



Association of Student International Law Societies

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THE 1987 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

THE WATER RESOURCES CASE

HARMONIA

v.

MERCADIA*

THE PROBLEM

The Governments of Harmonia and Mercadia have submitted the following matter by special agreement to the International Court of Justice. The parties have stipulated that the Statement of Facts is true. The Applicant is the Government of Harmonia. The Respondent is the Government of Mercadia.

This is a hypothetical problem drafted exclusively for use in the 1987 Jessup Competition. The Statement of Facts is not necessarily intended to portray actual situations.

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COMPROMIS

Harmonia and Mercadia are two coastal countries, both bordered on the west by the sea and on the east by a landlocked country. Harmonia is north of Mercadia. These nations share similar geological and climatological attributes. A mountain range, the Morningstar Mountains, separates the coastal lowlands from interior highlands. The coastal area is fertile and is supplied with water from the rainfall and runoff from the Morningstar Mountains. The principal river of the shared coastal drainage basin is the Lakota River. It runs through the coastal lowlands of both Harmonia and Mercadia and eventually empties into the sea from Mercadia. The Lakota's headwaters are found in the Morningstar Mountains in Harmonia. (See the attached map).

The interior of both countries is semi-arid highland whose water supply consists of groundwater and one principal river, the Green River. The Green River is fed by streams originating in the Morningstar Mountains in Mercadia. The Green flows solely through the highlands of Mercadia into the interior of the continent.

Harmonia is a developing country with virtually no industrial base but which contains large deposits of bauxite, the smelting

of which requires significant amounts of electricity. Approximately one-third of its foreign exchange earnings are generated by the tourist industry, an industry whose expansion is part of the country's development plan. Harmonia has a very substantial foreign debt. Mercadia, which lies south of Harmonia, is a more economically advanced developing country with an established industrial base located in the urban area in and around the capital city, which is located in the far southern portion of the country. There have been heavy migrations from rural areas to the urban area with resultant overcrowding and unemployment. In response to this situation, the government has instituted a program that requires rural populations to remain in rural areas.

The conflict which has brought Harmonia and Mercadia before the Court originated in the border region between Harmonia and Mercadia. In March 1979, the Government of Harmonia announced its new 1980 five-year development plan which called for the creation of a major bauxite mining and processing industry. As part of the needed industrial infrastructure, plans were announced for the construction of a major hydro-electric dam on the Lakota River, several kilometers north of the border with Mercadia. The Lakota High Dam, by stabilizing the spring runoff into the Lakota River from its tributaries, would provide both electric power for the planned industrial development and irrigation for the creation of a new agricultural area on the sea coast north of the dam. The new agricultural area would use modern irrigation methods requiring electric power for pumping and

sprinkler systems.

Mercadia shares the Lakota drainage basin with Harmonia and has used the waters of the Lakota for centuries to irrigate the farms of a traditional agricultural area just south of the border. This area is the home of the Old Ones, an ancient rural ethnic group of approximately 100,000 individuals. The land of the Old Ones is the ancestral home of the inhabitants of Mercadia and is the only area of the country where this traditional culture remains. A relatively poor section of Mercadia, physically isolated from the major areas of habitation, it is the spiritual homeland of the Mercadians. For the agriculture of the area, the Old Ones have always used the traditional ditch, or inundation, method of irrigation utilizing the spring runoff of the Lakota River. An objective study of the effects of the construction of the High Dam indicates that the flow of the Lakota would no longer be sufficient to support the subsistence agriculture of the Old Ones.

The government of Mercadia responded to the announcement of the Harmonian Development Plan by requesting an immediate meeting of Foreign Ministers. At the scheduled meeting, the plans for the construction of the Lakota High Dam and its associated facilities were discussed. The Mercadian Foreign Minister demanded that the plans be changed so as to allow the same volume of water to escape the High Dam as would naturally flow into the Lakota in the spring. The Harmonian officials responded to this demand by

stating that the use of the water of the Lakota for hydro-electric purposes would be more valuable than its use for irrigation of the land of the Old Ones. They also claimed that the necessary structure of the High Dam precluded any greater flow of water than that specified in the objective study. The talks continued for approximately nine months during which time the Mercadians steadfastly refused any offer short of the full flow of the Lakota. The Mercadian position was that without the assurance of the full flow of the Lakota they would be forced to move the Old Ones to the Green River valley. Talks were ended without any agreement. Construction was begun on the High Dam in accordance with the original plans. The dam was completed in the summer of 1983.

After construction of the High Dam, the Mercadian government responded with a construction program of its own. It moved the Old Ones to the semi-arid area west of the Morningstar Mountains adjoining the Green River. The Green is a small river, incapable by itself of providing sufficient water to support the agricultural needs of the Old Ones. In order to supplement the waters of the Green, the government built a diversion canal through the mountains connecting the Lakota with the Green.

Prior to the resettlement of the Old Ones, the only location of major habitation in the area west of the Morningstar Mountains was Trantor, a Harmonian provincial capital. The capital is located on Lake Lydia, a spring-fed lake with clean beaches and

good fishing. The existent waste treatment at Trantor has been of a high standard, maintaining the pristine nature of the lake's waters. To take advantage of the attributes of Lake Lydia, Harmonia has marked the area around Trantor for future tourist development.

Lake Lydia is fed by springs charged by the Galala Aquifer. The Galala underlies the entire area west of the Morningstar Mountains. The aquifer's recharge area is located near the resettlement area of the Old Ones.

The Old Ones have made normal use of pesticides for farming their new home. Concentrations of these pesticides, together with phosphates from farming and human habitation, have made their way into the Galala Aquifer. This has resulted in the pollution of Trentor's drinking water, the formation of algae in Lake Lydia, and the presence of toxics in the lake fish. In response to these developments, the Government of Harmonia filed a letter of protest with the Government of Mercadia in December 1985, demanding that Mercadia cease all actions causing pollution of the Galala Aquifer. Mercadia has refused to take any actions, disclaiming all responsibility for the pollution.

On March 1, 1986, the parties agreed to submit their dispute to the International Court of Justice and filed this Compromis. Harmonia and Mercadia are both members of the United Nations, and are parties without reservation to the jurisdiction of the Inter-

national Court of Justice pursuant to Article 36 of the Statute of the Court. They have stipulated that the information in the above statement of facts is true. There is no dispute as to the jurisdiction of the ICJ.

The Government of Harmonia asks the Court to:

1. a) Declare illegal the actions of Mercadia which have resulted in the pollution of the waters of the Galala Aquifer;

b) Declare Mercadia internationally responsible and liable for the aforementioned actions.

2. Declare its actions in the diversion of the waters of the Lakota River to be consistent with international law.

The Government of Mercadia asks the Court to:

1. a) Declare that Harmonia acted in violation of international law with respect to its appropriation of the waters of the Lakota River;

b) Declare Harmonia internationally responsible and liable for these actions.

2. Declare that Mercadia's actions affecting the Galala Aquifer were consistent with international law.

