the performance of its functions under this Constitution.

ARTICLE 18. [Location of Headquarters]

ARTICLE 19. [Signature and ratification]

ARTICLE 20. [Entry into force]

ARTICLE 21. This Treaty shall be of unlimited duration.

ARTICLE 22. Any Member State may make written proposals for the

amendment of this Constitution. Amendments shall be effected only by unanimous decision of all Member States present at a meeting of the Conclave called for the express purpose of considering the proposal for amendment.

ARTICLE 23. [Registration with the United Nations pursuant to Article 102 of the Charter of the United Nations]

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