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1990 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

Case Concerning International Environmental Law and Antarctica*

Leonia

v.

Vulpinia

The Governments of Leonia and Vulpinia have submitted the following matter by special agreement to the International Court of Justice pursuant to Article 36, paragraph 1, of the Statute of the Court. No question of the jurisdiction of the Court is at issue. The Appendix contains a list of relevant treaties to which both States are Parties. The Applicant is the Government of Leonia. The Respondent is the Government of Vulpinia.

This is a hypothetical problem drafted exclusively for use in the 1990 Jessup Competition. The Problem is not intended to portray actual situations.

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LAW MOOT COURT COMPETITION

Case Concerning International Environmental Law
and Anarctica

THE PROBLEM

Dr. Detritus is a citizen of the State of Vulpinia. He is that state's leading expert in hazardous waste disposal and has an international reputation as one of the best in his field. As the owner of his own business, he has solved many extremely difficult hazardous waste disposal problems posed by Vulpinia's thriving industries. If appropriate sites for disposal were not available in Vulpinia, he would negotiate with foreign governments for the disposal of waste on their territories, in accordance with environmental policies established by those countries and applicable international agreements.

As waste disposal sites have filled up and states have become wary of providing sites for this disposal of foreign hazardous waste, Dr. Detritus has found it increasingly difficult to service his clients. On 3 April 1987, while waiting for the start of a match of his favorite sport (soccer, of course), he became attracted to the headlines of a local newspaper, reporting on a recently completed expedition by Professor Handlin, a leading biologist from the State of Leonia. The newspaper headline read: "THE LEONIA BIOLOGIST PROF. HANDLIN BACK FROM EXPEDITION IN ANTARCTIC TERRA NULLIUS."

This headline suggested to Dr. Detritus that there may

exist an area of land not claimed by any state that he might freely use for his hazardous waste disposal operations. After the end of the soccer match (incidentally-a draw), he immediately called up his attorney to inquire about it. His attorney reported back that indeed 15% of the Antarctic continent had not been the subject of an active claim by any state. She also reported that, in accordance with the Antarctic Treaty of 1959, all the states which might make effective claims to that area had agreed not to make new claims while the Treaty is in force. Although the Treaty does prohibit military activities and the disposal of radioactive waste, in Antarctica no mention is made of the disposal of other wastes. Finally, she pointed out that Vulpinia is not a party to the Antarctic Treaty.

Armed with this information, Dr. Detritus decided to explore the safety of disposing of hazardous waste in Antarctica. After obtaining the opinions of other experts familiar with Antarctica who expressed the view that certain places in Antarctica may, indeed, be suitable for long-term hazardous waste disposal, Dr. Detritus identified a potential site, conducted a short investigation of the area, and decided to experiment by placing 100 drums of his typical hazardous waste on an unclaimed isolated tongue of the ice shelf named Stella Maris. His intention was to leave the drums in place and to return to examine their condition a year later. He proceeded to assemble waste from private Vulpinian industries and shipped it to Antarctica on a Vulpinian flag vessel owned by his company. The placement of the drums in Antarctica proceeded without incident and without publicity.

Dr. Detritus' ship's movements in Antarctica were, however, observed by an artificial satellite belonging to the State of Leonia, a Consultative Party to the 1959 Antarctic Treaty. The Leonian intelligence agency observed the

activities and determined that they did not involve military activities. The Foreign Office decided not to interfere with the activities but to send the Navy in after they were completed, in order to ascertain exactly what had transpired. When the Leonian Navy arrived at Stella Maris, it was immediately determined that the drums did not contain radioactive materials. The Navy officials identified the contents of the drums from the labels which Dr. Detritus' company had attached.

The Leonian government was most distressed with the discovery. Once all the facts were in, the Leonian Minister of Foreign Affairs, Mr. Darkeye, telephoned his counterpart in Vulpinia, Minister Fox. Darkeye explained the facts as he understood them to be. Fox stated that the Government of Vulpinia was not aware of this disposal effort and that it had not sponsored nor authorized the action. But no law of Vulpinia prohibits Dr. Detritus' export of such waste or its disposal in Antarctica. Minister Darkeye took the position that his country had an obligation to ensure that no one engaged in any activity incompatible with the text or spirit of the Antarctic Treaty, or of the recommendations adopted by the Consultative Parties in furtherance of the Treaty. He suggested that the disposal of the hazardous waste by Dr. Detritus' Vulpinian company constitutes such a violation. Minister Fox replied that he appreciated Leonia's concern and that he would look into the matter.

Minister Fox immediately spoke to Dr. Detritus who confirmed the essential facts related by Minister Darkeye. Dr. Detritus offered to remove the materials if that was what his government wished him to do. The following day, Minister Fox called Minister Darkeye and told him that, although his government was not aware of any rule prohibiting the hazardous waste disposal conducted by Dr. Detritus, nor of any rule requiring his country to remove such waste, his

country was ready to recover the waste and to arrange for its proper disposal elsewhere. His country would prefer to undertake this action without prejudice to its legal position.

The ministers agreed that the question could be settled discreetly by an exchange of notes, which they executed on 2 February 1988. Due to its executive nature it was not subjected in either state to parliamentary approval. Neither government published the agreement nor informed any other state or foreign official. The substantive portion of the text is as follows:

Without any prejudice to their respective legal positions and aiming at the preservation of the unique and delicate Antarctic environment, Leonia and Vulpinia agree that:

1. Vulpinia shall recover the 100 drums of waste and remove them from the Antarctic Treaty area in order to re-establish the situation that previously existed.
2. Vulpinia shall grant Leonia the right to be represented by observers on board the vessel responsible for recovering the drums to monitor the activities.

Since it was impossible to remove the drums during the Antarctic winter, the expedition had to wait for some months before departing. During the interim, Dr. Detritus and his experts studied the situation and ran experiments to determine the safest and most expeditious way for them to remove the drums without damage to the Antarctic environment. After determining that the drums could be removed safely and reporting this to the Government of Vulpinia they were

authorized by the Vulpinian Government to proceed to Antarctica for the purposes of removing the drums.

On 7 January 1988 Dr. Detritus' Vulpinian ship, the "Arianna," approached the site where the drums were located. On board were a team of technicians from Dr. Detritus' company, officials of Vulpinia under the command of Captain Capablanca, and the observers of Leonia under the command of Lieutenant Rubinetti. The recovery operation went according to plan and without incident, except for a problem that arose in regard to five drums. These drums contained a highly corrosive and explosive substance which had seriously damaged the drums. Dr. Detritus' experts explained the problem to Capablanca and Rubinetti. These experts recommended that the best solution would be to carefully open the drums, which could still explode, and to let the contents flow into the sea. These experts reported that experiments conducted before the voyage, established that within no more than ten days the sea water would dissolve the substance and it would cause no lasting damage. The two government officials related this information to their governments by radio. The Government of Vulpinia responded that their officials should trust the recommendations of Dr. Detritus experts. The Leonia Government's response was that its observers should not interfere with the activities and that they should report on what transpired.

The contents of the five drums were subsequently discharged into the sea. While they waited for the chemicals to pass into the water, the people on board the "Arianna" fraternized in the everlasting light of the Antarctic summer. They organized a chess tournament and Captain Capablanca won the first prize (his favorite openings were the Queen's Gambit declined and the Sicilian Defense.) Within ten days after the discharge, all chemical and physical analyses of the waters in the area showed that there were no traces of

the chemical waste and that the waters had recovered all of their purity and quality. The remaining 95 drums were transported without incident to Vulpinia where they were placed in an active hazardous waste disposal site. The news reached Dr. Detritus while was he watching his favorite soccer team on television. Although he was delighted with the news, he regretted that his team scored a goal while he was on the phone.

Meanwhile, Professor Handlin was busily analyzing the data and life forms he collected during his Antarctic expedition of 1987. As a prominent authority in Antarctic marine biology, he had been excited by the astonishing discovery of a populous colony of what appeared to be a new species of asteroid echinoderm (commonly known as starfish.) That very small and sophisticated animal, measuring not more than five millimeters in length, was completely different from any kind of starfish he knew. It was extraordinarily adapted to live in the unique environment in which it was found, the waters in the immediate vicinity of the unclaimed isolated tongue of the ice shelf used by Doctor Detritus for his hazardous waste disposal experiment.

Professor Handlin decided that he needed to conduct further studies of the animal before publicly announcing the discovery of a new species. Thus, he did not publicize the discovery upon his return from Antarctica in 1987. His studies back in Leonia showed that the starfish rapidly died if there were any changes in the unique balance of temperature, purity, salinity or transparency of the water in which they were located.

By the end of 1988, he had no doubt that he had discovered a new species. Early in 1989 he returned to Antarctica to conduct further on site studies of the starfish before announcing his discovery. What he discovered when he

arrived at Stella Maris was that the entire species had been wiped out by the hazardous waste discharges from Dr. Detritus' five drums. A saddened Professor Handlin return to Leonia to make the announcement.

When the entire story became known, the Governments of both Leonia and Vulpinia were put under strong pressure by the world scientific community, environmental associations, and the public at large. A number of state representatives condemned the action in speeches before the United Nations General Assembly, but no resolution was presented or adopted. The matter was also discussed at a meeting of the Consultative Parties to the Antarctic Treaty. A communique issued by the Chair of the meeting subsequent to the discussion called for increased vigilance by all states to protect the fragile Antarctic environment, expressed the regret of the Consultative Parties for the damage caused at Stella Maris, and urged those responsible to take corrective measures. The Governments of Leonia and Vulpinia issued a joint communique expressing their deep regret for the loss of the species, and restated their full commitment to the preservation and protection of the unique and delicate Antarctic environment. When asked by reporters whether their governments would provide reparation for the damage to Antarctica, Ministers Darkeye and Fox responded that the matter was under active consideration.

Subsequently, ad hoc negotiations were conducted between the two ministers to explore the question of remedies. (Rumours that they were both furious to be commonly considered as accomplices, in what the Press called "the irresponsible murder of a starfish" are completely untrue.) Minister Darkeye strongly insisted that Vulpinia had to pay Leonia, as an Antarctic Treaty Consultative Party, compensation that would provide satisfaction for the irreparable loss of the species. Such funds would be used by

Leonia for activities conducted in furtherance of the environmental protection goals of the Antarctic Treaty. Darkeye alleged that Vulpinia had violated international obligations found in customary and conventional international law including the exchange of notes of 2 February 1988.

Minister Fox argued that his government had taken the most careful steps to correct the situation. It was not his government's fault that Professor Handlin kept his discovery secret and thereby failed to alert the public to the otherwise unknown risks to the starfish. In regard to the hazardous discharge into the Antarctic waters, he maintained that the Leonian observers were fully aware of the actions taken by Dr. Detritus' technicians and had approved of and acquiesced in them. He concluded that the dumping of hazardous waste was not forbidden under international law binding on Vulpinia or by Vulpinia's domestic law. At that point there was a break in the negotiations for an official dinner (beginning with a quiche and ending with a mousse; the wines served were Chateau d'Yquem 1975 and Leoville Las Cases 1978.)

After months of negotiations it became apparent that they had reached an impasse. As a consequence, it was decided to submit the dispute to the International Court of Justice for resolution. Since neither state had accepted the compulsory jurisdiction of the Court and no treaty in force contained a compromissory clause applicable to the instant dispute, it was agreed to submit the matter to the Court in accordance with a special agreement. The relevant portion of that agreement reads as follows:

The Governments of Leonia and Vulpinia, restating their full commitment to the preservation of the unique and delicate Antarctic environment, request the International Court of Justice to decide the following questions arising from the

so-called Stella Maris ice shelf incident:

1. Is the State of Vulpinia responsible for any breach of right pertaining to Leonia by virtue of any rule of customary or conventional international law binding upon Vulpinia?

2. In the case of an affirmative answer to question number 1, is Vulpinia under any obligation to Leonia to take remedial measures or to provide reparations for the injury to the Antarctic environment caused in the Stella Maris incident, and, if so, what type of remedial measures or reparations would be appropriate under the instant circumstances.

The dispute is now pending before the International Court of Justice. In the Appendix that follows is information on the status of relevant international agreements to which either or both states have indicated a commitment.

APPENDIX

Status of Relevant International Agreements

Ant.	=	Antarctic Treaty of 1959
CAMLR	=	Convention on the Conservation of Antarctic Marine Resources of 1980
DUMP	=	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972
LOS	=	United Nations Convention on the Law of the Sea of 1982
UN	=	United Nations Charter of 1945
Vienna	=	Vienna Convention on the Law of Treaties of 1969
Waste	=	Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989

VUPLINIA

LEONIA

ANT.	No Action	Ratification
CAMLR	No Action	Ratification
DUMP	No Action	Ratification
LOS	Signature	Signature
UN	Ratification	Ratification
Vienna	Ratification	Ratification
Waste	Signature	Signature

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CLARIFICATIONS TO THE 1990 JESSUP PROBLEM

The authors, in cooperation with the Executive Director of ILSA (pursuant to Official Rule X), make the following clarifications to the 1990 Jessup Problem:

1. The contents of the FIVE drums in question were discharged into the sea directly from the Stella Maris ice shelf;
2. The wastes contained in the FIVE and the ONE HUNDRED drums are listed in Annex I to the 1972 Dumping Convention and Annex I to the 1989 Waste Convention;
3. None of the starfish that Dr. Handlin collected for his experiments have survived;
4. The exchange of notes on 2 February 1988 was registered in conformity with Article 102 of the United Nations Charter;
5. Dr. Detritus placed the 100 drums of hazardous waste onto the Stella Maris ice shelf on 10 January 1988;
6. In December 1988, Dr. Handlin completed his research and was convinced of the existence of the new species of starfish;
7. Dr. Handlin returned to the Stella Maris on 10 February 1989 and discovered that the species was destroyed;
8. The list of treaties in the Annex shows the various positions of Leonia and Vulpinia with respect to the relevant treaties;
9. The date on page 5 of the Problem should read 7 January 1989.