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

## 1993 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

*Administered By The*  
International Law Students Association (ILSA)

### *Case Concerning the Nationalization of Certain Property*

Bastonia

v.

Frontera

The Applicant is the government of Bastonia. The Respondent is the government of Frontera. 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. Bastonia and Frontera are original members of the United Nations and parties to the Statute of the International Court of Justice. They are contracting parties to the Vienna Convention on the Law of Treaties. They have neither signed nor ratified any other treaty relevant to this Compromis.

The 1993 Jessup Competition Problem was written by George C. Summerfield, Pennie & Edmonds, Washington, D.C. Assistance was provided by Michelle Behaylo, U.S. Dept. of Justice, Foreign Claims Settlement Commission. Review and commentary were provided by Prof. Burns H. Weston, The University of Iowa College of Law; Prof. Richard B. Lillich, The University of Virginia School of Law; Paul R. Williams, U.S. Dept. of State; and Christopher Whormsley, Foreign and Commonwealth Office (London). Copyright 1992 by the International Law Students Association and the American Society of International Law.

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## THE PROBLEM

Bastonia is a highly-developed nation with a strong industrial base. Frontera, until the Revolution of 1990, was a colony of Empira. During that time, Frontera was ruled by a Colonial Government appointed by the Empiran parliament. The Fronteran Colonial Government was afforded substantial autonomy by Empira. Frontera has had some economic growth over the last several years, but is still relatively undeveloped.

In 1980, the Foreign Trade Minister of Bastonia and the Governor General of Frontera signed a bilateral investment treaty ("Treaty"). That same year, the governments of Bastonia and Frontera ratified the Treaty. The Treaty provided, in relevant part, that:

...

Art. 2b) "States Parties", as used herein, shall mean the official organs of Bastonia and Frontera.

...

Art. 10) Each State Party shall undertake to provide the most constant protection and security against loss of, or damage to, the investments of citizens or companies of the other State Party.

...

Art. 12) In the event that a State Party fails to fulfill its obligation under Article 10 herein, such State Party shall provide compensation for such failure.

Art. 13) Each State Party shall provide compensation under Article 12 on terms no less favorable than such State Party accords the citizens or companies of any other state.

Art. 14) Notwithstanding any other provision herein, a State party shall not be required to provide compensation under Article 12 in the event that the subject loss or damage results from an act of necessity during a state of war, national emergency, or revolt.

The Treaty entered into force by its terms on January 1, 1981.

In 1978, the International Pharmaceutical Company ("IPC"), a multinational company incorporated in Bastonia, established PharmCo as a pharmaceutical manufacturing operation in Frontera. PharmCo was set up as a Fronteran corporation, 49% of which was owned by IPC, and 51% of which was owned by individuals in Frontera. Under Fronteran law, it is not possible for a corporation to be established with majority foreign ownership. IPC initially invested \$25 million in its plant, manufacturing machinery, and packaging equipment for the establishment of PharmCo, and signed a 100 year lease with the Fronteran Minister of the Interior for the 1,000 acre property on which PharmCo was to be situated.

From 1978 to 1989, the management of PharmCo was comprised entirely of Bastonian citizens who lived and worked in Frontera, and 60% of PharmCo's enormous annual profits were repatriated to IPC in Bastonia. Meetings of PharmCo's board of directors were held semi-annually at PharmCo's headquarters in Frontera, and PharmCo paid taxes in Frontera.

In 1989, the People's Revolutionary Coalition, led by the Fronteran Deputy Governor, Patrick Darwin, and assisted by a portion of the Fronteran Government, began a popular uprising in Frontera.

In early 1990, at the height of the revolution, the then-current Fronteran Government nationalized all manufacturing concerns for the stated purpose of putting down the revolution. PharmCo was among the companies nationalized by Frontera.

By late 1990, Revolutionary forces were prepared to overrun the Fronteran capitol. The Colonial Government fled to Empira. The Revolutionary Coalition ultimately gained control of the Fronteran capital and the remainder of Frontera. On January 1, 1991, the Revolutionary Coalition declared itself the Revolutionary People's Government of Frontera ("RPG"). The RPG was comprised primarily of former mid-level bureaucrats of the Colonial Government.

By March 1991, the RPG had been recognized by 50 nations, including the government of Bastonia, and an RPG representative had been seated at the United Nations as the official representative of Frontera. In presenting her credentials in Bastonia, the new Fronteran Ambassador stated that it was her government's hope that the long-standing tradition of economic and political cooperation between Bastonia and Frontera would continue under the new Fronteran regime.

In June 1991, the new Fronteran Parliament passed General Law No. 1991/007, which stated that "all laws enacted by the former Colonial Government which are inconsistent with the RPG's goals of economic and political freedom for all Fronteran citizens are hereby declared null and void . . . . This General Law is inapplicable to any treaty that Frontera has concluded." A few days later, the Fronteran Foreign Minister, appearing at the United Nations, stated that the RPG repudiated all acts of the former Fronteran regime which were inconsistent with the aims of the RPG.

Although the RPG restored ownership of companies nationalized by the former government during the revolution that were 100% owned by Fronteran nationals, no restitution or compensation was provided for any nationalized company, including PharmCo, that was partially owned by foreign nationals.

In August 1991, IPC, through appropriate administrative and judicial channels in Frontera, sought compensation for the nationalization of PharmCo. The judicial and administrative organs of ultimate jurisdiction in Frontera held that the Treaty did not provide a private cause of action for IPC. Although IPC exhausted its remedies in Frontera, no administrative agency or court reached the merits of IPC's claim.

IPC next raised the issue of compensation with the Bastonian Foreign Ministry, pointing to, *inter alia*, the guarantee provisions of the Treaty. On February 10, 1992, the Bastonian Foreign Minister sent a diplomatic note to Frontera, protesting the nationalization of PharmCo and requesting immediate compensation for IPC, pursuant to Articles 10, 12, and 13 of the Treaty.

Upon receiving the diplomatic note, Frontera responded by stating that it was not required to provide compensation for the following reasons:

- 1) Nationalization of a domestic company, such as PharmCo, without compensation is always within the sovereign right of any state;
- 2) The RPG is not liable for any obligations undertaken, or any acts committed, by the former Colonial Government of Frontera; and
- 3) Even if the terms of the Treaty were binding on the RPG, the RPG would not be liable for compensation because the loss to IPC was occasioned by necessity during a time of war, national emergency, or revolt.

The governments of Bastonia and Frontera undertook negotiations which lasted several months without result. The government of Bastonia expressed its desire to submit this dispute to the International Court of Justice. The government of Frontera agreed. On October 1, 1992, the two governments filed a *compromis* pursuant to Article 36(1) of the Statute of the ICJ.

The government of Bastonia asks the Court to:

- 1) Declare that Frontera acted illegally in nationalizing PharmCo without restitution or compensation; and
- 2) Declare the current Fronteran government liable for losses to the investment of IPC.

The government of Frontera asks the Court to:

- 1) Declare that Frontera acted in accordance with international law in nationalizing PharmCo; and
- 2) Declare that the current Fronteran government is not liable for losses to the investment of IPC.

## CLARIFICATIONS TO THE 1993 JESSUP PROBLEM

The following clarifications have been issued by the author of the 1993 Jessup Problem in response to requests submitted by participating teams pursuant to Official Rule X.

Not all questions submitted have been answered. The author of the Jessup problem has the discretion to not issue clarifications when the information requested touches too closely upon the central themes presented in the Problem and would detract from the nature of participant's arguments, or provide specific answers to matters left intentionally unclear.

Participants are reminded that, while some inferences must be necessarily be drawn from the fact scenario in order to present your arguments, all relevant inferences must be drawn from generally supportable facts present in the Problem. If a treaty or convention is not mentioned in the problem, the nations are not parties to it.

### Clarifications Issued

1. *When did Frontera become a colony of Empira and under what circumstances? Under what circumstances did Frontera become a member of the United Nations?*

Frontera was colonized by Empira in the early 1700's. By the early 1900's, Empira allowed Frontera substantial autonomy. While Empira continued to appoint the highest officials of the Fronteran government, generally from among the Fronteran population, Frontera was allowed to conduct its own foreign policy.

Frontera was admitted to the United Nations as an original member even though at the time no formal "end" had been brought to the colonial arrangement.

2. *Did the government of Frontera have the authority to enter into the bilateral treaty?*

Yes.

3. *Was Patrick Darwin appointed by the Empiran Parliament?*

No.

4. *What was the size and extent of PharmCo's business in Frontera, and what is the status of PharmCo's operations now?*

PharmCo's annual gross profits averaged \$50 million. PharmCo operated as any other private corporation in Frontera, and benefited from no special government subsidies, leases, or other arrangements available only to PharmCo.

When nationalized, the colonial government placed PharmCo under government management with all other nationalized corporations. All corporations not returned to their Fronteran owners by the RPC remain under the management of agencies of the new government.