

INTERNATIONAL LAW STUDENTS ASSOCIATION

2223 Massachusetts Avenue, N.W.
Washington, D.C. 20008-2864 U.S.A.

1-202-265-4375
CABLE "AMINTLAW"
FAX 1-202-797-7133



CONGRESS OF
INTERNATIONAL LAW SOCIETIES
PHILIP C. JESSUP
INTERNATIONAL LAW
MOOT COURT COMPETITION
CONFERENCE OF
INTERNATIONAL LAW JOURNALS

1992 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

Case Concerning the Media Gulf War

Atlantis

v.

Bergenia

The Applicant is the Government of Atlantis. The Respondent is the Government of Bergenia. The two Governments 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 Governments of Atlantis and Bergenia are members of the United Nations and have ratified the Hague Conventions of 1907, the Geneva Conventions of 1949, and the Geneva Additional Protocols of 1977.

This is a hypothetical problem drafted exclusively for use in the 1992 Philip C. Jessup International Law Moot Court Competition.

Notice is hereby given that all Memorials in the 1992 Competition become the property of the International Law Students Association and may be copyrighted as such.

Written by: Dr. Francoise Hampson, Professor of Law at the University of Essex, England; and Dr. Harold Almond, Professor of Law at the National Defense University, Washington, D.C.
Edited by: Dr. Jay Hall, Jill McC. Watson, American Society of International Law; and Denise M. Hodge, Executive Director of ILSA.

Copyright 1991 by the
International Law Students Association
and the
American Society of International Law

THE PROBLEM

Four major oil-producing States, Atlantis, Bergenia, Carola and Devon occupy territory bordering on Media Gulf, a semi-enclosed sea. In order to regulate oil production in the region, the four states joined the Organization of Oil-Producing States (OPS). OPS is an inter-governmental organization with informal authority to control prices, production and purchasers of oil. The directives and resolutions of the OPS are not, however, legally binding.

On 10 July 1978 Bergenia signed the Pipeline Treaty with its neighbor to the North, Atlantis, providing for the construction and operation of a pipeline to carry Bergenian oil over Atlantisan territory. Work began immediately after ratification of the agreement, and the installation began operation in early 1980 with oil flow running at the rate agreed upon by the parties--the maximum capacity of the pipes. The flow could be controlled at pump stations in both of the countries.

During the 1980s, problems arose and tensions heightened among the peoples in the north-eastern part of Bergenia (Province) which lies along Atlantis' southern border. These peoples, Ethlantians, are of the same cultural and racial group as the population of Atlantis. Bergenia had passed laws which created ethnic discrimination against the Ethlantians, requiring

that they live in defined areas, and establishing a special legal process for those in the group who were charged with "disruption" of governmental activities. In protest to this treatment, the Ethlantians repeatedly staged demonstrations. As tensions grew and after a number of demonstrators had been killed by riot police, they sought to form their own government and to secede from Bergenia.

Atlantis complained to Bergenia about the treatment of the Ethlantians and warned that this conduct was leading to insecurity and tension between the two states. Atlantis also called attention to the fact that Bergenia was exporting double the amount of oil agreed upon by the OPS member states. Atlantis claimed that Bergenia's interference with stable oil prices and its failure to stay within OPS-set production quotas threatened to destroy the OPS. Atlantis underscored its concern by pointing out that over 75% of its Gross National Product stems from the production and sale of oil, and that oil prices had fallen 17% since Bergenia began increasing its exports.

As the situation in Province worsened, Atlantis mobilized large numbers of its military forces and engaged in military exercises along the border it shares with Bergenia. Observing these activities, Bergenia reinforced its own forces along the border and deployed large numbers of Security Police - special military troops sent to ensure the security of Province.

On 1 January 1990, Atlantis made a formal demand through diplomatic channels that Bergenia take immediate steps to correct its misconduct in Province. Atlantis demanded that the Ethlant-

ians of Province be given autonomy and stated that if Bergenia failed to act, Atlantis would take any actions necessary to aid the Ethlantians in attaining that goal.

In the wake of extensive media coverage, teams from international non-governmental groups entered Province on 10 March 1990 to study the problems there. The teams reported that the Ethlantians had been subjected to abuse and deprived of the rights guaranteed to all citizens under Bergonian law.

During this period, Bergenia increased its purchases of high technology weapons, including ballistic and cruise missiles, high technology aircraft, and modernized conventional weaponry. Nearly 23% of its Gross National Product was now diverted to military expenditures.

On 1 July 1990, after its repeated requests to Bergenia to reform its oil export practices remained unanswered, Atlantis shut down the pipeline without giving notice, explaining that the measure was taken solely to compel Bergenia to fulfill its commitments under OPS directives regarding oil prices, production and sales.

Two weeks later Bergenia ordered full-scale mobilization of its military forces and began to deploy them in positions designed to assure defenses against attack from Atlantis. Bergenia also gained the support of several other states in the region who agreed to provide military assistance, if necessary, as a measure of collective self-defense. This group of states - Carola, Devon, Victoria, and Bergenia - agreed that if military action were taken, they would act as a Coalition, supplying military

forces and materials, and operating under the military command and leadership of Bergenia. Bergenia would assume full responsibility for any actions taken, and for the conduct of any hostilities with Atlantis.

At this same time Atlantis filed a report with the international organizations who had sent investigating teams into Bergenia, declaring that the treatment of the peoples in Province had not improved and that the Ethlantians continued to suffer under Bergenian rule. Atlantis produced evidence showing that the Ethlantians of Province had been tortured to compel them to confess to crimes they had not committed, that they were executed without trial, and that they were transported to ghetto communities lacking public services of any kind. Follow-up reports by the international teams noted that the demands of Atlantis upon Bergenia to cease its practices and to provide for immediate reforms had produced no effect and that Atlantis' appeals to the UN Human Rights Commission had proved futile.

On 10 August 1990, Atlantis without warning or formal declaration of war sent major military forces into Province, informing the United Nations Security Council of its action after it entered Province. Atlantis claimed that it was acting pursuant to its right of self-defense, its rights under the United Nations Charter, and its rights under customary international law relating to humanitarian intervention. Military forces from Atlantis quickly overran Province. They immediately took control of the police and public services and removed border controls at crossings between Atlantis and Province. Steps were taken to

link communications and transportation facilities in Province with those of Atlantis.

Bergenia immediately petitioned the Security Council, denouncing the actions of Atlantis as aggression contrary both to customary international law and to Article 2(4) of the Charter. Upon receiving Bergenia's petition the Security Council met and adopted Resolution 910 (1990). Resolution 910 states in its preamble that the Security Council affirms "the inherent right of individual or collective self-defense in response to the armed attack by Atlantis." The Resolution declares that:

The Security Council:

1. Condemns the Atlantis invasion of Bergenia;
2. Demands that Atlantis withdraw immediately and unconditionally all of its forces to the positions which they occupied before 10 August 1990.

Atlantis did not withdraw its forces, but reinforced them, and minor skirmishes between the two sides ensued. On 25 August 1990, the Security Council passed Resolution 928 (1990), noting Atlantis' failure to comply with Resolution 910 and authorizing under Chapter VII of the Charter:

...Member States, unless Atlantis on or before 15 October 1990 fully implements the Resolution, to use all necessary means to uphold and implement Resolution 910 and to restore international peace and security in the area.....

These resolutions were passed unanimously. Bergenia announced that in addition to considering itself authorized to

act under the resolutions, it reserved its right of self-defense under Article 51 of the Charter and under customary international law.

The October 15 deadline arrived without any sign of compliance by Atlantis. While Bergenia was consulting with its Coalition partners, Atlantis increased its military presence in the region. In the pre-dawn hours of October 16 the armed divisions of the Coalition, under the military direction of Bergenia, engaged the Atlantisan forces entrenched in Province and those stationed in Atlantis itself.

Coalition forces, having superior air power, launched air attacks on Atlantis and Province aimed at power stations and utility facilities, as well as military installations, aircraft, military bases and military forces. An attack on the Alpha power station in Atlantis resulted in the deaths of 500 civilians, 400 workers at the power station and 100 nearby residents. A sizable number of people were also wounded in the attack. Alpha station supplies power to a region largely civilian in character.

Coalition forces attacked the bridges that cross the Beta River dividing the capital of Atlantis. The attacks caused severe damage to the most important bridges, rendering them useless. Food and medical supplies could not be transported to the civilian population in the area. However, the attacks had relatively little impact upon the Atlantis military effort.

Bergenia located a missile-launching site approximately one-eighth of a mile from Gamma Hospital located in its capital city. The hospital was used to treat wounded prisoners of war as

well as others who were casualties of the fighting. Atlantis attacked the launching site, using ballistic missiles with limited targeting accuracy, causing widespread destruction.

Coalition forces destroyed the Delta Sanitation Plant which serves both the civilian population and the military forces of Atlantis. Shortly after the attacks, cholera outbreaks occurred in the civilian communities and in the military detachments served by the Delta Plant.

Victoria's ground troops entered Province and found that they were unable to dislodge Atlantisan troops who were entrenched in the Epsilon Caves there. They used flame-throwers and riot control agents to force them out. These troops, obviously blinded by riot control agents, left the caves with their hands in the air, demanding the right to surrender. A Victorian lieutenant, ignoring their pleas, ordered his platoon to fire on them. Many Atlantisans, though unarmed and on open ground, were killed.

Bergenian troops entered the village of Zeta located in central Province. They executed the 30 members of the Ethlantian Liberation Front who had controlled the village, carrying away their weapons, military insignia and flags as war souvenirs. Atlantis announced the execution of 30 captured personnel near the Atlantisan city of Eta, 3 as spies and 27 as mercenaries guilty of murder.

Bergenia spilled oil from Atlantis' Theta Refinery Complex into the waters along the coast of Atlantis, to inhibit Atlantis from landing on the coast of Devon, which borders Atlantis on the North. The oil spread along the coast and caused major damage to

Devon's desalination plants. Many of the plants were forced to shut down, which depleted essential fresh water supplies. The oil spill also destroyed much of the flora and fauna of the area.

The military forces of Atlantis ignited the Iota oil fields in Province to obstruct attacks by the Coalition Forces. The fires caused severe damage to the immediate surrounding environment. Fumes were carried by prevailing winds to other parts of Bergenia and to neutral states, harming crops and endangering the health of the population. Bergenian military forces ignited the Kappa oil fields in Atlantis creating smoke fumes and obscuring visibility. The impact of these actions was to create severe and wide-spread damage to the environment.

Atlantis attempted air attacks which were frustrated by the smoke and fumes, the concealment of military targets, and the confusion of military and civilian targets. Although they could not see their targets, the Atlantis airmen attacked the "general targeting area" and in doing so inflicted heavy civilian casualties in the Bergenian city of Lambda.

Prisoners taken by both sides suffered harsh conditions. Without authorization or knowledge of the Bergenian High Command, a column of eight hundred Atlantisan captives were marched North by Devonese troops for internment. They reached Devon's Fort Mu prison camp with only seven hundred prisoners surviving. The internees there lived in make-shift housing and were fed an inadequate diet. (Devon's food supply and distribution system had become nearly paralyzed in the weeks following 16 October 1990). Both officers and enlisted personnel were obliged to work long

hours of heavy labor repairing and rebuilding roads and military installations damaged in the fighting.

Fighting continued until 30 December 1990, when after heavy military casualties and severe destruction of civilian installations, hostilities were terminated by both sides, following a provisional cease-fire agreement. The Security Council then adopted Resolution 930 declaring that all states were requested to take measures necessary to assure the maintenance of peace and security in the region, and that they were to take prompt and effective measures to resolve their claims against each other. In reponse to Resolution 930, Atlantis and Bergenia signed a Compromis bringing their disputes regarding Atlantis' closing down the pipeline, Bergenia's oil export practices and the recent military actions undertaken by both of them, before the International Court of Justice.

Atlantis asks the Court to adjudge and declare:

1. That the oil export practices of Bergenia violate international law and applicable international agreements;
2. That the launching of hostilities by Bergenia on 16 October 1990, as well as its conduct of those hostilities, violated international law, the UN Charter, and applicable international agreements;
3. That Atlantis' closing of the pipeline is consistent with international law and applicable international

agreements;

4. That the actions of Atlantis to protect the Ethlantians and to defend itself are consistent with international law, the UN Charter, and applicable international agreements.

Bergenia asks the Court to adjudge and declare:

1. That Atlantis' shutting down the pipeline violated international law and applicable international agreements;
2. That Atlantis' sending military forces into Bergenia, as well as the subsequent conduct of the Atlantisan military, violated international law, the UN Charter, and applicable international agreements;
3. That Bergenia's oil export policies are consistent with international law and applicable international agreements;
4. That the actions of Bergenia to implement the Security Council resolutions and to defend itself are consistent with international law, the UN Charter, and applicable international agreements.